

Ordinance Fact Sheet

TO: CITY COUNCIL **DATE:** SEPTEMBER 11 2006

FROM: CITY ATTORNEY

SUBJECT: AN ORDINANCE AMENDING THE ZONING CODE REGARDING THE REGULATION OF ADULT BUSINESSES

TITLE OF PROPOSED ORDINANCE

AN ORDINANCE OF THE CITY OF PASADENA AMENDING THE PASADENA MUNICIPAL CODE, TITLE 17 (THE ZONING CODE), REGARDING THE REGULATION OF ADULT BUSINESSES

PURPOSE OF ORDINANCE

This ordinance amends the Zoning Code to modify the definition of "adult business" to extend the four foot separation requirement between an adult business performer and patron to apply to any adult business, and to make other minor corrections and clarifications to the Zoning Code's regulation of adult businesses

REASON WHY LEGISLATION IS NEEDED

This legislation is needed to bring the Zoning Code definition of "adult business" in line with case law developments since the time the definition was first established; to clarify that the four foot separation requirement between an adult business performer and patron applies in any adult business and not just those where the performer is nude; and to make other minor corrections and clarifications to the Zoning Code's regulation of adult businesses.

MEETING OF 9/11/2006

AGENDA ITEM NO. 11.A.1.

PROGRAMS, DEPARTMENTS OR GROUPS AFFECTED

The Planning and Development Department will implement the proposed ordinance through modifications to the Zoning Code and processing of subsequent requests for Expressive Use Permits.


FISCAL IMPACT

There will not be an immediate fiscal impact as a result of this amendment to the Zoning Code. Permitting fees will be collected from any future adult business applicant.

ENVIRONMENTAL DETERMINATION

A Negative Declaration was prepared for the proposed changes, pursuant to the California Environmental Quality Act (CEQA).

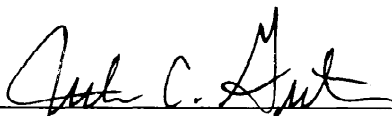
Respectfully submitted,

 9/7/06
for _____
Michele Beal Bagneris
City Attorney

Prepared by:


Theresa E. Fuentes
Deputy City Attorney

Concurred by:


for _____
Cynthia J. Kurtz
City Manager

Introduced by Council Member _____

ORDINANCE NO.

AN ORDINANCE OF THE CITY OF PASADENA AMENDING THE PASADENA MUNICIPAL CODE, TITLE 17 (THE ZONING CODE), REGARDING THE REGULATION OF ADULT BUSINESS

The People of the City of Pasadena ordain as follows:

SECTION 1. This ordinance, due to its length and corresponding cost of publication will be published by title and summary as permitted by Section 508 of the Pasadena City Charter. The approved summary of this ordinance is as follows:

“SUMMARY

Ordinance No. _____ will amend Title 17 of the City of Pasadena’s Zoning Code to clarify the definition of “adult business” and to add distance requirements between any adult business performer and patron. Other minor clarifying and grammatical changes will also be made.

Ordinance No. _____ shall take effect 30 days from its publication.”

SECTION 2. The City Clerk shall certify the adoption of this ordinance and shall cause this ordinance to be published by title and summary.

SECTION 3. This ordinance shall take effect 30 days from its publication.

Signed and approved this _____ day of _____, 2006.

Bill Bogaard
Mayor of the City of Pasadena

I HEREBY CERTIFY that the foregoing ordinance was adopted by the City Council of the City of Pasadena at its meeting held this _____ day of _____ 2006, by the following vote:

AYES:

NOES:

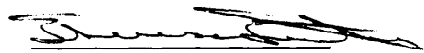
ABSENT:

ABSTAIN:

Date Published:

Jane L. Rodriquez, CMC
City Clerk

Approved as to form:


Theresa E. Fuentes
Deputy City Attorney

Regulation of Adult Business Ordinance Summary
0000050848C031

Introduced by: _____

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF PASADENA AMENDING THE PASADENA MUNICIPAL CODE, TITLE 17 (THE ZONING CODE), REGARDING THE REGULATION OF ADULT BUSINESSES

