

RESOLUTION NO. 68-1987

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS
DENYING ADDITIONAL TIME TO AMERICAN VIDEO.

WHEREAS, American Video has filed a request for additional time; and

WHEREAS, Section 23-306.5.C.12 Adult Entertainment Enterprise, allows additional time as provided hereafter:

(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 non-conforming 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 non-conforming 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 non-conforming use shall be illegal and shall terminate.

and,

WHEREAS, Section 23-306.5.C.12 Adult Entertainment Enterprise, allows additional time as provided hereafter:

(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.C.12(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 restriction 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 non-conforming 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.C.12(a).

now, therefore,

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

Part 1: That upon consideration of American Video's request and after considering all relevant factors, including materials submitted by applicant and staff recommendations in connection therewith, the City Council does hereby find and determine that the applicant has failed to show by a preponderance of the evidence that he is entitled to additional time, and applicant is therefore denied any additional amortization or exemption time.

Part 2: That this resolution shall take effect immediately from and after its passage.

ADOPTED this 17 day of December, A.D. 1987.

ATTEST:




CITY SECRETARY



MAYOR

ATTEST:



CITY ATTORNEY