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ORDINANCE NO. 2612

AN ORDINANCE OF THE CITY OF MESQUITE, TEXAS, AMENDING THE CODE OF THE CITY OF MESQUITE BY ADOPTING A NEW SECTION 13-10.007, SEXUALLY ORIENTED BUSINESSES WITH DEFINITIONS AND RELATING TO LICENSE REQUIREMENTS; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR A PENALTY; AND DECLARING AN EMERGENCY.

WHEREAS, Article 1175, Section 23, of the Revised Civil Statutes of Texas authorizes home rule cities to license any lawful business, occupation, or calling that is susceptible to the control of the police power; and

WHEREAS, 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; and

WHEREAS, the City has reviewed reports compiled by other cities on the effect of sexually oriented businesses on a neighborhood and the information contained within those reports is relevant to the problem of dealing with sexually oriented businesses; and

WHEREAS, studies completed by numerous cities indicate that sexually oriented businesses are frequently used for unlawful sexual activities and sexual liaisons of a casual nature, that a substantial number of arrests for sexually related crimes are made in and around sexually oriented business establishments, and that 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 citizens; and

WHEREAS, licensing is a legitimate and reasonable means of accountability to ensure that operators of sexually oriented businesses comply with reasonable regulations and to ensure that operators do not knowingly allow their establishments to be used as places of illegal sexual activity or solicitation; and

WHEREAS, the City Council believes it is in the interest of the public safety and welfare to prohibit persons convicted of certain crimes from engaging in the occupation of operating a sexually oriented business; and

WHEREAS, the City Council, in accordance with Article 6252-13c of Texas Revised Civil Statutes, has considered the following criteria involving certain crimes:

- (a) the nature and seriousness of the crime;
- (b) the relationship of the crimes to the purposes for requiring a license to engage in the occupation;
- (c) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; and
- (d) the relationship of the crimes to the duties and discharge the responsibilities of the licensed occupation; and

WHEREAS, the City Council has determined that the crimes listed in Section 13-10.007 of Chapter 13-Offenses-Miscellaneous, "Sexually Oriented Businesses," as set forth in the proposed ordinance, are serious crimes which are directly related to the duties and responsibilities of the occupation of operating a sexually oriented business and has further determined that the very nature of the occupation of operating a sexually oriented business brings a person into constant contact with persons interested in sexually oriented materials and activities thereby giving the person repeated opportunities to commit offenses against public order and decency or crimes against the public health, safety, or morals should he be so inclined; and

WHEREAS, it is the opinion of the City Council that the listed crimes render a person unable, incompetent, and unfit to perform the duties and responsibilities accompanying the operation of a sexually oriented business in a manner that would promote the public safety and trust; and

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WHEREAS, the City Council has determined that no person who has been convicted of a crime listed in Section 13-10.007, as set forth in this ordinance, is presently fit to operate a sexually oriented business until the respective time periods designated in that section have expired.

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

SECTION 1. That Chapter 13 of the Code of the City of Mesquite is hereby amended as follows, in all other respects to remain in full force and effect:

A. A new Section 13-10.007, Sexually Oriented Businesses, is hereby adopted to read as follows, said Section is attached hereto as Exhibit "A".

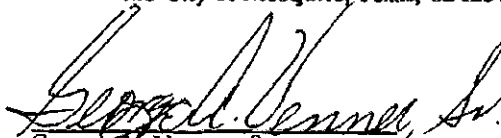
SECTION 2. That all persons required by this section to obtain a sexually oriented business license are hereby granted a grace period, beginning on the effective date of this ordinance and ending 30 days thereafter, in which to make application for the license. Those sexually oriented businesses which become nonconforming uses under the terms of this ordinance shall obtain a license annually as required by this section until the use is discontinued.

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 or terms 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 thousand (\$2,000.00) dollars for each offense.

SECTION 5. The fact that the Code of the City of Mesquite is inadequate for the protection of the inhabitants of the City creates an urgency and an emergency for the preservation of the public health, safety, and welfare of its citizens 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 the 3rd day of July, 1989.

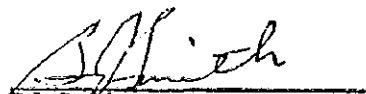


George A. Venner, Sr.
Mayor

ATTEST:

APPROVED:


Lynn Prugel
City Secretary


B.J. Smith
City Attorney

Sec. 13-10.007. Sexually Oriented Businesses - Definitions.

EXHIBIT "A"

The following definitions shall be applied to determine whether or not sexually oriented businesses exist or are proposed and are, therefore, subject to the regulations of section 13-10.006, to wit:

(a) Licensee means a person on whose name a license to operate a sexually oriented business has been issued, as well as any and all individuals listed as applicants on the application for a license.

