

CITY OF GIG HARBOR
ORDINANCE NO. 743

AN ORDINANCE OF THE CITY OF GIG HARBOR, PIERCE COUNTY, WASHINGTON, AMENDING TITLE 17 OF THE GIG HARBOR MUNICIPAL CODE BY ADDING NEW DEFINITIONS FOR ADULT ENTERTAINMENT FACILITIES TO CHAPTER 17.04; AMENDING SECTIONS 17.36.020 AND 17.40.020 TO PERMIT ADULT ENTERTAINMENT FACILITIES TO LOCATE IN B-2 AND C-1 ZONING DISTRICTS; AND ADDING A NEW CHAPTER 17.58 ESTABLISHING CONDITIONS UNDER WHICH ADULT ENTERTAINMENT FACILITIES WILL BE PERMITTED IN AND LIMITED TO THE B-2 AND C-1 ZONING DISTRICTS.

WHEREAS, on February 12, 1996, the City Council held a public hearing, adopted findings, and approved Ordinance 714, establishing a one year moratorium on adult entertainment facilities, with the intent to

review, and possibly revise, existing regulations, specifically based on the secondary effects of such businesses; and

WHEREAS, the City of Gig Harbor ("City") does not have any current zoning regulations governing the siting of adult entertainment facilities, and the City Council has directed the City Administrative Staff to prepare recommendations concerning new regulations for submittal to the Planning Commission and City Council during the course of the moratorium; and

WHEREAS, the City is adopting certain licensing and operational regulations governing adult entertainment facilities in order to mitigate and reduce unacceptable adverse secondary effects associated with and caused by activities occurring within adult entertainment facilities; and

WHEREAS, the City is a family-oriented residential community and employment center with attendant community standards; and

WHEREAS, the City is a non-charter code city under the Constitution and statutes of the State of Washington, its population as of April 1, 1996 is approximately 4110¹ and more than 20% of its population is under the age of 18 years²; and

WHEREAS, the City occupies an area of approximately 2.1 square miles and within its boundaries has approximately 1860 dwelling units; and

¹ Office of Financial Management, State of Washington

² 1990 Census

WHEREAS, approximately 16% of the land area within the City is publicly held open space, community facilities, and public right-of-way, and the remaining 1131 acres is land potentially available for private development; of that private land, approximately 66% is zoned for residential use, approximately 3% is zoned for Downtown Business, approximately 8.5% is zoned for retail and cultural and business uses, approximately 3% is zoned for office use, and approximately 0.4% is zoned intensive commercial/light industrial; and

WHEREAS, no adult entertainment facilities have attempted to locate within the City and to date there are no adult entertainment facilities located within the City; and

WHEREAS, cities have the right and duty to enact laws for the protection of public health, safety, general welfare, and morals; and

WHEREAS, various Washington State municipalities have found it necessary for public health, safety, and welfare reasons to restrict the location of adult entertainment facilities; and

WHEREAS, the City Council is committed to protecting the general welfare of the City through the enforcement of laws prohibiting obscenity, indecency, and sexual offenses; and

WHEREAS, the City Council seeks to reduce and mitigate the deleterious effects of adult entertainment facilities while preserving constitutionally protected forms of expression; and

WHEREAS, the City Council takes notice of and relies upon experiences of and studies conducted by other cities and counties in attempting to combat the specific adverse impacts of adult entertainment facilities; and

WHEREAS, the City Council finds that the location of adult entertainment facilities can contribute to neighborhood deterioration and blight through an increase in crime and diminution in property values, among other adverse consequences, and finds that such effects are contrary to the general welfare of the City; and

WHEREAS, the City Council finds that adult entertainment facilities have historically led to an increase in prostitution, sexually transmitted

diseases, drug and alcohol offenses, general criminal activity, and a decrease in property values; and

WHEREAS, based upon experiences of other jurisdictions, adult entertainment facilities are often used as fronts for or are operated by persons associated with organized criminal activities; and

WHEREAS, the law enforcement resources available for responding to problems or secondary impacts associated with or created by adult entertainment facilities are limited and are best conserved by regulating and licensing adult entertainment facilities, and attempting to prevent those activities associated with them; and