WHEREAS, the City of Pasadena regulates the location and operation of adult businesses through its Zoning Code (Title 17); and

WHEREAS, the last update to those parts of the Zoning Code which deal with adult businesses was approximately nine years ago, when the City adopted Ordinance No. 6723; and

WHEREAS, in that intervening time, the law governing the regulation of adult businesses has continued to develop, and the City has recently undertaken a review of its adult business definitions and regulations in light of those developments in the law; and

WHEREAS, the City has found it necessary to revise and update the Zoning Code definition of “adult business” to maintain its Zoning Code definition in compliance with the law, while reducing the adverse secondary effects that adult businesses have upon the residents of the City; and

WHEREAS, the City has also found it necessary to revise and update the Zoning Code operational requirements regulating the distance between adult business performers and patrons, to include any performance of “specified sexual activities.” The City Council finds and determines that this revision is necessary to extend reasonable and uniform regulations to all adult businesses to reduce the adverse secondary effects that adult businesses have upon the residents of the City, and it is evident that this revision is necessary to preserve the integrity of commercial areas in which adult businesses may operate and of residential areas which are in close proximity to such commercial areas. The public health, safety and welfare of the City require this revision.

WHEREAS, as specifically applicable to the revisions to the distance requirement between adult business performers and patrons, the City found, in Ordinance No. 6723 and the public record associated therewith, all of which are incorporated herein by reference, and continues to find:

1. Evidence indicates that some adult business performers who publicly perform specified sexual activities in adult businesses have been found to engage in sexual activities with patrons of adult business uses on the site of the adult business use;

2. Evidence indicates that some adult business performers have been found to engage in acts of prostitution with patrons of the adult business;

3. As a result of the above, and the increase in incidents of AIDS and Hepatitis B, which are both sexually transmitted diseases, the City has a substantial interest in extending to all adult businesses those regulations which will reduce, to the greatest extent possible, the possibility for the occurrence of prostitution and casual sex acts at adult businesses; and

WHEREAS, it is not the intent of the City Council in enacting this Ordinance to suppress any activities protected by the First Amendment, but rather to enact content neutral modifications to its adult business definition and regulations which address the secondary effects that adult businesses have on the City. In developing this Ordinance, the City Council has been mindful of legal principles relating to regulation of adult businesses and does not intend to suppress or infringe upon any expressive activities protected by the First Amendment of the United States and California Constitutions, but instead desires to enact reasonable time, place, and manner regulations that address the adverse secondary effects of adult businesses and which do not operate as an unconstitutional prior restraint. The Council desires to protect the rights conferred by the United States Constitution to adult business uses and other expressive uses in a manner that ensure the continued and orderly development of property within the City and diminishes the previously mentioned undesirable negative secondary effects; and

WHEREAS, pursuant to the California Environmental Quality Act, the Council has reviewed and considered the information contained in the Initial Study and Negative Declaration prepared for this Ordinance, and determines that the Negative Declaration adequately analyzes the environmental effects of this Ordinance. The City Council finds that there is no evidence from which it can be fairly argued that this Ordinance will have a significant adverse effect on the environment. The Council hereby certifies and approves the Negative Declaration.

NOW THEREFORE, the People of the City of Pasadena ordain as follows:

SECTION 1. This ordinance, due to its length and corresponding cost of publication will be published by title and summary as permitted by Section 508 of the Pasadena City Charter. The approved summary of this ordinance is as follows:

“SUMMARY

Ordinance No. _____ will amend Title 17 of the City of Pasadena’s Zoning Code to clarify the definition of “adult business” and to add distance requirements between any adult business performer and patron. Other minor clarifying and grammatical changes will also be made.

Ordinance No. _____ shall take effect 30 days from its publication.”

SECTION 2. Pasadena Municipal Code, Title 17, Article 5, Chapter 17.50, Section 17.50.030, Subsection C is amended as follows:

“C. Standards for live entertainment. An adult business with live entertainment shall comply with the requirements of Section 17.50.1230 (Live Entertainment) in addition to the requirements of this Section.”

