

ORDINANCE NO. 115

AS PER ORIGINAL

AN ORDINANCE OF THE CITY OF BEASLEY, TEXAS, RELATING TO ADULT ORIENTED BUSINESSES; PROVIDING FOR HOURS OF OPERATION, INSPECTIONS, AND LOCATIONS OF ADULT ORIENTED BUSINESSES; AND PROVIDING FOR PENALTIES IN THE MAXIMUM AMOUNT OF \$2000 FOR VIOLATIONS THEREOF.

WHEREAS, the City Council has determined to impose restrictions on the operation of adult oriented businesses after having been advised of numerous studies and reports by other cities that demonstrate that the presence of adult oriented businesses have certain "secondary effects" on adjoining properties, neighborhoods and the community, including a reduction in property values, an increase in crime, noise, traffic, and litter, an increase in health risks, and pressures for other businesses to move elsewhere; and

WHEREAS, the City Council finds that is necessary and prudent to enact these regulations for the purpose of alleviating the potentially damaging secondary effects adult oriented businesses have on adjacent properties, neighborhoods, and the community; NOW, THEREFORE:

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BEASLEY, TEXAS:

**Section 1. Purpose and Intent.**

The purpose of these regulations on Adult Oriented Businesses is to promote the health, safety, morals, and general welfare of the citizens of the City, and to establish reasonable and uniform regulations to prevent the concentration of Adult Oriented Businesses within the City. The provisions of these regulations have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including adult oriented materials. Similarly, it is not the intent nor effect of these regulations to restrict or deny access by adults to adult oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of adult oriented entertainment to their intended market.

**Section 2. Definitions.**

"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 an emphasis on matter depicting, describing or relating to "specified sexual activities" or "specified anatomical areas".

"Adult Bookstore" or "Adult Video Store" means:

- (a) A commercial establishment which as one of its principal business purposes 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 distinguished or characterized by an emphasis on matter depicting, describing or relating to "specified sexual activities" or "specified anatomical areas"; or
  - (2) instruments, devices, or paraphernalia which are designed for use in connection with "specified sexual activities".
- (b) For the purpose of this definition, a commercial establishment is considered to have as one of its "principal business purposes: the sale or the rental of the material described in paragraph (a) of this definition, if:
  - (1) The establishment makes use of a sign inside the establishment that is visible to any area open to the public or makes use of a sign, whether located on or off the property where the establishment is located, that is visible from any public street, advertising the availability at the establishment of any material described in paragraph (a) of this definition;
  - (2) The establishment devotes more than twenty percent of its total floor area that is open to the public to the display of items for sale or rental that are materials described in paragraph (a) of this definition;
  - (3) More than twenty percent of the total number of items displayed for sale or rental by the establishment are material described in paragraph (a) of this definition; or
  - (4) The establishment regularly maintains on the property for sale or rental materials described in paragraph (a) of this definition whose total retail value is more than twenty percent of the total retail value of all materials kept on the premises for sale or rental.



- (c) An establishment that does not qualify as an "adult bookstore" or "adult video store" under paragraph (b), may nevertheless be classified and regulated as an adult bookstore or adult video store under this article if the establishment offers for sale or rental any of the items described in paragraph (a)(1) or (2) and the City determines that the establishment has an adverse impact on surrounding properties or the neighborhood because the establishment offers such material for sale or rental.

"Adult Cabaret" means a nightclub, bar, restaurant, or similar commercial establishment which regularly features:

- (a) persons who appear in a state of nudity; or
- (b) live performances which are distinguished or characterized by an emphasis on "specified sexual activities" or the exposure of "specified anatomical areas"; or
- (c) 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".

"Adult Motel" means a hotel, motel, or similar commercial establishment which:

- (a) offers accommodations to the public for any form of consideration; 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
- (b) offers a sleeping room for rent for a period of time that is less than 10 hours; or
- (c) allows a tenant or occupant of a sleeping room to sub-rent the room for a period of time that is less than 10 hours.

"Adult Motion Picture Theater" means a commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, slides, or similar photographic reproductions are regularly shown which are distinguished or characterized by an emphasis on matter depicting, describing or

relating to "specified sexual activities" or "specified anatomical areas".

"Adult Oriented Business" means an adult arcade, adult bookstore or adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, nude model studio or sexual encounter center.

"Adult Theater" means a theater, concert hall, auditorium, or similar commercial establishment which regularly features persons who appear in a state of nudity or live performances which are distinguished or characterized by an emphasis on "specified sexual activities" or the exposure of "specified anatomical areas".

