

ORDINANCE NO. 09-5497

AN ORDINANCE OF THE CITY OF BILLINGS, PROVIDING THAT THE BILLINGS, MONTANA CITY CODE BE AMENDED BY REVISING, SECTION 27-201, SECTION 27-611(a) THROUGH SECTION 27-611(f) REVISING DEFINITIONS FOR SEXUALLY ORIENTED BUSINESS AND ADOPT THE REVISIONS AS AN AMENDMENT TO ZONING REGULATIONS AND SET A TIME PERIOD FOR THE REGULATION TO BE EFFECTIVE.

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

Section 1. RECITALS. *Title 76, Chapter 2, Part 3, MCA, and Section 27-1502, BMCC, provide for amendment to the City Zoning Regulations from time to time. The City Council initiated the amendment to the City Zoning Regulations and the City Zoning Commission and staff have reviewed the proposed zoning regulations hereinafter described. The recommendations of the Zoning Commission and staff have been submitted to the City Council, and the City Council, in due deliberation, has considered the proposed amendments to the City Zoning Regulations.*

Section 2. DESCRIPTION. The zoning regulation shall apply to all land within the City of Billings.

Section 3. That the Billings, Montana City Code be amended by revising Section 27-201 to add new language as follows:

SEC. 27-201. DEFINITIONS.

SEXUALLY ORIENTED BUSINESS: An adult arcade, adult bookstore, adult cabaret, adult video store, adult motel or adult motion picture theater, as those terms are defined in BMCC Section 27-611.

Section 4. That the Billings, Montana City Code be amended by revising Section 27-611 to delete certain language and add new language to read as follows:

SEC. 27-611. SEXUALLY ORIENTED BUSINESSES.

(a) Purpose and Intent. It is the purpose of this section to regulate sexually oriented businesses to promote the health, safety, morals, and the general welfare of the citizens of the City of Billings ~~and Yellowstone County~~, and to establish reasonable uniform regulations to prevent the continued deleterious location and concentration of sexually oriented businesses within the City ~~and County jurisdictions~~. The provisions of this section 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 or effect of these regulations to restrict or deny access by adults to distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent nor effect of these regulations to condone or legitimize the distribution of obscene materials.

(b) Findings and Determinations. The Billings City Council and ~~Yellowstone County Commission~~ hereby finds and determines that:

The establishment of adult uses in business districts which are immediately adjacent to and which serve residential neighborhoods has a deleterious effect on both the business and residential segments of the neighborhood, causing or contributing to blight and a downgrading of property values.

The establishment of more than two (2) adult uses within six hundred (600) feet of each other has a deleterious effect on surrounding residential and business areas and the fostering of such businesses within a close proximity tends to create a "skid row" atmosphere.

The location of several adult uses in the same neighborhood tends to attract an undesirable quantity and quality of transients, a circumstance which adversely affects property values, causes an increase in crime and encourages residents and businesses to move elsewhere.

Concern for, and pride in, the orderly planning and development of a neighborhood should be encouraged and fostered in those persons comprising residential and business segments of that neighborhood.

(c) Definitions. Terms used in this section, that are not specifically defined below, may be found in Section 27-201 BMCC. Where other definitions are necessary and are not defined in this Section or Section 27-201, the dictionary may define such terms.

(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)~~ County means Yellowstone County, Montana.

(8) 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.

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

~~(10)~~(11) 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.

~~(11)~~(12) Specified Sexual 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).

~~(42)~~(13) 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)~~ (4) Adult Motels; and
- ~~(4)~~ (5) Adult Motion Picture Theaters.

(e) Location of Sexually Oriented Business.

- (1) No person, whether as a principal or agent, clerk or employee, either for himself or any other person, or as an officer of any corporation, or otherwise, shall place, maintain, own, or operate any sexually oriented business within one thousand (1,000) feet of the following residential zones:
 - a. Agricultural Suburban (A-S) Zone;
 - b. Agriculture Open-Space (A-1) Zone;
 - c. Residential 15,000 (R-150) Zone;
 - d. Residential 9,600 (R-96) Zone;
 - e. Residential 8,000 (R-80) Zone;
 - f. Residential 7,000 Restricted (R-70R) Zone;
 - g. Residential 7,000 (R-70) Zone;
 - h. Residential 6,000 Restricted (R-60R) Zone;
 - i. Residential 6,000 (R-60) Zone;
 - j. Residential 5,000 (R-50) Zone;
 - k. Residential Multi-Family (RMF) Zone;

- l. Residential Multi-Family - Restricted (RMF-R) Zone;
 - m. Residential Manufactured Home (RMH) Zone; ~~or~~
 - n. Entryway Mixed Use (EMU) Zone; or
 - o. Any Planned Development Zone that allows residential uses unless such zone is separated from the location of a sexually oriented business by an Interstate Highway.
- (2) No person, whether as a principal or agent, clerk or employee, either for himself or any other person, or as an officer of any corporation, or otherwise, shall place, maintain, own, or operate any sexually oriented business within one thousand (1,000) feet of the following land uses:
- a. Public library;
 - b. Public playground or park (for purposes of this section, publicly owned multiuse trails shall be deemed to be a park);
 - c. Public or private school and its grounds, from pre-school ~~kindergarten~~ through twelfth grade;
 - d. A state licensed community residential facility, family day care home, group day care home, or day care center; ~~or~~
 - e. Church or other place of worship; or
 - f. A cemetery.
- (3) No person, whether as a principal or agent, clerk or employee, either for himself or any other person, or as an officer of any corporation, or otherwise, shall place, maintain, own or operate any sexually oriented business within six hundred (600) feet of another sexually oriented business.
- (4) For purposes of this section, specified distances will be measured in a straight line, without regard to intervening structures, from the property line of the sexually oriented business to the property line of the preceding land uses or zoning districts.
- (5) In addition to the preceding requirements, sexually oriented businesses are permitted in the following zones only:
- a. Central Business District (CBD) Zone;
 - b. Highway Commercial (HC) Zone;
 - c. Controlled Industrial (CI) Zone; or
 - d. Heavy Industrial (HI) Zone.
- (f) Nonconforming Use - Amortization period established. (Refer to BMCC Section 27-405(G))

Section 5. REPEALER. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

Section 6. 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.

Section 7. EFFECTIVE DATE. This ordinance shall be effective from and after final passage and as provided by law.

PASSED by the City Council on first reading October 26, 2009.

PASSED, ADOPTED AND APPROVED on second reading November 9, 2009.

CITY OF BILLINGS:

BY: _____
Ron Tussing, Mayor

ATTEST:

BY: _____
Cari Martin, City Clerk