

ORDINANCE NO. 2004-90

AN ORDINANCE OF THE TOWN OF TALTY, TEXAS, ADOPTING COMPREHENSIVE REGULATIONS TO REGULATE SEXUALLY ORIENTED BUSINESSES; PROVIDING FOR UNIFORM REGULATIONS FOR SEXUALLY ORIENTED BUSINESSES; PROVIDING A REPEALING CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY NOT TO EXCEED THE SUM OF TWO THOUSAND DOLLARS (\$2,000.00); AND PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE TOWN OF

TALTY, TEXAS:

SECTION 1. That the ordinances of the Town of Talty, Texas be and are hereby amended by adding new comprehensive regulations to provide for the regulation of Sexually Oriented Businesses, said new regulations to read in their entirety as follows:

“SEXUALLY ORIENTED BUSINESSES

Sec. 1.100 Purpose and Intent.

(a) It is the purpose of this ordinance to regulate sexually oriented businesses to promote the health, safety, morals, and general welfare of the citizens of the Town, and to establish reasonable and uniform regulations to prevent the concentration of sexually oriented businesses within the Town. 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) It is the intent of the Board of Aldermen that the locational regulations of this ordinance are promulgated pursuant to Chapter 243, V.T.C.A., Local Government Code.

Sec. 1.101 Definitions

In this ordinance:

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 the depicting or describing of “specified sexual activities” or “specified anatomical areas.”

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:

- (1) 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 “specific sexual activities” or “specified anatomical areas;” or
- (2) Instruments, devices, or paraphernalia, which are designed for, or used in connection with “specified sexual activities.”

Adult Cabaret means a nightclub, bar, restaurant, or similar commercial establishment, which regularly features:

- (1) persons who appear in a state of nudity; or
- (2) live performances which are characterized by the exposure of “specified anatomical areas” or by “specified sexual activities;” or
- (3) films, motion pictures, videocassettes, slides, or other photographic reproductions, which are characterized by the depiction or description of “specified

sexual activities” or “specified anatomical areas.”

Adult Motel means a hotel, motel or similar commercial establishment which:

(1) offers accommodations to the public for any form of consideration; provides the patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by the depiction or description of “specific 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

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

(3) allows a tenant or occupant of a sleeping room to sub•rent the room for a period of time that is less than 10 hours.

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

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 sexual activities” or “specified anatomical areas.”

Board of Aldermen means the governing body of the Town of Talty,. Texas.

Building Official means the individual, or his subordinates, designated by the Town and charged with code and ordinance enforcement. It shall refer to the mayor and/or his designee.

Escort means a person whom, 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.

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.

Historic District means a historic overlay zoning district as defined in the Comprehensive Zoning Ordinance.

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.

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

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 operating a sexually oriented business whether or not that person is an owner, part owner, or licensee of the business.

Nudity or a State Of Nudity means:

- (1) the appearance of a human bare buttock, anus, male genitals, female genitals, or female breasts; or

- (2) a state of dress that fails to opaquely cover a human buttock, anus, male genitals, female genitals, or any part of the female breast below the top of the areola.

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

Residential District means a single-family, duplex, townhouse, multiple family or mobile home zoning district as defined in the Comprehensive Zoning Ordinance.

Residential Use means a single-family, duplex, or multi-family use as defined in the Comprehensive Zoning Ordinance.

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

Sexual Encounter Center means a business or commercial enterprise that, as one of its primary business purposes, offers for any form of consideration:

- (1) Physical contact in the form of wrestling or tumbling between persons of the opposite sex; 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 or semi-nude.

Sexually Oriented Business means a sex parlor, nude studio, modeling studio, love parlor, adult bookstore, adult movie theater, adult video arcade, adult movie arcade, adult video store, adult motel, or other commercial enterprise the primary business of which is the offering of a service or the selling, renting, or exhibiting of devices or any other items intended to provide sexual stimulation or sexual gratification to the customer.

Specified Anatomical Areas means human genitals in a state of sexual arousal.

Specified Sexual Activities means and includes any of the following:

- (1) the fondling or other erotic touching of human genitals, pubic region, buttock, anus, or female breasts;
- (2) sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, or sodomy;
- (3) masturbation, actual or simulated; or
- (4) excretory functions as part of or in connection with any of the activities set forth in (1) through (3) above.

