

ORDINANCE NO. 86-1986

AN ORDINANCE AMENDING CHAPTER 23, "PLANNING AND COMMUNITY DEVELOPMENT," SUBPART E, "ZONING," DEFINING, REGULATING AND RESTRICTING ADULT ENTERTAINMENT ENTERPRISES, PROVIDING FOR LOCATIONS AND DISTANCES FROM CERTAIN LOCATIONS, OF THE ABILENE MUNICIPAL CODE, BY AMENDING CERTAIN SECTIONS AS SET OUT BELOW: PROVIDING A SEVERABILITY CLAUSE; DECLARING A PENALTY AND CALLING A PUBLIC HEARING.

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

PART 1: That Chapter 23, Subpart E, "Zoning," of the Abilene Municipal Code be amended as set out in Exhibit "A," attached hereto and made a part of this ordinance for all purposes.

PART 2: That if any provision or any section of this ordinance shall be held to be void or unconstitutional, such holding shall in no way affect the validity of the remaining provisions or sections of this ordinance, which shall remain in full force and effect.

PART 3: That any person, firm or corporation violating any of the provisions of this chapter shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not more than One Thousand Dollars (\$1,000.00). Each day such violation shall continue or be permitted to continue, shall be deemed a separate offense.

PART 4: That Exhibit B, attached hereto, is hereby approved and made a part of this ordinance for all purposes.

PASSED ON FIRST READING this 11 day of September, A.D. 1986.  
A notice of the time and place, where and when said ordinance would be given a public hearing and considered for final passage, was published in the Abilene Reporter-News, a daily newspaper of general circulation in the City of Abilene, said publication being on the 24 day of September, 1986, the same being more than fifteen (15) days prior to a public hearing to be held in the Council Chamber of the City Hall in Abilene, Texas, at 9:00 a.m., on the 16 day of October, 1986, to permit the public to be heard prior to final consideration of this ordinance. Said ordinance, being a penal ordinance, becomes effective sixty (60) days after its publication in the newspaper, as provided by Section 19 of the Charter of the City of Abilene.

PASSED ON SECOND AND FINAL READING this 16 day of October, A.D. 1986.

Attest:

Patricia Patton  
CITY SECRETARY

David Stubbeman  
MAYOR

APPROVED:

Harry Cargill  
CITY ATTORNEY

EXHIBIT "A"

SECTION 23-306.4 Permitted Uses, Cultural and Recreational Uses

ADD: Adult Entertainment Enterprise to be conditionally permitted in the HC (Heavy Commercial), LI (Light Industrial), and HI (Heavy Industrial) zoning districts.

SECTION 23-306.5.C Cultural and Recreational Uses

ADD: (10) Adult Entertainment Enterprise

1. (a) All structures housing adult entertainment enterprises (as defined in Section 23-363 of this Chapter) shall be located at least six hundred (600) feet from the property boundary line of any lot in a College-University zoning district, of any residentially zoned lot, or from any lot used for church, school, park, or hospital purposes and 600 feet north of North 1st Street and 600 feet south of South 1st Street and cannot be located on or between North and South 1st Streets and 1,000 feet from any structure housing an adult entertainment enterprise.

Said measurements are to be in a straight line in all directions from the structure housing the adult entertainment enterprise to the nearest property line on any lot in the College-University zoning district, any residentially zoned district, or any lot used for church, school, or hospital purposes, or any park, North and South 1st Streets, and any structure housing an adult entertainment enterprise.

- (b) 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.
- (c) Should said adult entertainment enterprise be located in conjunction with other buildings in a manner where said 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 bookstore is housed or confined (not the entire shopping center, motel, or structure).

- (d) Should said adult entertainment enterprise be 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 bookstore, 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 a College-University district, or any lot or tract used for church, school or hospital purposes, North and South 1st Streets and any structure housing an adult entertainment enterprise.
- (e) 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.
- (f) An adult entertainment enterprise in operation prior to the effective date of the adult entertainment enterprise ordinance which does not conform to the regulations pertaining to adult entertainment enterprise shall be considered to be non-conforming use that may continue until January 1, 1988, subject to the provisions that are provided in this section.
- (1) Amortization  
The nonconforming use will be permitted to continue until January 1, 1988, unless sooner terminated for any reason or voluntarily discontinued for a period of 30 days or more. On January 1, 1988, the nonconforming use shall be illegal and shall terminate, except as provided in Subsection 2.
- (2) Additional Time for Amortization  
(a) In the event an owner of an adult entertainment enterprise is unable to recoup his investment in an adult entertainment enterprise by January 1, 1988, then the owner may request additional time by making application with the Abilene City Secretary no later than November 1, 1987.

