

City of Houston, Texas, Ordinance No. 2018-790

AN ORDINANCE AMENDING ARTICLE II OF CHAPTER 28 OF THE CODE OF ORDINANCES, HOUSTON, TEXAS, RELATING TO THE ON PREMISE USE OF DEVICES OR ANY OTHER ITEMS INTENDED TO PROVIDE SEXUAL STIMULATION OR SEXUAL GRATIFICATION; CONTAINING FINDINGS AND OTHER PROVISIONS RELATING TO THE FOREGOING SUBJECT; PROVIDING FOR SEVERABILITY; AND DECLARING AN EMERGENCY.

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WHEREAS, the City of Houston, Texas (the "City") has established rules and regulations for sexually oriented businesses that are codified in Chapter 28 of the Code of Ordinances, Houston, Texas ("Chapter 28"); and

WHEREAS, the City Council finds it is necessary and appropriate to amend and update Chapter 28, Article II, related to Adult Arcades and Adult Mini-Theatres; and

WHEREAS, the Administration and Regulatory Department recommended the proposed amendments to the City Council for consideration and approval; **NOW, THEREFORE**,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HOUSTON, TEXAS:

Section 1. That the findings contained in the preamble of this Ordinance are determined to be true and correct and are hereby adopted as part of this Ordinance.

Section 2. That the definition of the term *adult arcade* in Section 28-81 of the Code of Ordinances, Houston, Texas, is hereby amended to read as follows:

"*Adult arcade* shall mean any premises that is subject to regulation under Chapter 243 of the Local Government Code, as amended, to which members of the public or members of any club, group or association are admitted and permitted to use one or more arcade devices on the premises."

Section 3. That the definition of the term *arcade device* in Section 28-81 of the Code of Ordinances, Houston, Texas, is hereby amended by adding a new sentence that reads as follows:

"Arcade device shall also mean an anthropomorphic device or object that is utilized for entertainment with one or more persons."

Section 4. That Items (3) and (4) of the definition of the term *entertainment* in Section 28-81 of the Code of Ordinances, Houston, Texas, is hereby amended to read as follows:

- "(3) Any combination of the foregoing, in which the specified anatomical areas or specified sexual activities are depicted; or
- (4) Use of an arcade device for any specified sexual activities."

Section 5. That the definition of the term *permit* in Section 28-81 of the Code of Ordinances, Houston, Texas, is hereby amended to read as follows:

"*Permit* shall mean a current, valid permit issued by the director under this article to an operator for an adult arcade or adult mini-theatre."

Section 6. That Item (4) of the definition of the term *specified sexual activities* in Section 28-81 of the Code of Ordinances, Houston, Texas, is hereby amended to read as follows:

- "(4) Any of the foregoing with an arcade device."

Section 7. That Section 28-91 of the Code of Ordinances, Houston, Texas, is hereby amended by inserting a new Subsection (b) to read as follows and redesignating the subsequent Subsections accordingly:

"(b) It shall be unlawful for any person to own, operate, manage or conduct any business in an adult arcade or adult mini-theatre unless there is a permit for the sexually oriented business enterprise pursuant to section 28-122 of this Code and Tex. Loc. Gov't Code section 243.002."

Section 8. That the newly redesignated Subsection (d) of Section 28-91 of the Code of Ordinances, Houston, Texas, is hereby amended to read as follows:

"(d) In any prosecution under subsections (a) and (b) of this section, it shall be presumed that there was no permit at the time of the

alleged offense, unless a permit was then posted as provided in subsection (c), above.”

Section 9. That Section 28-98 of the Code of Ordinances, Houston, Texas, is hereby amended to read as follows:

“Sec. 28-98. Conduct in adult arcades or adult mini-theatres.

It shall be unlawful for the owners or operator and it shall also be unlawful for any agent or employee present in an adult arcade or adult mini-theatre to knowingly allow or permit any act of sexual intercourse, sodomy, oral copulation, indecent exposure, lewd conduct or masturbation with or without an individual or an arcade device to occur in the adult arcade or adult mini-theatre or to knowingly allow or permit the adult arcade or adult mini-theatre to be used as a place in which solicitation for sexual intercourse, sodomy or oral copulation occur.”

Section 10. That Division 2 of Article II of Chapter 28 of the Code of Ordinances, Houston, Texas, is hereby amended by adding a new Section 28-100 to read as follows:

“Sec. 28-100. Authority to file suit.

The city attorney is hereby authorized to file suit to enjoin the violation of this article.”

Section 11. That the first sentence of Subsection (a)(3) of Section 28-111 of the Code of Ordinances, Houston, Texas, is hereby amended to read as follows:

“That the operator of the adult arcade or adult mini-theatre has knowingly allowed or permitted any act of sexual intercourse, sodomy, oral copulation, indecent exposure, lewd conduct or masturbation with or without an individual or an arcade device to occur in the adult arcade or adult mini-theatre or has knowingly allowed or permitted the adult arcade or adult mini-theatre to be used as a place in which solicitation for sexual intercourse, sodomy, or oral copulation occur.”

Section 12. That the City Attorney is hereby authorized to direct the publisher of the Code of Ordinances, Houston, Texas, (the “Code”) to make such changes to the Code as are necessary to conform to the provisions adopted in this Ordinance, and also

to make such changes to the provisions adopted in this Ordinance to conform them to the provisions and conventions of the published Code.

Section 13. That the City Council officially finds, determines, recites and declares that a sufficient written notice of the date, hour, place and subject of this meeting of the City Council was posted at a place convenient to the public at the City Hall of the City for the time required by law preceding this meeting, as required by the Open Meetings Act, Chapter 551, Texas Government Code; and that this meeting has been open to the public as required by law at all times during which this ordinance and the subject matter thereof has been discussed, considered and formally acted upon. The City Council further ratifies, approves and confirms such written notice and the contents and posting thereof.

Section 14. That, if any provision, section, subsection, sentence, clause, or phrase of this Ordinance, or the application of same to any person or set of circumstances, is for any reason held to be unconstitutional, void or invalid, the validity of the remaining portions of this Ordinance or their application to other persons or sets of circumstances shall not be affected thereby, it being the intent of the City Council in adopting this Ordinance that no portion hereof or provision or regulation contained herein shall become inoperative or fail by reason of any unconstitutionality, voidness or invalidity of any other portion hereof, and all provisions of this Ordinance are declared to be severable for that purpose.

Section 15. That there exists a public emergency requiring that this Ordinance be passed finally on the date of its introduction as requested in writing by the Mayor;

therefore, this Ordinance shall be passed finally on such date and shall take effect immediately upon its passage and approval by the Mayor.

PASSED AND APPROVED this 3rd day of October, 2018.

Sylvester Turner

Mayor of the City of Houston

Prepared by Legal Dept. Nirja S. Aiyer
na:asw 10/15/2018 Section Chief Neighborhood Services Legal Department
Requested by Tina Paez, Director, Department of Administration and Regulatory
L.D. File No. 0621800300001