Town Council means the Town Council or Board of Aldermen of the Town of Talty or its designated agent.

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 which constitute 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 which 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 ownership or control.

Sec. 1.102 Classification

Sexually oriented businesses are classified as follows:

- (1) adult arcades;
- (2) adult bookstore or adult video store;
- (3) adult cabarets;
- (4) adult motels;
- (5) adult motion picture theaters;
- (6) adult theaters;
- (7) escort agencies;
- (8) nude modeling studios; and
- (9) sexual encounter centers.

Sec. 1.103 License Required

- (a) A person commits an offense if he operates a sexually oriented business without a valid license issued by the Town for the particular type of business.
- (b) An application for a license must be made in the form provided by the Town. The application must be sworn to and shall 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 inches.
- (c) The applicant must be qualified according to the provisions of this ordinance.
- (d) If a person who wishes to operate a sexually oriented business is an individual, he 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 a ten percent (10%) or greater interest in the business must sign the application for a license as applicant. Each applicant must be qualified under Section 1.104 of this ordinance, and each applicant shall be considered a licensee if a license is granted.

Sec. 1.104 Issuance of a License

(a) The Building Official shall approve the issuance of a license to an applicant within sixty (60) days after receipt of an application unless the Building Officials finds one or more of the following to be true:

- (1) An applicant is under eighteen (18) years of age.
- (2) An applicant or applicant's spouse is overdue in the payment of Town taxes, fees, fines, or penalties assessed against or imposed upon the applicant or the applicant's spouse in relation to a sexually oriented business.
- (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 (2) years immediately preceding the application.
- (5) Any fee required by this ordinance has not been paid.
- (6) 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.
- (7) An applicant or the proposed establishment is in violation or is not in compliance with Sections 1.106, 1.111, 1.112, 1.113, 1.115, 1.116, 1.117, or 1.118, of this ordinance.
- (8) An applicant or applicant's spouse has been convicted of a crime:
 - A. involving:
 - i) any of the following offenses 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 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; or

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 the conviction or the date of the

release from confinement imposed for the conviction, whichever is the later date, if the conviction is of a misdemeanor offense;

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

iii) less than (5) five years have elapsed since the date of the last conviction or the date of the release from confinement imposed 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 has no effect on the disqualification of the applicant or applicant's spouse under subsection (a) of this section.

(c) An applicant who has been convicted or whose spouse has been convicted of an offense listed in subsection (a)(8)(A) of this section may qualify for a sexually oriented business license only when the time period required by subsection (a)(8)(B) has elapsed.

(d) The Building Official, upon approving issuance of a sexually oriented business license, shall send to the applicant, by certified mail, return receipt requested, written notice of that action and state where the applicant must pay the license fee and obtain the license. The Building Official's approval of the issuance of the license does not authorize the applicant to operate a sexually oriented business until the applicant has paid all fees required by this ordinance and obtained possession of the license.

(e) The license, if granted, must 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 must 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.

Sec. 1.105 Fees

(a) The Town shall collect an annual fee for a sexually oriented business license in

accordance with the fee schedule of the Town, as amended from time to time.

(b) In addition to the fees required by subsection (a), an applicant for an initial sexually oriented business license shall, at the time of making application, pay a nonrefundable fee in accordance with the fee schedule of the Town for the Town to consider such application and conduct an investigation of the applicant(s).

Sec. 1.106 Inspection

(a) An applicant or licensee shall permit the Building Official to inspect the premises of a sexually oriented business, for the purpose of ensuring 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 lawful inspection of the premises by the Building Official at any time it is occupied or open for business.

(c) 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 habitation.

Section 1.107 Expiration of License

Each license expires one year from the date of issuance, except that a license issued pursuant to a locational restriction expires on the date the exemption expires. A license may be renewed only by making application as provided in Section 1.103. Application for renewal should be made at least ninety (90) days before the expiration date, and when made less than ninety (90) days before the expiration date, the expiration of the license will not be affected by the pendency of the application.

Sec. 1.108 Suspension

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

- (1) violated or is not in compliance with Sections 1.106, 1.111, 1.112, 1.113,

1.115, 1.116, 1.117, 1.118, 1.119 or 1.120 of this ordinance;

- (2) engaged in excessive use of alcoholic beverages or drugs while on the sexually oriented business premises;
- (3) refused to allow an inspection of the sexually oriented business premises as authorized by this ordinance;
- (4) knowingly permitted gambling by any person on the sexually oriented business premises;
- (5) demonstrated inability to operate or manage a sexually oriented business in a peaceful and law-abiding manner thus necessitating action by law enforcement officers.

