

ORDINANCE NO. 2-06

AN ORDINANCE OF THE CITY OF LIVERMORE PROVIDING REGULATION OF SEXUALLY ORIENTED BUSINESSES AND THEIR EMPLOYEES

WHEREAS, the City Council of the City of Livermore, Commonwealth of Kentucky, is concerned about the secondary effects and impact of sexually oriented businesses such as adult amusement arcades, adult book stores, adult cabarets, adult motels, adult motion picture theaters, adult stage theaters, commercial sexual entertainment centers, and escort agencies; and

WHEREAS, sexually oriented businesses require special supervision to protect and preserve the health, safety, and welfare of the patrons of such businesses as well as the citizens of the City; and

WHEREAS, the concern over sexually transmitted diseases is a legitimate health concern of the City and demands regular regulation of sexually oriented businesses to protect the health and well-being of the City's citizens; and

WHEREAS, there is convincing, documented evidence that sexually oriented businesses, because of their very nature, have a deleterious effect on both the existing surrounding businesses and the surrounding residential areas, causing increased crime and the diminution of property values; and

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

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

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LIVERMORE, COMMONWEALTH OF KENTUCKY:

SECTION I. PURPOSE AND FINDINGS

(a) Purpose: It is the purpose of this ordinance to regulate sexually oriented businesses to promote the health, safety, and general welfare of the citizens of the City, and to establish reasonable and uniform regulations relating to sexually oriented businesses. The provisions of this ordinance have neither the purpose nor the effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly, it is neither the intent nor the effect of this ordinance to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent nor the effect of this ordinance to condone or legitimize the distribution of obscene material.

(b) Findings: Based on evidence concerning the adverse secondary effects of adult uses on the community presented in reports made available to the City Council, and on findings incorporated in the case of Renton vs. Play Time Theaters, Inc., 475 U.S. 41 (1986), Young vs. American Mini Theaters, 427 U.S. 50 (1976), and Barnes vs. Glen Theater, Inc., 501 U.S. 560 (1991), and on studies in other communities including, but not limited to, Phoenix, Arizona; Minneapolis and Saint Paul, Minnesota; Houston, Texas; Indianapolis, Indiana; Amarillo, Texas; Garden Grove, California; Los Angeles, California; Whittier, California; Austin, Texas; Seattle, Washington; Oklahoma City, Oklahoma; Cleveland, Ohio; and Beaumont, Texas; as well as on findings from the report of Attorney General's Working Group on the regulation of sexually oriented businesses (June 6, 1989, State of Minnesota), the City Council finds:

1. Sexually oriented businesses lend themselves to ancillary unlawful and unhealthy activities that are presently uncontrolled by the operators of such establishments. Further, there is presently no mechanism to ensure that the owners of those establishments will be responsible for the activities that occur on their premises.

2. Certain employees of sexually oriented business defined in this ordinance as adult theaters and cabarets engage in higher incidents of certain types of illicit sexual behavior than employees of other establishments.

3. Sexual acts occur at sexually oriented businesses, especially those which provide private or semi-private booths or cubicles for viewing films, videos, or live sex shows.

4. Offering and providing space for such activities encourages occurrences thereof and thereby create unhealthy conditions.

5. Persons frequent certain adult theaters, adult arcades, and other sexually oriented businesses for the purpose of engaging in sex within the premises of such sexually oriented businesses.

6. At least fifty (50) communicable diseases may be spread by activities occurring in sexually oriented businesses.

7. Since 1981 and to the present, there has been an increasing, cumulative number of reported cases of AIDS caused by the human immunodeficiency virus (HIV) in the United States; and, through December, 2001, there have been 1,284,059 reported cases of AIDS in the United States.

8. As of December 31, 2003, there have been 4,071 reported cases of AIDS in the Commonwealth of Kentucky.

9. According to the best scientific evidence, AIDS and HIV infection, like syphilis and gonorrhea, are principally transmitted by sexual acts.

10. Sanitary conditions in some sexually oriented businesses are unhealthy, in part, because of the unregulated nature of the activities and the failure of the owners and operators of the facilities to self-regulate those activities and maintain those facilities.

11. Numerous studies and reports have determined that semen is found in the areas of sexually oriented businesses where persons view adult oriented films.

12. The findings noted in paragraphs 1 through 11 raise substantial governmental concerns.

13. Sexually oriented businesses, especially premises with adult booths, have operational characteristics which engender substantial government concerns.

14. Removal of doors on adult booths and requiring sufficient lighting on premises with adult booths advance a substantial governmental interest in curbing the illegal and unsanitary sexual activity occurring in adult theaters.

