

CITY OF HEALDSBURG

ORDINANCE NO. 950

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF HEALDSBURG REPEALING THE CITY OF HEALDSBURG ZONING ORDINANCE, CHAPTER 20 OF THE MUNICIPAL CODE, IN ITS ENTIRETY AND OTHER LAND RELATED ORDINANCES, AND ADOPTING A REVISED ZONING TEXT ORDINANCE

The City Council of the City of Healdsburg does hereby ordain as follows:

SECTION 1. FINDINGS. The City Council of the City of Healdsburg hereby finds that:

- (a) That the following ordinance, as shown in Attachment "A" to this ordinance, is in the public interest and is consistent with the goals, policies and implementing programs set forth in the Healdsburg General Plan;
- (b) That in adopting changes to Article 20 – Signs, the regulations included in the ordinance are not more restrictive than the rescinded ordinance provisions pertaining to Signs.
- (c) The City Council, in adopting this ordinance, takes legislative notice of the existence and content of the following studies concerning the adverse secondary side effects of Adult-Oriented Businesses in other cities: Austin, Texas (1986); Indianapolis, Indiana (1984); Beaumont, Texas (1982); Phoenix, Arizona (1979); Amarillo, Texas (1977); Los Angeles, California (1977); Los Angeles County (1978), and Dublin, California (1997). The City Council finds that these studies are relevant to the problems addressed by the City in enacting this ordinance to regulate the adverse secondary side effects of Adult-Oriented Businesses, and more specifically finds that these studies provide convincing evidence that:
 - (1) Adult-Oriented Businesses are linked to increases in the crime rates in those areas in which they are located and in surrounding areas.
 - (2) Both the proximity of Adult-Oriented Businesses to sensitive land uses and the concentration of Adult-Oriented Businesses tend to result in the blighting and deterioration of the areas in which they are located.
 - (3) The proximity and concentration of Adult-Oriented Businesses adjacent to residential, recreational, religious, educational and other Adult-Oriented Business uses can cause other businesses and residences to move elsewhere.
 - (4) There is substantial evidence that an increase in crime tends to accompany, concentrate around, and be aggravated by Adult-Oriented Businesses, including but not limited to an increase in the crimes of narcotics distribution and use, prostitution, pandering, and violence against persons and property. The studies from other cities establish convincing evidence that Adult-Oriented Businesses which are not regulated as to permissible locations often have a deleterious effect on nearby businesses in residential areas, causing, among other adverse secondary effects, an increase in crime and a decrease in property values.

- (d) Based on the foregoing, the City Council of the City of Healdsburg finds and determines that special regulation of Adult-Oriented Businesses is necessary to ensure that their adverse secondary side effects will not contribute to an increase in crime rates or to the blighting or deterioration of the areas in which they are located or surrounding areas. The need for such special regulations is based upon the recognition that Adult-Oriented Businesses have serious objectionable operational characteristics, particularly when several of them are concentrated under certain circumstances or located in direct proximity to sensitive uses such as parks, schools, churches, thereby having a deleterious effect upon the adjacent areas. It is the purpose and intent of these special regulations to prevent the concentration of Adult-Oriented Businesses and thereby prevent such adverse secondary side effects.
- (e) The locational requirements established by this ordinance do not unreasonably restrict the establishment or operation of constitutionally protected Adult-Oriented Businesses in the City of Healdsburg, and a sufficient reasonable number of appropriate locations for Adult-Oriented Businesses are provided by this ordinance.
- (f) In developing this ordinance, the City Council has been mindful of legal principles relating to regulation of Adult-Oriented Businesses and does not intend to suppress or infringe upon any expressive activities protected by the First Amendments of the United States and California Constitutions, but instead desires to enact reasonable time, place, and manner regulations that address the adverse secondary effects of Adult-Oriented Businesses. The City Council has considered decisions of the United States Supreme Court regarding local regulation of Adult-Oriented Businesses, including but not limited to: Young v. American Mini Theaters, Inc., 427 U.S. 50 (1976) (Reh. Denied 429 U. S. 873); Renton v. Playtime Theaters, 475 U.S. 41 (1986) (Reh. Denied 475 U. S. 1132); FW/PBS, Inc. v. Dallas, 493 U. S. 215 (1990); Barnes v. Glenn Theater, 501 U.S. 560 (1991); United States Court of Appeals 9th Circuit decisions, including but not limited to: Topanga Press, et al. v. City of Los Angeles, 989 F.2d 1524 (1993); several California cases including but not limited to: City of National City v. Wiener, 3 Cal.4th 832 (1993); People v. Superior Court (Lucero) 49 Cal.3d 14 (1989); and City of Vallejo v. Adult Books, et al., 167 Cal.App.3d 1169 (1985); and other federal cases including Lakeland Lounge v. City of Jacksonville (5th Cir. 1992) 973 F.2d 1255, Hang On, Inc. v. Arlington (5th Cir. 1995) 65 F.3d 1248, Mitchell v. Commission on Adult Entertainment (3rd Cir. 1993) 10 F.3d 123, International Eateries v. Broward County (11th Cir. 1991) 941 F.2d 1157, and Star Satellite v. City of Biloxi (5th Cir. 1986) 779 F.2d 1074.

