

ORDINANCE NO. 10-05

INTRODUCED BY:

Councilperson Hamilton-Bruer

Councilperson Hoffman

**AN ORDINANCE OF THE CITY COUNCIL OF
THE CITY OF CASTLE PINES NORTH AMENDING CERTAIN PROVISIONS OF
THE ZONING ORDINANCE RELATING TO THE REGULATION
OF SEXUALLY ORIENTED BUSINESSES AND DECLARING AN EMERGENCY**

WHEREAS, pursuant to Section 31-23-301, *et seq.*, C.R.S., the City of Castle Pines North, Colorado (the "City"), the City Council has authority over zoning and land development matters within the City; and

WHEREAS, Section 29-20-104, C.R.S., grants cities the authority to plan for and regulate the planned and orderly use of land on the basis of the impact thereof on the community; and

WHEREAS, planning, land use, and business regulation are matters of local concern; and

WHEREAS, the City of Castle Pines North City Council (the "City Council") has adopted by reference the Douglas County Zoning Resolution to govern land use, zoning and development within the City (the "City Zoning Ordinance") until such time as the City is able to carefully consider and adopt land use regulations and ordinances that are more appropriate for the City and that reflect and implement the City's 2009 Comprehensive Plan; and

WHEREAS, the City's current regulations regarding sexually oriented businesses, as such uses are defined in the City Zoning Ordinance, effectively preclude the location of any sexually oriented business in the City due to the absence of C-Commercial District Zoning within the City; and

WHEREAS, by Ordinance No. 10-02, the City Council adopted a moratorium to suspend the acceptance, processing, consideration, and decision-making on applications, permits or licenses related to any sexually oriented business in order to allow sufficient time for City staff to research and draft updated regulations for such businesses; and

WHEREAS, the City finds that there are a substantial number of sexually oriented businesses in the Denver metropolitan area and that these uses are commonly regulated in order to preserve and protect the health, safety, and welfare of the patrons of such businesses as well as the citizenry; and

WHEREAS, the City Council and City staff have conducted a review of land use studies concerning the secondary effects of sexually oriented businesses in other cities including, but not limited to: Denver, Colorado; Adams County, Colorado; New York, New York; Houston,

Texas; Dallas, Texas; City of Garden Grove, California; Whittier, California; Phoenix, Arizona; Oklahoma City, Oklahoma; Indianapolis, Indiana; St. Paul, Minnesota; Los Angeles, California; Islip, New York; Ellicottville, New York; Las Vegas, Nevada; Rome City, Georgia; and Tucson, Arizona; as well as a study by the American Center for Law and Justice dated March, 1996; and

WHEREAS, the land use studies show that sexually oriented businesses have deleterious effects on both neighboring businesses and surrounding residential areas causing an increase in crime and a verifiable and non-speculative decrease in property values; and

WHEREAS, the City, among other Denver metropolitan jurisdictions, recognizes that sexually oriented businesses have serious objectionable characteristics, particularly when they are located in close proximity to each other, thereby contributing to urban blight and downgrading the quality of life in the adjacent area; and

WHEREAS, the City Council desires to minimize and control these adverse effects and thereby protect the health, safety, and welfare of the citizens; preserve the quality of life; preserve the property values and character of surrounding neighborhoods; deter the spread of urban blight; and protect the citizens from increased crime; and

WHEREAS, the City Council finds that in order to minimize the potential adverse effects of sexually oriented businesses, restrictions on the location and spacing of sexually oriented businesses are necessary; and

WHEREAS, the City Council further finds that providing a buffer of three hundred and fifty feet (350') between sexually oriented businesses and residentially zoned districts, parks, libraries, churches and state-licensed day-care centers (child or adult) will protect the citizens, and in particular the City's youth, from the potential negative effects generated by sexually oriented businesses; and

WHEREAS, the City Council finds that churches generally provide services and activities to their congregations during the week other than Sunday and such services and activities often involve children and include on-site day care, concerts, theater, education classes and other community events that require additional protection against the secondary effects of sexually oriented businesses through a three hundred and fifty foot (350') spacing requirement; and

WHEREAS, the prescribed three hundred and fifty foot (350') buffer between sexually oriented businesses and areas zoned for residential use; single-family, two-family, or multifamily dwellings; churches, parks, libraries; state-licensed day-care facilities (child or adult); schools primarily serving persons age 18 or younger, or any other sexually oriented business is appropriate and necessary; and

WHEREAS, the City Council intends to regulate the hours of operation of a sexually oriented business to require closure on Sundays in an attempt to best protect the general public that frequent churches, commercial areas, and businesses in larger numbers on weekends from the potential, negative secondary effects of such businesses; and

