

Chapter 16.110

ADULT-ORIENTED BUSINESSES

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16.110.010 Purpose.

It is the intent of this chapter to prevent community wide adverse economic impacts, increased crime, decreased property values, and the deterioration of neighborhoods which can be brought about by the concentration of Adult-Oriented Businesses in close proximity to each other or proximity to other incompatible uses such as schools for minors, churches, and residentially zoned districts or uses. The City Council finds that it has been demonstrated in various communities that the concentration of Adult-Oriented Businesses causes an increase in the number of transients in the area, and an increase in crime, and in addition to the effects described above can cause other businesses and residents to move elsewhere. It is, therefore, the purpose of this chapter to establish reasonable and uniform regulations to prevent the concentration of Adult-Oriented Businesses or their close proximity to incompatible uses, while permitting the location of Adult-Oriented Businesses in certain areas. (Ord. 606, 1999)

16.110.020 Definitions.

The following words and phrases shall have the meanings respectively ascribed to them by this

section:

Establishment of an Adult-oriented Business - as used herein, shall mean and include any of the following:

1. The opening or commencement of any Adult-Oriented Business as a new business;
2. The conversion of an existing business, whether or not an Adult-Oriented Business, to any Adult-Oriented Business defined herein;
3. The addition of any of the Adult-Oriented Businesses defined herein to any other existing Adult-Oriented Business; or
4. The relocation of any such Adult-Oriented Business.

Adult-oriented Businesses - means any one of the following:

1. Adult arcade - is an establishment where, for any form of consideration, one or more still or motion picture projectors, or similar machines, for viewing by five (5) or fewer persons each, are used to show films, computer generated images, motion pictures, video cassettes, slides or other photographic reproductions twenty-five (25%) percent or more of the number of which are distinguished or characterized by an emphasis upon the depiction or description of specified sexual activities or specified anatomical areas.

2. Adult bookstore - is an establishment that has twenty-five (25%) percent or more of its stock in books, magazines, periodicals or other printed matter, or of photographs, films, motion pictures, video cassettes, slides, tapes, records or other form of visual or audio representations which are distinguished or characterized by an emphasis upon the depiction or description of specified sexual activities and/or specified anatomical areas.

3. Adult cabaret - means a nightclub, restaurant, or similar business establishment which:
 - 1) regularly features live performances which are distinguished or characterized by an emphasis upon the display of specified anatomical areas or specified sexual activities; and/or
 - 2) which regularly features persons who appear semi-nude; and/or
 - 3) shows

films, computer generated images, motion pictures, video cassettes, slides, or other photographic reproductions twenty-five (25%) percent or more of the number of which are distinguished or characterized by an emphasis upon the depiction or description of specified sexual activities or specified anatomical areas.

4. Adult hotel/motel - means a hotel or motel or similar business establishment offering public accommodations for any form of consideration which, 1) provides patrons with closed-circuit televisions transmissions, films, computer generated images, motion pictures, video cassettes, slides, or other photographic reproductions twenty-five (25%) percent or more of the number of which are distinguished or characterized by an emphasis upon the depiction or description of specified sexual activities or specified anatomical areas; and 2) rents, leases, or lets any room for less than a six (6) hour period, or rents, leases, or lets any single room more than twice in a 24-hour period.

5. Adult motion picture theater - is a business establishment where, for any form of consideration, films, computer generated images, motion pictures, video cassettes, slides or similar photo-graphic reproductions are shown, and twenty-five (25%) percent or more of the number of which are distinguished or characterized by an emphasis upon the depiction or description of specified sexual activities or specified anatomical areas.

6. Adult theater - means a theater, concert hall, auditorium, or similar establishment which, for any form of consideration regularly features live performances which are distinguished or characterized by an emphasis on the display of specified anatomical areas or specified sexual activities.

7. Escort bureau - means a business which, for pecuniary compensation, consideration, hire or reward furnishes or offers to furnish escorts.

8. Modeling studio - means a business which provides, for pecuniary compensation, monetary or other consideration, hire or reward, figure models

who, for the purposes of sexual stimulation of patrons, display "specified anatomical areas" to be observed, sketched, photographed, painted, sculpted or otherwise depicted by persons paying such consideration. "Modeling studio" does not include schools maintain pursuant to standards set by the State Board of Education. "Modeling studio" further does not include a studio or similar facility owned, operated, or maintained by an individual artist or group of artists, and which does not provide, permit, or make available "specified sexual activities".

Bar - any commercial establishment licensed by the State Department of Alcoholic Beverage Control to serve any alcoholic beverages on the premises, except bonafide eating establishments.

Church - is a structure which is used primarily for religious worship and related religious activities.

Distinguished or Characterized by an Emphasis upon - the term "distinguished or characterized by an emphasis upon" shall mean and refer to the dominant or essential theme of the object described by such phrase. For instance, when the phrase refers to films "which are distinguished or characterized by an emphasis upon" the depiction or description of specified sexual activities or specified anatomical areas, the films so described are those whose dominant or predominant character and theme are the depiction of the enumerated sexual activities or anatomical areas. See Pringle v. City of Covina, 115 Cal.App.3 151 (1981).

