

**THE REGULATIONS FOR
SEXUALLY ORIENTED BUSINESSES
IN THE UNINCORPORATED AREA OF
MONTGOMERY COUNTY, TEXAS**
(Revised May 9, 2017)

SECTION I – AUTHORITY

- (a) These regulations are promulgated pursuant to and in conformity with Chapter 243 of the Local Government Code of Texas, as amended, and Chapter 234 of the Local Government Code, as amended.
- (b) It is the purpose of Montgomery County Commissioners Court in adopting these regulations to regulate sexually oriented businesses and massage parlors in order to promote the health, safety, moral and general welfare of the citizens of the unincorporated areas of Montgomery County, and to establish reasonable and uniform regulations to prevent the deleterious secondary effects of sexually oriented businesses within the unincorporated areas of Montgomery County. The regulations have neither the purpose nor effect of imposing a limitation or restriction on the content or reasonable access to any communicative materials, including sexually oriented materials. Similarly, it is neither the intent nor the effect of these regulations to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent nor effect of these regulations to condone or legitimize the distribution of obscene material.
- (c) Montgomery County Commissioners Court finds that:
 - (1) Sexually oriented businesses, as a category of commercial uses, are associated with a wide variety of adverse secondary effects including but not limited to personal and property crimes, potential spread of diseases, lewdness, public indecency, obscenity, illicit drug use and drug trafficking, negative impacts on surrounding properties, urban blight, litter, sexual assault and exploitation, prostitution, and human trafficking; and
 - (2) Sexually oriented businesses should be separated from sensitive land uses to minimize the impact of their secondary effects upon such uses, and should be separated from other sexually oriented businesses, to minimize the secondary effects associated with such uses and to prevent an unnecessary concentration of sexually oriented businesses in one area.

- (d) These regulations do not legalize anything prohibited under the Texas Penal Code and any other law or regulation.

SECTION II – ADMINISTRATION

- (a) The Commissioners Court of Montgomery County designates and directs the Montgomery County Sheriff or his duly authorized agent to investigate, deny, issue, attach conditions, suspend and revoke Sexually Oriented Business Permits (SOBPs) pursuant to the above authority and these regulations. An appeal shall not automatically stay the effect of the Sheriff’s determination.
- (b) Pursuant to Section 243.007(c) of the Local Government Code, as amended, the District Court has jurisdiction over a suit which arises from the denial, suspension, or revocation of a SOBP.

SECTION III – AREA COVERED BY REGULATIONS

- (a) These regulations apply to enterprises located in the extraterritorial jurisdiction of any city and the unincorporated areas of Montgomery County.
- (b) Incorporated cities or towns in Montgomery County that execute cooperative agreements with Montgomery County and adopt ordinances substantially similar to these regulations may utilize the permitting procedures set out herein. The incorporated city or town may adopt different distancing restrictions than those contained in these regulations and shall support its distancing restrictions by a finding that there are locations within the incorporated area which are available for use as sexually oriented enterprises under the designated distance.

SECTION IV – DEFINITIONS

As used in these regulations:

- (a) Adult Arcade: shall mean an enterprise the public is allowed or invited where image producing devices are maintained to show images to five or fewer persons per device at any one time and where the images so displayed are distinguished or characterized by the depiction or description of specified sexual activities or specified anatomical areas as defined in these regulations. Devices covered in this definition include machines that produce still or motion pictures, are coin or slug-operated, are electronically or mechanically controlled, and include computer monitors.
- (b) Adult Bookstore or Adult Video Store: shall mean an enterprise which, as one of its principal business activities, offers for sale or rental, for any form of

consideration, any one or more of the following: books, magazines, periodicals or other printed matter, photographs, films, motion pictures, video cassettes or video reproductions, computer programs, slides, instruments, devices, paraphernalia, compact discs, digital video discs or other visual representations that depict or describe specified sexual activities or specified anatomical areas as defined in these regulations.

(c) Adult Cabaret: shall mean a nightclub, bar, juice bar, restaurant, bottle club, bikini bar or other enterprise, whether or not alcoholic beverages are served, that features:

(1) persons who appear semi-nude or nude;

(2) live performances which are characterized by the exposure of specified anatomical areas or specified sexual activities; or

(3) films, motion pictures, computer simulations, videos, slides or other reproductions which are characterized by the depiction of or description of specified anatomical areas or specified sexual activities.

(d) Adult Lounge: shall mean an adult cabaret, as defined above, which is permitted or licensed by the Texas Alcoholic Beverage Code, where alcoholic beverages may be served or sold.

(e) Adult Motel: shall mean a hotel, motel or similar enterprise that:

(1) offers accommodations to the public for any form of consideration and provides customers with closed-circuit television transmissions, films, motion pictures, video cassettes, slides or other reproductions that are characterized by the depiction or description of specified sexual activities or specified anatomical areas as defined in these regulations; and

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

(f) Adult Motion Picture Theatre or Adult Movie Theatre: shall mean an enterprise that contains a room with a screen or projection area for customers to view films, motion pictures, videocassettes, digital video discs, slides, any electronically produced media or similar photographic reproductions depicting, describing or relating to specified sexual activities or specified anatomical areas or intended to provide sexual stimulation or sexual gratification.

(g) Adult Theatre: shall mean a theatre, concert hall, auditorium or similar enterprise that regularly features live performances characterized by the exposure of specified anatomical areas as defined in these regulations.

- (h) Allow: shall mean to let happen, cause, suffer, or permit, including failure to prevent.
- (i) Applicant: shall mean the individual or entity submitting the application for a SOBP. Where appropriate, this includes a designated agent of the applicant.
- (j) Cashier: shall mean any employee who handles cash or any other form of payment from clients of an enterprise for services or products provided.
- (k) Child Care Facility: shall mean a facility used as a day nursery, children's boarding home, child placement agency, or other place for the care or custody of children under fifteen (15) years of age, licensed by the State of Texas pursuant to Chapter 42 of the Texas Human Resource Code.
- (l) Church or Place of Religious Worship: shall mean a facility, including all structures and grounds, at which persons regularly assemble for worship, intended primarily for purposes connected with faith or for spreading a form of belief.
- (m) City: shall mean an incorporated city, town or village.
- (n) Commissioners Court: shall mean the Commissioners Court of Montgomery County.
- (o) Conduct Business: shall mean a person who does one or more of the following:
 - (1) Operates a cash register, cash drawer or other depository on the premises of the enterprise where cash funds, records of cash and credit card transactions are kept;
 - (2) Displays or takes orders from customers for any merchandise, goods, entertainment or other services offered on the premises of the enterprise;
 - (3) Delivers or provides to customers any merchandise, goods, entertainment, or other services offered on the premises of the enterprise;
 - (4) Acts as a door attendant to regulate entry into the enterprise;
 - (5) Supervises or manages other persons in the performance of activities on the premises of the enterprise; or
 - (6) Anyone who causes another to do any of the foregoing activities on the premises of the enterprise.
- (p) County: shall mean Montgomery County, Texas.