WHEREAS, the City Council finds a compelling need to protect all citizens, but especially minors from criminal and unlawful activities associated with adult entertainment facilities; and

WHEREAS, the City Council recognizes that important and substantial government interests provide a constitutional basis for reasonable regulation of the time, place, and manner under which adult entertainment facilities operate, and that, therefore, the City Council has determined that persons seeking to operate adult entertainment facilities shall be required to observe specific locational requirements, as provided for in this ordinance, before they commence business; and

WHEREAS, based on public testimony and other information presented on this subject to the Planning Commission and the City Council,

the City Council concurs with the Planning Commission and has determined that there are deleterious secondary effects associated with adult entertainment facilities that can be minimized through the adoption of specific zoning requirements that are specifically and narrowly tailored to alleviate these harmful effects; and

WHEREAS, based upon the studies, public testimony, and information presented to the City Council, and the information reviewed by the Planning Commission, and the recommendations of the Planning Commission, the City Council finds the adoption of zoning regulations for adult entertainment facilities to be necessary to protect the health, safety, and welfare of its citizens, and to preserve and protect the quality of its neighborhoods, and to preserve and protect residential land use values; the City Council therefore finds that it is necessary to minimize and alleviate

the harmful effects of adult entertainment facilities by separating adult entertainment facilities from incompatible zones and uses; and

WHEREAS, the City Administrative Staff has drafted a zoning ordinance which recognizes the constitutional right of all legitimate businesses to function while reasonably restricting the location of adult entertainment facilities within the City in order to reduce the unacceptable adverse secondary impacts associated with adult entertainment facilities; and

WHEREAS, based upon the evidence and studies considered by both the Planning Commission and the City Council, as well as the public comments and testimony presented to the Planning Commission in the public hearings on September 5 and November 7, 1996, the Planning

*Commission recommends the zoning regulations recommended by the
Administrative Staff; and*

*NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF GIG
HARBOR, WASHINGTON, DO ORDAIN AS FOLLOWS:*

***Section 1. Purpose.** It is the purpose of this ordinance to regulate adult
entertainment facilities and related activities to promote the health, safety,
morals, and general welfare of the citizens of the City of Gig Harbor, and to
establish reasonable and uniform regulations to prevent the deleterious
location of adult entertainment facilities within the City. In enacting this
ordinance, it is not the intent of the City Council to limit or restrict the
content of any communicative materials, including sexually oriented
materials. Similarly, it is not the intent of the City Council that it should*

be the effect of this ordinance to restrict or deny access by adults to sexually oriented materials protected by the State or Federal Constitutions, or to deny access by the distributors and exhibitors of sexually oriented materials to their intended market. Finally, it is not the intent of the City Council to condone or legitimize the distribution of obscene materials.

Section 2. Findings. Based upon a wide range of evidence presented to the Gig Harbor City Council and to other jurisdictions, including but not limited to the testimony of law enforcement officers and members of the public, and on other evidence, information, publications, articles, studies, documents, case law and materials submitted to and reviewed and considered by the City Council, Planning Commission, and Administrative Staff, the councils of other cities within the region and in other

jurisdictions, non-profit organizations and other legislative bodies, the City

Council makes the following findings:

- A. The City Council may rely on the experiences and studies of other cities and organizations in assessing the need for establishing zoning regulations applicable to adult entertainment facilities.*
- B. Regulation of adult entertainment facilities should be developed to prevent deterioration and degradation of the vitality of the community before the problem exists, rather than in response to an existing problem.*
- C. Certain conduct occurring at and surrounding adult entertainment facilities creates secondary impacts that are*

detrimental to the public health, safety, and general welfare of the citizens of Gig Harbor, and therefore the negative effects of such conduct must be minimized as provided herein.

D. Regulation of adult entertainment facilities is necessary because in the absence of regulation significant criminal activity has historically and regularly occurred.

E. Businesses providing adult entertainment or sexually oriented materials are increasingly associated with ongoing prostitution, illegal drug activity, disruptive conduct and other criminal activity, and such businesses are currently not subject to effective regulation and constitute an immediate threat to the public peace, health and safety.

