

Agenda Report

TO: CITY COUNCIL

DATE: SEPTEMBER 11, 2006

FROM: CITY MANAGER

SUBJECT: INTERIM URGENCY ORDINANCE TEMPORARILY PROHIBITING THE ISSUANCE OF EXPRESSIVE USE PERMITS FOR ADULT BUSINESSES FEATURING FULL NUDITY

RECOMMENDATION

It is recommended that the City Council:

1. Find the proposed moratorium to be exempt from environmental review pursuant to the California Environmental Quality Act (CEQA), State CEQA Guidelines Section 15060(C)(2), because the moratorium will not result in a direct or reasonably foreseeable indirect physical change in the environment, and State CEQA Guidelines Section 15262, because the project involves only feasibility or planning studies for possible future action which the City has not approved, adopted or funded, and does not involve adoption of a plan that will have a legally binding effect on later activities.
2. Find that the proposed moratorium is consistent with the objectives and policies in the General Plan.
3. Find that: (a) there is a current and immediate threat to the public health, safety, and welfare because Expressive Use Permits for adult businesses offering full nudity at locations that are directly adjacent to residentially zoned areas of the City are authorized under the current Zoning Code; (b) such Expressive Use Permits could have adverse impacts on residential neighborhoods pursuant to the standards and policies set forth in the General Plan, and (c) an interim ordinance establishing the proposed moratorium is necessary to study ways to reduce these potential impacts.
4. Adopt AN INTERIM URGENCY ORDINANCE TEMPORARILY PROHIBITING THE ISSUANCE OF EXPRESSIVE USE PERMITS FOR ADULT BUSINESSES FEATURING FULL NUDITY, which places a 45 day moratorium on the issuance of Expressive Use Permits to adult businesses which offer full nudity and hold the first reading on the same Monday, September 11, 2006.

BACKGROUND AND ANALYSIS

The City last amended and updated the adult business regulations in 1997, when it adopted Ordinance No. 6723 and added the expressive use permit process to the Zoning Code.

Although the Zoning Code imposes location requirements that separate adult businesses from a variety of sensitive uses (e.g. day-care facilities, park and recreation facilities, public or private schools, or religious facilities), the Zoning Code does not impose any distance requirement between an adult business and a residential zone. Well developed First Amendment law bars the prohibition of adult businesses, and also prohibits overly restrictive location requirements that would operate as a ban on adult businesses. The addition of a distance requirement between adult businesses and residential neighborhoods could operate as an overly restrictive location requirement. If an unconstitutional distance requirement between adult businesses and residential neighborhoods were added to the City's Zoning Code, and subsequently found by a court to be overly restrictive, it is possible that an adult business could establish itself at any location in the City.

Since 1997, state and federal case law regarding adult business regulations have developed which authorize the banning of full nudity. It may be that the elimination of the possibility for a fully nude adult business within the City would serve to more fully protect the City's residential neighborhoods from the secondary effects commonly associated with adult businesses, such as increased crime, prostitution, and drug-related problems. Imposition of the interim ordinance would give staff time to study the issue, and determine whether a ban on full nudity would serve to protect the public health, safety and welfare, and the City's residential neighborhoods.

During the moratorium, the City will continue to process, and grant if warranted, applications for any other type of adult business that does not feature full nudity.

The moratorium may be extended for 10 months and 15 days as provided in Government Code Section 65858.

ENVIRONMENTAL REVIEW

The proposed moratorium is exempt from environmental review pursuant to the California Environmental Quality Act (CEQA), State CEQA Guidelines Section 15060(C)(2), because the moratorium will not result in a direct or reasonably foreseeable indirect physical change in the environment; and State CEQA Guidelines Section 15262, because the project involves only feasibility or planning studies for possible future action which the City has not approved, adopted or funded, and does not involve adoption of a plan that will have a legally binding effect on later activities.

GENERAL PLAN OBJECTIVES AND POLICIES

The moratorium provides an opportunity for staff to determine whether a change to the Zoning Code's regulation of adult businesses is necessary to maintain consistency with the General Plan, and specifically:

- Objective #7 of the Land Use Element which states, "Residential Neighborhoods:

Preserve the character and scale of Pasadena's established residential neighborhoods."

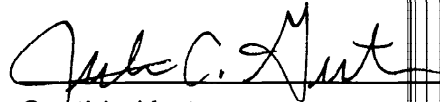
- Policy 10.5 which states, "Promote industrial development by protecting existing industrial districts and encouraging new industrial employers, and by restricting Industrial (IG) zoning districts to industrial businesses and ancillary retail and service activities, including, but not limited to restaurants and child care.

- The Social and Economic Development Element. The goals of the Element include: The alleviation of human problems through sensitive planning and effective application of resources, on-going evaluation, and continuing commitment to broadly based and informed citizen participation.
 - Objective 1: A comprehensive planning process which includes social needs and social impacts as integral components in public decision making.
 - Objective 2: Effective methods to secure informed citizen participation at all points in planning, resource allocation and evaluation process.

FISCAL IMPACT

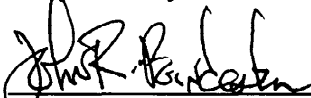
The moratorium will not have any foreseeable impact on revenues to the City.

Respectfully Submitted,



for Cynthia Kurtz
City Manager

Prepared by:



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Planning Manager

Approved by:



Richard Bruckner
Director of Planning and Development Department