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**YELLOWSTONE BOARD OF COUNTY COMMISSIONERS**  
**YELLOWSTONE COUNTY, MONTANA**  
**Friday, February 17, 2006**

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**SUBJECT:** Zone Change #591 Public Hearing –Text Amendment to Section 27-611 of the Unified Zoning Regulations, Sexually Oriented Businesses

**THROUGH:** Candi Beaudry, AICP, Interim Planning Director

**FROM:** Nicole Cromwell, AICP, Planner II, Zoning Coordinator

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**PROBLEM/ISSUE STATEMENT:** The Board of County Commissioners of Yellowstone County has initiated this text amendment to Section 27-611 of the Unified Zoning Regulations at the request of a group of concerned citizens including representatives from Montana Help Our Moral Environment (Montana H.O.M.E.), Mr. Dallas Erickson, and Citizen’s Against Sexual Exploitation (C.A.S.E.), Reverend Ron Palmer. The proposal includes significant additions to the existing code adopted into the zoning regulations by the City and County in 1992. The County Zoning Commission held a public hearing on the amendment to the zoning regulation on January 17, 2006, and voted 3-1 to recommend denial to the Board of County Commissioners.

**ALTERNATIVES ANALYZED:** The County Zoning Commission held a public hearing on the proposed text amendment on January 17, 2006. The Commission heard testimony before recommending denial of these changes. The County Zoning Commission is forwarding a recommendation of denial. The Board of County Commissioners may choose, after closing the public hearing, to approve, deny, delay action for thirty (30) days or place the proposed ordinance on a ballot.

**FINANCIAL IMPACT:** There should be a direct financial impact to the County, specifically the Code Enforcement Division, as a result of the new zoning regulation. The Code Enforcement Division will likely have to reduce levels of service for other areas of enforcement in order to document existing sexually oriented businesses to establish legal nonconformity under the proposed new regulation. Legal challenges to the proposed regulation are unknown and may result in a significant financial burden to the County.

**RECOMMENDATION**

The Zoning Commission recommends that the Board of County Commissioners deny Zone Change #591.

**ATTACHMENTS:**

- A: Comparison of Existing Regulation to Proposed Regulation
- B: Resolution of Intent to Amend the Zoning Regulations

## **INTRODUCTION**

In December 2001, Planet Lockwood at 1127 North Frontage Road in Lockwood, began offering live nude dancing at the bar and casino. Planet Lockwood is located outside the city limits but within the 4 ½ mile jurisdictional zoning area for Yellowstone County. The Unified Zoning Regulations Section 27-611 does not classify live nude dancing as a “sexually oriented business”. The existing zoning code regulates several classes of sexually oriented businesses that are clearly defined including adult arcades, adult book stores, adult movie theaters and adult motels. BMCC Section 3-304 allows the City of Billings to prohibit nude dancing where any alcohol is served or sold. The current zoning regulation allows sexually oriented businesses in certain districts if they can meet the required separation distances to other sexually oriented businesses, residential zoning districts, public libraries, playgrounds, parks, public or private schools, day care facilities, churches and other places of worship. Sexually oriented businesses are restricted to four (4) zoning districts – Central Business District, Highway Commercial, Controlled Industrial and Heavy Industrial provided they meet separation requirements.

## **PROCEDURAL HISTORY**

- On November 7, 2003, District Court Judge Russell Fagg determined that two proposed ordinances – one addressing Obscenity and one to make changes to Section 27-611, Sexually Oriented Businesses (Unified Zoning Regulations) were valid and constitutional and could be placed on a ballot for a public election on June 8, 2004.
- On February 5, 2004, the proponents of the ordinances failed to gain the required signatures within ninety (90) days of Judge Fagg’s ruling in order to place the ordinances on the June 8, 2004, primary ballot.
- On October 13, 2005, Dan Schwarz, Chief Deputy County Attorney, forwarded to the Planning and Community Services Department the proposed text amendment to Section 27-611 of the Unified Zoning Regulations. The Board of County Commissioners initiated this amendment. The proposed amendment is identical to the one presented to Judge Russell Fagg for a ruling in 2003.
- On January 1, and January 8, 2006, the legal ad for a special joint public hearing of the City and County Zoning Commissions was published in the Billings Gazette.
- On Tuesday January 17, 2006, the City and County Zoning Commissions conducted the public hearing on the proposed amendments to Section 27-611 of the Unified Zoning Regulations. The City Zoning Commission voted 3-2 to forward a recommendation of approval to the City Council. The County Zoning Commission voted 3-1 to recommend denial to the Board of County Commissioners.
- The City Council will hold a public hearing and 1<sup>st</sup> reading of the ordinance on February 13, 2006, and make a decision on the proposed text amendment.
- The Board of County Commissioners will hold a public hearing on Friday, February 17, 2006, to consider the proposed text amendment.
- If the text amendment ordinance is approved on first reading, the City Council will consider it for second reading on February 27, 2006.
- If the Board of County Commissioners adopts the resolution of intent to amend the zoning regulations on Friday February 17, 2006, then the Commissioners may adopt a resolution amending the zoning regulations after March 17, 2006.

