



ORDINANCE 2006-01

AN ORDINANCE OF THE CITY OF TOM BEAN, GRAYSON COUNTY, TEXAS, ENACTING A NEW ORDINANCE REGULATING SEXUALLY ORIENTED BUSINESSES; PROVIDING ENFORCEMENT, AND PENALTIES AND PROVIDING AN EFFECTIVE DATE.

Whereas: the Texas Legislature and the City Council of the City of Tom Bean, Texas has found that the unrestricted operation of certain sexually oriented businesses may be detrimental to public health, safety, and welfare by contributing to the decline of residential and business neighborhoods; and,

Whereas: the City Council has investigated and determined that it would be in the best interest to the health, safety, and welfare of the citizens of the City of Tom Bean, Texas to regulate Adult Entertainment.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TOM BEAN, TEXAS:

Section 1; the short title of the Ordinance will be titled **Sexually Oriented Businesses.**

Section 2: This Ordinance is intended to regulate location and certain design requirements of sexually oriented businesses, also described as “adult entertainment enterprises” by the authority in Local Government Code Chapters 54, 211, and 243.

Section 3: Adult Entertainment Enterprise Location:

A. Distance requirements. A person commits an offense if he/she operates or causes to be operated a sexually oriented business within 1,000 feet of : (1) a church; (2) a public or private daycare, elementary or secondary school; (3) a college or university; (4) a residential dwelling unit in which one or more persons maintain a residence; (5) a boundary of a residential district; (6) a residential lot line; (7) a public park or athletic facility; (8) a public or private hospital; or (9) another sexually oriented business of a type hereinafter enumerated. A person further commits an offense if he/she causes or permit’s the operation, establishment, or maintenance of more than one sexually oriented business in the same building, structure or portion thereof.

B. Zone: Adult entertainment enterprises are required to have a specific use permit and be located in the C-1 zoning district of the City.

C. Measurement requirements: Measurements to determine requirements set forth in subsection (a) above, shall be a straight line in all directions from the structure housing the adult entertainment enterprise to the nearest point on any property line of any residentially zoned district or any lot used for Church, residential, school, college or university, park or athletic facility, or hospital purposes, or any other structure housing an adult entertainment enterprise. The measurements for a structure shall be taken from the furthest point that a structure extends in that direction.

If the adult entertainment enterprise is located in conjunction with other buildings in a manner where the adult entertainment enterprise is clearly separated from other portions of the structure, (for example, an adult bookstore in a shopping center), the adult entertainment enterprise structure's measurements shall be taken from the boundaries of the space in which the adult entertainment enterprise is housed or confined (not the entire shopping center, motel, or structure).

If the adult entertainment enterprise is located in conjunction with other buildings in a manner where said adult entertainment enterprise is situated above the ground level of a multi-story structure and is clearly separate from other activities within the structure, (for example, an adult bookstore on an upper level of an office tower), the adult entertainment enterprise measurements shall be taken from the nearest entry to that portion of the structure housing the adult entertainment enterprise thence in a straight line to the nearest point on any property line of any residentially zoned district, or any lot used for Church, residential, school, college or university, park or athletic facility, or hospital purposes, or any other structure housing an adult entertainment enterprise.

If two or more adult entertainment enterprises are within 1,000 feet of one another and otherwise in a permissible location, the adult entertainment enterprise which was first established and continually operating at a particular location is the conforming use and the later-established business is non-conforming.

D. Site plan: Each applicant for an adult entertainment enterprise must submit a site plan setting out the dimensions and location for such adult entertainment enterprise. The applicant shall sign a sworn, certified and notarized statement attached to the site plan that the proposed adult entertainment enterprise complies with the requirements set forth hereinabove. It shall be the duty of the applicant to prepare the site plan and to assure compliance with the distance requirements. An affidavit must accompany the application setting forth a plan showing the proposed location of the applicant's business in relation to streets, property lines, the nearest Church, public or private school, public or private hospital and the portion of the premises to be used by the business. At the time the application is filed, applicant must prominently post an outdoor sign at the location stating that a sexually oriented business is intended to be located on the premises and providing the name and business address of the applicant. The sign must be at least 24 by 36 inches in size and must be written in contrasting letters at least two inches in size.