- (b) The applicant shall file, with his application for additional time, all data he wishes considered in support of request for additional time. The applicant shall also supply the Council any additional data that is requested by the Council to evaluate whether the applicant has recouped his investment in an adult enterprise. An applicant's failure to supply data requested by the Council shall be considered in evaluating whether he has recouped his investment in an adult entertainment enterprise.
- (c) Upon application by owner the City Council may, at its' discretion, allow additional time to amortize the investment in an adult entertainment enterprise if it makes the following findings:
  - (1) The owner has made every effort to recoup his investment in an adult entertainment enterprise.
  - (2) The owner will be unable to recoup his investment in an adult entertainment enterprise by the end of the amortization period.
  - (3) That all other applicable provisions of this ordinance will be observed.
- (d) If the City Council grants additional time, the grant shall be for a period not to exceed one (1) calendar year. If such time is insufficient to amortize, an owner may thereafter apply for additional grants of time to recoup his investment in an adult entertainment enterprise. Such application shall be made no later than 60 days prior to the expiration of the amortization time period.
- (e) The City Council shall grant or deny the additional time request by a majority vote. Failure to reach a majority vote shall result in denial of the request for additional time. Disputes of fact shall be decided on the basis of a preponderance of the evidence. The decision of the City Council is final.
- (f) On January 1, 1988, unless additional time is granted under this subsection, an adult entertainment enterprise will be in violation of the locational restriction of Sections 23-306.4 and 23-306.5 and the nonconforming use shall be illegal and shall terminate.

(3) Non-Enlargement and Priority By time  
Such nonconforming uses shall not be increased, enlarged, extended, or altered except that the use may be changed to a conforming use. If two or more adult entertainment enterprises are within 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.

(4) Expansion of Neighbors

An adult entertainment enterprise lawfully operating as a conforming use is not rendered a nonconforming use by the location of a church, school, hospital, park, residential zoned or College-University zoned lot, or the expansion in width of North 1st or South 1st Streets within 600 feet of the adult entertainment enterprise.

(5) Exemption from Locational 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 for a locational exemption from the requirements of Section 23-306.4 and Section 23-306.5.G.10(1)(a) at least 30 days prior to the expiration of all amortization periods.

The City Council may, in its discretion, grant an exemption from the locational 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 downgrade 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 contrary to 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 or deny the exemption by a majority vote. 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 locational restrictions of Section 23-306.4 and 23-306.5 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 Abilene City Secretary at least 60 days prior to the expiration of the exemption.
- (d) The grant of an exemption does not exempt the applicant from any other provisions of this ordinance other than the locational restrictions of Section 23-306.4 and 23-306.5.G.10(1)(a).

(g) Adult Viewing Booth Design

- (1) Adult viewing booths and arcades 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 directly into the viewing booth. In the event there is more than one 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.
- (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 (a) above remains unobstructed by any merchandise, display racks, or other materials at all

times that any patron is present in the adult arcade and to insure that no patron is permitted access to any area of the adult arcade which has been designated as an area in which patrons will not be permitted in the plan filed pursuant to this section.

(h) Lighting

- (1) 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 at an illumination so that any patron may be observed from the manager's station.
- (2) 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 insure that the illumination described above is maintained at all times that any patron is present in the adult arcade and viewing booths.

(i) Non-Applicability of Amortization, Time for Construction of Booths

The construction standards in Sections (g) and (h) above shall not be subject to the amortization provisions of Section 1(f).

Booths not in compliance with the design and lighting requirements shall have 60 days from the effective date of this ordinance to be in compliance.

In the event an owner is unable to complete reconstruction within that period, upon application to the Board of Building Standards, the owner may ask for an extension accompanied by documentation as may be required to justify additional time. The Board may extend the reconstruction time after considering the financial cost, difficulty in compliance and other factors related to the reconstruction and a finding that additional time is needed to reconstruct the booths to be in compliance.

SECTION 23-363, Definitions

ADD: Adult Entertainment Enterprise

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

1. Any business operated by or employing psychologists, physical therapists, athletic trainers, licensed masseuse, cosmetologists, or barbers, licensed by the State of Texas, performing functions authorized under the licenses held.
2. Any business operated by or employing physicians, osteopaths, chiropractors or nurses, licensed by the State of Texas, engaged in practicing the healing arts.
3. Any retail establishment whose major business is the offering of wearing apparel for sale to customer.

