

SEXUALLY ORIENTED BUSINESSES REGULATIONS ESTABLISHED

ORDINANCE 031810(01)

AN ORDINANCE AMENDING THE CITY OF QUITMAN – CODE OF ORDINANCES TO ESTABLISH REGULATIONS REGARDING SEXUALLY ORIENTED BUSINESSES, PROVIDING A SAVINGS CLAUSE, AND PROVIDING AN EFFECTIVE CLAUSE

PART I – AMENDMENT TO ORDINANCES ESTABLISHING REGULATIONS

The following is hereby added to the City of Quitman – Code of Ordinances:

“CHAPTER 114 – SEXUALLY ORIENTED BUSINESSES

Section 114.01 Purpose and intent

It is the purpose of this section to regulate sexually oriented businesses to promote the health, safety, morals, and general welfare of the citizens of the city, and to establish reasonable and uniform regulations to prevent the concentration of sexually oriented businesses within the city, in accordance with Texas Local Government Code Chapter 243. The provisions of this section 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 section 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.

Section 114.02 Definitions

(A) Achromatic: means colorless or lacking in saturation or hue. The term includes, but is not limited to, grays, tans, and light earth tones. The term does not include white, black, or any bold coloration that attracts attention.

(B) 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."

(C) Adult bookstore or adult video store: means any commercial establishment which as a part of its business offers for sale or rental for any form of consideration any one or more of the following:

- (1) Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes or video reproductions, slides, or other visual representations which depict or describe "specified sexual activities" or "specified anatomical areas;" or
- (2) Instruments, devices, or paraphernalia which are designed for use in connection with "specified sexual activities."

(D) Adult cabaret: means any commercial establishment that offers to customers entertainment that:

- (1) Is intended to provide sexual stimulation or sexual gratification to such customers; and
- (2) Is distinguished by or characterized by an emphasis on matter depicting, simulating, describing, or relating to "specified anatomical areas" or "specified sexual activities"

(E) Adult motel: means a hotel, motel or similar commercial establishment which:

- (1) 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;
- (2) Offers a sleeping room for rent for a period of time that is less than twelve hours; or
- (3) Allows a tenant or occupant of a sleeping room to subrent the room for a period of time that is less than twelve hours.

(F) Adult motion picture theater: means any commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, slides, or similar photographic reproductions are shown which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas."

(G) Adult theater: means any theater, concert hall, auditorium, or similar commercial establishment which 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."

(H) Chief of police: means the Chief of Police of the City of Quitman or his designated agent.

(I) Day nursery or kindergarten school: has the meaning given that term in the Quitman Zoning Ordinance.

(J) Escort: means any 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.

(K) Escort agency: means any person or business association who furnishes, offers to furnish, or advertises to furnish escorts as any part of its business, for any form of consideration.

(L) Establishment: means and includes any of the following:

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

(M) Licensee: means any 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.

(N) 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.

(O) Nudity or a state of nudity: means the appearance of a human bare buttock, anus, male genitals, female genitals, or female breast, including any state of dress that fails to completely and opaquely cover a human buttock, anus, male genitals, female genitals, or any part of the female breast or breasts that is situated below a point immediately above the top of the areola.

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

(Q) Person: means any individual, proprietorship, partnership, corporation, association, or other legal entity.

(R) Residential district: means any zoning district where individuals live or any district that is zoned as a residential district, including but not limited to single family, multi-family, apartment, or mobile homes.

(S) Residential use: means any property where individuals live or any district that is zoned as a residential district, , including but not limited to single family, multi-family, apartment, or mobile homes.

(T) Sexual encounter center: means any business or commercial enterprise that, as any part of its business offers for any form of consideration:

- (1) Physical contact in the form of wrestling or tumbling between persons of the opposite sex; or
- (2) Activities between male and female persons and/or persons of the same sex when one or more of the persons is in any state of nudity.

(U) Sexually oriented business: means any 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.

