

ORDINANCE NO. 361

AN ORDINANCE ESTABLISHING LICENSING REQUIREMENTS AND REGULATIONS FOR SEXUALLY ORIENTED BUSINESSES WITHIN THE CITY OF BARLING, ARKANSAS

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Whereas, sexually oriented businesses require special supervision of the City of Barling, Arkansas, in order to protect and preserve the health, safety, and welfare of the patrons of such businesses as well as the citizens of the City of Barling, Arkansas; and

Whereas, The Barling Board of Directors finds that sexually oriented businesses, as a category of establishments, are frequently used for illegal conduct and for unlawful sexual activities, including prostitution and sexual liaisons of a casual nature; and

Whereas, there is convincing documented evidence that sexually oriented businesses, as a category of establishments, have deleterious secondary effects and are often associated with crime and the downgrading of property values; and

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

Whereas, it is not the intent of this ordinance to suppress any speech activities protected by the U. S. Constitution or the Arkansas Constitution, but to enact an ordinance to further the content-neutral governmental interests of the City of Barling, Arkansas, to-wit, the controlling of secondary effects of sexually oriented businesses.

NOW, THEREFORE, BE IT AND ORDAINED AND ENACTED by the Barling Board of Directors, as follows:

SECTION 1: Rationale and findings. The Board of Directors and Mayor have been provided with copies of Supreme Court cases interpreting the rights of operators and owners of sexually oriented businesses. These cases include *City of Littleton v. Z.J. Gifts D-4, L.L.C.*, 124 S. Ct. 2219 (June 7, 2004); *City of Los Angeles v. Alameda Books, Inc.*, 535 U. S. 425 (2002); *Pap's A.M. v. City of Erie*, 529 U. S. 277 (2000);

SECTION 2: Definitions. For the purposes of this chapter, the words and phrases defined in the sections hereunder shall have the meanings herein respectively ascribed to them unless a different meaning is clearly indicated by the context.

“*Enforcement-Officer*” means the Chief of Police.

“*Adult Bookstore 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: books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, compact discs, digital video discs, slides, or other visual representations which are characterized by their emphasis upon the display of “specified sexual activities: or specified anatomical areas.”

A “*principal purpose*”: means that the commercial establishment:

- (a) has a substantial portion of its displayed merchandise which consists of said items, or
- (b) has a substantial portion of the wholesale value of its displayed merchandise which consists of said items, or
- (c) has a substantial portion of the retail value of its displayed merchandise which consists of said items, or
- (d) derives a substantial portion of its revenues from the sale or rental, for any form of consideration of said items; or
- (e) maintains a substantial section of its interior business space for the sale or rental of said items; or
- (f) maintains an “adult arcade,” which means any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are regularly maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are characterized by their emphasis upon matter exhibiting “specified sexual activities” or specified anatomical areas.”

“*Adult Cabaret*” means a nightclub, bar, juice bar, restaurant, bottle club, or other commercial establishment, whether or not alcoholic beverages are served, which regularly features persons who appear semi-nude.

“*Adult Motel*” means a motel, hotel, 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, other photographic reproductions, or live performances which

are characterized by the display of “specified sexual activities” or “specified anatomical areas”; and which advertises the availability of such material by means of a sign visible from the public right-of-way, or by means of any on or off-premises advertising, including but not limited to, newspapers, magazines, pamphlets or leaflets, radio or television; or

- (b) offers a sleeping room for rent for a period of time that is less than 10 hours; or
- (c) allows a tenant or occupant of a sleeping room to subrent the room for a period of time that is less than 10 hours.

“*Adult Motion Picture Theater*” means a commercial establishment where films, motion pictures, videocassettes, slides, or similar photographic reproductions which are characterized by their emphasis upon the display of “specified sexual activities” or specified anatomical areas are regularly shown to more than five persons for any form of consideration.

“*Characterized by*” means describing the essential character or quality of an item. As applied in this ordinance, no business shall be classified as a sexually oriented business by virtue of showing, selling, or renting materials rated NC-17 or R by the Motion Picture Association of America.

“*Licensee*” shall mean a person in whose name a license to operate a sexually oriented business has been issued.

“*Nudity or a State of Nudity*” means the showing of the human male or female genitals or anus with less than a fully opaque covering.

“*Premises*” means the real property upon which the sexually oriented business is located.

“*Regularly*” means and refers to the consistent and repeated doing of the act so described.

“*Sexual Device*” means any three (3) dimensional object designed and marketed for stimulation of the male or female human genital organ or anus or for sadomasochistic use or abuse of oneself or others and shall include devices such as dildos, vibrators, penis pumps, and physical representations of the human genital organs.

“*Sexual Device Shop*” means a commercial establishment that regularly features sexual devices. Nothing in this definition shall be construed to include any pharmacy, drug store, medical clinic, or any establishment primarily dedicated to providing medical or healthcare products or services, nor shall this definition be construed to include commercial establishments which do not restrict access to any portion of their premises by reason of age.

“*Sexually Oriented Business*” means an “adult bookstore or adult video store,” and “adult cabaret,” an “adult motel,” an adult motion picture theater,” a “semi-nude model studio,” a “sexual device shop,” or a “sexual encounter center.”

