

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF FLORIDA  
PENSACOLA DIVISION

THE OASIS OF DESTIN, INC. )  
d/b/a Oasis, a Florida corporation and )  
TRIDENT-OPERATIONS, LLC, )  
a Florida limited liability company, )  
Plaintiffs, ) CASE NO.: 3:08-cv-00528-MCR-EMT  
v. )  
CITY OF DESTIN, FLORIDA, )  
Defendant. )  
\_\_\_\_\_ /

**MOTION FOR PRELIMINARY INJUNCTION**

Plaintiffs file this Motion for Preliminary Injunction, pursuant to Rule 65, Fed.R.Civ.P. and Rule 7.1, N.D.Fla.Loc.R., and move this Court to enter a preliminary injunction enjoining the enforcement of City of Destin Ordinance 09-04, and say:

1. Plaintiffs have filed an Amended Complaint under 42 U.S.C. §1983 claiming that the City of Destin Ordinance 09-04 is void and unconstitutional for a variety of reasons.

2. This Motion is confined to two of the claims raised in the Amended Complaint:

A. Ordinance 09-04 was not enacted correctly under Florida law and is void *ab initio*. Ordinance 09-04 is a zoning ordinance because it changes the list of permitted uses in zoning districts and amends the zoning requirements for adult businesses.

However, the Ordinance was not enacted in accordance with the mandatory requirements of §166.041, Fla.Stat.

B. The definitions of “adult cabaret” and “semi-nudity” in §2.5-15 of Ordinance 09-04 are unconstitutionally overbroad and not narrowly tailored to serve the government interest at issue.

3. The legal basis for those challenges is set forth at length in the accompanying Memorandum of Law.

4. The two claims presented in this Motion are facial challenges to the new Ordinance. Facial challenges are particularly well suited to resolution through a preliminary injunction hearing. Injunctive relief is appropriate because Ordinance 09-04 is directly infringing upon Plaintiffs’ First Amendment rights.

5. Plaintiffs are not seeking preliminary injunctive relief on any of the other challenges set forth in the Amended Complaint, including the adequacy of the secondary effects predicate, the availability of alternative avenues of communication and the constitutionality of individual provisions of Ordinance 09-04. Those other claims are fact-intensive and are not suitable for resolution at this stage of the litigation. Plaintiffs specifically reserve all of their remaining claims and do not abandon any of the legal challenges set forth in their Amended Complaint.

**ALLEGATIONS IN SUPPORT OF INJUNCTIVE RELIEF**

6. Plaintiffs operate a “bikini bar” know as the “Oasis” at 205 Mountain Drive, Destin, Florida. Plaintiffs serve alcoholic beverages in a nightclub setting which features entertainment by live female dancers.

7. The dancers perform in skimpy attire which covers, at a minimum, their genitals, anal cleft and areola. At times, certain of the performers have danced fully nude at Plaintiffs' business.

8. Plaintiffs have a clear legal right to offer non-obscene adult entertainment in the form of exotic dance to persons over the age of eighteen.

9. The kind of exotic dancing which Plaintiffs offer at their business is clearly protected by the First Amendment.

10. Plaintiffs initially filed this litigation to challenge the City's adult entertainment ordinances that were in effect when they first sought to offer adult entertainment.

11. Ordinance 09-04 was enacted in response to the opening of Plaintiffs' adult club and the filing of this litigation.

12. Ordinance 09-04 repealed the prior adult entertainment laws and is the Ordinance currently in effect in the City of Destin.

13. The newspaper advertisements for the public hearings associated with the adoption of Ordinance 09-04 are attached as Exhibit "D" to Plaintiffs' Amended Complaint. A copy of the advertisements is also attached to this Motion.

14. The newspaper advertisements show on their face that Ordinance 09-04 was not enacted in accordance with the requirements of §166.041, Fla.Stat. Strict compliance with those advertising requirements is mandatory because Ordinance 09-04 is in large measure a zoning ordinance. Florida and Federal law are both clear that a failure to comply with the enactment procedures renders a municipal ordinance void *ab initio*.