- (q) Customer: shall mean any person, patron, or client including members of the public or club members invited to a Class I enterprise. This definition does not include employees required to have a Class II permit.
- (r) Dwelling: shall mean a house, duplex, apartment, townhouse, condominium, mobile home, or any other building used as a residence.
- (s) Employee: shall mean a person who works for or conducts business in a sexually oriented business, a person who receives or expects to receive compensation from the operator or customers of the sexually oriented business and shall include but is not limited to operators, managers, clerks, dancers, models, entertainers, food and beverage workers, servers, door persons, bouncers, and cashiers. It is expressly intended that this definition include employer-employee relationships, independent contractor relationships, agency relationships and any other arrangement whereby the “employee” has an expectation of receiving compensation, tips or other benefits from the sexually oriented business or its customers in exchange for services performed on the premises. Employee does not include a person exclusively on the premises for repair or maintenance of the premises or for the delivery of goods to the premises.
- (t) Escort: shall mean an individual who, for consideration, agrees or offers to privately model, dance or perform for another person, or to act as a private companion, guide or date for another person and offers a service intended to provide sexual stimulation or sexual gratification.
- (u) Escort Agency: shall mean a business that, for consideration, furnishes, offers to furnish or advertises to furnish escorts as one of its primary business purposes and offers a service intended to provide sexual stimulation or sexual gratification.
- (v) Enterprise: an organization, venture, individual, sole proprietorship, partnership, corporation, limited liability company, association, union, other legal entity, or group of individuals associated in fact, that have related activities, unified operation or common control, and a common business purpose.
- (w) Fire Marshal: shall mean the Montgomery County Fire Marshal or the Montgomery County Fire Marshal’s designated agent.
- (x) Hospital: shall mean a building used to provide in-patient medical care for the sick or injured and licensed pursuant to the Texas Hospital Licensing Law, Chapter 241 of the Texas Health and Safety Code, or operated by the Federal Government.
- (y) Interested Party: shall include the applicant; any person who owns or leases real property within fifteen hundred (1500) feet of an enterprise; and any official who

is elected by the residents of Montgomery County including the Montgomery County Sheriff but specifically excepting all magistrates elected in Montgomery County.

- (z) Live Exhibition: shall mean a live performance by one or more individuals in front of at least one customer, including but not limited to dancing, modeling, sword swallowing, juggling, acrobatic acts, wrestling, pantomime, role playing, encounter session, singing, striptease, play, skit, reading, revue, fashion show, or musical rendition.
- (aa) Manager: shall mean any person who supervises, directs, controls or manages any employee of an enterprise or any other person who conducts any business in an enterprise with respect to any activity conducted on the premises, including any on-site manager.
- (bb) Massage Parlor: shall mean a business that advertises or conveys a message, express or implied, that massage services are provided and allows:
 - (1) a customer to receive massage services by a person who is nude, as defined in section 234.101(2) of the Local Government Code;
 - (2) a person to engage in sexual contact for compensation, with sexual contact defined in 234.101(2) of the Local Government Code; or
 - (3) a person to provide massage services in clothing intended to arouse or gratify the sexual desire of any person.
- (cc) Nude: entirely unclothed or clothed in a manner that leaves uncovered or visible through less than fully opaque clothing any portion of the breasts below the top of the areola of the breasts or any portion of the genitals or buttocks.
- (dd) On-Site Manager: shall mean a person responsible, on a temporary or permanent basis, for supervision of the operation, monitoring and observing of all areas of the enterprise to which customers enter during regular business hours.
- (ee) Opaque: shall mean not transparent to any degree; an opaque article of clothing completely blocks visibility to the underlying skin; not see-through.
- (ff) Operate: shall mean to cause to function or to put or keep in a state of doing business.
- (gg) Operator: shall mean any person on the premises of the enterprise who operates or is authorized to manage the enterprise, whether or not that person is an owner, part-owner or licensee of the enterprise.
- (hh) Owner: shall mean the proprietor of an enterprise if a sole proprietorship; all general partners of an enterprise that is a partnership; a member of a limited

liability company; or the corporation and all officers, directors, and persons holding fifty percent (50%) or more of the outstanding shares of an enterprise if a corporation; and a person is considered an owner of an enterprise for purposes of these regulations if the person:

- (1) takes out a lease for an enterprise;
- (2) opens an account for utilities for an enterprise;
- (3) receives a certificate of compliance for the building;
- (4) receives the profits of an enterprise;
- (5) pays for an advertisement for an enterprise;
- (6) signs for an alarm permit for an enterprise;
- (7) signs for a license issued by the Texas Alcoholic Beverage Commission to the enterprise.

(ii) Peace Officer: shall mean a peace officer as described in Article 2.12 of the Code of Criminal Procedure having jurisdiction in the unincorporated areas of Montgomery County.

(jj) Person: shall mean an individual, proprietorship, partnership, corporation, limited liability company, association, or other legal entity.

(kk) Premises: shall mean the real property where the enterprise is located, and all appurtenances, buildings, grounds, private walkways, and parking lots adjacent to the enterprise.

(ll) Principal business activity: shall exist where the enterprise has a substantial portion of:

- (1) displayed merchandise consists of said items;
- (2) wholesale value of displayed merchandise consists of said items;
- (3) retail value of displayed merchandise consists of said items;
- (4) revenues from the sale or rental, for any form of consideration of said items; or
- (5) interior business space for the sale or rental of said items.

(mm) Public Building: shall mean a building used by Federal, State or local government that is open to the public.

(nn) Public Park: shall mean a tract of land dedicated to public use and accessible to the public for recreational purposes, not including public roads, walkways, easements and right-of-ways.

- (oo) Regulations: shall mean regulations of Montgomery County, Texas for the operation of sexually oriented businesses and massage parlors.
- (pp) Regularly: shall mean consistent and repeated doing of the act so described.
- (qq) School: shall mean a facility, including all attached playgrounds, dormitories, stadiums, and other appurtenances which are part of the facility used for the primary purpose of instruction or education, including primary and secondary schools, colleges, and universities both public and private.
- (rr) Semi-Nude: shall mean the showing of the female breast below a horizontal line across the top of the areola and extending across the width of the breast at that point, or the showing of the male or female buttocks. This definition includes the lower portion of the female breast, but shall not include any portion of the cleavage of the female breasts exhibited by a bikini, dress, blouse, shirt, leotard or similar apparel provided the areola is not exposed in whole or in part.
- (ss) Server: shall mean an individual who serves customers food or beverages in an enterprise, including waiters, waitresses, hosts, hostesses and bartenders.
- (tt) Sexual contact: shall include:
- (1) any touching of any part of the genitalia or anus;
 - (2) any touching of the breasts of a female without the written consent of the female;
 - (3) any offer or agreement to engage in any activity described in (1) or (2) above;
 - (4) kissing without the consent of both persons;
 - (5) deviate sexual intercourse, sexual contact, sexual intercourse, indecent exposure, sexual assault, prostitution, and promotions of prostitution as described in Chapters 21, 22, and 43, Penal Code, or any offer or agreement to engage in such activities;
 - (6) any behavior, gesture, or expression that may reasonably be interpreted as inappropriately seductive or sexual; or
 - (7) sexual comments about or to a client, including sexual comments about a person's body.
- (uu) Sexual Device: shall mean any three dimensional object designed and marketed for stimulation of the male or female genitals, anus, female breast, or for sadomasochistic use or abuse of oneself or others and shall include but not be limited to devices such as dildos, vibrators, penis pumps, and physical

representations of the human genital organs. This definition does not include devices primarily intended for protection against sexually transmitted diseases or for preventing pregnancy or devices primarily intended for medical or healthcare use.