F. Due to the information presented regarding the connection of prostitution with adult entertainment facilities, there is concern over sexually transmitted diseases which is a legitimate health concern of the City and thus requires regulation of adult entertainment facilities in order to protect the health, safety and well-being of the public.

G. No evidence has been presented to show that the location of adult entertainment facilities within the City will improve the commercial viability of the community, or will otherwise have a beneficial effect, versus a detrimental effect.

- H. *The City of Gig Harbor Comprehensive Plan strongly advocates compatibility of adjacent land uses.*
- I. *Adult entertainment facilities are incompatible with certain land uses such as residences, religious facilities, public parks, commercial family day care facilities, public and private nursery schools and preschools, and public and private primary and secondary schools.*
- J. *Adjacency of residential uses to adult entertainment facilities reduces the value of residential property.*
- K. *Adult entertainment facilities are perceived to negatively impact the character of established neighborhoods.*

L. *Currently there are no adult entertainment facilities in Gig Harbor, and the City has not received any formal inquiries regarding the potential siting of an adult entertainment facility within the City.*

M. *Restricting the location of adult entertainment facilities to commercial districts and general business districts, and utilizing 500 feet as the requisite spacing between an adult entertainment facility and any residential zone, religious facility, public park, commercial family day care facility, public or private nursery school or preschool, public or private primary or secondary school and other adult entertainment establishments,*

will provide minimal separation and buffering necessary to protect public health, safety, and welfare, while setting aside a reasonable number of location sites within the City for adult entertainment facilities.

N. Restricting the location of adult entertainment facilities as provided in this ordinance will leave 25 acres of the City, or 3% of the City's total commercial land available to adult entertainment facilities. At the time this ordinance was adopted, approximately 17 commercial sites were potentially available for the siting of adult entertainment facilities.

O. Regulation of adult entertainment facilities is necessary to prevent public nuisances including moral nuisances.

P. The City conducted an environmental review of the adult entertainment facility zoning regulations and issued a determination of nonsignificance.

Q. The City submitted a copy of the proposed adult entertainment facility zoning regulations to the state for the required 60 day review under RCW 36.70A.106.

Section 3. Definitions. A new section 17.04.021 is hereby added to

Chapter 17.04 of the Gig Harbor Municipal Code:

17.04.021 Adult arcade.

"Adult arcade" means a commercial establishment containing individual viewing areas or booths, where, for any form of consideration, including a membership fee, one or more still or motion picture projectors, slide projectors, or other similar image producing machines are used to show films, motion pictures, video cassettes, slides, or other visual representations that are distinguished or characterized by a predominant emphasis on matters depicting, describing, or simulating any specified sexual activities or any specified anatomical areas.

Section 4. Definitions. A new section 17.04.022 is hereby added to Chapter 17.04 of the Gig Harbor Municipal Code:

17.04.022 Adult cabaret.

"Adult cabaret" means a nightclub, bar, restaurant, tavern, or other similar commercial establishment, whether or not alcoholic beverages are served, that regularly features adult entertainment.

Section 5. Definitions. *A new section 17.04.023 is hereby added to Chapter 17.04 of the Gig Harbor Municipal Code:*

17.04.023 Adult entertainment.

"Adult entertainment" means:

A. Any exhibition, performance or dance conducted in an adult entertainment facility where such exhibition, performance or dance is distinguished or characterized by a predominant emphasis on matters depicting, describing, or simulating any specified sexual activities or any specified anatomical areas; or

B. Any exhibition, performance or dance intended to sexually stimulate any patron and conducted in an adult entertainment facility where such exhibition, performance or dance is performed for, arranged with, or engaged in with fewer than all patrons in the adult entertainment facility at that time, with separate consideration paid, either directly or indirectly, for such performance, exhibition or dance. For purposes of example and not limitation, such exhibitions, performances or dances are commonly referred to as table dancing, couch dancing, taxi dancing, lap dancing, private dancing or straddle dancing.

