



## **CITY COUNCIL COMMUNICATION**

March 24, 2009

**SUBJECT:** Amending Article III of Chapter 18, "Businesses" for Licensing Requirements of Sexually Oriented Businesses.

**SUBMITTED BY:** Mike Collins, Director of Planning & Development

**REFERENCE NO:** Ordinance No. 1844

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### **ACTION REQUESTED:**

Motion to approve Ordinance No.1844 amending Article III of Chapter 18 "Businesses" establishing Licensing Requirements for Sexually Oriented Businesses.

### **ALTERNATIVES:**

1. Approve the request with modifications
2. Deny the request

### **SUMMARY OF SUBJECT:**

City of Euless regulations related to sexually oriented businesses were adopted in March 1994 and can be found in the following sections of the Comprehensive Code of Ordinances: Chapter 18, Article III "Licensing Requirements for Sexually Oriented Businesses"; The Unified Development Code Chapter 84-Sec. 84-7 "Definitions and word usage", Sec. 84-84 "Permitted uses table" referencing Miscellaneous retail stores (adult or sexually oriented) and Modeling, photo studios, escort services and other adult or sexually oriented businesses or services establishes that SOBs are permitted through a Specific Use Permit in property zoned I-2 "Heavy Industrial District", and Special Condition Sec. 84-85 (ae) "Sexually oriented businesses", and Sec. 84-183 which establishes that SOBs cannot be located within 1000 feet of a church, public or private elementary or secondary school, public park, public library, residential use, property zoned for residential use or another sexually oriented business.

Since 1994, new federal case law has been established that provides municipalities with additional tools in order to address the negative secondary effects of sexually oriented businesses ("SOB") that would locate within a city. Staff is therefore recommending adoption of an ordinance that would amend Chapter 18 of the City of Euless, Texas Code of Ordinances. Required amendments to the Unified Development Code Chapter 84 will be brought forward for consideration by the Planning and Zoning Commission and the City Council at a future time. No changes are proposed that would change the zoning districts (Sec. 84-84) where the SOBs can make application for an

SUP or the minimum distance requirements (Sec. 84-183).

The City Council has been briefed on this proposed ordinance on several occasions by legal counsel, Bradford Bullock. The matter of regulating SOBs is very complicated, with many significant federal constitutional issues that come into play. Mr. Bullock has explained that SOBs enjoy various First Amendment protections; however, because various studies and cases recognized that these businesses create negative secondary effects, the courts have recognized that local governments have an interest in mitigating those effects through content neutral time, place and manner restrictions. A municipality can rely on evidence from other cities of negative secondary effects, including increased crime and reductions in property values. (Mr. Bullock and Mr. Mick McKamie were on the steering committee that authorized and defined the scope of the most recent study on negative secondary effects). “The Supreme Court has upheld definitions that manage to balance First Amendment protection and combat harmful secondary effects with time, place and manner regulations”.

Mr. Bullock has also explained that case law has established that non-obscene adult entertainment is a protected First Amendment activity for which local governments must make sites reasonably available. The proposed ordinance contains a new set of definitions to provide clarification and a better understanding of individual terms related to the complex regulation of SOBs. These definitions become very significant with respect to the issuance of a license to operate. The new ordinance specifically spells out what sexual acts, exposed parts of the human body, or what criminal convictions constitute the basis for denial of a permit. Adopted in this manner, Mr. Bullock believes that an ordinance containing such definitions can be upheld under a constitutional challenge because it has been recognized by the Courts that a “modicum of judgment” must be exercised by the regulators (municipality).

Additional information can be found on the attached Background and Purpose provided by Bradford Bullock.

**SUPPORTING DOCUMENTS:**

- Ordinance No. 1844
- Background and Purpose

**APPROVED BY:**

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City Manager’s Office

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City Secretary’s Office