

**AN ORDINANCE REGULATING
SEXUALLY ORIENTED BUSINESSES**

PENDLETON COUNTY FISCAL COURT
ORDINANCE NO. 400,1

11:00 AM
[Signature]

AN ORDINANCE pertaining to public health, safety and welfare; regulating sexually oriented businesses; providing a penalty for the violation of the provisions of this ordinance and repealing all ordinances in conflict herewith.

NOW, THEREFORE, be it ordained by the Fiscal Court, Pendleton County, Kentucky, as follows:

SEC. 1. PURPOSE AND INTENT.

- (a) It is the purpose of this chapter to regulate sexually oriented businesses to promote the health, safety, morals, and general welfare of the citizens of the county, and to establish reasonable and uniform regulations to prevent the concentration of sexually oriented businesses within the county. The provisions of this chapter 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 chapter 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) Nothing in this Ordinance shall be interpreted to permit the issuance of a license for the purpose of selling, renting or otherwise distributing materials prohibited by KRS Chapter 531, which prohibits pornography and the sexual exploitation of minors.

SEC. 2. DEFINITIONS.

In this chapter:

- (1) 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."
- (2) ADULT BOOKSTORE or ADULT VIDEO STORE means a commercial establishment which as one of its principal business purposes offers for sale or rental for any form of consideration any one or more of the following:
 - (A) books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes or video reproductions, slides, or other visual representations which depict or describe "specified sexual activities" or "Specified anatomical areas"; or

(B) instruments, devices, or paraphernalia which are designed for use in connection with "Specified sexual activities."

- (3) ADULT CABARET means a nightclub, bar, restaurant, or similar commercial establishment which regularly features:
- (A) persons who appear in a state of nudity; or
 - (B) live performances which are characterized by the exposure of "Specified anatomical areas" or by "Specified sexual activities"; or
 - (C) films, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by the depiction or description of "Specified sexual activities" or "Specified anatomical areas."
- (4) ADULT MOTEL means a hotel, motel or similar commercial establishment which:
- (A) offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by the depiction or description of "Specified sexual activities" or "Specified anatomical areas"; and has a sign visible from the public right of way which advertises the availability of this adult type of photographic reproductions; or
 - (B) offers a sleeping room for rent for a period of time that is less than 10 hours; or
 - (C) 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.
- (5) ADULT MOTION PICTURE THEATER means a commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, slides, or similar photographic reproductions are regularly shown which are characterized by the depiction or description of "Specified sexual activities" or "Specified anatomical areas."
- (6) ADULT THEATER means a theater, concert hall, auditorium, or similar commercial establishment which regularly features persons who appear in a state of nudity or live performances which are characterized by the exposure of "Specified anatomical areas" or by "Specified sexual activities."
- (8) ESCORT means a person who, for consideration, agrees or offers to act as a companion, guide, or date for another person, or who agrees or offers to privately model lingerie or to privately perform a striptease for another person.
- (9) 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.
- (10) ESTABLISHMENT means and includes any of the following:
- (A) the opening or commencement of any sexually oriented business as a new business;
 - (B) the conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business;
 - (C) the addition of any sexually oriented business to any other existing sexually oriented business; or,
 - (D) the relocation of any sexually oriented business.

