ORDINANCE NO. 99-367

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FEDERAL WAY, WASHINGTON, REVISING AND ADDING DEFINITIONS FOR ADULT ENTERTAINMENT ACTIVITY OR USES, ADDING AMORTIZATION PROVISIONS AND A NEW SECTION ALLOWING ADULT USES IN A BC ZONE TO CHAPTER 22, ZONING.

WHEREAS, the Federal Way City Council is committed to protecting the general welfare of the City through the enforcement of laws prohibiting obscenity, indecency, and sexual offenses while preserving constitutionally protected forms of expression; and

WHEREAS, the City has made a detailed review of the national record, including studies from the cities of New York, Indianapolis, and Los Angeles, the police records of various cities, and court decisions regarding adult entertainment, activity, retail, or use. The City Council finds that adult entertainment, activity, retail, or use require special supervision from the public safety agencies in order to protect and preserve the health, safety, and welfare of the patrons and employees of said businesses as well as the citizens of the City; and

WHEREAS, the City Council finds that concerns about crime and public sexual activity generated and/or occurring within or nearby the adult entertainment, activity, retail, or use are legitimate, substantial, and compelling concerns of the City which demand reasonable regulation; and

WHEREAS, the City Council finds that adult entertainment, activity, retail, or use, due to their nature, have secondary adverse impacts upon the health, safety, and welfare of the citizenry through increases in crime and opportunity for spread of sexually transmitted diseases; and
WHEREAS, there is convincing documented evidence that adult entertainment, activity, retail, or use have a detrimental effect on both the existing businesses around them and the surrounding residential and commercial areas adjacent to them, causing increased crime, the downgrading of quality of life and property values and the spread of urban blight. Reasonable regulation of the location of these facilities will provide for the protection of the community, protect residents, patrons, and employees from the adverse secondary effects of such retail facilities; and

WHEREAS, the City recognizes that adult entertainment, activity, retail, or use, due to their very nature, have serious objectionable operational characteristics, particularly when located in close proximity to residential neighborhoods, day care centers, religious facilities, public parks, libraries, schools, and other adult entertainment, activity, retail, or use, thereby having a deleterious impact upon the quality of life in the surrounding areas. It has been acknowledged by courts and communities across the nation that state and local governmental entities have a special concern in regulating the operation of such businesses under their jurisdiction to ensure the adverse secondary effects of their uses are minimized; and

WHEREAS, this ordinance is intended to protect the general public health, safety, and welfare of the citizenry of the City through the regulation of the location of adult entertainment, activity, retail, or use. The regulations set forth herein are intended to control health, safety, and welfare issues, the decline in neighborhood conditions in and around adult retail uses, and to isolate dangerous and unlawful conduct associated with these facilities; and

WHEREAS, it is not the intent of this ordinance to suppress any speech activities protected by the First Amendment to the United States Constitution, or Article 1, Section 5 of the Washington
State Constitution, but to enact content neutral legislation which addresses the negative secondary impacts of adult entertainment, activity, retail, or use; and

WHEREAS, it is not the intent of the City Council to condone or legitimize the distribution of obscene material, and the City Council recognizes that state and federal law prohibits the distribution of obscene materials; and

WHEREAS the Federal Way Planning Commission, having considered the proposal at public hearings during 1999, pursuant to Federal Way City Code (FWCC) Section 22-30, and all public notices having been duly given pursuant to FWCC Section 22-528; and

WHEREAS the public was given opportunities to comment on the proposal during the Planning Commission review; and

WHEREAS the City of Federal Way SEPA responsible official issued a Declaration of Nonsignificance on December 17, 1998; and

WHEREAS following the public hearing, the Planning Commission submitted to the Land Use/Transportation Committee of the City Council its recommendation in favor of the proposal, adding sections to the FWCC as noted; and

WHEREAS the Land Use/Transportation Committee of the City Council met to consider the recommendation of the Planning Commission and has moved to forward the proposal, with amendments, to the full City Council; and

WHEREAS there was sufficient opportunity for the public to comment on the proposal;

NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF FEDERAL WAY, WASHINGTON, DOES HEREBY ORDAIN AS FOLLOWS:

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Section 1. Findings. After full and careful consideration, the City Council of the City of Federal Way makes the following findings with respect to the proposal and the proposed amendments to the FWCC:

1. The Federal Way SEPA responsible official has issued a Declaration of Nonsignificance on December 17, 1998; and

2. The proposed code amendments would not adversely affect the public health, safety, or welfare; and

3. The Planning Commission, following notice thereof as required by RCW 35A.63.070, held a public hearing on the proposed amendments and has considered the testimony, written comments, and material from the public by and through said hearing.