WHEREAS, the City Council finds that, without the immediate passage of this Ordinance amending and prescribing location, siting, and other zoning standards for sexually oriented businesses, the City will be unable to preserve the health, peace, and safety of the residents through carefully considered and developed land use regulations.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Castle Pines North, Colorado:

Section 1. Under Section 11, B- Business District, of the City Zoning Ordinance, a new subsection 1102.20, titled “Sexually Oriented Businesses,” is hereby adopted to read in full as follows:

1102.20 Sexually Oriented Businesses as such uses are defined in Section 36 and subject to the regulations set forth in Section 24A. Sexually oriented businesses are not permitted as a business use in the PD – Planned Development District unless expressly described as a permitted use and are not permitted in any zone district other than the B – Business District.

Section 2. Section 12, titled C- Commercial District, is hereby amended to delete the following subsection:

1202.07 Sexually Oriented Business – Sexually oriented businesses are not permitted as a commercial use in the PD – Planned Development District and are not permitted in any zone district other than the C- Commercial District.

Section 3. That portion of Section 1212 of the City Zoning Ordinance, titled “Sexually Oriented Business,” is hereby repealed. The remainder of Section 1212 shall remain in full force and effect.

Section 4. That portion of Section 1217 of the City Zoning Ordinance, title “Sign Standards” is hereby repealed. The reference to Section 29 (Sign Standards) shall remain in full force and effect

Section 5. A new Section 24A of the City Zoning Ordinance is hereby adopted to read in full as follows:

SECTION 24A SEXUALLY ORIENTED BUSINESSES

2401A Findings and Intent.

- A. **Findings.** Based on evidence concerning the adverse secondary effects of adult uses on the community presented in land use studies made available to the City Council and on findings incorporated in the cases of the City of Littleton v. Z.J. Gifts, 541 U.S. 774 (2004), City of Erie v. Pap’s A.M., 120 S. Ct. 1382 (2000), Barnes v. Glen Theatre, Inc., 501 U.S. 560 (1991),

FW/PBS, Inc. v. City of Dallas, 493 U.S. 215 (1990), City of Renton v. Playtime Theatres, Inc., 475 U.S. 41 (1986), Young v. American Mini Theatres, 426 U.S. 50 (1976), Essence, Inc. v. City of Federal Heights, 285 F.3d 1272 (10th Cir. 2002), Z.J. Gifts D-2, L.L.C. v. City of Aurora, 136 F. 3d 683 (10th Cir. 1998), O'Connor v. City and County of Denver, 894 F. 2d 1210 (10th Cir. 1990), City of Colorado Springs v. 2354 Inc., 896 P.2d 272 (Colo. 1995), 7250 Corp. v. Board of County Commissioners for Adams County, 799 P. 2d 917 (Colo. 1990), and Marco Lounge, Inc. v. City of Federal Heights, 625 P.2d 982 (Colo. 1981); and on studies in other communities including but not limited to Adams County, Colorado; Dallas, Texas; Denver, Colorado; Garden Grove, California; Whittier, California; Indianapolis, Indiana; St. Paul, Minnesota; Los Angeles, California; Islip, New York; Ellicottville, New York; Las Vegas, Nevada; Rome City, Georgia; Houston, Texas; New York, New York; Oklahoma City, Oklahoma; Phoenix, Arizona; and Tucson, Arizona; and a study prepared by the American Center for Law and Justice dated March 1996; the Castle Pines North City Council finds:

1. There are a substantial number of sexually oriented businesses in the Denver metropolitan area and these uses require special supervision from public safety agencies and municipal regulation in order to protect the health, safety and welfare of the patrons of such businesses as well as the citizenry;
2. Regulation of sexually oriented businesses furthers substantial governmental interests and is necessary because, in the absence of such regulation, significant criminal activity, including prostitution, narcotics and liquor law violations, has historically and regularly occurred;
3. Sexually oriented businesses are frequently used for unlawful and unhealthful sexual activities, including prostitution and sexual liaisons of a casual nature;
4. The concern over sexually transmitted diseases, including HIV, is a legitimate health concern of the City which demands reasonable regulation of sexually oriented businesses in order to protect the health and well-being of the citizens;
5. Sexually oriented businesses have a deleterious effect on both neighboring businesses and surrounding residential areas causing an increase in crime and a decrease in property values;
6. Sexually oriented businesses lend themselves to ancillary unlawful and unhealthy activities that are often uncontrolled by the operators of the establishments;