15. The Court has supplemental jurisdiction to determine Plaintiffs' state law claim because the Court has original jurisdiction to consider Plaintiffs' Federal constitutional claims under 42 U.S.C. §1983.

16. Ordinance 09-04 adopts new definitions for "adult cabaret" and for "semi-nudity" that were not found in the original adult entertainment ordinance:

**Adult Cabaret:** a nightclub, bar, juice bar, restaurant, bottle club, or similar commercial establishment, whether or not alcoholic beverages are served, which regularly permits one (1) or more of the following activities:

- (1) Features persons who appear semi-nude; or
- (2) Allows employees to offer, solicit, or contract to dance with or for a customer with the acceptance of any consideration, tip, remuneration or compensation from or on behalf of that customer; or
- (3) Features persons who, with or without compensation or other form of consideration, perform semi-nude as a sexually-oriented dancer, exotic stripper, stripper, go-go dancer or similar dancer whose performance regularly focuses on or is characterized by an emphasis on the persons breasts, genitals, and/or buttocks, but does not involve nudity or depicting or engaging in specified sexual activities.

§2.5-15 Definitions at p. 9.

**Semi-nude or state of semi-nudity:** means a condition in which a person is not nude, but is showing a majority of the female breast below a horizontal line across the top of the areola and extending across the width of the breast at that point, or is showing the majority of the male or female buttocks. This definition shall include the lower portion of the female human breast, but shall not include any portion of the cleavage of the human female breast exhibited by a bikini, dress, blouse, shirt, leotard, or similar wearing apparel provided the areola is not exposed in whole or in part.

§2.5-15 Definitions at p. 12.

17. Those definitions render the Ordinance unconstitutionally overbroad on its face because the law includes within its scope a broad array of "mainstream" dance and

other First Amendment protected communications which have no relationship to the asserted government interest. The Ordinance is also unconstitutional because it is not narrowly tailored to serve the governmental interest in averting adverse secondary effects.

18. Plaintiffs have a substantial likelihood of prevailing on the merits of their claims.

19. Unless this Court issues a preliminary injunction, Plaintiffs will be irreparably injured by the deprivation of their rights under the First Amendment. As a matter of law, the deprivation of rights guaranteed under the First Amendment is an irreparable injury for purposes of injunctive relief.

20. The injury to Plaintiffs, should this Court deny this Motion, exceeds any possible harm to Defendant if the Motion is granted. Plaintiffs' injury is the loss of a constitutional right. On the other hand, since no city may deprive any person of a right guaranteed by the First Amendment, Defendant will suffer no injury if it is prevented from suppressing Plaintiffs' right to freedom of expression.

21. A preliminary injunction preventing the enforcement of the challenged Ordinance will not disserve the public interest. The public has no lawful interest in the enforcement of unconstitutional ordinances which violate the First Amendment. Further, the public's rights under the First Amendment are also being deprived by the provisions challenged herein as the public is being denied access to protected speech.

22. The Court should exercise its discretion and not require that Plaintiffs post a bond, or require that Plaintiffs post a nominal bond, because the City will incur no costs or damages in the event a preliminary injunction is entered and it is later determined that

the City was wrongfully enjoined. The only substantial costs involved are attorney fees, and pursuant to 42 U.S.C. §1988 the City cannot recover its attorney fees unless it shows that Plaintiffs' lawsuit was frivolous.

WHEREFORE, Plaintiffs pray for the following relief:

A. Entry of a preliminary injunction, restraining Defendant, its agents, employees and all others acting in concert with Defendant who receive actual notice of the injunction, from enforcing Ordinance 09-04.

B. Entry of an Order to Show Cause why the preliminary injunction should not be made permanent.

C. Such other and further relief as this Court deems just.

*Respectfully submitted,*

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\*Motions Pro Hac Vice pending