Sec. 1.109 Revocation

(a) The Building Official shall revoke a license if a cause of suspension in Section 1.108 occurs and the license was previously suspended within the preceding twelve (12) months.

(b) The Building Official shall revoke a license if the Building Official determines that:

- (1) a licensee gave false or misleading information in the material submitted to the Town 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 1.104 (a)(8)(A) for which the period required in Section 1.104(a)(8)(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 1.104 (a)(8)(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 conduct to occur in or on the licensed premises. The term "sexual contact" shall have the same meaning as it is defined in Section 21.02, Texas Penal Code; or
 - (8) a licensee is delinquent in payment to the Town for hotel occupancy taxes, ad valorem taxes, or sales taxes related to the sexually oriented business.
- (c) The fact that a conviction is being appealed shall have no effect on the revocation of the license.
 - (d) Subsection (b)(7) does not apply to adult motels as a ground for revoking the license unless the licensee or employees 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 Building Official revokes a license, the revocation shall continue for one (1) year and the licensee shall not be issued a sexually oriented business license for one (1) year from the date of date revocation became effective. If, subsequent to revocation, the Building Official finds that the basis for the revocation has been corrected or abated, the

applicant may be granted a license of at least ninety (90) days have elapsed since the date the revocation became effective. If the license was revoked under Subsection (b)(5), an applicant may not be granted another license until the appropriate number of years required under Section 1.104(a)(8)(B) has elapsed.

Sec. 1.110 Appeal

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

Sec. 1.111 Transfer of License

A licensee shall not transfer his 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. 1.112 Location of Sexually Oriented Businesses

(a) A person commits an offense if he operates or causes to be operated a sexually oriented business within one-thousand feet (1000') of:

- (1) the property line of any property zoned for any residential use or the property line of any residential district;
- (2) a church;
- (3) a school or child-care facility;

- (4) a boundary of a district zoned for residential use;
- (5) a public park;
- (6) the property line of a lot devoted to a residential use; or
- (7) any building or structure in which alcoholic beverages are offered for sale.

(b) A person commits an offense if he causes or permits the operation, establishment, or transfer of ownership or control of a sexually oriented business within one-thousand feet (1000') of another sexually oriented business.

(c) 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 the building structure or portion thereof containing another sexually oriented business.

(d) For the purpose 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 part of the premises where a sexually oriented business is conducted, to the nearest property line of the premises of a church, school or child care facility, or residential lot, or to the nearest boundary of an affected public park or residential district.

(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.

(f) A sexually oriented business fully operating as a conforming use is not rendered a nonconforming use by the location, subsequent to the grant or renewal of the sexually oriented business license, of a church, school or child care facility, or residential lot, or to the nearest boundary of an affected public park or residential district within one-thousand feet (1000') feet of the sexually oriented business. This provision applies only to the renewal of a valid license, and does not apply when an application for a license is submitted after a license has expired or has been revoked.

Section 1.113 Development and Performance Standards

(a) The following development standards shall apply to all sexually oriented businesses:

- (1) No adult business shall be located in any temporary or portable structure.
 - (2) Trash dumpsters shall be enclosed by a screening enclosure so as not to be accessible to the public.
 - (3) No parking outside of designated parking spaces within the boundaries of the premises shall be allowed.
 - (4) The entire exterior grounds, including the parking lot and landscaped areas, shall be lighted in such a manner that all areas are clearly visible at all times.
 - (5) All signage shall conform to all sign ordinances, requirements and regulations, and shall not contain sexually oriented photographs, silhouettes, or other pictorial representations of specified sexual activities.
 - (6) All entrances to an adult business shall be clearly and legibly posted by a notice indicating that minors are prohibited from entering the premises.
 - (7) No residential structure or any other nonconforming structure shall be converted for use as a sexually oriented business.
 - (8) No residence, apartment, living quarters or mobile home shall be located on the premises of a sexually oriented business.

(b) The following performance standards shall apply to all sexually oriented businesses:

- (1) The sexually oriented business shall not conduct or sponsor any special events, promotions, festivals, concerts, or similar activities which would create a demand for parking spaces beyond the number of spaces required for the business.