(V) Specified anatomical areas: means:

- (1) Any of the following, or any combination of the following, when less than completely and opaquely covered;
 - (a) Any human genitals, pubic region, or pubic hair;
 - (b) Any buttock; or
 - (c) Any portion of the female breast or breasts that is situated below a point immediately above the top of the areola; or
- (2) Human male genitals in a discernibly erect state, even if completely and opaquely covered.

(W) Specified sexual activities: means and includes any of the following:

- (1) The fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breasts;
- (2) Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, or sodomy;
- (3) Masturbation, actual or simulated; or
- (4) Excretory functions as part of or in connection with any of the activities set forth in [subsections] (1) through (3) above.

(X) Substantial enlargement of a sexually oriented business: means the increase in floor area occupied by business by more than 25 percent, as the floor exists upon issuance of a permit under this Chapter.

(Y) Transfer of ownership or control of a sexually oriented business means and includes any of the following:

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

Section 114.03 Classification

(A) Sexually oriented business 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;
- (9) Sexual encounter centers.

Section 114.04 License Required

(A) A person commits an offense if he operates a sexually oriented business without a valid license or not in accordance with the terms of a permit issued by the city.

(B) An application for a license must be made on a prescribed form provided by the City. The application must be accompanied by a sketch or diagram showing the configuration of the premises. 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 and include:

- (1) clear identification of property lines and adjacent properties or right-of-ways
- (2) distances between structures and other structures and property lines
- (3) all structures on the premises and their elements, including, all windows, doors, walls, electronic monitoring systems, fixtures, and displays.
- (4) clear designation of all floorspace and its uses / access by general public.

(C) The applicant must be qualified accordance with the provisions of Section 114.05.

(D) If a person who wishes to operate a sexually oriented business is an individual, he must sign the application for a license as an applicant. If a person who wishes to operate a sexually oriented business is other than an individual, each individual who has a five (5%) percent or greater interest in the business must sign the application for a license as applicant. Each applicant must be qualified under Section 114.05 and each applicant shall be considered a licensee if a license is granted.

(E) The fact that a person possesses a valid license of any kind or any other authority does not exempt the person from the requirement of obtaining a sexually oriented business license.

Section 114.05 Qualification for License.

Prior to Planning and Zoning Commission or City Council consideration on any application and throughout the effective period of the license,

- (A) the applicant or permittee shall meet the following qualifications, as certified by the Chief of Police:

(1) an applicant or permittee OR any employee working in the sexually oriented business shall be over 18 years of age.

(2) an applicant or permittee OR an applicant's or permittee's spouse OR any employee working in the sexually oriented business shall not be overdue in payment to the city of any fees, fines, or penalties asserted against him or imposed upon him by the city in relation to a sexually oriented business.

(3) an applicant or permittee shall not fail to provide information reasonably necessary for the consideration of the license or provide false information on the application form or as a part of the application process.

(4) an applicant or permittee OR an applicant's or permittee's spouse OR any employee working in the sexually oriented business shall not have been convicted of a violation of a provision of this section, other than the offense of operating a sexually oriented business without a license, within five years immediately preceding the application. The fact that a conviction is being appealed shall have no effect.

(5) an applicant or permittee shall not be residing with a person who has been denied a license by the city to operate a sexually oriented business within the preceding 24 months, or residing with a person whose license to operate asexually oriented business has been revoked within the preceding 24 months.

(6) an applicant or permittee shall not have been employed in any capacity at any time in the preceding 24 months by an applicant or at a premises which has had been denied a license by the city or has been revoked in the preceding 24 months.

(7) an applicant or permittee shall not be in non-compliance with any section of this Chapter.

(8) an applicant or permittee OR an applicant's or permittee's spouse OR any employee working at in the sexually oriented business shall not have been convicted of be under indictment or misdemeanor information for a crime,

(a) Involving:

(i) Any of the following offenses as described in V.T.C.A., Penal Code ch. 43:

(aa) Prostitution;

(bb) Promotion of prostitution;

(cc) Aggravated promotion of prostitution;

(dd) Compelling prostitution;

(ee) Obscenity;

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

(gg) Sexual performance by a child;

(hh) Possession of child pornography;

(ii) Any of the following offenses as described in V.T.C.A., Penal Code ch. 21.