“*Specified Criminal Activity*” means:

- (a) any of the following specified crimes for which less than five years elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date:
 - (1) [Sex Crimes] as defined in A.C.A. 5-14-101 et. seq.
 - (2) [Prostitution Crimes] as defined in A.C.A. 5-70-101 et. seq.
 - (3) [Obscenity Crimes] as defined in A. C. A. 5-68-301 et. seq.
 - (4) [Drug Crimes] as defined in A. C. A. 5-64-101 et. seq.
 - (5) [Racketeering] as defined in A.C.A. 5-42-201 et. seq.
- (b) any attempt, solicitation, or conspiracy to commit one of the foregoing offenses; or
- (c) any offense in another jurisdiction that, had the predicate act(s) been committed in Arkansas, would have constituted any of the foregoing offenses.

“*Specified Sexual Activity*” means any of the following:

- (a) intercourse, oral copulation, masturbation or sodomy; or
- (b) excretory functions as a part of or in connection with any of the activities described in (a) above.

“*Substantial*” means at least thirty-five percent (35%) of the item(s) so modified.

“*Transfer of Ownership or Control*” of a sexually oriented business shall mean any of the following:

- (a) The sale, lease, or sublease of the business;
- (b) The transfer of securities which constitute an influential interest in the business, whether by sale, exchange, or similar means; or
- (c) The establishment of a trust, gift, or other similar legal device which transfers the ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.

“*Viewing Room*” shall mean the room, booth, or area where a patron of sexually oriented business would ordinarily be positioned while watching a film, videocassette, or other video reproduction.

SECTION 3: License required.

- (a) It shall be unlawful for any person to operate a sexually oriented business in the City of Barling, Arkansas without a valid sexually oriented business license.
- (b) An applicant for a sexually oriented business license shall be filed in person at the office of the City of Barling, Arkansas. Application will be made on a form provided by the City Administrator. The application shall be signed and

notarized. An application shall be considered complete when it contains, for each person required to sign the application, the information required in Paragraphs 1 through 6 below,

- (1) The applicant's full true name and any other names used by the applicant in the preceding five (5) years.
- (2) Current business address or other mailing address of the applicant.
- (3) Written proof of age, in the form of a driver's license or a copy of a birth certificate accompanied by a picture identification document issued by a governmental agency.
- (4) If the application is for a sexually oriented business license, the business name, location, legal description, mailing address and phone number of the sexually oriented business, and the name and business address of the statutory agent or other agent authorized to receive service of process.
- (5) A statement of whether an applicant has been convicted of or has pled guilty or nolo contendere to a specified criminal activity as defined in this ordinance (Section 2), and if so, each specified criminal activity involved, including the date, place, and jurisdiction of each as well as the dates of conviction and release from confinement, where applicable.
- (6) A statement of whether any sexually oriented business in which applicant has had an influential interest, has, in the previous five (5) years (and at the time during which the applicant had the influential interest):
 - (i.) been declared by a court of law to be a nuisance; or
 - (ii.) been subject to a court order of closure or padlocking.

The information provided pursuant to Paragraphs 1 through 6 of this subsection shall be supplemented in writing by certified mail, return receipt requested, to the Barling Police Chief within ten (10) working days of change of circumstances which would render the information originally submitted false or incomplete.

SECTION 4: Issuance of license.

- (a) The Barling City Administrator shall issue a license unless:
 - (1) An applicant is less than eighteen (18) years of age.
 - (2) An applicant has failed to provide information as required by Section 3 for issuance of a license or has falsely answered a question or request for information on the application form.
 - (3) The license application fee required by this Chapter has not been paid.
 - (4) Any sexually oriented business in which the applicant has had an influential interest, has, in the previous five (5) years (and at a time during which the applicant had the influential interest):
 - (i.) been declared by a court of law to be a nuisance; or
 - (ii.) been subject to an order of closure or padlocking.

(5) An applicant has been convicted of or pled guilty or nolo contendere to a specified criminal activity, as defined in this ordinance.

(b) The license, if granted, shall state on its face the name of the person or persons to whom it is granted, the number of the license issued to the licensee(s), the expiration date, and the address of the sexually oriented business. The sexually oriented business license shall be posted in a conspicuous place at or near the entrance to the sexually oriented business.

SECTION 5: Fees. The initial license and annual renewal fees for sexually oriented business licenses shall be the same as for all other businesses.

SECTION 6: Inspection. Sexually oriented businesses and sexually oriented business employees shall permit the Chief of Police and his or her agents to inspect, from time to time on an occasional basis, the portions of the sexually oriented business premises where patrons are permitted, for the purpose of ensuring compliance with the specific regulations of this Chapter, during those times when the sexually oriented business is occupied by patrons or is open to the public. This section shall be narrowly construed by the City of Barling, Arkansas, to authorize reasonable inspections of the licensed premises pursuant to this chapter, but not to authorize a harassing or excessive pattern of inspections

SECTION 7: Transfer of license. A licensee shall not transfer his or her 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 sexually oriented business license application.

SECTION 8: Penalties and enforcement. The violation of this Ordinance may be punishable by a fine of up to \$500.00 and each day shall constitute a separate occurrence.

SECTION 9: Severability. In the event any portion of this Ordinance is determined to be invalid, the remaining portions shall be in full force and effect.

SECTION 10: Emergency Clause. It has been found that the effectiveness of the ordinance is necessary for the immediate enforcement of the above mentioned purposes and, therefore, an emergency is declared and this ordinance, being necessary for the preservation of the public peace, health and safety, shall be in force upon its passage and approval.

PASSED AND APPROVED this 9th day of February, 2010.


Jerry Barling, Mayor

ATTEST:


City Clerk