Section 2. Conclusions. Pursuant to FWCC Section 22-216, and based upon the Findings set forth in Section 1, the Federal Way City Council makes the following Conclusions of Law with respect to the decisional criteria necessary for the adoption of the proposal:

1. The proposal is consistent with the City of Federal Way Comprehensive Plan (FWCP) purposes, goals, and polices:

FWCP Pg VII-1 “Create an identifiable downtown that is the social and economic focus of the City.”

FWCP Pg VII-1 “Establishment of an urban center that is a vibrant, unique and attractive place to work.”

FWCP CCG5 “Encourage a mix of compatible uses to maintain a lively, attractive, and safe place to live, work and visit.”
2. The proposal bears a substantial relationship to the public health, safety, and welfare.

3. Zoning and text amendment criteria under FWCC Section 22-523 are met.

Section 3. Amendment.

1. The FWCC, Chapter 22-1, Definitions, is amended and FWCC, Chapter 22, Nonconformance, is amended by adding a new Section 22-338.2, as set forth in the attached Exhibit A;

2. Chapter 22, Zoning, Sections 22-794 and 22-806 are deleted as set forth in the attached Exhibit B; and

3. Chapter 22, Zoning, is amended by adding a new Section 22-763 as set forth in the attached Exhibit C.

Section 4. Severability. The provisions of this ordinance are declared separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section, or portion of this ordinance, or the invalidity of the application thereof to any person or circumstance, shall not affect the validity of the remainder of the ordinance, or the validity of its application to any other persons or circumstances.

Section 5. Ratification. Any act consistent with the authority and prior to the effective date of this ordinance is hereby ratified and affirmed.

Section 6. Effective Date. This ordinance shall be effective five (5) days after passage and publication as provided by law.
PASSED by the City Council of the City of Federal Way this 3rd day of August, 1999.

CITY OF FEDERAL WAY

[Signature]

MAYOR, RON GINTZ

ATTEST:

[Signature]

CITY CLERK, N. CHRISTINE GREEN, CMC

APPROVED AS TO FORM:

[Signature]

CITY ATTORNEY, LONDI K. LINDELL

FILED WITH THE CITY CLERK: 4/6/99

PASSED BY THE CITY COUNCIL: 8/3/99

PUBLISHED: 8/7/99

EFFECTIVE DATE: 8/12/99

ORDINANCE NO: 99-347

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EXHIBIT A

Chapter 22 of the Federal Way City Code is hereby amended as follows.

A. Sec. 22-1, Definitions, of Chapter 22 is amended as follows:

Adult entertainment, activity, retail, or use shall mean all of the following:

(1) Adult theater shall mean a building or enclosure or any portion thereof used for presenting material distinguished or characterized by an emphasis on matter depicting, describing or relating to specified "sexual activities" or "specified anatomical areas" (defined as follows below) for observation by patrons therein and which excludes minors by virtue of age.

a. Specified anatomical areas shall mean both of the following:
   1. When less than completely and opaquely covered:
      i. Human genitals or pubic region;
      ii. Human buttock;
      iii. Human female breast below a point immediately above the top of the areola;
   2. Human male genitals in a discernibly turgid state, even if completely and opaquely covered;

b. Specified sexual activities shall mean all of the following:
   1. Human genitals in a state of sexual stimulation or arousal;
   2. Acts of human masturbation, sexual intercourse or sodomy;
   3. Fondling or other erotic touching of human genitals, pubic region, buttock or breast;

(2) Adult bookstore shall mean an establishment which in whole or in portion thereof has a substantial or significant portion of its stock and trade books, magazines or other periodicals, which are distinguished or characterized by an emphasis on matter depicting, describing or relating to "specified sexual activities" or "specified anatomical areas" and which excludes minors by virtue of age.