(aa) Public lewdness;

(bb) Indecent exposure;

(cc) Indecency with a child;

(iii) Engaging in organized criminal activity as described in V.T.C.A., Penal Code ch. 71;

(iv) Sexual assault or aggravated sexual assault as described in V.T.C.A., Penal Code ch. 22;

(v) Incest, solicitation of a child, or harboring a runaway child as described in V.T.C.A., Penal Code ch. 25.

(vi) Kidnapping or aggravated kidnapping as described in V.T.C.A., Penal Code ch. 20;

(vii) Robbery or aggravated robbery as described in V.T.C.A., Penal Code ch. 29;

(viii) A bribery or retaliation as described in V.T.C.A., Penal Code ch. 36;

(ix) A violation of the Texas Controlled Substances Act or Dangerous Drugs Act punishable as a felony, Class A misdemeanor, or Class B misdemeanor; 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 of 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 of 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 offense or combination of misdemeanor offenses occurring within any 24-month period.

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

(d) An applicant who has been convicted or whose spouse has been convicted of an offense listed in subsection (e)(1)j., 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 chief of police 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 chief of police shall consider the following factors concerning the applicant or applicant's spouse, whichever had the criminal conviction:

(i) The extent and nature of his past criminal activity;

(ii) His age at the time of the commission of the crime;

(iii) The amount of time that has elapsed since his last criminal activity;

(iv) His conduct and work activity prior to and following the criminal activity;

(v) Evidence of his rehabilitation or rehabilitative effort while incarcerated or following release; and

(vi) 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 or chief of police in the community where he resides; and any other persons in contact with him.

(vii) It shall be the responsibility of the applicant to secure and provide evidence or information requested to determine present fitness under 114.05(A)(8)(d).

(B) the premises on which the sexually oriented business is operated shall comply with all federal and state laws and all local ordinances or adopted building codes, as certified by the Building Official.

(C) the premises shall not be located within,

(1) 1200 foot of any,

(a) school, public or private

(b) nursery or daycare

(c) church

(d) public park

(e) cemetery

(f) hospital

(g) governmental office

(h) restaurant, store, or private club which is licensed to sale alcoholic beverages by the Texas Alcoholic Beverage Commission, or

(i) any other premises with a sexually oriented business permit.

(2) 500 foot of any,

(a) residentially zoned district of any kind or property otherwise zoned, but currently in use for residential purposes of any kind, or

(b) state highway.

(3) such distance shall be as measured from the property line of the premises to the property line of other properties in a straight and direct line without regard for obstruction.

(D) any fee required by this Chapter shall have been paid, as certified by the City Secretary-Administrator.

Section 114.06 Fees

(A) The annual fee for a sexually oriented business license shall be one thousand dollars (\$1,000.00).

(B) In addition to the fees required by subsection (1), an applicant for an initial sexually oriented business license shall, at the time of making application, pay a nonrefundable fee of \$1,000 for the city to conduct a review to ensure that the proposed sexually oriented business is in compliance with the requirements of this Chapter.

Section 114.07 Permit Consideration and Issuance

(A) An application shall be considered complete and accepted for consideration upon compliance with Sections 114.04, 114.05, and 114.06 of this Chapter.

(B) An application accepted for consideration shall be placed on the agendas of the Planning and Zoning Commission and the City Council for the sequential meetings immediately following a 30 day period from the acceptance of the application.

(C) Public hearings shall be held at each of the meetings identified in Section 113.07(B) prior to any action on an application and notice for such public hearing shall be:

- (1) published in the newspaper of record at least one time not less than seven (7) days prior the public hearing,
- (2) sent to each property owner located within 200 feet of the applicant's premises, and
- (3) the applicant(s) or permittee(s).

(D) Provided a positive recommendation by the Planning and Zoning Commission, a regular majority vote of the City Council shall be required to authorize issuance of a sexually oriented business license,

(E) Provided a negative recommendation by the Planning and Zoning Commission, a 2/3rds majority vote of the City Council shall be required to authorize issuance of a sexually oriented business license.