## **ALTERNATIVES ANALYSIS**

The Board of County Commissioners may choose, after closing the public hearing, to approve, deny, delay action for thirty (30) days or place the proposed zoning regulation amendment on a ballot. The Planning Department recommended to the City and County Zoning Commissions denial of the proposed changes. The proposed changes present several difficulties including terms that are not defined, regulation of the interior design of buildings, references to case law and studies that have not been presented to the Board of County Commissioners for consideration, and proposes to regulate the day-to-day operations of sexually oriented businesses. An overall concern of the Planning Department with the proposed ordinance was whether it exceeds the authority granted to enact zoning regulations as stated within Montana Code and within the Unified Zoning Regulations. Many proposed sections of the code the Planning staff believes exceed this authority. Another primary concern of the Planning Department was the enforceability of some of these provisions particularly the interior building restrictions. For example, if all adult arcade viewing rooms must be limited to 150 square feet, not have closing doors and have an obstructed view from the booth to a manager's station, Code Enforcement Officers would need to check each of these specifications on an almost daily basis to determine compliance. Doors, furniture and space arrangements are easily changed even from hour to hour. Compliance will be difficult to determine and enforce for these provisions.

The County Zoning Commission determined after conducting the public hearing and considering all testimony, and the Planning Department's recommendation, the proposed amendment was not suitable for adoption on a 3-1 vote. The City Zoning Commission received the same testimony but conversely determined the proposed amendment was suitable for adoption on a 3-2 vote. The City Council will conduct a public hearing and first reading of the ordinance amending the Unified Zoning Regulations on Monday, February 13, 2006. The Board of County Commissioners will conduct a public hearing on the proposed amendment on Friday, February 17, 2006. The Board of County Commissioners has expressed an interest in placing this measure on the ballot for a public vote perhaps on the June 6, 2006 primary election. The City Council also has the option of placing this amendment to the zoning regulations on a ballot for public vote. This is not the usual method for adoption of amendments to zoning regulations either in the City or in the County. The deadline for submittal of complete ballot language is March 23, 2006. The County Zoning Commission was also asked by the Board of County Commissioners to recommend whether the proposed language be adopted through a public election ballot. The County Zoning Commission recommends that the Board of County Commissioners not place the matter on a public election ballot and that the Commissioners investigate whether a County-wide regulation might be adopted to prevent nudity where alcohol is served.

If the changes are not adopted, the County still retains its existing authority to regulate sexually oriented businesses and the City Of Billings retains its authority to regulate businesses under BMCC Section 3-304, which prohibits nude dancing where any alcoholic beverages are served or sold. If the changes are not adopted massage parlors will not be regulated as sexually oriented businesses and venues that offer nude dancing would not be regulated as sexually oriented businesses. If the changes are not adopted, the County will avoid significant financial burdens to enforce the new ordinance and defend likely legal challenges to the adopted text amendment.

### **STAKEHOLDERS**

The City and County Zoning Commissions held a public hearing on January 17, 2006 on the proposed changes to Section 27-611 Sexually Oriented Businesses. Eighteen (18) persons testified in favor of the proposed changes, five (5) persons testified against the proposed changes and four (4) persons submitted written testimony in favor of the proposed changes. Those in favor testified the proposed regulation would counteract the negative secondary effects of the sexually oriented businesses including sexually transmitted disease, blight and the break down of families. Those in favor testified that sexually oriented business contribute to addictive behavior and an increase in sexual assaults. Those opposed to the ordinance testified that the proposed change exceeds the zoning authority of the City and County, would invite litigation and is an invasion of citizen's right to privacy and free speech. Those opposed also testified that existing sexually oriented businesses are well run and have not created blight where they are located.