SECTION 3. Pasadena Municipal Code, Title 17, Article 5, Chapter 17.50, Section 17.50.030, Subsection D is amended by:

a. Amending Paragraph 4 to read as follows:

“4. Minors’ access prohibited. It shall be unlawful for any employee, owner, operator, responsible managing employee, manager, or permittee of an adult entertainment

business to allow any person below the age of 18 years upon the premises or within the confines of any adult ~~entertainment~~ business, either as a patron or employee, if no liquor is served, or under the age of 21 years if liquor is served.”

b. Amending Paragraph 6 to read as follows:

“6. Operating Distance requirements. No person, association, partnership, or corporation shall engage in, conduct or carry on, or allow to be engaged in, conducted, or carried on, the operation of an adult business ~~for nude entertainment~~ unless each and all of the following requirements are met:”

c. Amending Paragraph 6, Subparagraph a as follows:

“a. No employee, owner, operator, responsible managing employee, manager, or permittee of an ~~nude entertainment~~ adult business shall allow any person below the age of 18 years upon the premises or within the confines of any adult business if no liquor is served, or under the age of 21 years if liquor is served and the facility is not a restaurant as that land use classification is defined in Article 8 (Glossary of Specialized Terms and Land Use Types).”

d. Amending Paragraph 6, Subparagraph b as follows:

“b. No ~~nude entertainer~~ or entertainer displaying specific anatomical areas or engaging in or performing specified sexual activities shall dance with or otherwise be within four feet of a patron while performing for compensation or while on the licensed premises. This four-foot separation shall be marked by a railing or other physical barrier designed to properly obstruct any contact between the entertainer and the patrons.”

e. Amending Paragraph 6, Subparagraph c as follows:

“c. No owner, operator, responsible managing employee, manager, or permittee shall allow at a licensed premises any patron to approach within four feet of an ~~nude entertainer~~ or entertainer displaying specific anatomical areas or engaging in or performing specified sexual activities, or allow such an entertainer to approach within four feet of a patron.”

f. Amending Paragraph 7 as follows:

“7. Adult dancing establishment. An ~~adult~~ dancing establishment which operates as an adult business shall also, regardless of whether it holds an Expressive Use Permit, observe the following special requirements:”

g. Amending Paragraph 7, Subparagraph a as follows:

“a. It shall have a stage provided for the display or exposure of any specified anatomical area or for the performance of specified sexual activity by an employee to a person other than another employee consisting of a permanent platform (or other similar permanent structure) raised a minimum of 18 inches above the surrounding floor and encompassing an area of at least 100 square feet, separated by a distance of at least four ~~six~~ feet from the nearest area occupied by patrons and surrounded with a three-foot high properly constructed barrier. No patron shall be allowed within four ~~six~~ feet of the stage while the stage is occupied by a performer; and”

h. Amending Paragraph 7, Subparagraph b as follows:

“b. Any area in which a private performance occurs shall:

(1) Have a permanently open entranceway not less than two feet wide and not less than six feet high, which entranceway is not capable of being closed or partially closed by an curtain, door, or other partition which would be capable of wholly or partially obscuring any person situated in the area; and”

i. Amending Paragraph 8 as follows:

“8. Theater and cinemas. A theater or cinema which operates as an adult business shall also, regardless of whether it holds an Expressive Use Permit, observe the following special requirements:”

j. Amending Paragraph 8, Subparagraph b as follows:

“b. If the an ~~adult~~ theater or cinema contains ~~adult~~ booths, each ~~adult~~ booth shall comply with each of the following provisions:”

k. Deleting Paragraph 8, subparagraph c.

e. ~~If an adult theater or cinema is designed to allow outdoor viewing by persons seated in automobiles or other motor vehicles, the motion picture screen shall be situated, or the perimeter of the establishment shall be fenced, so that the material being shown will not be visible from any public right of way, property zoned for residential use, religious facility, school, public or private, or park or recreation area.~~

SECTION 4. Pasadena Municipal Code, Title 17, Article 5, Chapter 17.61, Section 17.61.060, Subsection G, Paragraph 3 is amended as follows:

“3. The proposed use will provide and maintain solid waste services to establish and maintain a level of service consistent with the city’s approved source reduction and recycling ~~reeiling~~ element.”