- (11) 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.
- (12) 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 pay money or any form of consideration.
- (13) NUDITY or a STATE OF NUDITY means the appearance of a human bare buttock, anus, male genitals, female genitals, or female breast.
- (14) PERSON means an individual, proprietorship, partnership, corporation, association, or other legal entity.
- (15) SEMI-NUDE means a state of dress in which clothing covers no more than the genitals, pubic region, and areolae of the female breast, as well as portions of the body covered by supporting straps or devices.
- (16) SEXUAL ENCOUNTER CENTER means a business or commercial enterprise that, as one of its primary business purposes, offers for any form of consideration:
- (A) 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.
- (17) SEXUALLY ORIENTED BUSINESS means an adult arcade, adult bookstore or adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, escort agency nude model studio, or sexual encounter center.
- human
- (18) SPECIFIED ANATOMICAL AREAS means genitals in a state of sexual arousal.
- (19) SPECIFIED SEXUAL ACTIVITIES means and includes any of the following:
- (A) the fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breasts;
 - (B) sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, or sodomy;
 - (C) masturbation, actual or simulated; or
 - (D) excretory functions as part of or in connection with any of the activities set forth in (A) through (C) above.
- (20) SUBSTANTIAL ENLARGEMENT of a sexually oriented business means the increase in floor area occupied by the business by more than 25 percent, as the floor area exists on July 1, 1998.
- (21) TRANSFER OF OWNERSHIP OR CONTROL of a sexually oriented business means and includes any of the following:
- (A) the sale, lease, or sublease of the business;
 - (B) the transfer of securities which constitute a controlling interest in the business, whether by sale, exchange, or similar means; or
 - (C) 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 the ownership or control.

SEC. 3. CLASSIFICATION.

Sexually oriented businesses are classified as follows:

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

SEC. 4. LICENSE REQUIRED.

- (a) A person commits an offense if he operates a sexually oriented business without a valid license, issued by the county for the particular type of business.
- (b) An application for a license must be made on a form provided by the fiscal court. The application must be accompanied by a sketch or diagram showing the configuration of the premises, including a statement of total floor space occupied by the business. The sketch or diagram need not be professionally prepared but must be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six inches. Applicants who must comply with Section 19 of this chapter shall submit a diagram meeting the requirements of Section 19.
- (c) The applicant must be qualified according to the this chapter and the premises must be inspected and found to be in compliance with the law by the health department, fire department, and building official.
- (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 20 percent or greater interest in the business must sign the application for a license as applicant. Each applicant must be qualified under Section 5 and each applicant shall be considered a licensee if a license is granted.

SEC. 5. ISSUANCE OF LICENSE.

(a) The county judge/executive shall approve the issuance of a license to an applicant within 30 days after receipt of an application unless he finds one or more of the following to be true:

- (1) An applicant is under 18 years of age.
- (2) An applicant or an applicant's spouse is overdue in his payment to the county of taxes, fees, fines, or penalties assessed against him or imposed upon him 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 chapter, other than the offense of operating a sexually oriented business without a license, within two years immediately preceding the application. The fact that a conviction is being appealed shall have no effect.

(5) An applicant is residing with a person who has been denied a license by the county to operate a sexually oriented business within the preceding 12 months, or residing with a person whose license to operate a sexually oriented business has been revoked within the preceding 12 months.

(6) The premises to be used for the sexually oriented business have not been approved by the health department, fire department, and the as being in compliance with applicable laws and ordinances.

(7) The license fee required by this chapter has not been paid.

(8) An applicant has been employed in a sexually oriented business in a managerial capacity within the preceding 12 months and has demonstrated that he is unable to operate or manage a sexually oriented business premises in a peaceful and law-abiding manner.

(9) An applicant or the proposed establishment is in violation of or is not in compliance with Section 7, 12, 13, 15, 16, 17, 18, 19 or 20.

(10) An applicant or an applicant's spouse has been convicted of or is under indictment or misdemeanor information for a crime:

(A) involving:

(i) any of the following offenses as described in Kentucky Revised Statutes:

(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 Kentucky Revised Statutes:

(aa) public lewdness;

(bb) indecent exposure;

(cc) indecency with a child;

(iii) engaging in organized criminal activity;

(iv) sexual assault or aggravated sexual assault;

(v) incest, solicitation of a child, or harboring a run-away child;

(vi) kidnapping or aggravated kidnapping;

(vii) robbery;

(viii) bribery or retaliation;

(ix) a violation of the Kentucky Revised Statute Chapter 218A as it relates to controlled substances; or

(x) criminal attempt, conspiracy, or solicitation to commit any of the foregoing offenses;

(B) for which:

(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 any 24 month period.