### **RECOMMENDATION**

The County Zoning Commission recommends that the Board of County Commissioners deny Zone Change #591.

### **ATTACHMENTS:**

- A: Comparison of Existing Regulation to Proposed Regulation
- B: Resolution of Intent to Amend the Zoning Regulations

**ATTACHMENT A**

Comparison of Existing Regulation to Proposed Regulation  
Section 27-611 Sexually Oriented Businesses (SOB)

**Existing SOB Regulation**

**Restricts and defines:**

- Adult Arcades
- Adult Book Stores
- Adult Video Stores
- Adult Motels
- Adult Movie Theaters

**Allowed Only in 4 Zoning Districts**

- Central Business District
- Highway Commercial
- Controlled Industrial
- Heavy Industrial

**Minimum separation from another SOB**

- 600 feet

**Minimum separation to residential zoning, libraries, playgrounds, parks, public & private schools, day cares, churches and other places of worship**

- 1,000 feet

**Legal Nonconformity lapse period**

- 1 year

**Restriction on size of viewing booth/room**

- None

**Proposed SOB Regulation**

**Restricts and defines:**

- Adult Arcades
- Adult Book Stores
- Adult Video Stores
- Adult Motels
- Adult Movie Theaters
- Viewing Rooms/Booths
- Nudity in Sexually Oriented Businesses

**Restricts but does not define:**

- Adult Massage Parlor
- Adult Sauna
- Adult Entertainment Center
- Adult Cabaret
- Adult Health/Sport Club
- Adult Steam Room/Bathhouse Facility
- Nude Dancing Establishment

**Allowed Only in 4 Zoning Districts**

- Central Business District
- Highway Commercial
- Controlled Industrial
- Heavy Industrial

**Minimum separation from another SOB**

- 600 feet

**Minimum separation to residential zoning, libraries, playgrounds, parks, public & private schools, day cares, churches and other places of worship**

- 1,000 feet

**Legal Nonconformity lapse period**

- 1 month (30 days)

**Restriction on size of viewing booth/room**

- 150 square feet
- No doors allowed
- Viewable from manager's station

### **Existing SOB Regulation**

#### **Sign Limitations**

- Prohibits obscene, pornographic or immoral words or pictures (City Sign Code)
- No prohibition in County Sign Code
- Size and number limited by City & County Sign Code applicable to zoning district

#### **Operating Standards**

- Prohibits nude dancing where alcohol is served (City only)

### **Proposed SOB Regulation**

#### **Sign Limitations**

- Prohibits pictures, silhouettes or drawings of any kind – just business name
- Requires uniformity on lettering and background of sign
- Limits each SOB to 2 signs maximum – 3 display sides total
- Must be a rectangle, not exceed 75 square feet, cannot exceed 10 feet in height or ten feet in length
- No flashing lights allowed
- Must post sign on each door stating “Adults Only” or “No Minors Allowed”

#### **Operating Standards**

- Prohibits nudity and specific sexual activity in any SOB except for Adult Motels
- Prohibits SOB in any building where alcohol is served except for Adult Motel (City & County)
- Prohibits employees from soliciting for business outside the SOB
- Requires live performances in SOB to be on a stage and at least 9 feet from audience
- May not be open between midnight and 9 am
- No minors allowed in SOB
- In Adult Video Arcades lighting must be at least 5 foot candles at floor level
- In Adult Video Arcades must have easily cleaned walls and flooring in viewing booths, rugs and carpeting are prohibited
- No merchandise or activities can be displayed from building exterior
- No flashing lights, drawings, pictures or silhouettes on the building exterior
- Single color required on building exterior unless part of a multi-tenant building

## ATTACHMENT B

Resolution of Intent 06-\_\_\_\_\_

A RESOLUTION OF INTENTION PROVIDING THAT THE UNIFIED ZONING REGULATIONS FOR THE CITY OF BILLINGS AND YELLOWSTONE COUNTY JURISDICTIONAL AREA BE AMENDED BY REVISING SECTION 27-611(a), 27-611(b), 27-611(c), AND ADDING NEW SECTIONS 27-611(g), 27-611(h), 27-611(i), 27-611(j) and 27-611(k); SEXUALLY ORIENTED BUSINESSES PURPOSE AND FINDINGS, DEFINITIONS, SIGN LIMITATIONS, OPERATING STANDARDS AND BUILDING EXTERIOR REQUIREMENTS AND ADOPT THE REVISIONS AS AN AMENDMENT TO THE ZONING REGULATIONS

WHEREAS, pursuant to Title 76, Chapter 2, Montana Code Annotated, the Board of County Commissioners of Yellowstone County, Montana, held a public hearing and adopted a resolution of intent on the 17th day of February, 2006 on the following proposed amendments and additions to the City of Billings – Yellowstone County Unified Zoning Regulations.

