



120 Malabar Road, SE - Palm Bay, FL 32907 (321-952-3400)

Mayor
JOHN J. MAZZIOTTI

Deputy Mayor
ED GEIER

Councilmembers
PAT WOODARD
MILO ZONKA
KRISTINE ISNARDI

AGENDA

SPECIAL COUNCIL MEETING NO. 2008-25 TUESDAY

September 2, 2008 - 7:00 P.M.
City Hall Council Chambers

CALL TO ORDER:

ROLL CALL:

PUBLIC HEARING:

1. Ordinance No. 2008-52, amending the Code of Ordinances, Chapter 173, Adult Entertainment Code, by adopting adult entertainment locational criteria (Case No. T-20-2008, City of Palm Bay), for first reading.

ADJOURNMENT:

If an individual decides to appeal any decision made by the City Council with respect to any matter considered at this meeting, a record of the proceedings will be required and the individual will need to ensure that a verbatim transcript of the proceedings is made, which record includes the testimony and evidence upon which the appeal is based (FS 286.0105). Such person must provide a method for recording the proceedings verbatim.

In accordance with the Americans with Disabilities Act, persons needing special accommodations for this meeting shall, at least 48 hours prior to the meeting, contact the Office of the City Clerk at (321) 952-3414 or Florida Relay System at 711.

THIS MEETING IS BROADCAST LIVE ON THE CITY'S WEBSITE (AUDIO ONLY).

ORDINANCE NO. 2008-52

AN ORDINANCE OF THE CITY OF PALM BAY, BREVARD COUNTY, FLORIDA, PROVIDING FOR LOCATIONAL REQUIREMENTS FOR ADULT ENTERTAINMENT ESTABLISHMENTS AND SEXUALLY-ORIENTED BUSINESSES; MAKING FINDINGS; SETTING FORTH LOCATIONAL AND DISTANCE REQUIREMENTS; PROVIDING FOR THE REPEAL OF ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR INCLUSION IN THE CITY OF PALM BAY CODE OF ORDINANCES; PROVIDING FOR SEVERABILITY AND INTERPRETATION; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Palm Bay City Council has determined it to be in the best interest of the general health, safety and welfare of the residents of the City to provide locational requirements for all adult entertainment establishments and sexually-oriented businesses as hereinafter defined, and

WHEREAS, the City Council of the City of Palm Bay has reason to believe and believes that (a) when the possession, display, exhibition, distribution and sale of books, magazines, motion pictures, prints, photographs, periodicals, records, novelties and devices that depict, illustrate, describe or relate to specified sexual activities and/or (b) with the operation and maintenance of places where parts of one person are treated or encountered by rubbing, stroking, kneading or tapping by a second person, accompanied by the exposure or display of specified anatomical areas, other activities tend to accompany them that are illegal, immoral or unhealthful, and

WHEREAS, such other activities include, but are not limited to, prostitution, pandering, solicitation for prostitution, obscene, lewd and lascivious behavior, exposing minors to harmful materials, sale or possession of controlled substances, and violent crimes against persons and property, and

WHEREAS, illegal, immoral or unhealthy activities tend to concentrate around and be aggravated by the presence of the activities detailed above, and

WHEREAS, the buildings and establishments in which the activities and business operations described above take place are conducive to and may be used for the commission of immoral, lewd, indecent or illegal acts, and

WHEREAS, the business operations and activities detailed above frequently occur in commercial establishments either selling or allowing consumption of alcoholic beverages on the premises, and

WHEREAS, there is a direct relationship between the concurrent consumption of alcoholic beverages and the activities described above and an increase in criminal activities, degradation and disturbances of the peace and good order of the community, and

WHEREAS, certain studies have shown the concurrence of the sale and consumption of alcoholic beverages with the activities described above is hazardous to the health and safety of those persons in attendance, and tends to depreciate the value of adjoining property, harm the economic welfare of the community as a whole and adversely affect the public's interest in the quality of life, tone of commerce, and total community environment of the City, and

