November 5, 2008 - Special Meeting

BENICIA PLANNING COMMISSION

CITY COUNCIL CHAMBERS

SPECIAL MEETING AGENDA

Wednesday, November 5, 2008

7:00 P.M.

I. OPENING OF MEETING

- **A. Pledge of Allegiance**
- **B. Roll Call of Commissioners**
- **C. Reference to Fundamental Rights of Public - A plaque stating the Fundamental Rights of each member of the public is posted at the entrance to this meeting room per Section 4.04.030 of the City of Benicia's Open Government Ordinance.**

II. AGENDA CHANGES AND DISCUSSION

III. OPPORTUNITY FOR PUBLIC COMMENT

- **A. WRITTEN**
- **B. PUBLIC COMMENT**

IV. CONSENT CALENDAR

Consent Calendar items are considered routine and will be enacted, approved or adopted by one motion unless a request for removal for discussion or explanation is received from the Planning Commission or a member of the public by submitting a speaker slip for that item.

***Any Item identified as a Public Hearing has been placed on the Consent Calendar because it has not generated any public interest or dissent. However, if any member of the public wishes to comment on a Public Hearing item, or would like the item placed on the regular agenda, please notify the Community Development Staff either prior to, or at the Planning Commission meeting, prior to the reading of the Consent Calendar.**

- **A. Approval of Agenda**

V. REGULAR AGENDA ITEMS

A. ZONING TEXT AMENDMENT TO AMEND TITLE 5 AND TITLE 17 BY ADDING A NEW CHAPTER 17.102 (ADULT BUSINESSES) AND NEW CHAPTER 5.45 (BUSINESS TAXES, LICENSES AND REGULATIONS) TO THE BENICIA MUNICIPAL CODE

Zoning Text Amendment

City Wide

PROPOSAL:

The proposed ordinance would update the Benicia Municipal Code provisions regarding adult entertainment by updating Chapter 5.44 and adding a new Chapter 5.45 in Title 5 (Business Taxes, Licenses and Regulations) to regulate the licensing and operational standards for adult businesses. It will also, as part of a zoning text amendment, add a new Chapter 17.102 (Adult Businesses) and amend Sections 17.28.020 (CC, CO, CG, and CW districts – Land use regulations) and 17.32.020 (IL, IG, IW and IP districts – Land use regulations).

Recommendation: Provide direction to City Council on amendments of Title 5 and Title 17 of the Benicia Municipal Code regarding adult businesses.

VI. COMMUNICATIONS FROM STAFF

VII. COMMUNICATIONS FROM COMMISSIONERS

VIII. ADJOURNMENT

Public Participation

The Benicia Planning Commission welcomes public participation.

Pursuant to the Brown Act, each public agency must provide the public with an opportunity to speak on any matter within the subject matter jurisdiction of the agency and which is not on the agency's agenda for that meeting. The Planning Commission allows speakers to speak on non-agendized matters under public comments, and on agendized items at the time the agenda item is addressed at the meeting. Comments are limited to no more than five minutes per speaker. By law, no action may be taken on any item raised during the public comment period although informational answers to questions may be given and matters may be referred to staff for placement on a future agenda of the Planning Commission.

Should you have material you wish to enter into the record, please submit it to the Commission Secretary.

Disabled Access

In compliance with the Americans with Disabilities Act (ADA), if you need special assistance to participate in this meeting, please contact Dan Pincetich, the ADA Coordinator, at (707) 746-4211. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting.

Meeting Procedures

All items listed on this agenda are for Commission discussion and/or action. In accordance with the Brown Act, each item is listed and includes, where appropriate, further description of the item and/or a recommended action. The posting of a recommended action does not limit, or necessarily indicate, what action may be taken by the Planning Commission.

The Planning Commission may not begin new public hearing items after 11 p.m. Public hearing items which remain on the agenda may be continued to the next regular meeting of the Commission, or to a special meeting.

Pursuant to Government Code Section 65009; if you challenge a decision of the Planning Commission in court, you may be limited to raising only those issues you or someone else raised at the Public Hearing described in this notice, or in written correspondence delivered to the Planning Commission at, or prior to, the Public Hearing. You may also be limited by the ninety (90) day statute of limitations in which to file and serve a petition for administrative writ of mandate challenging any final City decisions regarding planning or zoning.

Appeals of Planning Commission decisions which are final actions, not recommendations, are considered by the City Council. Appeals must be filed in the Community Development Department in writing, stating the basis of appeal with the appeal fee within 10 business days of the date of action.

Public Records

The agenda packet for this meeting is available at the City Clerk's Office, the Benicia Public Library and the Community Development Department during regular working hours. To the extent feasible, the packet is also available on the City's web page at www.ci.benicia.ca.usunder the heading "Agendas and Minutes." Public records related to an open session agenda item that are distributed after the agenda packet is prepared are available before the meeting at the Community Development Department's office located at 250 East L Street, Benicia, or at the meeting held in the City Hall Council Chambers. If you wish to submit written information on an agenda item, please submit to Gina Eleccion, Management Analyst, as soon as possible so that it may be distributed to the Planning Commission.

Staff Report (pdf)

AGENDA ITEM
PLANNING COMMISSION: NOVEMBER 5, 2008
PUBLIC HEARING

DATE : October 31, 2008

TO : Planning Commission

FROM : Heather C. Mc Laughlin, City Attorney

SUBJECT : Amendments to the Benicia Municipal Code regarding Adult Entertainment- Amending Chapter 5.44 (Adult Businesses) and Adding Chapter 5.45 (Adult Business Performer License) in Title 5 (Business Taxes, Licenses and Regulations) to Regulate the Licensing and Operational Standards for Adult Businesses and Amending Section 17.28.020 (CC,CO, CG and CW districts- Land use regulations) and Section 17.32.020 (IL, IG, IW and IP districts- Land use regulations) and Adding a new Chapter 17.102 (Adult Businesses) in Title 17 (Zoning) to Regulate the Locations of Adult Businesses.

RECOMMENDATION:

Recommend the City Council approve the amendments to the Benicia Municipal Code to update and enhance the regulation procedures regarding the licensing and operational standards, as well as locations for adult businesses in the City of Benicia based on the findings set forth in the ordinance.

EXECUTIVE SUMMARY:

The existing provisions of the Benicia Municipal Code (BMC) pertaining to the licensing and regulation of adult businesses are in need of updating and should be enhanced to reduce and/or preclude undesirable secondary effects including, but not limited to, increased crime, blighting influences in the community, decrease in property values, and the spread of sexually transmitted diseases. Accordingly, staff and its legal consultant have recently completed an exhaustive review of the legal issues relating to the regulation of adult businesses, particularly as these proposed regulations protect public health, safety, and welfare. As a result of this research and review process, the proposed ordinance provides the requisite balance between the City's interests in protecting the public safety, health, and welfare and the constitutional protection afforded to adult businesses. Moreover, the proposed ordinance provides the evidentiary and factual foundation required to reasonably conclude that adult business can create potentially serious and deleterious secondary effects in the Benicia community, and therefore, the City's adult business regulations should be updated.

STRATEGIC PLAN:

Relevant Strategic Plan Goals and Strategies:

- Goal 1.00: Protect Community and Environmental Health and Safety
- Goal 3.00: Strengthen Downtown

BUDGET INFORMATION:

There are no fiscal impacts that would arise as a result of the proposed text amendments.

ENVIRONMENTAL ANALYSIS:

In accordance with the California Environmental Quality Act (CEQA), an Initial Study was conducted to determine whether the proposed draft Adult Business Ordinance could have a significant adverse effect on the environment. On the basis of that study, staff has determined the proposed ordinance will not have a significant adverse impact on the environment and is therefore proposing adoption of a Negative Declaration by the City Council. The Initial Study will be circulated for the required 20-day comment period starting October 9, 2008, with the public comment period ending October 29th.

BACKGROUND:

The City of Benicia initially adopted adult businesses regulations in 1980. On May 17, 2007, the City Council authorized a moratorium on adult entertainment businesses to prevent the issuance of any permits for adult entertainment businesses while appropriate regulations and zoning code revisions for such businesses were considered. On June 5, 2007, the City Council authorized an extension of the adult entertainment business moratorium for an additional 22 months and 15 days to prevent the issuance of any permits for adult entertainment businesses to allow sufficient time for the Planning Commission to develop and recommend appropriate regulations to the City Council.

The ordinance that is put forth is a comprehensive revision of the City's existing regulations for adult uses and addressed both licensing/permitting provisions; operating standards for adult facilities and zoning limitations for these adult businesses The purpose and intent of the proposed amendments to the Benicia Municipal Code are to:

(1) mitigate and reduce the judicially recognized potential adverse secondary effects of adult businesses including, but not limited to, crime, the prevention of blight in neighborhoods, and the increased spread of sexually transmitted diseases;

(2) protect quality of life and neighborhoods in the City, the City's retail and commercial trade, and local property values, and minimize the potential for nuisances related to the operation of adult businesses;

(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.

To achieve these desired goals, the proposed ordinance establishes reasonable time, place, and manner restrictions on the adult businesses in Benicia. These are also coupled with zoning or locational criteria which are also legitimate and reasonable means of regulating adult facilities. There are two generally accepted approaches to regulating the location of adult businesses – (1) the "dispersal" method; and (2) the "concentration" method. With the dispersal method adult uses are buffered a set distance from various sensitive land uses (i.e., parks, schools, residential zones) and from other adult uses. With the concentration method adult uses are all located in one area such as what is known as the "combat zone" in Boston. The City has selected the dispersal method.

A. Legal Basis/Constitutional Constraints.

Adult businesses, such as adult bookstores, adult videos stores, and adult cabarets, engage in activities recognized as protected speech under the First Amendment of the United States Constitution. For example, 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)). As providers of protected First Amendment speech, the courts have uniformly ruled that these types of adult businesses cannot be prohibited. Adult businesses can, however, be regulated. Traditional constitutional analysis divides the range of speech regulations into two main categories: (1) content based; and (2) content neutral (i.e., regulations not based on content but rather imposing reasonable time, place, and manner restrictions). Content-based regulation is specifically aimed at the speech's content, and any such content based regulation carries with it a very high burden to find such legally adequate mandating that the public entity show it has a compelling interest in its regulation. In contrast, content neutral regulations are aimed at protecting governmental interests unrelated to the content of speech, such as traffic or noise regulation applied to all types of commercial uses for purposes of furthering the public health, safety and welfare.

The United States Supreme Court in the *City of Renton v. Playtime Theaters, Inc.,* 475 U.S. 41 (1986), addressing Renton, Washington's adult use ordinance, held that whether a time, place, and manner regulation is content neutral is to be determined by looking at the regulation's purposes, i.e. is the purpose the reduction of secondary effects versus the suppression of the offensive or unpopular speech. A city may adopt regulations to curb the deleterious secondary effects of adult uses, but suppression of the speech is impermissible. A content neutral time, place, and manner regulation must serve a substantial government interest and be reasonably tailored to preclude secondary effects. Courts have also recognized that a city's interest in protecting the quality of life and finding creative solutions to address adult uses deleterious secondary effects must be accorded the highest respect. *City of Los Angeles v. Alameda Books,* 535 U.S. 425, 122 S.Ct. 1728, 152 L.Ed.2d 670 (2002).

