

City of Houston Ordinance No. 2012-597

AN ORDINANCE AMENDING CHAPTER 28 OF THE CODE OF ORDINANCES, HOUSTON, TEXAS BY ADDING A NEW ARTICLE XI RELATING TO ADULT ESTABLISHMENTS; IMPOSING A FEE ON ADULT ESTABLISHMENTS AND PROVIDING FOR THE USE OF FUNDS GENERATED FROM SUCH FEES; CONTAINING FINDINGS AND OTHER PROVISIONS RELATING TO THE SUBJECT; PROVIDING FOR SEVERABILITY; AND DECLARING AN EMERGENCY.

* * * * *

WHEREAS, in 2007, the 80th Texas Legislature enacted the Sexually Oriented Business Fee Act (the "Act"), codified in the Texas Business and Commerce Code as §§ 102.051-056, imposing a \$5 fee on each customer entering certain types of adult establishments ("Adult Establishments"), including certain types of sexually oriented businesses already regulated by the City; and

WHEREAS, a large number of Adult Establishments covered by the provision of the Act currently operate within the city limits; and

WHEREAS, in an opinion released on August 26, 2011, the Texas Supreme Court upheld the constitutionality of the Act in a challenge brought by several sexually oriented businesses; and

WHEREAS, the City has a long history of regulating sexually oriented businesses to protect the general welfare, health, safety, and order of the citizens of the City and to mitigate the negative secondary effects associated with such businesses; and

WHEREAS, the City Council finds that studies relied on by the Texas Legislature in support of the Act validate the position that prostitution, violent crime, crimes against person, promotion of prostitution, indecent exposure, lewd conduct, and illegal drug dealing, such as possession and delivery of illegal drugs, occur with greater frequency at or near Adult Establishments; and

WHEREAS, the City Council also finds that imposing a per customer fee on the operators of Adult Establishments will have a beneficial effect on the public health, safety and welfare of the City and its citizens; **NOW THEREFORE**,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HOUSTON, TEXAS:

Section 1. That the findings contained in the preamble of this Ordinance are determined to be true and correct and are hereby adopted as a part of this Ordinance.

Section 2. That Chapter 28 of the Code of Ordinances, Houston, Texas, is hereby amended by adding a new Article XI that reads as follows:

"ARTICLE XI. ADULT ESTABLISHMENTS

Sec. 28-321. Definitions.

As used in this article:

Adult establishment means a nightclub, bar, restaurant, sexually oriented business or similar commercial enterprise that:

- (A) Provides for an audience of two or more individuals live nude or semi-nude entertainment or live nude or semi-nude performances; and
- (B) Authorizes on-premise consumption of alcoholic beverages, regardless of whether the consumption of alcoholic beverages is under a license or permit issued under the Texas Alcoholic Beverage Code.

Customer means any person on the premises of an adult establishment during any performance of live nude or semi-nude entertainment, except an owner, operator, independent contractor or employee of that adult establishment or any person on such premises exclusively for the repair or maintenance of the premises or for the delivery of goods to the premises.

Director means the director of the city's department of finance.

Nude means (i) entirely unclothed or (ii) clothed in a manner that leaves uncovered or visible through less than fully opaque clothing any portion of the breasts below the top of the areola of the breasts, if the person is a female, or any portion of the genitals or buttocks.

Semi-Nude means (i) clothed in a manner that exposes the nipples and/or areola of the female breast or (ii) clothed in a manner that exposes the female breast if any device is worn as a cover over only the nipples and/or areola so long as the genitals, pubic region, anus and buttocks are fully and opaquely covered.

Sexually Oriented Business means any business or enterprise that is subject to regulation under Article III of this chapter.

Sec. 28-322. Fee imposed; records.

(a) A \$5.00 fee is hereby imposed for each entry by a customer admitted into an adult establishment within the corporate limits of the city. For more than one entry by the same customer on the same day at the same location, it shall be presumed to have been one entry by the customer and the fee amount due for that customer is \$5.00.

(b) For purposes of this article, a business day begins when the adult establishment opens and continues until the close of business.

(c) An adult establishment shall record daily the number of customers admitted to the business. The adult establishment shall maintain a record of the number of customers admitted to the business in the same manner required for such records pursuant to Section 102.052, Texas Business and Commerce Code, and as the same may be hereafter amended from time to time.

(d) An adult establishment is not required to impose the fee on a customer of the business. An adult establishment that chooses to recover the fee separately from its customers by including a stated charge for the fee on the customer check or invoice must clearly identify the charge as a reimbursement.

