



---

The Columbia City Council conducted a Special Called Meeting on Tuesday, December 22, 2011 at City Hall, 1737 Main Street, Columbia, South Carolina. The Honorable Mayor Stephen K. Benjamin called the meeting to order at 9:06 a.m. and the following members of Council were present: The Honorable Tameika Isaac Devine, The Honorable Daniel J. Rickenmann, The Honorable Belinda F. Gergel, The Honorable Leona K. Plough and The Honorable Brian DeQuincey Newman. The Honorable Sam Davis arrived at 9:07 a.m. Also present were Mr. Steven A. Gantt, City Manager and Ms. Niki Daniels, City Clerk Assistant. This meeting was advertised in accordance with the Freedom of Information Act.

Mr. Kenneth E. Gaines, Esq., City Attorney introduced Scott Bergthold, Esq. from Chattanooga, Tennessee whose pedigree is handling sexually oriented business cases. He has been of valuable assistance to us. I would suggest that we go into Executive Session to receive legal advice protected by attorney-client privilege and investigations of criminal misconduct of an employee.

Upon a motion made by Mr. Davis and seconded by Ms. Devine, Council voted unanimously to go into Executive Session at 9:10 a.m. for the receipt of legal advice, which relates to a matter covered by attorney-client privilege and the discussion of investigative proceedings regarding allegations of criminal misconduct.

Upon a motion made by Mr. Newman and seconded by Mr. Davis, Council voted unanimously to adjourn the Executive Session at 9:53 a.m.

### **ORDINANCES – FIRST READING**

1. Ordinance No.: 2011-105 – Amending the 1998 Code of Ordinances of the City of Columbia, South Carolina, Chapter 11, Licenses, Permits and Miscellaneous Business Regulations to add Article XI, Sexually Oriented Businesses

Mr. Scott Bergthold, Esq., Law Office of Scott D. Bergthold, P.L.L.C. stated that any law regulating adult entertainment or sexually oriented businesses has to be passed not based on moral opposition to a particular form of expression, but rather based on the documented negative secondary effects that are associated with this class of land uses. The seminal case from the US Supreme Court on this issue was decided in 1986 in the case of City of Renton Washington vs. Playtime Theaters. In 1986, the US Supreme Court said that a city can adopt regulations based on the documented experiences of other jurisdictions as long as whatever the City relies upon is reasonably believed to be relevant to the negative secondary effects the city tries to prevent. Five (5) categories of sources for secondary effects evidences are: (1) Land Use Reports have been done by large cities like New York City and smaller municipalities like New Hanover County, North Carolina. Planning Departments and Private Planning agencies have conducted these analyses; (2) Crime Impact Reports are police incident reports and other analyses of crime data relevant to the negative secondary effects that Police Departments have documented in jurisdictions across the country; (3) Judicial Opinions: the Supreme Court of the United States said that local governments can rely upon the documented secondary effects that have been discussed in detail in prior judicial decisions; (4) Expert Reports: criminologist and statisticians have done analyses of crime data to document the ambiance crime hazards associated with sexually orientated businesses; and (5) Anecdotal Data: an act of violence or stabbing or a fight

breaking out. Even though those are not statistical or scientific, the courts have said that local governments can rely upon that type of information. They can rely upon citizens talking about the adverse impacts of adult businesses on their property, noise, and traffic late at night. Five (5) Types of harmful secondary effects are: (1) negative impacts on surrounding property values. This doesn't just include decreased values of properties, but it also includes litter, noise and the type of urban life that is associated with not only a concentration of adult businesses, but singular adult businesses as well; (2) personal and property crimes and the public safety risks which are crimes such as burglary, auto theft, assaults and batteries on the premises of these types of establishments. These regulations help to prevent those types of activities as well; (3) sexual crimes associated with adult businesses such as lewdness and public indecency like prostitution has been documented not only in cities such as South Carolina but in Georgia, Florida and around the country; (4) illicit drug use and trafficking and not necessarily because of the establishments involved. A lot of times when people seek to move drugs in the community, they go to other locations in the city where people are openly engaged in other vice activities like the sexual orientated business context. The City of Warner Robins, Georgia for example had a strip club which had a significant problem with drugs moving through the club until the DEA and FBI shut it down; and (5) litter and aesthetic impacts. The legislative findings that are identified in this ordinance are that sexual orientated businesses, as a broad category of land uses are associated with a wide range of adverse secondary effects including but not limited to these public and property crimes. There are other cases that we have been involved with that uphold ordinances that are very similar to the ones before you today. For example, in the City of Littleton v. Z.J. Gifts in 2004, we wrote the briefs at the US Supreme Court and a unanimous decision said that cities can employ licensing mechanisms like those laid out in this ordinance for regulated adult businesses to include doing background checks on the establishments. The case H & A Land Corp. v. City of Kennedale, Texas upheld hours of operation regulations associated with retail adult bookstores, noting that the Indianapolis and Oklahoma City studies justified the regulations of retail adult bookstores. The case Independence News, Inc. v. City of Charlotte from the 4<sup>th</sup> Circuit Court of Appeals in 2009 is particularly relevant to South Carolina. The Court upheld the regulations with adult bookstores and quote "When cities exercise their power to zone the location of adult establishments, they need not show that each individual adult establishment actually generates the undesired secondary effects." The case Richland Bookmart, Inc. v. Knox County, Tennessee upheld a similar regulation and was litigated to the US Court of Appeals in 2009. The case East Brooks Books, Inc. v. Shelby County was an adult bookstore case which had a stringent case in the law in Memphis and the entire Shelby County and City Limits. Some highlighted secondary effects evidence that has been recorded from large and small cities regarding the adverse effects of adult businesses are: Tucson, Arizona; New York City; Garden Grove, California which is a suburb of Los Angeles County; Houston, Texas; and Jackson County, Missouri. The courts looking at regulations in New York, Garden Grove and Houston upheld those regulations on the time, place and manner of these businesses. The Supreme Court says you can't entirely ban adult businesses from a complete jurisdiction, but you can regulate the time, place and manner of their operations. These are the studies that cities have looked at previously in adopting ordinances. Additional counties that are involved in some litigation are Fulton County, Georgia and Manatee County, Florida. In each case, the city looked at affidavits of illegal activities going on inside the premises and around adult businesses in which judicial reviews upheld. We were counsel in the Hillsborough County, Florida case and the 11<sup>th</sup> Circuit Court of Appeals upheld their regulations in both cases. Spokane, Washington is also relevant, because that was a case that dealt exclusively with retail only adult bookstores that sold adult materials and off-premises consumption. The court said that the city was justified in rezoning adult bookstores based on the negative secondary effects that have been documented around the country. Experts have found that the findings of secondary effects from sexually orientated businesses are scientifically robust, because it's being confirmed in a wide variety of data sources over many years. The City of Columbia has a substantial governmental interest in regulating adult businesses to prevent the identified negative secondary effects. In recent years, many industry attorneys and higher experts have done their own studies; usually these have been rejected by the courts as insufficient to cast direct doubt on the legislative predicate for an ordinance like the one