"Church" means a place used primarily for religious worship on a regular basis.

"Nude Model Studio" means any place where a person who appears in a state of nudity or displays "specified anatomical areas" is provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons who pay money or any form of consideration.

"Nudity" or a "State of Nudity" means:

- (a) the appearance of a human bare buttock, anus, male genitals, female genitals, or female breasts; or
- (b) a state of dress which fails to opaquely cover a human buttock, anus, male genitals, female genitals, or areola of the female breast.

"Public Park or Playground" means the real property and improvements thereon owned, operated, or maintained by a city, university, a Governmental Entity, or a homeowner's association, which are designed or used for recreational purposes and are available to the general public or the members of the homeowner's association. The defined terms include public swimming pools, golf courses, tennis courts, stadiums, field houses, and similar uses and facilities.

"School" means a building where persons regularly assemble for the purpose of instruction or education and includes playgrounds, stadia, and other Structures or grounds used in conjunction therewith. The term is limited to: (1) public and private schools having a curriculum generally equivalent to elementary or secondary schools; and (2) special educational facilities in which students who have physical or learning disabilities receive specialized education in lieu of attending regular classes in a kindergarten or grades one through twelve.



"Sexual Encounter Center" means an establishment whose major business is the furnishing of a location 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.

"Specified Anatomical Areas" means human genitals in a state of sexual arousal.

"Specified Sexual Activities" means and includes any of the following:

- (a) the fondling or other erotic touching of the human genitals, pubic region, buttocks, anus, or female breasts;
- (b) sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, or sodomy;
- (c) masturbation, actual or simulated; or
- (d) excretory functions as part of or in connection with any of the activities set forth in (a) through (c) above.

### **Section 3. Classifications.**

Adult Oriented Businesses are classified as follows:

- (a) adult arcades;
- (b) adult bookstores or adult video stores;
- (c) adult cabarets;
- (d) adult motels;
- (e) adult motion picture theaters;
- (f) adult theaters;
- (g) nude model studios; and
- (h) sexual encounter centers.

### **Section 4. Inspection.**

A person operating, managing, or otherwise in control of an Adult Oriented Business commits an offense if the person refuses to permit City code enforcement employees, City representatives of the police department, fire department, health department, or the

building official, to inspect the premises of an Adult Oriented Business for the purpose of insuring compliance with the law at any time it is occupied or open for business. The provisions of this section do not apply to areas of an adult motel which are currently being rented by a customer for use as a permanent or temporary habitation.

**Section 5. Location of Adult Oriented Businesses.**

- (a) A person commits an offense if he operates or causes to operate an Adult Oriented Business within 1,000 feet of any of the following:
- (1) a boundary of a Residential District;
  - (2) the property line of a Lot devoted to a Residential Use;
  - (3) a church;
  - (4) a school;
  - (5) a Child Care Center; or
  - (6) a public Park or playground.
- (b) For the purposes of Subsection (a), measurement is made in a straight line, without regard to intervening Structures or objects, from the nearest portion of the Building or Structure used as a part of the premises where an Adult Oriented Business is conducted, to the nearest property line of the premises of a church, school, Child Care Center, or to the nearest boundary of an affected public Park or playground, Residential District, or Lot devoted to a Residential Use.
- (c) A person commits an offense if he or she operates or establishes, or causes or permits another to operate or establish an Adult Oriented Business which is located within 1,000 feet of another Adult Oriented Business. The distance between two Adult Oriented Businesses is measured in a straight line, without regard to intervening Structures or objects, from the closest exterior walls of the Structures in which the businesses are located.
- (d) A person commits an offense if he causes or permits the operation, establishment, or maintenance of more than one Adult Oriented Business in the same Building, Structure, or portion thereof.



**Section 6. Additional Regulations for Adult Motels.**

- (a) Evidence that a sleeping room in a hotel, motel, or similar commercial establishment has been rented and vacated two or more times in a period of time that is less than 10 hours creates a rebuttable presumption that the establishment is an adult motel.
- (b) A person commits an offense if, as the person in control of a sleeping room in a hotel, motel, or similar commercial establishment that does not comply with the location requirements of section 2-273, he or she rents or sub-rents a sleeping room to a person and, within 10 hours from the time the room is rented, he or she rents or sub-rents the same sleeping room again.
- (c) For purposes of Subsection (b) of this section, the terms "rent" or "sub-rent" means permitting a room to be occupied for any form of consideration.
- (d) A person commits an offense if the person operates or causes to operate an Adult Oriented Business before 10:00 a.m. or after 10:00 p.m. on Monday through Saturday. A person commits an offense if the person operates or causes to operate an Adult Oriented Business on any Sunday.