7. Some people frequent certain adult theaters, adult arcades and other sexually oriented businesses to engage in sex within the premises of such sexually oriented businesses;
 8. Sexually oriented businesses have serious objectionable characteristics, particularly when they are located in close proximity to each other, thereby contributing to urban blight and downgrading the quality of life in the adjacent area;
 9. City Council recognizes the possible harmful impact on children and minors exposed to the effects of adult businesses that includes those encountered when children walk through or visit in the immediate neighborhood of such businesses;
 10. The City wishes to minimize and control adverse effects and thereby protect the health, safety and welfare of the citizens; preserve the quality of life; preserve the property values and character of surrounding neighborhoods; deter the spread of urban blight and protect the citizens from increased crime; and
 11. It is not the intent of this Section 24.A to suppress any speech protected by the First Amendment, but to enact content-neutral regulations that address the secondary effects of sexually oriented businesses.
- B. Intent. The intent of this Section is to set reasonable and uniform regulations to prevent the deleterious location and siting of sexually oriented businesses. These Regulations impose restrictions no greater than necessary to further the City's interest in preventing negative secondary effects attributable to sexually oriented businesses. This Section is to be construed as a regulation of time, place, and manner of the location of these businesses, consistent with the United States and Colorado Constitutions. The provisions of this Section have neither the purpose nor the 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 this Section to restrict or deny access by adults to sexually oriented materials protected by the First Amendment. It is also not the intent of this Section to condone or legitimize the distribution of obscene material or material not protected by the First Amendment.

2402A Location and Siting Requirements.

- A. It is unlawful to operate or cause to be operated a sexually oriented business in any location except as provided in the City Zoning Ordinance, as amended from time to time and subject to licensing approval by the City in conformance with applicable regulations.

- B. Sexually oriented businesses shall be permitted only upon business zoned properties within the boundaries of the City of Castle Pines North subject to the siting requirements of subsection C below.
- C. No sexually oriented business shall be located within three hundred and fifty (350') feet of the following:
1. residentially zoned district;
 2. single-family, two-family, or multifamily dwelling;
 3. church, park, or library;
 4. state-licensed day-care facility (child or adult);
 5. school primarily serving persons age 18 or younger, or
 6. any other sexually oriented business.
- D. It is unlawful to cause or permit the operation or maintenance of more than one (1) sexually oriented business in the same building, structure, lot, parcel, or portion thereof regardless of whether such businesses would be owned or operated by the same owner or lessee.
- E. For purposes of this Section, distance requirements between structures and uses specified in this Section 24.A, shall be measured in accordance with the following:
1. The distance between any two sexually oriented businesses shall be measured in a straight line, without regard to intervening structures, from the closest exterior structural wall of each business. The distance between any sexually orientated business and any church, school primarily serving persons age 18 or younger, library, public park, dwelling unit (single or multiple) or residentially zoned district shall be measured in a straight line, without regard to intervening structures or objects, from the nearest portion of the building or structure used as part of the premises where the sexually oriented business is conducted to the nearest lot line of the premises of a church, school or dwelling unit (single or multiple) or the nearest boundary of an affected public park, or residential district.
- F. A sexually oriented business lawfully operating is not rendered in violation of this Section by the subsequent location of an area zoned for residential use; single-family, two-family, or multifamily dwelling; church, park, or library; state-licensed day-care facility (child or adult); school, primarily serving persons age 18 or younger within three hundred and fifty (350') feet of the sexually oriented business.

2403A Location and Siting Requirement Exceptions.

The location and siting requirements of Section 2402A shall not apply to the following:

- A. Any sexually oriented business expressly described as an approved use in an annexation agreement or planned development approved by ordinance of the City of Castle Pines North.
- B. Any sexually oriented business for which a vested property right (within the meaning of Colorado law) was lawfully conferred or established provided that such right remains valid and effective.

2404A Signs and Exterior - Sexually Oriented Businesses.

- A. In addition to, and notwithstanding anything to the contrary contained in the sign code or other regulation of the City Zoning Ordinance, sexually oriented business signs shall be limited as follows:
 - 1. No more than one exterior sign shall be allowed for any sexually oriented business;
 - 2. No animation shall be permitted on or around any sexually oriented business sign or on the exterior walls or roof of the premises;
 - 3. No descriptive art, pictures, or designs depicting any activity related to, or inferring the nature of the business shall be allowed on any sexually oriented business sign. Said signs shall contain alphanumeric copy only; and
 - 4. Only flat wall, fascia signs shall be permitted not exceeding a total of fifty (50') square feet.
- B. It shall be unlawful for the owner or operator of a sexually oriented business to allow exterior portions of the sexually oriented business to be painted any color other than shades of brown, beige, tan or grey. Substitutes may be proposed by the owner or operator which may be accepted by the City upon an administrative determination by the City that such substitute color is compatible with and similar to other neighboring buildings' colors; provided however, the use of high intensity colors, primary colors, metallic colors, black or fluorescent colors shall be prohibited. This provision shall not apply to any sexually oriented business if the following conditions are met:

1. The sexually oriented business is a part of a commercial or industrial multi-unit center; and
 2. The exterior portions of each individual unit in the commercial or industrial multi-unit center, including the exterior portions of the sexually oriented business, are painted the same color as one another or are painted in such a way so as to be a component of the overall architectural style or pattern of the commercial multi-unit center.
- C. No merchandise or pictures of the products or entertainment on the premises shall be displayed in window areas or any area where they can be viewed from the exterior of the building.

Section 6. Section 36, titled Definitions, of the City Zoning Ordinance, is hereby amended to add a new definition of “School” to read in full as follows:

School: An institution or facility that provides a curriculum of elementary, secondary, or post-secondary academic instruction, including:

- A. College/University: A school providing higher education beyond grade 12, which offers either a two-year or four-year degree in specific disciplines;
- B. K-12: A school, public or private, which meets State of Colorado standards for providing instruction for students between five (5) and eighteen (18) years of age, including, but not limited to, vocational schools and special education schools.

Section 7. Severability. If any provision of this Ordinance should be found by a court of competent jurisdiction to be invalid, such invalidity shall not affect the remaining portions or applications of this Ordinance that can be given effect without the invalid portion, provided that such remaining portions or applications of this Ordinance are not determined by the court to be inoperable. The City Council declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase, or portion thereof, despite the fact that any one or more section, subsection, sentence, clause, phrase, or portion would be declared invalid or unconstitutional.

Section 8. Repeal of Temporary Suspension. This Ordinance repeals in its entirety Ordinance No. 10-02, titled “An Ordinance of the City Council of the City of Castle Pines North Establishing and Imposing a Temporary Suspension and Delay in the Acceptance, Processing and Approval of Applications for any Permit, Approval, or License related to the Operation of a Sexually Oriented Business.”

Section 9. Emergency Declared. The City Council finds and determines that an emergency exists in that the moratorium imposed by Ordinance No. 10-02 will expire in advance of the effective date of this Ordinance unless it becomes immediately effective upon adoption of City Council. Without the benefit of the lawful moratorium, the existing regulations codified in

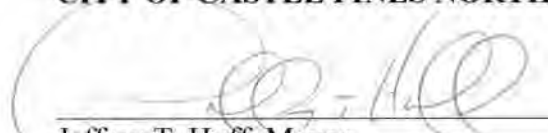
the City Zoning Ordinance governing sexually oriented businesses are legally inadequate and thus subject to challenge. Therefore, the City Council finds an emergency exists and this Ordinance is declared necessary for the immediate preservation of the public peace, health, and safety. This Ordinance shall therefore take effect immediately upon adoption as provided by law.

Section 12. Effective Date. In accordance with Colo. Rev. Stat., Section 31-16-105, this Ordinance shall take effect immediately upon final adoption.

INTRODUCED, READ, AND PASSED, ON FIRST READING, AT A REGULAR MEETING OF THE CITY COUNCIL OF THE CITY OF CASTLE PINES NORTH, COLORADO the 13th day July, 2010.

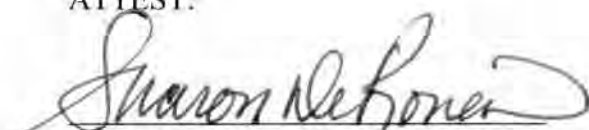
READ, AND PASSED, AND ADOPTED AS AN EMERGENCY MEASURE, WITH ANY AMENDMENTS, ON SECOND READING, AT A REGULAR MEETING OF THE CITY COUNCIL OF THE CITY OF CASTLE PINES NORTH, COLORADO the 24th day August, 2010.

CITY OF CASTLE PINES NORTH:



Jeffrey T. Huff, Mayor

ATTEST:



Sharon DeRouen, City Clerk

Approved as to form:



Linda C. Michow, City Attorney

CERTIFICATION OF PUBLICATION

I hereby attest and certify that the within and foregoing Ordinance was introduced and read on first reading at a regular meeting of the Castle Pines North City Council on July 13, 2010; published in full in the *Douglas County News-Press*; and finally passed and adopted by the City Council on August 24, 2010 following a duly noticed public meeting and ordered published by title only, with amendments if any, one time in the *Douglas County News-Press* on September 9, 2010.

ATTEST:



Sharon DeRouen, City Clerk