

ORDINANCE NO. 06-685

AN ORDINANCE PERTAINING TO SEXUALLY ORIENTED BUSINESSES, TO ADD PROVISIONS TO THE ZONING REGULATIONS OF THE CITY OF FRIEND, NEBRASKA RELATED TO SUCH BUSINESSES, TO DEFINE CERTAIN TERMS AND TO CLASSIFY SUCH BUSINESSES, TO PROVIDE FOR THE AREAS AND LOCATIONS WITHIN THE ZONING JURISDICTION AREA OF THE CITY IN WHICH SUCH BUSINESSES MAY LAWFULLY LOCATE, TO PROVIDE FOR PENALTIES FOR VIOLATIONS OF THIS ORDINANCE, TO PROVIDE FOR EXISTING BUSINESSES OPERATING IN A MANNER NOT IN CONFORMITY WITH THESE REGULATIONS, TO PROVIDE FOR THE PUBLICATION OF THIS ORDINANCE IN PAMPHLET FORM, AND TO PROVIDE FOR AN EFFECTIVE DATE.

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF FRIEND, NEBRASKA; AS FOLLOWS:

WHEREAS, sexually oriented businesses require special supervision from the Friend Police Department, acting in its capacity as the law enforcement agency of the City, in order to protect and preserve the health, safety, morals and welfare of the patrons of such businesses as well as the citizens of the City; and

WHEREAS, the City Council finds that sexually oriented businesses are frequently used for unlawful sexual activities, including prostitution and sexual liaisons of a casual nature; and

WHEREAS, the concern over sexually transmitted diseases is a legitimate health concern of the City which demands reasonable regulation of sexually oriented businesses in order to protect the health and well-being of the citizens; and

WHEREAS, there is convincing documented evidence that sexually oriented businesses, because of their very nature, have a harmful 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; and

WHEREAS, it is recognized that sexually oriented businesses, due to their nature, have serious objectionable 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 area; and

WHEREAS, the City Council desires to minimize and control these adverse effects and thereby protect the health, safety, and welfare of the citizenry; protect the citizens from increased crime; preserve the quality of life; preserve the property values and character of surrounding neighborhoods and deter the spread of urban blight; and

WHEREAS, the City Council has determined that locational criteria alone do not adequately protect the health, safety, and general welfare of the people of this City; and

WHEREAS, it is not the intent of this ordinance to suppress any speech activities protected by the First Amendment, but to enact a content neutral ordinance which addresses the secondary effects of sexually oriented businesses; and

WHEREAS, it is not the intent of the City Council to condone or legitimize the distribution of obscene material, and the Council recognizes that state and federal law prohibits the distribution of obscene materials and expects and encourages state and county law enforcement officials to enforce state obscenity statutes against any such illegal activities in the City.

NOW, THEREFORE, be it ordained by the Mayor and City Council as follows:

Section 11-121 of the Zoning Regulations of the City of Friend, Nebraska is hereby created and shall provide as follows:

SECTION I: DEFINITIONS.

- (1) ADULT ARCADE means any place to which the public is permitted or invited wherein coin-operated, slug-operated, or for any form of consideration, or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, video or laser disc players, 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.”
- (2) ADULT BOOKSTORE, ADULT NOVELTY STORE OR ADULT VIDEO STORE means a commercial establishment which, as one of its principal purposes, offers for sale or rental for any form of consideration any one or more of the following:
 - (a) books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes or video reproductions, compact discs, digital video discs, slides, or other visual representations which are characterized by the depiction or description of “specified sexual activities” or “specified anatomical areas”; or
 - (b) instruments, devices, or paraphernalia which are designed for use in connection with “specified sexual activities.”

A commercial establishment may have other principal business purposes that do no involve the offering for sale or rental of material depicting or describing “specified sexual activities” or “specified anatomical areas” and still be categorized as ADULT BOOKSTORE, ADULT NOVELTY STORE, or ADULT VIDEO STORE. Such other business purposes will not serve to exempt such commercial establishments from being categorized as an ADULT

BOOKSTORE, ADULT NOVELTY STORE, or ADULT VIDEO STORE so long as one of its principal business purposes is the offering for sale or rental for consideration the specified materials which are characterized by the depiction or description of “specified sexual activities” or “specified anatomical areas.”