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

(c) An applicant who has been convicted or whose spouse has been convicted of an offense listed in Subsection (a)(10), for which the required time period has elapsed since the date of conviction or the date of release from confinement imposed for the conviction, may qualify for a sexually oriented business license only if the county judge/executive determines that the applicant or applicant's spouse is presently fit to operate a sexually oriented business. In determining present fitness under this section, the judge/executive shall consider the following factors concerning the applicant or applicant's spouse, whichever had the criminal conviction:

- (1) the extent and nature of his past criminal activity;
- (2) his age at the time of the commission of the crime;
- (3) the amount of time that has elapsed since his last criminal activity;
- (4) his conduct and work activity prior to and following the criminal activity;
- (5) evidence of his rehabilitation or rehabilitative effort while incarcerated or following release; and
- (6) other evidence of his present fitness, including letters of recommendation from prosecution, law enforcement and correctional officers who prosecuted, arrested, or had custodial responsibility for him; the sheriff and chief of police in the community where he resides; and any other persons in contact with him.

(d) It is the responsibility of the applicant, to the extent possible, to secure and provide to the county judge/executive the evidence required to determine present fitness under Subsection (C) of this section.

(e) The license, if granted, shall state on its face the name of the person or persons to whom it is granted, the expiration date, and the address of the sexually oriented business. The license shall be posted in a conspicuous place at or near the entrance to the sexually oriented business so that it may be easily read at any time.

SEC. 6. FEES.

(a) The annual fee for a sexually oriented business license is \$1,000.00.

SEC. 7. INSPECTION.

(a) An applicant or licensee shall permit representatives of the sheriff's department, health department, fire department, and building inspection division to inspect the premises of a sexually oriented business for the purpose of insuring compliance with the law, at any time it is occupied or open for business.

(b) A person who operates a sexually oriented business or his agent or employee commits

an offense if he refuses to permit a lawful inspection of the premises by a representative of the sheriff's department at any time it is occupied or open for business.

SEC. 8. EXPIRATION OF LICENSE.

- (a) Each license shall expire one year from the date of issuance and may be renewed only by making application as provided in Section 4. Application for renewal should be made at least 30 days before the expiration date, and when made less than 30 days before the expiration date, the expiration of the license will not be affected.
- (b) When the judge/executive denies renewal of a license, the applicant shall not be issued a license for one year from the date of denial. If, subsequent to denial, the judge/executive finds that the basis for denial of the renewal license has been corrected or abated, the applicant may be granted a license if at least 90 days have elapsed since the date denial became final.

SEC. 9. SUSPENSION.

The County Judge/Executive shall suspend a license for a period not to exceed 30 days if it determines that a licensee or an employee of a licensee has:

- (1) violated or is not in compliance with Section 7, 12, 13, 15, 16, 17, 18, 19, or 20 of this ordinance;
- (2) engaged in excessive use of alcoholic beverages 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. 10. REVOCATION.

(a) The judge/executive shall revoke a license if a cause of suspension in Section 9 occurs and the license has been suspended within the preceding 12 months.

(b) The judge/executive shall revoke a license if it determines that:

- (1) a licensee gave false or misleading information in the material submitted to the judge/executive 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 5(a)(10)(A) for which the time period required in Section 5(a)(10)(B) has not elapsed;
- (6) on two or more occasions within a 12-month period, a person or persons

committed an offense occurring in or on the licensed premises of a crime listed in Section 5(a)(10)(A), for which a conviction has been obtained, and the person or persons were employees of the sexually oriented business at the time the offenses were committed;

(7) A licensee or an employee has knowingly allowed any act of sexual intercourse, sodomy, oral copulation, masturbation, or sexual contact to occur in or on the licensed premises. The term "sexual contact" shall have the same meaning as it is defined by Kentucky Revised Statute.