(vv) Sexual Device Shop: shall mean a commercial establishment that regularly features sexual devices. This definition does not include any pharmacy, drug store, medical clinic, or establishment primarily dedicated to providing medical or healthcare products or services.

(ww) Sexually Oriented Business: shall mean 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 enterprise the primary business of which is the offering of a service or the selling, renting, or exhibiting of sexual devices or any other items intended to provide sexual stimulation or sexual gratification to the customer. A massage parlor, as defined in these regulations, is not a sexually oriented business and may not be licensed under these regulations.

(xx) Modeling Studio: shall mean an enterprise where for any form of consideration, a person models semi-nude or nude, or displays specified anatomical areas for other persons to sketch, draw, paint, sculpt, photograph, or similarly depict or observe.

(yy) Sexual Encounter Center: shall mean a commercial enterprise that as one of the 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 semi-nude or nude.

(zz) Sheriff: shall mean the Sheriff of Montgomery County, Texas or the Sheriff of Montgomery County's designated agent.

(aaa) Specified Anatomical Areas: shall mean human genitals, pubic region, pubic hair, buttock, or female breasts.

(bbb) Specified Sexual Activities: shall mean any of the following:

(1) Fondling or erotic touching of human genitals, pubic regions, buttocks, anus or female breasts, whether clothed or nude;

(2) Sex acts, actual or simulated, intercourse, oral copulation, or sodomy;

(3) Masturbation, actual or simulated; or

- (4) Excretory functions in connection with any of the activities set forth in (1) through (3) above.
- (ccc) Substantial: shall mean at least thirty-five (35%) of the item(s) so modified.
- (ddd) Transfer of Ownership or Control: shall mean:
 - (1) the sale, lease or sublease of the enterprise;
 - (2) The transfer of securities which constitute a controlling interest in the enterprise, whether by sale, exchange, gift or other means.

SECTION V – SEXUALLY ORIENTED BUSINESS PERMIT (SOBP) REQUIRED

- (a) Sexually Oriented Business- No person shall conduct business as a sexually oriented business at any location in the areas of Montgomery County subject to these regulations without a valid Class I SOBP issued in accordance with these regulations. A separate application and SOBP shall be required for each enterprise. Each physical address or location of an enterprise is a separate enterprise for the purposes of these regulations.
- (b) Employees- All employees, operators, and owners, as defined in these regulations shall be required to obtain a Class II SOBP and badge number in order to conduct business or work for a sexually oriented business, except that a person who holds a Class I SOBP shall not also be required to obtain a Class II SOBP.
- (c) Violation- A sexually oriented business is in violation of these regulations if it operates without a Class I SOBP or it allows employees, operators, and other persons to conduct business or work in the enterprise without the Class II SOBP required by these regulations. All owners or enterprise operators are individually responsible for ensuring the Class I and Class II SOBPs are in compliance with these regulations regardless of the amount of time each has been either an owner or enterprise operator.
- (d) Massage Parlors- Massage parlors are prohibited in Montgomery County and shall not be eligible to receive a sexually oriented business permit.

SECTION VI – DISPLAY OF PERMIT

- (a) Sexually oriented businesses must display a valid Class I SOBP at all times in an open and conspicuous place in the enterprise for which it was issued.

- (b) All employees, operators, and owners required to have a Class II SOBPs shall wear a clearly visible badge issued by the Sheriff showing the Class II SOBPs number any time he or she is conducting business at the premises.
- (c) The owner, operator, employee and enterprise are responsible for ensuring compliance with the Class II SOBPs requirements.

SECTION VII – PERMIT APPLICATION

- (a) Procedure- To obtain a Class I or Class II SOBPs, an individual must fully complete an application provided by the Sheriff and provide all required information. The application may be presented to the Sheriff in person during hours established by the Sheriff or mailed to #1 Criminal Justice Dr., Conroe, Texas 77301. Within five (5) business days of submission of an application, a receipt shall be mailed to the applicant if the application is complete. A notice of deficiencies shall be mailed to the applicant if all the information required by these regulations has not been provided in the application.
- (b) Application for a Class I SOBPs-An applicant for a Class I SOBPs shall provide:
 - (1) non-refundable fee established by Montgomery County Commissioners Court in the form of a money order, cashiers or bank check;
 - (2) full legal name and any other name(s) used;
 - (3) general description of the enterprise, the address of the enterprise, and the services and products which will be offered;
 - (4) history of all business licenses and permits issued to the applicant by any agency, board, City, County, or State;
 - (5) applicant's professional or vocational licenses or permits issued, denied, revoked or suspended and the current status of the licenses or permits;
 - (6) copy of the assumed name certificate filed in compliance with Chapter 36 of the Texas Business and Commerce Code, if the applicant intends to operate an enterprise under an assumed name;
 - (7) if the applicant is a Texas corporation, a copy of the Articles of Incorporation with any amendments; names and residential addresses of all current officers and directors; and the name and address of each stockholder holding more than 5% of the corporation's stock;
 - (8) if the applicant is a foreign corporation, a copy of the certificate of authority to transact business in Texas with all amendments; names and

residential addresses of current officers and directors; and names and addresses of each stock holder holding more than 5% of the stock of the corporation;

- (9) if the applicant is a limited liability company, it shall provide a copy of its Certificate of Formation with any amendments; and names and residential addresses of all current members. If any of the members are a corporation, general or limited partnership or other entity, the information required from that entity as if it were an applicant shall be included in the application.
- (10) if the applicant is a general or limited partnership, the names and residential addresses of each partner, including limited partners; if a Texas limited partnership, a copy of the limited partnership filed with the Office of the Secretary of State of Texas and amendments; if one or more of the partners is a corporation, the information required of corporate applicants shall be included in the application;
- (11) if the applicant is a joint venture or other similar entity, the names and residential addresses of the participants and their valid driver's license numbers or Texas Department of Transportation identification card numbers if the participants are individuals; if a participant is a corporation or partnership, the corporate or partnership information required in these regulations shall be included in the application;
- (12) persons required to be identified in (7), (8), (9), (10) and (11) above shall provide a statement as to any ownership interest that person has in any other enterprise in Montgomery County, a description as to any management, supervisory, or oversight responsibility that person will have in the enterprise; a valid driver's license number or Texas Department of Transportation identification number; and a certification as to each officer, partner, or participant that he/she has not been convicted of any of the crimes listed in these regulations;
- (13) if applicable, the enterprise's license issued by the Texas Alcoholic Beverage Code and the enterprise shall conduct business under the name shown on the liquor license;
- (14) if the applicant is an individual, the applicant's valid driver's license number or identification card issued by the Texas Department of Transportation;
- (15) name and residential address of each operator and owner;
- (16) name and address of the owner of the real property at which the enterprise is to be located and a copy of any lease or rental agreement;

