

ORDINANCE NO. 1207

AN ORDINANCE OF THE CITY OF PAYETTE, IDAHO ENACTING A NEW CHAPTER 5.36 OF TITLE 5 OF THE MUNICIPAL CODE OF THE CITY OF PAYETTE, IDAHO WHICH IS ENTITLED ADULT ENTERTAINMENT BUSINESS ORDINANCE; DESCRIBING ENTITIES SUBJECT TO THE ORDINANCE; INTENT OF LICENSING REQUIREMENTS; DEFINITIONS OF TERMS; DEFINING WHEN A LICENSE WOULD BE REQUIRED; PROHIBITING ISSUANCE OF LICENSES TO ESTABLISHMENTS WITH BEER, WINE OR LIQUOR LICENSES; CLASSIFYING LICENSES; SETTING OUT INFORMATION REQUIRED IN A LICENSE APPLICATION; SETTING OUT DUTIES OF CITY CLERK; REQUIRING CERTAIN CITY OFFICIALS TO INVESTIGATE; SETTING OUT WHEN A LICENSE MAY BE ISSUED; ALLOWING THE CITY COUNCIL TO CONDUCT ADDITIONAL INVESTIGATION; ALLOWING THE COUNCIL TO DENY A LICENSE UPON MATERIAL MISREPRESENTATION OR FRAUD; MAKING IT A MISDEMEANOR FOR AN APPLICANT TO MAKE A MATERIAL MISREPRESENTATION; ALLOWING REVOCATION OF THE LICENSE; SETTING FORTH THE PROCEDURE FOR LICENSE REVOCATION; ALLOWING EXISTING BUSINESSES TO CONTINUE; SETTING LICENSE FEES; SETTING AN EFFECTIVE DATE; ESTABLISHING SEVERABILITY; ESTABLISHING A REPEALER; ESTABLISHING A PENALTY; ALLOWING PUBLICATION BY SUMMARY;

WHEREAS, the Mayor and the City Council of the City of Payette, State of Idaho, have concluded that it is in the best interest of the said City to enact a new Chapter 5.36 to Title 5,

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF PAYETTE, PAYETTE COUNTY, IDAHO:

SECTION 1: That Title 5 of the Payette City Code is amended with the addition of a new chapter 5.36, which Chapter is hereby enacted, which shall be titled "ADULT ENTERTAINMENT BUSINESS" Ordinance and which shall read as follows:

ADULT ENTERTAINMENT BUSINESS

5.36.010: PERSONS SUBJECT TO LICENSE:

Whenever in this Ordinance a license is required for the maintenance, operation or conduct of any business or establishment, or for doing business or engaging in any activity or occupation, any person or corporation shall be subject to the requirement, if by himself or through an agent, employee or partner he holds himself out as being engaged in the business or occupation; or solicits patronage therefore, actively, or passively, or preforms or attempts to perform any part of such business or occupation in the City of Payette.

5.36.020: LICENSE:

This ordinance is not designed to define, nor regulate, the

sale, loan, distribution, dissemination, presentation or exhibition, of material or live conduct which is obscene. This ordinance is designed to license establishments that provide adult entertainment or themes of a distinct sexual nature.

5.36.030: DEFINITIONS:

The following definitions are applicable to this Ordinance:

(A) ADULT STORE:

1. An establishment having as a substantial or significant portion of its stock or trade, books, magazines, videos or films which are distinguished or characterized by their emphasis on matter depicting, describing, or relating to adult entertainment.

2. An establishment with a segment or section devoted to the sale or display of such material or;

3. An establishment which sells or displays for sale devices designated to stimulate sexual arousal by contact with the skin or bodily orifices.

(B) ADULT THEATRE:

An establishment, either enclosed or in the open air, used for presenting to an audience through film, video or live performance material distinguished or characterized by emphasis on matter depicting, describing or relating to activities of a sexual nature for the purposes of adult entertainment.

(C) ADULT ARCADE MACHINES:

Machines which are used by an individual to view films, videos, or segments of films, which distinguish, characterize, or emphasize matters depicting, describing or relating to activities of a sexual nature for the purposes of adult entertainment.

