

**Ordinance No. 2003.09
Village of Salado
County of Bell
State of Texas
July 3, 2003**

SEXUALLY ORIENTED BUSINESS ORDINANCE

AN ORDINANCE OF THE VILLAGE OF SALADO, TEXAS, RESTRICTING THE SITING OF SEXUALLY ORIENTED BUSINESSES; PROVIDING FOR THE FOLLOWING: POPULAR NAME, LEGISLATIVE FINDINGS; SCOPE; DEFINITIONS; LICENSING REQUIREMENTS; LICENSING FEES; LOCATION AND SIGNAGE; ENFORCEMENT, INCLUDING CRIMINAL FINES NOT TO EXCEED \$2,000.00 OR CIVIL PENALTY NOT TO EXCEED \$1,000.00 PER VIOLATION; DEFENSES TO PROSECUTION; REPEALER; SEVERABILITY; EFFECTIVE DATE; AND PROPER NOTICE AND MEETING

WHEREAS, there is the potential for the location of sexually oriented businesses in any community; and

WHEREAS, such businesses require special supervision for the public safety and welfare of the patrons of such businesses as well as the citizens of the Village of Salado; and

WHEREAS, the Texas Legislature has determined that the unrestricted operation of certain sexually oriented businesses may be detrimental to the public health, safety, and welfare by contributing to the decline of residential and business neighborhoods and the growth of criminal activity; and

WHEREAS, the Board of Aldermen acknowledges the existence of convincing documented evidence that sexually oriented businesses have a deleterious effect on both surrounding businesses and residential areas, causing increased crime and reduced property values;¹ and

¹ See Studies of the cities of Austin (May 19, 1986); Amarillo (September 12, 1977); Beaumont (September 14, 1982); and Houston, Texas (1982-83); and to the cities of Indianapolis, Indiana (February, 1984); Los Angeles, California (June, 1977); Oklahoma Village, Oklahoma (March 3, 1986); Phoenix, Arizona (May 25, 1979); and Seattle, Washington (March 24, 1989), are herein incorporated for all purposes as if printed verbatim.

WHEREAS, the Board of Aldermen of the Village of Salado finds that sexually oriented businesses are frequently used for unlawful sexual activities, including prostitution and sexual liaisons of a casual nature; and

WHEREAS, the Board of Aldermen of the Village of Salado desires to minimize and control these adverse effects and thereby protect the health, safety, and welfare of the citizenry; preserve the property values and character of surrounding neighborhoods; and deter the spread of urban blight; and

WHEREAS, licensing is a legitimate and reasonable means of creating accountability to ensure that operators of sexually oriented businesses comply with reasonable regulations and to ensure that operators do not knowingly allow their establishments to be used as places of illegal sexual activities or solicitation; and

WHEREAS, pursuant to Chapter 211 of the Texas Local Government Code restricting the location of sexually oriented businesses within the Village is a reasonable and legitimate exercise of the Village's zoning authority; and

WHEREAS, pursuant to Chapter 243 of the Texas Local Government Code the Board of Aldermen has authority to regulate sexually oriented businesses to promote the public, health, safety and welfare; and

WHEREAS, it is not the intent of the Board of Aldermen to suppress any speech activities protected by the First Amendment of the United States Constitution, but to enact a content-neutral Ordinance that addresses the secondary effects of sexually oriented businesses; and

WHEREAS, it is not the intent of the Board of Aldermen to condone or legitimize the promotion of obscene materials; and

WHEREAS, the Board of Aldermen seeks to regulate Sexually Oriented Businesses as part of the Board's comprehensive efforts to protect and preserve the scenic and historic nature of the Village in a manner that fosters a family atmosphere conducive to Village residents and tourists; and

NOW, THEREFORE, BE IT HEREBY ORDAINED BY THE BOARD OF ALDERMEN OF THE VILLAGE OF SALADO, COUNTY OF BELL, STATE OF TEXAS, THAT:

1. ENACTMENT PROVISIONS

A. Popular Name

This Ordinance shall commonly be referred to as the Village of Salado "Sexually Oriented Business Ordinance."

B. Legislative Findings

The recitals made above in the Preamble are hereby deemed Findings made by the Board of Aldermen and shall be incorporated within this Ordinance.

C. Scope

This Ordinance provides regulatory standards throughout the Village's incorporated municipal boundaries (i.e., city limits) but not the extraterritorial jurisdiction (ETJ).

