ORDINANCE NO. 1030.1

AN ORDINANCE RELATING TO THE LICENSING AND REGULATION OF ADULT ENTERTAINMENT ESTABLISHMENTS AND THEIR EMPLOYEES.

(A) Findings. The Fiscal Court finds: that certain adult entertainment activities which might be located near areas zoned for residential use, near schools and public parks, and near shopping centers and similar open spaces that cater to use by family groups and children adversely affect the viability of such nearby properties for such purposes; and

That Nelson County, the local government within the County and the United States Government have spent millions of dollars on community development and neighborhood enhancement projects over the past several years to eliminate blight and to prevent the further deterioration of the County's neighborhoods; and

That adult entertainment activities, because of the conditions of their operations, have contributed to an increased incidence of crime and juvenile delinquency particularly when adult entertainment activities are located in close proximity to one another; and

That adult entertainment activities, through outside displays, tend to attract an undesirable clientele that discourages neighboring residents from undertaking civic improvements and causes residents and businesses to move elsewhere and frustrates attempts to attract new residents and businesses to come into the area, all of which factors contribute to a diminution of property values and to a general deterioration of the County's neighborhoods; and

That the noise generated by patrons coming and going from adult entertainment activity establishments causes a substantial disruption to nearby residents and a modest curtailment of the

hours during which entertainment is offered to patrons coming and going from such establishments would afford some relief to persons living in such nearby residences without significantly interfering with the availability of the entertainment offered therein; and

That nationally there is extensive involvement of organized crime in the business of such adult entertainment activities and that the disclosure of the names of persons who own, as well as the name of the persons who operate such adult activity establishments will aid law enforcement officials in the enforcement of the Racketeer Influenced and Corrupt Organizations Act (RICO) as well as in the enforcement of the laws of the Commonwealth of Kentucky prohibiting such distribution.

(B) Declaration of Public Purpose. The Fiscal Court declares as a matter of public policy that in order to preserve surrounding neighborhoods, prevent blight and the deterioration of the neighborhoods of Nelson County, protect property values, promote the return of residents and businesses to the County's neighborhoods, protect children from the deleterious effects of exposure to sexually explicit acts, and decrease the incidence of crime and juvenile delinquency, the licensing and regulation of adult entertainment establishments is a public necessity and is required in the interest of public health, safety and welfare and the economic and aesthetic well-being of the people.

(C) Purpose. It is further stated that the purposes of this ordinance are: (1) to protect neighborhoods from the noise, the blighting influence and the increase in crime brought about by the concentration and harmful location of adult entertainment establishments; (2) to prevent health risks caused by illicit and unlawful sexual relations in such public establishments; (3) to protect children and the family environment from the deleterious and harmful effects of exposure to certain sexually explicit matter; and (4) to obtain the

identity of persons licensed and to be licensed for renting certain sexually explicit material in order to identify the persons responsible for operating such business and assist in enforcing this ordinance.

It is not the purpose of this Ordinance to establish community standards on obscenity nor to permit persons to engage in any activity which is in violation of law, including but not limited to state laws pertaining to the advertising, promotion, distribution or sale of obscene matter portraying a sexual performance by a minor, or the use of a minor to distribute material portraying sexual performance by a minor.

NOW THEREFORE BE IT ORDAINED BY THE FISCAL COURT OF NELSON COUNTY:

SECTION 1. Definitions.

(A) Adult Entertainment Provider. A commercial establishment, such as a hotel or motel, which in addition to providing as the major part of its business, services unrelated to depictions of sexual activities as herein defined, makes entertainment (either live or on film or video tape) available to its customers, which entertainment has as a dominant theme or is characterized or distinguished by an emphasis on matter depicting, describing or relating to sexual activities, if such establishment advertises the availability of such adult entertainment at its establishment. This definition shall not include Video Rental Stores that derive less than TWENTY-FIVE (25%) percent of their Gross Revenue from the rental or sale of sexually explicit films and show no sexually explicit films on the premises. The advertisement of such materials shall not include the posting of a card or handbill on or near a television set in a hotel or motel room advertising room guests that such adult movies are available upon request of guest, or advertising informing the public of the availability of commercial cable channels.

(B) Commercial Sexual Entertainment Center. Any commercial establishment not otherwise described herein which makes available material, services or entertainment appealing to adult sexual interests if the establishment or its entertainment, services or goods are advertised by or on behalf of the establishment in a manner patently designed to appeal to such adult sexual interest.

