

ORDINANCE NO. 98 -2

AN ORDINANCE RELATING TO ADULT ENTERTAINMENT ENTERPRISES ALSO KNOWN AS SEXUALLY ORIENTED BUSINESSES; PROVIDING FOR LOCATIONS OF SUCH BUSINESSES; PROVIDING FOR ZONES WHERE BUSINESSES MAY BE LOCATED AND REQUIRING PRMIT; PRESCRIBING MEASUREMENT REQUIREMENTS; REQUIREMENT FOR SITE PLAN OF SUCH BUSINESSES; PROVIDING FOR EXEMPTIONS; PROVIDING FOR ADULT VIEWING BOOTH DESIGNS; CONTAINING DEFINITIONS. REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HERewith, CONTAINING A SAVINGS CLAUSE. PROVIDING A PENALTY CLAUSE AND DECLARING AN EMERGENCY.

WHEREAS, the Planning and Zoning Commission held meetings on October 28, 1997 and on November 25, 1997, a copy of the minutes are attached and marked Exhibit "A" recommending an Ordinance be adopted by the City Council regulating operation and location of sexually oriented businesses; and

WHEREAS, after careful consideration by the City Council it has been determined that it is in the best interest of the City of Commerce that an Adult Entertainment Ordinance be adopted.

BE IT ORDAINED BY THE CITY OF COMMERCE THAT AN ADULT ENTERTAINMENT ORDINANCE BE ADOPTED AND INDEXED IN THE CODE OF ORDINANCES OF THE CITY OF COMMERCE, TEXS, AND BE STYLED CHAPTER 15, ADULT ENTERTAINMENT ENTERPRISES, ARTICLE 1, SEXUALLY ORIENTED BUSINESSES.

SECTION 15-1. PURPOSE AND AUTHORITY.

This article is intended to regulate location and certain design requirements of sexually oriented businesses, also described as "Adult Entertainment Enterprises" by the authority in Local Government Code Chapters 54, 211, and 243.

SECTION 15-2

ADULT ENTERTAINMENT ENTERPRISE LOCATION.

15-2.1 Distance Requirements. A person commits an offense if he operates or causes to be operated within one thousand (1,000) feet of a church, a public or private elementary or secondary school, a university, a residential dwelling unit in which one or more persons maintain a residence, a public park, or another business of a type hereinafter enumerated.

15-2.2 Zone. Adult Entertainment Enterprises are required to have a specific use permit and be located in the HC zoning districts of the City.

15-2.3 Measurement Requirements. Measurements to determine distance requirements set forth in 15-2.1 shall be a straight line in all directions from the structure housing the adult entertainment enterprise to the nearest property line on any residentially zoned district, or any lot used for church, school, park, or hospital purposes, and any structure housing an adult entertainment enterprise. The measurements for a structure shall be taken from the furthest point that a structure extends in any direction, including overhanging roofs and all other projections or portions of said structure.

If the adult entertainment enterprise is located in conjunction with other buildings in a manner where the adult entertainment enterprise is clearly separated from other portions of the structure, (for example, an adult bookstore in a shopping center), the adult entertainment enterprise structure's measurements shall be taken from the boundaries of the space in which the adult entertainment enterprise is housed or confined (not the entire shopping center, motel, or structure).

If the adult entertainment enterprise is located in conjunction with other buildings in a manner where said adult entertainment enterprise is situated above the ground level of a multi-story structure and is clearly separate from other activities within the structure, (for example, an adult bookstore on an upper level of an office tower or hotel), the adult entertainment enterprise measurements shall be taken from the nearest entry to that portion of the structure housing the adult entertainment enterprise, thence to the nearest point of egress (elevator or stairs), thence to the nearest ground floor exit, thence in a straight line to the nearest point on any lot in a residential district or any lot or tract used for church, school or hospital purposes, and any structure housing an adult entertainment enterprise.

If two or more adult entertainment enterprises are within one thousand (1,000) feet of one another and otherwise in a permissible location, the adult entertainment enterprise which was first established and continually operating at a particular location is the conforming use and the later-established business is nonconforming.

15-2.4 Site Plan. Each applicant for an adult entertainment enterprise must submit a site plan setting out the dimension and locations for such adult entertainment enterprise. The applicant shall sign a certified and notarized statement attached to the site plan that the proposed adult entertainment enterprise complies with the requirements set forth herein above. It shall be the duty of the applicant to prepare the site plan and to assure compliance with the distance requirements.

SECTION 15-3. EXEMPTION FROM LOCATION REQUIREMENTS.

- (A) In the event an owner of an adult entertainment enterprise wishes to claim an exemption from the ordinance, the owner shall make application to the Planning & Zoning Commission for a location exemption from the requirements of section 15-2.1 and/or 15-2.2, and the applicant shall provide supporting explanation and documentation for the exemption.