(2) The traffic generated by the sexually oriented business shall not overload the capacity of the surrounding street system and shall not create a hazard to public safety, as determined by the Town.

(3) No sexually oriented business shall be operated in any manner that permits the observation of any persons or material depicting, describing or related to specified sexual activities or specified anatomical areas, inside the premises, from any public way or from any location outside the building or area of such establishment. This provision shall apply to any display, decoration, sign, show window or other opening.

(4) No loudspeakers or sound equipment shall be used by a sexually oriented business for the amplification of sound to a level audible beyond the building setbacks for the premises on which the sexually oriented business is located.

(5) All exterior areas of the sexually oriented business, including buildings, landscaping, and parking areas shall be kept free of trash and debris and maintained in a clean and orderly manner at all times.

(6) Hours of operation shall be from 10:00 a.m. to 12:01 a.m.

Sec. 1.114 Exemption From Location Restrictions

(a) If the Building Official denies the issuance of a license to an applicant because the location of the sexually oriented business establishment is in violation of Section 1.112 of this ordinance, then the applicant may, not later than ten (10) calendar days after receiving notice of the denial, file with the Town secretary a written request for an exemption from the locational restrictions of Section 1.112 of this ordinance.

(b) If the written request is filed with the Town secretary within the ten (10) day limit, the Board of Aldermen shall appoint a special appeals board to consider the request. This board may consist of, but is not limited to, members of the Town Planning and Zoning Commission or the Board of Adjustments. The Town secretary shall set a date for the hearing within sixty (60) days from the date the written request is received.

(c) A hearing by the appeals board may proceed if a quorum is present. The appeals board shall hear and consider evidence offered by any interested person. The formal rules of evidence do not apply.

(d) The Appeals Board may, in its discretion, grant an exemption from the locational restrictions of Section 1.112 if it makes the following findings:

(1) that the location of the proposed sexually oriented business will not have a detrimental effect on nearby properties or being contrary to the public safety and welfare;

(2) that the granting of the exemption will not violate the spirit and intent of this ordinance;

(3) that the location of the proposed sexually oriented business will not downgrade the property values or quality of life in the adjacent areas or encourage the development of urban blight;

(4) that the location of an additional sexually oriented business in the area will not be contrary to the any program of neighborhood conservation nor will it interfere with any efforts of urban renewal or restoration; and

(5) that all other applicable provisions of this ordinance will be observed.

(e) The Appeals Board shall grant or deny the exemption by a majority vote. Failure to reach a majority vote shall result in denial of the exemption. Disputes of fact shall be decided on the basis of a preponderance of the evidence. The decision of the Appeals Board is final.

(f) If the Appeals Board grants the exemption, the exemption is valid for one year from the date of the Boards action. Upon the expiration of an exemption, the sexually oriented business is in violation of the locational restrictions of Section 1.112 of this ordinance, until the applicant applies for and receives another exemption.

(g) If the Appeals Board denies the exemption, the applicant may not reapply for an exemption until at least twelve (12) months have elapsed since the date of the Board's action.

(h) The grant of an exemption does not exempt the applicant from any other provisions of this ordinance other than the locational restrictions of Section 1.112 of this ordinance.

Sec. 1.115 Additional Regulations for Escort Agencies

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

(b) A person commits an offense if he acts as an escort or agrees to act as an escort for any person under the age of eighteen (18) years.

Sec. 1.116 Additional Regulations for Nude Modeling Studios

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

(b) A person under the age of eighteen (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 eighteen (18) years was in a restroom not open to public view or persons of the opposite sex.

(c) 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 an 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. 1.117 Additional Regulations for Adult Theaters and Adult Motion Picture Theaters

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

(b) 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.

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

Sec. 1.118 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 rebuttal 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 the sleeping room in a hotel, motel, or similar commercial establishment that does not have a sexually oriented business license, he rents or sub rents a sleeping room to a person and, within ten (10) hours from the time the room is rented, he rents or sub rents the same sleeping room again.

(c) For purposes of Subsection (b) of this section, the terms “rent” or “sub-rent” means the act of permitting a room to be occupied for any form of consideration.

Sec. 1.119 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 managers stations 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 permit will be conspicuously posted, if granted. A professionally prepared diagram in

the nature of an engineer's or architect's blueprint shall not be required; however each diagram should be oriented to the north or to some designated street or object and should be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus six inches. The Building Official 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 Building Official.