(3) 2 Adult cabaret entertainment shall mean a cabaret, nightclub or other establishment which features go-go dancers, exotic dancers, strippers, male or female impersonators, similar entertainers or attendants, who are so clothed or dressed as to emphasize "specified anatomical areas" and/or whose performances or other activities include or mimic "specified sexual activities" (defined below) and which establishment excludes minors by virtue of age, and shall mean any of the adult entertainment establishments as defined in section 9-71(A) and (B) of the FWCC.

(3) Panorama and peepshow shall mean as defined in section 9-71(f) and (j) of the FWCC.

(4) Adult retail shall mean a retail establishment which, for money or any other form of consideration, either:
   a. Has as one of its principal purposes to sell, exchange, rent, loan, trade, transfer, and/or provide for viewing, off the premises, any adult oriented merchandise; or
b. Provides, as its substantial stock in trade, for the sale, exchange, rental, loan, trade, transfer, and/or for viewing or use, off the premises, any adult oriented merchandise.

**Adult oriented merchandise** shall mean any goods, products, commodities, or other wares, including but not limited to, videos, CD Rom’s, DVD’s, magazines, books, pamphlets, posters, cards, periodicals, or non-clothing novelties which depict, describe, or simulate specified anatomical areas or specified sexual activities (defined below).

**Specified anatomical areas** shall mean the following:

a. Less than completely and opaquely covered human genitals, anus, pubic region, buttock, or female breast below a point immediately above the top of the areola; or

b. Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

**Specified sexual activities** shall mean any of the following:

a. Human genitals in a state of sexual stimulation or arousal;

b. Acts of human masturbation, sexual intercourse, sodomy, oral copulation, or bestiality; or

c. Fondling or other erotic touching of human genitals, pubic region, buttocks, or female breasts, whether clothed, of oneself or of one person by another; or

d. Excretory functions as part of or in connection with any of the activities set forth in this section.

Activities and uses defined as adult entertainment, activity, retail, or use are only permitted in the zone where that term is specifically listed as an allowable use and only in conformance to the requirements as stated for that use.

B. The following section shall be added to Chapter 22:

**Sec. 22-338.2. Nonconforming adult entertainment, activity, retail, or use.**

Any adult entertainment, activity, use, or retail use located within the city limits on the effective date of this code, which are either made nonconforming by this code or which are existing nonconforming uses shall be terminated within one (1) year; provided, however, that such termination date may be extended upon the approval of an application filed with the city’s Community Development Director within 120 days of the effective date of this code provision requesting an extension to such one (1) year amortization period. The Director’s decision on whether or not to approve any extension period and the length of such period shall be based upon the applicant clearly demonstrating extreme economic hardship based upon an irreversible financial investment or commitment made prior to February 1, 1999, which precludes reasonable alternative uses of the subject property.
EXHIBIT B

Sex: 22-794: Adult entertainment, etc.
— The following uses shall be permitted in the city center core (CC-C) zone subject to the regulations and notes set forth in this section:

### USE-ZONE-CHART

<table>
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<tr>
<th>ZONE</th>
<th>CC-C</th>
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**SPECIAL REGULATIONS AND NOTES**

- a) Any increase in building elevation shall be 1' for each 500 sq. ft. of gross floor area;
- b) No increase to a maximum of 25' above average building elevation;
- c) No increase to a maximum of 100' above average building elevation.

**Notes:**

- (a) No increase to a maximum of 25' above average building elevation;
- (b) No increase to a maximum of 100' above average building elevation.

**Provisions:**

- (1) Entry to any building located on a street permitted way:
- (2) Public use;
- (3) Public safety;
- (4) Public health;
- (5) Stormwater facility or system;
- (6) Any other use which is deemed useful or necessary by the city council.

**Facilities:**

- (a) Stormwater control measures shall be provided to ensure that the stormwater runoff from the use complies with the standards established by the city council.
- (b) Public health and safety requirements shall be satisfied.

**Regulations:**

- (a) The use shall be permitted only if it is consistent with the requirements of Article 22 and Article 794 of the city code.
- (b) The use shall be permitted only if it is consistent with the requirements of Article 22 and Article 794 of the city code.
- (c) The use shall be permitted only if it is consistent with the requirements of Article 22 and Article 794 of the city code.