D. Definitions

Words and phrases used in this Ordinance shall have the meanings set forth in this section. Words and phrases which are not defined in this Ordinance but are defined in other ordinances of the Village of Salado shall be given the meanings set forth in those ordinances. Other words and phrases shall be given their common, ordinary meaning unless the context clearly requires otherwise. Headings and captions are for reference purposes only, and shall not be used in the interpretation of this Ordinance.

- (1) "*Board*" means the Board of Aldermen, which is the governing body (i.e., the "city council") of the Village of Salado.
- (2) "*Person*" means an individual, corporation, organization, government agency, business, trust, partnership, association, or any other legal entity.
- (3) "*Sexually oriented businesses*" means sex parlors, nude studios, modeling studios, love parlors, adult bookstores, adult movie theaters, adult video arcades, adult video stores, adult motels, or any other commercial enterprises the primary business of which is the offering of a service or the selling, renting, or exhibiting of devices or any other items intended to provide sexual stimulation or sexual gratification to the customer.
- (4) "*Village*" means the Village of Salado, an incorporated municipality located in Bell County, Texas. The term may also refer to employees, agents or other designee of the Board of Aldermen of the Village of Salado.

2. LICENSING REQUIREMENTS

A. Licensing Requirement

No person shall operate a Sexually Oriented Business without applying for and receiving a valid license issued by the Village.

B. Notice by Sign

(1) At least sixty (60) days before filing an application, any person who plans to apply for a license for a location not previously licensed shall prominently post an outdoor sign at the proposed location stating that a sexually oriented business is intended to be located on the premises and providing the name and business address of the applicant.

(2) The sign must be at least twenty-four by thirty-six (24 x 36) inches in size and must be written in lettering at least two (2) inches in size. The sign must be in both the English and Spanish languages.

C. Issuance of License

(1) Any person desiring a license shall file a sworn written application with the Village Secretary, on a form provided by the Village Secretary, and pay the license fee as provided in this Ordinance and as may be amended by the Board of Aldermen.

(2) The Planning and Zoning Commission shall approve the issuance of a license by the Village Secretary to an applicant within sixty (60) days of receipt of a complete written application unless one or more of the following is true:

- (a) An applicant is under eighteen (18) years of age;
- (b) An applicant or an applicant's spouse is overdue in his payment to the Village of Salado taxes, fines, or penalties assessed against him or imposed upon him in relation to a sexually oriented business;
- (c) 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;
- (d) An applicant or an applicant's spouse has been convicted of violating any provision of this Ordinance, other than the offense of operating a sexually oriented business without a license, within two (2) years immediately preceding

the application. The fact that a conviction is being appealed shall have no effect;

- (e) An applicant is residing with a person who has been denied a license by the Village to operate a sexually oriented business within the preceding twelve (12) months, or residing with a person whose license to operate a sexually oriented business has been revoked within the preceding twelve (12) months;
- (f) The premises to be used for the sexually oriented business have not been approved by the Village as being in compliance with applicable laws and ordinances;
- (g) The license fee required by this Ordinance has not been paid;
- (h) An applicant has been employed in a sexually oriented business in a managerial capacity within the preceding twelve (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, thus necessitating action by law enforcement officers; or
- (i) An applicant or an applicant's spouse has been convicted of a crime:
 - 1. involving:
 - a. any of the public indecency offenses described in Chapter 43 of the Texas Penal Code;
 - b. any of the sexual offenses 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; or
 - e. criminal attempt, conspiracy, or solicitation to commit any of the foregoing offenses;

2. for which:

- a. less than two (2) years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, if the conviction is of a misdemeanor offense;
- b. less than five (5) years have elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date, if the conviction is of a felony offense; or
- c. less than five (5) years have elapsed since the date of the last conviction or the date of release from confinement for the last conviction, whichever is the later date, if the convictions are of two (2) or more misdemeanor offenses or combination of misdemeanor offenses occurring within any twenty-four (24) month period.
- d. The fact that a conviction is being appealed shall have no effect on the disqualification of the applicant.

(3) 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.

D. License Fee

The annual administrative fee for a sexually oriented business license shall be _____ (\$_____) dollars. Such fee is based on the cost of processing license applications and investigating applicants.

E. Transfer and Operation

A licensee shall not transfer his license to another person, 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.

F. Inspection

An applicant or licensee shall permit representatives of the Village or the Village's Police Department to inspect the premises of a sexually oriented business for the purpose of insuring compliance with the law at any time it is occupied or open for business except that the Village may not inspect areas of an adult motel that are currently being rented by a customer.