before you today. The types of crime associated with a number of these establishments are discovered through very intensive manpower investigations and undercover surveillance. For example, we represented Louisville, Kentucky on an ordinance that was upheld by the Kentucky Supreme Court and as a predicate to that ordinance the city spent \$75,000.00 and conducted an eighteen (18) month investigation to get thirty-one (31) arrests for prostitution in a string of strip clubs. All sub-classes of sexually oriented businesses including retail-only adult bookstores have secondary effects and should be regulated to prevent those secondary effects. There are a number of cases that rejected the industry counter challenges to those establishments. We have been involved in a number of these to include the Daytona Grand v. Daytona Beach case. We were also involved in the High Five Investments v. Floyd County Case in Georgia, and the Peek-A-Boo Lounge v. Manatee County case. The courts have said the legislative records like the documents that have been supplied for your review now and between first and second reading, are an adequate record for regulations addressing the negative secondary effects. I have provided copies of a summary of the negative secondary effects associated with adult businesses and a number of the key studies. There is also an index of twenty-nine studies and documents associated with negative secondary effects. The voluminous of materials will be made apart of the official record and minutes for this public meeting.

Councilor Newman said that Mr. Bergthold has done an excellent job providing such comprehensive information. When we have to make decisions on the fly, we are missing pieces of information, but I think this really covers all bases and it appears to be a very sound ordinance.

Councilor Plaugh said that it has been clearly known for a period of time that our Business License ordinance needs to be updated. It's been hard to do that in a broad rush. We did some other adjustments in our Business License in early December, not recognizing that we needed to make these improvements. We also know that we need to go further in terms of looking at our zoning ordinances and doing some forward thinking in terms of planning for orderly growth. I thank my colleagues for recognizing and getting involved in this issue and helping us come to grips for what we can do to specifically address this issue as it comes forward in terms of updating our ordinance and making sure that we are properly addressing the negative impacts.

Mayor Benjamin thanked the citizens who have expressed their concerns; particularly the businesses that have been there for a number of years and those who plan to come here. We all have been very excited about the economic revitalization in southeast Columbia and very concerned about the potential secondary effects that these types of businesses can have on the momentum that we have seen.

Mr. Ken Gaines, Esq., City Attorney said that Mr. Bergthold has amendments to the ordinance that he would like to read into the record. There seems to be some confusion about the nature of this particular ordinance before the Council today. Prior to the enactment of this ordinance, the only tool in the toolbox the city had to regulate sexually orientated businesses was the zoning ordinance. As you well know, the zoning ordinance provides a 500' distance separation between certain locations and adult businesses. This is not a zoning ordinance. This is a sexually orientated business license ordinance, which the sexually orientated businesses will be required to comply with. We have a 750' separation distance in the ordinance that is written today that will probably be amended after GIS does some analysis. I don't want the public to rely on the 750' as being absolute. Under our rules we can amend the ordinance between first and second reading and we will have that information for you at second reading.

Mr. Scott Bergthold, Esq., Law Office of Scott D. Bergthold, P.L.L.C outlined several amendments to Sec. 11-616. *Applicability of Article to Existing Businesses* and Sec. 11-620. *Location of Sexually Oriented Business*.

Upon a motion made by Ms. Plaugh and seconded by Dr. Gergel, Council voted unanimously to give first reading approval to Ordinance No.: 2011-105 – Amending the 1998 Code of Ordinances of the City of Columbia, South Carolina, Chapter 11, Licenses, Permits and Miscellaneous Business Regulations to add Article XI, Sexually Oriented Businesses, as amended orally by Mr. Scott Bergthold, Esq.

Upon a motion made by Mr. Davis and seconded by Ms. Plaugh, Council voted unanimously to adjourn the meeting at 10:20 a.m.

Respectfully submitted by:

Erika D. Moore  
City Clerk