

ADULT USE ORDINANCE UPDATES

OPERATIONAL REQUIREMENTS (AGENDA ITEM NO. 22) ZONING AND LOCATIONAL (AGENDA ITEM NO. 23)

**Presented to
City Council of the City of Chula Vista**

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Purpose of Proposed Amendments

- 1) Refinement of the City's permitting and operational regulations as to sexually oriented businesses (SOB);
- 2) Refinement of language on licensing of performers;

Intent of Proposed Amendments

- 1) Mitigate and reduce the judicially recognized potential adverse secondary effects of adult businesses:
 - Crime
 - Neighborhood blight
 - Spread of sexually transmitted diseases
- 2) Protect quality of life and neighborhoods in the City, the City's retail and commercial trade, local property values, and minimize the potential for nuisances related to the operation of adult businesses;

Intent of Amendments

- 3) Protect the peace, welfare and privacy of persons who own, operate and/or patronize adult businesses; and
- 4) Minimize the potential for nuisance related to the operation of adult businesses.

Legal Basics/ Constitutional Constraints

- Adult businesses, such as adult bookstores, adult video stores, and adult live nude dancing facilities, engage in activities recognized as protected speech under the First Amendment of the United States Constitution.
- Nude dancing has been found by the U.S. Supreme Court to be on the outer margins of protected activity. See *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560 (1991).

Legal Basics/ Constitutional Constraints cont.

- As providers of protected First Amendment speech, the courts have uniformly ruled that these types of adult businesses cannot be banned.
- Adult businesses can be regulated.
- May impose reasonable time, place and manner restrictions.

Legal Basics/ Constitutional Constraints cont.

- Content neutral regulations versus content based restrictions.
- Content neutral provisions are aimed at protecting governmental interests unrelated to speech content.
- Can preclude lap dancing and touching (*Gammoh v. City of La Habra* (9th Cir. 2005) 395 F.3d 1114)
- Focus of regulations to reduce secondary effects.

Permitting and Operational Standards

- 1) Clean up on various definitions;
- 2) Clarifying license application process;
- 3) Regulation/standards for adult booths – video arcades;
- 4) No doors on adult booths/individual viewing area;
- 5) Unobstructed view of the interior of the premises of an adult use business.

Zoning and Locational Regulations cont.

- Allowed in:
 - C-T (Thoroughfare Commercial)
 - Bayfront Specific Plan
 - Eastlake I
 - Eastlake Business Center II and
 - Eastlake II Sectional Planning Areas (SPA).
- This is a clarification and insuring internal consistency between specific plans and Municipal Code.

Zoning and Locational Regulations cont.

- Criteria to determine potentially available sites established in *Topanga Press, Inc. v. City of Los Angeles*, 989 F.2d 1524 (9th Cir. 1993).
- Sites are actually available in the “relevant commercial market” if:
 - There is a genuine possibility that the site is potentially available.
 - If the sites are in manufacturing zones, are they reasonably accessible to the general public.

Zoning and Locational Regulations cont.

- If the sites are in manufacturing zones, do they have proper infrastructure such as sidewalks, road and lighting.
- If the sites are in manufacturing zones, can they serve a generic commercial purpose such as retail or places of assembly.
- The sites are commercially zoned.

Expert Planner

Lloyd Zola

Metis Environmental Group

- Revised sites, toured city
- Report and mapping provided as part of record

Zoning and Locational Regulations (Agenda Item 23)

- City's Composition of land uses
 - a. Residential 32%
 - b. Commercial 2%
 - c. Industrial 4%
 - d. Public, Quasi-Public, Open Space,
Streets, Freeways, and Utilities
rights of way 61%
 - e. Special Planning Areas 1%

Zoning and Locational Regulations cont.

- Only 6% of land within Chula Vista is available for potential commercial or industrial land use.

Zoning and Locational Regulations cont.

- The “dispersal” method vs. the “concentration” method.
- Dispersal of 500 feet from certain sensitive uses (i.e., schools, parks and residential zones).
- Dispersal of 1000 feet from adult uses

Zoning and Locational Regulations cont.

Total of 170 potential sites available:

- 59 designated commercial
- 111 designated industrial
- 6 sites maximum