Section 6. Definitions. A new section 17.04.024 is hereby added to

Chapter 17.04 of the Gig Harbor Municipal Code:

17.04.024 Adult entertainment facility.

"Adult entertainment facility" means a commercial establishment defined as an adult arcade, adult cabaret, adult motel, adult motion picture theater, adult retail store, or other adult entertainment facility.

Section 7. Definitions. A new section 17.04.026 is hereby added to Chapter 17.04 of the Gig Harbor Municipal Code:

17.04.026 Adult motel.

"Adult motel" means a hotel, motel, or similar commercial establishment which:

A. Offers sleeping accommodations to the public for any form of consideration and provides patrons with closed-circuit television

transmissions, films, motion pictures, video cassettes, slides, or other visual representations that are distinguished or characterized by a predominant emphasis on matters depicting, describing, or simulating any specified sexual activities or any specified anatomical areas, and that has a sign visible from the public right-of-way that advertises the availability of this type of sexually oriented materials; or

B. Offers a sleeping room for rent for a rental fee period of time that is less than ten (10) hours; or

C. Allows a tenant or occupant of a sleeping room to sub-rent the room for a period of time that is less than ten (10) hours.

Section 8. Definitions. A new section 17.04.027 is hereby added to

Chapter 17.04 of the Gig Harbor Municipal Code:

17.04.027 Adult motion picture theater.

"Adult motion picture theater" means a commercial establishment where, for any form of consideration, motion pictures, films, video cassettes, slides, or other similar visual representations are regularly shown that are distinguished or characterized by a predominant emphasis on matters depicting, describing, or simulating any specified sexual activities or any specified anatomical areas.

Section 9. Definitions. A new section 17.04.028 is hereby added to

Chapter 17.04 of the Gig Harbor Municipal Code:

17.04.028 Adult retail store.

"Adult retail store" means a commercial establishment such as a bookstore, video store, or novelty shop which as one of its principal business purposes offers for sale or rent, for any form of consideration, any one or more of the following:

- A. Books, magazines, periodicals or other printed materials, or photographs, films, motion pictures, video cassettes, slides, or other visual representations that are distinguished or characterized by a predominant emphasis on matters depicting, describing, or simulating any specified sexual activities or any specified anatomical areas; or*
- B. Instruments, devices, or paraphernalia designed for use in connection with any specified sexual activities.*

Section 10. Definitions. *A new section 17.04.329 is hereby added to*

Chapter 17.04 of the Gig Harbor Municipal Code:

17.04.329 Expressive dance.

"Expressive dance" means any dance which, when considered in the context of the entire performance, constitutes an expression of art, theme, story or ideas, but excluding any dance such as, but not limited to, common barroom type topless dancing which, when considered in the context of the entire performance, is presented primarily as a means of displaying nudity as a sales device or for other commercial exploitation without substantial expression of theme, story or ideas, and the conduct appeals to the prurient interest, depicts sexual conduct in a patently offensive way and lacks serious literary, artistic, political or scientific value.

Section 11. Definitions. A new section 17.04.633 is hereby added to

Chapter 17.04 of the Gig Harbor Municipal Code:

17.04.633 Other adult entertainment facility.

"Other adult entertainment facility" means any commercial establishment not defined herein where adult entertainment or sexually oriented materials is regularly conducted, displayed, or available in any form, for any type of consideration. Provided however, that a public library, and a school, university, or similar educational or scientific facility shall not be considered an adult entertainment facility. In addition, a commercial establishment that offers access to telecommunications networks as a principal business purpose shall not be considered an adult entertainment facility unless the access is provided for the primary purpose of displaying or

presenting visual images that are distinguished or characterized by a predominant emphasis on matters depicting, describing, or simulating any specified sexual activities or any specified anatomical areas.

Section 12. Definitions. A new section 17.04.725 is hereby added to Chapter 17.04 of the Gig Harbor Municipal Code:

17.04.725 Sexually oriented materials.

"Sexually oriented materials" means any books, magazines, periodicals or other printed materials, or any photographs, films, motion pictures, video cassettes, slides, or other visual representations that are distinguished or characterized by a predominant emphasis on matters depicting, describing, or simulating any specified sexual activities or any specified anatomical areas.