- (17) reliable estimate of the number of employees, job descriptions, and a description of the management structure;
 - (18) sketch or diagram showing the configuration of the premises and total floor space occupied by the enterprise; 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 to an accuracy of plus or minus six (6) inches;
 - (19) current inspection report from the Montgomery County Fire Marshal;
 - (20) certification that the location of the proposed enterprise does not violate the distance requirements of these regulations as specified in SECTION VII; and
 - (21) a statement under oath that the applicant has personal knowledge of the information contained in the application and the information is true and correct; the applicant has read and understands these regulations; and the applicant authorizes the Sheriff to seek information to confirm any statements set forth in the application
- (c) Post Signs-An applicant for a Class I SOBP shall post signs at least 24 inches x 36 inches in size at the property where the SOB will be located in a location that is clearly visible from all public sidewalks, roads, or highways. If a side of the property is longer than three hundred (300) feet, one sign shall be posted in each three hundred (300) foot increment of the property. The sign shall legibly state the date that a SOBP application was filed with the Sheriff and a phone number for the Sheriff's Office. Each letter on the sign must be at least 2 inches in size. The signs shall be posted within seven (7) days after the filing of the application for the Class I SOBP and remain until the application has been approved or denied by the Sheriff. If the Sheriff determines that the signs have not been posted pursuant to these regulations, a written notice shall be issued to the applicant identifying the deficiencies and no action shall be taken on the application until the signs have been posted as required.
- (d) Written Notice- within ten (10) business days after the application is filed with the Sheriff, the applicant for a Class I SOBP shall give written notice of the application to all owners and lessees of real property within fifteen hundred (1500) feet of property on which the SOBP is requested, even if not located in the unincorporated areas of Montgomery County. The notice shall contain a legible copy of the "Notice to Interested Parties" included in the application form, the applicant's full legal name, address and description of the enterprise, and services offered. These owners and lessees are interested parties in any public hearing process connected with the SOBP, including revocation hearings and shall have

the same rights whether or not the property they own is in the unincorporated areas of Montgomery County.

(e) Employee Application for a Class II SOBP-an applicant for a Class II SOBP shall provide the following information:

- (1) non-refundable fee established by Montgomery County Commissioners Court in the form of a money order, cashiers or bank check;
- (2) full legal name and any other names used by the applicant;
- (3) mailing address where the applicant can be reliably contacted;
- (4) applicant's present residential address, current telephone number, and residential addresses for the three (3) years immediately preceding the date of the application, indicating dates of residence for each;
- (5) applicant's business, occupation, and employment history for the three (3) years immediately preceding the date of the application, indicating applicable dates and addresses;
- (6) documentation that the applicant is at least eighteen (21) years of age;
- (7) applicant's height, eye color, natural hair color; the Sheriff shall take two photographs of the applicant at the time of application; one photograph will be affixed to the SOBP and one photograph shall be retained by the Sheriff; new photographs may be required by the Sheriff upon application for renewal of the SOBP;
- (8) applicant's criminal history with all criminal convictions and the date and place thereof; any criminal charge which the applicant entered a plea of nolo contendere or which the applicant received deferred adjudication; but shall not include Class C misdemeanor traffic violations;
- (9) fingerprints if required by the Sheriff for the purpose of establishing identification;
- (10) other identification and information as reasonably necessary to confirm the validity of information provided in the application; and
- (11) a statement under oath that the applicant has personal knowledge of the information contained in the application and the information is true and correct; the applicant has read and understands these regulations; and the applicant authorizes the Sheriff to seek information to confirm any statements set forth in the application.

SECTION VIII – DISTANCE REQUIREMENTS

- (a) Proposed sexually oriented businesses shall be located:
 - (1) A minimum of one thousand five hundred (1500) feet from any existing or planned child care facility, school, dwelling, hospital, public building, public park, or church or place of religious worship. “Planned” means that steps have been taken toward the facility’s or structure’s development, including but not limited to a permit received, a plat approved, design work started, a bond received, or an order approved by a governmental entity’s governing body;
 - (2) A minimum of one (1) mile from a penal institution as defined by the Penal Code; and
 - (3) Not more than two (2) other Class I enterprises are located within a distance of two thousand (2,000) feet of the proposed location.
- (b) Property uses are considered if they were in existence at least thirty (30) days prior to the date of application for a Class I SOBP.
- (c) Distance measurements shall be made in a straight line from the nearest portion of the building or appurtenance used by the enterprise to the nearest portion of the building or appurtenance of the property used for the purposes identified above.
- (d) Distance requirements apply to buildings with an identified purpose whether or not the building is located within the unincorporated area of Montgomery County.

SECTION IX – REQUIREMENTS FOR EXISTING ENTERPRISES

- (a) All enterprises permitted under the repealed Montgomery County sexually oriented business regulations, or existing enterprises or individuals that were not permitted or not required to be permitted under the previous regulations, shall submit a completed application for a SOBP pursuant to these regulations within sixty (60) days of the effective date of these regulations.
- (b) An SOBP issued prior to the effective date of these regulations shall be valid for an enterprise until a final determination is made on the application under the new regulations. The receipt for the SOBP application shall be attached to the SOBP.
- (c) An existing enterprise or individual that was not required to obtain a permit under the previous regulations may continue to operate until the Sheriff’s determination on the SOBP application is final. A Class I SOBP application receipt shall be

displayed in clear view at the premises of the enterprise. A Class II SOBP badge is required to be worn in a visible and conspicuous location on the applicant.

- (d) If an existing Class I enterprise is in violation of the distance restrictions, the enterprise may submit verified proof that the business has not recouped the owner's investment prior to the date of the application in lieu of the certification required in that section. Required documentation shall include:
 - (1) the amount of the owner's investment in the existing enterprise to the date the proof is submitted;
 - (2) the life expectancy of the enterprise;
 - (3) the existence or nonexistence of lease obligations and any contingency clauses permitting termination of the lease;
 - (4) proof of the enterprise's income since it commenced operation and a projection of yearly income, which may be in the form of tax returns or reliable financial statements;
 - (5) a proposed schedule for amortization of the investment, to be considered in light of the intent of these regulations.
- (e) Upon evaluation of the proof and a finding that a proposed amortization is reasonable under the circumstances, the Sheriff shall approve a Contingent SOBP. The Sheriff may consult with the County Auditor and other county representatives in determining the reasonableness of the amortization proposal. The Contingent SOBP shall specifically state the reasons that the SOBP would have been denied but for the fact that the enterprise was in existence prior to the enactment of these regulations.
- (f) The Contingent SOBP shall be renewed only through the amortization period. No SOBP shall be issued for that location beyond that period unless circumstances change so as to bring the enterprise into compliance with these regulations. The Contingent SOBP shall be subject to revocation and suspension pursuant to these regulations.
- (g) Upon a finding that the proposal is not reasonable under the circumstances, the Sheriff shall make a reasonable counter-proposal or recommendation and the applicant may re-submit a revised proposal within fifteen (15) days of notice of the Sheriff's determination and counter-proposal. If the revised proposal is again found to be unreasonable by the Sheriff, the Sheriff shall make a final determination to deny the SOBP.
- (h) Any enterprise or individual that is subject to these regulations at the time they become effective shall have sixty (60) days from the effective date to come into

compliance, subject only to the provisions for a Contingent SOBP based on location.

SECTION X – PUBLIC HEARING ON HEALTH AND SAFETY

(a) When the Sheriff receives a written request for a public hearing concerning a Class I SOBP application, the Sheriff shall confirm that it is: from an interested party; that the request specifically identifies the SOBP application at issue; that the request is timely filed; and that the request specifically identifies health and safety concerns affected by the enterprise. The Sheriff shall then initiate the public hearing procedure as follows:

(1) A hearing official, appointed by Commissioners Court, shall be contacted by the Sheriff and a date set for the public hearing.