(8) a licensee is delinquent in payment to the county for hotel occupancy taxes, ad valorem taxes, or sales taxes related to the sexually oriented business.

8 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.

(e) When the judge/executive revokes a license, the revocation shall continue for one year and the licensee shall not be issued a sexually oriented business license for one year from the date revocation became effective. If, subsequent to revocation, the judge/executive finds that the basis for the revocation has been corrected or abated, the applicant may be granted a license if at least 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 5(a)(10)(B) has elapsed since the termination of any sentence, parole, or probation.

SEC. 11. APPEAL.

In the event the county judge/executive denies, suspends or revokes a license the applicant may appeal that action to the fiscal court. Said appeal shall be filed in writing with the office of the judge/executive within ten (10) days of the denial, suspension or revocation of the license. The judge/executive shall place the appeal on the agenda of the next regularly scheduled meeting of the fiscal court for the purpose of scheduling a hearing on the matter. Said hearing shall be scheduled within thirty (30) days of that meeting. The hearing may occur during a regular meeting of the fiscal court or at a special meeting scheduled for that purpose in the discretion of the fiscal court. The hearing shall be open to the public.

SEC. 12 APPEAL TO CIRCUIT COURT

In the event the applicant wishes to appeal the decision of the fiscal court, further appeal shall be made to the Pendleton Circuit Court.

SEC. 13 LOCATION OF SEXUALLY ORIENTED BUSINESSES.

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.

(a) A person commits an offense if he operates or causes to be operated a sexually

oriented business within 1,000 feet of

- (1) a church;
 - (2) a public or private elementary or secondary school;
 - (3) a boundary of a residential subdivision;
 - (4) a public park adjacent to a residential district; or
 - (5) the property line of a lot devoted to residential use.
- (b) A person commits an offense if he causes or permits the operation, establishment, substantial enlargement, or transfer of ownership or control of a sexually oriented business within 1,000 feet 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 any building, structure, or portion thereof containing another sexually oriented business.
- (d) For the purposes of Subsection (a), measurement shall be made in a straight line, without regard to intervening structures or objects, from the nearest portion of the building or structure used as a part of the premises where a sexually oriented business is conducted, to the nearest property line of the premises of a church or public or private elementary or secondary school, or to the nearest boundary of an affected public park, residential district, or residential lot.
- (e) For purposes of Subsection (b) of this section, the distance between any two sexually oriented businesses shall be measured in a straight line, without regard to intervening structures or objects, from the closest exterior wall of the structure in which each business is located.
- (f) Any sexually oriented business lawfully operating on the date of adoption of this ordinance, that is in violation of Subsections (a), (b), or (c) of this section shall be deemed a nonconforming use.
- The nonconforming use will be permitted to continue for a period not to exceed three years, unless sooner terminated for any reason or voluntarily discontinued for a period of 30 days or more. Such nonconforming uses shall not be increased, enlarged, extended or altered except that the use may be changed to a conforming use. If two or more sexually oriented businesses are within 1,000 feet of one another and otherwise in a permissible location, the sexually oriented business which was first established and continually operating at a particular location is the conforming use and the later-established businesses is nonconforming.
- (g) A sexually oriented business lawfully 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, public or private elementary or secondary school, public park, residential district, or residential lot within 1,000 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.

SEC. 14. EFFECT OF FUTURE ZONING ORDINANCES

In the event a zoning ordinance is adopted by the county in the future, the location requirements of this ordinance shall remain in force unless specifically and expressly superseded by said zoning regulations.

SEC. 15. ADDITIONAL REGULATIONS FOR ESCORT AGENCIES.

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

SEC. 16. ADDITIONAL REGULATIONS FOR NUDE MODEL STUDIOS.