**Ordinance References:**

- Ord. No. 90-43, § 2(50.45), 2-27-90, Ord. No. 93-170, § 7(Exch. B), 4-20-93; Ord. No. 96-270, § 5, 2-7-96; Ord. No. 97-291, § 3, 4-1-97

**Document Review:**

- All documents relating to this section shall be reviewed by the planning commission.
The following uses shall be permitted in the city center frame (CC-F) zone subject to the regulations and notes set forth in this section:

<table>
<thead>
<tr>
<th>USE-ZONE-CHART</th>
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<tbody>
<tr>
<td><strong>USE</strong></td>
</tr>
<tr>
<td>Adult entertainment activity</td>
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<td></td>
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</tbody>
</table>

**SPECIAL REGULATIONS AND NOTES**

- [Notes and regulations are listed here, including specific distances, requirements, and exceptions.]

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(Ord. No. 95-45; §(50.45), 2-27-90; Ord. No. 93-170, § 7 (Exh. D); 4-20-93; Ord. No. 96-276, § 5, 7-2-96; Ord. No. 97-291, § 3, 4-1-97)
Sec. 22-763. Adult entertainment, activity, retail, or use ("Adult Uses").

The following uses shall be permitted in the community business (BC) zone subject to the regulations and notes set forth in this section:

<table>
<thead>
<tr>
<th>USE</th>
<th>REGULATIONS</th>
<th>REQUIRED YARDS</th>
<th>MINIMUM</th>
<th>TEXT BOX</th>
</tr>
</thead>
<tbody>
<tr>
<td>Adult entertainment, activity, retail, or use.</td>
<td>Process</td>
<td>None</td>
<td>25' 1'</td>
<td>See note 1</td>
</tr>
</tbody>
</table>

**USE ZONE CHART**

**SPECIAL REGULATIONS AND NOTES**

1. A. As stated under paragraph 1 below, this adult use may not locate or be conducted closer than the distance noted below to any of the following, whether in or out of the city:

   - 1) Within 1,000 feet of any residential zone or any single-family or multiple-family residential use outside the Community Business zone;
   - 2) Within 1,000 feet of any public parks;
   - 3) Within 1,000 feet of any library;
   - 4) Within 1,000 feet of any day care center for children, nursery, or pre-school;
   - 5) Within 1,000 feet of any church or other facility or institution used primarily for religious purposes;
   - 6) Within 1,000 feet of any public or private elementary or secondary school;
   - 7) Within 1,000 feet of any other adult uses;

   The exception required between an adult use and any sensitive use described above in sections 1(A)(1)-(6) shall be measured from the edge or corner of the property of each sensitive use to the edge or corner of the property of the adult use. The exception required between adult uses shall be determined from the point of public access among the building housing each use. That unencumbered portion of any area or building not included within any portion of the above referenced 1,000 feet setback area may be used for adult uses.

   8. The city may, using Process IV, approve that use regardless of its proximity to the uses and areas specified in paragraphs 1(A)(1)-(7) above, based on the following criteria:

   - 1) The extent to which the topography or physical features of the area would result in effective separation in terms of visibility and screening;
   - 2) The compatibility of the proposed use with similar uses;
   - 3) The lack of availability of alternative locations for the proposed use, based on the requirements of paragraph 1A above;
   - 4) The availability of transportation routes to allow access for patrons and employees to the proposed use if two or more than two.

   9. In the city, using Process IV, modified required yard, height, setbacks and buffer and other site design and dimensional requirements for a proposed development that meets the following criteria:

   - 1) The proposed development will be consistent with adopted comprehensive plan policies for this zone and
   - 2) The proposed development will be consistent with applicable design guidelines and
   - 3) The street, utilities, and other infrastructure in the area are adequate to support the proposed development.

   10. The maximum lot coverage is established. Instead, the setback area will be determined by the site development requirements, i.e., required buffers, parking, landscaping, street, water facilities, etc.

   11. For community design guidelines that apply to the project, see Article XVII.

   12. For landscaping requirements that apply to the project, see Article XVII.

   13. For park requirements that apply to the project, see Article XVII.

   14. For all requirements that apply to the project, see Article XVII.

   15. For details of what may exceed this height limit, see § 22-1046 et seq.

   16. For details regarding required set backs, see $ 22-1131 et seq.

   (Ord. No. 90-43, § 22-1376 et seq.)

   

   

   (Ord. No. 90-43, § 22-1376 et seq.)

   (Ord. No. 90-43, § 22-1376 et seq.)

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