1. That the Unified Zoning Regulations of Yellowstone County and the City of Billings be amended by revising Sections 27-611(a), 27-611(b), 27-611(c) and adding new sections 27-611(g), 27-611(h), 27-611(i), 27-611(j) and 27-611(k) to read as follows:

**SEC. 27-611. SEXUALLY ORIENTED BUSINESSES.**

- (a) Purpose and Intent. It is the purpose of this section to regulate sexually oriented businesses and related activities to promote the health, safety, morals, and the general welfare of the citizens of the City of Billings and Yellowstone County, and to establish reasonable uniform regulations to prevent the continued deleterious location and concentration of sexually oriented businesses within the City and County jurisdictions. The provisions of this section have neither the purpose nor 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 these regulations to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, nor to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent nor effect of these regulations to condone or legitimize the distribution of obscene materials.
- (b) Findings ~~and Determinations~~. The Billings City Council and Yellowstone County Commission hereby finds and determines that:

Based upon evidence concerning the adverse secondary effects of sexually oriented businesses on the community presented in hearings and reports made available to the City Council and Board of County Commissioners, and upon findings incorporated in the cases of *City of Renton v. Playtime Theatres, Inc.* 475 U.S.41 (1986); *Young v. American Mini Theatres*, 426 U.S. 50 (1976); and *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560 (1991); *Arcara v. Cloud Books, Inc.* 478 U.S. 697 (1986); *California v. LaRue*, 409 U.S. 109 (1972); *Iacobucci v. City of Newport*,

Ky, 479 U.S. 92 (1986); United States v. O'Brien, 391 U.S. 367 (1968); DLS Inc. v. City of Chattanooga, 107 F 3<sup>rd</sup> 403(6th Cir. 1997); Key, Inc. v. Kitsap County, 793 F. 2<sup>nd</sup> 1053 (9<sup>th</sup> Cir 1986); Hang On Inc. v. City of Arlington, 65 F. 3<sup>rd</sup> 1248 (5<sup>th</sup> Cir. 1995); South Florida Free Beaches Inc. v. City of Miami, 7344 F 2n 608 (11<sup>th</sup> Cir 1984); and N.W. Enterprises v. City of Houston, 27 F. Supp. 2d 754 (S.D. Tex. 1998), as well as studies conducted in other cities including but not limited to, Phoenix, Arizona; Minneapolis, Minnesota; Houston, Texas; Indianapolis, Indiana; Amarillo, Texas; Garden Grove, California; Los Angeles, California; Whittier, California; Austin, Texas; Seattle, Washington; Oklahoma City, Oklahoma; Cleveland, Ohio; and Beaumont, Texas; and findings reported in the Final Report of the Attorney General's Working Group on the Regulation of Sexually Oriented Businesses (June 6, 1989, State of Minnesota), and statistics obtained from the U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, the City of Billings and Yellowstone Commission find that:

- ~~(1) — The establishment of adult uses in business districts which are immediately adjacent to and which serve residential neighborhoods has a deleterious effect on both the business and residential segments of the neighborhood, causing or contributing to blight and a downgrading of property values.~~
- ~~(2) — The establishment of more than two (2) adult uses within six hundred (600) feet of each other has a deleterious effect on surrounding residential and business areas and the fostering of such businesses within a close proximity tends to create a "skid row" atmosphere.~~
- ~~(3) — The location of several adult uses in the same neighborhood tends to attract an undesirable quantity and quality of transients, a circumstance which adversely affects property values, causes an increase in crime and encourages residents and businesses to move elsewhere.~~
- ~~(4) — Concern for, and pride in, the orderly planning and development of a neighborhood should be encouraged and fostered in those persons comprising residential and business segments of that neighborhood.~~

(1) Sexually oriented business lend themselves to ancillary unlawful and unhealthy activities that are currently uncontrolled by the operators of the establishments. Further, there is currently no mechanism to make owners of these establishments responsible for the activities that occur on their premises.

(2) Crime statistics show that all types of crimes, especially sex-related crimes, occur with more frequency in neighborhoods where sexually oriented businesses are located. See, e.g. Studies of the cities of Phoenix, Arizona; Indianapolis, Indiana; and Austin, Texas.