(b) Person means an individual, proprietorship, partnership, corporation, association or other legal entity.

Sec. 13-10.007.1. License required.

(a) A person commits an offense if he operates a sexually oriented business without obtaining a valid license issued by the city for such business.

(b) An application for a license must be made to the city secretary on the form prescribed by that official. The application must be accompanied by a sketch or diagram showing the configuration of the premises, including a statement of the total floor space occupied by the total business and the total floor space occupied by the sexually oriented business portion of the business. The sketch need not be professionally prepared, but it must show the interior dimensions of the business to an accuracy of plus or minus six (6) inches.

(c) The applicant must be qualified according to the provisions of this chapter. The premises must be inspected and found to be in compliance with all applicable laws and ordinances by the health department, fire department and building inspection department and planning department. Application must be approved by the chief of police and city manager or designated representative.

(d) If a person who wishes to operate a sexually oriented business is an individual, he must sign the application for a license as the applicant. If the person who wishes to operate a sexually oriented business is an individual, each individual who has a twenty (20%) per cent or greater interest in the business must sign the application for a license as the applicant. Each applicant must be qualified under section 13-10.007.2(b), and each applicant shall be considered a licensee if a license is granted.

(e) Acquisition of a license under this chapter is a separate and distinct requirement from any other licensing requirement. Possession of some other license shall not relieve a person of the requirement to obtain a license pursuant to this chapter.

Sec. 13-10.007.2. Issuance of license.

(a) All applications for a license under this chapter shall be accompanied by a nonrefundable application fee of fifty (\$50.00) dollars. An application shall not be considered to have been filed until the fee is paid and all information required by the application form has been submitted.

(b) Upon approval by the city manager or his designated representative the city secretary shall issue the license to an applicant within thirty (30) days of the filing of the application, unless he/she finds one (1) or more of the following to be true:

- (1) An applicant is under eighteen (18) years of age.
- (2) An applicant or applicant's spouse is overdue in his payment to the city of taxes, fees, fines or penalties assessed against him or imposed upon him in relation to a sexually oriented business.

- (3) An applicant has failed to provide information reasonably necessary for issuance of the license or has falsely answered a question or request for information on the application form.
- (4) An applicant or an applicant's spouse has been convicted of a violation of a provision of this section, other than the offense of operating a sexually oriented business without a license, within two (2) years immediately preceding the application. The fact that a conviction is being appealed shall have no effect.
- (5) An applicant is residing with a person who has been denied a license by the city to operate a sexually oriented business within the preceding twelve (12) months or residing with a person whose license to operate a sexually oriented business has been revoked within the preceding twelve (12) months.
- (6) The premises to be used for the sexually oriented business have not been approved by the health department, fire department or building inspection department as being in compliance with applicable laws and ordinances.
- (7) An applicant or applicant's spouse has been convicted of a crime:
 - a. Involving:
 1. Any of the following offenses, as described in Chapter 43 of the Texas Penal Code:
 - (i) Prostitution;
 - (ii) Promotion of prostitution;
 - (iii) Aggravated promotion of prostitution;
 - (iv) Compelling prostitution;
 - (v) Obscenity;
 - (vi) Sale, distribution or display of harmful material to a minor;
 - (vii) Sexual performance by a child;
 - (viii) Possession of child pornography;
 2. Any of the following offenses, as described in Chapter 21 of the Texas Penal Code:
 - (i) Public lewdness;
 - (ii) Indecent exposure;
 - (iii) Indecency with a child;
 3. Sexual assault or aggravated sexual assault, as described in Chapter 22 of the Texas Penal Code;
 4. Incest, solicitation of a child or harboring a runaway child, as described in Chapter 25 of the Texas Penal Code;

5. Criminal attempt, conspiracy or solicitation to commit any of the following offenses;

- (i) Prostitution;
- (ii) Promotion of prostitution;
- (iii) Aggravated promotion of prostitution;
- (iv) Compelling prostitution;
- (v) Obscenity;
- (vi) Sale, distribution or display of harmful material to a minor;
- (vii) Sexual performance by a child;
- (viii) Possession of child pornography;

6. A similar crime to those described herein in a jurisdiction other than Texas;
b. For which:

- 1. Less than two (2) years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever if the later date, if the conviction is a misdemeanor offense;
- 2. Less than five (5) years have elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date, if the conviction is of a felony offense;
- 3. Less than five (5) years have elapsed since the date of the last conviction or the date of release from confinement for the last conviction, whichever is the later date, if the convictions are of two (2) or more misdemeanor offenses or combination of misdemeanor offenses occurring within any twenty-four month period.

(c) The fact that a conviction is being appealed shall have no effect on the disqualification of the applicant or applicant's spouse.