(2) The hearing shall be scheduled at a public building within the precinct where the enterprise is to be located, or within an adjacent precinct.

(3) The hearing shall be scheduled either on a weekday at 7:00 p.m., or on a Saturday morning at 9:30 a.m.

(4) The Sheriff shall send the applicant a written Notice of Hearing at least ten days in advance stating the date, time and place of the hearing and shall make a copy of the Notice of Hearing available to the public.

(5) Publicizing the hearing shall be the responsibility of the interested party who requested the hearing. The Sheriff shall make available to the public a copy of any request for hearing and the Notice of Hearing.

(6) The Sheriff shall place a sign at the location identified in the application containing the time and place of the hearing.

(7) The hearing may be rescheduled by the hearing official for good cause, including, for example, a large number of requests for a hearing that indicate strong public interest in the matter. The hearing may be rescheduled a second time if rescheduling was due to emergency circumstances such as extreme weather conditions. If rescheduled, the new Notice of Hearing shall be available to the public at the Sheriff's Office.

(8) The applicant may request that a court reporter make a record of the hearing. The applicant must make this request at least two (2) days prior to the hearing and bear the cost of making an official record and one (1) transcript for the County. The hearing official shall arrange for the court reporter to take the record of the hearing, including exhibits and testimony. One copy of the transcript shall be provided to the hearing official to become the property of the County.

(b) If a request for a public hearing is received by the Sheriff after the SOBP has been issued or renewed, the hearing shall be scheduled when the next renewal application is filed. The Sheriff shall confirm that the request identifies health and safety concerns affected by the enterprise that are not addressed in the current SOBP and that the request is filed by an interested party. The request shall then be attached to the SOBP records. When a renewal application is submitted, the Sheriff shall initiate the hearing as set out in subsection (a).

(c) If the request for public hearing is deficient, the Sheriff shall return it to the person who submitted the request with a notation stating the deficiency. A request that does not comply with requirements stated in (a) or (b) above shall not extend the period of time in which a request for hearing may be filed.

(d) The hearing shall be conducted by the hearing official under the following guidelines. The hearing official shall liberally construe these guidelines to allow the public input to protect the health and safety of a community affected by the location of and enterprise and to allow the applicant to address these concerns:

(1) interested parties may elect to retain the assistance of counsel at their own expense;

(2) the hearing official shall, upon prior request, provide for appropriate facilities for any disabled person to be able to participate in the hearing, this shall include, but not be limited to: interpreters for deaf or hearing impaired participants, wheel chair access and special seating arrangements; and

(3) participants in the proceeding may supply interpreters for language translation and the hearing official shall accommodate the translation of the proceeding;

(4) the hearing official may exclude evidence that is irrelevant, immaterial, or unduly repetitious. Relevance and materiality shall be evaluated by the relation of the evidence to health and safety concerns directly related to the SOBP at issue, and conditions which may be attached to the SOBP to address those concerns. The hearing is not limited to the health and safety concerns specifically identified in the hearing request;

(5) if no request is made by the applicant for an official record, any person may record, videotape or transcribe the hearing provided there is no interference with the proceedings. The hearing official shall have the power to limit any interference with the proceeding.

(e) The hearing official may continue the hearing to a date no later than ten (10) days after the initial hearing if:

- (1) the hearing has lasted at least two and one half (2-1/2) hours and it appears to the hearing official that a significant amount of time is still required to fully present the public concerns and potential solutions to those concerns; or
 - (2) issues have been raised at the hearing requiring additional research in order to develop appropriate conditions to be attached to the SOBP or that the parties need additional time to develop a solution to issues identified at the hearing.
 - (3) A continuance shall to be for the purpose of delay or for developing new evidence.
- (f) After the conclusion of the public hearing, the hearing official shall produce a written statement containing the official's findings of public health and safety concerns and recommendations for conditions to be attached to the SOBP. The recommendations shall be forwarded to the Sheriff, the applicant and the interested party who requested the hearing. When the hearing official determines that public health and safety concerns exist, the Sheriff shall attach conditions as part of the SOBP. If no official record of the hearing has been requested the hearing official's statement shall be the official record of the public hearing. The hearing official may consult with the Sheriff for the purpose of developing appropriate conditions to address the health and safety concerns shown at the hearing.
- (g) If evidence is produced at the hearing that would support denial of the SOBP, the hearing official shall provide that information to the Sheriff, who shall investigate whether the evidence warrants denial or revocation of the SOBP under these regulations.

SECTION XI – ISSUANCE OR DENIAL

- (a) A Class I SOBP shall be issued within sixty (60) business days of submission of a complete application, unless the application is denied. The sixty (60) business days shall run from the date the Sheriff issues the application receipt.
- (b) A class II SOBP shall be issued within ten (10) business days unless the application is denied. The ten (10) days shall run from the date the Sheriff issued the application receipt.
- (c) The Sheriff shall defer determination whether to issue a SOBP until final disposition of any charge of any of the crimes listed in subsection XI(e)(1)(iv) that is pending or arises during the investigation period. No temporary SOBP shall be issued before there is a final determination of the criminal charge.
- (d) If the Sheriff finds that the determination on whether a SOBP can be issued cannot be made within the time period stated in subsection (a) above, a written notice stating the reasons for the delay shall be sent to the applicant within that time period.

(e) The SOBP shall be denied upon the finding by the Sheriff of any of the following facts:

(1) The applicant, or if the applicant is a corporation, partnership, limited liability company or other business entity, any officer, director, member, partner or participant required to be identified in the application, was convicted of any of the crimes listed below and

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

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

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

(iv) The crimes considered in applying this section are:

(a) prostitution, promotion of prostitution, aggravated promotion of prostitution, compelling prostitution, obscenity, sale, distribution, or display of harmful material to a minor, sexual performance by a child, or possession of child pornography as described in Chapter 43 of the Texas Penal Code;

(b) public lewdness, indecent exposure, or indecency with a child as described in Chapter 21 of the Texas Penal Code;

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

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

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

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

- (g) a criminal offense as described in Chapter 481, Subchapter D of the Health and Safety Code;
 - (h) a criminal offense as described in Chapter 43 of the Texas Penal Code;
 - (i) criminal attempt, conspiracy or solicitation to commit any of the foregoing offenses; or any other offense in another state that, if committed in this state, would have been punishable as one or more of the aforementioned offenses;
 - (j) a criminal offense as described in Chapter 352, Subchapter B of the Texas Local Government Code;
 - (k) a violation of Chapter 455 of the Texas Occupations Code; or
 - (l) a violation of these regulations described in Sections XIV, XVII and XVIII.
- (2) The enterprise, as proposed, is a prohibited enterprise pursuant to Section XVII; the enterprise does not meet all the requirements of these regulations; or the enterprise is otherwise prohibited by local, state or federal law;
- (3) The applicant has knowingly made a misleading statement of a material fact by omitting or falsifying information in the application for the SOBP;
- (4) The applicant, if an individual, is under eighteen (18) years of age;
- (5) The applicant or operator has had a SOBP revoked for the same enterprise within the one-hundred eighty (180) day period immediately preceding the date the application was filed;
- (6) An applicant is delinquent in the payment to the county of taxes, fees, fines or penalties assessed or imposed regarding the operation of a sexually oriented business;
- (7) The application or renewal fee required by these regulations has not been paid; or
- (8) An applicant or operator has owned or been employed in a managerial capacity of a business or location within the preceding twelve (12) months and during that period that business or location constituted a

common or public nuisance as denied in Chapter 1254 of the Texas Civil Practice and Remedies code.