After considering the application, the Planning & Zoning Commission shall make a recommendation to the City Council to grant or deny the exemption.

The City Council may, in its discretion, grant an exemption from the location restrictions if it makes the following findings:

- (1) That the location of the adult entertainment enterprise will not have a detrimental effect on nearby properties or be contrary to the public safety or welfare;
 - (2) That the granting of the exemption will not violate the spirit and intent of this ordinance;
 - (3) That the location of the adult entertainment enterprise will not diminish the property values or quality of life in the adjacent areas or encourage the development of urban blight;
 - (4) That the location of the adult entertainment enterprise will not be inconsistent with any program of neighborhood conservation nor will it interfere with any efforts of urban renewal or restoration; and,
 - (5) That all other applicable provisions of this ordinance will be observed.
- (B) The City Council shall grant the exemption by a majority vote of the entire Council. Failure to reach a majority vote shall result in denial of the exemption. Disputes of fact shall be decided on the basis of a preponderance of the evidence. The decision of the City Council is final.
- (C) If the City Council grants an exemption, the exemption is valid for one year from the date of the City Council's action. Upon the expiration of an exemption, an adult entertainment enterprise will be in violation of the location restrictions of section 15-2.1 and/or 15-2.2 and the nonconforming use shall be illegal and shall terminate, unless the applicant applies for and receives another exemption. Such application shall be made with the City Secretary at least ninety (90) days prior to the expiration of the exemption.

- (D) The grant of an exemption does not exempt the application from any other provision of this ordinance other than the location restriction of section 15-2.1 and 15-2.2.

SECTION 15-4. ADULT VIEWING BOOTH DESIGN.

15-4.1 Adult viewing booths and arcades as defined by this article shall be constructed according to this section. The interior of an adult arcade and/or viewing booth shall be configured in such a manner that there is an unobstructed view of every interior area of the adult arcade and/or viewing booth to which any patron is permitted access for any purpose. This unobstructed view shall be from the manager's station, then at any of the manager's stations there shall be at least one unobstructed view to any interior area of the viewing booth or arcade. The view required in this section must be in direct line of sight from the manager's station.

15-4.2 It shall be the duty of the owner and operator of such arcade or viewing booth, and it shall also be the duty of any agents and employees present in an arcade or viewing booth to insure that the view area specified in this subsection above remains unobstructed by any merchandise, display racks, or other materials at all times any patron is present in the adult arcade.

15-4.3 Lighting.

- (A) Each adult arcade and viewing booth shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access so that any patron may be observed from the manager's station.
- (B) It shall be the duty of the owners and operators, and it shall also be the duty of any agents and employees present in an adult arcade and viewing booth, to ensure that the illumination described above is maintained at all times that any patron is present in the adult arcade and viewing booths.

SECTION 15-5. DEFINITIONS.

15-5.1 Adult Entertainment Enterprise.

Any business activity whether in public, semi-public or private premises, which offers the opportunity to describe, feel, handle, touch, paint, be in the presence of, or be entertained by the completely unclothed body or the unclothed specified anatomical area(s) of the body of another person, or to observe, view, or photograph any such activity. Except as specifically provided otherwise herein, nothing in this chapter is intended to regulate:

- a. Any business operated by or employing counselors, psychologist, physical therapists, athletic trainers, licensed masseuse, cosmetologists, or barbers, licensed by the State of Texas, performing functions authorized under the license held.

- b. Any business operated by or employing physicians, acupuncturists, osteopaths, chiropractors, or nurses, licensed by the State of Texas, engaged in practicing the healing arts.
- c. Any retail establishment whose major business is the offering of wearing apparel for sale to customer.
- d. Any school, class or business which offers as part of a regular class painting, sketching, or photographing of a person(s), whether nude or semi-nude, and such classes are offered for the purpose of artistic study of the human form.
- e. Any business which offers as a service tattooing or body piercing.

Adult Entertainment Enterprises furthermore include, but are not limited to, the following:

Adult Bookstore/Video Store

An establishment or commercial enterprise having 10% or more of its stock in trade; videos, tapes, cassettes, photographs, books, magazines or other periodicals which are distinguished by a predominant emphasis on matter(s) depicting, describing, or relating to "specific sexual activities" or "specified anatomical areas" as defined below.

Movie Arcade

Any business where in operated a film or videotape viewing device as described below.

1. Adult Viewing Booths/Arcades

An establishment or commercial enterprise which has within its structure any electrical or mechanical device, which projects or displays any film, videotape or reproduction into a viewing area obscured by a curtain, door, or wall, other enclosure which is designed for occupancy by no more than five persons, and is regularly or routinely used for presenting material distinguished or characterized by a predominant emphasis on matter depicting, describing, or relating to "specified sexual activities" or "specified anatomical areas" for observation by five (5) or fewer persons.

