

# Agenda Report

**TO:** CITY COUNCIL

**DATE:** DECEMBER 4, 2006

**FROM:** CITY MANAGER

**SUBJECT:** PROPOSED MUNICIPAL CODE AMENDMENTS TO REGULATE SEXUALLY ORIENTED BUSINESSES

## **RECOMMENDATION**

It is recommended that the City Council:

1. Acknowledge the conclusion of the Initial Environmental Study (Attachment 2), that no impacts on the environment would result from the proposed Municipal Code Amendments, and adopt the Negative Declaration (Attachment 3);
2. Adopt the De Minimis Impact Finding on the State Fish and Wildlife Habitat (Attachment 4);
3. Direct the City Clerk to file a Notice of Determination with the County Clerk;
4. Adopt the findings that the Municipal Code Amendments, as outlined in this report, are consistent with the goals and objectives of the General Plan and the purposes of Title 5 and Title 17 as outlined in the body of the report;
5. Approve the Municipal Code Amendments as outlined in this report; and
6. Adopt an ORDINANCE AMENDING THE MUNICIPAL CODE TO REGULATE SEXUALLY ORIENTED BUSINESSES, as presented by the City Attorney.

## **PLANNING COMMISSION RECOMMENDATION**

On November 8, 2006, after a public hearing, the Planning Commission:

1. Adopted the Staff Recommendation, which was that the City Council adopt the recommendations outlined above;
2. Recommended that any biennial review of the ordinance include an analysis of the cost of enforcing the ordinance and that such cost be reflected in the licensing fee for sexually oriented businesses; and
3. Recommended that Staff provide the City Council with an analysis of the impacts that would result from allowing sexually oriented businesses in the IG Districts.

The analysis requested by the Planning Commission is presented below. In addition, the recommendation presented to the Planning Commission was to allow no more than two adult businesses within a 500-foot radius, and no change to the nomenclature was discussed with the Planning Commission.

## **BACKGROUND**

In 1997 the City Council adopted Ordinance No. 6723, which updated the adult business regulations and added the expressive use permit process to the Zoning Code. On September 11, 2006 the City Council adopted Ordinance No. 7064, which revised the definition and operational requirements of adult businesses. At that same meeting, the City Council adopted Ordinance No. 7063, which established a 45-day moratorium on the issuance of expressive use permits for adult businesses citywide. In adopting the moratorium, the City Council requested that City Staff and the City Attorney conduct a comprehensive study, including an examination of the following six points and recognizing that these points may need to be modified after the study is completed:

1. Increase the required separation distance from sensitive uses from 500 feet to 1,000 feet;
2. Include residential districts or uses in the definition of sensitive uses;
3. Include family-day care uses in the definition of sensitive uses;
4. Increase the required separation distance between adult uses from 1,000 feet to 1,500 feet;
5. Make the regulations as restrictive as is legally permissible; and
6. Require periodic review of the ordinance every two years to address changes in case law.

As requested by the City Council, City Staff and the City Attorney have completed a study of the current regulations pertaining to adult businesses and recommend the following changes:

1. Modification of the nomenclature to define what were previously defined as "adult businesses" as "sexually oriented businesses;"
2. Modification of § 17.50.030 of the Zoning Code to require a 250-foot separation between proposed sexually oriented business uses and residential districts;
3. Modification of § 17.50.030 to specify that required separation distances are from the boundaries of the site of the proposed sexually oriented business to the boundaries of the site of a sensitive use as opposed to from the exterior walls of the proposed sexually oriented business;
4. Modification of § 17.50.030 to change the required separation distances between two sexually oriented businesses to allow no more than two sexually oriented businesses within a 250-foot radius, measured around the location of the proposed business;
5. Creation of a new Municipal Code Chapter (New Chapter), in Title 5 – Businesses Licenses and Regulations, to comprehensively regulate sexually oriented businesses as follows:
  - a. Set forth purposes and findings related to regulation of sexually oriented businesses;

