

**ORDINANCE NO. 10, 4<sup>th</sup> Series**

**AN INTERIM ORDINANCE PLACING TEMPORARY  
LOCATION REQUIREMENTS ON SEXUALLY ORIENTED  
BUSINESSES IN THE CITY AND DIRECTING A STUDY  
TO BE CONDUCTED**

**WHEREAS**, the City of East Grand Forks has previously determined that sexually oriented businesses cause secondary effects that are detrimental to the public health, safety, and general welfare of the citizens of the City of East Grand Forks; and

**WHEREAS**, the City's comprehensive plan, zoning, licensing and development regulations may not adequately address various impacts to the public health, safety, morals and general welfare that adult uses and sexually oriented businesses present; and

**WHEREAS**, to provide for adequate time for study, analysis, and the finalization of a city code amendments regarding sexually oriented businesses and to preserve the status quo within the City, the City desires to enact temporary location requirements and a temporary prohibition on the applications for and the issuance of permits and licenses of sexually oriented businesses.

**The City of East Grand Forks Ordains as follows:**

**SECTION 1. THE FOLLOWING MORATORIUM ORDINANCE IS ADOPTED:**

**PURPOSE.**

1.1. The purpose of this interim ordinance is to protect the planning process and the health, safety and welfare of the citizens of East Grand Forks by placing temporary location requirements on adult uses within the City. The ordinance will allow adult uses as defined in this ordinance, but subject to certain location requirements until the City can complete a comprehensive study and enact permanent zoning regulations relating to adult uses. This ordinance does not have the effect of imposing a limitation or restriction on the content of any communicative materials, including adult-oriented materials protected by the First Amendment.

**FINDINGS.**

2.1. Studies conducted by the Minnesota Attorney General and the Texas City Attorneys' Association, as well as the cities of St. Paul, Alexandria, and Rochester, Minnesota; Indianapolis, Indiana; Phoenix, Arizona; Los Angeles, California; Seattle, Washington; St. Croix County, Wisconsin; Adams County and the City of Denver, Colorado, have examined the impact that adult establishments have on their respective communities. These studies concluded that adult establishments have an adverse impact on surrounding neighborhoods. Those impacts include increased crime rates, lower property values, increased transiency, neighborhood blight and potential health risks. The City Council of the City of East Grand Forks recognizes that the same or similar adverse impacts could occur in a smaller city. Therefore, the City Council makes the following findings regarding the need to regulate adult establishments:

- a) Adult uses have an impact on the neighborhoods surrounding them, which is distinct from the impact caused by other commercial uses;
- b) Residential neighborhoods located within close proximity to adult theaters, bookstores and other adult uses experience increased crime rates (sex-related crimes in particular), lower property values, increased transiency and decreased stability of ownership;
- c) The adverse impacts that adult uses have on surrounding areas diminish as the distance from the adult uses increases;
- d) Studies of other cities have shown that among the crimes which tend to increase either within or in the near vicinity of adult uses are rapes, prostitution, child molestation, indecent exposure and other lewd and lascivious behavior;
- e) Many members of the public perceive areas within which adult uses are located as less safe than other areas which do not have such uses;
- f) Studies of other cities have shown that the values of both commercial and residential properties either are diminished or fail to appreciate at the rate of other comparable properties when located in proximity to adult uses; and

2.2 The East Grand Forks City Council finds that adult uses will have secondary effects upon certain pre-existing land uses within the City.

2.3 The City Council is also concerned that the City's zoning regulations may be inadequate to accomplish the purpose for which they were intended.

2.4 In addition to the proper zoning classification of such uses there are a number of significant planning and land use issues pertaining to the regulation of such uses, including the following:

- a) The particular districts in which such uses shall be allowed as permitted uses;
- b) The concentration and density of such uses in the City and its neighborhoods; and
- c) The effect of such uses on other uses in the surrounding area.

2.5 There is a need for a study to be conducted so that the City, as part of its planning process, can adopt comprehensive land use and zoning regulations pertaining to adult uses.

2.6 Minnesota Statutes, Section 462.355, sub. 4, permit the adoption of interim zoning ordinances during the planning process.

**DEFINITIONS.**

For the purposes of this ordinance, the following terms shall have the meanings given below:

3.1. Adult Establishments.

- a) any business that devotes a substantial or significant portion of its inventory, stock in trade, or publicly displayed merchandise, or devotes a substantial or significant portion of its floor area (not including storerooms, stock areas, bathrooms, basements, or any portion of the business not open to the public) to, or derives a substantial or significant portion of its gross revenues from, items, merchandise, devices or other materials distinguished or characterized by an emphasis on material depicting, exposing, simulating, describing, or relating to Specified Sexual Activities or Specified Anatomical Areas as described herein; or
- b) any business that engages in any Adult Use as defined in Section 3.2 of this ordinance.