G. License Suspension

The Planning and Zoning Commission shall suspend a license for a period not to exceed thirty (30) days if it is determined that a licensee or an agent or employee of a licensee has:

- (1) violated or is not in compliance with any section of this Ordinance;
- (2) refused to allow an inspection of the sexually oriented business premises as authorized by this Ordinance;
- (3) knowingly permitted gambling by any person on the sexually oriented business premises; or
- (4) demonstrated an inability to operate or manage a sexually oriented business in a peaceful and law-abiding manner, thus necessitating action by law enforcement officers.

H. Revocation

The Planning and Zoning Commission shall revoke a license if it determines that:

- (1) a licensee gave false or misleading information in the material submitted to the Village during the application process;
- (2) a licensee or an agent or employee of the licensee has knowingly allowed prostitution or any act of sexual intercourse, sodomy, oral copulation, masturbation, or sexual contact to occur in or on the premises of a sexually oriented business other than an adult motel. The term sexual contact shall have the same meaning as in Section 21.01 of the Texas Penal Code;
- (3) a licensee or an agent or employee of the licensee has knowingly allowed possession, use, or sale of controlled substances on the premises;
- (4) a licensee or a licensee's spouse has been convicted of an offense listed in section 2(C)(2)(i) of this Ordinance for which the time period specified in the Section has not elapsed;
- (5) a licensee has knowingly operated a sexually oriented business during a period of time when the licensee's license was suspended; or
- (6) a licensee is delinquent in payment to the Village for any taxes, fees, fines, or penalties.

(7) a cause of suspension in section 2(G) occurs and the license has been suspended within the preceding twelve (12) months.

I. Expiration and Renewal

Each license shall expire one (1) year from the date of issuance and may be renewed only by making an application for renewal as provided in section 2(C). Application for renewal shall be made at least thirty (30) days prior to the expiration date.

J. Appeal

(1) If the Planning and Zoning Commission denies the issuance or renewal of a license, or suspends or revokes a license, it shall send to the applicant, or licensee, by certified mail, return receipt requested, written notice of its actions and the right to an appeal.

(2) Appeal from the denial, suspension, or revocation of a license by the Planning and Zoning Commission shall be to the Board of Aldermen. An appeal to the Board of Aldermen shall be filed within fifteen (15) calendar days from the date of receipt of the notice of the decision by the Planning and Zoning Commission. The Board of Aldermen shall conduct a hearing on the appeal within sixty (60) days of receipt of the appeal. A hearing by the Board of Aldermen may proceed if at least seventy-five percent (75%) of the members are present. The Board of Aldermen shall hear and consider evidence offered by any interested person. Neither the Texas Rules of Evidence nor the Rules of Civil Procedure will apply at such hearing. The Village shall send to the applicant, or licensee, by certified mail, return receipt requested, written notice of its actions and the right to an appeal.

(a) Exemption from Location Restrictions

1. If the Planning and Zoning Commission denies the issuance of a license to an applicant because the location of the sexually oriented business establishment is in violation of Section 3(A) of this Ordinance, the Board of Aldermen may, at the hearing, consider granting an exemption to the application.
2. The Board of Aldermen may, in its discretion, grant an exemption from the location restrictions of this Ordinance if the Board of Aldermen makes the following written findings:
 - a. That the location of the proposed sexually oriented business will not have a detrimental effect on nearby properties or be contrary to the public safety or welfare;

- b. That the granting of the exemption will not violate the spirit and intent of this Ordinance;
 - c. That the location of the proposed sexually oriented business will not downgrade the property values or quality of life in the adjacent areas or encourage the development of urban blight;
 - d. That the location of an additional sexually oriented business in the area will not be contrary to any program of neighborhood conservation nor will it interfere with any efforts of urban renewal or restoration; and
 - e. That all other applicable provisions of this Ordinance will be observed.
 3. The Board of Aldermen shall grant or deny the exemption by a two-thirds majority vote. Failure to reach a two-thirds (2/3) majority vote shall result in denial of the exemption. Disputes of fact shall be decided on the basis of a preponderance of the evidence. A decision of the Board of Aldermen is final.
 4. If the Board of Aldermen grants the exemption, the exemption is valid for one (1) year from the date of the Council's action. Upon expiration of an exemption, the sexually oriented business is in violation of the location restrictions found in section 3(A) of this Ordinance until the applicant applies for and receives another exemption from the Board of Aldermen. The application for an exemption shall be made to the Village Secretary on a form provided by the Village.
 5. The grant of an exemption does not exempt the applicant from any other provisions of this Ordinance other than the location restrictions of section 3(A).
- (3) Appeal from the denial, suspension, or revocation of a license by the Board of Aldermen shall be to the state district court. An appeal to the state district court must be filed within thirty (30) days after the receipt of notice of the decision of the Board of Aldermen. The applicant or licensee shall bear the burden of proof in court.

