

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS,
REGARDING VIDEO VUE, AN ADULT ENTERTAINMENT ENTERPRISE.

WHEREAS, Video Vue has filed a request for additional amortization time and for locational exemption; and,

WHEREAS, Video Vue has filed a lawsuit against the City of Abilene; and,

WHEREAS, the City Council can only take action in open meetings held pursuant to the Texas Open Meetings Act, and can take action only if there are four (4) affirmative votes; and,

WHEREAS, the City Council takes this action to summarize and highlight the Council's intention regarding today's meeting; now, therefore,

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

PART 1: The City Council specifically makes the following findings at today's Council meeting:

- (1) The City Council's intent is to ascertain whether Mr. Kervin has recouped his investment at the 1700 Industrial Boulevard site;
- (2) The City Council's intent is to ascertain whether Mr. Kervin has shown that he is entitled to locational exemption time at the 1700 Industrial Boulevard site;
- (3) The City Council's intent is to consider whether Mr. Kervin can justify the Council waiving the ordinance deadline for a locational exemption application at 727 South Treadaway;

The City Council's intent is not, and it does not, by allowing presentation of the request, waive its right to urge that the locational exemption request for 727 South Treadaway is not timely per the City's ordinance;

- (4) Without waiver of Mr. Kervin's failure to timely file for locational exemption at 727 South Treadaway, the City Council's intent is to ascertain whether Mr. Kervin has shown that he is entitled to locational exemption time at 727 South Treadaway;
- (5) The City Council will consider the Adult Entertainment Zoning Ordinance requirements for additional amortization time, pages 89-90-91, to see if the applicant has recouped his investments;

- (6) The City Council understands and believes that if Mr. Kervin satisfies the ordinance requirements, the City Council will have to grant additional amortization time for the 1700 Industrial Boulevard site;
- (7) The City Council will consider the Adult Entertainment Zoning Ordinance requirements for locational exemption, pages 91-92-93, to see if the applicant will have no detrimental effect on his neighbors and satisfies other ordinance requirements;
- (8) The City Council understands and believes that if Mr. Kervin satisfies the ordinance requirements, the City Council will have to grant locational exemption time for the 1700 Industrial site;
- (9) The City Council understands that personal feelings of individual Council Members are not the issue. The issue is "whether Mr. Kervin has shown that he has not recouped his investment and whether he has shown that he is entitled to locational exemption time;"
- (10) The City Council is aware that Mr. Kervin has expressed concern over the phrase "used for," found on page 256 of the ordinance, as it relates to his adult theaters;

His concerns are addressed by the City on page 8 of the City's answer filed in case no. 1-88-0120 W relating to page 256 of the City's zoning ordinance;

The City Council firmly states that it is aware that the phrase "used for" has been interpreted by the City staff as "predominately used for" or "majority" of the use of the theaters;

The City Council hereby approves and emphasizes that it is its interpretation that if the majority use of a theater is for adult films, then it is an adult theater. If a majority of the films shown are non-adult, then it is a non-adult theater;

The City Council further states that a single showing of an adult oriented film would not cause the theater to be classified as an adult theater within the meaning of the City's Adult Entertainment Ordinance;

- (11) Prior to the City Council's vote today, Council Members considered the following items:
 - (a) unnumbered, assorted pieces of paper that Mr. Kervin filed with the City Secretary prior to November 1, 1988, requesting more time;

- (b) November 1, 1988, letter from Lee Roy George to Mr. Ron Kervin, requesting supporting data;
 - (c) November 15, 1988, letter from Mr. Kervin to Lee Roy George responding to November 1, 1988, letter requesting more time for Treadaway and Industrial sites;
 - (d) January 6, 1989, letter from Lee Roy George to Mr. Kervin notifying him of February 9, 1989, meeting to consider his requests. In that letter, Mr. Kervin was invited to review the data that he previously filed with the City Secretary;
 - (e) copy of Mr. Kervin's First Amended Complaint 1-88-0120W, with the Adult Entertainment Ordinance as Ex. A and the Amendment as Ex. B attached;
 - (f) City's Answer to Plaintiff's First Amended Complaint 1-88-0120W;
 - (g) Judge Woodward's Opinion in *Deja Vu and Reflections*, March 31, 1988;
 - (h) copies of the Adult Entertainment Ordinance, Pages 87 through 94, Pages 255 through 258 and Page 25 of the Zoning Ordinance;
 - (i) minutes of October 16, 1986 Council Meeting concerning the adoption of the Adult Entertainment Ordinance;
 - (j) minutes of the January 14, 1988, Council meeting concerning adoption of the Amendment to the Adult Entertainment Ordinance and staff comments.
- (12) The City Council will consider comments of City staff, the applicant, and anyone willing to speak in regard to Mr. Kervin's locational exemption and amortization requests;
- (13) At this time the City Council has not decided nor voted to grant or deny Mr. Kervin's requests for amortization time and locational exemption time.

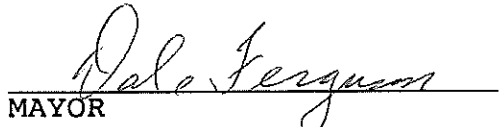
PART 2: The City Council makes these findings to emphasize and spell out its thought process and position before considering the applications of Mr. Ron Kervin for amortization time and locational exemptions at 1700 Industrial Boulevard and 727 South Treadaway.

PART 3: That this resolution shall take effect immediately from and after its passage.

ADOPTED this 9 day of February, A.D. 1989.

ATTEST:


CITY SECRETARY


MAYOR

APPROVED:


CITY ATTORNEY