The proposed ordinance is content neutral under the *Renton* standard because it is designed to further the City's purposes and goals in limiting and preventing the deleterious secondary effects associated with adult businesses. The extensive findings set forth in the proposed ordinance

fully support the regulations therein. In *SDJ. Inc. v. City of Houston,* 837 F.2d 1274 (5th Cir. 1988), cert. denied 480 U.S. (1989), the court remarked on the importance of findings: "Insisting on findings reduces the risk that a purported effort to regulate effect is a mask for regulation of content. That is, evidence of a legitimate purpose is supported by proof that secondary effects actually exist and are the result of the business subject to the regulation…"

As a result of the First Amendment protection afforded to various adult businesses (adult bookstores, video stores and live entertainment), conditions cannot simply be imposed upon an adult facility in an effort to preclude the facility's operation. Any condition(s) must be predicated on the reduction of the secondary effects. These adverse secondary effects include: urban blight; increased crime; decreased property values; diminished retail trade; prostitution; the spread of sexually transmitted diseases; and illegal drug transactions. It is important to note that the purpose of the proposed ordinances is not to prohibit or otherwise regulate child pornography or obscenity because such material is not now, nor has it ever been, granted constitutional protection. Furthermore, local regulation of obscene material has been preempted by state and federal law. Rather, the intent of the proposed ordinance is to address the adverse secondary effects that are caused by adult businesses.

Case law also recognizes that a community can plan ahead and put in place operational and zoning standards prior to the entry of an adult facility into the community. The United States Supreme Court held that it is not necessary for a city to conduct its own studies regarding the presence of negative secondary side effects associated with adult businesses. *City of Los Angeles v. Alameda Books,* 535 U.S. 425, 122 S.Ct. 1728, 152 L.Ed.2d 670 (2002). The Court specifically determined that cities may reasonably rely on the experiences and studies of other cities in concluding that adult businesses create the aforementioned negative secondary side effects.

The supporting materials provided as exhibits to this staff report, as well as input from City staff, the city attorney, and the city's special counsel, contributed to crafting the recommended operational requirements found in the proposed ordinance which we believe are a constitutional, narrowly tailored means of controlling potential secondary effects of adult use businesses. On file at the City Clerk's office is the set of the exhibits in support of this ordinance. Included among the exhibits are the cases referred to in the ordinances, the studies of other cities relating to the secondary effects of adult uses, and other supporting documentation. We have also included a number of materials relating to testimony from current and former dancers and other employees of adult use businesses or persons affiliated with the adult business industry, which support the need for the recommended operational requirements. A summary of a portion of these studies is attached to this staff report.

Another issue at play for the City is the fact that Robert Amatrone has filed a lawsuit that is now pending in federal court which names the City and several individual City defendants and asserts that his civil rights have been violated. Plaintiff Amatrone has also recently filed an added document with the federal court asserting that the proposed ordinance is improper and its regulations including the lap dance prohibition are impermissible. The City should anticipate that all of its future actions in the regulation of adult facilities will be examined by the federal court.

B. Permitting and Operational Standards (Chapters 5.44 and 5.45).

The City has put forth a comprehensive adult use ordinance that is state of the art. The operational requirements contained in the ordinances are designed to reduce/eliminate the negative secondary effects from adult businesses. The requirements include:

(1) Restricting hours of operation;
(2) Lighting requirements (interior and exterior);
(3) Precluding direct touching between patrons and performers of live adult entertainment establishments;
(4) Requiring that performers and patrons maintain a six (6) foot distance separation;
(5) Precluding direct tipping and/or payment for live adult entertainment performers;
(6) Requiring a fixed stage with a barrier or rail;
(7) Separate entrances;
(8) Separate restrooms;
(9) No doors on arcade booths; and
(10) Unobstructed view of the interior of the premises of an adult use business.

Each of these operational criteria is designed to address concerns regarding prostitution, drug transactions and illicit sexual activity.

In reviewing the City's existing regulations in light of the extensive existing case law, it is warranted that operating provisions should be added or enhanced to reduce and/or preclude secondary effects. It is important to note that experiences in other cities have demonstrated that potential adverse secondary effects generated by adult use businesses cannot be adequately addressed by locational restrictions alone. See Exhibits. For example, the cities of La Habra, Anaheim and Arcadia have extensive experience with adult facilities focused on totally nude "juice bars." Nude "juice bars" are adult facilities that feature totally nude dancers without the provision of alcoholic beverages. These types of facilities are not regulated by the *Alcoholic Beverage Control Department*, which further mandates the need for the City's operational standards. Nude juice bars require carefully tailored regulations to reduce the adverse secondary effects that such facilities bring to a community.

At many totally nude clubs, the establishments also offer "off-stage" performances commonly known as "lap," "couch" or "table" dancers. This type of conduct typically consists of direct physical touching and/or the provision of "specified sexual activities" or the simulation of "specified sexual activities" for a fee after the dancers conclude a main stage performance. At the clubs in La Habra and Anaheim, performers wearing only g-string bikinis typically straddle the laps of male patrons, writhing and rubbing their bikini-covered breasts on patrons' chests while rubbing and fondling the patrons' genitals over their clothing. As more fully discussed below, the proposed ordinance precludes this type of extreme "off-stage" activity, along with its companion noted secondary effects of prostitution and/or illegal drug transactions.

1. Arcade Booths/Individual Viewing Areas.

The interior configuration of adult businesses, specifically those that include video viewing booths, is an important area for regulation. This is because in many communities, these booths have become a common site for illicit sexual activity. Ordinances requiring the interiors of video viewing booths to be visible from the room in which they are located are routinely upheld. Similarly ordinances that require booths to be sufficiently lighted are also constitutionally sound.

As arcade booths and/or closed individual viewing areas are a magnet for illicit sex, the use of either is conducive to the spread of communicable diseases found to be of danger to persons frequenting such premises and to the public health. The public health of all people in the City must be protected by the establishment of standards for such premises to eliminate the possibility of infection of contagious diseases. Of specific danger is the sexually transmitted disease AIDS currently found to be irreversible and fatal. The incidence of this disease is found to occur in discernable population groups, and the risk factors for obtaining or spreading the disease are associated with high-risk sexual conduct with multiple partners. The commercial premises, or parts thereof, which place persons at risk of infection from this disease, due to their design and use for high-risk sexual conduct, are necessarily subject to regulation and standards for the prevention of the spread of this disease and for the protection of public health, safety and welfare. The Planning Commission (and eventually the City Council) is asked to take legislative notice of the facts recited in *Berg v. Health and Hosp. Corp. of Marion County, Ind.,* 865 F.2d. 797, 799 (7th Cir. 1989), allowing the removal of doors on booths as a valid response to a legitimate concern about multiple sexual encounters that facilitated the spread of AIDS.

The Planning Commission (and eventually the City Council) is also asked to take notice of statistics provided by the County of Solano, the County of Contra Costa Health Services and Yolo County Health Department on HIV/AIDS and other sexually transmitted diseases. See Exhibits, Vol. V. The Planning Commission (and eventually the City Council) also is asked to take legislative notice of the findings set forth in the 1986 Attorney General's Report on Pornography in support of the ordinances including, but not limited to, its recommendation that local governments ban certain features of peep show booth that facilitate sexual encounters. See Exhibits, Vols. III and IV.

2. Live Entertainment.

Adult businesses providing live entertainment have been subject to regulations uniquely tailored to reduce/eliminate their companion secondary effects. The experiences of other cities have demonstrated that establishments allowing touching and physical contact between performers and patrons have high instances of illicit sexual activity or narcotics transactions occurring on the premises. In an effort to reduce these secondary effects, cities have passed, and courts have uniformly upheld, ordinances imposing performer-patron distance restrictions and no touching provisions. (See *Colacurcio v. City of Kent*, 163 F.3d 545 (9th Cir. 1998); *Gammoh v. City of La Habra*, 395 F.3d 1114 (9th Cir. 2005), amended 402 F.3d 875, *cert. denied* 126 S.Ct. 374.)

As to "couch," "lap," table or similar one on one private "dances," courts have held that those types of so called lap dances are not expressive activity and a city may regulate this conduct. (see *Tily B., Inc. v. City of Newport Beach,* 69 Cal. App 4th 1 (1998); *Colacurcio v. City of Kent,* 163 F. 3d 545 (9th Cir. 1998), cert. denied 529 U.S. 1053 (2000); *Kev, Inc. v. Kitsap County*, 793 F. 2d 1053 (9th Cir. 1986). The proposed ordinance prohibits this type of off-stage performances by requiring all adult live performances be confined to a fixed main state and requiring that patrons and performers be six (6) feet apart. The operating standards found in the proposed ordinance for live entertainment have been approved by case law and most recently validated in the 2005 published 9th Circuit case of *Gammoh v. City of La Habra, 395 F.3d 1114 (9th Cir. 2005), amended 402 F.3d 875, cert. denied 126 S.Ct. 374.*

C. Permitting Provisions.

The proposed ordinance provides a permitting procedure for the issuance of an adult use regulatory permit. The proposed ordinance's permitting criteria are specifically defined and set out a specific time frame for action, hearing, decision, etc. All of these precise criteria and fast track time limits are mandated by the body of constitutional law in this area.

It should be noted that the previous requirement that an adult business obtain a use permit has been removed. The use permit process typically involves levels of discretion that were found to be unconstitutional in the reported decision of *Dease v. City of Anaheim* (USDC 1993) 826 F.Supp. 336. All adult businesses will have to comply with the requirements of Chapter 5.44 and all adult live entertainers will have to comply with Chapter 5.45.

Adopting the proposed ordinance provides comprehensive operational standards along with permitting provisions for adult businesses for the City and serves to thoroughly and aggressively regulate the harmful secondary effects of these businesses. The proposed ordinance strikes the requisite balance between the City's interests in protecting the public safety, health, and welfare and the constitutional protection afforded adult businesses.

The proposed changes to the Benicia Municipal Code are consistent with the City's zoning ordinance and the General Plan. For example, Section 17.04.030 (Purposes) provides:

> "The broad purposes of the zoning ordinance are to protect and promote the public health, safety, and general welfare, and to implement the policies of the city's general plan, as provided in the California Government Code, Title 7, Chapters 3 and 4 and in the California Constitution, Article 11, Section 7. More specifically, the zoning ordinance is intended to:
>
> A. Provide a precise guide for the physical development of the city in order to:
> 1. Preserve the character and quality of residential neighborhoods,
> 2. Foster convenient, harmonious, and workable relationships among land uses, and
> 3. Achieve progressively the arrangement of land uses described in the general plan;
>
> B. Promote the economic stability of existing land uses that are consistent with the general plan and protect them from intrusions by inharmonious or harmful land uses;...."

Some of the General Plan Policies that support the proposed locations for adult businesses include:

> Policy 2.1.1 "Ensure that new development is compatible with adjacent existing development and does not detract from Benicia's small town qualities and historic heritage...."
>
> Policy 2.6.1 "Preserve industrial land for industrial purposes and certain compatible "service commercial" and ancillary on-site retail uses"
>
> Policy 2.6.5 " Establish and maintain a land buffer between industrial/commercial uses and existing and future residential uses for reasons of health, safety, and quality of life."

As these policies illustrate it is important that the City preserve the commercial, industrial and residential zones within its jurisdiction and insure that the siting of any potential adult facility has a sufficient buffer to preclude sensitive uses being negatively impacted by deleterious secondary effects.

D. Zoning and Locational Regulations.

Potential Sites; Reasonable Range of Alternative Sites

Due to the physical and land use constraints of Benicia, the proposed Ordinance offers a separation requirement between adult facilities and certain sensitive users (i.e., schools, parks and residential zones). After touring the entire City and reviewing the various available zones and potential distance from sensitive users, staff recommends that adult businesses be allowed in the:
General Commercial District; Limited Industrial, General Industrial, and
Industrial Park Districts.

This provides a reasonable range of potential sites for adult businesses to locate with a varied land use mix in Benicia.

Of note, there is no "mathematical formula" or set "litmus test" established by the courts to determine the number of sites that must be available for adult uses. The issue is examined on a case by case basis, looking at the particular land use and demographic characteristics of the community.

Benicia is small community with a population estimated at 27,978 (as of May 2008). The general plan and zoning map designate all parcels of land within the City for some type of use – such as residential, industrial, or commercial.

Under the locational and zoning provisions at play in Benicia there is a reasonable rage of alternative sites.