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

A. Adult Bookstore/Film Store.

An establishment or commercial enterprise having 10% or more of its stock in trade; videos, tapes, cassettes, photographs, books, magazines and 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.

B. Movie Arcade

Any business wherein is operated a film or videotape viewing device.

A film or videotape viewing device or booth subject to these provisions is defined as:

1. 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, or other enclosure which is designed for occupancy by no more than five persons, and is used for presenting material distinguished or characterized by a predominant emphasis on matters depicting, describing, or relating to "specified sexual activities" or "specified anatomical areas" for observation by five (5) or fewer persons.

2. Adult Motion Picture Theatre

An establishment or commercial enterprise which has an enclosed building with a capacity of more than five (5) persons and is 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.

C. 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."

D. 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.

E. 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.

F. Adult Drive-In Theatre

A drive-in theatre used for presenting motion picture films, video cassettes, 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".

G. Adult Retail Store

This is a retail establishment in which:

1. Ten percent or more of the "stock in trade" consists of items, products or equipment distinguished or characterized by an 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 an emphasis on "specified sexual activities" or "specified anatomical areas".

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;
- C. Fondling or other erotic touching of human genitals, pubic region, buttock or female breast.

Specified Anatomical Areas.

- A. less than completely and opaquely covered:
  1. human genitals, pubic region
  2. buttock
  3. Female breast below a point immediately above the top of the areola; and
- B. human genitals in a discernibly erect state, even if completely and opaquely covered.

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, the city council makes the following findings with regard to adult entertainment enterprises:

(1) Article 1175, Section 26 and Article 1011a-1011f of the Revised Civil Statutes of Texas authorizes home rule cities to divide the City into districts and regulate the use of property within the districts for the purpose of promoting health, safety, morals, and for the protection of the general welfare of the community.

(2) Article 1175, Section 34, of the Revised Civil Statutes of Texas authorizes home rule cities to enforce all ordinances necessary to protect health, life, and property, and to preserve the good government, order and security of such cities and their inhabitants.

(3) There are several adult entertainment enterprises in the city that require special supervision from the public safety agencies of the city in order to protect and preserve the health, safety, and welfare of the patrons of such businesses as well as the citizens of the city.

(4) The city council finds that adult entertainment enterprises are used for sexual liaisons of a casual nature.

(5) The concern over sexually transmitted diseases is a legitimate health concern of the city which demands reasonable regulation of adult entertainment enterprises in order to protect the health and well-being of the citizens.

(6) There is convincing documented evidence that adult entertainment enterprises, because of their very nature, have a deleterious effect on both the existing businesses around them and the surrounding residential areas adjacent to them, causing increased crime and the downgrading of property values. Numerous studies, reports, and findings concerning the harmful effects of adult entertainment uses on surrounding land uses and neighborhoods have been produced.

- A. DETROIT - The Detroit Adult Entertainment Use Regulations were adopted in 1972 as part of an "Anti Skid Row Ordinance" that prohibited an adult entertainment business within 500 feet of a residential area or within 1000 feet of any two other regulated uses. The term *regulated use* applied to a variety of other sexual entertainment establishments, including adult theaters, adult bookstores, cabarets, bars, taxi dance halls, and hotels. During the hearings on the ordinance, the

City introduced extensive documentation that demonstrated the adverse socio-economic and blighting impacts that adult entertainment uses have on surrounding development. The documentation consisted of reports and affidavits from sociologists, urban planners, and real estate experts, as well as some laymen on the cycle of decay expected in Detroit from the influx and concentration of such establishments.

- B. AMARILLO - In 1977, the Amarillo Planning Department prepared a report entitled, *A Report on Entertainment Uses in Amarillo*. The report concluded that adult entertainment uses have adverse impacts on surrounding land uses, and that those impacts can be distinguished from those of other businesses. The study found that street crime rates are considerably above the City's average in areas immediately surrounding the adult-only businesses, and that late at night, during their primary operating hours, these businesses create unique problems of noise, glare, and traffic.
- C. LOS ANGELES - A November 1984 report, *The Current Status of Pornography and Its Effect on Society*, prepared by the Los Angeles Police Department's Vice Division, identifies the adverse effects of concentrating adult entertainment businesses. The report states, "The proliferation and clustering of sex-oriented businesses adversely impacts the crime rate in those adjacent areas . . . The overwhelming increase in prostitution, robberies, assaults, thefts, and proportionate growth in police personnel deployed throughout Hollywood are all representative of the blighting that the clustering of adult entertainment establishments has on the entire community."
- D. INDIANAPOLIS - In 1984, Indianapolis surveyed real estate experts on the impact that adult entertainment uses had on surrounding property values. A random sample (20 percent) of the national membership of the American Institute of Real Estate appraisers was used. The opinion survey found that an adult bookstore located in the hypothetical neighborhood described would have a negative impact on residential property values of premises located within one block of the site.