(C) Self-Designated Adult Entertainment Center. Any establishment which (i) designates all or a portion of its premises as for adults only and (ii) has a policy of excluding minors from its premises or from a portion of its premises or which advertises so as to convey the impression that the services, entertainment or goods available at the premises or at the portion of the premises designated for adults only are characterized or distinguished by depictions of sexual activities, as herein defined. This definition shall not include Video Rental Stores that derive less than TWENTY-FIVE (25%) percent of their Gross Revenue from the rental or sale of sexually explicit films and show no sexually explicit films on the premises.

(D) "Judge/Executive" shall mean the Nelson County Judge/Executive or his designee.

(E) "Employee" shall mean any person hired by or suffered or permitted to work in an establishment engaging in adult entertainment activities whether that person received remuneration or compensation directly from the operator or owner of the establishment, from patrons of the establishment or from any other source whether by contract of employment or otherwise.

(F) "Establishment" shall mean a business entity or endeavor, fixed, mobile or traveling, including its owners, operators, directors, shareholders, partners, employees and possessions.

(G) "Licensee" shall mean a person who is the holder of a

valid license under this Ordinance and shall also include an agent, servant, or employee of, or other person acting on behalf of a licensee whenever a licensee is prohibited from doing a certain act under this Ordinance.

(H) "Person" shall mean any individual, partnership, corporation or business entity.

(I) "Operator" shall mean any individual, partnership, corporation or business entity who establishes and/or maintains a business as its owner or manager and may also mean a "licensee" as defined hereunder.

(J) "Owner" shall mean any individual, partnership, corporation or business entity who has legal title to real estate, with or without accompanying actual possession thereof, and has all or part of the beneficial ownership of any real estate and a right to present use of enjoyment thereof, including a mortgage in possession.

(K) "Principal Use" shall mean a substantial or significant use, but not necessarily a majority of the business activity or stock in trade. The fact that a business may have one or more other principal uses unrelated to adult entertainment shall not relieve the business from the provisions of this ordinance applicable to adult entertainment establishments. The fact that an establishment dedicates a section or area of the business premises for a business purpose or activity which would otherwise require licensing under this Ordinance if such purpose of activity were the sole business or activity of the establishment may be considered evidence of a "principal use."

(L) "Sexual Activities" shall mean partial or complete male and/or female nudity in conjunction with:

(1) Depiction of human genitals in a state of sexual stimulation, or;

(2) Acts of human masturbation, sexual intercourse or sodomy, or;

(3) Holding or other erotic touching of human genitals, pubic region, buttocks or breasts.

SECTION 2. Restrictions, Requirements and Conditions

(A) An establishment engaging in an adult entertainment activity, except as otherwise provided by laws which may be more restrictive, may not have more than one outside flush to the wall, facial style sign, not to exceed in size ten feet in length (horizontal to the ground) and three feet in width (vertical to the ground) with no flashing lights and with no lettering, wording or pictorial or representational matter which is distinguished or characterized by an emphasis on or depictions of sexual activities as herein defined.

(B) An establishment engaging in an adult entertainment may not display its matter depicting, describing, or relating to sexual activities in such manner as to be subject to public view from outside the establishment, including but not limited to view from public sidewalks, streets, arcades, hallways or passageways.

(C) An operator or his employee engaging in an adult entertainment activity shall not permit a person under 18 years of age to be employed by or to enter his establishment. This section shall not be construed to be an exemption from or in conflict with any requirement found in any statute, ordinance, regulation or other provision of law applicable to a licensee or potential licensee hereunder which is more stringent in terms of an age requirement for employees.

(D) An operator engaging in an adult entertainment activity shall, at all times, cause the entrance of his establishment to be so attended as to insure compliance with the requirements contained in Subsection C.

(E) An establishment licensed to engage in adult entertainment shall not permit any person to conduct, show, state or perform any entertainment, whether live or on film or video tape between the hours of 12:00 a.m. and 8:00 a.m.

(F) The public entrance to an establishment engaging in adult entertainment activities shall not be located within one thousand (1000) feet (i) of any building containing a public or private elementary, middle or secondary school, institution of higher education or business college, or church (ii) or any park, shopping center or park-line area of open space under the control of a governmental agency. Such distance shall be measured along a straight line from the nearest property line of the real estate on which said building or public park-line area is located to the entrance to such establishment engaging in an adult entertainment activity.

(G) The public entrance to an establishment engaging in adult entertainment activities may not be located within one thousand (1000) feet of an area zone R-1, R-2, R-3, R-4, or from an area used for residential purposes. Such distance shall be measured along a straight line from the boundary line of the newest area zoned or used for residential purposes to the entrance to such establishment engaging in an adult entertainment activity.