The Ninth Circuit in *Topanga Press, Inc. v. City of Los Angeles*, 989 F.2d 1524 (9th Cir. 1993) set out established criteria for determining whether sites are actually available in the "relevant commercial market" by examining if:

- There is a genuine possibility that the site is potentially available. In other words, is it reasonable "to believe that [the site] would ever become available to any commercial enterprise?"

- If the sites are in manufacturing zones, are they reasonably accessible to the general public.

- 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.

The court in *Topanga Press* rejected Los Angeles' attempt to include sites that were clearly unavailable such as areas under water, landfills and airport sites. Other examples of unavailable sites include lands used for large warehouses, lands that are part of a sewage treatment facility, lands that are part of an existing hospital, and large oil refineries. To avoid the pitfalls of *Topanga Press*, the City should exclude any sites that are outside of the "relevant commercial market."

Further, the Planning Staff has reviewed these various *Topanga* criteria and determined that all commercial zoned sites are per se available per *Topanga* and as to the balance of industrially zoned sites they meet all of the Topanga criteria. A map showing potential sites for adult businesses are attached hereto.

Moreover, the locational requirements contained in the proposed Ordinance do not unreasonably restrict the establishment or operation of constitutionally protected adult businesses in Benicia, and a sufficient and reasonable number of alternative locations for adult businesses are provided by the City of Benicia. The United States Supreme Court decision in *City of Renton v. Playtime Theaters, Inc.*, 475 U.S. 41, 106 S.Ct. 925 (1986) requires that the City provide adult businesses a reasonable opportunity to open and operate. The Ninth Circuit decisions in *Topanga Press*, *Lim v. City of Long Beach*, 217 F.3d 1050 (9th Cir. 2000), *cert. denied* 531 U.S. 1191 (2001), and *Isbell v. City of San Diego*, 258 F.3d 1108 (9th Cir. 2001) with respect to availability of sites for adult businesses support a finding that there are sufficient sites available for adult businesses within the City.

FURTHER ACTION:

The Planning Commission recommendation will be forwarded to the City Council for a first reading of the ordinance.

Attachments:

- ❑ Draft Resolution, including Exhibit A: Draft Ordinance
- ❑ Negative Declaration
- ❑ List of Exhibits (The Exhibits are available in the City Attorney's Office or online at www.ci.benicia.ca.us/cityattorney)
- ❑ Summary of studies (this is first item in exhibit but should also be part of staff report; copy is attached hereto)

1161079.2

DRAFT RESOLUTION

RESOLUTION NO. –(PC)

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BENICIA RECOMMENDING CITY COUNCIL APPROVAL OF AMENDMENTS TO CHAPTER 5.44 (ADULT BUSINESSES) AND ADDING CHAPTER 5.45 (ADULT BUSINESS PERFORMER LICENSE) IN TITLE 5 (BUSINESS TAXES, LICENSES AND REGULATIONS) TO REGULATE THE LICENSING AND OPERATIONAL STANDARDS FOR ADULT BUSINESSES AND AMENDING SECTION 17.28.020 (CC, CO, CG and CW DISTRICTS- LAND USE REGULATIONS) AND SECTION 17.32.020 (IL, IG, IW and IP DISTRICTS- LAND USE REGULATIONS) AND ADDING CHAPTER 17.102 (ADULT BUSINESSES) IN TITLE 17 (ZONING) TO REGULATE THE LOCATIONS OF ADULT BUSINESSES

WHEREAS, the City of Benicia initially adopted adult businesses regulations in 1980, and the City's existing regulations for this type of business have not been updated since 1980; and

WHERAS, the law on regulating adult entertainment has changed considerably since then, and since the adult entertainment industry is known to regularly challenge local regulations, the City of Benicia needs to ensure that our regulations comply with current law; and

WHEREAS, on May 17, 2007, the City Council authorized a moratorium on adult entertainment businesses, lasting 45 days, to prevent the issuance of any permits for adult entertainment businesses in order to prohibit any new adult entertainment businesses, while appropriate regulations for such businesses were considered; and

WHEREAS, on June 5, 2007, the City Council authorized an extension of the adult entertainment business moratorium for an additional 22 months and 15 days to prevent the issuance of any permits for adult entertainment businesses to allow sufficient time for the Planning Commission to develop and recommend appropriate regulations to the City Council; and

WHEREAS, for the benefit of the Benicia community as a whole, the purpose and intent of the proposed amendments to the Benicia Municipal Code (i.e., amending Chapter 5.44, adding Chapter 5.45, amending Sections 17.28.020 and 17.32.020 and adding Chapter 17.102) are to: (1) mitigate and reduce the judicially recognized potential adverse secondary effects of adult businesses including, but not limited to, crime, the prevention of blight in neighborhoods, and the increased spread of sexually transmitted diseases; (2) protect quality of life and neighborhoods in the City, the City's retail and commercial trade, and minimize the potential for nuisances related to the operation of adult businesses; (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. To achieve these desired goals, the proposed ordinance establishes reasonable time, place, and manner restrictions on the adult businesses in Benicia.; and

WHEREAS, to achieve these desired goals, the proposed amendments set forth in ordinance establishes reasonable time, place, and manner restrictions on the adult businesses in Benicia based on the findings set forth in the ordinance.

NOW, THEREFORE, BE IT RESOLVED THAT the Planning Commission of the City of Benicia hereby recommends the City Council approve the amendments to Chapter 5.44 (Adult Businesses), the addition of Chapter 5.45 (Adult Business Performer License), the amendments to Section 17.28.020 (CC,CO, CG and CW districts- Land use regulations) and Section 17.32.020 (IL, IG, IW and IP districts- Land use regulations), and the addition of Chapter 17.102 (Adult Businesses) in Title 17 (Zoning) to amend, update and enhance the regulations regarding the licensing and operational standards for adult businesses in the City of Benicia;

BE IT FURTHER RESOLVED THAT the Planning Commission finds that:

a) The proposed amendments are categorically exempt from California Environment Quality Act review under Guidelines Section 15321, which applies to actions by regulatory agencies to enforce a permit or other entitlement, or adopt an administrative decision to enforce a general rule, standard, or objective.

b) The proposed amendments and additions are consistent with the objectives, purposes, and other provisions of Title 5 and Title 17 of the Benicia Municipal Code.

BE IT FURTHER RESOLVED THAT the Planning Commission hereby recommends the City Council amend Chapter 5.44 (Adult Businesses), add Chapter 5.45 (Adult Business Performer License), amend Section 17.28.020 (CC,CO, CG and CW districts- Land use regulations) and Section 17.32.020 (IL, IG, IW and IP districts- Land use regulations), and add Chapter 17.102 (Adult Businesses) in Title 17 (Zoning) to read as shown in attached Exhibit A.

On motion of Commissioner , seconded by Commissioner , the above Resolution was adopted by the Planning Commission of the City of Benicia at a special meeting of said Commissioner held on the 5th day of November, 2008 by the following vote:

*****

Ayes:
Noes:
Absent:

_____
Fred Railsback
Planning Commission Chair

EXHIBIT A: DRAFT ORDINANCE

PC DRAFT
10/6/08

CITY OF BENICIA

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BENICIA AMENDING CHAPTER 5.44 (ADULT BUSINESSES) AND ADDING CHAPTER 5.45 (ADULT BUSINESS PERFORMER LICENSE) REGULATING THE LICENSING PROVISIONS AND OPERATIONAL STANDARDS FOR ADULT BUSINESSES AND ADULT PERFORMERS OF TITLE 5 (BUSINESS TAXES, LICENSES AND REGULATIONS) AND AMENDING CHAPTER 17.28 (C COMMERCIAL DISTRICTS) AND CHAPTER 17.32 (INDUSTRIAL DISTRICTS) AND ADDING CHAPTER 17.102 (ADULT BUSINESSES) TO TILE 17 (ZONING) TO REGULATE ZONING REQUIREMENTS FOR ADULT BUSINESSES TO THE BENICIA MUNICIPAL CODE

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BENICIA DOES ORDAIN as follows:

Section 1.

Findings.

A. The city council finds that it is necessary and appropriate to amend chapters 5.44, 17.28 and 17.32 and add chapters 5.45 and 17.102 to add, refine and update the provisions providing licensing, operational and zoning standards for adult businesses and adult performers operating within the City of Benicia ("the city" or "Benicia"). The public health, safety and welfare of Benicia and its residents require the enactment of this ordinance and such operating and zoning standards for adult businesses in order to: (1) mitigate and reduce the judicially recognized potential adverse secondary effects of adult businesses, including but not limited to crime, the prevention of blight in neighborhoods and the increased threat of the spread of sexually transmitted diseases; (2) protect the quality of life and neighborhoods in the city; (3) protect the city's retail and commercial trade; (4) minimize the potential for nuisances related to the operation of adult businesses; and (5) protect the peace, welfare and privacy of persons who own, operate and/or patronize adult businesses.

B. On _____, 2008 the city's planning commission held a duly-noticed public hearing during which it allowed for public input and testimony from the public concerning this proposed ordinance. At the conclusion of the public hearing the planning commission recommended this ordinance to the city council for approval.

C. On _____, 2008 the city council held a duly noticed public hearing during which it received input and testimony from the public concerning this proposed ordinance and considered its adoption.

D. The city council, in adopting this ordinance, takes legislative notice of the existence and content of the following studies concerning the adverse secondary side effects of Adult-Oriented Businesses in other cities: Garden Grove, California (1991); Tucson, Arizona (1990); Seattle, Washington (1989); Report of the Attorney General's Working Group on the Regulation of Sexually Oriented Businesses, Attorney General, State of Minnesota (1989); Austin, Texas (1986); Oklahoma City, Oklahoma (1986); Indianapolis, Indiana (1984); Houston, Texas (1997); Beaumont Texas (1982);

Regulating Sex Business by William Toner, Report No. 327 Planning Advisory Service of American Society of Planning Officials; Phoenix, Arizona (1979); Whittier, California (1978); Amarillo, Texas (1977); Cleveland, Ohio (1977); Los Angeles, California (1977); New York, New York (1994); Newport News, Virginia (1996); Times Square, New York City (1994); A Methodological Critique of the Linz-Paul Report: A Report to the San Diego City Attorney's Office (2003); Sexually Oriented Businesses: An Insider's View – Testimony of David Sherman before the Michigan House Committee on Ethics and Constitutional Law (2000); Closin' Time: Effective Regulation of Adult Businesses' Hours of Operation, by Scott Bergthold (2000); Summaries of Key Reports Concerning the Negative Secondary Effects of Sexually Oriented Businesses, by Louis Comus III (2001); Peep Show Establishments, Police Activity, Public Place and Time: A Study of Secondary Effects in San Diego, California, by Daniel Linz *et al.* (2006); and Do Peep-shows "Cause" Crime? A response to Linz, Paul, and Yao, by Richard McCleary *et al.* (2006). The city council finds that these studies are relevant to the problems addressed by the city in enacting this ordinance to regulate the adverse secondary side effects of Adult-Oriented Businesses, and more specifically finds that these studies provide convincing evidence that:

1. There is substantial evidence that an increase in crime tends to accompany, concentrate around, and be aggravated by adult businesses including, but not limited to, an increase in the crimes of narcotics distribution and use, prostitution, pandering, and violence against persons and property. The studies from other cities establish by convincing evidence that adult businesses that are not regulated with operating standards often have a deleterious effect on nearby businesses and residential areas, causing, among other adverse secondary effects, an increase in crime and a decrease in property values.

2. Regulations for adult businesses should be developed to prevent deterioration and/or degradation of the vitality of the community before the problem exists, rather that waiting for problems to be created.