(f) The Sheriff shall attach reasonable conditions on a SOBP pursuant to the recommendations of the hearing officer if a public hearing was held under Section XI. These conditions shall address the public health and safety concerns identified in the hearing.

(g) A Class I SOBP shall be valid for one (1) year from the date it is issued, and a Class II SOBP shall be valid until the individual's next birth date, unless the SOBP is revoked or suspended pursuant to these regulations, the enterprise is sold or transferred or the SOBP is cancelled by written request of the applicant. The renewal fee for the initial Class II SOBP will be reduced to reflect proration of the application fee based on the portion of the year for which the initial SOBP was valid.

(h) If the Sheriff denies the SOBP pursuant to these regulations, the applicant shall be given written notice of the reason for that determination. The written notice provided under this section does not prohibit the County, in litigation on appeal, from presenting evidence of additional or alternative facts that support denial of the SOBP.

SECTION XII - REVOCATION OR SUSPENSION

(a) The Sheriff shall have the authority to initiate a proceeding to revoke or suspend a SOBP if there is probable cause to believe that one or more of the following events or conditions has occurred:

- (1) the owner or operator allowed a person under eighteen (18) years of age to remain on the premises of the enterprise during the hours of operation;
- (2) three (3) or more violations of any of the offenses contained in Section XI(e)(1)(iv) have occurred on the premises of the Class 1 enterprise within a period of eight (8) months and the owner or operator failed to prevent the occurrence of such violations;
- (3) the enterprise, owner, operator or applicant failed to comply with a duty specifically imposed by these regulations;
- (4) the applicant provided false, fraudulent or untruthful information on the original or renewal application form;
- (5) the enterprise has been closed for business for a period of thirty (30) consecutive days unless the closure is due to circumstances beyond the

control of the owner and the owner is proceeding with due diligence to reopen the enterprise;

- (6) the SOBP should not have been issued pursuant to these regulations; or
- (7) the enterprise owner, operator or applicant is convicted of a criminal offense contained in Section XI(e)(1)(iv).

(b) If probable cause is found to believe any of the stated events or conditions occurred, the Sheriff shall forward to the SOBP holder or its designated agent a written notice of revocation. The notice shall set out the reasons for the action. Subject to a request for hearing pursuant to this section, the revocation shall become final on the eleventh (11th) day after delivery of the notice.

(c) The enterprise or its designated agent shall have the opportunity to appear before a hearing officer appointed the Commissioners Court upon written request submitted to the Sheriff within ten (10) business days of delivery of the notice of revocation. The hearing officer shall not have participated in any investigation of the alleged ground for the revocation. The hearing shall be held within fourteen (14) business days of the request for hearing and the enterprise and the Sheriff shall be provided an opportunity to present evidence, cross examine witnesses and be represented by legal counsel. The rules of civil evidence for a non-jury trial shall apply.

(d) Upon finding that the facts presented at the hearing support a finding that ground exists for revoking or suspending the SOBP, the hearing officer may request that the parties present relevant evidence to show whether suspension or revocation of the SOBP is more appropriate. The hearing officer may also request that evidence be presented for the purpose of identifying appropriate conditions to be attached to a Class II SOBP if the SOBP is suspended. Reasonable conditions may be attached to a Class II SOBP by the hearing officer based on the evidence at the hearing.

(e) If the hearing officer determines that a SOBP should be revoked, the hearing officer shall issue a written order revoking the SOBP, effective when notice is provided to the enterprise pursuant to these regulations.

(f) If the hearing officer determines, based upon the nature of the violations, that a suspension in lieu of revocation is appropriate, operation of the SOBP may be suspended for a period of time not to exceed two (2) months. The hearing officer shall issue a written order suspending the SOBP and attaching conditions, if applicable, effective upon notice to the enterprise pursuant to these regulations.

(g) Upon the finding that item (a)(4), (5), (6) or (7) of this section has been violated revocation of the SOBP shall be mandatory.

(h) Revocation shall be subject to the hearing provisions of this section except revocation shall take immediate effect upon notice by the Sheriff, subject to reinstatement resulting from an appeal when:

(1) there is a necessity for immediate action to protect the public from injury or imminent danger; or

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

SECTION XIV - SOBP EMPLOYEE RECORDS

(a) Before an enterprise may employ a person, the enterprise must obtain a complete background and criminal history check of the person. An enterprise may not employ a person, who would be required to have a Class II SOBP, if the person would not be eligible for a Class II SOBP under Section XII.

(b) An enterprise has the duty to keep the following information on file on site for each person employed at the enterprise:

(1) the full legal name, professional or performing names and any other names used by the employee;

(2) a photocopy of the employee's valid driver's license or Texas Department of Transportation identification card;

(3) the current address and telephone number of the employee;

(4) employee's height, eye color and natural hair color;

(5) a photograph of the employee taken within one (1) month of the date of employment and updated every year;

(6) The complete background and criminal history check made prior to the offer of employment and an annual background and criminal history check made no later than one month after the anniversary of the date of employment;

(7) a description of the capacity in which the employee is employed; and

(8) if the employee is employed in a capacity that involves serving liquor to patrons, evidence of certification through completion of a Texas Alcoholic Beverage Commission approved seller training program, under the V.T.C.A., Alcoholic Beverage Code Sect. 106.14.

(b) The enterprise has the duty to maintain and make available these records for inspection, and copying, by the Sheriff. The Sheriff will provide a standard format for these records. The records shall include a time record reflecting the times and dates each employee worked. These records shall be available for inspection by the Sheriff during the hours of operation of the enterprise upon twenty-four (24) hours' notice. These records shall be retained for at least a period of two (2) years from creation. Upon written request, the enterprise has a duty to provide a copy of the records to the Sheriff within seven (7) business days of the request.

(c) An owner or enterprise operator of an enterprise shall maintain a log of all Class I or Class II SOBP recipients conducting business at the enterprise and list the duties of those recipients. The owner or enterprise operator must turn over the log to the Sheriff upon request.

(d) Any employee who provides false information to an enterprise pursuant to this section violates these regulations.

(e) An enterprise has the duty to have the employee information available regarding any individual working at the enterprise. This information must be maintained by the enterprise regardless of whether these regulations require the employee to have a valid Class II SOBP.

SECTION XV - NOTICE

(a) Any notice required to be given by the Sheriff under these regulations to any applicant or enterprise or enterprise operator may be given by personal delivery or by United States mail, postage prepaid, addressed to the most recent address as specified in the application for the SOBP or the most recent notice of address change.

(b) Mailed notice shall be deemed served three (3) days after deposit in the United States Mail.

(c) In the event that notice given by mail is returned by the postal service as undeliverable it shall be presumed that the enterprise or recipient did not comply with the affirmative duty to notify the Sheriff of any change of address, unless the enterprise or recipient can show there was error on the part of the Post Office, and;

(1) in the case of notice in connection with a Class I SOBP the Sheriff shall have the notice posted at the entrance to the enterprise; or

(2) in the case of notice in connection with a Class II SOBP the Sheriff shall have the notice posted at the entrance to the enterprise and shall suspend the SOBP until the applicant/recipient contacts the Sheriff with a current address. An individual with a SOBP that is suspended pursuant to this section who continues to conduct business at an enterprise shall be in violation each and every day that s/he conducts

business in Montgomery County.