(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 the 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.

(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 view area specified in subsection (5) of this section 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 (1) of this section.

(7) 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) 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.

(b) A person having a duty under subsections (1) through (8) of subsection (a) of this section commits an offense if he knowingly fails to fulfill that duty.

Sec. 1.120 Display of Sexually Explicit Material to Minors

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

(1) human sexual intercourse, masturbation, or sodomy;

(2) fondling or other erotic touching of human genitals, pubic region, buttock, or that portion of the female breast below the top of the areola; or

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

(4) human male genitals in a discernibly turgid state, whether covered or uncovered.

(b) In this section “display” means to locate any item in such a manner that, without obtaining assistance from an employee of the business establishment:

(1) it is available to the general public for handling and inspection; or

- (2) the cover or outside packaging on the item is visible to members of the general public.

Sec. 1.121 Enforcement

(a) Except as provided by subsection (b) of this section, any person, firm or corporation violating any of the provisions of this ordinance shall be deemed guilty of a misdemeanor and, upon conviction, shall be punished by a penalty or fine not to exceed the sum of Two Thousand Dollars (\$2,000) for each offense, and each and every day such offense is continued shall constitute a new and separate offense.

(b) If the sexually oriented business involved is a nude model studio or sexual encounter center, then violation of Section 1.112 of this ordinance is punishable as a Class A misdemeanor.

(c) It is a defense to prosecution under Sections 1.103(a), 1.112, or 1.116(d) 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, junior 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 transferable 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 days in advance of the class; and

C. where no more than one nude model is on the premises at any one time.

(d) It is a defense to the prosecution under Sections 1.103(a) or 1.112 of this ordinance 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. 1.122 Injunction

A person who operates or causes to be operated a sexually oriented business without a valid license or in violation of Section 1.112 of this ordinance is subject to a suit for injunction as well as prosecution for criminal violations.

Sec. 1.123 Amendment of this Ordinance

Sections 1.112 and 1.114 of this ordinance may be amended only after compliance with the procedure required to amend a zoning ordinance. Other sections of this ordinance may be amended by ordinance adopted by majority vote of the Board of Aldermen.”

SECTION 2. That any provisions of the ordinances of the Town of Talty in conflict with the provisions of this ordinance be and same are hereby repealed and any provisions not so in conflict shall remain in force and effect.

SECTION 3. That should any sentence, paragraph, subdivision, clause, phrase or section of this ordinance be adjudged or held to be unconstitutional, illegal or invalid, the same shall not effect the validity of this ordinance as a whole, or any part or provision thereof other than the part so decided to be invalid, illegal or unconstitutional, and shall not effect the validity of the Code of Ordinances as a whole.

Section 4. That any person, firm or corporation violating any of the provisions or terms of this ordinance shall be subject to the same penalty as provided for in the Code of Ordinances of the Town of Talty, as heretofore amended, and upon conviction shall be punished by a fine not to exceed the sum of two thousand dollars (\$2,000.00) for each

offense; and each and every day such violation shall continue shall be deemed to constitute a separate offense.

SECTION 5. This ordinance shall take effect immediately from and after its passage and the publication of the caption, as the law in such cases provides.

DULY ADOPTED by the Board of Aldermen of the Town of Talty, Texas on the 12th day of October, 2004.

APPROVED:

Allison Weaver, Mayor

ATTEST:

Roberta Owens, Town Secretary

APPROVED AS TO FORM:

CITY ATTORNEY (67994)

ORDINANCE NO. 2004-90

AN ORDINANCE OF THE TOWN OF TALTY, TEXAS, ADOPTING COMPREHENSIVE REGULATIONS TO REGULATE SEXUALLY ORIENTED BUSINESSES; PROVIDING FOR UNIFORM REGULATIONS FOR SEXUALLY ORIENTED BUSINESSES; PROVIDING A REPEALING CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY NOT TO EXCEED THE SUM OF TWO THOUSAND DOLLARS (\$2,000.00); AND PROVIDING AN EFFECTIVE DATE.

DULY PASSED by the Board of Aldermen of the Town of Talty, Texas, on the 12th day of October, 2004.

APPROVED:

Allison Weaver, Mayor

ATTEST:

Roberta Owens, Town Secretary