E. In developing this ordinance, the city council is mindful of legal principles relating to regulation of adult businesses, and the city council does not intend to suppress or infringe upon any expressive activities protected by the First Amendment of the United States and California Constitutions but instead desires to enact reasonable time, place, and manner regulations that address the adverse secondary effects of adult businesses. The city council has considered decisions of the United States Supreme Court regarding local regulation of adult businesses including, but not limited to: *City of Littleton, Colorado v. Z.J. Gifts D-4*, 541 U.S. 744, 124 S.Ct. 2219, 159 L.Ed.2d 84 (2004); *City of Los Angeles v. Alameda Books,* 535 U.S. 425, 122 S.Ct. 1728, 152 L.Ed.2d 670 (2002); *City of Erie v. Pap's A.M. ("Kandyland")*, 529 U.S. 277, 120 S.Ct. 1382, 146 L.Ed.2d 265 (2000); *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560, 111 S.Ct. 2456, 115 L.Ed.2d 504 (1991); *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215, 110 S.Ct. 596, 107 L.Ed.2d 603 (1990); *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41, 106 S.Ct. 925, 89 L.Ed.2d 29 (1986); and *Young v. American Mini Theaters, Inc.*, 427 U.S. 50, 96 S.Ct. 2440, 49 L.Ed.2d 310 (1976); decisions of the United States Court of Appeals for the Ninth Circuit, including but not limited to: *Gammoh v. City of La Habra*, 395 F.3d 1114 (9th Cir. 2005), amended 402 F.3d 875, *cert. denied* 126 S.Ct. 374; *Dream Palace v. County of Maricopa*, 384 F.3d 990 (9th Cir. 2004); *World Wide Video. v. City of Spokane*, 368 F.3d 1186 (9th Cir. 2004); *Center for Fair Public Policy v. Maricopa County*, 336 F.3d 1153 (9th Cir. 2003); *Diamond v. City of Taft,* 215 F.3d

1052 (9th Cir. 2000), *cert. denied* 531 U.S. 1072 (2001); *Isbell v. City of San Diego*, 258 F.3d 1108 (9th Cir. 2001); *Isbell v. City of San Diego*, 450 F.Supp.2d 1143 (S.D. Cal. 2006); *Tollis Inc. v. County of San Diego,* 505 F.3d 935 (9th Cir. 2007); *Young v. City of Simi Valley*, 216 F.3d 807 (9th Cir. 2000), *cert. denied* 531 U.S. 1104 (2001); *Lim v. City of Long Beach*, 217 F.3d 1050 (9th Cir. 2000), *cert. denied* 121 S.Ct. 1189 (2001); *Baby Tam & Co., Inc. v. City of Las Vegas ("Baby Tam I")*, 154 F.3d 1097 (9th Cir. 1998); *Baby Tam & Co., Inc. v. City of Las Vegas ("Baby Tam II")*, 199 F.3d 1111 (9th Cir. 2000); *Baby Tam & Co., Inc. v. City of Las Vegas ("Baby Tam III")*, 247 F.3d 1003 (9th Cir. 2001); *4805 Convoy, Inc. v. City of San Diego*, 183 F.3d 1108 (9th Cir. 1999); *Topanga Press, Inc. v. City of Los Angeles,* 989 F.2d 1524 (9th Cir. 1993), *cert. denied* 511 U.S. 1030 (1994); *Kev, Inc. v. Kitsap County*, 793 F.2d 1053 (9th Cir. 1986); *Colacurcio v. City of Kent*, 163 F.3d 545 (9th Cir. 1998), *cert. denied* 529 U.S. 1053 (2000); and *Spokane Arcade, Inc. v. City of Spokane*, 75 F.3d 663 (9th Cir. 1996); several California cases, including but not limited to: *Tily B., Inc. v. City of Newport Beach*, 69 Cal.App.4th 1 (1998); *City of National City v. Wiener*, 3 Cal.4th 832 (1992), *cert. denied* 510 U.S. 824; *People v. Superior Court (Lucero)* 49 Cal.3d 14 (1989); *Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Board of California ("Vicary")*, 99 Cal.App.4th 880 (2002); and *City of Vallejo v. Adult Books*, 167 Cal.App.3d 1169 (1985), *cert. denied* 475 U.S. 1064 (1986); and other federal cases, including but not limited to: *G.M. Enterprises v. Town of St. Joseph*, 350 F.3d 631 (7th Cir. 2003); *SOB, Inc. v. County of Benton*, 317 F.3d 856 (8th Cir. 2003); *DiMa Corp. v. Town of Hallie*, 185 F.3d 823 (7th Cir. 1999); *Richland Bookmart, Inc. v. Nichols*, 137 F.3d 435 (6th Cir. 1998); *National Amusements, Inc. v. Town of Dedham*, 43 F.3d 731 (1st Cir. 1995); *Hang On, Inc. v. City of Arlington*, 65 F.3d 1248 (5th Cir. 1995); *Mitchell v. Commission on Adult Entertainment,* 10 F.3d 123 (3rd Cir. 1993); *Lakeland Lounge v. City of Jacksonville,* 973 F.2d 1255 (5th Cir. 1992), *cert. denied* 507 U.S. 1030 (1993); *International Eateries v. Broward County*, 941 F.2d 1157 (11th Cir. 1991), *cert. denied* 503 U.S. 920 (1992); *Star Satellite, Inc. v. City of Biloxi,* 779 F.2d 1074 (5th Cir. 1986); *N.W. Enterprises, Inc. v. City of Houston*, 372 F.3d 333 (5th Cir. 2004); and *N.W. Enterprises, Inc. v. City of Houston*, 352 F.3d 162 (5th Cir. 2003).

F. Locational criteria are a legitimate and reasonable means of ensuring that adult businesses are conducted in a manner so as to minimize their adverse secondary effects and to thereby protect the health, safety, and welfare of the city's residents, protect citizens from increased crime, preserve the quality of life, preserve property values and the character of surrounding neighborhoods and businesses, and deter the spread of urban blight. The locational requirements contained in this ordinance do not unreasonably restrict the establishment or operation of constitutionally protected adult businesses in Benicia and a sufficient and reasonable number of alternative locations for adult businesses are provided by this ordinance. The city council takes legislative notice of the United States Supreme Court decision in *Renton* that requires the city provide adult businesses a reasonable opportunity to open and operate. The city council also takes legislative notice of the Ninth Circuit's decisions in *Topanga Press, Lim* and *Isbell* with respect to availability of sites for adult businesses and finds that under the distance and locational restrictions imposed by this ordinance there are sufficient sites available for adult businesses within the city.

G. The city council also finds that locational criteria alone do not adequately protect the health, safety, and general welfare of the citizens of Benicia, and thus

certain requirements with respect to the ownership, operation and licensing of adult businesses are in the public interest. In addition to the findings and studies conducted in other cities regarding increases in crime rates, decreases in property values and the blighting of areas in which such businesses are located, the city council takes legislative notice of the following: (1) the facts recited in the case of *Kev, Inc. v. Kitsap County*, 793 F.2d 1053 (9th Cir. 1986), regarding how live adult entertainment results in secondary effects such as prostitution, drug dealing, and other law enforcement problems, and (2) the facts and holding of the case of *Gammoh v. City of La Habra*, 395 F.3d 1114 (9th Cir. 2005), amended 402 F.3d 875, *cert. denied* 126 S.Ct. 374, wherein the Ninth Circuit recognized that off stage performances by performers who also perform nude and/or semi-nude at an adult establishment can cause the same secondary effects as other activities documented in studies and case law regarding adult establishments, even if the performer is clothed and the establishment does not serve alcohol.

H. Relying on the following, the city finds that adult businesses in its community may lead to detrimental secondary effects including prostitution and engagement in unlawful sexual activity. The city bases this conclusion on the experiences of Benicia, as well as that of other California communities, such as La Habra and Arcadia, which the city has a reasonable basis to believe reflect the experiences of its own community, including numerous police reports and affidavits from those communities, and judicial decisions in the public record:

1. Evidence indicates that some dancers, models, entertainers, performers, and other persons who publicly perform specified sexual activities or publicly display specified anatomical areas in adult businesses (collectively referred to as "performers") have been found to engage in sexual activities with patrons of adult businesses on the site of the adult business.

2. Evidence has demonstrated that performers employed by adult businesses have been found to offer and provide private shows to patrons who, for a price, are permitted to observe and participate with the performers in live sex shows.

3. Evidence indicates that performers at adult businesses have been found to engage in acts of prostitution with patrons of the establishment.

4. Evidence indicates that fully enclosed booths, individual viewing areas, and other small rooms whose interiors cannot be seen from public areas of the establishment regularly have been found to be used as locations for engaging in unlawful sexual activity.

5. As a result of the above, and the increase in incidents of HIV, AIDS, and hepatitis B, which are sexually transmitted or blood borne diseases, the city has a substantial interest in adopting regulations that will reduce the possibility for the occurrence of prostitution and unlawful sex acts at adult businesses in order to protect the health, safety, and well-being of its citizens. The city finds this is relevant to Benicia and the need to regulate the secondary effects of adult businesses within the community.

6. The public health, safety, welfare, and morals of all persons in the city must be protected by the establishment of standards to diminish the possibility of infection of contagious diseases.

I. The city council is cognizant of the specific danger from the sexually transmitted diseases ("STD") HIV and AIDS, which are currently irreversible and often fatal. The city council takes legislative notice of the County of Contra Costa Health

Services HIV/AIDS Epidemiology Report issued April 2002 ("Health Report"). The Health Report states that as of December 31, 2001, a total of approximately 4,900 Contra Costa residents are estimated to have been infected with HIV. Of these, 2,248 (45.9%) have already been diagnosed with and reported with AIDS and 1,443 (29.5%) of these people have died with AIDS. While the number of cases diagnosed each year in the County has dropped since its peak in 1992, there were 47 new cases in 2001. The Health Report also indicates that Contra Costa County has the eleventh highest cumulative incidence of AIDS in the State, with 236.9 cases per 100,000 residents. The city council also takes legislative notice of the Trends in HIV/AIDS in Yolo County report prepared by the Yolo County Health Department in 2006 ("HIV/AIDS Report"). According to the HIV/AIDS Report, from 1985 through December 2005, 281 Yolo County residents were diagnosed with HIV, of those, 215 (77%) were diagnosed with AIDS and 115 (41%) are now deceased. As of 2005, women, non-Hispanic Blacks and Hispanics comprised a larger proportion of cases than in the 1980s and 1990s. A copy of both the Report and the HIV/AIDS Report are part of the administrative record on file in this matter and are available for public review upon request.

J. The city council is also concerned with preventing the spread of other STDs such as gonorrhea, chlamydia, syphilis, hepatitis B and hepatitis C. The city council takes legislative notice of the statistics produced by the Solano County Public Health Briefs, issued September 2007 ("Public Health Brief"). According to the Public Health Brief, syphilis is on the rise in many major U.S. cities and in Solano County. The County experienced a 300 percent increase in syphilis cases when comparing January to June of 2006 with the same time period in 2007. From January to June 2006, two cases of syphilis were reported, and that number climbed to eight in 2007. The Public Health Brief also indicates that in 2006 Solano County reported 419.5 cases of chlamydia per 100,000 residents, and as of July 2007, that figure had already reached 243.1 cases per 100,000, exceeding the state's rate of 202.5 cases per 100,000. Solano County also exceeded the state average for both hepatitis B and hepatitis C. From January to July 2007, the County reported 20.3 cases of hepatitis B per 100,000 residents, compared with the state's average of 0.6 cases per 100,000. For the same time period, the County's hepatitis C case rate was 33.6 per 100,000, while the state had an average that was too small to report. Solano County also reported 42.3 cases of gonorrhea per 100,000 from January to July 2007. The HIV/AIDS Report further indicates that the number of cases of chlamydia, gonorrhea, hepatitis B and hepatitis C each increased in Yolo County between 2004 and 2005. In 2005, Yolo County reported 531 cases of chlamydia, while 415 were reported in 2004. Similarly, there were 65 cases of gonorrhea reported in 2005 while in 2004 there were 42 cases. The County reported 55 cases of hepatitis B in 2005 and 42 cases in 2004. There were 117 cases of hepatitis C in Yolo County in 2005 compared with 116 in 2004. A copy of the Public Health Brief is on file with the city attorney and available for public review upon request.