(H) The public entrance to an establishment engaging in adult entertainment activities shall not be located within one (1000) feet of the public entrance of another adult entertainment activity establishment.

(I) The public entrance to an establishment engaging in adult entertainment shall not be located within five hundred (500) feet of the public entrance of an establishment licensed to serve alcoholic beverages.

SECTION 3. Licensing.

(A) The owner or operator of an establishment intending to engage or engaging in an adult entertainment activity shall make application for a license with the Judge/Executive or his designee in accordance with this Section. Such application shall be in writing, under oath, and shall be in the form prescribed by

the Judge/Executive or his designee and shall contain the following information together with such further information as the Judge/Executive or his designee may require:

(1) The name and location of the establishment and the name and business of the applicant.

(2) The name, address, date of birth, social security number and photograph of a natural person to be determined as follows:

(a) If the licensee is one or more natural persons, then all such natural persons shall comply, or any one natural person may comply for the licensee upon certification that he owns greater share of the licensee that any other person.

(b) If the licensee is a partnership then the natural person designated as the managing general partner in the partnership agreement (a copy of which is to be attached to the license application) shall comply.

(c) If the licensee is a corporation, the natural person, if any, who owns a greater number of shares than any other person shall comply, but if the person owning the greatest number of shares is not a natural person, then the natural person or persons who by virtue of his/their interests or holdings in one or more partnerships or other corporations that own shares in the licensee own a greater portion of the shares in the licensee than any other individual natural person shall comply.

(3) The name and address of all directors and officers of any licensee or applicant which is a corporation, and the name and address of the licensee's designated agent for service of process.

(4) In the event the applicant or licensee is not the owner of record of the real property on which the licensed establishment is located or to be located, the application shall include a notarized statement from the owner of record of the real property acknowledging that an adult entertainment

establishment is to be located on the real property upon the issuance of the license. The applicant also shall furnish the name and address of the owner of record of the real property and a copy of the lease or rental agreement or memorandum thereof.

(5) The name, address, date of birth, social security number and photograph of all persons engaged in the day to day management of the licensed premises. All persons who at any time shall be responsible for attending the entrance of the establishment for the purpose of insuring compliance with the provisions of Subsection C of Section 3 of this ordinance shall be included in the provisions of the paragraph.

(6) The name, address, date of birth, social security number and photograph of the individual designated by the applicant to undertake to keep the applicant, if licensed, at all times in compliance with the restrictions, requirements and conditions hereof and with the rules and regulations promulgated by the Judge/Executive or his designee pursuant to Section 5 hereof together with the sworn affidavit of said individual stating that he has received a copy of this Ordinance, that he understands the restrictions, requirements and conditions hereof, and that he willfully undertakes on behalf of the applicant to comply therewith.

(7) The name, address, date of birth, social security number and photograph of the individual designated by the applicant or licensee to be responsible for keeping the information required hereunder current at all times together with a sworn affidavit of said individual stating that he has received a copy of this Ordinance, that he understands the requirements hereof pertaining to disclosure of information and that he willfully undertakes on behalf of the applicant to comply therewith.

(8) The name and addresses of any rental agent of the property on which the establishment is located.

(9) The nature of the activity or activities to be engaged in at such location.

(10) All criminal convictions other than traffic violations of the applicants, owners, directors, partners, or employees whose names are required pursuant to Section 3(a) above. Any such person who is on parole shall submit to the Judge/Executive or his designee the terms of such parole.

(11) The names and address of any person to whom the applicant wants mail notice to be given in case of violation or other matters affecting the license hereunder.

(12) A photograph or drawing of any signs displayed or proposed to be displayed on the exterior of the establishment and a statement of the dimensions of such signs.

(13) A Certificate of Occupancy where required and in all other cases a Letter of Compliance issued by the Zoning Administrator of Nelson County or his designee certifying that the business is in compliance with applicable zoning laws or has non-conforming use rights and that the proposed use will not constitute an enlargement or expansion of the scope of such non-conforming rights.

(14) A certificate from the State Fire Marshall, or other fire marshall having authority to enforce fire code within that fire district, that all applicable fire regulations have been met.

(B) The information required by Section 3(A) shall be at all times current even after the granting of a license by the Judge/Executive or his designee. It shall be the responsibility of the operator or other person designated in the license application to notify the Judge/Executive or his designee after the effective date of any changes, alterations or modifications in any information contained in the application including, but not limited to: name of the establishment; any change of address of the owner or operator of the establishment; any change in the

corporate information required for the application; names and addresses of employees; names and addresses of the owners of the property on which the establishment is located; names and addresses of any rental agents of the property on which the establishment is located; name and address of designated agent for service of process; nature of the activity or activities to be engaged in at the establishment; and the name and address of any person the applicant wants mail notice to be given in case of violation or other matters affecting the license.

