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ORDINANCE NO. 1215

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS, AMENDING CHAPTER XI OF THE CODE OF THE CITY OF MESQUITE, BY DECLARING THE EXPLOITATION OF SEX FOR COMMERCIAL PURPOSES A NUISANCE AND MAKING SAME UNLAWFUL; BY DECLARING THE PURPOSE AND INTENT THEREOF; BY PROVIDING SANCTIONS IN THE CASE OF VIOLATION HEREOF; BY PROVIDING FOR APPEAL; BY PROVIDING A SEVERABILITY CLAUSE; BY PROVIDING FOR A PENALTY NOT TO EXCEED TWO HUNDRED DOLLARS (\$200.00); AND DECLARING AN EMERGENCY.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS:

SECTION 1. That Chapter XI of the Code of the City of Mesquite is hereby amended by providing new Sections 4, 5, and 6, in all other respects to remain in full force and effect.

Section 11-4. Commercial Exploitation of Sex.

Exploitation of sex for commercial purposes is hereby declared to be detrimental to the health, welfare and morals of the inhabitants of the City of Mesquite and is hereby declared to be a nuisance and unlawful. For purposes of this ordinance, commercial exploitation of sex shall include, but not be limited to, the use of or reliance upon an appeal to any interest in sex to promote or further any commercial activity in the City where such appeal is obscene, degrading, demeaning or tends to debase or lower the dignity of either sex for the purpose of profit or commercial gain or activity. Commercial exploitation of sex is expressly declared to include, but is not limited to, the employment of persons by commercial establishments to associate with, serve, sell to or be seen by patrons where such employees are required, encouraged, or permitted to dress, display themselves or perform in such a manner as to call attention to their sex or promote

and encourage an interest in sex. For purposes of this paragraph, it shall not be deemed to be intended to call attention to one's sex or promote and encourage an interest in sex for employees to dress according to that mode traditionally accepted as pertaining to that employee's sex and in accordance with physical requirements and environment, such as the wearing of swim suits by lifeguards, or sportswear by athletes; provided, however, that clothing shall not be immodest or unnecessarily revealing. In addition to the requirements of the State Penal Code, employees of commercial establishments that associate with, sell to, serve or are seen by patrons or potential customers shall not expose the buttocks or the female breasts, either partially or altogether, and whether or not through the use of transparent material or "pasties".

Section 11-5.

It is further declared unlawful and a nuisance for any person, corporation, association or establishment to sell, offer for sale or display printed matter or photographs or any type of reproductions or portrayal or a representation of a reproduction or portrayal of matter that is obscene, an affront to public decency or is calculated to debase or demean or lessen the dignity of either or both sexes from, at or in furtherance of any commercial operation, venture or establishment except where such activity is beyond the control of the City of Mesquite due to such activity being interstate commerce as such term is judicially defined.

It is the intent of this section that not only matter made unlawful by the Texas Penal Code, but also matter that the sale, exchange or display thereof for profit or commercial purposes tends to and is calculated to debase, demean and lessen the dignity of either or both sexes and particularly that of the female sex, by representing, pretending, declaring, or intimating that the privilege of enjoyment of sex or the viewing of matters relating thereto is merely or primarily a matter of money or commerce or that members of either sex and particularly those of the female sex are

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"playthings", without morals or dignity, willing to exchange their dignity for wealth or comfort or similar suggestions, where such representations, pretenses, declarations, intimations or suggestions are made not for the purpose of bona fide communication of ideas or beliefs, but are frivolous, slanderous, insulting, or humiliating and are designed, calculated or trafficked in for the purpose of deriving gain or furthering commercial purposes at the expense of members of such sex generally; and includes, but is not limited to photographs, drawings, pictures, magazines and other printed matter and visual representations of matter projected upon a screen or other surface or materials for such, depicting sex acts, nudity or partial nudity, lewd behavior such as so called "skin flick" or "dirty" movies and matters of similar nature and import be prohibited and declared a nuisance in order that members of either or both sexes shall not be victimized for private gain or commercial purposes.

It is not the intent of this Section to prohibit or deny the bona fide written or pictorial communication of ideas where the idea sought or calculated to be communicated rather than the method or degree of detail is the dominant appeal of such communications or where such communications is for the purpose of conveying serious and useful information, the need for which outweighs the consideration for protection of members of the sexes and their dignity, considering the circumstances of the situation.

Section 11-6.

Pursuant to authority delegated to the governing body under Article XI, Chapter V, of the Texas Constitution and Article 1175, Vernon's Annotated Civil Statutes, Paragraphs 19, 22, 23, 24 and 34, the following measures are hereby adopted, in addition to the penal provision hereof, to abate nuisances arising hereunder.

