

ORDINANCE NO. 08-5474

AN ORDINANCE OF THE CITY OF BILLINGS, PROVIDING THAT THE BILLINGS, MONTANA CITY CODE BE AMENDED BY REVISING SECTION 27-611(c), AND SECTION 27-611(d); SETTING DEFINITIONS FOR SEXUALLY ORIENTED BUSINESS, ADOPT THE REVISIONS AS AN INTERIM ZONING REGULATION AND SET A TIME PERIOD FOR THE REGULATION TO BE EFFECTIVE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BILLINGS, MONTANA:

1. RECITALS. *Title 76, Chapter 2, Part 3, MCA*, provides for the enactment as a matter of urgency an interim zoning regulation. The City Council, City Attorney and staff have reviewed the proposed interim zoning regulation and determined there is a matter of urgency to be addressed by the interim zoning regulation. The City Council, in due deliberation, has considered the interim zoning regulation.

2. DESCRIPTION. The interim zoning regulation shall apply to all land within the City Of Billings.

3. INTERIM ZONING REGULATION. That Section 27-611(c) and 27-611(d) of the BMCC be amended to read as follows:

SEC. 27-611. SEXUALLY ORIENTED BUSINESSES.

(c) Definitions.

(1) 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 (5) or fewer persons per machine at any one (1) time, and where the images so displayed are distinguished or characterized by an emphasis on the depiction or description of "specified sexual activities" or "specified anatomical areas."

(2) Adult Book Store or Adult Video Store means a commercial establishment which, as one (1) of its principal business purposes, offers for sale or rental for any form of consideration any one (1) or more of the following:

- a. Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, video reproductions, slides, or other visual representations which are characterized by an emphasis on the depiction or description of "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 means a commercial establishment which regularly features:

- (a) Persons who appear nude or in a state of nudity or semi-nudity; or

(b) Live performances which are characterized by the exposure of specified anatomical areas or by the exhibition of specified sexual activities;

(3)(4) Adult Motel means a hotel, motel, 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, slides, 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 visible from the public right-of-way which advertises the availability of this adult type of photographic reproductions;
- b. Offers a sleeping room for rent for a period of time that is less than ten (10) hours; or
- c. 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.

(4)(5) 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."

(5)(6) 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.

(6) (7) City means the City of Billings, Montana.

(7) (8) County means Yellowstone County, Montana.

(8) (9) Establishment means and includes any of the following:

- a. The opening or commencement of any sexually oriented business as a new business;
- b. The conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business;
- c. The additions of any sexually oriented business to any other existing sexually oriented business; or
- d. The relocation of any sexually oriented business.

(10) Nudity or a state of nudity means (a) the appearance of a human bare buttock, anus, male genitals, female genitals, or areola or nipple of the female breast, or (b) a state of dress which fails to opaquely and fully cover human buttocks, anus, male or female genitals, pubic region or areola or nipple of the female breast.

(9)(11) Sexually Oriented Business means an "adult" arcade, "adult" book store, "adult" cabaret, "adult" video store, "adult" motel, or "adult" motion picture theater.

(10)(12) Specified Anatomical Area means the male genitals in a state of sexual arousal and/or the vulva or more intimate parts of the female genitals. Specified Sexual

(11)(13) Activities means and includes any of the following:

- a. The fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breasts;

- b. Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, or sodomy;
- c. Masturbation, actual or simulated; or
- d. Excretory functions as part of or in connection with any of the activities set forth in above (a) through (c).

(12)(14) Transfer of Ownership or Control of sexually oriented business means and includes any of the following:

- a. The sale, lease, or sublease of the business;
- b. The transfer of securities which constitute a controlling 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.

(d) Classification. Sexually oriented businesses are classified as follows:

- (1) Adult Arcades;
- (2) Adult Book Stores or Adult Video Stores;
- (3) Adult Cabarets
- (3) Adult Motels; and
- (4) Adult Motion Picture Theaters.

4. REPEALER. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

5. 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.

6. EFFECTIVE DATE. This ordinance shall be effective immediately upon first reading and up to six (6) months after final passage and as provided by law.

PASSED, ADOPTED AND APPROVED on first reading June 23, 2008.



ATTEST:

BY: Cari Martin
Cari Martin, City Clerk

CITY OF BILLINGS:

BY: Ron Tussing

Ron Tussing, Mayor