E. Applicant and Operator: An applicant for an adult entertainment enterprise, and his/her spouse, may not have been convicted of a crime involving an offense for: prostitution, promotion of prostitution; obscenity, sale, distribution or display of harmful material to a minor, sexual performance by a minor, possession of child pornography; public lewdness; indecent exposure; indecency with a child; sexual assault or aggravated sexual assault, incest or solicitation of a child; improper photography or visual recording; or conspiracy to commit such

crimes. Likewise, an adult entertainment enterprise may not be operated by a person, who has been convicted of a crime involving an offense for; prostitution, promotion of prostitution; obscenity; sale; distribution or display of harmful material to a minor; sexual performance by a minor; possession of child pornography; public lewdness; indecent exposure; indecency with a child; sexual assault or aggravated sexual assault; incest or solicitation of a child; improper photography or visual recording; or conspiracy to commit such crimes.

F. Zoning Ordinance: No individual or entity shall establish or expand a sexually oriented business without first obtaining a specific use permit. When a specific use permit application is made, an affidavit must accompany the application setting forth a plan showing the proposed location of the applicant's business in relation to streets, property lines, the nearest Church, public or private school, public or private hospital and the portion of the premises to be used by the business.

Section 4: Exemption requirements: In the event an owner of an adult entertainment enterprise wishes to claim an exemption from this Ordinance, the owner shall make application to the Planning and Zoning Commission for a location exemption from the requirements in Section 3 and/or the applicant shall provide supporting explanation and documentation for the exemption. After considering the application, the Planning and Zoning Commission shall make a recommendation to the City Council to grant or deny the exemption. The City Council may, in its discretion, grant an exemption from the location restrictions if it makes the following findings:

- A. That the location of the adult entertainment enterprise will not have a detrimental effect on nearby properties or be contrary to the public safety or welfare;
- B. That the granting of the exemption will not violate the spirit and intent of this section;
- C. That the location of the adult entertainment enterprise will not diminish the property values or quality of life in the adjacent areas or encourage the development of urban blight;
- D. That the location of the adult entertainment enterprise will not be inconsistent with any program of neighborhood conservation nor will it interfere with any efforts of urban renewal or restoration; and
- E. That all other applicable provisions of this section will be observed.

The City Council shall require a majority vote of the entire Council to grant the exemption. Failure to reach a majority vote shall result in denial of the exemption. Disputes of fact shall be decided on the basis of a preponderance of the evidence. The decision of the City Council is final. If the City Council grants an exemption, the exemption is valid for one year from the date of the City Council's action. Upon the expiration of an exemption, an adult entertainment enterprise will be in violation of the location restrictions of Section 3 of this Ordinance and the non-conforming use shall be illegal and shall terminate, unless the applicant applies for and receives another exemption. Such application shall be made with City Secretary at least 90 days prior to the expiration of the exemption. The grant of an exemption does not exempt the applicant from any other provision of this section other than the location restriction of Section 3.

Section 5: Adult viewing Booth Design: Adult viewing booths and arcades as defined by this section shall be constructed according to this section. The interior of an adult arcade and/or viewing booth shall be configured in such a manner that there is an unobstructed view of every interior area of the adult arcade and/or viewing booth to which any patron is permitted access for any purpose. This unobstructed view shall be from the manager's station, and then at any of the

manager's stations there shall be at least one unobstructed view to any interior area of the viewing booth or arcade. The view required in this section must be in direct line of sight from the manager's station. It shall be the duty of the owner and operator of such arcade or viewing booth, and it shall also be the duty of any agents or employees present in an arcade or viewing booth, to ensure that the view area specified in the subsection above remains unobstructed by any merchandise, display racks, or other materials at all times any patron is present in the adult arcade. Each adult arcade and viewing booth shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access so that any patron may be observed from the manager's station. It shall be the duty of the owners and operators, and it shall also be the duty of any agents and employees present in an adult arcade and viewing booth, to ensure that the illumination described above is maintained at all times that any patron is present in the adult arcade and viewing booths.

Section 6: A person who operates or causes to operate an adult entertainment enterprise, other than an adult motel, which exhibits on the premises in a viewing room, a film, videocassette, or other visual reproduction which depicts specified sexual activities or specified anatomical areas, shall:

A. Configure the interior of the premises such that there is an unobstructed view of all areas of the premises to which any patron is permitted access, except a restroom. Restrooms shall not contain any video reproduction of any type nor any photograph or visual display of any specified sexual activities or specified anatomical areas. All public areas and viewing areas shall be equipped with overhead lighting fixtures, and illuminated at all times to provide an illumination of not less than one (1.0) foot-candle as measured at the floor.