2. Adult Motion Picture Theater

An establishment or commercial enterprise which has an enclosed building with a capacity of more than five (5) persons and is regularly and routinely used for presenting material distinguished or characterized by a predominant emphasis on matter depicting, describing or relating to "specified sexual activities: or "specified anatomical areas" for observation by patrons.

Adult Cabaret.

An establishment whose portion of business is the offering to customers of live entertainment which is intended to provide sexual stimulation or sexual gratification to such customers, including but not limited to dancing, posing, modeling, acting, and which is distinguished by or characterized by a predominant emphasis on matter depicting, describing, or relating to "specified sexual activities" or "specified anatomical areas".

Adult Encounter Parlor.

An establishment whose business consists of premises where customers either congregate, associate, or consort with employees who engage in "specified sexual activities" with or in the presence of such customers, or who display "specified anatomical areas" in the presence of such customers, with the intent of providing sexual stimulation or sexual gratification to such customers.

Adult Lounge.

An "adult cabaret" as defined above which is permitted or licensed pursuant to the Alcoholic Beverage Code where alcoholic beverages may be served or sold.

Adult Drive-In Theater.

A drive-in theater used for presenting motion picture films, videocassettes, cable television, or any other such visual media, distinguished or characterized by a predominant emphasis on matter depicting, describing or relating to "specified sexual activities" or "specified anatomical areas".

Adult Retail Store.

This a retail establishment in which:

1. The stock in trade consists of items, products or equipment distinguished or characterized by a predominant emphasis on "specified sexual activities" or "specified anatomical areas"; or,
2. Any person is excluded by virtue of age from all or part of the premises generally held open to the public where products or equipment distinguished or characterized by a predominant emphasis on "specified sexual activities" or "specified anatomical areas".

Adult Motel.

A hotel, motel, or similar commercial establishment which:

1. Offers accommodations to the public for any form of consideration and provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides, or other photographic reproductions which are distinguished or characterized by an emphasis on matter depicting, describing or relating to "specified sexual activities" or "specified anatomical areas"; and has a sign visible from the public right-of-way which advertises the availability of this adult type of photographic reproductions; or
2. Offers a sleeping room for rent for a period of time that is less than ten (10) hours; or
3. Allows a tenant or occupant of a sleeping room to sub-rent the room for a period of time that is less than ten (10) hours.

15-5.2 Specified Sexual Activities.

- a. Human genitals in a state of sexual stimulation or arousal; or
- b. Acts of human masturbation, sexual intercourse, sodomy, acts of bestiality; or
- c. Fondling or other erotic touching of human genitals, pubic region, buttock or female breast.

15-5.3 Specified Anatomical Areas.

- a. Less than completely and opaquely covered:
 - 1. Human genitals, pubic region
 - 2. Buttock
 - 3. Female breast below a point which is immediately above the top of the areola.
- b. Human genitals in a discernible erect state, even if completely and opaquely covered.

15-5.4 Stock in Trade.

The total volume or number of items, products or equipment available for purchase, rental, viewing or use by patrons of the establishment, excluding material located in any storeroom or other portion of the premises not regularly open to patrons.

WHEREAS, all Ordinances or parts of Ordinances in conflict herewith are hereby expressly repealed.

WHEREAS, if any section, sub-section, word, sentence, or phrase of this Ordinance is declared to be invalid, it shall not effect the validity of this Ordinance.

WHEREAS, this Ordinance is declared to be an emergency measure, necessary for the preservation of the health, safety, and welfare of the City of Commerce, Texas, and the inhabitants thereof; therefore, all rules and regulations providing for the reading of Ordinance more than one time or on more than one occasion be and the same are hereby suspended, and this Ordinance is passed and shall take effect as an emergency measure, and shall be and remain in full force and effect as herein provided from and after its passage and approval.

NOW, THEREFORE, this Ordinance shall take effect immediately after its passage and approval.

PASSED AND APPROVED at a regular meeting of the City Council of the City of Commerce, Texas, on this the 3rd day of February, 1998.

ATTEST

CITY OF COMMERCE

Marty Morrison
Marty Morrison
City Secretary

John R. Sands
John R. Sands
Mayor

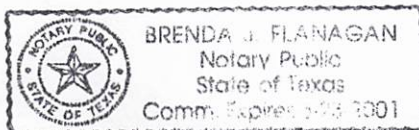
(seal)

I, Marty Morrison, City Secretary of the City of Commerce, Texas, do hereby certify that the above is a true and correct copy of an Ordinance, and that the same has not been repealed and is in full force and effect.

(seal)

Marty Morrison
Marty Morrison, City Secretary
City of Commerce

Sworn to and subscribed before me, on this the 3rd day of February, 1998, to certify which witness my hand and seal of office.



Brenda J. Flanagan
Notary Public