

ORDINANCE

AN ORDINANCE OF THE CITY OF MANITOU SPRINGS, COLORADO, IMPOSING A SIX-MONTH MORATORIUM ON APPLICATIONS FOR ADULT BUSINESS LICENSES OR ON ESTABLISHING A SEXUALLY ORIENTED BUSINESS IN THE CITY

WHEREAS, the City Council, the City Planning Commission, the City Attorney, and City staff are in the process of reviewing and crafting regulations governing the location and operation of sexually oriented businesses in the City;

WHEREAS, the City Council finds and determines that sexually oriented businesses can produce adverse secondary effects on the public health, safety and welfare, such as increased rates of certain crimes, including prostitution, robbery, assault, theft, loitering, pandering and public intoxication, the spread of sexually transmitted diseases, the debasement of both men and women, a decrease in property values for surrounding properties, and noise, parking and traffic problems;

WHEREAS, the City Council, in enacting this ordinance, expressly relies on the findings of the 10th Circuit Court of Appeals in *Z.J. Gifts D-2, LLC v. City of Aurora*, 136 F.3d 683 (10th Cir. 1998), *reversed on other grounds* at 311 F.3d 1220 (10th Cir. 2002), *reversed* at 541 U.S. 774 (2004), and *Essence, Inc. v. City of Federal Heights*, 285 F.3d 1272 (10th Cir. 2002), concerning the adverse secondary effects of sexually oriented businesses on communities in Colorado and elsewhere;

WHEREAS, the City Council, in enacting this ordinance, expressly relies on the findings of the United States Supreme Court in *City of Los Angeles v. Alameda Books, Inc.*, 535 U.S. 425 (2002), *Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986), and *Boos v. Barry*, 485 U.S. 312 (1988), concerning the adverse secondary effects of sexually oriented businesses on surrounding areas; and

WHEREAS, to reduce the adverse secondary effects caused by sexually oriented businesses in the City, the City Council deems it appropriate and necessary to impose a moratorium on the establishment of sexually oriented businesses in the City to provide reasonable time to amend the City's current regulations and to adopt new regulations for sexually oriented businesses.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MANITOU SPRINGS, COLORADO, THAT:

Section 1: Application and process moratorium. A moratorium is hereby imposed on the processing and approval of requests or applications for approvals, licenses, and permits for sexually oriented businesses in the City. No sexually oriented business shall located or operate in the City during the moratorium period. City staff is directed to refuse to process, review or approve any such applications during the moratorium period. For purposes of this Ordinance, the following definitions shall apply:

“Adult arcade” means any commercial establishment in which the public is permitted or invited where, for any form of consideration, one (1) or more motion picture projectors, slide projectors, image or virtual reality producing machines or similar machines, for viewing by five (5) or fewer persons per machine at any one time, are used regularly to show films, motion pictures, video cassettes, slides, digital images, electronic reproductions or photographs describing, simulating or depicting specified sexual activities or specified anatomical areas.

“Adult store” means any commercial establishment which, as one of its principal business purposes, offers for sale or rent for any form of consideration one or more of the following: (1) books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, slides, compact discs, digital video discs (DVDs), digital images or other visual representations which are characterized by their emphasis on the depiction or description of specified sexual activities or specified anatomical areas; or (2) instruments, devices or paraphernalia designed for use in connection with specified sexual activities.

“Adult cabaret” means a nightclub, bar, restaurant or similar commercial establishment which, for any form of consideration, regularly features live performances which are characterized by the exposure of specified anatomical areas or by the exhibition of specified sexual activities.

“Adult motion picture theater” means a commercial establishment which is characterized by the showing, for any form of consideration, of films, motion pictures, video cassettes, slides, compact discs, digital video discs (DVDs), digital images or other visual representations that have an emphasis on depicting or describing specified sexual activities or specified anatomical areas.

“Adult theater” means a theater, auditorium or similar commercial establishment which, for any form of consideration, regularly features live performances which are characterized by an emphasis on exposure of specified anatomical areas or specified sexual activities.

“Sexually oriented business” means an adult arcade, adult store, adult cabaret, adult motion picture theater or adult theater, except an establishment where a medical practitioner, psychologist, psychiatrist or similar professional licensed by the State of Colorado engages in approved and recognized sexual therapy.

“Specified anatomical areas” means any of the following: (1) human genitals, pubic region, buttocks, anus or female breasts below a point immediately above the top of the areola, which are not completely and opaquely covered; or (2) human male genitals in a discernibly turgid state, even if completely and opaquely covered.

Section 2: This moratorium shall be for six (6) months from the effective date of this Ordinance, unless repealed prior to that date or extended, if necessary, as determined by City Council.

Section 3: If any article, section, paragraph, sentence, clause or phrase of this ordinance is held to be unconstitutional or invalid for any reason, such decision shall not affect the validity or constitutionality of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each part or parts hereof irrespective of the fact that any one part or parts be declared unconstitutional or invalid.

Section 4: This Ordinance is necessary for the immediate preservation of the public health and safety, because the current City regulations governing sexually oriented business are inadequate to address secondary effects of such businesses. The six (6) month moratorium imposed by this Ordinance will provide the City Council with a reasonable opportunity to consider new legislation that will help reduce the secondary effects of such businesses within the City.

Section 6: This Ordinance shall take effect immediately upon approval.

Passed on first reading and ordered published this 21st day of February, 2017.

/s/ Donna Kast
City Clerk, Donna Kast

A Public Hearing on this ordinance will be held at the March 7, 2017 City Council meeting. The Council Meeting will be held at 6:00 P.M. at City Hall, 606 Manitou Avenue, Manitou Springs, Colorado.

Ordinance Published: February 23, 2017 (in full)
City's Official Website and City Hall

Passed on second reading and adopted by Council this 7th day of March, 2017.

/s/ Nicole Nicoletta
Mayor, Nicole Nicoletta

Attest: /s/ Donna Kast
City Clerk, Donna Kast

Ordinance Published: March 9th, 2017 (in full)
City's Official Website and City Hall