

CITY OF NORTH MIAMI BEACH, FLORIDA

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CITY ATTORNEY'S OFFICE
CITY OF NORTH MIAMI BEACH

TO: MAYOR AND COUNCIL

FROM: MICHAEL J. ROBERTO, CITY MANAGER

DATE: OCTOBER 12, 1989

RE: ADULT ENTERTAINMENT ESTABLISHMENT

EXISTING CONDITIONS:

The City of North Miami Beach is a community of approximately 4.5 square miles and 35,000 residents. The City is primarily a retirement and bedroom community with a business and commercial base which generally serves the local citizenry. Few visitors or tourists are served by the City's attractions and amenities. Within the City limits there are currently three businesses operating which are sexually oriented in nature. These include one adult book store at 13981 Biscayne Boulevard and two nude dancing establishments, Miami Gold at 17450 Biscayne Boulevard and the Crazy Horse Saloon at 16410 Biscayne Boulevard. Another adult entertainment club, Solid Gold, at Biscayne Boulevard and Sunny Isles Causeway, has received limited renovation building permits and other necessary city approvals. This establishment might be considered to be a pre-existing adult business.

HISTORY / STATUS:

In this context, a historical review of adult business and city ordinances is appropriate. As other neighboring communities, particularly Ft. Lauderdale, began enacting ordinances and taking other actions to ban or discourage adult entertainment establishments, the City of North Miami Beach became concerned that these businesses would be squeezed south into our community and that the City would become a haven for such sexually oriented ventures. These fears seem to have been confirmed by the marked increase in the number of inquiries made by these businesses concerning relocation to North Miami Beach.

Sunny Isle Food and Beverage Inc. (Solid Gold) purchased the lease on the existing Mardis Gras Lounge at 2355 Sunny Isle Boulevard for \$500,000 on June 6, 1989 with the propoerted intention of operating an adult entertainment establishment, and applied for a building permit on June 14, 1989 for renovation work in this regard. Also on June 14, the plans were sent to the Public Utilities Department for water implant fee calculations. These fees were paid and the plans picked up on June 28, 1989. The Dade County Fire Department approved these plans on July 30, 1989, and the Countys Department of Environmental Resources Management issued approval on August 9, 1989. Revised implant fees were then paid to the Citys Public Utilities Department on August 9, 1989. The renovation building permit was issued to Sunny Isles Food & Beverage Inc. (Solid Gold) on August 11, 1989. It should be noted that the City took ample precaution, due to the premature nature of the application, to place the applicant on notice of pending adult/alcohol legislation.

On July 18, 1989, subsequent to the application for building permit and water inplant fee calculations, the City Council approved Ordinances dealing with alcoholic beverages and adult entertainment, by title only on first reading. Ordinance 89-4 created a definition for "Establishments dealing in alcoholic beverages" while Ordinance 89-5, prohibited such establishments from allowing or providing entertainment or conduct of a nude or sexual nature. Both ordinances were approved and adopted on second reading on August 15, 1989, four days after Sunny Isles Food & Beverage Inc. (Solid Gold) was issued a renovation building permit. Sunny Isles Food and Beverage Inc. (Solid Gold) will allegedly spend in excess of \$300,000 to suitably renovate this establishment under a validly held building permit.

The site improvements as indicated on the submitted building plans are of a high quality and include a new facade, abundant landscaping, and greatly reduced and improved signage. This would be a marked improvement of the existing situation where, in its present condition the property has presented visitors and residents of North Miami Beach with an unsightly and negative image of the City at a location of extremely high visibility. In addition, the past history of the Mardis Gras Lounge, the previous establishment at the site, has included a large number of police calls, disturbances, city code, maintenance and other violations. Solid Gold could choose to operate an adult entertainment establishment with no alcohol service without making the proposed improvements. This could lead to a situation in which the City suffers all of the negative impacts of a low-end sexually oriented business without any of the aesthetic improvements and benefits associated with a business such as Solid Gold which, through pricing and marketing, caters to a more upscale clientele.

OTHER NEARBY ESTABLISHMENTS NON-CITY:

In addition to the above referenced establishments in the City, eight (8) adult entertainment businesses are located in Dade County within one mile of the City of North Miami Beach. These include Cherrys Lounge at 14670 West Dixie Highway, Pappys Lounge on Miami Gardens Drive, Party Girls at 11340 Biscayne Boulevard, Show Girl Review at 255 Sunny Isles Boulevard and the Tender Trap, 17868 Biscayne Boulevard, all of which feature nude dancing, Adult Books at 11711 Biscayne Boulevard, The Love Boutique Adult Book Store at 291 Sunny Isles Causeway, and 167 XXX Books at 14 N.E. 167th Street, which is immediately adjacent to our City.

OVERVIEW AND CITY OBJECTIVES (EFFECT OF ADULT ENTERTAINMENT ESTABLISHMENTS):

The City is currently undertaking a concerted effort at revitalizing the commercial environment of the City while improving the environmental and residential quality of the community and enhancing the City's reputation as a desirable place in which to work, shop and live. These efforts have begun to be realized, particularly on SR 826 and Biscayne Boulevard, and the formerly declining commercial strips are showing signs of rejuvenation and the positive benefits of the City's endeavors.

The proliferation of adult entertainment establishments in the city would have a clear and immediate negative impact on the commercial environment of the City by encouraging potential undesirable persons and behavior, leading to crime, significantly declining property values and a reversal in the trend towards economic redevelopment. In addition, the negative effect of multiple pornographic and adult entertainment establishments in the City on the residential desirability and civic pride could be extreme. Adult businesses tend to locate in areas of poorer residential quality and lead to a relative worsening of the residential condition. There are presently a sufficient number of adult entertainment establishments within and in close proximity to the City to meet the needs and desires of its residents. It is therefore felt that in order to uphold the quality of life, health, safety and welfare, maintain property values, prevent crime, and protect the City's retail trade, no such additional adult entertainment establishment other than Miami Gold, The Crazy Horse Saloon and Solid Gold should be allowed in the City. However, these three establishments should be amortized out over a lengthy period of time, no greater than ten (10) years. This would be consistent with the City's long range revitalization and civic improvement plan while allowing sufficient time for these businesses to maintain profitability and recoup their investments.

The Ordinances which the City council passed in this regard should effectively discourage and limit the number of new establishments while allowing those businesses currently operating in the City, as noted above, (potentially including Solid Gold), to remain as grandfathered legal non-conforming uses. This will ensure the maintenance and protection of a higher quality of life for the community and its residents.

RECOMMENDATIONS:

In order to ensure that the secondary effects of these establishments are adequately controlled, the following review procedures and safeguards are proposed:

- . Occupational licenses shall be granted on a reviewed renewal term basis only, subject to a periodic review by the City Manager, but in no case less than annually. This review is to insure that the subject establishments do not adversely impact the surrounding neighborhood properties or the City in general, in both value and quality of life. Said review should include, but not be limited to, number of police calls and arrests at the site, neighborhood complaints and property maintenance standards. Specific thresholds should be determined in consultation with the Chief of Police.
- . Off duty police officer shall be required after 10:00 P.M. until closing on Friday and Saturday evenings.
- . Any limited non-conforming use shall run with the current establishment and owners, and not with the land, and as such shall not be saleable or transferable.
- . An adult entertainment licensing fee of \$5,000 should be required to compensate the City for the extraordinary amount of time expended on review and oversight of these establishments.
- . All liquor establishments shall be licensed until 2:00 A.M. only. A special license to extend the hours until 6:00 A.M. may be granted by the Mayor and Council when the current 4:00 A.M. to 6:00 A.M. licenses come up for review. An extra impact fee for the extended hour license should be imposed.
- . Occupational license shall be required for all performers and employees, including background checks to be conducted by the Police Department. If possible, the City should retain the right to refuse a license for individuals with a record of previous crimes or arrests which is felt to be excessive and which would constitute potential problems for the establishment, surrounding properties, and/or the City.

- . Outside appearance and aesthetics are of particular concern in order to counter the negative image of these establishments in the community. It is recommended that landscaping be predominately comprised of palms so as to provide lushness without ground level density which would inhibit security. Likewise, parking lot and establishment lighting should be of a superior nature to deter crime. Signage should be compatible with the proposed sign code, specifically, individual channel letters on monument type signs with no reader boards, plastic box signs or pole signs allowed. In addition, copy should be strictly limited to the name of the establishment and objectionable content or graphics prohibited (e.g. "XXX", sex, nudity, etc.), within the dictates of current law.
- . Accessory uses (e.g. pool tables, video games, food service) should be closely controlled to prevent an unregulated and unforeseen expansion on the intended (main) use.

It is imperative to note that any restrictions on adult entertainment establishments must not be imposed on moral or freedom-of-speech grounds, but rather on basic zoning regulations where a standard of reasonableness and balance is required. The constitutional validity of any ordinance restricting the time, place or manner of free speech requires that two conditions be met; a significant governmental interest must be served by the regulation by the least restrictive means possible, and ample alternative channels for the information dissemination must be left open by the regulation.

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