B. Failure to comply with this requirement constitutes a violation of this Ordinance.

Section 7: A person commits an offense if he/she uses or employs, whether for remuneration or not, any person under the age of 18 in any business or activity regulated by this Ordinance.

Section 8: DEFINITIONS:

A. Adult entertainment enterprise. Any business activity, whether in public, semi-public or private premises, which offers the opportunity to describe, feel, handle, touch, paint, be in the presence of, or be entertained by the completely unclothed body or the unclothed specified anatomical area(s) of the body of another person, or to observe, view, or photograph any such activity. Except as specifically provided otherwise herein, nothing in this section is intended to regulate:

1. Any business operated by or employing counselors, psychologists, physical therapists, athletic trainers, massage therapists, cosmetologists, or barbers, licensed by the State of Texas, performing functions authorized under the license held.
2. Any business operated by or employing physicians, acupuncturists, osteopaths, chiropractors, or nurses, licensed by the State of Texas, engaged in practicing the healing arts.
3. Any retail establishment whose only business is the offering of wearing apparel for sale to customers.
4. Any school, class or business which offers as part of a regular class painting, sketching, or photographing of a person(s), whether nude or semi-nude, and such classes are offered for the purpose of artistic study of the human form.
5. Any business which only offers as a service tattooing or body piercing.

“Adult entertainment enterprises” furthermore include, but are not limited to, the following:

B. Adult bookstore/video store. An establishment or commercial enterprise having ten percent or more of its stock in trade, videos, DVDs, computer files or programs, tapes, cassettes, photographs, books, magazines or other periodicals which are distinguished by a predominant emphasis on matter(s) depicting, describing, or relating to “specified sexual activities” or “specified anatomical areas” as defined below.

C. Adult Cabaret. An establishment whose portion of business is the offering to customers of live entertainment which is intended to provide sexual stimulation or sexual gratification to such customers, including but not limited to dancing, posing, modeling and acting, and which is distinguished by or characterized by a predominant emphasis on matter depicting, describing, or relating to “specified sexual activities” or “specified anatomical areas.”

D. Adult encounter parlor. An establishment whose business consists of premises where customers either congregate, associate, or consort with employees who engage in “specified sexual activities” with or in the presence of such customers, or who display “specified anatomical areas” in the presence of such customers, with the intent of providing sexual stimulation or sexual gratification to such customers. Said definition shall include nude modeling studios.

E. Adult lounge. An “adult cabaret” as defined above which is permitted by or licensed pursuant to the Alcoholic Beverage Code where alcoholic beverages may be served or sold.

F. Adult motel. A hotel, motel, or similar commercial establishment which:

1. Offers accommodations to the public for any form of consideration and provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides, or other photographic reproductions which are distinguished or characterized by an emphasis on matter depicting, describing or relating to “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; or

2. Offers a sleeping room for rent for a period of time that is less than 10 hours;
or

3. Allows a tenant or occupant of a sleeping room to sub-rent the room for a period of time that is less than 10 hours.

G. Adult retail store. This is a retail establishment in which:

1. The stock in trade consists of items, products or equipment distinguished or characterized by a predominant emphasis on “specified sexual activities” or “specified anatomical areas”; or

2. Any person is excluded by virtue of age from all or part of the premises generally held open to the public where there are products or equipment distinguished or characterized by a predominant emphasis on “specified sexual activities” or “specified anatomical areas.”

H. Bath clubs. A business or commercial enterprise for any form of consideration provides access to one or more shower, bathtub, or hot tub. This provision does not apply to motels, hotels, and fitness facilities who provide said facilities said facilities only as a part of its primary services.

I. Escort agency. A person or business association, who furnishes, offers to furnish or advertises to furnish escorts, as one of its primary business purposes, for a fee, tip or other consideration.

J. Gentlemen clubs: An establishment whose portion of business is the offering to customers live entertainment or interaction which is intended to provide sexual stimulation or sexual gratification to such customers, including viewing of employees or other persons in a state of nudity, simulated nudity, or semi-nudity. Semi-nudity is a state of dress in which clothing covers no more than the genitals, pubic region, and areola of the female breast, as well as supporting straps or devices.