- (g) The City Council of the City of Healdsburg also finds that locational criteria alone do not adequately protect the health, safety, and general welfare of the citizens of the City of Healdsburg, and thus certain requirements with respect to the ownership and operation of Adult-Oriented Businesses are in the public interest. In addition to the findings and studies conducted in other cities regarding increases in crime rates, decreases in property values and the blighting of areas in which such businesses are located, the City Council also takes legislative notice of the facts recited in the case of Kev, Inc. v. Kitsap County, 793 F.2d 1953 (1986), regarding how live adult entertainment results in secondary effects such as prostitution, drug dealing, and other law enforcement problems.
- (h) The City Council finds the following, in part based upon its understanding of the documents and judicial decisions in the public record:
- (1) Evidence indicates that some dances, models and entertainers, and other persons who publicly perform specified sexual activities or publicly display specified anatomical parts in Adult-Oriented Businesses (collectively referred to as 'performers') have been found to engage in sexual activities with patrons of Adult-Oriented Businesses on the site of the Adult-Oriented Business;
 - (2) Evidence has demonstrated that performers employed by Adult-Oriented Business have been found to offer and provide private shows to patrons who, for a price, are permitted to observe and participate with the performers in live sex shows;
 - (3) Evidence indicates that performers at Adult-Oriented Businesses have been found to engage in acts of prostitution with patrons of the establishment;
 - (4) Evidence indicates that fully enclosed booths, individual viewing areas, and other small rooms whose interiors cannot be seen from public areas of the establishment regularly have been found to be used as a location for engaging in unlawful sexual activity;
 - (5) As a result of the above, and the increase in incidents of AIDS and Hepatitis B, which are both sexually transmitted diseases, the City has a substantial interest in adopting regulations which will reduce, to the greatest extent possible, the possibility for the occurrence of prostitution and casual sex acts at Adult-Oriented Businesses.
- (i) Zoning, licensing and other police power regulations are legitimate, reasonable means of accountability to help protect the quality of life in the community of Healdsburg and to help assure that all operators of Adult-Oriented Businesses comply with reasonable regulations and are located in places that minimize the adverse secondary effects which naturally accompany the operation of such businesses.

- (j) The City Council of the City of Healdsburg recognizes the possible harmful effects on children and minors exposed to the effects of such Adult-Oriented Businesses and the deterioration of respect for family values, and the need and desire of children and minors to stay away from and avoid such businesses, which causes children to be fearful and cautious when walking through or visiting the immediate neighborhood of such businesses; and the City Council desires to minimize and control the adverse secondary side effects associated with the operation of Adult-Oriented Businesses and thereby protect the health, safety, and welfare of the citizens of Healdsburg; protect the citizens from increase crime; preserve the quality of life; preserve property values and the character of surrounding neighborhoods and businesses; deter the spread of urban blight and protect against the treat to health from the spread of communicable and sexually transmitted diseases.
- (k) It is not the intent of the City Council of the City of Healdsburg in enacting this ordinance, or any provision thereof, to condone or legitimize the distribution of obscene material, and the City of Healdsburg recognizes that state law prohibits the distribution of the obscene materials and expects and encourages law enforcement officials to enforce state obscenity statutes against such illegal activities in the City of Healdsburg.
- (l) Nothing in this ordinance is intended to authorize, legalize, or permit the establishment, operation, or maintenance of any business, building, or use which violates any City ordinance or any statute of the State of California regarding public nuisances, unlawful or indecent exposure, sexual conduct, lewdness, obscene or harmful matter of the exhibition of public display thereof.
- (m) The City of Healdsburg finds the following in part, based upon its understanding of the documents and judicial decisions in the public record:
 - (1) Evidence indicates that some dancers, models, entertainers, and other persons who publicly perform Specified Sexual Activities or publicly display Specified Anatomical Parts in Adult-Oriented Businesses (as those terms are defined herein) (collectively referred to as "Performers") have been found to engage in sexual activities with patrons of Adult-Oriented Businesses on the site of the Adult-Oriented Business;
 - (2) Evidence has demonstrated that Performers employed by Adult-Oriented Businesses have been found to offer and provide private shows to patrons who, for a price, are permitted to observe and participated with the Performers in live sex shows;
 - (3) Evidence indicates that Performers at Adult-Oriented Businesses have been found to engage in acts of prostitution with patrons of the establishment;
- (n) In prohibiting public nudity in Adult-Oriented Businesses, the City Council does not intend to proscribe the communication of erotic messages or any other communicative element or activity, but rather only to prohibit public nudity due to the secondary impacts associated with such public nudity; and

