



## **CITY COUNCIL COMMUNICATION**

April 28, 2009

**SUBJECT:** HOLD PUBLIC HEARING REGARDING A UNIFIED DEVELOPMENT CODE AND CONSIDER FIRST AND FINAL READING OF ORDINANCE NO. 1847

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

**REFERENCE NO:** 09-01-UDC

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### **ACTION REQUESTED:**

Receive public input and motion to approve a request by the City of Euless for a change to Code of Ordinances Chapter 84 "Unified Development Code" in order to amend Section 84-7 "Definitions and word usage" and approve Ordinance No. 1847, concurring with the Planning and Zoning Commission's 6-0 recommendation on April 7, 2009.

### **ALTERNATIVES:**

1. Open the Public Hearing and continue it to the next meeting.
2. Open, conduct, and close the Public Hearing
3. Approve the request – *simple majority*
4. Approve the request with modifications – *simple majority*
5. Deny the request – *simple majority*

### **SUMMARY OF SUBJECT:**

The City Council adopted amendments to regulations related to sexually oriented businesses (SOB's) on March 24, 2009 that can be found in the Comprehensive Code of Ordinances, Chapter 18, Article III "Licensing Requirements for Sexually Oriented Businesses". The amendments included primarily definitional changes and did not modify the zoning requirements or minimum distances that SOB's must maintain from other land uses. The adoption of these amendments has made it necessary to make certain changes to the Unified Development Code.

Specifically, other regulations related to SOB's can be found in the following sections of 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 SOB's are permitted through a Specific Use Permit in property zoned I-2 "Heavy Industrial District", Special Conditions Sec. 84-85 (ae) "Sexually oriented businesses", and Sec. 84-183 which establishes that SOB's can not 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.

The following words and definitions need to be changed to make them consistent with those adopted in the new Chapter 18:

*NUDITY or a STATE OF NUDITY* means a state of dress which fails to fully and opaquely cover the, anus, genitals, pubic region, or perineum anal region, or the exposure of any device, costume or covering that gives the realistic appearance of or simulates the anus, genitals, pubic region, or perineum anal region, regardless of whether the nipple and areola of the human female breast are exposed.

*SEMI-NUDE or SEMI-NUDITY or STATE OF SEMI-NUDITY* means the exposure of the post puberty female nipple or areola, or the exposure of any device, costume or covering that gives the realistic appearance of or simulates the post puberty female nipple or areola, so long as the following anatomical areas of an individual are fully and opaquely covered: the anus, genitals, pubic region and the perineum anal region of the human body. The term “semi-nude” shall not apply to an individual exposing a post puberty female nipple or areola in the process of breastfeeding a child under that person’s care.

*SEXUALLY ORIENTED BUSINESS* means an adult arcade, adult bookstore or adult video store, adult cabaret, adult motel, adult motion picture theater, escort agency, nude model studio, or other commercial enterprise for which the regular offering of a service or the selling, renting, or exhibiting of devices or any other items intended to provide sexual stimulation or sexual gratification to the customer constitutes twenty-five percent (25%) or more of the items in inventory and/or floor space of the Sexually Oriented Business. The term shall also mean any commercial enterprise that self-identifies as an adult arcade, adult bookstore, adult video store, adult cabaret, adult motel, adult motion picture theater, escort agency or nude model studio, regardless of whether the percentage of items in inventory and/or floor space constitute twenty-five percent (25%) or more of the total items in inventory and/or floor space.

The following information was provided by legal counsel to the City Council as background for it’s consideration of the amendments to Chapter 18.

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 create a new 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 have 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. The Supreme Court has upheld definitions that manage to balance First Amendment 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).

The Planning and Zoning Commission recommends approval of Ordinance No. 1847.

**SUPPORTING DOCUMENTS:**

- Ordinance No. 1847
- Draft Minutes – P & Z

**APPROVED BY:**

\_\_\_\_\_ **LG** \_\_\_\_\_

City Manager’s Office

\_\_\_\_\_ **SC** \_\_\_\_\_

City Secretary’s Office