Section 114.08 Inspection

(A) An applicant or licensee shall allow designated city representatives to inspect the premises of a sexually oriented business for the purpose of insuring compliance all applicable laws or local ordinances. Such access shall be allowed 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 allow a lawful inspection of the premises by a city representative at any time it is occupied or open for business.

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

Section 114.09 Expiration of License

Each license shall expire one year from the date of issuance and may be renewed only by making application as provided in this Chapter. Application for renewal should be made at least 60 days before the expiration date, and when made less than 60 days before the expiration date, the expiration of the license shall not be affected.

Section 114.10 Transfer of License

No transfer, assignment, or other conversion of a sexually oriented business permit shall be allowed.

Section 114.11 Suspension of License

The City Secretary-Administrator shall suspend a license for a period not to exceed 45 days if he determines that a licensee or an employee of a license has:

- (A) violated or is not in compliance with any section of this Chapter;
- (B) engaged in use of alcoholic beverages while on the sexually oriented business premises;

- (C) refused to allow an inspection of the sexually oriented business premises as authorized by this section;
- (D) knowingly permitted gambling or any other criminal activity by any person on the sexually oriented business premises;
- (E) demonstrated inability to operate or manage a sexually oriented business in a peaceful and law abiding manner, thus necessitating action by law enforcement officers.
- (F) provided false or misleading information in the application process or as a part of inspection by city personnel.
- (G) allowed possession, use, or sale of controlled substances on the premises.
- (H) knowingly allowed prostitution on the premises.
- (I) knowingly allowed any act of sexual intercourse, sodomy, oral copulation, masturbation, or sexual contact to occur in or on the licensed premises. The term "sexual contact" shall have the same meaning as it is defined in V.T.C.A., Penal Code ch. § 21.01;
- (J) allowed any individual under the age of 18 access to the premises.
- (K) is delinquent in payment or fails to pay any amount due the city for hotel occupancy taxes, ad valorem taxes on the premises, or sales taxes related to the sexually oriented business,
- (L) transferred any portion of ownership or control to an individual or party who is not a permittee,
- (M) or substantially enlarged or altered any structure on the premises.

Section 114.11 Revocation and Reinstatement

- (A) The City Council shall consider revocation or reinstatement of any suspended sexually oriented business permit at its next regular meeting immediately following 30 days from the date of suspension.
- (B) Prior to action on any revocation or reinstatement, the City Council shall hold a public hearing. Notice of the hearing shall be in accordance with the requirements Section 114.07(C).

Section 114.12 Premises and Signage

- (A) Notwithstanding any provision of this Code of Ordinances or any other city ordinance, code, or regulation to the contrary, a person commits an offense if he erects, constructs, or maintains any sign for advertisement of a sexually oriented business other than one primary sign and one secondary sign on the premises of a permitted sexually oriented business, as provided in this section OR operates a sexually oriented business in a manner not in compliance as provided in this section.
- (B) A primary sign or secondary sign must contain no photographs, silhouettes, drawings, or pictorial representations of any manner, and may contain only:
 - (1) The name of the establishment,
 - (2) The name of each permittee
 - (2) One or more of the following phrases as describes the operation of the establishment as defined by the license:
 - (a) "Adult arcade"
 - (b) "Adult bookstore or adult video store"
 - (c) "Adult cabaret"
 - (d) "Adult motel"
 - (e) "Adult motion picture theater"
 - (f) "Adult theater"
 - (g) "Escort agency"
 - (h) "Nude model studio"
 - (4) the statement in letters, of comparable size to all other lettering and in capital lettering with underlining,

"NO ONE UNDER 18 PERMITTED"
- (B) All signage shall be directly attached to the premises and extend no more than 12 inches from any existing structure.
- (C) All signage shall be externally lit only and shall not have internal lighting, backlighting, neon, led or other bright lighting.
- (D) The combined total signage area of both signs shall not exceed 50 square feet.