1. Any person, organization, association or entity violating this ordinance shall be notified to cease and desist immediately.

2. If such party does not agree that such actually constituted a nuisance he may so state and give notice in writing immediately of appeal to the City Council. Upon such appeal the Chief of Police shall communicate such appeal to the Council. Such appeal shall not suspend any criminal charges arising out of this ordinance or other law or statute, but action of a civil nature shall be deferred until such appeal is heard by the City Council, either in regular or special session. It is expressly declared that the hearing of an appeal hereunder constitutes an emergency and is an exception to the seventy-two (72) hour notice requirement if so found by the Council.

3. Upon hearing of appeal by the City Council and a finding that an activity constitutes a nuisance the Council shall order same abated forthwith or within such time as may be deemed appropriate, having regard to the effect upon the public safety, health and welfare of the community and the victims, if any.

4. Should any party fail to cease and desist creating and maintaining a nuisance within the time allowed by the Council, the Council may enforce its decree by one or more of the following:
 - a. Authorize the City Attorney to file suit in the District Court for injunctive relief.
 - b. Discontinue the furnishing of utility services provided by the City to the premises where such nuisance exists.
 - c. Revoke the certificate of occupancy of the premises where such nuisance exists and prohibit the furnishing of utility service by any public utility holding a franchise for use of City streets and alleys.
 - d. Prohibit the use of City streets, alleys and public ways for access to such premises during the existence of such nuisance or in furtherance thereof.

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The City Council, in hearing an appeal and determining the measures necessary to abate an alleged nuisance shall act in a judicial capacity and their decision shall be final if there is substantial evidence to support their action thereunder. In the event of appeal of the Council's decision to the District Court the action of the Council in abating the nuisance shall be deemed the status quo and shall not be deferred or suspended by appeal.

In the event notice to abate a nuisance hereunder is given by the Chief of Police and no notice of appeal to the City Council is given, all of the foregoing remedies shall be available to the City Manager to enforce such notice; provided, however, that an aggrieved party may appeal the imposition of any of the said measures to the City Council after having failed to appeal the determination of a nuisance, but in such case must forego the activity complained of or suffer imposition of the remedy until the appeal is heard by the Council.

SECTION 2. It is the intent of this ordinance that the dignity of the individual and particularly, but not only, that of the female sex, be preserved and protected from exploitation by those who would debase and abuse same for monetary considerations, and that those acts that tend to do so be declared a nuisance when employed as commercial ventures. It is not the intent of this ordinance to regulate the dress or tastes of private individuals in the pursuit of their private affairs or legitimate sports and athletic and related activities.

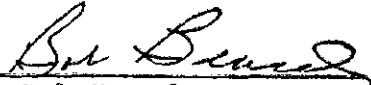
Commercial activity may, however, consist of activity by private individuals, either single or in groups, whether by an entity or association organized as a non-profit organization or private club or otherwise, if the activity consists of the sale, exchange or furnishing of goods, wares, property or service to persons or parties other than members of their immediate family or household.

SECTION 3. Should any word, phrase, sentence, paragraph or section of this ordinance be held to be invalid or unconstitutional, the remaining provisions of this ordinance shall remain in full force and effect.

SECTION 4. Any person, firm, or corporation violating any of the provisions of this ordinance shall be deemed to be guilty of a Class C Misdemeanor and upon conviction in the Municipal Court shall be subject to a fine not to exceed Two Hundred Dollars (\$200.00) for each offense.

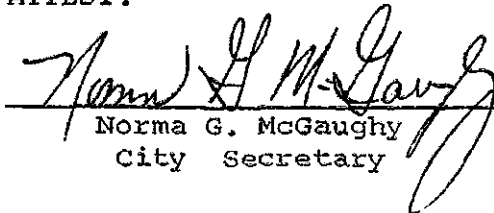
SECTION 5. The fact that the laws of the State of Texas and the ordinances of the City of Mesquite are inadequate to prevent the exploitation of the sexes and particularly those of the female sex and the fact that there are those that would, for the sake of profit or the furtherance of commercial activity, debase and demean the dignity of such persons creates an urgency and an emergency and requires that this ordinance shall take effect immediately from and after its passage and the publication of the caption of said ordinance as the law in such cases provides.

DULY PASSED AND APPROVED by the City Council of the City of Mesquite, Texas, on this the 21 day of October , A.D., 1974.

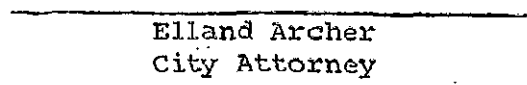


Bob Beard
Mayor

ATTEST:


Norma G. McGaughy
City Secretary

APPROVED AS TO FORM:


Elland Archer
City Attorney