

**ATTACHMENT 1**  
**ANALYSIS OF RECOMMENDED REVISIONS**

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## ANALYSIS OF RECOMMENDED REVISIONS

### **Change to Nomenclature –**

The current nomenclature in the Municipal Code refers to the class of businesses, which are under discussion, as “Adult Businesses.” Because the proposed regulations would not regulate some businesses (e.g. the showing of NC-17 or R rated movies, etc.) which are restricted to adults, it is believed that the term “Sexually Oriented Businesses” is more descriptive of the class of businesses, which are intended to be regulated. This change in nomenclature is consistent with the new definitions proposed for Sections 5.45.020 and 17.80.020 of the Municipal Code.

### **Separation Distance from Residential Districts –**

Currently the Zoning Code does not require a separation distance between proposed sexually oriented businesses and residential districts or uses. Establishment of such a separation is one of the explicit points expressed in the City Council’s directive of September 11, 2006. A number of alternatives were examined ranging from a zero foot separation (i.e. the current regulation) to a 1,000 foot separation. Also examined was requiring a separation from residential uses, as opposed to residential districts.

The recommendation, which is to require a 250-foot separation, is intended to balance the need to provide protections to established residential neighborhoods (as is consistent with Objective #7 of the Land Use Element) with case law, which mandates that a sufficient number of potential locations city-wide be available for the potential establishment of sexually oriented uses.

Also examined was the possibility of requiring a separation from existing residential uses. However, such a regulation would potentially erode the number of available locations to a level which could be judged as insufficient. Additionally, it is noted that most residential uses (except caretaker quarters and single-room occupancy) are not allowed in the CG district. Accordingly, such a regulation would be providing protections to non-conforming uses.

### **Separation Distance from Sensitive Uses –**

Currently the Zoning Code requires a 500-foot separation between the exterior walls of a proposed sexually oriented use and a sensitive use (i.e. a religious assembly, public or private school, child day-care facility, or park and recreational use). Maintaining this requirement, when combined with the effects of establishment of a separation to residential districts might erode the number of available locations. However, because providing for protections to sensitive uses is an important consideration, it was concluded that it was unreasonable to reduce the required separation to zero or to a distance such that nuisance activities might easily impact sensitive uses. Prior to making the recommendation to retain the current 500-foot separation requirement, a number of alternatives were examined ranging from a zero foot separation to a 1,000-foot separation. The basis of the recommendation is the importance of maintaining appropriate protections when combined with a separation requirement for residential districts. The above enumerated sensitive uses are seen as being distinct from residential districts, which are also deserving of protections, because:

- These sensitive uses often contain large unlit parking lots, which can be attractive locations for nuisance activities which migrate from adult businesses; and
- These sensitive uses often conduct nighttime assembly activities, which attract large numbers of children.

#### **Inclusion of Family-day Care Uses in the definition of Sensitive Uses –**

Currently, the Zoning Code does not permit Large Family Day-Care and Small Family Day-Care Homes, which are uses that are required to be part of a residential use, in the CG and IG Districts. As such, the recommendation of a separation requirement between sexually oriented businesses and residential districts (250 feet) would serve to provide protections to Large and Small Family Day-Care Homes.

#### **Separation Distance from Alcohol Sales –**

The mix of sexually oriented businesses and alcohol sales uses has been demonstrated as a combination that can result in nuisance activity in the local area. Consideration was given to requiring a separation distance from any proposed sexually oriented business to any existing alcohol sales use. However, given the variety and number of existing alcohol sales uses within the city, it was determined that this would potentially erode the number of available locations to a level which could be judged as insufficient.

#### **Measurement of Separation Distances to boundaries of site –**

Many of the nuisance activities (e.g. prostitution, loitering, public urination, public exposure, etc.) which are associated with sexually oriented businesses occur in the parking lot and areas surrounding the sexually oriented use. Inclusion of the entire site and any parking areas associated with the sexually oriented business would provide additional protections against those activities. Although it is noted that this recommendation would slightly reduce the number of available locations, it is felt that protections from these nuisance activities is an important consideration.

#### **Separation distance between two Sexually Oriented Uses –**

The existing regulation, which requires a 1,000 foot separation between individual sexually oriented businesses, is intended to guard against an over concentration of such uses. With institution of a separation distance from residential districts, the number of available locations might be eroded to a level where there are insufficient locations available. The number of available locations can be augmented by deleting or modifying this regulation. However, to prevent an over proliferation of such uses and the potential impacts to commercial areas from a concentration it is necessary to provide restrictions on how many uses can be established within an area. The recommendation, which is to establish no separation requirement, but to allow no more than two such businesses within a 250-foot radius, is intended to balance the proposed restrictions with a proposed relaxation of the separation requirement. Initially, when presented to the Planning Commission, the recommendation was to establish a 500-foot radius for such purposes. However, after further examination of the impacts associated with such a regulation, there was concern that the number of available locations might be reduced to a level which could be judged as insufficient.