The city council has a reasonable basis to conclude that the experiences of Contra Costa, Solano and Yolo Counties as to these STD or blood borne diseases are relevant to the experiences of Benicia, which is located in the midst of this large urban area.

K. In considering appropriate operational regulations for adult businesses, the city council finds that:

1. Enclosed or concealed booths and dimly lit areas within adult businesses greatly increase the potential for misuse of the premises, including unlawful

conduct of a type which facilitates transmission of disease. Requiring all indoor areas to be open to view by management at all times and adequate lighting to be provided reduces the opportunity for, and therefore the incidence of illegal conduct within adult businesses, and further facilitates the inspection of the interior of the premises thereof by law enforcement personnel.

2. Preventing the exchange of money between performers and patrons also reduces the likelihood of drug and sex transactions occurring in adult businesses.

3. Requiring separations between performers and patrons precludes them from being within earshot to communicate and thereby reduces the likelihood that such persons will negotiate narcotics sales and/or transact sexual favors within the adult business.

L. The city council recognizes and relies on the findings set forth in the 1986 Attorney General's Report on Pornography in support of this ordinance including, but not limited to, its recommendations that local governments ban certain features of video booths that facilitate carnal sexual encounters. A copy of the Attorney General's Report on Pornography is available for public review at the city clerk's office.

1. With respect to booths, these findings include the following: The inside walls of the booth are typically covered with graffiti and messages, usually of a sexual nature and consisting of telephone numbers, names, requests and offers for sex acts, anatomical descriptions, and sketches. Some booths also contain a chart used as an appointment schedule that is utilized to schedule appointments for sex acts that take place in that particular booth. In some instances, this arrangement has been used for the solicitation of prostitutes. Many of these booths are equipped with a hole in the side wall between the booths to allow patrons to engage in anonymous sex including both oral and anal sex acts. Inside the booths, the floors and walls are often wet and sticky with liquid or viscous substances, including semen, urine, feces, used prophylactics, gels, saliva, or alcoholic beverages. The city concludes, based in part on the description of the illicit sexual activity as noted within the Attorney General's Report, that the presence of closed doors and/or any obstruction of the video booth area is likely to lead to the above described secondary effects.

2. Likewise, the city council recognizes and relies on the findings set forth in the May 1990 study conducted by the City of Tucson in support of this ordinance including, but not limited to, the following findings with respect to booths: Holes were present in the walls of adjoining booths within adult entertainment establishments. These holes were used by male patrons to facilitate sex acts with the occupant of the neighboring booth. The Council reasonably believes that the Tucson experience, along with the Attorney General's Report, is relevant to the problems associated with adult facilities in Benicia.

3. The city council finds that requiring that adult booths be configured in such a manner so that there is an unobstructed view from the manager's station(s) and prohibiting closed, concealed, or unobstructed booths that are occupied by no more than one person at a time reduces the secondary effects associated with closed booths. Specifically, the provisions pertaining to booths are necessary to eliminate the masturbation and sexual activity that are known to occur in closed booths and which present significant health and safety concerns with respect to communicable diseases, including AIDS. A number of courts have held that combating the spread of AIDS and STDs is a significant government interest, and that prohibiting concealed or enclosed

booths in an adult use establishment is a narrowly tailored means of serving that interest. *Deluxe Theater & Bookstore, Inc. v. City of San Diego*, 175 Cal.App.3d 980 (1985); *Pleasureland Museum, Inc. v. Beutter*, 288 F.3d 988 (7th Cir. 2002); *Mitchell v. Commission on Adult Entertainment Establishments*, 10 F.3d 123 (3rd Cir. 1993); *Bamon Corp. v. City of Dayton*, 923 F.2d 470 (6th Cir. 1991); *Doe v. City of Minneapolis*, 898 F.2d 612 (8th Cir. 1990); *Wall Distributors, Inc. v. City of Newport News*, 782 F.2d 1165 (4th Cir. 1986). The city council takes further note of the Ninth Circuit's decision in *Ellwest Stereo Theatres, Inc. v. Wenner*, 681 F.2d 1243 (9th Cir. 1982) and its finding that there is no constitutional right to unobserved masturbation in a public place. The city council also recognizes the California case *Deluxe Theater & Bookstore, Inc. v. City of San Diego*, 175 Cal.App.3d 980 (1985), which found that the right to privacy guaranteed by the California Constitution does not protect the right to unobserved masturbation in a public place. Further, the city takes note of the Eleventh Circuit's validation of a restriction on the size of adult booths in *Lady J. Lingerie, Inc. v. City of Jacksonville*, 176 F.3d 1358 (11th Cir. 1999), including the Court's finding that "[a]mple evidence ... supports the ... finding that illegal and unhealthy activities take place in small rooms at adult entertainment establishments."

M. In recognition of the negative secondary effects generated by live adult entertainment, a number of courts have upheld distance limitations between performers and patrons, prohibitions against physical contact between performers and patrons, and precluded direct exchange of monies between performers and patrons at adult businesses that provide live entertainment including, but not limited to: *Gammoh v. City of La Habra*, 395 F.3d 1114 (9th Cir. 2005), amended 402 F.3d 875, *cert. denied* 126 S.Ct. 374; *Tily B. v. City of Newport Beach*, 69 Cal.App.4th 1 (1999); *Colacurcio v. City of Kent*, 163 F.3d 545 (9th Cir. 1998); *BSA, Inc. v. King County*, 804 F.2d 1104 (9th Cir. 1986); *Kev, Inc. v. Kitsap County*, 793 F.2d 1053 (9th Cir. 1986); *DLS, Inc. v. City of Chattanooga*, 894 F.Supp. 1140 (E.D. Tenn. 1995); *Parker v. Whitfield County*, 463 S.E.2d 116 (Ga. 1995); and *Hang On, Inc. v. City of Arlington*, 65 F.3d 1248 (5th Cir. 1995). Courts have found that dancers who perform nude or semi-nude on stage at adult cabarets are the same individuals who then move off stage to offer lap dances, couch dances, or other similar off stage performances. *Gammoh v. City of La Habra*, 395 F.3d 1114 (9th Cir. 2005). Therefore, Benicia reasonably believes it is necessary to impose distance limitations between performers and patrons and prohibit physical contact between performers and patrons during all performances, whether on or off stage, in order to guard against the documented secondary effects.

N. The city council believes that prohibiting physical contact between performers and patrons at adult businesses, requiring separate entrances for performers from those used for patrons, requiring separate restrooms for opposite sexes, prohibiting performers from soliciting payment from patrons, and prohibiting the direct payment to performers by patrons are a reasonable and effective means of addressing the legitimate governmental interests of preventing prostitution, the spread of sexually transmitted diseases, and drug transactions. The case law and studies serve as a reasonable basis to establish this link.

O. The city council also finds the establishment of an adult business regulatory licensing process and operational standards for adult businesses are legitimate and reasonable means of ensuring that:

1. Operators of and performers at adult businesses comply with the city's regulations;

2. The recognized adverse secondary impacts of a proposed adult business are mitigated;

3. Adult business operators have specific guidelines with respect to the manner in which they can operate an adult business; and

4. The applications for adult business regulatory licenses are handled fairly and expeditiously.

P. The city council recognizes the possible harmful effects on children and minors exposed to the effects of adult businesses and recognizes the need to enact regulations which will minimize and/or eliminate such exposure. The city council takes legislative notice of the Penal Code provisions authorizing local governments to regulate matter that is harmful to minors (*i.e.,* Penal Code § 313 *et seq.*). The city council further takes legislative notice of the cases that recognize that protection of minors from sexually explicit materials is a compelling government interest, including *Crawford v. Lungren*, 96 F.3d 380 (9th Cir. 1996), *cert. denied* 520 U.S. 1117 (1997) and *Berry v. City of Santa Barbara*, 40 Cal.App.4th 1075 (1995).

Q. While the city council is obligated to protect the rights conferred by the United States Constitution to adult businesses, it does so in a manner that ensures the continued and orderly use and development of property within the city and diminishes, to the greatest extent feasible, those undesirable adverse secondary effects which the above mentioned studies have shown to be associated with the operation of adult businesses.

R. Licensing permits, locational restrictions and operating standards are a legitimate and reasonable means of ensuring that adult businesses are conducted in a manner so as to minimize their adverse secondary effects and to help assure that such operators, businesses, licensees and permittees comply with reasonable regulations related to such requirements to minimize and control problems associated with such businesses and thereby protect the health, safety, and welfare of Benicia residents, protect citizens from increased crime, preserve the quality of life, and preserve the character of surrounding neighborhoods and businesses, and deter the spread of urban blight. The zoning and operational requirements contained in this ordinance do not unreasonably restrict the establishment or operation of constitutionally protected adult businesses in Benicia.

S. The city council, in adopting operational standards, recognizes that these standards do not preclude reasonable alternative avenues of communication. For example, the closing hours requirement means that adult businesses are free to operate seven (7) days a week for seventeen (17) hours per day. The city council takes note of the proliferation of adult material on the Internet, satellite television, direct television, CDs, DVDs, and that these various media provide alternative avenues of communication. Additionally, the city council takes note that numerous web-based services, such as www.sugardvd.com and www.wantedlist.com, deliver adult videos and DVDs directly to customers' homes via the mail. The city council recognizes the following review of one of these web-based services: "SugarDVD has made it so easy to rent and view adult movies, you may never leave your house again ... SugarDVD is discreet with quick turn around times and a massive selection ... SugarDVD offers six rental plans, catering to the casual porn viewer and diehards who can never get enough hard-core fare." (*Hustler Magazine*, January 2006.) The city council also considers and relies on published decisions examining the proliferation of communications on the Internet. (*Reno v. American Civil Liberties Union*, 521 U.S. 844, 117 S.Ct. 2329, 138

L.Ed.2d 874 (1997) [the principle channel through which many Americans now transmit and receive sexually explicit communication is the Internet]; *Anheuser-Busch v. Schmoke*, 101 F.3d 325 (4th Cir. 1996), *cert. denied* 520 U.S. 1204 (1997) [the Fourth Circuit rejected a First Amendment challenge to a Baltimore ordinance restricting alcohol advertisements on billboards acknowledging that the Internet is one available channel of communication]; *U.S. v. Hockings*, 129 F.3d 1069 (9th Cir. 1997); *see also U.S. v. Thomas*, 74 F.3d 701 (6th Cir. 1996), *cert. denied* 519 U.S. 820 [recognizing the Internet as a medium for transmission of sexually explicit material in the context of obscenity prosecutions].) The emergence of the Internet brings with it a virtually unlimited additional source of adult oriented sexual materials available to interested persons in every community with a mere keystroke. An adult business no longer has to be "actually" physically located in a city to be available in the community.

T. The city council recognizes that adult devices (*i.e.* adult novelties and/or adult related products) such as dildos, fur-lined handcuffs, leather whips, anal beads, and devices that are physical representations of human genital organs, are not speech and enjoy no First Amendment protections. (*See Ford v. State of Texas*, 753 S.W.2d 451, 452-453 (1988); *Sewell v. State of Georgia*, 233 S.E.2d 187, 188-189 (1977); *Chamblee Visuals, LLC v. City of Chamblee*, 506 S.E.2d 113, 115 (1998); and *Red Bluff Drive-In, Inc. v. Vance*, 648 F.2d 1020 (5th Cir. 1981).)