SECTION 5. Pasadena Municipal Code, Title 17, Article 6, Table 6-1 is amended as shown in Exhibit 1, attached hereto and incorporated by this reference.

SECTION 6. Pasadena Municipal Code, Title 17, Article 8, is amended as follows:

“**Adult Businesses (land use).** A business ~~based upon~~ establishment that, as a regular and substantial course of conduct, offers, sells or distributes materials or performances that depict, describe, or relate to "specified sexual activities" or "specified anatomical areas," as defined in this Zoning Code. The following terms and phrases are defined for the purposes of Section 17.50.030 (Adult Businesses).

1. **Specified Anatomical Areas.** Specified anatomical areas are and include any of the following:

a. Less than completely and opaquely covered, and/or simulated to be reasonably anatomically correct, human genitals, pubic region, buttocks, anus or female breasts below a point immediately above the top of the areolas; or

b. Human male genitals in a discernibly turgid state even if completely and opaquely covered.

2. **Specified Sexual Activities.** Specified sexual activities are and include any of the following, whether performed directly or indirectly through clothing or other covering:

- a. The fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breast;
- b. Sex acts, actual or simulated, including intercourse, oral copulation, or sodomy;
- c. Masturbation, actual or simulated; or
- d. Masochism, erotic or sexually oriented torture, beating, or the infliction of pain, or bondage and/or restraints; or
- ee. Excretory functions as part of or in connection with any of the other activities described in 2.a through 2.ed above.”

SECTION 7. Pasadena Municipal Code, Title 17, Article 5, Chapter 17.50, Section 17.50.130 is amended as follows:

a. By amending Subsection A as follows:

“A. **Applicability.** The following regulations apply to live entertainment when associated with a commercial entertainment, ~~or commercial recreational – indoor use,~~ a bar or tavern or adult business use.”

b. By Amending Subsection B, Subparagraph 1 as follows:

“1. The type of live entertainment provided shall only be that type approved under the Conditional Use Permit or Expressive Use Permit;”

c. By Amending Subsection B, Subparagraph 2 as follows:

“2. If another type of entertainment is proposed, a new Conditional Use Permit or Expressive Use Permit shall first be obtained.”

SECTION 8. The City Clerk shall certify the adoption of this ordinance and shall cause this ordinance to be published by title and summary.

SECTION 9. This ordinance shall take effect 30 days from its publication.

Signed and approved this _____ day of _____, 2006.

Bill Bogaard
Mayor of the City of Pasadena

I HEREBY CERTIFY that the foregoing ordinance was adopted by the City Council of the City of Pasadena at its meeting held _____ day of _____, 2006, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Date Published:

JANE L. RODRIGUEZ, CMC
CITY CLERK

APPROVED AS TO FORM:



Theresa E. Fuentes
Deputy City Attorney

TEF Ordinances/Resolutions/adult business ordinance redlined

TABLE 6-1 - REVIEW AUTHORITY

| Type of Decision | Role of Review Authority (1) | | | | |
|--|------------------------------|---|------------------|-----------------------------|-----------------------|
| | See Section | Director/Zoning Administrator/Hearing Officer | DC (2) | BZA/Planning Commission (2) | City Council |
| Administrative and Amendments | | | | | |
| General Plan amendments | 17.74 | | | Recommend | Decision |
| Interpretations | 17.02 | Decision (3) | | (BZA) Appeal | CFR |
| Master Plans | 17.61.050 | | | Recommend | Decision |
| Planned Developments | 17.61.110 | | | Recommend | Decision |
| Specific Plans | 17.68 | | | Recommend | Decision |
| Zoning Code amendments | 17.74 | | | Recommend | Decision |
| Zoning Map amendments | 17.74 | | | Recommend | Decision |
| Land Use Permits and other Development Approvals | | | | | |
| Adjustment Permits | 17.61.070 | | | Recommend | Decision |
| Certificate of Appropriateness | 17.62.090 | Decision (4) | | | Appeal/CFR |
| Code Compliance Certificates | 17.61.020 | Issued by Director | | | |
| Conditional Use Permits | 17.61.050 | (HO) Decision (3) | | (BZA) Appeal | Appeal/CFR (6) |
| Creative Sign Permits | 17.48.070 | Decision | Appeal | | Appeal/CFR |
| Design Review - City Sponsored Projects | 17.61.030 | Recommend | Recommend | | Decision |
| Design Review - Non-City Sponsored Projects (See Tables 6-2 & 6-3) | 17.61.030 | Decision | Decision/ Appeal | | Appeal/CFR |
| Development Agreements | 17.66 | | | Recommend | Decision |
| Expressive Use Permits | 17.61.060 | (ZA) Decision (3) | | | Appeal/CFR |
| <u>Expressive Use Permits</u> | <u>17.61.060</u> | <u>(HO) Decision (3)</u> | | | <u>Appeal/CFR</u> |

| Type of Decision | Role of Review Authority (1) | | | | |
|---|------------------------------|---|--------|-----------------------------|----------------|
| | See Section | Director/Zoning Administrator/Hearing Officer | DC (2) | BZA/Planning Commission (2) | City Council |
| Land Use Permits and other Development Approvals {Continued} | | | | | |
| Long-term Film Permits | 17.61.090 | (HO) Decision | | (BZA) Appeal | Appeal/CFR |
| Hillside Development Permit | 17.29.010 | (HO) Decision (3) | | (BZA) Appeal | Appeal/CFR (6) |
| Lot Line Adjustments | Title 16 | Advisory Agency (HO) Decisions | | (BZA) Appeal | Appeal |
| Master Sign Plans | 17.48.060 | Decision | Appeal | | Appeal/CFR |
| Minor Conditional Use Permits | 17.61.050 | (HO) Decision (3) | | (BZA) Appeal | Appeal/CFR (6) |
| Minor Variances | 17.61.080 | (HO) Decision (3) | | (BZA) Appeal | Appeal/CFR (6) |
| Modifications for Persons with Disabilities | 17.61.080 | (HO) Decision (3) | | (BZA) Appeal | Appeal/CFR (6) |
| Sign Exceptions | 17.48.050 | (HO) Decision (3) | | (BZA) Appeal | Appeal/CFR (6) |
| Tentative Tract and Parcel Maps (Including Vesting Maps) | Title 16 | Advisory Agency (HO) Decision | | (BZA) Appeal | Appeal/CFR |
| Temporary Use Permits | 17.61.040 | (ZA) Decision (3) | | (BZA) Appeal | CFR |
| Variances | 17.61.080 | (HO) Decision (3) | | (BZA) Appeal | Appeal/CFR (6) |

Notes:

- (1) "Recommend" means that the review authority makes a recommendation to a higher decision-making body; "Decision" means that the review authority makes the final decision on the matter; "Appeal" means that the review authority may consider and decide upon appeals to the decision of an earlier decision-making body, in compliance with Chapter 17.72 (Appeals); and "CFR" means Call for Review, in compliance with Chapter 17.72 (Appeals).
- (2) "DC" means the Design Commission and "BZA" means Board of Zoning Appeals.
- (3) The Hearing Officer may defer action on permit applications and refer the items to the Board of Zoning Appeals (BZA) for the final decision.
- (4) The Director's decision to issue a Certificate of Appropriateness may first be appealed to the Historic Preservation Commission (HPC) and then to the Council.
- (5) The City's Film Liaison is the applicable review authority for short-term Film Permits and Film Conditional Use Permits, in compliance with Section 17.61.090.
- (6) May be only appealed to the City Council if the decision includes certification of an EIR or approval of a Negative Declaration or Mitigated Negative Declaration.