- E. PHOENIX - A 1979 Planning Department study compared three study areas containing adult entertainment uses with three control areas that had similar demographic and land use characteristics but not adult entertainment businesses. Their study indicated that, on the average, "In the three study areas, property crimes were 36 percent higher, violent crimes were 4 percent higher, and sex crimes were over 600 percent higher than in the control areas.
- F. ST. PAUL, MINNESOTA - In 1978, the Planning Department of St. Paul completed a study of *Effects on Surrounding Area of Adult Entertainment Businesses*. The study concluded: (1) that there was a statistically significant correlation between neighborhood deterioration as reflected in housing values and crime rates and the location of adult entertainment businesses; (2) the statistical relationship was still significant after taking into account certain marketing factors, and; (3) there was a stronger correlation with neighborhood deterioration after establishment of an adult entertainment business than before.
- G. BEAUMONT, TEXAS - The effects of the concentration of adult entertainment uses in Beaumont was clearly illustrated in the commercial revitalization plan for the Charlton-Pollard neighborhood that was prepared by the City's Planning Department in May of 1981. This plan described the economic decline that followed the establishment of adult entertainment uses in a specific neighborhood. It was noted that the growing presence of adult businesses drive away neighborhood commercial stores.
- H. SEATTLE, WASHINGTON - In 1976, the City of Seattle amended its zoning ordinance providing for the gradual elimination of nonconforming adult theaters. In a memorandum to the City Planning Commission from the Planning Department, proposed zoning ordinance amendments are recommended based on the evidence that neighborhood property values will be negatively impacted and that residents fear that some of the people attracted by adult theaters may constitute a threat to the comfort and safety of the residents. Evidence was presented in the report which indicated that adult theaters were not

compatible with adjacent residence and other types of uses such as churches, schools, etc.

- I. AUSTIN, TEXAS - In May of 1986 the Austin Planning Department published a report on adult businesses in Austin. An analysis of crime rates in Austin was conducted by comparing areas with adult businesses to areas without adult businesses. Four study areas were chosen that did not contain adult businesses. Two study areas were chosen containing only one adult business each, and two study areas were chosen containing two adult businesses each.

Within those study areas containing adult businesses, sex crimes were found to be from two to nearly five times the city-wide average. Also, sex related crime rates were found to be 66% higher in study areas containing two adult businesses as compared to study areas containing only one (1) adult business.

Austin conducted a survey of 120 real estate appraisers and lending institutions. Eighty-eight percent (88%) of those responding indicated a belief that an adult bookstore would decrease residential property values within one (1) block, and 59% felt that residential property values would decrease within three (3) blocks. A survey of three adult businesses in Austin revealed that only three customers had addresses within one mile of an adult business and 44% of all customers visiting the three adult businesses had addresses outside the City of Austin.

From the studies that have been presented, concentrations of adult entertainment uses within a community have a serious deleterious physical, social, and economic effect on surrounding areas. The studies show that regulations requiring the dispersion of adult entertainment uses are justified. The studies also show that because of their very nature, adult entertainment uses can and should be relegated to nonresidential and nonretail zoning districts.

(7) Studies conducted in other cities and states throughout the country have shown a decline in neighborhoods, and neighborhood oriented commercial, religious, and institutional facilities when exposed to adult entertainment facilities.

The City of Abilene is relying on the findings of these studies and is attempting to benefit the public welfare by proposing such new zoning rules.

(8) The Supreme Court has upheld the validity of such controls that disperse these kinds of activities within zoning districts that are less sensitive to their blighting influences.

(9) That there will be adequate locations for adult entertainment enterprises within the City of Abilene, after passage of the adult entertainment enterprise ordinance. There will be approximately 5% of the City available for relocation sites and in excess of 50 possible sites within the city.

(10) It is recognized that adult entertainment enterprises due to their nature have serious objectionable operational characteristics particularly when they are located in close proximity to each other, thereby contributing to urban blight and downgrading the quality of life in the adjacent areas.

(11) The city council desires to minimize and control these adverse effects and thereby preserve the property values and character of surrounding neighborhoods, deter the spread of urban blight, protect the citizens from increased crime, preserve the quality of life, and protect the health, safety, and welfare of the citizenry.