Section 13. Definitions. A new section 17.04.745 is hereby added to

Chapter 17.04 of the Gig Harbor Municipal Code:

17.04.745 Specified anatomical areas.

"Specified anatomical areas" means and includes any of the following:

- A. The human male genitals in a discernibly turgid state, even if completely and opaquely covered; or
- B. Less than completely and opaquely covered human genitals, pubic region, anus, buttocks, or female breast below the top of the areola.

Section 14. Definitions. A new section 17.04.746 is hereby added to

Chapter 17.04 of the Gig Harbor Municipal Code:

17.04.746 Specified sexual activities.

"Specified sexual activities" means and includes any of the following:

- A. The caressing, fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breasts; or
- B. Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, or sodomy; or
- C. Masturbation, actual or simulated; or
- D. Excretory functions as part of, or in connection with, any of the sexual activities specified in this definition.

Section 15. Location of Adult Entertainment Facilities. Section

17.36.020 of the Gig Harbor Municipal Code is hereby amended to permit the location of adult entertainment facilities subject to the provisions of Chapter 17.58 of the Gig Harbor Municipal Code.

17.36.020 Permitted uses.

The following uses and structures are permitted in a B-2 district:

A. Retail and wholesale sales, excluding motorized vehicles, trailers and boats;

* * * *

I. Family day care; ~~and~~

J. Hotels and motels; and

K. Adult entertainment facilities subject to the provisions of

Chapter 17.58 of the Gig Harbor Municipal Code.

Section 16. Location of Adult Entertainment Facilities. Section

17.40.020 of the Gig Harbor Municipal Code is hereby amended to permit the location of adult entertainment facilities subject to the provisions of Chapter 17.58 of the Gig Harbor Municipal Code.

17.40.020 Permitted principal uses and structures.

The following principal uses and structures are permitted in a

C-1 district:

A. All uses permitted in a B-2 district;

* * * *

T. Family day care; ~~and~~

U. Adult family homes; and

V. Adult entertainment facilities subject to the provisions of

Chapter 17.58 of the Gig Harbor Municipal Code.

Section 17. Adult Entertainment Standards. A new chapter 17.58 is hereby added to Title 17 of the Gig Harbor Municipal Code:

CHAPTER 17.58

ADULT ENTERTAINMENT FACILITIES

Sections:

17.58.010 Purpose and intent.

17.58.020 Applicability.

17.58.030 Limitations.

17.58.040 Separation requirements.

17.58.050 Variation from separation requirements.

17.58.060 Nonconforming adult entertainment facility.

17.58.010 Purpose and intent.

The purpose and intent of requiring standards for adult entertainment facilities is to mitigate the adverse secondary effects caused by such facilities and to maintain compatibility with other land uses and services permitted within the City.

17.58.020 Applicability.

The standards established in this chapter apply to all adult entertainment facilities and include, but are not limited to, the following: adult arcades, adult cabarets, adult motels, adult motion picture theaters, and adult retail stores.

17.58.030 Limitations.

The standards established in this chapter shall not be construed to restrict or prohibit the following activities or products: (a) expressive dance; (b) plays, operas, musicals, or other dramatic works; (c) classes, seminars, or lectures conducted for a scientific or educational purpose; (d) printed materials or visual representations intended for educational or scientific purposes; (e) nudity within a locker room or other similar facility used for changing clothing in connection with athletic or exercise activities; (f) nudity within a hospital, clinic, or other similar medical facility for health-related purposes; and (g) all movies and videos that are rated G, PG, PG-13, R and NC-17 by the Motion Picture Association of America.