- (o) The City Council also finds, as a wholly independent basis, that it has a substantial public interest in preserving societal order and morality, and that such interest is furthered by a prohibition on public nudity; and
- (p) While the City Council desires to protect the rights conferred by the United States Constitution to Adult-Oriented Businesses, it does so in a manner that ensures the continued and orderly development of property within the City and diminishes, to the greatest extent feasible, those undesirable secondary effects which the aforementioned studies have shown to be associated with the development and operation of Adult-Oriented Businesses; and
- (q) In enacting a nudity limitation, the City declares that the limitation is a regulatory licensing provision and not a criminal offense. The City has not provided a criminal penalty for a violation of the nudity limitation. The City adopts such a limitation only as a condition of issuance and maintenance of an Adult-Oriented Business permit issued pursuant to the City Code; and
- (r) The City Council finds that preventing the exchange of money between entertainers and patrons also reduces the likelihood of drug and sexual transactions occurring in Adult-Oriented businesses; and
- (s) Requiring separations between entertainers and patrons reduces the likelihood that such persons will negotiate narcotics sales and/or transact sexual favors within the Adult-Oriented Business.
- (t) Enclosed or concealed booths and dimly-lit areas within Adult-Oriented Businesses greatly increase the potential for misuse of the premises, including unlawful conduct of a type which facilitates transmission of disease. Requirements that all indoor areas be open to view by management at all times, and that adequate lighting be provided are necessary in order to reduce the opportunity for, and therefore the incidence of illegal conduct within Adult-Oriented Businesses, and to facilitate the inspection of the interior of the premises thereof by law enforcement personnel.

SECTION 2. ADOPTION OF ZONING TEXT.

The Zoning Text Ordinance, Chapter 20 of the Municipal Code, is hereby by revised in its entirety as shown in Exhibit "A" to this ordinance.

SECTION 3. INCONSISTENT ORDINANCES REPEALED.

Ordinances Nos. 354, 357, 388, 390, 396, 413, 414, 418, 419, 442, 451, 464, 697, 745, 746, 762, 783, 788, 779, 801, 818, 822, 870, 896, 897, 900, 901, 905, 921, 923, 937 are hereby repealed. All ordinances and parts of ordinances inconsistent with the provisions of this ordinance are hereby repealed insofar as they are inconsistent with the provisions thereof. Enactment of this ordinance shall not affect the effective time period for conditional use permits or variances under Ordinance 354 or the Zoning Map.

SECTION 4. CONSTITUTIONALITY.

If any article, section, subsection, paragraph, sentence, clause or phrase of this ordinance for any reason shall be held to be invalid or unconstitutional, the decision shall not affect the remaining portions of this ordinance.

The City Council of the City of Healdsburg hereby declares that it would have enacted this ordinance and each article, section, subsection, paragraph, sentence, clause, and phrase thereof irrespective of the fact that any one or more articles, sections, subsections, paragraphs, sentences, clauses, or phrases are declared to be valid or unconstitutional.

SECTION 5. REFERENCE.

This ordinance shall be known and cited as the Zoning Ordinance of the City of Healdsburg.

SECTION 6. ENACTMENT.

This ordinance of the City of Healdsburg shall be effective thirty (30) days after the date of its passage. Before expiration of the fifteen (15) days after its passage, this ordinance, or a summary thereof as provided in California Government Code Section 36933, shall be published and circulated in the City of Healdsburg, along with the names of the members of the City Council voting for and against its passage.

Introduced by the City Council of the City of Healdsburg on the 20th day of July, 1998, and passed and adopted by the City Council on the 3rd day of August, 1998, by the following roll call vote:

AYES: Councilmembers: Howell, Mitchell, Ziedrich and Vice Mayor Gleason

NOES: Councilmembers: None

ABSENT: Councilmembers: Mayor Harvey

ABSTAIN: Councilmembers: None

APPROVED:

ATTEST:

/S/ MARK GLEASON
Mark Gleason, Vice Mayor

/S/ MARIA CURIEL
Maria Curiel, City Clerk

I, MARIA CURIEL, City Clerk of the City of Healdsburg, do hereby certify that the foregoing is a full, true, and correct copy of an ordinance adopted by the City Council of the City of Healdsburg on the 3rd day of August, 1998.