#### **Allowing Sexually Oriented Businesses within other commercial or industrial districts –**

Currently sexually oriented businesses are not allowed within the CL, CO, CD, or IG Districts. Allowing such uses within these districts would provide additional opportunities for the

establishment of such uses, which could as a result permit a greater separation distance in the CG districts. However, after exploring this alternative, it is not recommended because:

- With the recommendation, sufficient sites would remain available in the CG district;
- Allowing these uses within the CL and CO districts would bring them in proximity to residential uses and a greater array of sensitive uses since residential uses are permitted in the CL and the CO Districts but not in the CG District;
- Allowing these uses within the CD district would also bring them in close proximity to residential uses. Under the City's General Plan, the focus of high density residential development has been in the CD District; and
- Allowing these uses within the IG District would be inconsistent with Policy 10.5 of the Land Use Element 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."

### **Amortization of Nonconforming Sexually Oriented Businesses –**

The purpose of the amortization provision is to require the relocation of a lawfully established, nonconforming sexually oriented business – if any – to conform to the proposed locational requirements within a reasonable, specified period of time. The rationale of the amortization provision is the same as that set forth for the locational regulations themselves, that is, to prevent the negative secondary effects of sexually oriented businesses on nearby properties, including sensitive uses. The Ninth Circuit Court of Appeals has held that "[n]othing in the Constitution forbids municipalities from requiring non-conforming uses to close, change their business, or relocate within a reasonable time period." *World Wide Video of Washington, Inc. v. City of Spokane*, 368 F.3d 1186, 199-1200 (9th Cir. 2004). Thus, requiring a nonconforming sexually oriented business to eventually relocate to a conforming location passes constitutional muster.

### **Creation of New Municipal Code Chapter dealing with Sexually Oriented Businesses –**

Many regulations designed to prevent the negative secondary effects associated with sexually oriented businesses regulate the interior configuration of the premises and the conduct that occurs inside the building. Similarly, licensing standards disqualify certain persons (e.g., those convicted of specified criminal activities) from operating a sexually oriented business in order to prevent recidivism and crime in and through sexually oriented businesses. Because these regulations do not affect the locations where sexually oriented uses are permitted, it is not necessary to include these regulations in the Zoning Code. Thus, if the periodic review requested by Council at the Sept. 11, 2006 meeting reveals changes in case law that warrant changes in any of the previously-mentioned operational regulations, those changes can be made promptly without being encumbered with the additional processes required for amending the Zoning Code.

### **Allowing Sexually Oriented Businesses to be a permitted use by right –**

Consistent with the foregoing paragraph, the proposed recommendations eliminate the Expressive Use Permit requirement for sexually oriented businesses because: (1) many changes to permitting requirements do not need to be encumbered with the required zoning amendment procedures, and (2) public hearings to determine whether a sexually oriented use obtains a permit can pose constitutional problems. The City's current public hearing process allows public input on a sexually oriented use permit, but that public input does not affect the objective standards in the Code for granting or denying a sexually oriented use permit. Thus,

there is the potential for frustration among citizens because their public input cannot, under the code or under constitutional standards, affect the decision on an individual sexually oriented use permit. The new code structure, however, would allow public participation at the time it is constitutionally permissible in this context, that is, during amendments to any and all legislation affecting sexually oriented uses.

### **Allowing Sexually Oriented Businesses in the IG Districts –**

At the November 8, 2006 Planning Commission meeting, the Planning Commission requested that Staff provide the City Council with an analysis of the impacts that would result from allowing sexually oriented businesses in the IG Districts. Staff has analyzed this request and has determined that this would result in the following:

- If the recommended separation distances (i.e. 250 feet to residential districts and 500 feet to sensitive uses) was maintained, the number of available locations would be substantially increased (i.e. approximately doubled);
- If the recommended separation distance to residential districts was increased to 500 feet and the recommended separation distance to sensitive uses (i.e. 500 feet) was maintained, the number of available locations would be approximately the same as with the recommended separation distances without the IG Districts;
- Areas of the City that are not currently subject to the possibility of impacts from sexually oriented businesses would become potentially subject to these impacts;
- This approach would be inconsistent with General Plan objectives aimed at preservation of industrial districts for the purposes of employment creation.

After completion of this analysis, Staff continues to recommend that this approach not be adopted.