(3) Sexual acts, including masturbation, sadomasochistic abuse, and oral and anal sex, occur at sexually oriented businesses, especially those which provide private or semi-private booths or cubicles for viewing films, videos or live sex shows. See, e.g. California v LaRue, 409 U.S. 109, 111 (1972); See also Final Report of the Attorney General's Commission on Pornography (1986) at 377.

- (4) Offering and providing such booths and/or cubicles encourages such activities, which creates unhealthy conditions. See, e.g. Final Report of Attorney Generals' Commission on Pornography (1986) at 367-77.
- (5) Persons frequent certain adult theaters, adult arcades, and other sexually oriented businesses, for the purpose of engaging in sex within the premises of such sexually oriented businesses. See e.g. *Arcara v. Cloud Books Inc.* 478 U.S. 697, 698 (1986), see also Final Report of the Attorney General's Commission on Pornography (1986) at 376-77.
- (6) At least 50 (fifty) communicable diseases may be spread by activities occurring in sexually oriented businesses including, but not limited to, syphilis, gonorrhea, human immunodeficiency virus infection (HIV- AIDS), genital herpes, hepatitis B, Non A, Non B amebiasis, salmonella infections, and shigella infections, See, e.g. Study of Fort Meyers, Florida.
- (7) As of December 31, 1996, the total number of reported cases of AIDS in the United States caused by the human immunodeficiency virus (HIV) was 581,429. See, e.g. Statistics of the U.S. Department of Health and Human Services, Centers for Disease Control and Prevention.
- (8) As of December 31, 1999, there have been 92 (ninety-two) reported cases of AIDS in the State of Montana for the years 1997 through 1999.
- (9) The total number of cases of genital Chlamydia trachomatis infection in the United States reported in 1997 was 526,653, an 8% increase over the year 1996. See, e.g. Statistics of the U.S. Department of Health and Human Services, Centers for Disease Control and Prevention.
- (10) The total number of cases of early (less than one year) syphilis in the United States reported during the twelve year period 1985-1997 was 387,233. See, e.g. Statistics of the U.S. Department of Health and Human Services, Centers for Disease Control and Prevention.
- (11) The number of cases of gonorrhea in the United States reported annually remains at a high level, with a total of 1,901,365 cases reported during the period 1993-1997. See e.g. Statistics of the U.S. Department of Health and Human Services, Centers for Disease Control and Prevention.
- (12) The Surgeon General of the United States, in his report of October 22, 1986, advised the American public that AIDS and HIV infection may be transmitted through sexual contact, intravenous drug use, exposure to infected blood and blood components, and from an infected mother to her newborn.
- (13) According to the best scientific evidence available, AIDS and HIV infection, as well as syphilis and gonorrhea, are principally transmitted by sexual acts, See, e.g. Findings of the U.S. Department of Health and Human Services, Centers for Disease Control and Prevention.
- (14) Sanitary conditions in some sexually oriented businesses are unhealthy, in part, because the activities conducted therein are unhealthy, and, in part, because

of the unregulated nature of the activities and the failures of the owners and operators of the facilities to self-regulate those activities and maintain those facilities. See, e.g. Final Report of the Attorney General's Commission on Pornography (1986) at 377, and testimony to the Montana Senate Judiciary Committee February 9, 2001, in reference to SB399.

- (15) Numerous studies and reports have determined that bodily fluids, including semen and urine, are found in the areas of sexually oriented businesses where persons view "adult" oriented films. See, e.g., Final Report of the Attorney General's Commission on Pornography (1986) at 377.
- (16) Studies show nude dancing in adult establishments increases prostitution, increases sexual assaults, and attracts other criminal activity. See, e.g., Barnes v. Glen Theatre, 501 U.S. 560, 583 (1991).
- (17) Nude dancing in adult establishments increases the likelihood of drug dealing and drug use. See, e.g., Kev, Inc. v. Kitsap County, 793 F .2d 1053, 1056 (9<sup>th</sup> Cir. 1986).
- (18) The findings noted in paragraphs numbered (1) through (17) raise substantial governmental concerns.
- (19) Sexually oriented businesses have operational characteristics which should be reasonably regulated in order to protect those substantial governmental concerns.
- (20) Removal of doors on adult booths and requiring sufficient lighting on the premises with adult booths advances a substantial governmental interest in curbing illegal and unsanitary sexual activity occurring in adult establishments.
- (21) The general welfare, health, morals and safety of citizens in the City of Billings and Yellowstone County will be promoted by enactment of this regulation.