K. Massage establishment. Any building, room, place or establishment other than a licensed hospital, where massage or manipulated exercises are practiced on the human body by anyone not a duly licensed physician, osteopath, chiropractor or nurse. This provision does not apply to a physical therapist, massage therapist, massage therapy instructor, or athletic trainer properly licensed, qualified and registered in compliance with the Texas Occupation Code for said profession who prominently displays the state license or registration and performs services limited to those for which they are licensed.

L. Movie Arcade. Any business operating a film or videotape viewing device as described below:

1. Adult motion picture theater. An establishment or commercial enterprise which has an enclosed building with a capacity of more than five persons and is regularly and routinely used for presenting material distinguished or characterized by a predominant emphasis on matter depicting, describing, or relating to “specified sexual activities” or “specified anatomical areas” for observation by patrons.

2. Adult viewing booths/arcades. An establishment or commercial enterprise which has within its structure any electrical or mechanical device, which projects or displays any film, videotape or reproduction into a viewing area in an area which is designed for occupancy by no more than five persons, and is regularly or routinely used for presenting material distinguished or characterized by a predominant emphasis on matter depicting, describing, or relating to “specified sexual activities”, or “specified anatomical areas” for observation by five or fewer persons.

M. Sexual Encounter Center. A business or commercial enterprise, as one of its primary business purposes, offers for any form of consideration: (a) physical contact in the form of wrestling or rumbling, other than training or participation in a sanctioned athletic event; (b) sexual activities between male and female persons and/or persons of the same sex when one (1) or more persons is in a stated of nudity or semi-nudity. Semi-nudity is a state of dress in which clothing covers no more than the genitals, pubic region, and areola of the female breast, as well as supporting straps or devices.

N. Sexually oriented commercial activity. A massage establishment, nude studio, modeling studio, love parlor, or other similar commercial enterprise, the primary business of which is the offering of a service that is intended to provide sexual stimulation or sexual gratification to the customer.

O. Nude.

1. Means entirely unclothed; or
2. Clothed in a manner that leaves uncovered or visible through less than fully opaque clothing any portion of the breast below the top of the areola of the breast, if the person is female, or any portion of the genitals or buttocks.

P. Specified sexual activities.

1. Human genitals in a state of sexual stimulation or arousal; or

2. Acts or representations of human masturbation, sexual intercourse, sodomy, acts of bestiality; or
3. Fondling or other erotic touching of human genitals, pubic region or pubic hair, perineum, anus, buttock or female breast.

Q. Specified anatomical areas.

1. Less than completely and opaquely covered:
 - a. Human genitals, pubic region, pubic hair, perineum;
 - b. Buttock or anus: and
 - c. Female breast below a point which is immediately above the top of the areola.
2. Human genitals in a discernible erect state, even if completely and opaquely covered.

R. Stock In Trade. The total volume or number of items, products, or equipment available for purchase, rental, viewing or use by patrons of the establishment, excluding material located in any storeroom or other portion of the premises not regularly open to patrons.

Section 9: Inspection. An applicant or operator shall permit representatives of the police department, health department, code enforcement, fire department and building inspection division to inspect the premises of any adult entertainment enterprise for the purpose of insuring compliance with the law at any time it is occupied or open for business. A person who operates an adult entertainment enterprise or his/her agent commits an offense if he/she refuses to permit a lawful inspection of the premises by a representative of the police department, code enforcement and/or building inspection at any time it is occupied or open for business.

Section 10: Enforcement. Any person violating this ordinance is subject to criminal prosecution and punishment as allowed by state law. Each day an offense continues is a separate offense. Further, violation of this Ordinance is subject to suit for injunction or other civil suit, in addition to any prosecution for criminal violations.

Section 11: All provisions of the Ordinances of the City of Tom Bean in conflict with the provisions of this Ordinance be, and the same are hereby repealed and all other provisions of the Ordinances of the City of Tom Bean not in conflict with the provisions of this Ordinance shall remain in full force and effect.

Section 12: Should any sentence, paragraph, subdivision, clause, phrase or section of this Ordinance be adjudged or held to be unconstitutional, illegal, or invalid, the same shall not affect the validity of this Ordinance as a whole, or any part of provision thereof other than the part so decided to be invalid, illegal, or unconstitutional, and shall not affect the validity of this Ordinance as a whole.

Section 13: This Ordinance shall take effect from and after its passage and publication of the caption in accordance with the provisions of the law and it is accordingly so ordained.

**DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF TOM
BEAN, TEXAS THIS 13TH DAY OF FEBRUARY, 2006.**

Mayor

Attest:

City Secretary