WHEREAS, to preserve the public peace and good order, and to safeguard the health, safety and welfare of the community and the citizens thereof, it is necessary and advisable to regulate and restrict the sale and consumption of alcoholic beverages in

commercial establishments where the business operations and activities described above occur, and

WHEREAS, to preserve the public peace and good order, and to safeguard the health, safety and welfare of the community and the citizens thereof, it is necessary and advisable to regulate and restrict the conduct of owners, operators, agents, employees, entertainers, performers, patrons, and persons on the premises of commercial establishments where the activities described above occur, and

WHEREAS, the business operations and activities described above are commercial ventures, operated for the purpose of making a profit, and as such are proper subjects for regulation by the City in the interest of the health, safety and welfare of the public, and

WHEREAS, in order to preserve and safeguard the good order, health, morals, safety, and general welfare of the people of the City it is necessary and advisable for the City to regulate the location of adult entertainment establishments and sexually-oriented businesses, and

WHEREAS, the potential dangers to the health, safety, and welfare of the citizens of Palm Bay posed by permitting adult entertainment establishments and sexually-oriented businesses to operate without first meeting the requirements of this ordinance are so great as to require the inspection and examination of the location of such establishments and businesses prior to permitting them to initiate operations and thereafter, and

WHEREAS, prohibiting adult entertainment establishments and sexually-oriented businesses from operating within set distances of educational institutions and parks at

which minors are customarily found, will serve to protect minors from the adverse affects of the activities that accompany such establishments and businesses, and

WHEREAS, there is a higher incidence of criminal activity among the employees of commercial establishments that permit the concurrence of the consumption of alcoholic beverages and adult entertainment than among the employees of other commercial establishments, and

WHEREAS, the City, through its police power and the twenty-first Amendment of the United States Constitution, has the right to regulate the time, place and manner of the selling consumption of alcohol, and

WHEREAS, the City Council of the City of Palm Bay has been presented with case law from the United States Supreme Court, the Eleventh Circuit Court of Appeals, the Federal District for Middle District of Florida and from other jurisdictions as well as studies and testimony validating and supporting the predicate clauses set forth hereinabove.

NOW, THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF PALM BAY, BREVARD COUNTY, FLORIDA, as follows:

SECTION 1. Definitions.

The following words and phrases used in this ordinance shall have the meaning herein described, unless the context clearly suggests otherwise.

DEVELOPED PUBLIC PARK. Any officially named city owned, county owned, state owned or federally owned park.

DEVELOPED PUBLIC SCHOOL. Any school owned, operated or approved by the City of Palm Bay or the Brevard County School Board, including charter schools.

FEDERAL HIGHWAY. Any roadway having an official federal highway number or an interstate highway, including, but not limited to, U.S. Highway No. 1 (Dixie Highway NE) and Interstate 95.

NON-PRIMARY COMMERCIAL ZONING DISTRICT. Any zoning district within the City of Palm Bay except CC, Community Commercial District, HC, Highway Commercial District or GC, General Commercial District. Any zoning district not defined herein as a primary commercial zoning district.

PRIMARY COMMERCIAL ZONING DISTRICT. The CC, Community Commercial District, HC, Highway Commercial District or GC, General Commercial District.

PRIVATE SCHOOL. As defined under Florida Statutes, Section 1002.01, with registration required as set forth in Florida Statutes, Section 1002.42.

SECTION 2. Sale of Alcoholic Beverages for Consumption on Premises.

No sale of alcohol for consumption on premises shall be permitted within five hundred (500) feet of an adult entertainment establishment or sexually-oriented business as defined elsewhere in the City of Palm Bay's Adult Entertainment Code. All measurements herein shall be made in accordance with Section 3, Subsection C, of this ordinance.

SECTION 3. Location of Adult Entertainment Establishments and Sexually-Oriented Businesses; Restrictions.