3.2. Adult Use. An adult use is any of the activities and businesses described below:

- a) **Adult Uses.** Adult uses include adult bookstores, adult motion picture theaters, adult mini-motion picture theaters, adult massage parlors, adult steam room/bathhouse/sauna facilities, adult companionship establishments, adult rap/conversation parlors, adult health/sport clubs, adult cabarets, adult novelty businesses, adult motion picture arcades, adult modeling studios, adult hotels/motels, adult body painting studios, and other premises, enterprises, establishments, businesses or places open to some or all members of the public, at or in which there is an emphasis on the presentation, display, depiction or description of Specified Sexual Activities or Specified Anatomical Areas which are capable of being seen by members of the public. Activities classified as obscene as defined by Minnesota Statutes 617.241 are not included.
- b) **Adult Use- Body Painting Studio:** An establishment or business that provides the service of applying paint or other substance, whether transparent or non-transparent, to the body of a patron when such body is wholly or partially nude in terms of Specified Anatomical Areas.
- c) **Adult Use- Bookstore:** A building or portion of a building used for the barter, rental or sale of items consisting of printed matter, pictures, slides, records, audio tape, videotape or motion picture film if such building or portion of a building is not open to the public generally and if a substantial or significant portion of such items are distinguished and characterized by an emphasis on the depiction or description of Specified Sexual Activities or Specified Anatomical Areas.
- d) **Adult Use- Cabaret.** A building or portion of a building used for dancing or other live entertainment that is distinguished or characterized by an emphasis on the presentation, display, depiction or description of Specified Sexual Activities or Specified Anatomical Areas.
- e) **Adult Use- Companionship Establishment:** A companionship establishment that provides the service of engaging in or listening to conversation, talk or discussion between an employee of the establishment and a customer, if such service is distinguished and characterized by an emphasis on Specified Sexual Activities or Specified Anatomical Areas.

- f) Adult Use- Conversation/Rap Parlor: A conversation/rap parlor that provides the services of engaging in or listening to conversation, talk or discussion, if such service is distinguished and characterized by an emphasis on Specified Sexual Activities or Specified Anatomical Areas.
- g) Adult Use- Health/Sport Club: A health/sport club that is distinguished and characterized by an emphasis on Specified Sexual Activities or Specified Anatomical Areas.
- h) Adult Use- Hotel or Motel: Adult hotel or motel means a hotel or motel from that minors are specifically excluded from patronage and where material is presented that is distinguished and characterized by an emphasis on matter depicting, describing or relating to Specified Sexual Activities or Specified Anatomical Areas.
- i) Adult Use- Massage Parlor, Health Club: A massage parlor or health club that provides the services of massage, if such service is distinguished and characterized by an emphasis on Specific Sexual Activities or Specified Anatomical Areas.
- j) Adult Use- Mini-Motion Picture Theatre: A building or portion of a building with a capacity for less than 50 persons used for presenting material if such material is distinguished and characterized by an emphasis on matter depicting, describing or relating to a Specified Sexual Activities or Specified Anatomical Areas.
- k) Adult Use- Modeling Studio: An establishment whose major business is the provision, to customers, of figure models who are so provided with the intent of providing sexual stimulation or sexual gratification to such customers and who engaged in Specified Sexual Activities or display Specified Anatomical Areas while being observed, painted, painted upon, sketched, drawn, sculptured, photographed, or otherwise depicted by such customers.
- l) Adult Use- Motion Picture Arcade: Any place to which the public is permitted or invited wherein coin or slug-operated or electronically, electrically or mechanically controlled or operated still or motion picture machines, projectors or other image producing devices are maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished and characterized by an emphasis on depicting or describing Specified Sexual Activities or Specified Anatomical Areas.
- m) Adult Use- Motion Picture Theatre: A building or portion of a building with a capacity of 50 or more persons used for presenting material if such business as a prevailing practice presents material distinguished or characterized by a emphasis on Specified Sexual Activities or Specified Anatomical Areas for observation by patrons therein.
- n) Adult Use- Novelty Business: A business that has as a principal activity the sale of devices that stimulate human genitals or devices that are designed for sexual stimulation.
- o) Adult Use- Sauna: A sauna that provides a steam bath or heat bathing room used for the purpose of bathing, relaxation, or reducing, utilizing steam or hot air as a cleaning, relaxing or reducing agent, if the service provided by the sauna is distinguished or characterized by an emphasis on Specified Sexual Activities or Specified Anatomical Areas.

p) **Adult Use- Steam Room/Bathhouse Facility:** A building or portion of a building used for providing a steam bath or heat bathing room used for the purpose of pleasure, bathing relaxation or reducing, utilizing steam or hot air as a cleaning, relaxing or reducing agent if the service provided by the steam room/bathhouse facility is distinguished and characterized by an emphasis on Specified Sexual Activities or Specified Anatomical Areas.