- b. Set forth updated definitions for sexually oriented uses and regulations related thereto;
  - c. Set forth licensing requirements and criteria (including being located in a permitted location) for sexually oriented businesses and their employees;
  - d. Set forth annual licensing fees for sexually oriented businesses and their employees;
  - e. Provide for administrative inspections of the public areas of sexually oriented businesses during business hours;
  - f. Set forth standards for license suspensions and revocations;
  - g. Set forth procedures for hearings related to license denials, suspensions, and revocations;
  - h. Set forth hours of operation (similar to present § 17.50.030 or 10:00 am to 1:00 am);
  - i. Prescribe configuration and cleaning requirements for peep show booths;
  - j. Prescribe no-loitering requirement and standards for interior and exterior lighting and monitoring;
  - k. Prescribe penalties for violation;
  - l. Set forth grace period for current sexually oriented businesses to meet interior configuration requirements;
  - m. Detail prohibited conduct, including:
    - Prohibit nudity on the premises of sexually oriented businesses;
    - Regulate semi-nudity by requiring semi-nude conduct to occur on a stage at least 6 feet removed from all patrons, in a room of at least 1,000 square feet, and within a direct line of sight from a fixed manager's station; and
    - Prohibit any employee who appears in a state of semi-nudity from touching a patron or the clothing of a patron.
  - n. Ban the sale or consumption of alcoholic beverages within any sexually oriented business; and
  - o. Provide for repeal of conflicting code provisions.
6. Modification of § 17.50.030 to eliminate non-locational criteria and the Expressive Use Permit requirement for sexually oriented businesses, making sexually oriented business uses permitted as of right subject to objective criteria (district and setback requirements);
  7. Modification of § 17.50.030 to establish an amortization period for sexually oriented businesses, along with a procedure for obtaining an extension to the amortization period based on demonstrated financial hardship. At the conclusion of the amortization period and any hardship extension obtained, a nonconforming sexually oriented business would have to change its business to conform to the applicable regulations or move its business to a location that allows sexually oriented businesses;
  8. Modification of Article 8 of the Zoning Code so that sexually oriented business definitions comport with those in the New Chapter; and
  9. Elimination the following Code provisions because they would duplicate or conflict with the New Chapter:
    - Chapter 5.52 (dealing with nude or semi-nude model studios)
    - Chapter 5.73 (dealing with picture arcades)

## **ANALYSIS**

Each of these recommendations is detailed in an attached Analysis of Recommended Revisions (Attachment 1). These recommendations represent an attempt to balance the need to provide sufficient protections to residential districts and sensitive uses throughout the city with the requirement to provide, as constitutionally required, locations for sexually oriented business uses within the city limits. Case law has indicated that certain sexually oriented businesses engage in speech or expressive conduct protected under the Constitution. As such, cities can regulate time, location, and manner of operation of such businesses, but cannot totally eliminate such uses through zoning or other regulation.

In 1997 an adult business operator brought suit against the city. This suit, which challenged the current regulations and alleged that there were insufficient locations available within the city for the establishment of potential adult businesses, was judged in favor of the City. This judgment was upheld by the Appellate Court. During the course of deliberations, the city alleged that there were at least 25 locations available for the establishment of adult businesses. The plaintiff alleged that there were only approximately 16 available locations. The determination of the court was that approximately 16 available locations constituted a sufficient number. It should be noted however that, other than this precedent, there is no clear judicial standard for what number of available locations constitutes a “sufficient” number of locations.

At the request of the Planning Commission, Staff has analyzed the impacts that would result from allowing adult businesses in the IG Districts. This request on the part of the Planning Commission related to whether the separation distance from residential districts could be increased to 500 and the approximate number of available locations retained by allowing adult businesses in the IG Districts. Staff has determined that this approach is possible, but does not recommend it because:

- Areas of the City that are not currently subject to the possibility of impacts from adult 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.

## **ENVIRONMENTAL REVIEW**

An Initial Environmental Study was prepared for the proposed Municipal Code Amendments in conformance with the requirements of the California Environmental Quality Act (CEQA). It was determined that there will be no impacts on the environment. Therefore, a Negative Declaration has been prepared. Staff is recommending adoption of the Negative Declaration.

## **GENERAL PLAN OBJECTIVES AND POLICIES**

The proposed revisions to the Municipal Code are intended to update the City’s Adult Business ordinance in order to make it consistent with recent case law and changes to

how these businesses are conducted and to provide an objective process for approval and for the operation of such uses. These revisions will provide greater protection to residential neighborhoods because sexually oriented businesses will continue to be limited to the CG Zoning district. These amendments are consistent with Objective #7 of the Land Use Element which states, "Residential Neighborhoods: Preserve the character and scale of Pasadena's established residential neighborhoods."

The proposed amendments will continue to limit Sexually Oriented Businesses to the CG Zoning districts thus protecting industrial districts for industrial uses. This is consistent with 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 proposed amendments are consistent with the City's 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; and

Objective 2: Effective methods to secure informed citizen participation at all points in planning, resource allocation and evaluation process.

### **FISCAL IMPACT**

The proposed Municipal Code Amendments will not have any foreseeable impact on revenues to the City.

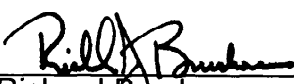
Respectfully Submitted,

  
For Cynthia Kurtz  
City Manager

Prepared by:

  
John R. Poindexter, Planning Manager

Approved by:

  
Richard Bruckner  
Director of Planning and Development Department

## Attachments

- Attachment 1 – Analysis of Recommended Revisions
- Attachment 2 – Initial Environmental Study
- Attachment 3 – Negative Declaration
- Attachment 4 – De Minimis Impact Finding
- Attachment 5 – Map of CG Zoning Districts which permit Adult Businesses
- Attachment 6 – Map of CG Zoning Districts with 500-foot buffer to Current Sensitive Uses
- Attachment 7 – Map of CG Zoning Districts with 500-foot buffer to Current Sensitive Uses and 250 foot buffer to Residential Zoning Districts