(c) Definitions.

(1) Adult Arcade means any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are maintained to show images to five (5) or fewer persons per machine at any one (1) time, and where the images so displayed are distinguished or characterized by an emphasis on the depiction or description of "specified sexual activities" or "specified anatomical areas."

(2) Adult Book Store or Adult Video Store means a commercial establishment which, as one (1) of its principal business purposes, offers for sale or rental for any form of consideration any one (1) or more of the following:

- a. Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, video reproductions, slides, or other visual representations which are characterized by an emphasis on the depiction or description of "specified sexual activities" or "specified anatomical areas"; or

- b. Instruments, devices, or paraphernalia which are designed for use in connection with "specified sexual activities."
- (3) Adult Motel means a hotel, motel, or similar commercial establishment which:
- a. Offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by an emphasis on the depiction or description or "specified sexual activities" or "specified anatomical areas"; and has a sign visible from the public right-of-way which advertises the availability of this adult type of photographic reproductions;
  - b. Offers a sleeping room for rent for a 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.
- (4) Adult Motion Picture Theater means a commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, slides, or similar photographic reproductions are regularly shown which are characterized by an emphasis on the depiction or description of "specified sexual activities" or "specified anatomical areas."
- (5) Church or Other Place of Worship means a building which is used primarily for religious worship and related religious activities, including but not limited to churches, convents, monasteries, shrines, and temples.
- (6) City means the City of Billings, Montana.
- (7) County means Yellowstone County, Montana.
- (8) Establishment means and includes any of the following:
- a. The opening or commencement of any sexually oriented business as a new business;
  - b. The conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business;
  - c. The additions of any sexually oriented business to any other existing sexually oriented business; or
  - d. The relocation of any sexually oriented business.
- (9) Nudity or State of Nudity means a male appearing without clothing to conceal his genitals or anal cleft or a female appearing without clothing to conceal her breasts, genitals or anal cleft. A male or female's genitals or anal cleft are concealed when they are not visible. A female's breasts are concealed when her areolas and nipples are not visible.
- (10) Sexually Oriented Business means an adult bookstore, adult theater, adult motel, adult massage parlor, adult sauna, adult entertainment center, adult cabaret,

adult health/sport club, adult steam room/bathhouse facility and/or nude dancing establishment.

~~(10) Sexually Oriented Business means an "adult" arcade, "adult" book store, "adult" video store, "adult" motel, or "adult" motion picture theater.~~

(11) Specified Anatomical Area means the male genitals in a state of sexual arousal and/or the vulva or more intimate parts of the female genitals.

(12) Specified Sexual Activities means and includes any of the following:

- a. The fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breasts;
- b. Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, or sodomy;
- c. Masturbation, actual or simulated; or
- d. Excretory functions as part of or in connection with any of the activities set forth in above (a) through (c).

(13) Transfer of Ownership or Control of sexually oriented business means and includes any of the following:

- a. The sale, lease, or sublease of the business;
- b. The transfer of securities which constitute a controlling interest in the business, whether by sale, exchange or similar means; or
- c. The establishment of a trust, gift, or other similar legal device which transfers the ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.

(14) Viewing Room/Booth/Adult Arcade means a room or booth of less than one hundred fifty (150) square feet of floor space to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are maintained to show images to five (5) or fewer persons per machine at any one (1) time, and where the images so displayed are distinguished or characterized by an emphasis on the depiction or description of "specified sexual activities" or "specified anatomical areas."

(d) Classification. Sexually oriented businesses are classified as follows:

- (1) Adult Arcades;
- (2) Adult Book Stores or Adult Video Stores;
- (3) Adult Motels; and
- (4) Adult Motion Picture Theaters.

(e) Location of Sexually Oriented Business.