(D) ADULT ENTERTAINMENT ESTABLISHMENT:

Adult Entertainment Establishment is defined as, "Any place of business, or commercial establishment, wherein the entertainment or activity therein consists of substantially nude persons dancing with or without music or engaged in movements of a sexual nature wherein the patron is directly or indirectly charged a fee or required to make a purchase in order to view the entertainment or activity which consists of persons exhibiting or modeling lingerie, bikinis or similarly styled garments, or where the patron, directly or indirectly,

is charged a fee to engage in personal contact by employees, devices or equipment, or by personnel provided by the establishment."

An establishment which has semi-nude dancing or strip tease performances, whether these occur regularly or occasionally.

Adult dancing includes, but is not limited to: erotic, exotic, striptease, bikini or lingerie and shall mean and relate to any performance, preview, play, show, skit, film, video, dance or other exhibition performed before an audience depicting, describing or relating to activities of a sexual nature for the purposes of adult entertainment.

"Substantially Nude" as used in this section shall mean dressed in a manner so as not to display any portion of the female breast below the top of the aureole, or displaying any portion of any person's pubic hair, anus, cleft of the buttocks, vulva or genitals. This definition of "Adult Entertainment Establishments" is to include, but not be limited to, bathhouses, massage parlors, lingerie, modeling studios, or related or similar activities.

(E) HOLDING COMPANY:

Holding company means any corporation, firm, partnership, trust or other form of business organization not a natural person which, directly or indirectly:

(a) Owns;

(b) Has the power, ability or right to control; or

(c) Holds with the power to vote, all or any part of the outstanding, shares, stocks, equity securities or voting securities of a corporation which holds or applies for a license required by this Ordinance.

2. For the purposes of this Section, in addition to any other reasonable meaning of the words used, a holding company "indirectly" has, holds or owns any power right or security mentioned in subsection 1 if it does so through any subsidiaries, however many such subsidiaries may intervene between the holding company and the corporate licensee or applicant.

(F) INTERMEDIARY COMPANY:

Intermediary company means any corporation, firm, partnership, trust or other form of business organization other than a natural person which:

1. Is a holding company with respect to a corporation which

holds or applies for a license required by this Ordinance.

2. Is a subsidiary with respect to any holding company.

(G) SUBSIDIARY: Subsidiary means:

1. Any corporation all or any part of whose outstanding stocks, shares, voting securities or equity securities are:

(a) Owned;

(b) Subject to a power or right of control; or

(c) Held with power to vote, by a holding company or intermediary company; or

2. Any firm, partnership, trust or other form of business organization not a natural person, all or any interest in which is:

(a) Owned;

(b) Subject to a power or right of control; or

(c) Held with power to vote, by a holding company or intermediary company.

(H) ADULT BUSINESS:

An adult store, adult theatre, adult entertainment establishment or adult business which also includes any business that operates adult arcade machines on its premises.

5.36.040: LICENSE REQUIRED; ALCOHOL LICENSES:

It shall be unlawful for any person to operate within the city limits of Payette any adult store, adult theatre, adult arcade machine business, or adult entertainment establishment, without first obtaining an appropriately classified license as set forth in Section 5.36.050 below.

No beer, wine or liquor license shall be issued to any adult theatre, adult store, adult arcade business or adult entertainment establishment business as described above.

No adult theatre, adult store, adult arcade business or adult entertainment establishment license shall be issued to a beer, wine or liquor licensee.

5.36.050: LICENSE CLASSIFICATIONS:

(A) Class A: Adult store which does not admit persons eighteen

(18) years or younger.

(B) Class B: Adult store which admits customers eighteen (18) years or younger to purchase publications or items not relating to specified sexual activities or specified anatomical areas but which has a portion of its premises devoted to the sale or display of such publications, films, or sexual devices.

(C) Class C: Adult theatre.

(D) Class D: Adult arcade machines.

(E) Class E: Any Adult Entertainment Establishment which may also include the elements of Class A, C, and D but not Class B.