(e) An adult establishment that provides live nude or semi-nude entertainment on occasion but does not regularly or habitually provide such entertainment, such as hosting a wet t-shirt contest or naked sushi contest, is required to collect the fee for the day on which such entertainment is provided.

(f) An adult establishment shall file a quarterly statement even if there is no fee to report.

Sec. 28-323. Remittance of fees.

(a) An adult establishment must remit the fee and file a report with the director each quarter in the manner and containing the information required by the director.

(b) The adult establishment must remit the quarterly fee payment no later than the 20th day of the month following the end of the quarter for which the payment is due.

(c) The director shall make such rules and regulations as are reasonable and necessary to effectively collect the fee.

Sec. 28-324. Retention of records.

(a) An adult establishment must maintain and retain the records such as statements, books or accounts necessary to determine the amount of the fee for which the business is liable to pay for at least four years after the date on which the records are prepared.

(b) The city or its authorized representative may inspect, examine, or audit any records or equipment of an adult establishment liable for the fee in order to verify the accuracy of any payment made and shall have the right to determine the fee liability in the event no payment was made as required by this article.

Sec. 28-325. Estimated fees; civil penalty.

(a) Should an adult establishment fail to keep accurate records of the number of customers admitted to its business, the city may estimate the amount of fee liability based on any available information that includes, but is not limited to, any reports filed previously filed under this article.

(b) An adult establishment that fails to file a report or to pay the fee as required by this article when due shall be liable, in addition to the amount of the fee owed, interest on the principal amount due at the rate of ten percent per annum, and a civil penalty equal to 15 percent of the total amount. Should legal action be instituted for the recovery of the fees, such business shall also be liable for the city's reasonable attorney fees and costs incurred for the recovery of the fee and penalties.

(c) In addition to the civil penalty provided in this section, the failure of an adult establishment to timely file a report, make a payment, or

maintain the records required by this article shall constitute a misdemeanor and, upon conviction thereof, the *owner* of the adult establishment shall be punished by a fine of not less than \$100.00 nor more than \$500.00. Each day that any violation continues shall constitute and be punishable as a separate offense."

Section 3. The funds generated from the fees imposed by the article made the subject of this ordinance shall be used to fund the processing of all pending Houston Police Department crime lab sexual assault kits and all funds in excess of such use, if any, shall be dedicated to fund the ongoing processing of sexual assault kits held at the Houston Police Department crime lab or the Houston Forensics Science Center.

Section 4. That, if any provision, section, subsection, sentence, clause, or phrase of this Ordinance, or the application of same to any person or set of circumstances, is for any reason held to be unconstitutional, void or invalid, the validity of the remaining portions of this Ordinance or their application to other persons or sets of circumstances shall not be affected thereby, it being the intent of the City Council in adopting this Ordinance that no portion hereof or provision or regulation contained herein shall become inoperative or fail by reason of any unconstitutionality, voidness or invalidity of any other portion hereof, and all provisions of this Ordinance are declared to be severable for that purpose.

Section 5. That there exists a public emergency requiring that this Ordinance be passed finally on the date of its introduction as requested in writing by the Mayor; therefore, this Ordinance shall be passed finally on such date and shall take effect immediately upon its passage and approval by the Mayor; however, in the event that the

Mayor fails to sign this Ordinance within five days after its passage and adoption, it shall take effect in accordance with Article VI, Section 6, Houston City Charter.

PASSED AND ADOPTED this 27th day of June, 2012.

APPROVED this 27th day of June, 2012.

Annise D. Parker
Mayor of the City of Houston

Pursuant to Article VI, Section 6, Houston City Charter, the effective date of the foregoing Ordinance is _____.

City Secretary

Prepared by Legal Dept. Donne Cleveland
RDC:asr 6/18/2012 Senior Assistant City Attorney
Requested by Council Member Ellen Cohen
L.D. File No. 0121200001001

AYE	NO	
✓		MAYOR PARKER
....	COUNCIL MEMBERS
	✓	BROWN
✓		DAVIS
✓		COHEN
✓		ADAMS
	ABSENT-ON PERSONAL BUSINESS	SULLIVAN
✓		HOANG
✓		PENNINGTON
✓		GONZALEZ
✓		RODRIGUEZ
✓		LASTER
✓		GREEN
✓		COSTELLO
✓		BURKS
	ABSENT DUE TO BEING ILL	NORIEGA
✓		BRADFORD
✓		CHRISTIE
CAPTION	ADOPTED	