SECTION XVI - TEMPORARY SOBP PROVISIONS

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

SECTION XVII - SOBP RENEWALS

(a) SOBP renewal applications must be filed not more than thirty (30) days prior to the expiration date of the SOBP. The form for renewal application shall be provided by the Sheriff.

(b) An annual nonrefundable renewal fee, to be set by the Montgomery County Commissioners Court shall accompany the application for renewal to defray costs of inspections and investigation. The fee shall be paid in the form of cash, money order, cashier or bank check.

(c) The renewal application shall contain:

(1) Certification by the applicant that there have been no changes in the information provided in the initial application or the information which has changed since the initial application, supported by related documentation as required in the initial application.

(2) An application for a Class I SOBP renewal shall contain a certification that the enterprise is in operation. A Class I SOBP will not be renewed if the enterprise has not commenced operation as proposed in the initial SOBP application.

(3) A current inspection report from the Fire Marshal.

(d) The Sheriff shall determine whether the permit maybe renewed based on the information contained in the renewal application. The renewal permit shall be denied upon a finding of any of the conditions identified in Section XII(e). Renewal or denial shall be issued within fourteen (14) days of receipt of the completed renewal application or by the expiration date of the previous SOBP whichever period is longer.

(e) If a renewal application is submitted less than fifteen (15) days before the previous SOBP expires, there shall be no temporary SOBP issued to extend the SOBP. The original SOBP will expire and until the Sheriff's determination on renewal, there will

be no valid SOBP for operation during that period.

(f) If an applicant fails to file its renewal application prior to the expiration of the existing SOBP, the applicant must file an application for a new SOBP and the application shall be considered as any new application.

(g) Upon written request of any interested party, filed with the Sheriff prior to issuance of a new Class I SOBP and specifically identifying existing public health and safety concerns connected with the operation of that enterprise, a public hearing will be held as provided for in Section XI.

(1) The general public and all interested parties may present to the hearings examiner information to support recommendations to the Sheriff for conditions relating to public health and safety to be attached to the SOBP upon renewal.

(2) The request for a public hearing may be filed at any time during the year, but the hearing will be scheduled when the application for renewal of the Class I SOBP is filed. If issuance of the renewal is delayed solely to accommodate the need for the public hearing, the existing SOBP shall be automatically extended until the Sheriff issues the renewed SOBP based on the recommendations of the hearing official. The fact that there is a pending public hearing does not revive a SOBP that lapses under the provisions of subsections (e) and (f) above.

(h) If a permit has been suspended pursuant to Section XIII of these regulations, the renewed permit will be suspended until the suspension period has elapsed.

SECTION XVIII – INVESTIGATION

Upon receiving the application for a SOBP or all application for renewal, the Sheriff shall conduct an investigation to determine compliance with these regulations.

SECTION XIX – INSPECTIONS

(a) A peace officer shall make reasonable, periodic inspections of the premises of all permitted sexually oriented businesses in unincorporated Montgomery County to determine compliance with these regulations.

(b) The Fire Marshal shall make reasonable, periodic inspections of the premises of all sexually oriented businesses in unincorporated Montgomery County for fire and life safety hazards.

SECTION XX - TRANSFER PROHIBITED

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

(d) A Class SOBP and accompanying badge issued under these regulations are not transferable, assignable or divisible and it is a violation of these regulations for any person to attempt to do so. If the recipient of the Class II SOBP ceases to conduct business at the enterprise, the owner or enterprise operator must inform the Sheriff. The Class II SOBP and accompanying badge become ineffective and inoperative when the recipient ceases to conduct business at the enterprise.

SECTION XIII – LOST SOBP OR BADGE

(a) If an SOBP or badge is lost or destroyed, a replacement may be obtained by filing a lost SOBP/badge application and paying a lost SOBP/badge fee.

(b) A replacement SOBP or badge shall be issued immediately upon confirmation of the identity of the applicant through the Sheriff's records.

(1) A replacement badge number will be assigned for a replacement Class II SOBP.

(2) A replacement SOBP will expire on the same date as the original SOBP.

(c) It shall not be a defense to prosecution for conducting business without an SOBP or failure to display a badge that an SOBP or SOBP or badge was lost or stolen. The enterprise may not conduct business as an enterprise, in Montgomery County, Texas, until a replacement SOBP or badge is obtained.

(d) A SOBP or badge found in the possession of any person other than the enterprise may be immediately seized by the Sheriff. The authorized SOBP holder may reclaim the permit or badge from the Sheriff's office.

SECTION XIV – OPERATING REQUIREMENTS FOR ENTERPRISES

(a) A Class I SOBP enterprise has the duty to station an employee at each public entrance to the enterprise at all times during business hours. The employee shall not allow any person under the age of eighteen (18) years of age to enter the enterprise. It shall be presumed that an employee knew a person was under the age of eighteen (18) years of age unless the employee asked for and was furnished:

- (1) A facially valid driver's, commercial operator's, or chauffeur's driver's license; or
- (2) A facially valid personal identification certificate issued by the Texas Department of Public Safety reflecting that such person is eighteen (18) years of age or older.

(b) An enterprise has the duty to maintain and make available records reflecting the times, dates and business conducted by each Class II SOBP employee at that location. The Sheriff will provide a standard format for these records which shall require a sign-in/out sheet and notation of the SOBP badge number. These records shall be available for inspection by the Sheriff during the hours of operation of the enterprise. These records shall be retained for at least a period of two (2) years from creation. Upon written request, the enterprise has a duty to provide a copy of the records to the Sheriff within seven (7) days of the request. It shall be a violation of these regulations to falsify these records.

(c) Each enterprise shall have the duty to post a sign obtained from the Sheriff's Office containing the following educational AIDS message at eye level adjacent to each entrance, in each public restroom and in any dressing room in an enterprise;

**STOP AIDS. AVOID HIGH RISK BEHAVIOR. AVOID CONTACT
WITH SEXUAL FLUIDS OR DIRTY NEEDLES. AIDS CAN BE
TRANSMITTED BY SEX WITHOUT CONDOMS OR BY SHARING
NEEDLES.**

(d) It shall be unlawful for an owner or operator to allow the merchandise or activities of the enterprise to be visible from any point outside such enterprise. It shall be unlawful for the owner or operator to allow exterior portions of the enterprise to be painted any color other than a single achromatic color. Noting in this Section shall be construed to require the painting of an otherwise unpainted exterior portion of an enterprise. This provision shall not apply to an enterprise if the following conditions are met;

- (1) The enterprise is a part of a commercial multi-unit center; and
- (2) The exterior portions of each individual unit in the commercial multi-unit center, including the exterior portions of the enterprise, are painted the same color as one another or are painted in such a way so as to be a component of the overall architectural style or pattern of the commercial multi-unit center.

SECTION XV - REGULATION OF ADULT MOTELS

- (a) Evidence that a sleeping room in a hotel, motel or similar commercial establishment has been rented and vacated two (2) or more times in less than ten (10) hours creates a rebuttable presumption that the establishment is an adult

motel that is an enterprise under these regulations if the motel also provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides, digital videos recorded on any type of medium, or other reproduction which are characterized by the depiction or description of specified sexual activities or specified anatomical areas as defined in this section.

