

ORDINANCE NO. 2860

Amended on the floor

AN ORDINANCE IMMEDIATELY ESTABLISHING INTERIM ZONING REGULATIONS WITHIN THE GREAT FALLS CITY LIMITS PROVIDING FOR CLASSIFYING AND DEFINING SEXUALLY ORIENTED BUSINESSES; PROVIDING FOR DISTANCE LIMITATION AND LOCATION RESTRICTIONS FOR SEXUALLY ORIENTED BUSINESSES AND PROVIDING FOR BUSINESSES DEEMED TO BE LEGAL NON CONFORMING USES THEREUNDER UNTIL THE ADOPTION OF A UNIFIED LAND DEVELOPMENT CODE FOR THE CITY OF GREAT FALLS.

BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF GREAT FALLS, MONTANA:

That Title 17, OCCGF, be amended to add thereto Chapter 95, Sections 010 through 090, pertaining to Sexually Oriented Business as follows:

17.95.010 Purpose and Intent. It is the purpose of this ordinance to regulate sexually oriented businesses to promote the health, safety, morals, and the general welfare of the citizens of the City of Great Falls and to establish reasonable uniform regulations to prevent the continued deleterious location and concentration of sexually oriented businesses within the City. The provisions of this ordinance have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly, it is not the intent or effect of this ordinance to restrict or deny access by adults to distributors and exhibitors or sexually oriented entertainment to their intended market. Neither is it the intent nor effect of this ordinance to condone or legitimize the distribution of obscene material.

17.95.020 Findings and Determination. Based upon analysis of sexually oriented business by Indianapolis, Indiana; Rochester, New York; and Denver, Colorado, the Great Falls City Commission hereby finds and determines that:

1. The establishment of adult uses in business districts which are immediately adjacent to and which serve residential neighborhoods has a deleterious effect on both the business and

residential segments of the neighborhood, causing or contributing to blight and a downgrading of property values.

2. The establishment of more than two (2) adult uses within six hundred (600) feet of each other has a deleterious effect on surrounding residential and business areas and the fostering of such businesses within a close proximity tends to create a “skid row” atmosphere.
3. The location of several adult uses in the same neighborhood tends to attract an undesirable quantity and quality of transients, a circumstance which adversely affects property values, causes an increase in crime and encourages residents and businesses to move elsewhere.
4. Concern for, and pride in, the orderly planning and development of a neighborhood should be encouraged and fostered in those persons comprising residential and business segments of that neighborhood.

17.95.030 Definitions. As used in this part, the following definitions apply;

A) Adult Arcade 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 maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguish or characterized by an emphasis on the depiction or description of “specified sexual activities” or “specified anatomical areas.”

B) Adult Book Store or Adult Video Store means a commercial establishment which, as one of its principal business purposes, offers for sale or rental for any form of consideration any one or more of the following:

1. Books, magazines, periodicals, or other printed matter, or photographs, films, motion pictures, video cassettes, video reproductions which are characterized by an emphasis on the depiction or descriptions of “specified sexual activities” or “specified anatomical areas”; or

2. instruments, devices or paraphernalia which are designed for use in connection with “specified sexual activities.”

C) Adult Cabaret means a nightclub, bar, restaurant, or similar commercial establishment which regularly features:

1. persons who appear semi-nude; or
2. live performances which are characterized by the exposure of “specified anatomical areas” or by “specified sexual activities;” or
3. film, motion pictures, video cassettes, slides or other photographic reproductions which are characterized by the exhibition or display of “specified sexual activities” or “specified anatomical areas.”

D) Adult Motel means a hotel, motel, or similar commercial establishment which:

1. offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slide, or other photographic reproductions which are characterized by an emphasis on the depiction or description of “specified sexual activities” or “specified anatomical areas”; and has a sign availability of this adult type of photographs reproduction; or
2. offers a sleeping room for rent for a period of time that is less than ten (10) hours; or
3. 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.

E) Adult Motion Picture Theater means a commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, slides, or similar photographic reproductions are regularly shown which are characterized by an emphasis on the depiction or description of “specified sexual activities” or “specified anatomical areas.”

F) Church or Other Place of Worship means a building which is used primarily for religious worship and related religious activities, including but not limited to churches, convents, monasteries, shrines, and temples.

- G) City means the City of Great Falls, Montana.
- H) Establishment means and includes any of the following:
1. the opening or commencement of any sexually oriented business as a new business; or
 2. the conversion of any existing business, whether or not a sexually oriented business, to any sexually oriented business; or
 3. the additions of any sexually oriented business to any other existing sexually oriented business; or
 4. the re-location of any sexually oriented business.
- I) Sexually Oriented Business means an “adult” arcade, “adult” book or video store, “adult” motion picture theater, “adult” cabarets, and “adult” motels.
- J) Specified Anatomical Areas means the male genital in the state of sexual arousal and/or the vulva or more intimate parts of the female genitals.
- K) Specified Sexual Activities means and includes any of the following:
1. the fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breast; or
 2. sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, or sodomy; or
 3. masturbation, actual or simulated; or
 4. excretory functions as part of or in connection with any of the activities set forth in 1 through 3 above.
- L) Transfer of Ownership or Control of sexually oriented business means and includes any of the following:
1. the sale, lease, or sublease of the businesses; or

2. the transfer of securities which constitute a controlling interest in the business, whether by sale, exchange, or similar means; or
3. 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.