(d) An applicant who has been convicted or whose spouse has been convicted of an offense listed in subsection (b)(8) may qualify for a sexually oriented business license only when the time period required by subsection (b)(8)b has elapsed.

(e) The license, if granted shall state on its face the name of the person or persons to whom it is granted, the expiration date and the address of the sexually oriented business. The license shall be posted in a conspicuous place at or near the entrance to the sexually oriented businesses so that it can be easily read at any time.

Sec. 13-10.007.3. Expiration of license.

(a) Each license issued pursuant to this section shall expire on December 31st of each year. A license may be renewed by submission to the city secretary of an application on the form prescribed by such official and payment of a nonrefundable renewal procession fee of twenty-five (\$25.00) dollars at least thirty (30) days in advance of the expiration date. The renewal application must be reviewed in accordance with the same standards and requirements for an original license application, as set out in section 13-10.007.2.

(b) When a renewal application is denied, the applicant shall not be issued a license for one (1) year from the date of the denial. If, subsequent to denial, the city secretary finds that the basis for denial of the renewal license has been corrected or abated, the applicant may be granted a license if at least ninety (90) days elapsed since the date the denial final.

(c) The denial of a license renewal may be appealed in the same manner as a license suspension or revocation.

Sec. 13-10.007.4. Fees.

(a) The license fee shall be \$1,000.00 per year to operate a sexually oriented business.

(b) Payment of another license fee required by the city, state or any other entity shall not exempt the person from payment of the fee set out in this section. Nor shall payment of the license fee prescribed in this section exempt the person from payment of any other license fee.

Sec. 13-10.007.5. Suspension of license.

The city manager or his designated representative shall suspend a license for a period not to exceed thirty (30) days if he/she determines that a licensee or an employee of a licensee has:

- (a) Violated or is not in compliance with sections 13-10.007.4, 13-10.007.8, and 13-10-007.9;
- (b) Engaged in excessive use of alcoholic beverages while on the sexually oriented business premises;
- (c) Refused to allow an inspection of the sexually oriented business premises, as authorized by this section;
- (d) Knowingly permitted gambling by any person on the sexually oriented business premises;
- (e) Demonstrated inability to operate or manage a sexually oriented business in a peaceful and law abiding manner, those necessitating action by law enforcement officers.

Sec. 13-10.007.6. Revocation of license.

(a) The city manager or his designated representative shall revoke a license if a cause of suspense in section 13-10.007.5 occurs, and the license has been suspended within the preceding twelve (12) months.

(b) The city manager or his designated representative shall revoke a license if he/she determines that:

- (1) A licensee gave false or misleading information in the material submitted during the application or license renewal process;
- (2) A licensee or an employee has knowingly allowed possession, use or sale of controlled substances on the premises;
- (3) A licensee or an employee has knowingly allowed prostitution on the premises;
- (4) A licensee or an employee knowingly operated the sexually oriented business during a period of time when the licensee's license was suspended;
- (5) A licensee has been convicted of an offense listed in section 13-10.007.2(b)(7)a., for which the time period required in section 13-10.007.2(b)(7)b. has not elapsed;
- (6) On two (2) or more occasions within a twelve-month period, a person or persons committed an offense, occurring in or on the licensed premises of a crime listed in section 13-10.007.2(b)7a., for which a conviction has been obtained; and the person or persons were employees of the sexually oriented business at the time the offenses were committed;

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(c) The denial of a license renewal may be appealed in the same manner as a license suspension or revocation.

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- (b) Payment of another license fee required by the city, state or any other entity shall not exempt the person from payment of the fee set out in this section. Nor shall payment of the license fee prescribed in this section exempt the person from payment of any other license fee.

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- (b) Engaged in excessive use of alcoholic beverages while on the sexually oriented business premises;
- (c) Refused to allow an inspection of the sexually oriented business premises, as authorized by this section;
- (d) Knowingly permitted gambling by any person on the sexually oriented business premises;
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(b) The city manager or his designated representative shall revoke a license if he/she determines that:

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- (2) A licensee or an employee has knowingly allowed possession, use or sale of controlled substances on the premises;
- (3) A licensee or an employee has knowingly allowed prostitution on the premises;
- (4) A licensee or an employee knowingly operated the sexually oriented business during a period of time when the licensee's license was suspended;
- (5) A licensee has been convicted of an offense listed in section 13-10.007.2(b)(7)a., for which the time period required in section 13-10.007.2(b)(7)b. has not elapsed;
- (6) On two (2) or more occasions within a twelve-month period, a person or persons committed an offense, occurring in or on the licensed premises of a crime listed in section 13-10.007.2(b)7a., for which a conviction has been obtained; and the person or persons were employees of the sexually oriented business at the time the offenses were committed;

- (7) A licensee or an employee has knowingly allowed any act of sexual intercourse, sodomy, oral copulation, masturbation or sexual contact to occur in or on the licensed premises. The term "sexual contact" shall have the same meaning as it is defined in Section 21.01, Texas Penal Code; or
- (8) A licensee is delinquent in payment to the city of hotel occupancy taxes, ad valorem taxes or sales taxes related to the sexually oriented business.
- (c) The fact that a conviction is being appealed shall have no effect on the revocation of the license.
- (d) Subsection (b)(7) above does not apply to adult motels as a grounds for revoking the license, unless the licensee or employee knowingly allowed the act of sexual intercourse, sodomy, oral copulation, masturbation or sexual contact to occur in a public place or within public view.