3. LOCATION AND SIGNAGE

A. Location

- (1) Sexually oriented businesses may only be sited in that portion of the Village currently designated as Industrial.
- (2) Each structure housing a sexually oriented business shall be located at least five-hundred (500) feet from the property line of any lot used for a residence, church, cemetery, school, child care facility, or public park, and shall be located at least five-hundred (500) feet from any other structure housing a sexually oriented business.

B. Signage

Each sexually oriented business shall comply with all of the Village's sign requirements and shall not advertise, either graphically or verbally, either by explicit or literal expression, connotation, or implied reference, any specified sexual activities, or specified anatomical areas.

4. ENFORCEMENT

A. Civil and Criminal Penalties

Village shall have the power to administer and enforce the provisions of this Ordinance as may be required by governing law. Any person violating any provision of this Ordinance is subject to suit for injunctive relief as well as prosecution for criminal violations. Any violation of this Ordinance is hereby declared to be a nuisance.

B. Criminal Prosecution

Any person violating any provision of this Ordinance shall, upon conviction, be fined a sum not exceeding two thousand dollars (\$2,000.00). Each day that a provision of this Ordinance is violated shall constitute a separate offense. An offense under this Ordinance is a Class A misdemeanor.

C. Civil Remedies

Nothing in this Ordinance shall be construed as a waiver of the Village's right to bring a civil action to enforce the provisions of this Ordinance and to seek remedies as allowed by law, including, but not limited to the following:

- (1) injunctive relief to prevent specific conduct that violates the Ordinance or to require specific conduct that is necessary for compliance with the Ordinance; and
- (2) a civil penalty up to one thousand dollars (\$1,000.00) a day when it is shown that the defendant was actually notified of the provisions of the Ordinance and after receiving notice committed acts in violation of the Ordinance or failed to take action necessary for compliance with the Ordinance; and
- (3) other available relief.

D. Defenses to Prosecution

- (1) It is a defense to prosecution under this Ordinance that a person appearing in a state of nudity or semi-nudity did so in a modeling class operated:
 - (a) by a proprietary school licensed by the State of Texas, a college, junior college, or university supported entirely by or partly by taxation;
 - (b) 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
 - (c) in a structure:
 1. which has no sign visible from the exterior of the structure and no other advertising that indicates a nude or semi-nude person is available for viewing; or
 2. where in order to participate in a class a student must enroll at least three (3) days in advance of the class; and
 3. where no more than one (1) nude or semi-nude model is on the premises at any time.
- (2) It is a defense to prosecution under this Ordinance that each item of descriptive, printed film, or video material offered for sale or rental, taken as a whole, contains serious literary, artistic, political, or scientific value.

5. REPEALER

All ordinances or parts of ordinances in force when the provisions of this Ordinance become effective which are inconsistent or in conflict with the terms and provisions contained in this Ordinance are hereby repealed only to the extent of any such conflict.

6. SEVERABILITY

If any word, article, phrase, paragraph, sentence, clause or provision of this Ordinance shall be adjudged by a court of competent jurisdiction to be invalid, the invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision, and to this end the provisions of this Ordinance are declared to be severable.

7. EFFECTIVE DATE

This Ordinance shall take effect immediately from and after its passage and publication as may be required by governing law.

8. PROPER NOTICE AND MEETING

It is hereby officially found and determined that the public hearings at which testimony was received and the meeting at which this Ordinance was passed were open to the public and that public notices of the time, place and purpose of said hearings and meetings were post as required by the Open Meetings Act, Chapter 551 of the Texas Government Code, the Texas Zoning Enabling Act, Chapter 211 of the Texas Local Government Code, and Chapter 52.012 of the Texas Local Government Code.

PASSED AND APPROVED this the 3 day of July 2003, by the Board of Aldermen of the Village of Salado, Texas, by a vote of:

AYE(S): 5

NO(S): 0

ABSTENTION(S): 0

VILLAGE OF SALADO

by: Charlotte Douglass
Charlotte Douglass, Mayor

ATTEST:

Dianna Zulauf
Dianna Zulauf, Village Secretary

APPROVED AS TO FORM:

Alan J. Bojorquez, Village Attorney