U. The city council has also determined that a closing hours requirement promotes the reduction of deleterious secondary effects from adult facilities and reasonably relies on prior court decisions on the need for closing hours including *Center for Fair Public Policy v. Maricopa County ("Maricopa")*, 336 F.3d 1153 (9th Cir. 2003); *DiMa Corp. v. Town of Hallie*, 185 F.3d 823 (7th Cir. 1999); *Lady J. Lingerie, Inc. v. City of Jacksonville*, 176 F.3d 1358 (11th Cir. 1999); *Lady J. Lingerie, Inc. v. City of Jacksonville*, 973 F.Supp. 1428 (M.D. Fla. 1997); *Richland Bookmart, Inc. v. Nichols*, 137 F.3d 435 (6th Cir. 1998); *National Amusements Inc. v. Town of Dedham*, 43 F.3d 731 (1st Cir. 1995); *Mitchell v. Comm'n on Adult Enter. Est. of the State of Delaware*, 10 F.3d 123 (3rd Cir. 1993); *Star Satellite, Inc. v. City of Biloxi*, 779 F.2d 1074 (5th Cir. 1986); and *City of Colorado Springs v. 2354 Inc.*, 896 P.2d 272 (1995). The city council also takes legislative notice of (a) the Report of the Attorney General's Working Group on the Regulation of Sexually-Oriented Businesses, Minnesota (1989), which concluded that surrounding communities are negatively impacted by 24-hour-a-day or late night operation of sexually oriented businesses; and (b) the analysis presented by Scott Bergthold in his report, Closin' Time: Effective Regulation of Adult Businesses' Hours of Operation (2000). Additionally, the city council takes legislative notice of Peep Show Establishments, Police Activity, Public Place and Time: A Study of Secondary Effects in San Diego, California, by Daniel Linz *et al.* (2004) and Do Peep-shows "Cause" Crime? A response to Linz, Paul, and Yao, by Richard McCleary *et al.* (2006). Based on these cases, reports and analyses, as well as the findings of this ordinance, the city council has a reasonable basis to believe and does conclude that the hours of operation provision is necessary in light of the fact that adult businesses have been found to accompany and aggravate crime and to deplete police time and resources in the late night hours.

V. It is not the intent of the city council of Benicia in enacting this ordinance or any provision thereof to condone or legitimize the distribution of obscene material, and the city and its council recognize that state law prohibits the distribution of obscene

materials and expect and encourage law enforcement officials to enforce state obscenity statutes against such illegal activities in Benicia.

W. The city council does not intend to regulate in any area preempted by California law including, but not limited to, regulation of obscene speech, nor is it the intent of the city council to preempt regulations of the state Alcoholic Beverage Control ("ABC").

X. Nothing in this ordinance is intended to authorize, legalize, or permit the establishment, operation, or maintenance of any business, building, or use which violates any city ordinance or any statute of the State of California regarding public nuisances, unlawful or indecent exposure, sexual conduct, lewdness, obscene or harmful matter, or the exhibition or public display thereof.

Y. The city council finds that licensing and operational standards are a legitimate and reasonable means of accountability to ensure that operators of adult businesses comply with reasonable regulations and to ensure that operators do not knowingly allow their establishments to be used as places of illegal sexual activity or solicitation.

Z. The licensing and operation provisions adopted herein are necessary in order to protect the public health, safety and welfare by providing a mechanism to address the adverse secondary effects associated with the establishment and operation of unregulated or under-regulated adult use businesses.

Section 2.

Chapter 5.44 (Adult Businesses) of Chapter 5 (Business Taxes, Licenses And Regulations) of the Benicia Municipal Code is amended to read as follows:

CHAPTER 5.44

ADULT BUSINESS LICENSES AND OPERATING REGULATIONS

Sections:

5.44.010 Purpose.
5.44.020 Definitions.
5.44.030 Adult business regulatory license required.
5.44.040 Investigation and action on application for adult business regulatory license.
5.44.050 Operating standards.
5.44.060 Transfer of adult business license.
5.44.070 Suspension or revocation of adult business license.
5.44.080 Appeal procedures.
5.44.090 Violations.
5.44.100 Regulations non-exclusive.

5.44.010 Purpose. It is the purpose and intent of this chapter to regulate the operations of adult businesses, which tend to have judicially recognized adverse secondary effects on the community, including, but not limited to, increases in crime in the vicinity of adult businesses; increases in vacancies in residential and commercial

areas in the vicinity of adult businesses; interference with residential property owners' enjoyment of their properties when such properties are located in the vicinity of adult businesses as a result of increases in crime, litter, noise, and vandalism; and the deterioration of neighborhoods. Special regulation of these businesses is necessary to prevent these adverse secondary effects and the blighting or degradation of the neighborhoods in the vicinity of adult businesses while at the same time protecting the First Amendment rights of those individuals who desire to own, operate or patronize adult businesses.

It is, therefore, the purpose of this chapter to establish reasonable and uniform operational standards for adult businesses.

5.44.020 Definitions. In addition to any other definitions contained in the municipal code, the following words and phrases shall, for the purpose of this chapter, be defined as follows, unless it is clearly apparent from the context that another meaning is intended. Should any of the definitions be in conflict with any current provisions of the municipal code, these definitions shall prevail.

A. "Adult arcade" shall mean a business establishment to which the public is permitted or invited and where coin, card or slug operated or electronically, electrically or mechanically controlled devices, still or motion picture machines, projectors, videos, holograms, virtual reality devices or other image-producing devices are maintained to show images on a regular or substantial basis, where the images so displayed are distinguished or characterized by an emphasis on matter depicting or describing "specified sexual activities" or "specified anatomical areas." Such devices shall be referred to as "adult arcade devices."

B. "Adult retail store" shall mean a business establishment having as a regular and substantial portion of its stock in trade, "adult oriented material."

C. "Adult booth/individual viewing area" shall mean a partitioned or partially enclosed portion of an adult business used for any of the following purposes:

1. Where a live or taped performance is presented or viewed, where the performances and/or images displayed or presented are distinguished or characterized by their emphasis on matter depicting, describing, or relating to "specified sexual activities" or "specified anatomical areas;" or

2. Where "adult arcade devices" are located.

D. "Adult business" shall mean:

1. A business establishment or concern that as a regular and substantial course of conduct operates as an adult retail store, adult motion picture theater, adult arcade, adult cabaret, adult motel or hotel, adult modeling studio; or

2. A business establishment or concern which as a regular and substantial course of conduct offers, sells or distributes "adult oriented material" or "sexually oriented merchandise," or which offers to its patrons materials, products, merchandise, services or entertainment characterized by an emphasis on matters depicting, describing, or relating to "specified sexual activities" or "specified anatomical areas" but not including those uses or activities which are preempted by state law.

E. "Adult cabaret" shall mean a business establishment (whether or not serving alcoholic beverages) that features "adult live entertainment."

F. "Adult cabaret dancer" shall mean any person who is an employee or independent contractor of an "adult cabaret" or "adult business" and who, with or without any compensation or other form of consideration, performs as a sexually

oriented dancer, exotic dancer, stripper, go-go dancer or similar dancer whose performance on a regular and substantial basis focuses on or emphasizes the adult cabaret dancer's breasts, genitals, and/or buttocks, but does not involve exposure of "specified anatomical areas" or depicting or engaging in "specified sexual activities." "Adult cabaret dancer" does not include a patron.

G. "Adult hotel/motel" shall mean a "hotel" or "motel" (as defined in the municipal code) that is used for presenting on a regular and substantial basis images through closed circuit television, cable television, still or motion picture machines, projectors, videos, holograms, virtual reality devices or other image-producing devices that are distinguished or characterized by the emphasis on matter depicting or describing or relating to "specified sexual activities" or "specified anatomical areas."

H. "Adult live entertainment" shall mean any physical human body activity, whether performed or engaged in, alone or with other persons including, but not limited to, singing, walking, speaking, dancing, acting, posing, simulating, wrestling or pantomiming, in which: (1) the performer (including, but not limited to, topless and/or bottomless dancers, go-go dancers, exotic dancers, strippers, or similar performers) exposes to public view, without opaque covering, "specified anatomical areas;" and/or (2) the performance or physical human body activity depicts, describes, or relates to "specified sexual activities" whether or not the specified anatomical areas are covered.

I. "Adult modeling studio" shall mean a business establishment which provides for any form of consideration, the services of a live human model, who, for the purposes of sexual stimulation of patrons, displays "specified anatomical areas" to be observed, sketched, photographed, filmed, painted, sculpted, or otherwise depicted by persons paying for such services. "Adult modeling studio" does not include schools maintained pursuant to standards set by the Board of Education of the State of California.

J. "Adult motion picture theater" shall mean a business establishment, with or without a stage or proscenium, where, on a regular and substantial basis and for any form of consideration, material is presented through films, motion pictures, video cassettes, slides, laser disks, digital video disks, holograms, virtual reality devices, or similar electronically-generated reproductions that is characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas."

K. "Adult oriented material" shall mean accessories, paraphernalia, books, magazines, laser disks, compact discs, digital video disks, photographs, prints, drawings, paintings, motion pictures, pamphlets, videos, slides, tapes, holograms or electronically generated images or devices including computer software, or any combination thereof that is distinguished or characterized by its emphasis on matter depicting, describing or relating to "specified sexual activities" or "specified anatomical areas." "Adult oriented material" shall include "sexually oriented merchandise."

L. "Establishment of an adult business" shall mean any of the following:

1. The opening or commencement of any "adult business" (as defined above) as a new business;

2. The conversion of an existing business, whether or not an "adult business," to any "adult business;"

3. The addition of any "adult business" to any other existing "adult business;"

4. The relocation of any "adult business;" or

5. Physical changes that expand the square footage of an existing "adult business" by more than ten percent (10%).

M. "Owner/license holder" shall mean any of the following: (1) the sole proprietor of an adult business; (2) any general partner of a partnership that owns and operates an adult business; (3) the owner of a controlling interest in a corporation or L.L.C. that owns and operates an adult business; or (4) the person designated by the officers of a corporation or the members of an L.L.C. to be the license holder for an adult business owned and operated by the corporation.

N. "Performer" shall mean a person who is an employee or independent contractor of an adult business or any other person who, with or without any compensation or other form of consideration, provides "adult live entertainment" for patrons of an "adult business."

O. "Sexually oriented merchandise" shall mean sexually oriented implements, paraphernalia, or novelty items such as, but not limited to: dildos, auto sucks, sexually oriented vibrators, benwa balls, inflatable orifices, anatomical balloons with orifices, simulated and battery operated vaginas, and similar sexually oriented devices which are designed or marketed primarily for the stimulation of human genital organs or sado-masochistic activity or distinguished or characterized by their emphasis on matter depicting, describing or relating to "specified sexual activities" or "specified anatomical areas."

P. "Specified anatomical areas" shall mean and include any of the following:

1. Less than completely and opaquely covered, and/or simulated to be reasonably anatomically correct, even if completely and opaquely covered human:

a. genitals, pubic region;

b. buttocks, anus; or

c. female breasts below a point immediately above the top of the areola; or

2. Human male genitals in a discernibly turgid state, even if completely or opaquely covered.

Q. "Specified sexual activities" shall mean and include any of the following, irrespective of whether performed directly or indirectly through clothing or other covering:

1. Human genitals in a state of sexual stimulation or arousal; and/or

2. Acts of human masturbation, sexual stimulation or arousal; and/or

3. Use of human or animal ejaculation, sodomy, oral copulation, coitus or masturbation; and/or

4. Masochism, erotic or sexually oriented torture, beating, or the infliction of pain, or bondage and/or restraints; and/or

5. Human excretion, urination, menstruation, vaginal or anal irrigation; and/or

6. Fondling or other erotic touching of human genitals, pubic region, buttock, or female breast.

<u>5.44.030</u> <u>Adult business regulatory license required.</u> All adult businesses are subject to the adult business regulatory license requirements of this chapter as well as all other applicable ordinances of the city and laws of the State of California.