17.95.040 Classification. Sexually oriented businesses are classified as follows:

- A) Adult Arcades;
- B) Adult Book Stores or Adult Video Stores;
- C) Adult Cabarets
- D) Adult Motels; and
- E) Adult Motion Picture Theaters

17.95.050 Location of Sexually Oriented Businesses.

A) Sexually oriented businesses are not a permitted use in any use district or zone established or described in this Title, except in the General Commercial District (17.33), First Industrial District (17.36) and Second Industrial District (17.39) where they shall be subject to the other provisions of this ordinance.

~~B) — No person, whether as a principal or agent, clerk or employee, either for himself or any other person, or as an officer of any corporation, or otherwise, shall place, maintain, own, or operate any sexually oriented business within three hundred fifty (350) feet of A, B or C, R-2, R-3, R-4, R-E, R-O, MH, or PUD Residential Districts.~~

B) No person, whether as a principal or agent, clerk or employee, either for himself or any other person, or as an officer of any corporation, or otherwise, shall place, maintain, own, or operate any sexually oriented business within six hundred (600) feet of A, B or C, R-2, R-3, R-4, R-E, R-O, MH, or PUD Residential Districts.

C) No person, whether as a principal or agent, clerk or employee, either for himself or any other person, or as an officer of any corporation, or otherwise, shall place, maintain, own or operate any sexually oriented business within six hundred (600) feet of the following land uses:

1. public library, or
2. public playground or park, or
3. public or private school and its grounds, from kindergarten through twelfth grade, or
4. a state licensed family day-care home, group day-care home, or day care center, or
5. church or other place of worship or

D) No person, whether as a principal or agent, clerk or employee, either for himself or any other person, or as an officer of any corporation, or otherwise, shall place, maintain own or operate any sexually oriented business within six hundred (600) feet of another sexually oriented business.

F) For purposes of this section, specified distances will be measured in a straight line, without regard to intervening structures or streets, from the property line of the sexually oriented business to the property line of the preceding land uses or zoning districts.

G) Should any use requiring distance separation voluntarily locate within a specified area of separation after a sexually oriented business has been granted an occupancy or building permit, the sexually oriented business shall not be required to relocate to maintain such separation.

17.95.060 Association With Other Uses. A sexually oriented business shall not sell, distribute, or allow consumption of alcohol on the premises.

17.95.070 Design Review Board Approval. Sexually Oriented Businesses are required to have exterior design and finishes; and landscaping, signage, lighting and parking plan must be approved by the Design Review Board before a building or occupancy permit can be granted.

17.95.080 Non-conforming Use – Amortization Period Established. Any sexually oriented business existing upon passage of this ordinance which does not comply

with the requirements established herein shall be deemed a legal non-conforming use subject to the provisions of Title 17, Chapter 78 of the City Code.

17.95.090 Repealed. All resolutions, ordinances, and sections of the City Code inconsistent herewith are hereby repealed.

17.95.110 Severability. If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect the other provisions of this ordinance which may be given effect without the invalid provisions or application, and, to this end, the provisions of this ordinance are declared to be severable.

17.95.120 Injunction. A person who operates or causes to be operated a sexually oriented business in violation of this part is subject to suit for injunction as well as prosecution for criminal violation.

PASSED AND ADOPTED by the City Commission of the City of Great Falls, Montana, on this 19th day of August, 2003.

Randy Gray, Mayor

ATTEST:

Melodi A. Wald, Deputy City Clerk

(SEAL OF CITY)

Approved as to form: City Attorney

State of Montana)
 County of Cascade : ss.
 City of Great Falls)

I, Melodi A. Wald, Deputy City Clerk of the City of Great Falls, Montana, do hereby certify that the foregoing Ordinance No. 2860 was placed on its final passage and passed by the Commission of the City of Great Falls, Montana, at a meeting thereof held on the 19th day of August, 2003, and approved by the Mayor of said City on the 19th day of August, 2003.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Seal of said City This _____ day of _____, 2003.

Melodi A. Wald, Deputy City Clerk

(SEAL OF CITY)

State of Montana)
 County of Cascade : ss.
 City of Great Falls)

Melodi A. Wald, being first duly sworn, deposes and says: That on the 19th day of August, 2003, and prior thereto, she was the City Clerk of the required by law and as prescribed and directed by the Commission, Ordinance No. 2860 of the City of Great Falls, in three conspicuous places within the limits of said City to-wit:

On the Bulletin Board, first floor Civic Center Building
 On the Bulletin Board, first floor, Cascade County Court House
 On the Bulletin Board, Great Falls Public Library

(SEAL OF CITY)

Melodi A. Wald, Deputy City Clerk