- (1) No person, whether as a principal or agent, clerk or employee, either for himself or any other person, or as an officer of any corporation, or otherwise, shall place, maintain, own, or operate any sexually oriented business within one thousand (1,000) feet of the following residential zones:

- a. Agricultural Suburban (A-S) Zone;
  - b. Residential 15,000 (R-150) Zone;
  - c. Residential 9,600 (R-96) Zone;
  - d. Residential 8,000 (R-80) Zone;
  - e. Residential 7,000 Restricted (R-70R) Zone;
  - f. Residential 7,000 (R-70) Zone;
  - g. Residential 6,000 Restricted (R-60R) Zone;
  - h. Residential 6,000 (R-60) Zone;
  - i. Residential 5,000 (R-50) Zone;
  - j. Residential Multi-Family (RMF) Zone;
  - k. Residential Multi-Family - Restricted (RMF-R) Zone;
  - l. Residential Manufactured Home (RMH) Zone; or
  - m. Entryway Mixed Use (EMU) Zone.
- (2) No person, whether as a principal or agent, clerk or employee, either for himself or any other person, or as an officer of any corporation, or otherwise, shall place, maintain, own, or operate any sexually oriented business within one thousand (1,000) feet of the following land uses:
- a. Public library;
  - b. Public playground or park;
  - c. Public or private school and its grounds, from kindergarten through twelfth grade;
  - d. A state licensed family day care home, group day care home, or day care center; or
  - e. Church or other place of worship.
- (3) No person, whether as a principal or agent, clerk or employee, either for himself or any other person, or as an officer of any corporation, or otherwise, shall place, maintain, own or operate any sexually oriented business within six hundred (600) feet of another sexually oriented business.
- (4) For purposes of this section, specified distances will be measured in a straight line, without regard to intervening structures, from the property line of the sexually oriented business to the property line of the preceding land uses or zoning districts.
- (5) In addition to the preceding requirements, sexually oriented businesses are permitted in the following zones only:
- a. Central Business District (CBD) Zone;
  - b. Highway Commercial (HC) Zone;
  - c. Controlled Industrial (CI) Zone; or

d. Heavy Industrial (HI) Zone.

(f) Nonconforming Use - Amortization period established. (Refer to BMCC Section 27-405(G))

(g) Applicability. The provision of this section shall apply to all existing and future sexually oriented businesses. Pursuant to MCA 76-2-208 and Section 27-401 of these regulations, any such existing business that does not meet the zoning district restrictions or the distance limitations, may continue its existence as a nonconforming use; but such nonconforming use will be subject to curtailment by current state law and these regulations. If a sexually oriented business is nonconforming to these regulations and such use is discontinued or abandoned for a period of thirty (30) consecutive days the nonconforming status shall lapse and any subsequent use of the property shall conform to the regulations specified by this resolution/ordinance for the district in which such land is located.

(h) Sign Limitations. Notwithstanding any other city ordinance or county resolution, code or regulations to the contrary, it shall be unlawful for the operator of any sexually oriented business or any other person to erect, construct, or maintain any sign for the sexually oriented business other than the one (1) primary sign and one (1) secondary sign, as provided herein.

(1) Primary signs shall have no more than two (2) display surfaces. Each such display surface shall:

- (a) not contain any flashing lights;
- (b) be a flat plane, rectangular in shape;
- (c) not exceed seventy-five (75) square feet in area or the maximum size allowed under any other relevant city ordinance or county resolution, whichever is less; and
- (d) not exceed ten (10) feet in height or ten (10) feet in length or the maximum size allowed under any other relevant city ordinance or county resolution, whichever is less.

(2) Primary signs shall contain no photographs, silhouettes, drawings or pictorial representations of any type and may contain only the name of the business.

(3) Each letter forming a word on a primary sign shall be of solid color, and each letter shall be the same print-type, size and color. The background behind such lettering on the display surface of a primary sign shall be uniform and solid color.

(4) Secondary signs shall have only one (1) display surface. Such display surface shall:

- (a) be a flat plane, rectangular in shape;
- (b) not exceed twenty (20) square feet in area or the maximum size allowed under any other relevant city or county regulations, whichever is less;
- (c) not exceed five (5) feet in height and four (4) feet in width or the maximum size allowed under any other relevant city or county regulations, whichever is less; and
- (d) be affixed or attached to any wall or door of the business.

(5) Each sexually oriented business operation must post a sign on each door stating with "Adults only" or "No Minors Allowed".