(e) When the city manager or his designated representative revokes a license, the revocation shall continue for one (1) year; and the licensee shall not be issued a sexually oriented business license for one (1) year from the date the revocation became effective. If, subsequent to the revocation, the city manager or designated representative finds that the basis for the revocation has been corrected or abated, the applicant may be granted a license if at least ninety (90) days have elapsed since the date the revocation became effective. If the license was revoked under subsection (b)(5), an applicant may not be granted another license until the appropriate number of years required under section 13-10.007.2(b)(7)b. has elapsed since the termination of any sentence, parole or probation.

Sec. 13-10.007.7. Appeal.

(a) If a license is denied, suspended or revoked, the applicant shall be informed of that action in writing in a notice that also states the basis for the action. The aggrieved party may appeal that action to the city council by filing a notice of appeal with the city secretary's office within ten (10) days of receiving the notice of the decision to deny, suspend or revoke the license. In the notice of appeal, the appealing party shall clearly set out his reasons for believing that the action to deny, suspend or revoke the license was in error.

(b) After an appeal is filed, the city council shall conduct a public hearing on the appeal within thirty (30) days. Within thirty (30) days of closing the public hearing, the council shall make its decision on the appeal. A written notice setting out the council's decision shall be given to the appealing party. If the council fails to act within the time frame stated herein, the denial, suspension or revocation of the license shall be overturned.

Sec. 13-10.007.8. Transfer of license.

A licensee shall not transfer his license to another, nor shall a licensee operate a sexually oriented business under the authority of a license at any place other than the address designated in the application.

Sec. 13-10.007.9. Display of materials or performance to minors.

(a) In a business which is open to persons under the age of eighteen (18) years, all materials of any kind, including, but not limited to, books, magazines, video cassettes, films or photographs, which depict or describe specified sexual activities or specified anatomical areas, shall be segregated within the business to an area where persons under the age of eighteen (18) years do not have physical or visual access. A person commits an offense if he knowingly or recklessly allows a person under the age of eighteen (18) years in the area of the business where such materials are segregated.

(b) A person commits an offense if he knowingly or recklessly allows persons under the age of eighteen (18) years in any theaters, arcades or any area within a sexually oriented business where they may observe or view any display, performance or exhibition of a movie, video, photograph or live performance which depicts or describes specified sexual activities or specified anatomical areas.

Sec. 13-10.007.10. Additional regulations for nude model studios.

- (a) A nude model studio shall not employ any person under the age of eighteen (18) years.
- (b) A person under the age of eighteen (18) years commits an offense if he appears in a state of nudity in or on the premises of a nude model studio. It is a defense to prosecution under this subsection if the person under the age of eighteen (18) years was in a restroom not open to public view or to persons of the opposite sex.
- (c) A person commits an offense if he appears in a state of nudity or knowingly allows another to appear in a state of nudity in an area of a nude model studio premises which can be viewed from the public right-of-way.
- (d) A nude model studio shall not place or permit a bed, sofa or mattress in any room on the premises, except that a sofa may be placed in a reception room open to the public.

Sec. 13-10.007.11. Additional regulations for adult cabarets, adult theatres and adult motion picture theatres.

- (a) A person commits an offense if he knowingly allows a person under the age of eighteen (18) years to appear in a state of nudity in or on the premises of an adult cabaret, adult theatre or adult motion picture theatre.
- (b) A person under the age of eighteen (18) years commits an offense if he knowingly appears in a state of nudity in or on the premises of an adult cabaret, adult theatre or adult motion picture theatre.
- (c) It is a defense to prosecution under this section if the person under eighteen (18) years of age was in a restroom not open to public view or to persons of the opposite sex.

Sec. 13-10.007.12. Injunction.

A person who operates or causes to be operated a sexually oriented business without the license required under this section is subject to a suit for injunction, as well as prosecution for criminal violations.

Sec. 13-10.007.13. Defense to prosecution.

It is a defense to prosecution under section 13-10.007.1 that each item of descriptive, printed, film or video material offered for sale or rental, taken as a whole, contains serious literary, artistic, political or scientific value.

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