- (b) For purposes of this section, the terms “rent” or “subrent” mean the act of allowing a room to be occupied for any form of consideration.
- (c) An “Adult Motel” permitted pursuant to these regulations may have a resident manager living on site. This shall not be considered a dwelling under the distancing requirements of Section VIII(a)(1), but no individuals under the age of eighteen (18) may live onsite.

SECTION XVI - REGULATION OF ENTERPRISES THAT EXHIBIT SEXUALLY EXPLICIT VISUAL MEDIA

- (a) An enterprise, other than an adult motel, which exhibits on the premises in a viewing room of less than one hundred (150) square feet of floor space a film, video, digital video, computer programs, or other visual reproduction that depicts specified sexual activities or specified anatomical areas shall comply with the following requirements:
 - (1) the interior of the premises configured so that there is an unobstructed view from at least one manager’s station of every area of the premises, excluding restrooms, that customers are allowed access for any purpose;
 - (2) maintain at least one (1) employee on duty and situated in each manager’s station at all times when any customer is present inside the premises.

SECTION XVII - REGULATION OF MASSAGE PARLORS AND OTHER ILLEGAL ENTERPRISES

The following categories of enterprises are prohibited in Montgomery County, Texas; escort agencies; escorts; encounter centers; any enterprise whose employees appear in a state of nudity; and massage parlors. It shall be a violation of these regulations to engage in these business activities in Montgomery County, Texas. Each person found to be engaged and or participating in the business of such an enterprise shall be subject to the penalties and enforcement provisions of these regulations.

SECTION XVIII - VIOLATIONS

(a) The following shall be violations of these regulations punishable as authorized in Section 243.010(b) of the Local Government Code and may be punishable as authorized in chapter 234 of the Local Government Code, if applicable. Each day a violation continues constitutes, and is punishable as, a separate offense:

- (1) for any employee, owner, or operator of an enterprise to negligently allow any person below the age of eighteen (18) years to remain at the enterprise during the hours of operation;
- (2) for any person to be at an enterprise nude; however, private rooms at adult motels and designated dressing rooms for employees that are not visible or accessible to patrons are excepted from this prohibition;
- (3) for any employee, owner or operator to request or suggest that any customer, employee or individual become nude at the premises of the enterprise;
- (4) for any person to engage in, or any employee, owner or operator to allow another person to engage in, sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation or any other public sexual acts prohibited by law, or acts which simulate the aforesaid at or in a permitted enterprise;
- (5) for any enterprise to exhibit advertisements, displays, or other promotional materials at the premises that are characterized by specified sexual activities or specified anatomical areas and are visible from a public road, sidewalk or other public place;
- (6) for any person to conduct business as an enterprise in the area of Montgomery County covered by these regulations without a valid Class I SOBP issued in accordance with these regulations;
- (7) for an individual, who is required by these regulations to have an SOBP, to conduct business at an enterprise or for an operator or owner to allow any person to conduct business of an enterprise in the area of Montgomery County covered by these regulations without a valid Class II SOBP issued and displayed in accordance with these regulations;
- (8) for any person to counterfeit, forge, change, deface, duplicate or alter an SOBP;
- (9) for any person to knowingly make any false, fraudulent or untruthful material representation, written or oral, or in any other way knowingly conceal any material fact required in the SOBP application;

- (10) for the owner or operator to fail to comply with the conditions attached to the SOBP pursuant to these regulations; each and every day the enterprise fails to comply with a SOBP condition is a violation of these regulations;
- (11) for an employee of an enterprise to provide materially false identification information to an enterprise under Section XIV;
- (12) for any person to attempt to transfer, assign or devise an SOBP;
- (13) for any person performing at an enterprise to do so less than six (6) feet from the nearest customer;
- (14) for the owner or operator of an enterprise to allow any location within the enterprise to be used for the purpose of live exhibitions unless it is marked with clear indications of the six (6) foot zone, the absence of this demarcation will create a presumption that there have been violations of these regulations during performances in the unmarked area;
- (15) for any person to offer or accept a gratuity at an enterprise unless it is done pursuant to this section; gratuities being offered to any person performing on a stage must be placed in a receptacle provided for receipt of gratuities and a tip or gratuity offered to any employee in or about the non-stage area of the enterprise shall be placed into the hand of the employee or into a receptacle provided by the employee and not upon the person or into the clothing of the employee; or
- (16) for any person conducting business at an enterprise to be in a state of intoxication or otherwise under the influence of a controlled substance, or for an operator or owner to allow any person to conduct business at an enterprise in a state of intoxication or otherwise under the influence of a controlled substance;
- (17) for an owner or operator of an enterprise to allow any person to offer a service or sell, rent or exhibit devices or any other items intended to provide sexual stimulation or sexual gratification without a valid SOBP;
- (18) for an owner or operator of an enterprise to allow an employee without a valid SOBP to conduct business at an enterprise;
- (19) for an owner or operator of an enterprise to allow any person to offer a service or sell, rent or exhibit devices or any other items intended to provide sexual stimulation or sexual gratification in a private or secluded room in the enterprise.

SECTION XIX - ENFORCEMENT AND PENALTIES

- (a) Any peace officer certified by the State of Texas may enforce these regulations.
- (b) A person commits a Class A misdemeanor offense if the person intentionally or knowingly violates these regulations and is subject to a suit to enjoin operation of the enterprise pursuant to Section 243.010 of the Local Government Code.
- (c) A person commits a Class A misdemeanor offense if the person intentionally or knowingly operates a massage parlor in violation of these regulations, pursuant to Section 234.105 of the Local Government Code.
- (d) Montgomery County is authorized to impose a civil penalty of not more than \$1,000.00 on a person who violates the prohibition on massage parlors, pursuant to Section 234.104 of the Local Government Code. After the first violation, subsequent violations subject a person to a suit to enjoin the operation or threatened operation of a massage parlor, in addition to a civil penalty and criminal penalty. Each day a violation continues is considered a separate violation for the purposes of assessing the civil penalty.
- (e) The Montgomery County Attorney is hereby authorized to file suit to recover a civil penalty and/or enjoin violations of these regulations. The Montgomery County District Attorney is hereby authorized to file suit to prosecute a criminal penalty for violations of these regulations. A suit may be initiated upon information received from private citizens or any law enforcement agency.

SECTION XX - SEVERABILITY

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

SECTION XXI - OPERATIVE DATE

The effective date of these revisions to the Regulations for Sexually Oriented Businesses and Massage Parlors in the Unincorporated Area of Montgomery County, Texas is May 9, 2017. To the extent these revisions conflict with the previous regulations, these revisions control.

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The Commissioners Court hereby adopts these regulations and each separate part hereof, and that these regulations shall replace in entirety the prior regulations that were adopted on November 17, 1997. Any part of these regulations held to be invalid shall not affect the validity of the remaining portions.

Approved and executed this ____ day of _____, 2017.

MONTGOMERY COUNTY, TEXAS

CRAIG DOYAL, COUNTY JUDGE

MIKE MEADOR, COMMISSIONER PCT. 1

CHARLIE RILEY, COMMISSIONER PCT. 2

JAMES NOACK, COMMISSIONER PCT. 3

JIM CLARK, COMMISSIONER PCT. 4

Attest:

Mark Turnbull, County Clerk