Regularly Features - with respect to an adult theater or adult cabaret, means a regular and substantial course of conduct. The fact that live performances which are distinguished or characterized by an emphasis upon the display of specified anatomical areas or specified sexual activities occurs on two (2) or more occasions within a thirty (30) day period; three (3) or more occasions within a sixty (60) day period; or four (4) or more occasions within a one hundred and eighty (180) day period, shall to the extent permitted by law be deemed to be a regular and substantial course of conduct.

School - means any child or day care facility, or an institution of learning for minors, whether public or private, offering instruction in those courses of study required by the California Education Code and maintained pursuant to standards set by the State Board of Education. This definition includes a nursery school, kindergarten, elementary school, middle or junior high school, senior high school, or any special institution of education, but it does not include a vocational or professional institution of higher education, including a community or junior college, college, or university.

Semi-nude - means a state of dress in which clothing covers no more than the genitals, pubic region, buttocks, areola of the female breast, as well as portions of the body covered by supporting straps or devices.

Specified Anatomical Areas - means and includes any of the following:

1. Less than completely and opaquely covered human i) genitals or pubic region; ii) buttocks; and iii) female breast below a point immediately above the top of the areola; and
2. Human male genitals in a discernibly turgid state, even if completely and opaquely covered.
3. Any device, costume or covering that simulates any of the body parts included in subdivisions 1 or 2 above.

Specified Sexual Activities - means and includes any of the following, whether performed directly or indirectly through clothing or other covering:

1. The fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breast;
2. Sex acts, actual or simulated, including intercourse, oral copulation, or sodomy;
3. Masturbation, actual or simulated;
4. Excretory functions as part of or in connection with any of the other activities described in subdivisions 1 through 3 of this subsection. (Ord. 606, 1999)

16.110.030 Minimum Proximity Requirements.

No Adult-Oriented Business shall be established or located in any zone in the City other than C4 (Highway Service), M1 (Light Industrial), M2 (Heavy Industrial), or within certain distances of certain specified land uses or zones as set forth below:

A. No such business shall be established or located, or within one thousand (1,000) feet of any other Adult-Oriented Business.

B. No such business shall be established or located within five hundred (500) feet from any existing residential zone or use, park, church, school.

C. No such business shall be established or located within seven hundred fifty (750) feet of a right-of-way line for State Route 99.

D. The distances set forth above shall be measured as a radius from the primary entrance of the Adult-Oriented Business to the property lines of the property so zoned or used without regard to intervening structures. (Ord. 606, 1999)

16.110.040 Amortization of Nonconforming Adult-Oriented Business Uses.

Any use of real property existing at the time the provisions were adopted, which does not conform to the provisions of Section 16.110.030, but which was constructed, operated, and maintained in compliance with all previous regulations, shall be regarded as a nonconforming use which may be continued until January 1, 1998 (or for one (1) year after the effective date of these provisions.) On or before such date, all such nonconforming uses shall be terminated unless an extension of time has been approved by the City Administrator.

A. Abandonment. Notwithstanding the above, any discontinuance or abandonment of the use of any lot or structure as an Adult-Oriented Business shall result in a loss of legal nonconforming status of such use.

B. Amortization - annexed property. Any

Adult-Oriented Business which was a legal use at the time of annexation of the property and which is located in the City, but which does not conform to the provisions of Section 16.110.030 shall be terminated within one (1) year of the date of annexation unless an extension of time has been approved by the City Administrator in accordance with the provisions of Sections 16.110.050. (Ord. 606, 1999)

16.110.050 Extension of time for termination of nonconforming use.

The owner or operator of a nonconforming use as described in Section 16.110.040 may apply under the provisions of this section to the City Administrator for an extension of time within which to terminate the nonconforming use.

A. Time and manner of application. An application for an extension of time within which to terminate a use made nonconforming by the provisions of Section 16.110.030, may be filed by the owner of the real property upon which such use is operated, or by the operator of the use.

Such an application must be filed with the City Clerk at least ninety (90) days but no more than one hundred eighty (180) days prior to the time established in Section 16.110.040 for termination of such use.

B. Content of application fees. The application shall state the grounds for requesting an extension of time. The filing fee for such application shall be the same as that for a variance as is set forth in the schedule of fees established by resolution from time to time by the City Council.

C. Hearing procedure. The City Administrator will act as a hearing officer to hear the application

and shall set the matter for hearing within forty-five (45) days of receipt of the applications. All parties involved shall have the right to offer testimonial, documentary and tangible evidence bearing on the issues; may be represented by counsel; and shall have the right to confront and cross-examine witnesses. Any relevant evidence may be admitted that is the sort of evidence upon which reasonable persons are accustomed to rely in the conduct of serious affairs. Any hearing under this section may be continued for a reasonable time for the convenience of a party or a witness. The decision of the hearing officer shall be final and subject to judicial review pursuant to Code of Civil Procedure section 1094.6.

D. Approval of extension; findings. An extension under the provisions of this section shall be for a reasonable period of time commensurate with the investment involved, and shall be approved only if the City Administrator makes all of the following findings or such other findings as are required by law.

1. The applicant has made a substantial investment (including but not limited to lease obligations) in the property or structure on or in which the nonconforming use is conducted; such property or structure cannot be readily converted to another use; and such investment was made prior to adoption of these provisions.

2. The applicant will be unable to recoup said investment as of the date established for termination of the use; and

3. The applicant has made good faith efforts to recoup the investment and to relocate the use to a location in conformance with Section 16.110.030. (Ord. 606, 1999)