- (a) A nude model studio shall not employ any person under the age of 18 years.
- (b) A person under the age of 18 years commits an offense if he appears in a state of nudity in or on the premises of a nude model studio. It is a defense to prosecution under this subsection if the person under 18 years was in a restroom not open to 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 model studio premises which can be viewed from the public right of way.
- (d) A nude model studio shall not place or permit a bed, 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. 17. 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 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.
- (d) It is a defense to prosecution under Subsections (b) and (c) of this section if the person under 18 years was in a restroom not open to public view or persons of the opposite sex.

SEC. 18. 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 10 hours creates a rebuttable presumption that the establishment is an adult motel as that term is defined in this chapter.
- (b) A person commits an offense if, as the person in control of a sleeping room in a hotel, motel, or similar commercial establishment that does not have a sexually oriented business license, he rents or subrents a sleeping room to a person and, within 10 hours from the time the room is rented, he rents or subrents the same sleeping room again. (c) For purposes of Subsection (b) of this section, the terms "rent" or "subrent" mean the act

of permitting a room to be occupied for any form of consideration.

SEC. 19. REGULATIONS PERTAINING TO EXHIBITION OF SEXUALLY EXPLICIT FILMS OR VIDEOS.

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

(1) Upon application for a sexually oriented business license, the application shall be accompanied by a diagram of the premises showing a plan thereof specifying the location of one or more manager's stations and the location of all overhead lighting fixtures and designating any portion of the premises in which patrons will not be permitted. A manager's station may not exceed 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 fiscal court 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 fiscal court.

(4) It is the duty of the owners and operator of the premises to ensure that at least one employee is on duty and situated in each manager's station at all times that any patron is present inside the premises.

(5) The interior of the premises shall be configured in such a manner that there is an unobstructed view from a manager's station of every area of the premises to which any patron is permitted access for any purpose excluding restrooms. Restrooms may not contain video reproduction equipment. If the premises has two or more manager's stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose from at least one of the manager's stations. The view required in this subsection must be by direct line of sight from the manager's station.

(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) 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 (1.0) foot-candle as measured at the floor level.

(8) It shall be the duty of the owners and operator and it shall also be the duty of any agents and employees present in the premises to ensure that the illumination described above is maintained at all times that any patron is present in the premises.

(b) A person having a duty under Subsections (1) through (8) of Subsection (a) above commits an offense if he knowingly fails to fulfill that duty.

SEC.20. 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 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, buttocks, or female breasts;
- (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 an 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. 21. ENFORCEMENT.

(a) Except as provided by Subsection (b), any person violating Section 13 of this chapter, upon conviction, is punishable by a fine not to exceed \$1,000.

(b) If the sexually oriented business involved is a nude model studio or sexual encounter center, then violation of Section 4(a) or 13 of this chapter is punishable as a Class B misdemeanor.

(c) Except as provided by Subsection (b) any person violating a provision of this chapter other than Section 13, upon conviction, is punishable by a fine not to exceed \$200.

(d) It is a defense to prosecution under Section , 13, or 16(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 Kentucky, 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.

(e) It is a defense to prosecution under Section 4(a) or Section 13 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. 22. INJUNCTION.

A person who operates or causes to be operated a sexually oriented business without a valid license or in violation of Section 13 of this chapter is subject to a suit for injunction as well as prosecution for criminal violations.

SEC. 23. SEVERABILITY CLAUSE

The provisions of this ordinance are severable and if any provisions are part thereof shall be held invalid or unconstitutional or inapplicable to any person or circumstance, such invalidity, unconstitutionality or inapplicability shall not affect or impair the remaining provisions of this ordinance.

This Ordinance shall become effective upon its passage and publication as required by law.

First reading July 9th 1998.

Second reading, passed and approved this 27th day of August 1998.

Donald R. Mays
Donald R. Mays
Pendleton County Judge/ Executive

Attest:

BONNIE S. Monroe, Clerk By: Jarvis D. Dore
Bonnie S. Monroe
Pendleton County Court Clerk