

ORDINANCE NO. 97

CITY OF BETHEL HEIGHTS, ARKANSAS

AN ORDINANCE REGULATING THE LOCATION OF SEXUALLY ORIENTED BUSINESS IN THE CITY OF BETHEL HEIGHTS, ARKANSAS.

WHEREAS, it is the intent and desire of the City Council to use the police powers of the City in conjunction with the efforts of the Prosecuting Attorney for the Nineteenth Judicial District of the State of Arkansas, in a joint effort to regulate the proliferation of sexually oriented businesses within the City of Bethel Heights; and

WHEREAS, at a public hearing held before the City Council, it was determined that these types of businesses should be located away from residential uses, churches, parks and schools because of the detrimental effects these businesses have on the various uses of the properties mentioned; and

WHEREAS, the City Council recognizes that the location of sexually orientated businesses in proximity to residential uses, churches, parks and schools may lead to increased levels of criminal activity in the vicinity of such sexually oriented businesses; and

WHEREAS, merchants in the City have expressed their concern about the adverse impact these businesses have on the value of their property and on their retail trade, and

WHEREAS, the City Council recognized that such consequences will reduce tax revenues to the City and may cause an area of blight and deterioration in the City; and

WHEREAS, the City Council recognizes that the location of sexually oriented businesses in a concentrated area will lead to the location of additional and similar uses within the same vicinity, thus multiplying the adverse impact they have on residential areas, churches, parks, and schools; and

WHEREAS, it is the desire of the City Council to regulate sexually oriented businesses at this time to prevent a deterioration of the community before the problem becomes critical.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BETHEL HEIGHTS, ARKANSAS:

SECTION 1. Purpose and Intent.

It is the purpose of this section 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 regulation to prevent the concentration of sexually oriented businesses within the City. The provisions of this chapter 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 nor 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. Definitions.

- (1) Adult Arcade- 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- 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 matter, or photographs, films, motion pictures, video cassettes or video reproduction, 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- 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 exposing of "specified anatomical areas" or by "specified sexual activities," or
 - (c) Films, motion pictures, videocassettes, slides or other photographic reproductions, which are characterized by the depiction of "specified sexual activities" or "specified anatomical areas."
- (4) Adult Motion Picture Theater- 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- 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-
 - (a) The appearance of the bare human buttocks, anus, male genitals, female genitals or female breast.
 - (b) A state of dress that fails to opaquely cover a human buttocks, anus, male genitals, female genitals or areola of the female breast.
- (7) Person- An individual, proprietorship, partnership, corporation, association or other legal entity.
- (8) Semi-nude- 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- 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) Specified Sexual Activities-

- (a) Human genitals in a state of sexual stimulation or arousal;
- (b) Act of human masturbation, sexual intercourse or sodomy;
- (c) Fondling or other erotic touching of human genitals, pubic region, buttocks or female breast.

(11) Specified Anatomical Areas-

- (a) Less than completely and opaquely covered human genitals, pubic region, buttock and female breast below a point immediately above the areola; and
- (b) Human male genitals in a discernible turgid state even if completely and opaquely covered.

(12) Residential District- Any land within the City limits of Bethel Heights zoned as R-1, R-2, or R-MH, and single family or multiple family residential use, as defined by the Ordinance.

(13) Conditional Use- A use which may be conditionally permitted in a zone, subject to the provisions of Section (2) c. and Section (4) of the City of Bethel Heights Ordinance No. 53, Zoning Regulations.

SECTION 3. Classification.

Sexually oriented businesses are classified as follows:

- (1) Adult Arcade;
- (2) Adult Bookstores or Adult Video Stores;
- (3) Adult Cabarets;
- (4) Adult Motion Picture Theaters;
- (5) Adult Theaters

SECTION 4. Conditional Use Permit Required.

(1) Sexually Oriented Businesses shall not be allowed in any zoning district except Commercial where they may be allowed as a conditional use pursuant to the Bethel Heights Ordinance No. 53 Section (3) b and Section (4) and all Sexually Oriented Businesses shall secure a Conditional use Permit from the Bethel Heights Planning Commission in accordance with the rules and regulations of said Code prior to opening a business or being issued an occupation license.

SECTION 5. Location of Sexually Oriented Businesses.

(1) A person commits an offense if that person operates or causes to be operated a sexually oriented business within 660 feet of.

- (a) A church, synagogue, mosque, temple or building which is used primarily for religious worship and related religious activities; or
- (b) A public or private elementary school, middle school, secondary or post-secondary school, pre-school, nursery school or child care facility. "School" includes the school grounds; or
- (c) A neighborhood park or family residential center; or
- (d) A Hospital, Medical Clinic or Nursing facility.

(2) A person commits an offense if that person causes or permits the operation, establishment or maintenance of a sexually oriented business within 660 feet of a boundary of a residential zone (R-1, R-2, R-MH,) or any single family or multiple family residential use.

(3) A person commits an offense if that person causes or permits the operation, establishment or maintenance of a sexually oriented business within 660 feet of another sexually oriented business, or within 660 feet of any room, building, premises, place or establishment that sells or dispenses any alcoholic beverage, which means, but is not limited to, distilled spirits, wine or beer.

(4) For the purposes of Subsection (1), (2), and (3), measurement shall be made in a straight line, without regard to intervening structures 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 use listed in subsection (1), (2), or (3). Presence of a City, County or other political subdivision boundary shall be irrelevant for purposes of calculating and applying the distance requirements of this section.

SECTION 6. Non-conforming sexually oriented business.

(1) A sexually oriented business lawfully operating as a conforming use is not rendered a non-conforming use by the subsequent location of a use defined in Section 5, (1), (2), or (3) within 660 feet of the property line of a sexually oriented business. This provision applies only to an ongoing sexually oriented business, not to a sexually oriented business that has been terminated for any reason or discontinued for a period of ninety (90) days or more subsequent to the location of the use defined in Section 5, (1), (2), or (3).

SECTION 7. Enforcement.

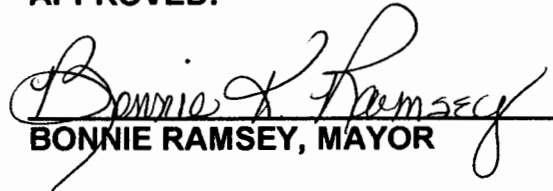
- (1) Any person violating any part of this ordinance, upon conviction, is punishable by a fine not to exceed \$500.00.
- (2) If the violation is, in its nature, continuous in respect to time, the penalty for allowing the continuance thereof is a fine not to exceed two hundred fifty dollars (\$250.00) 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 4 of this Ordinance will be subject to a suit for injunction as well as prosecution for criminal violations.

SECTION 8. Emergency Clause.

Due to the need to immediately protect the public health and welfare an emergency is hereby declared to exist and this Ordinance shall be in full force and effect from and after the date of its passage.

PASSED AND APPROVED THIS 17th DAY OF November, 1998.

APPROVED:


BONNIE RAMSEY, MAYOR

ATTEST:


CLERK/RECORDER/TREASURER