- (3) ADULT CABARET means a nightclub, bar, restaurant, or other commercial establishment which features:
 - (a) persons who appear in a state of nudity or semi-nude; or
 - (b) live performances which are characterized by the exposure of “specified anatomical areas” or by “specified sexual activities”.
- (4) 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 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 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 ten (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 ten (10) hours.
- (5) ADULT MOTION PICTURE THEATER means a commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, compact discs, digital video discs, slides, or similar photographic reproductions are regularly shown which are characterized by the depiction or description of “specified sexual activities” or specified anatomical areas.” This shall not include hotels or motels which offer adult movies for viewing as part of a selection of available movies that includes non-adult movies, on a pay-per-view basis.
- (6) ADULT THEATER means a theater, concert hall, auditorium, or similar commercial establishment which features persons who appear in a state of nudity or semi-nude, or live performances which are characterized by the exposure of “specified anatomical areas” or by “specified sexual activities.”
- (7) EMPLOYEE means a person who performs any service on the premises of a sexually oriented business on a full-time, part-time or contract basis, whether or not the person is denominated an employee, independent contractor, agent or otherwise and whether or not said person is paid a salary, wage or other compensation by the operator of said

- business. Employee does not include a person exclusively on the premises for repair or maintenance of the premises or equipment on the premises, or for the delivery of goods to the premises.
- (8) ESCORT means a person who, for consideration, agrees or offers to act as a companion, guide, or date for another person, or who agrees or offers to privately model lingerie or to privately perform a striptease for another person.
- (9) 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.
- (10) ESTABLISHMENT means and includes any of the following:
- (a) The opening or commencement of any sexually oriented business as a new businesses;
 - (b) the conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business;
 - (c) the addition of any sexually oriented business to any other existing sexually oriented business; or
 - (d) the relocation of any sexually oriented business.
- (11) NUDE MODEL STUDIO means any place where a person who appears semi-nude, in a state of nudity, or who displays "specified anatomical areas" and is provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons who pay money or any form of consideration. Nude Model Studio shall not include a proprietary school licensed by the State of Nebraska or a college or junior college.
- (12) NUDITY or a STATE OF NUDITY means the showing of the human male or female genitals, pubic area, vulva, anus, anal cleft or cleavage with less than a fully opaque covering, the showing of the female breast with less than a fully opaque covering of any part of the nipple, or the showing of the covered male genitals in a discernibly turgid state.
- (13) PERSON means an individual, proprietorship, partnership, corporation, association, or other legal entity.
- (14) SEMI-NUDE or in a SEMI-NUDE CONDITION means the showing of the female breast below a horizontal line across the top of the areola at its highest point or the showing of the male or female buttocks. This definition shall include the entire lower portion of the human female breast, but shall not include any portion of the cleavage of the human female breast, exhibited by a dress, blouse, skirt, leotard, bathing suit, or other wearing apparel provided the areola is not exposed in whole or

in part.

- (15) SEXUAL ENCOUNTER CENTER means a business or commercial enterprise that, as one of its principal business purposes, offers for any form of consideration:
- (a) physical contact in the form of wrestling or tumbling between persons of the opposite sex; or
 - (b) 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 or semi-nude.
- (16) SEXUALLY ORIENTED BUSINESS means an adult arcade, adult bookstore, adult novelty store, adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, escort agency, nude model studio, or sexual encounter center.
- (17) SPECIFIED ANATOMICAL AREAS means;
- (a) the human male genitals in a discernibly turgid state, even if completely and opaquely covered; or
 - (b) less than completely and opaquely covered human genitals, pubic region, buttocks or a female breast below a point immediately above the top of the areola.
- (18) SPECIFIED SEXUAL ACTIVITIES means any of the following:
- (a) the actual or simulated fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breasts;
 - (b) sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, masturbation, or sodomy; or
 - (c) excretory functions as part of or in connection with any of the activities set forth in (a) through (b) above.