(E) All signage and other exterior areas of the premises shall be wholly achromatic.

(F) All windows, doors, or other egress or ingress shall be wholly opaque so as to obscure external view into the premises.

Section 114.13 Escort Agencies – Additional Regulations

(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.

Section 114.14 Nude Model Studios – Additional Regulations

(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.

(E) 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 that can be viewed from the public right-of-way.

(F) An employee of a nude model studio, while exposing any specified anatomical areas, commits an offense if the employee touches a customer or the clothing of a customer.

(G) A customer at a nude model studio commits an offense if he touches an employee who is exposing any specified anatomical areas or touches the clothing of the employee.

(H) A licensee or an employee of a nude model studio commits an offense if he permits any customer access to an area of the premises not visible from the manager's station or not visible by a walk through of the premises without entering a closed area excluding a restroom.

Section 114.15 Adult Cabarets – Additional Regulations

(A) An employee of an adult cabaret, while exposing any specified anatomical areas, commits an offense if the employee touches a customer or the clothing of a customer.

(B) A customer of an adult cabaret commits an offense if he touches an employee who is exposing any specified anatomical areas or touches the clothing of the employee.

(C) A licensee or an employee of an adult cabaret commits an offense if he permits any customer access to an area of the premises not visible from the manager's station or not visible by a walk through of the premises without entering a closed area, excluding a restroom.

Section 114.16 Adult Theaters and Motion Picture Theaters – Additional Regulations

(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.

(C) It is a defense to prosecution under subsections (1) and (2) above if the person under 18 years was in a restroom not open to public view or persons of the opposite sex.

Section 114.17 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 twelve hours creates a rebuttable presumption that the establishment is an adult motel as that term is defined in this section.

(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 twelve hours from the time the room is rented, he rents or subrents the same sleeping room again.

(3) For purposes of subsection (2) above, the terms "rent" or subrent" mean the act of permitting a room to be occupied for any form of consideration.

Section 114.18 Exhibition of Sexually Explicit Films

(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 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 foregoing diagram for renewal applications may be waived 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 and notarized.

(3) No alteration in the configuration or location of a manager's station may be made without the prior approval of the chief of police or his designee.

(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) footcandle, as measured at the floor level.

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

(9) A person having a duty under subsections a. through h. of subsection (l) above commits an offense if he knowingly fails to fulfill that duty.

Section 114.19 Display of sexually explicit materials 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 areolae; 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.

Section 114.20 Penalty and Enforcement.

(A) Violation of any provision contained in this Chapter shall be punishable by a fine not to exceed \$2,000.00.

(B) It is a defense to prosecution regarding any violation that a person appeared in a state of nudity did so in an art class operated:

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

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

(3) In a private 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.

(C) It is a defense to prosecution with regard to the operation of an adult bookstore or adult video store without a license that each item of descriptive, printed, film, or video material offered for sale or rental, taken as a whole, contains serious literary, artist, political, or scientific value.

(D) It is a defense to prosecution with regard to the operation of an adult video store that the material sold shall have an 'R' or lower rating according the Motion Picture Association of America rating system, no defense to prosecution is provided herein with regard to a violation display of sexually explicit material to a minor as provided in Section 114.19."

PART II – SAVINGS CLAUSE

Should any part, section, portion, or clause of this ordinance be found by a court of law to be unenforceable or otherwise rendered unenforceable, the remaining portions shall remain effective and enforceable.

PART III – EFFECTIVE CLAUSE

The City Secretary-Administrator is hereby authorized and directed to publish the caption and penalty clause of this ordinance in accordance with the Texas Local Government and it shall become effective upon publication in accordance with this requirement.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF QUITMAN, TEXAS THIS 18TH DAY OF MARCH, 2010.

IN WITNESS WHEREOF WE HEREBY AFFIX OUR SIGNATURES HERETO ON THIS 18TH DAY OF MARCH, 2010.

SIGNED,

Jerry Edwards, Mayor

ATTEST

Mike Hall, City Secretary-Administrator