**Section 7. Regulations Pertaining to Exhibition of Adult Explicit Films or Videos.**

- (a) A person who operates or causes to be operated an Adult Oriented Business, other than an adult motel, which exhibits on the premises in a viewing room of less than 150 square feet of floor space, a film, video cassette, or other reproduction distinguished or characterized by an emphasis on matter depicting "specified sexual activities" or "specified anatomical areas", must comply with the following requirements:
  - (1) The establishment must provide for one or more manager's stations, none of which may exceed 32 square feet of Floor Area. The manager's stations must be designed to provide a monitoring location for the operators or employees of the establishment during business hours and to exclude members of the general public. The interior of the premises must be configured so that there is an unobstructed view from a manager's station of every area of the premises to which any patron is permitted access for any purpose, excluding rest rooms. Rest rooms may not contain video reproduction equipment. If the premises has two or more manager's stations,

then the interior of the premises must be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose from at least one of the manager's stations. The view required in this subsection must be by direct line of sight from the manager's station.

- (2) It is the duty of the owners and operator of the premises to ensure that at least one employee is on duty and situated in each manager's station at all times that any patron is present inside any part of the premises.
  - (3) It is the duty of the owners and operator, and it is also the duty of any agents and employees present in the premises, to ensure that the view area specified in subsection (1) remains unobstructed by any doors, walls, merchandise, display racks or other materials at all times that any patron is present in the premises and to ensure that no patron is permitted access to any area of the establishment that does not have an unobstructed view from a manager's station.
  - (4) The premises must be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place in which patrons are permitted access at an illumination of not less than one (1.0) foot candle as measured at the floor level.
  - (5) It is the duty of the owners and operator, and it is also the duty of any agents and employees present in the premises, to ensure that the illumination described above is maintained at all times that any patron is present in the premises.
- (b) A person having a duty as provided in subsections (1) through (5) of subsection (a) above commits an offense if he or she knowingly fails to fulfill that duty.

#### **Section 8. Additional Regulations for Adult Cabarets.**

- (a) An employee of an adult cabaret, while appearing in a state of nudity, commits an offense if the employee touches a customer or the clothing of a customer.
- (b) A customer of an adult cabaret commits an offense if the customer touches an employee appearing in a state of



nudity or the clothing of the employee appearing in a state of nudity.

- (c) An employee of an adult cabaret, while appearing in a state of nudity, commits an offense if the employee touches another employee appearing in a state of nudity or touches the clothing of the other employee appearing in a state of nudity.
- (d) An employee of an adult cabaret commits an offense if the employee, while appearing in a state of nudity, dances closer than six feet (6') to any customer.
- (e) A person who owns, operates, manages, or controls an adult cabaret at which alcoholic beverages are offered for sale for consumption on the premises commits an offense if the person allows any person to appear in a state of nudity on the premises of the adult cabaret.
- (f) A person commits an offense if the person appears in a state of nudity on the premises of an adult cabaret at which alcoholic beverages are offered for sale for consumption on the premises.
- (g) For purposes of this section, intent, knowledge, or recklessness suffice to establish the requisite mental state to establish criminal responsibility.

**Section 9. Enforcement.**

- (a) Any person violating Section 5, upon conviction, is punishable by a fine not to exceed \$2,000 for each offense.
- (b) Any person violating a provision of this Article, other than Section 5, upon conviction, is punishable by a fine not to exceed \$500 for each offense.
- (c) It is a defense to prosecution under Section 5 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.
- (d) Each day on which a violation of this Article occurs is a separate and distinct violation.

**Section 10. Saving Clause.**

That the provisions of this ordinance are severable and the invalidity of any part of this ordinance shall not affect the validity of the remainder of the ordinance.

APPROVED AND ADOPTED on August 18, 1998.



ATTEST:

*James Isbell*  
James Isbell, Mayor

*Daniel F. Van Gossen*  
\_\_\_\_\_, City Secretary  
DANIEL F. VAN GOSSEN

Ret.

City of Beasley  
P.O. # 122  
Beasley, TX 77417

FILED AND RECORDED  
OFFICIAL PUBLIC RECORDS

*Dianne Wilson*

8-21-98 11:38 AM 9867525  
CT \$27.00  
DIANNE WILSON, County Clerk  
FORT BEND COUNTY, TEXAS