15. The general welfare, health, and safety of the citizens of the City will be promoted by the enactment of this ordinance.

SECTION II. DEFINITIONS

For purposes of this ordinance, certain terms and words are defined as follows, unless the context clearly indicates or requires a different meaning:

1. "Adult Amusement Arcade" means any place to which the public is permitted or invited wherein coin operated, slug operated, or for any form of consideration, electronically, electrically, or mechanically controlled still or motion picture machines, projectors, video or laser disk players, or other image producing devices are regularly maintained to display 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 Book Store," "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, slides, or other visual representations characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas"; or

(b) Instruments, devices, or paraphernalia designed for use in connection with "specified sexual activities."

A commercial establishment may have other principal business purposes that do not involve the offering for sale or rental of material depicting or describing "specified sexual activities" or "specified anatomical areas" and still be characterized as "Adult Book Store," "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 Book Store," "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 characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas."

3. "Adult Cabaret" means a nightclub, bar, restaurant, or similar commercial establishment which regularly features:

- (a) Persons who appear in a state of nudity or semi-nude; or
- (b) Live performances characterized by the exposure of "specified anatomical areas" or by "specified sexual activities"; or
- (c) Films, motion pictures, video cassettes, slides, or other photographic reproductions, characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas."

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 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 advertising the availability of such adult-type photographic reproductions; or
- (b) Offers a sleeping room for rent for a period of 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 less than ten (10) hours.

5. "Adult Motion Theater" means a commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, slides, or similar photographic reproductions are regularly shown and characterized by the dominant depiction or description of "specified sexual activities" or "specified anatomical areas."

6. "Adult Stage Show Theater" means a theater, concert hall, auditorium, or similar commercial establishment which regularly features persons who appear in a state of nudity or semi-nude, or live performances characterized by the exposure of "specified anatomical areas" or "specified sexual activities."

7. "City" shall mean City of Livermore, Kentucky.

8. "Employee" shall mean any 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.

9. "Entertainer" means any person who provides sexually oriented entertainment in a sexually oriented business, whether or not an employee of the business and whether or not a fee is charged or accepted for such entertainment.

10. "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.

11. "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.

12. "Establishment" means any sexually oriented business, whether existing or the opening of such business; the conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business; and the addition to any sexually oriented business.

13. "Manager" means any person who manages, directs, administers, or is in charge of the affairs and/or the conduct of a sexually oriented business.

14. "Nude," "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.

15. "Person" means an individual, proprietorship, partnership, corporation, association, or other legal entity.

16. "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, exhibited by a dress, blouse, skirt, leotard, bathing suit, or other wearing apparel provided the areola is not exposed in whole or in part.

17. "Sexual Activities" shall mean depiction of human genitals in a state of sexual stimulation, active human masturbation, sexual intercourse or sodomy, or holding or erotic touching of human genitals, pubic region, buttocks or breasts.

18. "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.

19. "Sexually Oriented Business" means an adult amusement arcade, adult book store, adult novelty store, adult video store, adult cabaret, adult motel, adult motion picture theater, adult stage theater, escort agency, or sexual encounter center.

20. "Regularly Features" or "Regularly Shown" means a consistent or substantial course of conduct such that the films or performances exhibited constitute a substantial portion of the films or performances offered as a part of the ongoing business of the sexually oriented business.

SECTION III. CLASSIFICATION

Sexually Oriented Businesses are classified as follows:

- (a) Adult amusement arcades;
- (b) Adult book stores, adult novelty stores, or adult video stores;
- (c) Adult cabarets;
- (d) Adult motels;
- (e) Adult motion picture theaters;
- (f) Adult stage theaters;
- (g) Escort agencies; and
- (h) Sexual encounter centers.

SECTION IV. GENERAL RESTRICTIONS, REQUIREMENTS, AND CONDITIONS FOR SEXUALLY ORIENTED BUSINESSES

All sexually oriented businesses classified under Section III of this ordinance shall comply with the following requirements:

(a) Except as otherwise provided by laws, which may be more restrictive, no owner or operator of an establishment shall knowingly permit a person under eighteen (18) years of age to be employed by or enter the establishment.

(b) An establishment must have an employee on duty at all times the business is open and must be positioned at a station in the premises located in such a manner that the entrance can be monitored at all times. Any person who reasonably appears to be under the age of eighteen (18) shall be requested to verify his/her age. All persons under the age of eighteen (18) discovered in the establishment shall be immediately escorted from the premises.

(c) No establishment, except for an adult motel, shall remain open at any time between the hours of one o'clock (1:00) a.m. and six o'clock (6:00) a.m.