A. It shall be unlawful for any person to establish, operate, engage in, conduct, or carry on any adult business within Benicia unless the person first obtains,

and continues to maintain in full force and effect, an adult business regulatory license as herein required. Any occurrence of the "establishment of an adult business" as defined in this chapter, shall require a new application for an adult business regulatory license. The adult business regulatory license shall be subject to the development and operational standards of this chapter and the underlying zone where the facility is located.

B. The community development director or his/her designee (hereinafter "director") shall grant, deny and renew adult business regulatory licenses in accordance with these regulations.

C. License applicants shall file a written, signed and verified application on a form provided by the community development department. Such application shall contain the following information and be accompanied by the following documents:

1. If the license applicant is an individual, the individual shall state his or her legal name, including any aliases, and address, and shall submit satisfactory written proof that he or she is at least eighteen (18) years of age.

2. If the license applicant is a partnership, the partners shall state the partnership's complete name, address, the names of all partners, and whether the partnership is general or limited; and shall attach a copy of the partnership agreement, if any.

3. If the license applicant is a corporation, the corporation shall provide its complete name, the date of its incorporation, evidence that the corporation is in good standing under the laws of the State of California, the names and capacities of all officers and directors, the name of the registered corporate agent, and the address of the registered office for service of process.

4. A signed and verified statement that the license applicant, if an individual, or if a partnership or corporation by its partners, its officers or its directors, that the applicant has not pled guilty or nolo contendere or been convicted of an offense classified by this or any other state as a sex or sex-related offense, including crimes involving moral turpitude, prostitution, or obscenity, and (a) more than two (2) years have elapsed since the date of conviction or the date of release from confinement for the conviction to the date of application, whichever is the later date, if the conviction is a misdemeanor; or (b) more than five (5) years have elapsed since the date of conviction or the date of release from confinement for the conviction to the date of application, whichever is the later date, if the conviction is a felony; or (c) more than five (5) years have elapsed since the date of the last conviction or the date of release from confinement for the conviction to the date of application, whichever is the later date, if the convictions are two or more misdemeanors or combination of misdemeanor offenses occurring within any 24-month period.

5. The license applicant shall sign the application. All persons who sign the application must also provide names, aliases, addresses, and date of birth.

6. If the license applicant intends to operate the adult business under a name other than that of the license applicant, the license applicant shall file the fictitious name of the adult business and show proof of registration of the fictitious name.

7. A description of the type of adult business for which the license is requested and the proposed address where the adult business will operate, plus the names and addresses of the owners and lessors of the adult business site.

8. The address to which notice of action on the application is to be mailed.

9. A sketch or diagram showing the interior configuration of the premises, including a statement of the total floor area occupied by the adult business. The sketch or diagram need not be professionally prepared but must be oriented to the north or some other designated street or object and drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six (6) inches.

10. A diagram of the off-street parking areas and entries to the premises of the adult business, also showing the location of the lighting system required by this chapter.

D. The completed application shall be accompanied by a non-refundable application fee. The amount of such fees shall be set by resolution of the city council.

E. The completeness of an application for an adult business regulatory license shall be determined by the director or within five (5) city business days of its submittal. If the director determines that the license application is incomplete, the director shall immediately notify in writing the license applicant of such fact and the reasons therefor, including any additional information necessary to render the application complete. Such writing shall be deposited in the U.S. mail, postage prepaid, immediately upon determination that the application is incomplete. Within five (5) city business days following the receipt of an amended application or supplemental information, the director shall again determine whether the application is complete in accordance with the provisions set forth above. Evaluation and notification shall occur as provided herein until such time as the application is found to be complete.

F. The fact that a license applicant possesses other types of state or city licenses does not exempt the license applicant from the requirement of obtaining an adult business regulatory license.

5.44.040 Investigation and action on application for adult business regulatory license.

A. Upon receipt of a completed application and payment of the application and license fees, the director shall immediately write or stamp the application "Received" and, in conjunction with city staff, shall promptly investigate the information contained in the application to determine whether an adult business regulatory license shall be granted. Investigation shall not be grounds for the city to unilaterally delay in reviewing a completed application, nor is it grounds to extend the time period to conduct a hearing pursuant to this section.

B. Within twenty-one (21) days of receipt of the completed application, the investigation shall be completed and the director shall notice and conduct a public hearing with notice of such hearing to be made pursuant to California Government Code §§ 65091 and 65905.

C. In reaching a decision on the application, the director shall not be bound by the formal rules of evidence in the California Evidence Code.

D. The director shall render a written decision on the application for an adult business regulatory license within two (2) city business days of the public hearing required by this section. The failure of the director to render any decision within the time frames established in any part of this section shall be deemed to constitute an approval, subject to compliance with all operational standards of section 5.44.050 and all city

zoning requirements including those found in sections 17.28.020 and 17.32.020, and chapter 17.102 of this code, and shall be subject to appeal to the city council, pursuant to section 5.44.080. The decision of the director shall be hand delivered or mailed to the applicant at the address provided in the application, and shall be provided in accordance with the requirements of this code.

E. Notwithstanding any provisions in this section regarding the occurrence of any action within a specified period of time, the applicant may request additional time beyond that provided for in this section or may request a continuance regarding any decision or consideration by the city of the pending application. Extensions of time sought by applicants shall not be considered delay on the part of the city or constitute failure by the city to provide for prompt decisions on applications.

F. The director shall grant or deny the application in accordance with the provisions of this section, and so notify the applicant as follows:

1. The director shall write or stamp "Granted" or "Denied" on the application and date and sign such notation.

2. If the application is denied, the director shall attach to the application a statement of the reasons for the denial.

3. If the application is granted, the director shall attach to the application an adult business regulatory license.

G. The director shall grant the application and issue the adult business regulatory license upon findings that the proposed business meets, or will meet, all of the development and operational standards and requirements of this chapter, unless the application is denied based upon one or more of the criteria set forth in subsection (I) of this section.

H. If the director grants the application, the applicant may begin operating the adult business for which the license was sought, subject to strict compliance with the development and operational standards and requirements of this chapter. The license holder shall post the license conspicuously in the premises of the adult business.

I. The director shall deny the application if the applicant fails to establish any of the following:

1. The adult business complies with the city's zoning requirements as to its underlying zoning designation and other locational requirements of sections 17.28.020 and 17.32.020, and chapter 17.102.

2. The adult business complies with the development, operational or performance standards found in this chapter.

3. The license applicant is at least eighteen (18) years of age.

4. The required application fees have been paid.

5. The application complies with section 5.44.030.

J. A permittee, applicant or substantially related entity wherein the new application is made by an individual or previous entity exercising management or oversight or control of the adult facility, cannot re-apply for an adult business regulatory license for a particular location within one (1) year from the date of prior denial.

K. Any affected person may appeal the decision of the director in writing within ten (10) days in accordance with the provisions of section 5.44.080.

5.44.050 Operating standards.

A. Hours of operation. It shall be unlawful for any owner, operator, manager, employee or independent contractor of an adult business to allow such adult business

to remain open for business, or to license any employee, independent contractor or performer to engage in a performance, solicit a performance, make a sale, solicit a sale, provide a service, or solicit a service, between the hours of 2:00 a.m. and 9:00 a.m. of any day excepting herefrom an "adult hotel/motel."

B. Exterior lighting requirements. All exterior areas, including parking lots, of the adult business shall be illuminated at a minimum of 1.50 foot-candle, maintained and evenly distributed at ground level with appropriate devices to screen, deflect or diffuse the lighting in such manner as to prevent glare or reflected light from creating adverse impacts on adjoining and nearby public and private properties. Inoperable and/or broken lights shall be replaced within twenty-four (24) hours.

C. Interior lighting requirements. All interior areas of the adult business excepting therefrom adult hotels/motels shall be illuminated at a minimum of 1.00 foot-candle, maintained and evenly distributed at floor level. Inoperable and/or broken lights shall be replaced within twenty-four (24) hours, excepting herefrom an "adult hotel/motel."

D. Regulation of adult booth/individual viewing area.

1. No adult booth/individual viewing area shall be occupied by more than one individual at a time.

2. Each adult booth/individual viewing area within the adult business shall be visible from a continuous and accessible main aisle in a public portion of the establishment, and shall not be obscured by any door, curtain, wall, two-way mirror or other device which would prohibit a person from seeing the entire interior of the adult booth/individual viewing area from the main aisle. Any adult business may have more than one manager station in order to ensure compliance with this regulation. At all times, the manager station(s) shall be maintained to ensure a clear line of sight into the interior of the adult/booth individual viewing area. Further, no one shall maintain any adult booth/individual viewing area in any configuration unless the entire interior wherein the picture or entertainment that is viewed is visible from the manager station(s). The entire body of any patron in any adult booth/individual viewing area must be visible from the main aisle and the manager station(s) without the assistance of mirrors or any other device.

3. No doors are permitted on an adult booth/individual viewing area. No partially or fully enclosed adult booth/individual viewing areas or partially or fully concealed adult booth/individual viewing areas shall be maintained.

4. No holes or other openings shall be permitted between adult booths/individual viewing areas. Any such hole or opening shall be repaired within twenty-four (24) hours using "pop" rivets to secure metal plates over the hole or opening to prevent patrons from removing the metal plates.

5. No beds, couches or chairs with a sitting area greater than twenty-four inches (24") wide shall be permitted in an adult booth/individual viewing area.

E. On-site manager. All adult businesses shall have a responsible person who shall be at least 18 years of age and shall be on the premises to act as manager at all times during which the business is open. No performer may serve as the manager. The individual(s) designated as the on-site manager shall provide his/her name to the chief of police to receive all complaints and be given by the owner and/or operator the responsibility and duty to address and immediately resolve all violations taking place on the premises.

F. Interior of premises. No exterior door or window on the premises of an adult business shall be propped or kept open at anytime while the business is open and any exterior windows shall be covered with opaque coverings at all times.

G. Displays of adult oriented materials. All displays of materials characterized or distinguished on matters describing or relating to "specified sexual activities" or "specified anatomical areas," as defined in this code, shall be completely screened from public view as viewed from adjacent sidewalks or public rights-of-way.

H. Signs. All adult businesses shall comply with the following sign requirements, in addition to those of the Benicia Municipal Code. Should a conflict exist between the requirements of the Benicia Municipal Code and this subsection, the more restrictive shall prevail.

If an adult business does not serve alcohol, it shall post a notice prior to entry to the area of public assembly and within ten feet (10′) of every entrance used by customers for access to the establishment, stating that persons below the age of eighteen (18) years of age are prohibited from entering onto the premises or within the confines of the adult business. This notice shall be posted on a wall in a place of prominence. The dimensions of the notice shall be no less than six inches (6″) by six inches (6″), with a minimum typeface of 25 points. If the adult business serves alcohol, it shall comply with all notice and posting requirements of the Alcoholic Beverage Control Department.

I. Regulation of public restroom facilities. If the adult business provides restrooms for patron use, it shall provide separate restroom facilities for male and female patrons. The restrooms shall be free from adult oriented material. Only one (1) person shall be allowed in each restroom at any time, unless otherwise required by law, in which case the adult business shall employ a restroom attendant of the same sex as the restroom users who shall be present in the public portion of the restroom during operating hours. The attendant shall insure that no person of the opposite sex is permitted into the restroom, and that not more than one (1) person is permitted to enter a restroom stall, unless otherwise required by law, and that the restroom facilities are used only for their intended sanitary purposes. Access to restrooms for patron use shall not require passage through an area used as a dressing area by performers.

J. Trash. All interior trash cans shall be emptied into a single locked trash bin lined with a plastic bag or with individually bagged trash at least once a day. At least four (4) times a day, the front and rear exteriors of any adult business, along with the parking lot, shall be inspected for trash and debris and any trash and debris found shall be immediately removed and placed into a single locked trash bin lined with a plastic bag.