(C) The Judge/Executive or his designee will cause the premises to be inspected after such application has been received and all application requirements of Section 3 (A) have been complied with. The Judge/Executive or his designee shall then issue a license forthwith if all restrictions, requirements, conditions and all applicable requirements of this Ordinance and other applicable law have been met; except, that no license will be issued if the applicant or any owner, operator, director, partner, shareholder, or employee has been convicted or any offense set forth in KRS 528.010 (Gambling), KRS 529.010 to 529.080 (Prostitution), KRS 506.030 if such solicitation pertains to a prostitution offense under KRS 529, KRS 510.150 (Sexual offense), KRS 531.010 to 531.040 Distribution of obscene material, within the last five (5) years. Provided, however, the granting of a license does not certify compliance with all applicable laws nor does it stop the county from enforcement of all applicable laws or ordinances. If inspection reveals failure to comply with any restrictions, requirements, or conditions herein, the Judge/Executive or his designee shall notify the applicant in writing of that fact, stating what failures have been discovered, allowing a reasonable time to correct such defects and informing the applicant of the appeal procedure if the applicant does not agree with the Judge/Executive or his designee's decision. The Judge/Executive or his designee shall

certify annually to the Fiscal Court that the inspections required by this section have been completed.

(D) Any license granted hereunder shall at all times be conspicuously posted and displayed in a public area so as to be open to view of the patrons and proper public authorities.

(E) Application for or granting of a license hereunder is deemed to permit periodic inspections of the public areas of any establishment requiring a license under this Ordinance for the purpose of verifying compliance with the terms and conditions of this Ordinance.

(F) Thirty (30) days after the effective date of this Ordinance, no operator shall maintain, operate or conduct an establishment engaging in adult entertainment activities, defined under Section 1, Subsections (A), (B), (C), (D), unless such person has made an application for a license, and thereafter no operator shall own, operate or be employed at an establishment engaging in adult entertainment activities which has sought and been denied a license hereunder, and unless all dancers, performers, and entertainers appearing at the establishment have obtained the license required by Subsection 3(K).

(G) Immediately upon the effective date of this Ordinance no person shall operate, own or be employee at an unlicensed adult entertainment activity defined under Section 1, Subsections (A), (B), (C), (D).

(H) No real estate owner shall permit adult entertainment activities to operate on his property without such adult entertainment activities being properly licensed except as permitted under Section 3(K).

(I) No person shall permit himself to be an operator or an employee at an adult entertainment activity which has not been validly licensed hereunder, except as permitted under Section 3(K).

(J) All licenses shall be for the fiscal year, July 1, to

June 30, or the remaining portion of such fiscal year. The annual license fee shall be one thousand dollars ($1,000.00). All license fees shall be remitted to the Treasurer of Nelson County. Annual fees may be prorated at the rate of one hundred dollars ($100.00) per month for the remaining full months of the current fiscal year, but not to exceed one thousand dollars ($1,000.00). Application for renewal of a license shall be made on or before March 15 of each year and accompanied by the annual fee of one thousand dollars ($1,000.00). Such application shall also contain any changes in the information required by Section 4(A) above which have occurred since the previous application.

(K) Any person intending to be an employee at an adult entertainment establishment shall make application for a license with the Judge/Executive or his designee in accordance with this Section. Such application shall be in writing, under oath, and shall be in the form prescribed by the Judge/Executive or his designee and shall include: (i) the legal name of the applicant, (ii) any and all names used by the applicant in the course of performance of his/her duties as a dancer, performer or entertainer, (iii) the applicant's residence address, (iv) the applicant's date of birth, (v) the applicant's social security number, (vi) a recent photograph of the applicant; and (vii) the licensee's fingerprints. The applicant shall submit with his/her application an annual license fee of Twenty-five dollars ($25.00). The Judge/Executive or his designee shall grant the applicant the license promptly after receiving a report from the Nelson County Sheriff that the applicant has not been convicted in the past five (5) years of an offense set forth in KRS 529.010 to KRS 529.080 (prostitution) or KRS 510.010 to 510.150 (sexual offenses). The license so granted shall expire on June 30th of each year and shall be reissued by the Judge/Executive of his designee upon application therefore by the employee unless the Judge/Executive or his designee is informed that the applicant

has been convicted in the past five (5) years of any of the above set forth offenses. Within thirty (30) days after the effective date of the Ordinance, no person shall be an employee at an adult entertainment establishment without having obtained the license required by this Section 4(K).