3.3. Specified Sexual Activities:

Any of the following, whether performed directly or indirectly through clothing or other covering: (1) the fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breast; (2) sex acts, actual or simulated, including intercourse, oral copulation, or sodomy; (3) masturbation, actual or simulated; and (4) excretory functions as part of or in connection with any of the other activities described in (1) through (3) of this paragraph.

3.4. Specified Anatomical Areas:

a) The showing of the human male or female genitals, pubic area, buttocks, or anus with less than a fully opaque covering; the showing of the female breast with less than a fully opaque covering of any part of the nipple; the exposure of any device, costume, or covering which gives the appearance of or simulates the genitals, pubic hair, natal cleft, perineum anal region or pubic hair region; or the exposure of any device worn as a cover over the nipples and/or areola of the female breast, which device simulates and gives the realistic appearance of nipples and/or areola; or

b) Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

3.5. Substantial or significant portion means 25% or more.

**PLANNING AND ZONING STUDY; MORATORIUM.**

4.1 A study is authorized to be conducted by City staff to determine how adult uses should be regulated within the City. The scope of the study should include, but is not limited to, the following:

a) The particular zoning districts in which adult establishments should be allowed as permitted uses;

b) The density and concentration of such uses; and

c) The effect of such uses on other uses in the surrounding area.

4.2 Upon completion of the study, the matter is to be considered by the planning commission for its review and recommendation to the city council.

4.3 Temporary Location Requirements. Pursuant to Minn. Stat § 462.355, subd. 4, the following temporary location requirements are imposed on adult uses within the City:

- a) Adult uses are permitted uses in the General Industrial District (I-2) of the City;
- b) Adult uses must be located at least 250 feet from the following uses:
  - 1) Property used or zoned for residential uses;
  - 2) A daycare facility, school, library, park, playground, state or federal wildlife area or preserve; religious institution, or other public recreational facility;
  - 3) Premises licensed under Chapter 117, Alcoholic Beverages; and,
  - 4) Another adult use.
- c) Distances must be measured by following a straight line, without regard to intervening structures or objects, between the closest points on the boundary lines of the parcels where the two uses are located.

4.4 Pending completion of the study and adoption of any amendments to the City's official controls, a moratorium is established on the issuance of any development approvals, including but not limited to preliminary plats, re-zonings, variances, conditional use permits, site plans, or building permits for adult uses, except those proposed to be located in the temporary area established by Section 4.3 of this ordinance.

4.5 Except in the temporary area established by Section 4.3 of this Ordinance, applications for any adult uses shall not be accepted by the City nor shall the planning commission or city council consider or grant approval of any such application during the period of the moratorium. The moratorium applies to applications that are pending with the City as of the date of the adoption of this ordinance.

4.6 This ordinance will be effective for a period of 6 months after its effective date.

**ENFORCEMENT.**

5.1. Violation of any portion of this ordinance shall be a misdemeanor punishable by imprisonment for up to 90 days and a fine of \$1000 or both, plus the costs of prosecution. Each day that a violation occurs shall be considered a separate offense.

5.2. The City may enforce any provision of this ordinance by mandamus, injunction or any other appropriate civil remedy in any court of competent jurisdiction.

**SEPARABILITY.**

6.1 Every section, provision or part of this ordinance is declared separable from every section, provision or part of this ordinance. If any section, provision, or part of this ordinance is adjudged to be invalid by a court of competent jurisdiction, such judgment shall not invalidate any other section, provision, or part of this ordinance.

**SECTION 2. EFFECTIVE DATE.** This ordinance shall take effect the day after its adoption and publication.

*Voting Aye:* *Buckalew, Tweten, Olstad, Leigh, Grassel, Vetter, and Vonasek.*

*Voting Nay:* *None.*

*Absent:* *None.*

ATTEST:

PASSED: May 7, 2013

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City Administrator/Clerk-Treasurer

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President of Council

I hereby approve the foregoing Ordinance this 7<sup>th</sup> day of May, 2013.

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Mayor