

ORDINANCE NO. 0-03- 173

AN ORDINANCE EXTENDING THE MORATORIUM ON SEXUALLY ORIENTED BUSINESSES; DECLARING AN EMERGENCY; AND FOR OTHER PURPOSES.

WHEREAS, the City of Conway zoning ordinance contains no references to sexually oriented businesses either as to their approved or restricted use in various zones in the city; and

WHEREAS, sexually oriented businesses are opening in other cities without the typical prerequisite of alcohol availability; and

WHEREAS, other cities, notably Fort Smith, Arkansas, have paid hundreds of thousands of dollars in damages due to court challenges of attempts to prohibit sexually oriented businesses from operating inside city limits; and

WHEREAS, any attempt by the City of Conway to regulate such businesses must prudently observe the court rulings in regard to the zoning and regulation of such businesses as well as determine the appropriate areas and zones in which such businesses can be legally sited with little or no detriment to the property values or the community or neighborhood character of other land uses; and

WHEREAS, sexually oriented businesses can open at any time in Conway in advance of the drafting of appropriate ordinances governing such; and

WHEREAS, any attempt by the City of Conway to regulate or oppose the opening of a sexually oriented business without specific reference to such in the current zoning ordinance would put the city at risk of paying hundreds of thousands of dollars in damages from court challenges due to the city's attempts at prohibiting such businesses from its corporate limits; and

WHEREAS, the City of Conway passed ordinance Nos. 0-02-70 and O-03-57, respectively, which placed a moratorium on the opening of such businesses for a period ending on December 31, 2003; and

WHEREAS, the City undertook additional study of issues relating to sexually oriented businesses, including a presentation by its consultant on December 8, 2003; and

WHEREAS, there is a need for additional time to adopt and implement some of the recommendations from the City's consultant on these issues in the current draft ordinance under consideration by the city council of the City of Conway.

- (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 a state of nudity.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CONWAY, ARKANSAS THAT:

Section 1. An extended moratorium on the opening of sexually oriented businesses is declared for a period from December 31, 2003 until March 1, 2004 for the purposes of the study of the consultant's recommendations, the drafting of, and the adoption of appropriate and legal zoning regulations governing sexually oriented businesses within the City of Conway.

Section 2. That the term "sexually oriented businesses" are those businesses as defined in the attached Exhibit A, which is incorporated herein as if set out word for word.

Section 3. All ordinances in conflict herewith are repealed to the extent of the conflict.

Section 4. Because time and study is needed to implement the changes and recommendations of the City's consultant, and to draft and adopt appropriate zoning ordinance amendments addressing sexually oriented businesses, this ordinance is necessary for the protection of the public peace, health and safety and an emergency is hereby declared to exist, and this ordinance shall be in full force and effect from and after its passage and approval.

PASSED this 23rd day of December, 2003.

APPROVED:



Mayor Tab Townsell

ATTEST:



Michael O. Garrett, City Clerk

- (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.

ADULT MOTION PICTURE THEATER means a commercial establishment where, as its principal business purpose, for any form of consideration, films, motion pictures, video cassettes, slides, or similar photographic reproductions are presented that are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas."

ADULT SEX SHOP means an establishment offering goods for sale or rent and that meets any of the following tests:

- (1) The establishment offers for sale items from any two of the following categories:
 - (a) adult media, as set out in the definition of *adult book store* or *adult video store* above, (b) lingerie, or (c) leather goods or other items marketed or presented in a context to suggest their use for sadomasochistic practices; and the combination of such items constitutes more than 10 percent of its stock in trade or occupies more than 10 percent of its floor area.
- (2) More than 5 percent of its stock in trade consists of sexually oriented toys or novelties.
- (3) More than 5 percent of its gross public floor area is devoted to the display of sexually oriented toys or novelties.

ADULT THEATER means a theater, concert hall, auditorium, or similar commercial establishment that regularly features persons who appear, in person, in a state of nudity, semi-nudity and/or live performances that are characterized by the exposure of "specified anatomical areas" or "specified sexual activities."

ESCORT AGENCY means a person or business association who furnishes, offers to furnish, or advertises to furnish escorts as one of its primary business purposes for a fee, tip, or other consideration.

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 an 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.

NUDE MODEL STUDIO means any place where a person who appears in a state of nudity or semi-nudity, or who displays "specified anatomical areas", is provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons for consideration, with the exception of those persons and places exempted by Section 1201.25 of this Ordinance.

SEXUAL ENCOUNTER CENTER means a business or commercial enterprise that, as one of its principal business purposes, offers for any form of consideration:

EXHIBIT "A"

SEXUALLY ORIENTED BUSINESSES: DEFINITIONS

SEXUALLY ORIENTED BUSINESS means an adult arcade, adult bookstore or adult video store, adult cabaret, adult motel, adult motion picture theater, adult sex shop, adult theater, escort agency, nude model studio, or sexual encounter center.

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."

ADULT BOOKSTORE or ADULT VIDEO STORE means a commercial establishment that, as its principal business purpose, 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 that depict or describe "specified sexual activities" or "specified anatomical areas"; or
- (2) instruments, devices, or paraphernalia that are designed for use in connection with "specified sexual activities."

The determination of the principal business purpose of an establishment is based on the visual inventory or commercial activity of the establishment; provided, there shall be a rebuttable presumption that any commercial establishment which utilizes more than ten percent (10%) of total display area for merchandise of any type described in this definition shall be deemed to be engaged in the business of an *adult bookstore* or *adult video store* as its principal business purpose.

ADULT CABARET means a nightclub, bar, restaurant, or similar commercial establishment that presents:

- (1) persons who appear in a state of nudity or semi-nudity; or
- (2) live performances that are characterized by the display of any portion of the female breast or any portion of the human buttocks, or which are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities"; or
- (3) films, motion pictures, video cassettes, slides or other photographic reproductions that are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas."

ADULT MOTEL means a hotel, motel or similar commercial establishment that:

- (1) offers accommodation 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 that 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 that advertises the availability of this type of adult photographic reproductions; or
- (2) offers a sleeping room for rent for a period of time that is less than ten (10) hours; or