

Chapter 17.14

ADULT BUSINESS OVERLAY ZONE (A-B OVERLAY)

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17.14.010 Intent and purpose.

It is the intent and purpose of the adult business overlay zone (hereinafter zone “A-B overlay”) to allow adult businesses in portions of the commercial zone where such commercial uses would be consistent with the general plan, compatible with surrounding commercial uses and not materially detrimental to adjacent properties; it is the further intent of this chapter to regulate adult businesses which, unless closely regulated, have the potential of causing serious adverse secondary effects upon the community. These secondary effects include, but are not limited to, the following: depreciation of property values, increases in vacancy rates in residential and commercial areas, increase in incidences of criminal activity, increase in litter, noise, and vandalism and the interference with enjoyment of residential property in the vicinity of such businesses. (Ord. 626 § 2, 1996)

17.14.020 Changes of zone.

Any change of an existing commercial zone to include, in addition to the existing commercial zone uses, an A-B overlay zone, shall be made in accordance with: the provisions of Chapter 17.28. (Ord. 626 § 2, 1996)

17.14.030 Location requirements.

A. Adult businesses shall not be located:

1. Within two hundred fifty feet of any lot upon which a residential use is legally occurring or within two hundred fifty feet of any property located in a zone permitting residential uses at the time of an application for an adult business permit, whether or not such other use is located within the city; or
2. Within five hundred feet of any church, chapel or other publicly recognized place of worship whether or not such other use is located within the city; or
3. Within five hundred feet of any public or private school (kindergarten through twelfth grade) or child care center whether or not such other use is located within the city; or

4. Within five hundred feet of any park owned by a public entity whether or not such other use is located within the city; or

5. Within five hundred feet of any existing adult business whether or not such other use is located within the city.

B. The distances specified in this section shall be measured in a straight line, without regard to intervening structures, from the nearest point of the property line of the premises in which the proposed adult business is to be established to the nearest point of the property line of a use or zoning classification listed above. (Ord. 626 § 2, 1996)

17.14.040 Development standards.

The following development standards shall apply to adult businesses:

A. No adult business shall be located in any temporary or portable structure.

B. Trash dumpsters shall be enclosed by a screening enclosure so as not to be accessible to the public.

C. No exterior door or window on the premises shall be propped or kept open at any time while the business is open, and all exterior windows shall be covered with opaque covering at all times.

D. Permanent barriers shall be installed and maintained to screen the interior of the premises from public view for each door used as an entrance or exit to the business.

E. No landscaping shall exceed thirty inches in height, within fifty feet of any portion of the business except trees with foliage not less than six feet above the ground.

F. The entire exterior grounds, including the parking lot, shall be lighted in such a manner that all areas are clearly visible at all times.

G. Signage shall conform to the standards established for the zone and shall not contain sexually oriented photographs, silhouettes or other sexually oriented pictorial representations.

H. All entrances to adult businesses shall be clearly and legibly posted by a notice indicating that minors are prohibited from entering the premises.

I. No residential structure or any other nonconforming structure shall be converted for use as an adult business.

J. The adult business shall not conduct or sponsor any activities which create a demand for parking spaces beyond the number of spaces required by this code for the business.

K. No adult business shall be operated in any manner that permits the observation of any persons or material depicting, describing or related to specified sexual activities or specified anatomical areas, inside the premises, from any public way or from any location outside the building or area of such establishment. This provision shall apply to any merchandise, display, decoration, sign, show window or other opening.

L. All exterior areas of the adult business, including buildings, landscaping, and parking areas shall be maintained in a clean and orderly manner at all times.

M. Any business license or permit required by this code shall be kept current at all times.

N. Each adult business shall conform to all applicable laws and regulations.

O. The adult business shall not operate or be open between the hours of two a.m. - and six a.m.

P. The adult business will not conduct any massage, acupuncture, tattooing, acupressure or escort services, and will not allow such activities on the premises.

Q. At least one security guard shall be on duty outside the premises, patrolling the premises, grounds and parking areas, at all times while the business is open. The security guard shall be charged with preventing violations of law, with enforcing compliance by patrons with the requirements of this chapter and with notifying the sheriff of any violations of law observed. Security guard(s) required by this subsection shall be uniformed in such a manner so as to be readily identifiable as a security guard by the public and shall be du-

ly licensed as a security guard as required by applicable provisions of state or local law. No security guard required pursuant, to this subsection shall act as a doorperson, ticket seller, ticket taker or admittance person while acting as a security guard hereunder. (Ord. 626 § 2, 1996)

17.14.050 Permitted zone classification.

Premises may be used for adult businesses only in zone A-B overlay. (Ord. 626 § 2, 1996)

17.14.060 Adult business permit—Required.

No adult business shall be established until an application for an adult business permit is approved by the planning commission pursuant to the procedures set forth in this chapter. (Ord. 626 § 2, 1996)

17.14.070 Adult business permit—Application.

An application for an adult business permit shall contain the information required by Section 17.48.030 of this code. (Ord. 626 § 2, 1996)

17.14.080 Application fee.

When an adult business permit application is filed, it shall be accompanied by a filing fee in the amount of two hundred fifty dollars. (Ord. 626 § 2, 1996)

17.14.090 Permit application—Review and approval.

A. When an application has been accepted as complete, the planning director shall set the application for a nondiscretionary public hearing before the planning commission within sixty days from the date on which the application was accepted as complete, generally following the notice procedures set out in Section 17.48.050 of this code. The planning commission shall approve or disapprove the application within ninety days from the date on which the application was accepted as complete by the planning director.