5.36.060: APPLICATION FOR LICENSE:

An application for a license to operate one of the establishments described in Section 5.36.050 above shall be made to the City Clerk in such form and manner as prescribed by the City Council accompanied by the annual fee hereinafter prescribed, but the application shall contain at least the following:

(A) The name and residence address of the applicant;

(B) The name and address of each employee;

(C) If applicant is a corporation, the names and resident addresses of each of the officers, directors and managers of said corporation and of each stockholder owning more than ten percent (10%) of the stock, shares, equity or voting securities of the corporation and the address of the corporation itself, if different from the address of the proposed establishments.

(D) If applicant is a partnership, the names and addresses of each of the partners, including any managing partners, limited partners, silent partners investing partners and the address of the partnership itself, if different from the address proposed for the establishment.

(E) Written proof that the applicant is over the age of eighteen (18) years.

(F) The business, occupation, or employment of the applicant for the three (3) years immediately preceding the date of the application including the names, dates of, location and nature of same.

(G) The number of adult arcade machines to be installed, if any, and the name, address and employer of the owner of said machines. If the owner is a corporation, the names and resident addresses of each of the officers, directors and managers of said corporation and of each stockholder owning more than ten percent (10%) of the stock of the corporation and the address of the corporation itself, if different from the address of the proposed establishment[s].

(H) The class of license applied for and a statement why the proposed establishment falls within the requested classification.

(I) A criminal record of any partner, shareholder, employee, corporate partner or any person with a financial interest in the business.

(J) If the applicant is seeking a Class B adult store license, a description of the manner in which minors will be prevented from viewing publications, films of specified sexual activities or sexual anatomical areas.

(K) If a Class A adult store license is being requested, a statement whether the applicant will display for sale or sell any device designed to be used to stimulate sexual arousal or arousal by contact with the human skin or bodily orifices;

(L) A diagram of the floor plan and number of square feet and on premises parking spaces;

(M) If the applicant is seeking a Class C adult theatre license, a statement whether the entertainment will be live or on film. If live, a statement as to the nature of the live entertainment, e.g. burlesque, dance, musical, drama, etc.

If a Class E Adult Entertainment license is sought, a statement of the type and nature of entertainment whether Class A items are to be sold or offered for sale, and if adult arcade machines, including the number of, will be available for patronage.

(N) The date on which the applicant intends to open for business.

(O) The type and nature of activity desired to be licensed and whether the type of activity shall at any time require the total exclusion of minors from the premises.

(P) A legal description of the real property on which the premises are to be located, the name and address of the record owner; the name and address of each lien holder; the name and address of each party to a valid and subsisting

contract of sale, deed of trust or other agreement the subject of which is the aforesaid real property. If any of the persons sought to be identified by this Section is a corporation, the names and resident addresses of the officers, directors and managers of said corporation and of each stockholder owning more than ten percent (10%) of the stock of the corporation and the address of the corporation itself, if different from the address of the proposed establishment.

(Q) An agreement that if any of the information supplied pursuant to this Section becomes outdated by virtue of changes in the operation of the business or otherwise needs to be supplemented, the licensee shall provide the City Clerk with the modified or supplemental date within ten (10) days of the change or addition being effective.

(R) As to subsections (C), (G) and (O), if the owner or applicant corporation is an intermediary company as defined in Section 5.36.030 (F), the identity of each related holding company or subsidiary as those terms are defined in Section 5.36.070 (E) and (G). In providing the identity of each such corporation, the applicant shall furnish the names and addresses of each of the officers, directors and managers and of each stockholder or shareholder owning more than ten percent (10%) of the stock of the corporation, and the address of the corporation.

5.36.070: CONTROL BY CITY CLERK:

The City Clerk shall, within three (3) working days of a receipt of an application for license required by this ordinance submit a complete copy of the application to the Planning and Zoning Administrator, Building Inspector, Southwest District Health, Fire Chief for the City, Attorney, City Engineer and the Director of Public Safety.

5.36.080: INVESTIGATION TO BE MADE BY CITY OFFICIALS AND OTHER AGENCIES:

Upon receipt of an application for licensing from the City Clerk as required by this Ordinance, respective City officials and other governmental agencies shall commence investigations as to whether the physical plant of the proposed establishment is in conformity with the State law and City Code within ten (10) days of receiving the license application and state whether the proposed establishment is in compliance with the applicable ordinances, State laws and regulations. It shall further be the duty of each respective official agency, should a license subsequently be granted to the applicant, to examine and inspect such place licensed on a regular basis to determine continuing conformity to the applicable laws and regulations. If, during such routine

inspection, a discrepancy is noted, the official noting such discrepancy shall so advise the licensee in writing.

The licensee shall have ten (10) days within which to correct the discrepancy. Reasonable extensions of time may be granted the licensee if the discrepancy cannot be eliminated within a ten (10) day period.

5.36.090: ISSUANCE OF LICENSE:

When the City Clerk has received a report and recommendation from each of the officials or agencies designated in Section 5.36.070 and not later than twenty (20) days from the filing of the application, the City Clerk shall submit the license application and official reports to the City Council for inclusion in the Council agenda.

The City Council shall act upon the application at the next regular scheduled meeting after submission of the application by the City Clerk. If each of the designated officials or agencies has determined that the proposed business establishment is in conformity with all applicable City and State laws, and if it appears that there are no material misrepresentations or fraud in the application or in connection with the investigation by the City officials or other governmental agencies, the City Council may grant a license to the applicant.

5.36.100 INVESTIGATION BY CITY COUNCIL:

The City Council prior to the issuance of an license requested by this Ordinance, and after review of the submitted application, may undertake further investigation if it has reasonable cause to believe that the applicant has or is attempting to perpetrate a fraud or material misrepresentation on the City. Such further investigation may be completed and written findings issued at or prior to the next regular meeting following the meeting at which such application was initially considered.

Upon a finding by the Council that the material misrepresentation or fraud has been perpetrated either in the application or in connection with the investigation by City officials or other governmental agencies, said application may be denied by the City Council. Nothing in this Section shall be construed to permit any investigation into the substantive content of the publications or films to be displayed or sold by the applicant.

5.36.110: MISDEMEANOR:

It shall be a misdemeanor for an applicant or licensee to

make a material misrepresentation on his application, to perpetrate a fraud on any investigative official or agency, to operate a business as defined herein without first obtaining a business license or permit or to operate a business licensed under this Ordinance in contravention to the laws of the State of Idaho or the ordinances of the City of Payette.

5.36.120: REVOCATION:

The licensee shall be responsible for the operation of the licensed premises in conformity with the ordinances of the City of Payette and the State of Idaho. If a person is convicted of any felony or any misdemeanor involving moral turpitude, or upon a conviction of the licensee or any agent or any employee of the licensee of violating any law or any ordinance including this Ordinance, which is intended to protect the health, welfare or safety of individuals living in this community or this state, and which violation occurs in the course of the business activity licensed under this Ordinance, the City Council may revoke all licenses held by the licensee under this Ordinance for a period up to and including eighteen (18) months from the date of conviction. Upon expiration of the period of revocation, the applicant will be eligible to reapply for a license according to the procedures and requirements of this Ordinance.

5.36.030: PROCEDURE FOR LICENSE REVOCATION:

Any revocation of a license pursuant to this Ordinance shall not occur until a hearing is held before the City Council. Twenty (20) days written notice of the time and place of the hearing and the nature of the grounds for such revocation sufficient to inform the licensee and enable him to respond shall be given. The licensee shall have the right to appear at said hearing in person or by counsel to present evidence and argument on the licensee's behalf and cross-examine witnesses.

The City Council shall make a ruling based on the evidence presented to it at the hearing. Thereafter, the licensee shall be informed in writing of the Council's decision. If the Council by majority vote approves revocation, such revocation shall take effect when personal service of the written decision is made upon the licensee or an agent or employee of said licensee.

5.36.140: PRIOR LOCATION AND LICENSE LAPSE:

Nothing in this Ordinance shall in any way affect the rights of present adult businesses to continue their operation so long as they adhere to the provisions of this Ordinance, including submission of properly completed applications

within thirty (30) days of the date of this Ordinance and otherwise maintain a current license. Once an existing operation obtains a classified license, only subsequent change in classification shall be treated as a new use and must qualify under the provisions of this Ordinance. If there is a failure to timely renew a license, any subsequent application must satisfy all the requirements of this Ordinance including Section 5.36.060 pertaining to location restrictions.

5.36.150: LICENSE FEES:

(A) The following annual license fees must be paid to City at the time the license application is submitted.

1. Class A License       \$300.00
2. Class B License       \$125.00
3. Class C License       \$200.00
4. Class D License       \$ 50.00 per adult arcade machine
5. Class E License       \$300.00 plus applicable fees for  
  Class A content and  
  fees for each arcade  
  machine under Class D

(B) The request for renewal of licenses must be made on forms supplied by the City Clerk and such requests must be submitted by December 1 for renewal for the next calendar year. Each renewal application must be accompanied by the annual fee set forth in subsection (A) above.

(C) Where an application for a new license is made after January 1, the applicable fee shall be apportioned in accordance with the number of days remaining in the calendar year.

5.36.160: LOCATION OF BUSINESS:

No adult store, adult theatre, adult arcade or adult entertainment establishment shall be located within three hundred (300) yards of any school, church, bar, hospital, nursing home, assisted living facility, adult or child day care facility, liquor store or public park which is open to children. No adult store, adult theatre, adult arcade or adult entertainment establishment shall be located in any area which has been zoned as A or B residential, C commercial, T trailer or as F unclassified or in any similarly designated zone if those zoning designations should be changed.

Section 2. This Ordinance shall be in full force and effect immediately upon passage and publication as required by law.

Section 3. Any ordinances or resolutions which are in conflict with this ordinance are hereby repealed, but only insofar as the conflict exists.

Section 4. If any portion of this Ordinance should be found to be unconstitutional or unenforceable for any reason, the remainder of the Ordinance shall constitute Ordinance Number 1207.

Section 5. This Ordinance may be published by summary in accordance with the Statutes of the State of Idaho.

Section 6. Any violation of this Ordinance shall be a misdemeanor punishable in accordance with the general misdemeanor statutes of the State of Idaho. In addition, any violation of the ordinance shall be grounds to revoke any permit issued in violation of the terms hereof.

Passed and approved by the Mayor and City Council this 1st day of October , 2001.

CITY OF PAYETTE

By *Ann Brasley*  
Mayor

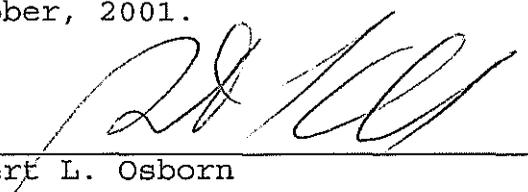
ATTEST: *John P. Franks*  
City Clerk

SUMMARY OF ORDINANCE 1207

Ordinance 1207 is an ordinance of the City Of Payette, Idaho, adopted October 1, 2001. The ordinance may be descriptively known as the Adult Entertainment Business Ordinance. The ordinance adds a new chapter 5.36 of title 5 of the Payette Municipal Code; the ordinance describes entities subject to the ordinance; sets out the intent of licensing requirements; provides a definitions of terms; defines when a license would be required; prohibits issuance of licenses to establishments with beer, wine or liquor licenses; classifies licenses; sets out the information required in a license application; the ordinance sets out duties of city clerk; requires certain city officials to investigate an application; sets out when a license may be issued; it allows the city council to conduct additional investigations; it allows the council to deny a license upon material misrepresentation or fraud; the ordinance makes it a misdemeanor for an applicant to make a material misrepresentation; it allows revocation of the license under certain circumstances; sets forth the procedure for license revocation; allows existing businesses to continue; sets out license fees; Ordinance 1207 provides for severability, repealer, publication by summary and for a penalty in the event there is an ordinance violation. The ordinance becomes effective immediately upon passage and publication.

I, Bert L. Osborn, City Attorney for the City of Payette, Idaho, certify that I am familiar with Ordinance 1207 of the City of Payette, Idaho and with the foregoing summary. The summary is true and complete and provides adequate notice to the public. The full text is on file with the Payette City Clerk and shall promptly be made available to any citizen upon request.

Dated this 2nd day of October, 2001.

  
Bert L. Osborn