

COPY

ORDINANCE NO. _____

AN ORDINANCE AMENDING SECTION _____ OF THE HARRISON ZONING CODE, REGULATING THE LOCATION OF SEXUALLY ORIENTED BUSINESSES, DECLARING AN EMERGENCY.

WHEREAS, the Harrison City Council is aware that the location of a sexually oriented business in proximity to residences, churches, parks and recreation areas, hospitals and schools, etc. is likely to lead to increased criminal activity and adversely affect the value of nearby properties; and

WHEREAS, the Harrison City Council believes that sexually oriented business concentrated and located in family populated areas would cause a blight and deterioration and result in decreased tax revenues in the city.

NOW THEREFORE BE IT ORDAINED by the Harrison City Council, that Section _____ of the Harrison Zoning Code be established as follows:

SECTION 1 - Purpose and Intent:

It is the purpose of this section to regulate the location of sexually oriented businesses to promote the health, safety and general welfare of the citizens of the City, and to establish reasonable and uniform regulations to regulate the location 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 section 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, unless otherwise restricted by law.

SECTION 2 – Classifications and Definitions:

- (1) **Adult Arcade:** defined as any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically, or mechanically controlled image-producing devices are maintained to show images to five or fewer viewers at 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 Bookstore or Adult Video Store:** defined as 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:
- (a) Books, magazines, periodicals or other printed material, or photographs, films, motion pictures, video cassettes, or video reproductions, slides or other visual representations which depict or describe "SPECIFIED SEXUAL ACTIVITIES" or "SPECIFIED ANATOMICAL AREAS" or
 - (b) Instruments, devices, or paraphernalia which are designed for use in connection with "SPECIFIED SEXUAL ACTIVITIES"
- (3) **Adult Cabaret:** defined as a nightclub, bar, restaurant, or similar commercial establishment which regularly features:
- (a) Persons who appear in a state of nudity; or
 - (b) Live performances which are 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 which are characterized by the depiction of "SPECIFIED ANATOMICAL ACTIVITIES" or "SPECIFIED SEXUAL ACTIVITIES".
- (4) **Adult Picture Theater:** defined as 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 or distinguished by an emphasis on matter depicting, describing or relating to "SPECIFIED SEXUAL ACTIVITIES" or "SPECIFIED ANATOMICAL AREAS".
- (5) **Adult Theaters:** defined as a theater, concert hall, auditorium, or similar commercial establishment, which regularly features persons who appear in a state of nudity or live performances which are characterized by the exposure of "SPECIFIED ANATOMICAL AREAS" or "SPECIFIED SEXUAL ACTIVITIES".
- (6) **Nudity or State of Nudity:** defined as the appearance of the bare human buttock, anus, male genitals, female genitals, or female breast; or a state or dress which

fails to opaquely cover a human buttock, anus, male genitals, female genitals, or areola of the female breast.

- (7) **Person**: defined as an individual, proprietorship, partnership, corporation, association, or other legal entity.
- (8) **Semi-nude**: defined as a state of dress in which clothing covers no more than the genitals, pubic region and/or the female breast, as well as portions of the body covered by supporting straps or devices.
- (9) **Sexually Oriented Business**: defined as an adult arcade, adult bookstore or adult video store, adult cabaret, adult motion picture theater, or adult theater whose inventory, merchandise, or performances are characterized by a preponderance of "SPECIFIED SEXUAL ACTIVITIES" or "SPECIFIED ANATOMICAL AREAS".
- (10) **Special Use**: defined as a use which may be permitted in a zone where it is specifically listed, subject to the provisions of Article VI of the Harrison Zoning Ordinance.
- (11) **Specified Sexual Activities**: defined as the human genitals in a state of sexual stimulation or arousal; or acts of human masturbation, sexual intercourse, or sodomy; or fondling or other erotic touching of human genitals, public region, buttock, or female breast.
- (12) **Specified Anatomical Areas**: defined as less than completely and opaquely covered human genitals, public region, buttock, and female breast below a point immediately above the top of the areole; or human male genitals in a discernible turgid state, even if completely and opaquely covered.
- (13) **Residential District**: defined as any land within the City limits of Harrison zoned as R-1, R-2, R-3, R-4, as defined by this Ordinance.

SECTION 3 - Location of Sexually Oriented Businesses, and Offenses:

- (1) A person commits an offense if he operates or causes to be operated a sexually oriented business within 1,500 feet of:
 - (a) A church or other religious facility;
 - (b) A public or private day-care, elementary, secondary or post-secondary school;
 - (c) A boundary of a residential zone (R-1, R-2, R-3, R-4), or any single family or multiple family residential use;
 - (d) A public park (City, State, or Federal);
 - (e) A hospital or other medical facility; or

- (2) A person commits an offense if he causes or permits the operation, establishment, or maintenance of a sexually oriented business within 1000 feet of another sexually oriented business.

- (3) For the purpose of Subsection (1), measurement shall be made in a straight line, without regard to intervening structure or objects, from the nearest portion of the building or structure used as part of the premises where a sexually oriented business is conducted, to the nearest property line of the premises of a church or public or private elementary or secondary school, or college, or to the nearest boundary of an affected public park, residential district, residential lot, or hospital or other medical facility.

- (4) For the purposes of Subsection (2) of this section, the distance between any two sexually oriented businesses shall be measured in a straight line without regard to intervening structures or objects, from the closes exterior wall of the structure in which each business is located.

SECTION 4 - Zones in Which Sexually Oriented Businesses May Be Located:

In addition to the restrictions found in Section No.3 the City Council directs that sexually oriented businesses may only be located in the following zoning districts: C-3 (highway commercial), I-2(light industrial), and I-1 (heavy industrial).

SECTION 5 - Sexually Oriented Business – Special Use Permit Required:

All sexually oriented businesses shall be considered special uses pursuant to the Harrison Zoning Ordinance, and all sexually oriented businesses shall secure a special use permit from the Harrison City Council, after a public hearing to be held before the Harrison Planning Commission, in accordance with the rules and regulations of said Ordinance, prior to opening a business or being issued a business license.

SECTION 6 - Non-Conforming Sexually Oriented Business:

- (a) It is believed that there are currently no sexually oriented businesses located within the city limits of Harrison.
- (b) A lawfully operating sexually oriented business shall not be rendered illegal by the subsequent location of a church, a public or private school, a pre-school, a child care facility, a public park, residential zoning, or residential uses.

SECTION 7 – Enforcement:

- (1) Any person violating any part of this ordinance, upon conviction, shall be punished by a fine not to exceed \$1000.00.
- (2) If the violation is, in its nature, continuous in respect to time, the penalty for allowing the continuance thereof is a fine not to exceed two hundred fifty dollars (\$250.00) for each day that the same is unlawfully continued.
- (3) A person who operates or causes to be operated a sexually oriented business in violation of Section 3 of this Ordinance will be subject to a suit for injunction as well as prosecution for criminal violations.

SECTION 8: The provisions of this ordinance shall be added to the City's Zoning Ordinance, as an amendment.

SECTION 9 – Severability: The provisions of this ordinance are deemed to be severable. A finding that any provision of this ordinance is invalid shall not affect the validity of the remaining provisions of this ordinance.

Emergency Clause: The Harrison City Council has determined that there is an immediate need to regulate sexually oriented businesses, in order to protect the public peace, health, and safety, and therefore an emergency is declared to exist and this ordinance shall be in full force and effect from and after its passage.

PASSED and adopted this ____ day of _____, 2011

JEFF CROCKETT, Mayor

ATTEST:

JEFF PRATT, City Clerk