Section 11-122 of the Zoning Regulations of the City of Friend, Nebraska is hereby created and shall provide as follows:

SECTION II. CLASSIFICATION.

Sexually oriented businesses are classified as follows:

- (1) adult arcades;
- (2) adult bookstores, adult novelty stores, or adult video stores;

- (3) adult cabarets;
- (4) adult motels;
- (5) adult motion picture theaters;
- (6) adult theaters;
- (7) escort agencies;
- (8) nude model studios; and
- (9) sexual encounter centers.

Section 11-123 of the Zoning Regulations of the City of Friend, Nebraska is hereby created and shall provide as follows:

SECTION III. LOCATION OF SEXUALLY ORIENTED BUSINESS/VIOLATIONS AND PENALTIES.

- (A) A sexually oriented business may only be located in the M-2 District as defined and described in the City zoning ordinance. A person violates this ordinance and is subject to the penalty as provided herein if that person locates or operates or causes to be located or operated a sexually oriented business in any zoning district other than the M-2 District.
- (B) A person commits an offense if the person operates or causes to be operated a sexually oriented business within 400 feet of;
 - (A) A church, synagogue, mosque, temple or building which is used primarily for religious worship and related religious activities;
 - (B) A public or private educational facility including but not limited to child daycare facilities, nursery schools, preschools, kindergarten, elementary schools, private schools, intermediate schools, junior high schools, middle schools, high schools, vocational schools, secondary schools, continuation schools, special education schools, colleges and universities; school includes the school grounds, but does not include facilities used primarily for another purpose and only incidentally as a school;
 - (C) A boundary of a residential district as defined in the City zoning ordinance;
 - (D) A public park or recreational area which has been designated for park or recreational activities including but not limited to a park, playground, nature trails, swimming pool, reservoir, athletic field, basketball or tennis courts,

- pedestrian/bicycle paths, wilderness areas, or other similar public land within the City which is under the control, operation, or management of the City park and recreation authorities;
- (E) the property line of a lot devoted to a residential use as defined in the City zoning ordinance;
 - (F) An entertainment business which is oriented primarily towards children or family entertainment; or
 - (G) A licensed premises, licensed to serve and/or sell alcoholic beverages by the Nebraska Liquor Control Commission.
 - (H) Any publicly-owned facility, including but not limited to fire stations, police stations, City offices or structures which are periodically used by members of the general public for private or public gatherings.
- (C) A person commits a misdemeanor if that person causes or permits the operation, establishment, substantial enlargement, or transfer of ownership or control of a sexually oriented business within 400 feet of another sexually oriented business.
- (D) For the purpose of subsection B of this Section, measurement shall be made in a straight line, without regard to the intervening structures or objects, from the nearest portion of the building or structure used as the part of the premises where a sexually oriented business is conducted, to the nearest property line of the premises of a use listed in subsection B. Presence of a City, county or other political subdivision boundary shall be irrelevant for the purposes of calculating and applying the distance requirements of this Section.
- (E) Any person found guilty of any violation of this ordinance shall be subject to a fine of not less than \$100 per violation. A separate offense and violation shall be deemed committed on each day of which a violation occurs or continues. In the alternative, the City may enjoin such activities which are in violation of this ordinance.
- (F) Any sexually oriented business lawfully operating on January 1, 2006, that is in violation of any of subsections A through F of this Section shall be deemed a nonconforming use. The nonconforming use will be permitted to continue for a period not to exceed one year, unless sooner terminated for any reason or voluntarily discontinued for a period of thirty (3) days or more. Such nonconforming uses shall not be increased, enlarged, extended, or altered except that the use may be changed to a conforming use.

SECTION IV: SEVERABILITY.

If any section of this ordinance is found to be unconstitutional or otherwise invalid, the validity of the remaining sections hereof shall not be affected.

SECTION V: EFFECTIVE DATE.

This ordinance shall become effective upon its passage and publication in pamphlet form as required by law.

Passed and approved this 24th day of February, 2006.

CITY OF FRIEND, NEBRASKA



By:

Roger C. Horne
MAYOR

Hebbie Gilmer
CITY CLERK