SECTION 4. Suspension, Revocation or Refusal to Renew a License: Administration: Severability.

(A) The Judge/Executive or his designee may refuse to renew any establishment license or may suspend any such license granted under this ordinance if the Judge/Executive or his designee finds on the basis of substantial evidence presented at the hearing that a license, applicant, owner or operator:

(1) Has failed to comply with the restrictions, requirements and conditions herein or with such regulations as may be enacted by the Judge/Executive or his designee pursuant to Section 5 of this Ordinance; or

(2) Has knowingly provided false information to gain or to maintain a license, or has willfully failed to keep the information required under Section 2 hereof current; or

(3) Has engaged in conduct which has resulted in the licensed premises being used for or the site of illegal activities, whether under this Ordinance, state or federal law by the licensee or its agents, employees or patrons.

(B) At any hearing under Subsection A of this Section 4 the Judge/Executive or his designee shall consider all relevant evidence pertaining to the substantive changes requiring the hearing including any evidence mitigating the charges.

(C) When the Judge/Executive or his designee determines to hold a hearing pursuant to this Section 4 he shall serve written notice of the hearing and of the specific matter or charges to be determined. Said notice shall be served upon the licensee or applicant at the address listed for the licensee or applicant in the application at least twenty (20) days in advance of said

hearing. Service of notice shall be deemed complete upon certified mailing, return receipt requested, or personal delivery. At the hearing the Judge/Executive or his designee shall afford the licensee or applicant an opportunity to be represented by an attorney, to present evidence, to cross-examine adverse witnesses and otherwise to rebut the evidence presented against the licensee. Within twenty (20) days after the hearing the Judge/Executive or his designee shall publish his findings and shall determine the sanction, if any, to be imposed on the licensee or upon the owner of the licensed premises, which may include suspension of a licensee's license for a period not to exceed five (5) years. If the licensee's license is suspended all persons listed on the application, whether as a partner, director, officer, owner, part owner or operator, managing partner may also be suspended from participating in adult entertainment activities for a period not to exceed five (5) years if the Judge/Executive or his designee finds that such persons knew or reasonable should have known of the violation for which the license is suspended and failed to take steps promptly to cure the violation.

(F) The findings and rulings of any hearing before the Judge/Executive or his designee shall be a final determination of the issues raised and may be appealed to a Court of competent jurisdiction, but shall be enforced during the pendency of any such appeal unless otherwise ordered by the Court.

SECTION 5. Administration of Ordinance

The Judge/Executive or his designee is empowered to enact from time to time whatever rules and regulations are deemed necessary for the orderly and complete administration of this Ordinance at such times, in the discretion of the Judge/Executive or his designee, as the need arises for such rules and regulations. All regulations shall be submitted to the fiscal court and shall become effective within thirty (30) days of

submission unless disapproved by the fiscal court prior to that date. All licensees and persons with license applications pending shall be mailed copies of all such regulations and they shall be published one time in the newspaper as soon as practical after they become effective.

SECTION 6. Severability.

If any provision of this Ordinance or the application thereof is held invalid, such invalidity shall not affect other provisions or applications of the Ordinance which can be given effect without the invalid provisions or application, and to this end, the provisions of this Ordinance are declared to be severable.

SECTION 7. Penalties.

Any person who violates any provision of this Ordinance or who knowingly provides false information in an attempt to gain or maintain a License, shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than two hundred fifty dollars ($250.00) nor more than five hundred dollars ($500.00) or imprisonment not to exceed one (1) year, or both, fine and imprisonment, for each offense. Any person cited hereunder for a failure to meet a requirement hereof may be cited again for said failure one or more days after a prior citation and in such case each citation shall constitute a separate offense.

This Ordinance shall take effect upon its passage and approval.

Given first reading at a duly authorized and constituted meeting of the Nelson Fiscal Court on the 2nd day of February, 1993, and given second reading and adopted at a duly authorized and constituted meeting of the

Nelson Fiscal Court this 16th day of February, 1993.

Votes for 6 ; Votes against _____; abstentions _____.

Approved this 16th day of February 1993.

MIKE ABELL
NELSON COUNTY JUDGE-EXECUTIVE

Attest:

CLERK, NELSON FISCAL COURT

APPROVED AS TO FORM AND LEGALITY:

CHALLEN P. MCCOY
NELSON COUNTY ATTORNEY

CPM/rb