

**TOWN OF HICKORY CREEK, TEXAS
ORDINANCE NO. 2021-11-891**

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF HICKORY CREEK, TEXAS AMENDING THE CODE OF ORDINANCES CHAPTER 4 BUSINESS REGULATIONS ARTICLE 4.02 SEXUALLY ORIENTED BUSINESSES; PROVIDING FOR INCORPORATION OF PREMISES; PROVIDING FOR FINDINGS; PROVIDING FOR AMENDMENTS TO THE CODE OF ORDINANCES; PROVIDING A CUMULATIVE REPEALER CLAUSE; PROVIDING FOR SEVERABILITY; PROVIDING FOR SAVINGS; PROVIDING FOR ENGROSSMENT AND ENROLLMENT; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town of Hickory Creek, Texas, is a Type A General Law Municipality located in Denton County, Texas, created in accordance with provisions of the Texas Local Government Code and operating pursuant to the enabling legislation of the State of Texas; and

WHEREAS, the Town of Hickory Creek, Texas is a general law municipality empowered under the Texas Local Government Code, Section 51.012, to adopt an ordinance necessary for the government, interest, welfare, or good order of the Town; and

WHEREAS, the Town Council does hereby find and determine that the amendment of the Town's sexually oriented business restrictions is in the best interest of the Town and is necessary for the government, interest, welfare, and good order of the Town as well as the public health, safety, morals and general welfare of the Town; and

WHEREAS, this ordinance is promulgated pursuant to and in conformity with Chapter 215 of the Local Government Code and Chapter 243 of the Local Government Code, as amended.; and

WHEREAS, it is the purpose of the Town Council to exercise its police power, as established under Chapter 215 of the Local Government Code, to establish reasonable and uniform regulations of Sexually Oriented Businesses to promote and protect the health, safety, and general welfare of the citizens of Hickory Creek, and to prohibit business activities that merely serve as a front for criminal activities, including but not limited to, prostitution, human trafficking, and the promotion of prostitution; and

WHEREAS, the provisions of this ordinance have neither the intent nor the effect of imposing limits or restrictions on the content of any communicative material, including sexually oriented material; and

WHEREAS, the provisions of this ordinance have neither the intent nor the effect of imposing limits or restrictions on an adult's access to sexually oriented material protected by the First Amendment; and

WHEREAS, this ordinance does not legalize anything prohibited under the Texas Penal Code and any other law(s) or regulation(s).

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF HICKORY CREEK, TEXAS:

SECTION 1
INCORPORATION CLAUSE

That all of the above premises are true and correct and are hereby incorporated in the body of this Ordinance as if fully set forth herein.

SECTION 2
FINDINGS

After due deliberations the Town Council has concluded that the amendments contained herein are in the best interest of the Town of Hickory Creek, Texas, and of the public health, safety and welfare.

SECTION 3
AMENDMENTS

3.01 That the Code of Ordinances of the Town of Hickory Creek, Texas, Chapter 4: Business Regulations, Article 4.02 Sexually Oriented Businesses, Section 4.02.011 Location Generally is hereby amended to read as follows:

“(a) A person commits an offense if he operates or causes to be operated a sexually oriented business within 1,500 feet of:

- (1) A church or place of religious worship;
- (2) A public or private elementary or secondary school;
- (3) A child care facility;
- (4) A boundary of a residential district as defined in this article;
- (5) A public park;
- (6) The property line of a lot devoted to a residential use as defined in this article.

(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 1,500 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 (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.

(e) Any sexually oriented business lawfully operating that is in violation of subsections (a), (b), and (c) of this section shall be deemed a nonconforming use. Such use will be permitted to continue for a period of not to exceed one year, unless sooner terminated for any such 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 nonconforming use. If two or more sexually oriented businesses are within 1,500 feet of one another and otherwise 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 business(es) is nonconforming.

(f) 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 or place of religious worship, public or private elementary or secondary school, public park, residential district, or residential lot within 1,500 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.

(g) All locational requirements of this section must be approved by the chief of police within 30 days from the time the application is filed.”

3.02 All other articles, chapters, sections, subsections, paragraphs, sentences, phrases and words, are not amended but are hereby ratified and affirmed.

SECTION 4 **CUMULATIVE REPEALER CLAUSE**

This Ordinance shall be cumulative of all other Ordinances and shall not repeal any of the provisions of such Ordinances except for those instances where there are direct conflicts with the provisions of this Ordinance. Ordinances, or parts thereof, in force at the time this Ordinance shall take effect and that are inconsistent with this Ordinance are hereby repealed to the extent that they are inconsistent with this Ordinance. Provided however, that any complaint, action, claim or lawsuit which has been initiated or has arisen under or pursuant to such other Ordinances on the date of adoption of this Ordinance shall continue to be governed by the provisions of such Ordinance and for that purpose the Ordinance shall remain in full force and effect.

SECTION 5 **SEVERABILITY CLAUSE**

If any section, article, paragraph, sentence, clause, phrase or work in this Ordinance, or application thereof to any person or circumstance, is held invalid or unconstitutional by a Court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of the Ordinance, and the Town Council hereby declares it would have passed such remaining portions of the Ordinance despite such invalidity, which remaining portions shall remain in full force and effect.

SECTION 6 **SAVINGS CLAUSE**

All rights and remedies of the Town of Hickory Creek, Texas, are expressly saved as to any and all violations of the provisions of any other Ordinances of the Town concerning the subject matter of this Ordinance which have accrued at the time of the effective date of this Ordinance; and, as to such accrued violations and all pending litigation, both civil and criminal, whether pending in court or not, under such Ordinances same shall not be affected by this Ordinance but may be prosecuted until final disposition by the courts.

SECTION 7 **ENGROSSMENT AND ENROLLMENT CLAUSE**

The Town Secretary of the Town of Hickory Creek is hereby directed to engross and enroll this Ordinance by copying the exact Caption and Effective Date in the minutes of the Town Council and by filing this Ordinance in the ordinance records of the Town.

SECTION 8
EFFECTIVE DATE CLAUSE

That this Ordinance and the rules, regulations, provisions, requirements, orders and matters established and adopted hereby shall take effect and be in full force and effect from the date of passage.

IT IS SO ORDAINED.

PASSED AND APPROVED by the Town Council of the Town of Hickory Creek, Texas, this the 15th day of November, 2021.

Lynn C. Clark, Mayor
Town of Hickory Creek, Texas

ATTEST:

Kristi Rogers, Town Secretary
Town of Hickory Creek, Texas

APPROVED AS TO FORM:

Dorwin L. Sargent, III, Town Attorney
Town of Hickory Creek, Texas