SECTION V. REGULATIONS PERTAINING TO EXHIBITION OF SEXUALLY EXPLICIT FILMS, VIDEOS, OR LIVE ENTERTAINMENT IN VIEWING ROOMS.

(a) A person who operates or causes to be operated a sexually oriented business, other than an adult motel, which exhibits on the premises in a viewing room of less than one hundred fifty (150) square feet of floor space, a film, videocassette, live entertainment, or other video reproduction which depicts "specified sexual activities" or "specified anatomical areas," shall comply with the following requirements:

1. Any wall or partition, which is situated so as to create a viewing area in which any amusement device or viewing screen is located shall be constructed of not less than one hour fire-restriction material and shall contain no hole or other perforation.

2. The interior of the premises shall be configured in such a manner that there shall be an unobstructed view from a manager's or cashier's station of every area of the premises to which any patron is permitted access for any purpose, excluding restrooms. The view required in this section must be by direct line of sight from the manager or cashier's station.

3. No viewing room or booth shall be obstructed by any doors, curtains, partitions, walls, merchandise, display racks, or other materials. No patron shall be permitted access to any area of the premises which has been designated as an area to which patrons are not permitted.

4. No viewing room or booth shall be occupied by more than one person anytime. No owner, operator, or employee shall knowingly permit any viewing room or booth to be occupied by more than one person anytime.

5. No restroom shall contain any video reproduction devices or equipment.

6. The premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than ten (10) foot candles as measured at floor level.

7. It shall be the duty of the owner, operator, or employee to ensure that the illumination described above is maintained at all times any patron or customer is present in the premises.

8. No owner, operator, or employee shall allow openings of any kind to exist between viewing rooms or booths.

9. No person shall make or attempt to make an opening of any kind to exist between viewing rooms or booths.

10. The owner and/or employees shall, during each business day, cause the walls between the viewing booths to be regularly inspected to determine if any openings or holes exist.

11. All floor coverings in viewing rooms or booths shall be nonporous, easily cleanable surfaces, with no rugs or carpeting.

12. There must be at least one employee on duty and situated at the manager's station at all times any patron is present inside the premises.

(b) All sexually oriented businesses in operation in the City on the effective date of this ordinance shall comply with the configuration requirements of section V (a) (1) and (2) within one hundred twenty (120) days after the effective date of this ordinance.

SECTION VI. INSPECTION

At anytime occupied or open for business, all sexually oriented businesses shall permit representatives of the City, including representatives of the City Police Department, Sheriff's Department, Fire Department, Health Department, or other City departments or agencies, to inspect the premises of a sexually oriented business for the purpose of ensuring compliance with the law.

SECTION VII. REGULATIONS PERTAINING TO LIVE PERFORMANCES.

(a) All live performances in any sexually oriented business shall be on a designated performance area consisting of a stage or platform at least eighteen (18) inches above the immediate floor level and removed at least six (6) feet from any area in which any patrons are permitted.

(b) No person shall appear nude or in a state of nudity while engaged in any live performance on the premises of any sexually oriented business.

(c) No person shall appear semi-nude or in a semi-nude condition while engaged in any live performance on the premises of any sexually oriented business except on the stage or platform described in section VII (a) above.

(d) No entertainer or employee shall be permitted to have any physical contact with any patron during any performance.

(e) No entertainer or employee shall be visible from any public place outside the premises during any performance.

SECTION VIII. RECORD KEEPING REQUIREMENTS.

Each sexually oriented business shall maintain and retain for a period of two (2) years beyond the last date of employment, the date of birth, last known address, date of termination, and Social Security number of all persons employed by the sexually oriented business.

SECTION X. SEVERABILITY.

(a) All City ordinances, orders, resolutions, motions, or parts thereof, insofar as same may be in conflict herewith, are repealed.

(b) If any section, subsection, or clause of this ordinance shall be deemed unconstitutional or otherwise invalid, the validity of the remaining sections, subsections, and clauses shall not be affected.

SECTION XI. PENALTIES.

Any person who violates any provision of this ordinance shall be guilty of a misdemeanor and subject to a fine of not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00), or be imprisoned in the county jail for not more than twelve (12) months, or both.

SECTION XII. EFFECTIVE DATE.

This ordinance shall be read on two separate days and become effective upon publication pursuant to KRS Chapter 424.

Motion to record was made by David Martin, seconded by Mike Monroe, at a regular meeting on August 10, 2006.

Motion for passage was made by Shirley Sartain, seconded by David Martin, at a regular meeting on September 14, 2006, with 5 members present and 5 voting for passage of this Ordinance.

Eldon Eaton
Mayor, City of Livermore

ATTEST:

Stacy Maddox
Livermore City Clerk