A. Definitions. Where applicable, words or phrases not defined hereinabove and used in this section shall be defined elsewhere according to the Adult Entertainment Code of the City of Palm Bay.

B. Distance Restrictions. All adult entertainment establishments or sexually-oriented businesses as defined elsewhere in the Palm Bay Adult Entertainment Code shall not be located within two thousand five hundred (2,500) feet of a Developed Public School, as the term Public School is defined in the Florida Statutes, and as the term Developed Public School is defined herein or Private School. All adult entertainment establishments or sexually-oriented businesses as defined elsewhere in the Palm Bay Adult Entertainment Code shall not be located within a Non-Primary Commercial Zoning District. All adult entertainment establishments or sexually-oriented businesses as defined elsewhere in the Palm Bay Adult Entertainment Code shall not be located within two thousand five hundred (2,500) feet of a Developed Public Park. All adult entertainment establishments or sexually-oriented businesses as defined elsewhere in the Palm Bay Adult Entertainment Code shall not be located within one thousand five hundred (1,500) feet of another adult entertainment establishment or sexually-oriented business. All adult entertainment establishments or sexually-oriented businesses as defined elsewhere in the Palm Bay Adult Entertainment Code shall not be located within one thousand (1000) feet of a Federal Highway.

C. Measurement of distance. Measurement of distances as required herein, pursuant to Section 2, shall be measured in a straight line, without regard to intervening structures, from the closest exterior structural wall of the adult entertainment establishment or sexually-oriented business to the closest property line of the establishment serving alcoholic beverages for consumption on premises. Measurement of distances as required herein pursuant to Section 3 shall be measured in a straight line, without regard to intervening structures, from the closest exterior structural wall of the adult entertainment establishment or sexually-oriented business to the closest exterior structural wall of the closest adult entertainment establishment or sexually-oriented business. Further measurement of distances as required herein, pursuant to Section 3, shall be measured in a straight line, without regard to intervening structures, from the closest exterior structural wall of the adult entertainment establishment or sexually-oriented business to the closest property line of either the Developed Public Park or the Developed Public School, as applicable.

D. Non-Conforming Establishments - Distance Requirements. Any adult entertainment establishments or sexually-oriented businesses existing and operating as of the effective date of this ordinance which are not located within the permissible locations identified as set forth herein shall be classified as non-conforming. If any such non-conforming adult entertainment establishment or sexually-oriented business voluntarily ceases to do business for a period of ninety (90) consecutive days then it shall be deemed abandoned and thereafter shall not reopen except in conformance with these location, distance and dispersal standards. A non-conforming adult entertainment establishment or sexually-oriented business shall not expand the square footage or cubic footage of the establishment or business beyond its existing dimensions.

SECTION 4. All ordinances or parts of ordinances in conflict herewith are hereby repealed and all ordinances or parts of ordinances not in conflict herewith are hereby continued in full force and effect.

SECTION 5. It is the intention of the City Council of the City of Palm Bay that the provisions of this Ordinance shall be made a part of the City of Palm Bay Code of Ordinances, Chapter 173, Adult Entertainment Code, and the sections renumbered to accomplish such intention.

SECTION 6. If any portion, clause, phrase, sentence or classification of this ordinance is held or declared to be either unconstitutional, invalid, inapplicable, inoperative

or void, then such declaration shall not be construed to affect other portions of the ordinance; it is hereby declared to be the express opinion of the City Council of the City of Palm Bay that any such unconstitutional, invalid, inapplicable, inoperative or void portion or portions of this ordinance did not induce its passage, and that without the inclusion of any such portion or portions of this ordinance, the City Council would have enacted the valid constitutional portions thereof.

SECTION 7. The provisions within this ordinance shall take effect immediately upon the enactment date.

Read in title only at Meeting No. 2008- held on 2008; and read in title only and duly passed and enacted at Meeting No. 2008- , held on , 2008.

John J. Mazziotti, MAYOR

ATTEST:

Alice Passmore, CITY CLERK

CC: