

A JOINT ORDINANCE AMENDING THE MEMPHIS AND SHELBY COUNTY ZONING ORDINANCE-REGULATIONS ADOPTED BY THE SHELBY COUNTY BOARD OF COMMISSIONERS ON OCTOBER 6, 1980, AND BY THE COUNCIL OF THE CITY OF MEMPHIS ON OCTOBER 7, 1980, BEING RESOLUTION AND ORDINANCE NO. 3064, AS AMENDED, SO AS TO MAKE CERTAIN CHANGES THEREIN AS FOLLOWS:

AMEND SECTION 30(B)(6) / 16-116-2(F) TO SPECIFY THAT CESSATION OF USE DUE TO LOSS OF LICENSE OR PERMIT FOR 365 CONSECUTIVE DAYS TERMINATES A NON-CONFORMING USE.

WHEREAS, The joint Memphis and Shelby County Zoning Code, section 30(B)(6) / 16-116-2(F), provides that when a nonconforming use or structure is discontinued or abandoned for a period of 365 consecutive days (regardless of any reservation of an intent not to abandon and to resume such use), such use shall not thereafter be reestablished or resumed; and

WHEREAS, A local government's interest in attempting to preserve the quality of urban life is one that must be accorded high respect, Young v. American Mini-Theatres, Inc., 427 U.S. 50, 71, 96 S.Ct. 2440, 2453, 49 L.Ed.2d 310 (1976); and

WHEREAS, The courts of Tennessee have recognized that one lawful method of terminating a nonconforming use is to forbid a resumption of use after a specified period of non-use, in Custom Land Development, Inc. v. Town of Coopertown, 168 S.W.3d 764 (Tenn.App. 2005), perm. app. den., and Rives v. City of Clarksville, 618 S.W.2d 502, 510 (Tenn.App. 1981); and

WHEREAS, The Board of County Commissioners and the Memphis City Council find that various types of nonconforming businesses and uses often close on their own, or are closed by nuisance or other government action, then often reappear following a period of non-use, sometimes in violation of or in contravention to section 30(B)(6) / 16-116-2(F), and often by relying upon a supposed intention to re-open upon issuance of the appropriate permits; and

WHEREAS, Such claims of nonconformity become a repeated source of litigation and expense; and

WHEREAS, Such uses and businesses are generally of a type often detrimental to property values and the peaceful use of surrounding property including but not limited to uses such as billboards, bars, nightclubs, sexually oriented businesses, and others; and

WHEREAS, The Board of County Commissioners and the Memphis City Council adopt the findings of the reports cited in Shelby County's September 2007 Ordinance Repealing Ordinance No. 81 and Adopting the State Adult Oriented Establishment Registration Act of 1998 in Shelby County, and likewise follow and adopt the state legislature's findings in enacting a law, at 1998 *Tennessee Public Acts*, chapter 1090 and amendments, and in particular in the most recent amendments to that law at 2006 *Tennessee Public Acts*, chapter 943, wherein the legislature found its adult oriented business registration law to be a reasonable time, place, and manner regulation to attempt to address some recognized deleterious secondary effects commonly associated with adult-oriented establishments, including but not limited to an increase in crime, the spread of sexually-transmitted diseases, the downgrading of property values, and other public health, safety, and welfare issues; and

WHEREAS, The replacement of non-conforming uses with conforming uses is an essential element of any properly functioning zoning ordinance and is crucial to fulfilling the stated purposes of the zoning ordinance; and

WHEREAS, The Memphis and Shelby County Land Use Control Board has held a public hearing as required by law on the proposed changes and has recommended its approval of same.

NOW, THEREFORE, BE IT RESOLVED, By the Shelby County Board of Commissioners and Council of the City of Memphis, that Memphis and Shelby County Zoning Code section 30(B)(6) / 16-116-2(F) is hereby repealed.

BE IT FURTHER RESOLVED, That a new section 30(B)(6) / 16-116-2(F) is hereby enacted as ZTA No. 07-002CC to read as follows (new language underlined here for reference only):

When a nonconforming use of land or a nonconforming use of part or all of a structure is discontinued or abandoned for a period of 365 consecutive days, such use shall not thereafter be reestablished or resumed, regardless of any intent not to abandon and to resume such use. Discontinuance or abandonment for time to obtain a permit or license to operate or keep the nonconforming use, or due to a suspension, revocation, injunction, or loss of such permit or license, shall not toll any portion of the 365 days.

Any subsequent use or occupancy of such land or structure shall comply with the regulations of the zoning district in which such land or structure is located.

BE IT FURTHER RESOLVED, That the various sections of this Ordinance are severable, and that any portion declared unlawful shall not affect the remaining portions.

BE IT FURTHER RESOLVED, That this amendment take effect from and after the date it shall have been enacted according to due process of law, and thereafter shall be treated as in full force and effect in the jurisdictions subject to the above mentioned Joint Ordinance and Resolution by virtue of the concurring and separate passage thereof by the Shelby County Board of Commissioners and the Council of the City of Memphis.