(i) Operating Standards. All sexually oriented businesses shall operate in accordance with the following:

(1) No employee shall solicit business outside the building in which the business is located;

(2) All live entertainment in sexually oriented businesses shall be performed on a platform or other exclusive area provided for such purpose, and no entertainer or performer shall be permitted to leave such platform or area while entertaining or performing. This platform or other exclusive area shall be constructed in such a manner as to keep the performers at least nine (9) feet away from patrons;

(3) Nudity and specified sexual activities while on the premises of a sexually oriented business, other than adult motel, shall be prohibited. Nothing in these regulations shall be construed to prohibit a person from appearing in a state of nudity while using a restroom. Restrooms may not contain video reproduction equipment or be used in any way to circumvent this zoning regulation;

(4) No sexually oriented business shall operate between the hours of 12:01 am and 9:00 am;

(5) No sexually oriented business, other than an adult motel, shall be located in any building where alcoholic beverages are dispensed or consumed; and

(6) No minors shall be allowed in sexually oriented businesses.

(j) Operating Standards that Pertain to Establishments that Exhibit Sexually Explicit Films, Videos or any other Images. A sexually oriented business which exhibits on the premises in a viewing room of less than one hundred fifty (150) square feet of floor space, a film, video cassette, other video reproduction that specified sexual activities or specified anatomical areas, shall comply with the following requirements:

(1) The interior of the premises shall be configured in such a manner that there is an unobstructed view from a manager's station of the entire area of the premises to which any patron is permitted access for any purpose, excluding restrooms. If the premises has two or more manager's stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of the entire area of the premises to which any patron is permitted access for any purpose from at least one of the manager's stations, excluding restrooms. The view required in this subsection must be direct line of sight from the manager's station;

(2) No opening or holes of any kind shall exist between viewing booths/rooms or adult arcades;

(3) No doors shall be allowed on viewing booths/rooms or adult arcades;

(4) The premises shall be equipped with and have in continuous operation, while patrons are present, overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than five (5.0) foot-candle as measured at the floor level; and

(5) All floor coverings and walls in viewing booths/rooms and adult arcades are to be constructed of nonporous, easily cleanable surfaces, with no rugs or carpeting.

(k) Building Exterior Appearance.

(1) It shall be unlawful for an owner or operator of sexually oriented business to allow merchandise or activities of the establishment to be visible from outside the establishment.

(2) It shall be unlawful for the owner or operator of a sexually oriented business to allow the exterior portion of the sexually oriented business to have flashing lights,

words, lettering, photographs, silhouettes, drawings, or pictorial representations of any type except to the extent permitted by the provisions of this section.

(3) It shall be unlawful for the owner or operator of a sexually oriented business to allow exterior portions of the establishment to be painted any color other than a single monochromatic color. This provision shall not apply to a sexually oriented business if the following conditions are met:

(a) The establishment is part of a commercial multi-unit center;  
and;

(b) The exterior portions of each individual unit in the commercial multi-unit center, including the exterior portions of the 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.

(4) Nothing in this section shall be construed to require painting of an otherwise unpainted exterior portion of a sexually oriented business.

REPEALER. All resolutions, ordinances and sections of the Unified Zoning Regulations in conflict herewith are hereby repealed.

EFFECTIVE DATE. Final adoption, as provided by law, shall be effective thirty (30) days after the first publication of the "Notice of Passage of Resolution", in the County's legal newspaper, *The Billings Gazette*.

WHEREAS, the Board of County Commissioners received and considered the recommendations of the City/County Planning Department staff on said proposed amendments and additions; and,

WHEREAS, the Yellowstone County Zoning Commission has considered the proposed amendments and has forwarded its recommendation to the Board of County Commissioners; and,

WHEREAS, the City of Billings and Yellowstone County Unified Zoning Regulations have been amended several times in the past by the Yellowstone County Commissioners; and,

WHEREAS, the Board of County Commissioners desires to amend the City of Billings and Yellowstone County Unified Zoning Regulations as mentioned above,

NOW, THEREFORE, BE IT HEREBY RESOLVED that the Board of County Commissioners, Yellowstone County, Montana, adopts the above proposed amendments revising Sections 27-611(a), 27-611(b), 27-611(c) and adding new sections 27-611(g), 27-611(h), 27-611(i), 27-611(j) and 27-611(k) of the City of Billings and Yellowstone County Unified Zoning Regulations.

PASSED AND ADOPTED by the Board of Yellowstone County Commissioners, Yellowstone County, Montana, this \_\_\_\_ day of \_\_\_\_\_, 2006.

BOARD OF COUNTY COMMISSIONERS

YELLOWSTONE COUNTY, MONTANA

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John Ostlund, Chairman

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James E. Reno, Member

(SEAL)  
ATTEST:

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Bill Kennedy, Member

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Tony Nave, Clerk and Recorder

Sexually Oriented Business Zoning Text Amendment ZC #591