17.58.040 Separation requirements.

A. An adult entertainment facility shall not be permitted to locate in any zoning district other than the General Business District (B-2) and Commercial District (C-1). Within the B-2 or C-1 district, an adult entertainment facility shall not be permitted to locate within five hundred (500) feet of any of the following zones or uses whether such zones or uses are located within or outside of the City limits:

1. A single-family residential zone (R-1);
2. A medium-density residential zone (R-2);
3. A multiple-family residential zone (R-3);
4. A residential and business district zone (RB-1, RB-2);
5. A commercial family day care facility;
6. A public or private preschool or nursery school;

7. A public or private primary or secondary school;
8. A public park;
9. A church, temple, mosque, synagogue, chapel or other similar religious facility; and,
10. Other adult entertainment establishments

B. In calculating the measurement of the five hundred (500) foot buffer between an adult entertainment facility and a sensitive zone or use specified in GHMC 17.58.040(A), such distance shall be measured by extending a straight line between the nearest boundary line of a sensitive zone or nearest physical point of the structure housing a sensitive use, to the nearest physical point of the structure housing an adult entertainment facility, whichever is the greater distance.

17.58.050 Variation from separation requirements.

Variances shall be granted from the separation requirements in GHMC 17.58.040 if the applicant demonstrates that all of the following criteria are met:

- A. The physical features of the land would result in an effective separation between the proposed adult entertainment facility and any sensitive zones or uses in terms of visibility and access;*
- B. The proposed adult entertainment facility complies with the goals and policies of the City's Comprehensive Plan;*
- C. The proposed adult entertainment facility is otherwise compatible with adjacent and surrounding land uses;*
- D. The applicant has proposed conditions which would minimize the adverse secondary effects of the proposed adult entertainment facility.*

17.58.060 Nonconforming adult entertainment facility.

An adult entertainment facility shall be deemed a nonconforming use and shall be subject to the requirements of Chapter 17.68 GHMC (Nonconformities) if a sensitive zone or use identified in GHMC 17.58.040(A) locates within five hundred (500) feet of that adult entertainment facility after the date that adult entertainment facility has located within the City in accordance with the requirements of this chapter.

Section 18. Limitations of Liability. *None of the provisions of this ordinance are intended to create a cause of action or provide the basis for a claim against the City, its officials or employees through the performance or the failure to perform a duty or obligation running to a specific individual*

or specific individuals. Any duty or obligation created herein is intended to be a general duty or obligation running in favor of the general public.

Section 19. Public Nuisance/Injunctions. Any adult entertainment facility in violation of this ordinance shall be deemed a public nuisance, which, in addition to all other remedies, may be abated by injunctive relief.

Section 20. Severability. If any section, sentence, clause or phrase of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance.

Section 21. Effective Date. This ordinance or a summary thereof consisting of the title shall be published in the official newspaper of the City, and shall take effect and be in full force five (5) days after publication.

PASSED by the City Council and APPROVED by the Mayor this 9th day of December, 1996.

APPROVED:

MAYOR, GRETCHEN WILBERT

ATTEST/AUTHENTICATED:

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

FILED WITH THE CITY CLERK: 11/25/96

PASSED BY THE CITY COUNCIL: 12/9/96

PUBLISHED: 12/18/96

EFFECTIVE DATE: 12/23/96

ORDINANCE NO. 743

SUMMARY OF ORDINANCE NO. 743

of the City of Gig Harbor, Washington

On the 9th day of December, 1996, the City Council of the City of Gig Harbor, passed Ordinance No. 743. A summary of the content of said ordinance, consisting of the title, provides as follows:

AN ORDINANCE OF THE CITY OF GIG HARBOR, PIERCE COUNTY, WASHINGTON, AMENDING TITLE 17 OF THE GIG HARBOR MUNICIPAL CODE BY ADDING NEW DEFINITIONS FOR ADULT ENTERTAINMENT FACILITIES TO CHAPTER 17.04; AMENDING SECTIONS 17.36.020 AND 17.40.020 TO PERMIT ADULT ENTERTAINMENT FACILITIES TO LOCATE IN B-2 AND C-1 ZONING DISTRICTS; AND ADDING A NEW CHAPTER 17.58 ESTABLISHING CONDITIONS UNDER WHICH ADULT ENTERTAINMENT FACILITIES WILL BE PERMITTED IN AND LIMITED TO THE B-2 AND C-1 ZONING DISTRICTS.

The full text of this Ordinance will be mailed upon request.

DATED this 10th day of December, 1996.

CITY ADMINISTRATOR, MARK HOPPEN