B. Any application for a permit pursuant to this chapter is considered to be a ministerial permit and, as such, is not subject to the time limits specified in Section 65960 et seq. of the Government Code, or the California Environmental Quality Act.

C. In considering an application for a permit pursuant to this chapter, the planning commission shall approve the permit if it makes the following findings:

1. The adult business is consistent with the location and development standards contained in this chapter; and

2. The adult business is located in a zone classification which lists the adult business as a permitted use; and

3. Except as specifically provided in this chapter, the adult business complies with the development requirements prescribed in this chapter.

D. Issuance or denial of the ministerial permit is not subject to administrative appeal. (Ord. 626 § 2, 1996)

17.14.100 Existing adult businesses.

Any adult business lawfully operating as a conforming use will not be rendered nonconforming by the subsequent location of any of the uses set forth in Section 17.14.030 (A) of this chapter within the referenced distance separations regardless of whether such use is located within the city. (Ord. 703 § 2, 2004; Ord. 626 § 2, 1996)

17.14.105 Amortization of nonconforming adult businesses.

A. Amortization Period. After December 31, 2006, no person may cause, allow, or permit the continued operation, maintenance or use of a lot, building or structure as a legal nonconforming adult business which is not located within the city's A-B overlay zone, unless such use is granted an extension pursuant to subsections C and D of this section. For the purposes of this section, the term "legal nonconforming adult business" means any adult business use which was legally established and lawfully operating on November 24, 1996, which is the date upon which the ordinance first establishing this chapter became effective.

B. Early Termination. Any discontinuance or abandonment of a legal nonconforming adult business for a period of thirty consecutive days will result in a loss of the legal nonconforming status of such use.

C. Extension Application. The owner of a legal nonconforming adult business or the owner of the property upon which such use exists, may file an application with the planning director for an extension of the amortization period in accordance with the following procedures:

1. The application must be filed at least one hundred eighty days prior to the expiration of the amortization period established in subsection A of this section. The filing fee for the application will be the same as that for a variance as established by the city council;

2. The application must state the additional length of time requested for the amortization and the grounds for requesting such an extension of time including but not necessarily limited to information relevant to the criteria set forth in subsection D of this section;

3. Within thirty calendar days following the receipt of a complete application, the planning director shall set the matter for a hearing.

D. Decision on Extension Application. The city manager or a designated hearing officer will hold a public hearing at which time all evidence and testimony regarding the request for an extension of the amortization period will be considered. The burden will be on the applicant to establish that the extension should be granted. In rendering a decision, the city manager or hearing officer must consider the following factors:

1. The adult business owner's or property owner's financial investment in the business, in particular the amount of investment prior to notice of the city's intent to amortize existing legal nonconforming adult businesses, which for the purposes of this chapter was November 12, 2004;

2. The present actual and depreciated value of business improvements;

3. The applicable Internal Revenue Service depreciation schedules;

4. The remaining useful life of the business improvements;

5. The remaining lease term and the validity of such term in light of the city's original twenty-year amortization period for nonconforming adult businesses and the enactment of the current amortization period;

6. The date upon which the business owner or property owner first received notice of the nonconforming status of the use;

7. The cost of relocating the business to a site conforming with the provisions of this chapter;

8. The ability of the business owner or property owner to change the use to a conforming use;

9. The good faith efforts made to recoup the investment and to relocate the use;

10. The secondary effects of the adult business on the health, safety and welfare of surrounding businesses and uses and the secondary effects if the adult business were to be permitted to extend the amortization period.

The decision must be in writing and must include findings in support of the decision to grant or deny any extension of the amortization period. The decision must be hand delivered or sent by certified mail to the applicant within twenty business days of the hearing.

E. The decision of the city manager or hearing officer will be final and subject to judicial review pursuant to Code of Civil Procedure Section 1094.8. (Ord. 703 § 2, 2004)

17.14.110 Conflicts.

If the provisions of this chapter conflict or contravene the provisions of another chapter of this title, the provisions of this chapter shall prevail as to all matters and questions arising out of the subject matter of this chapter. (Ord. 626 § 2, 1996)

17.14.120 Modifications or revocations.

The planning commission may modify or revoke an adult business permit if it finds that one or more of the following conditions exist:

A. The building, structure, equipment or location of such business does not comply with or fails to meet all of the health, zoning, fire and safety requirements or standards of all of the laws of the state of California or ordinances of the city applicable to such business operation;

B. The business owner, its employee, agent or manager has been convicted in a court of competent jurisdiction of:

1. Any violation of any statute, or any other ordinance arising from any act performed in the exercise of any rights granted by the permit, the revocation of which is under consideration, or

2. Any offense involving the maintenance of a nuisance caused by any act performed in the exercise of any rights granted by the permit the revocation of which is now under consideration;

C. The business owner, its employee, agent or manager has knowingly made any false, misleading or fraudulent statement of material fact in the application for a permit, or in any report or record required to be filed with the planning commission. (Ord. 626 § 2, 1996)