K. Adult business offering adult live entertainment – Additional operating requirements. The following additional requirements shall apply to adult businesses providing adult live entertainment:

1. No person shall perform adult live entertainment for patrons of an adult business except upon a permanently fixed stage at least eighteen inches (18") above the level of the floor, and surrounded with a three foot (3') high barrier or by a fixed rail at least thirty inches (30") in height. No patron shall be permitted on the stage while the stage is occupied by a performer(s) and/or adult cabaret dancer(s). This provision shall not apply to an individual viewing area where the performer is completely separated from the area in which the performer is viewed by an individual by a permanent, floor to ceiling, solid barrier.

2. No performer or adult cabaret dancer shall be within six feet (6') of a patron, measured horizontally, while the performer or adult cabaret dancer is performing adult live entertainment. While on stage, no performer or adult cabaret dancer shall have physical contact with any patron, and no patron shall have physical contact with any performer or adult cabaret dancer.

3. As to off stage performances, no performer or adult cabaret dancer shall perform "adult live entertainment" off stage. As to an adult cabaret dancer performing off stage, a distance of at least six feet (6') shall be maintained between the adult cabaret dancer and the patron(s) at all times. During off stage performances, no adult cabaret dancer shall have physical contact with any patron, and no patron shall have physical contact with any adult cabaret dancer.

4. In addition, while on the premises, no performer or adult cabaret dancer shall have physical contact with a patron and no patron shall have physical contact with a performer or adult cabaret dancer, which physical contact involves the touching of the clothed or unclothed genitals, pubic area, buttocks, cleft of the buttocks, perineum, anal region, or female breast with any part or area of any other person's body either before or after any adult live entertainment or off stage performances by such performer or adult cabaret dancer. Patrons shall be advised of the no touching requirements by signs and, if necessary, by employees, independent contractors, performers, or adult cabaret dancers of the establishment. This prohibition does not extend to incidental touching.

5. Patrons shall be advised of the separation and no touching requirements by signs conspicuously displayed and placed on the barrier between patrons and performers and utilizing red or black printing of letters not less than one inch (1") in size. And, if necessary, patrons shall also be advised of the separation and no touching requirements by employees or independent contractors of the establishment.

6. All employees and independent contractors of the adult facility, except therefrom performers while performing on the fixed stage, while on or about the premises or tenant space, shall wear at a minimum an opaque covering which covers their specified anatomical areas.

7. Patrons shall not throw money to performers, place monies in the performers' costumes or otherwise place or throw monies on the stage. If patrons wish to pay or tip performers, payment or tips may be placed in containers. Patrons shall be advised of this requirement by signs conspicuously displayed and placed on the barrier between patrons and performers and utilizing red or black printing of letters not less than one inch (1") in size. If necessary, patrons shall also be advised of the tipping and gratuity requirements by employees or independent contractors of the adult business.

8. The adult business shall provide dressing rooms for performers, that are separated by gender and exclusively dedicated to the performers' use and which the performers shall use. Same gender performers may share a dressing room. Patrons shall not be permitted in dressing rooms.

9. The adult business shall provide an entrance/exit to the establishment for performers that is separate from the entrance/exit used by patrons, which the performers shall use at all times.

10. The adult business shall provide access for performers between the stage and the dressing rooms that is completely separated from the patrons. If such separate access is not physically feasible, the adult business shall provide a

minimum three foot (3′) wide walk aisle for performers between the dressing room area and the stage, with a railing, fence or other barrier separating the patrons and the performers capable of (and which actually results in) preventing any physical contact between patrons and performers and the patrons must also be three feet (3′) away from the walk aisle. Nothing in this section is intended to exempt the adult business from compliance with the provisions of Title 24 of the California Code of Regulations pertaining to handicapped accessibility.

11. All adult businesses featuring live entertainment shall employ security guards in order to maintain the public peace and safety, based upon the following standards:

a. Shall provide at least one security guard at all times while the business is open.

b. If the occupancy limit of the premises is greater than 21 persons, an additional security guard shall be on duty.

c. Security guard(s) shall be charged with preventing violations of law and enforcing compliance by patrons with the requirements of these regulations. Security guard(s) shall be uniformed in such a manner so as to be readily identifiable as a security guard by the public and shall be duly licensed as a security guard as required by applicable provisions of state law. No security guard required pursuant to this subsection shall act as a door person, ticket seller, ticket taker, admittance person, or sole occupant of the manager's station while acting as a security guard.

d. Between the hours of 8:00 p.m. and thirty (30) minutes after the established closing time of the facility, security guard(s) shall regularly patrol the parking lot and adjacent outdoor areas of the facility to maintain order therein and prevent any illicit or nuisance activity.

L. Adult motion picture theater additional operating requirements. The following additional requirements shall apply to adult motion picture theaters:

1. If the theater contains a hall or auditorium area, the area shall comply with each of the following provisions:

a. Have individual, separate seats, not couches, benches, or the like, to accommodate the maximum number of persons who may occupy the hall or auditorium area;

b. Have a continuous main aisle alongside the seating areas in order that each person seated in the hall or auditorium area shall be visible from the aisle at all times; and

c. Have a sign posted in a conspicuous place at or near each entrance to the hall or auditorium area which lists the maximum number of persons who may occupy the hall or auditorium area, which number shall not exceed the number of seats within the hall or auditorium area.

M. Employment of and services rendered to persons under the age of eighteen (18) years prohibited; twenty-one (21) if liquor is served.

1. Employees/independent contractors. Employees and independent contractors of an adult business must be at least eighteen (18) years of age. It shall be unlawful for any owner, operator, manager, partner, director, officer, shareholder with a ten percent (10%) or greater interest, employees, or other person in charge of any adult business to employ, contract with, or otherwise retain any services in connection with the adult business with or from any person who is not at least eighteen (18) years of age. If liquor is served at the adult business, employees and independent contractors

of the adult business must be at least twenty-one (21) years of age. If liquor is served at the adult business, it shall be unlawful for any owner, operator, manager, partner, director, officer, shareholder with a ten percent (10%) or greater interest, employee, or other person in charge of any adult business to employ, contract with, or otherwise retain any services in connection with the adult business with or from any person who is not at least twenty-one (21) years of age. And said persons shall exercise reasonable care in ascertaining the true age of persons seeking to contract with, be employed by, or otherwise service the adult business.

2. Patrons. Patrons of an adult business must be at least eighteen (18) years of age. It shall be unlawful for any owner, operator, manager, partner, director, officer, shareholder with a ten percent (10%) or greater interest, employee, independent contractor, or other person in charge of any adult business to permit to enter or remain within the adult business any person who is not at least eighteen (18) years of age. If liquor is served at the adult business, patrons must be at least twenty-one (21) years of age. If liquor is served at the adult business, it shall be unlawful for any owner, operator, manager, partner, director, officer, shareholder with a ten percent (10%) or greater interest, employee, independent contractor, or other person in charge of any adult business to permit to enter or remain within the adult business any person who is not at least twenty-one (21) years of age. And said persons shall exercise reasonable care in ascertaining the true age of persons entering the adult business.

3. X-rated movies. The selling, renting and/or displaying of x-rated movies, videotapes, digital video disks (DVDs), compact disks (CDs) and laser disks shall be restricted to persons over eighteen (18) years of age. If an establishment that is not otherwise prohibited from providing access to the establishment to persons under eighteen (18) years of age sells, rents, or displays movies, videos, DVDs, CDs or laser disks that have been rated "X" or rated "NC-17" by the motion picture rating industry ("MPAA"), or which have not been submitted to the MPAA for a rating, and which consist of images that are distinguished or characterized by an emphasis on depicting or describing specified sexual activities or specified anatomical areas, said movies, videos, DVDs, CDs, and laser disks shall be located in a specific section of the establishment where these items are not visible to persons under the age of eighteen (18) and from which persons under the age of eighteen (18) shall be prohibited.

4. Inspections. Each owner, operator, manager, employee or independent contractor of an adult business or other person in charge of an adult business shall permit representatives of the police department, health department, fire department, community development department, business license division and other city departments, to inspect the adult business for the purpose of insuring compliance with the laws and operating standards applicable to adult businesses at any time it is occupied or open for business. Such inspections shall be conducted in a reasonable manner.

5.44.060 Transfer of adult business license.

A. A license holder shall not operate an adult business under the authority of an adult business license at any place other than the address of the adult business stated in the application for the license.

B. In the event of a transfer of ownership of the adult business, the new owner shall be fully informed of the requirements of this chapter, including the operational and development standards herein.

C. In the event of a transfer of the adult business or the adult business license, the transferee must provide the director with the following information within seven (7) days of the transfer:

1. If the transferee is an individual, the individual shall state his or her legal name, including any aliases, and address, and shall submit satisfactory written proof that he or she is at least eighteen (18) years of age.

2. If the transferee is a partnership, the partners shall state the partnership's complete name, address, the names of all partners, and whether the partnership is general or limited; and shall attach a copy of the partnership agreement, if any.

3. If the transferee is a corporation or L.L.C., the entity shall provide its complete name, the date of its incorporation or organization, evidence that it is in good standing under the laws of the State of California, the names and capacities of all officers and directors, managers or members having supervisory or managerial control over the facility, the name of the registered agent, and the address of the registered office for service of process.

5.44.070 Suspension or revocation of adult business license.

A. On determining that grounds for license suspension or revocation exist, the community development director ("the director") shall furnish written notice of the proposed suspension or revocation to the license holder. Such notice shall set forth the time and place of a hearing and the ground or grounds upon which the hearing is based, the pertinent municipal code sections, and a brief statement of the factual matters in support thereof. The notice shall be mailed, postage prepaid, addressed to the last known address of the license holder, or shall be delivered to the license holder personally, at least ten (10) days prior to the hearing date. Hearings pursuant to this section shall be noticed in accordance with California Government Code §§ 65091 and 65905 and conducted by the community development director or his/her designee (hereinafter "director"), which may include a third party hearing officer. Hearings pursuant to this section shall be conducted in accordance with procedures established by the director but, at a minimum, shall include the following:

1. All parties involved shall have the right to offer testimonial, documentary, and tangible evidence bearing upon the issues and may be represented by counsel.

2. The director shall not be bound by the formal rules of evidence.

3. Any hearing under this section may be continued for a reasonable time for the convenience of a party or a witness at the request of the license holder. Extensions of time or continuances sought by a license holder shall not be considered delay on the part of the city or constitute failure by the city to provide for prompt decisions on license suspensions or revocations.

4. The director's decision may be appealed in accordance with section 5.44.080.

B. A license may be suspended or revoked based on the following causes arising from the acts or omissions of the license holder, or an employee, independent contractor, partner, director, or manager of the license holder:

1. The building, structure, equipment, or location used by the adult business fails to comply with all provisions of these regulations and this section relating to adult businesses, including the adult business operational standards contained in section 5.44.050 above and the zoning requirements of sections 17.28.020 and 17.32.020, and chapter 17.102, and all other applicable building, fire, electrical, plumbing, health, and zoning requirements of the Benicia Municipal Code.

2. The license holder has failed to obtain or maintain all required city licenses.

3. The license holder has made any false, misleading, or fraudulent statement of material fact in the application for an adult business license.

4. The license is being used to conduct an activity different from that for which it was issued.

5. That an individual employed by, or performing in, the adult business (whether classified as an employee or independent contractor) has been convicted of two (2) or more sex-related offenses that occurred in or on the licensed premises within a twelve (12) month period and was employed by, or performing in, the adult business at the time the offenses were committed.

6. That the use for which the approval was granted has ceased to exist or has been suspended for six (6) months or more.

7. That the transferee/new owner of an adult business or adult business license failed to comply with the requirements of this chapter.

8. The license holder, partner, director, or manager has knowingly allowed or permitted, or has failed to make a reasonable effort to prevent the occurrence of any of the following on the premises of the adult business; or a licensee has been convicted of violating any of the following state laws on the premises of the adult business:

a. Any act of unlawful sexual intercourse, sodomy, oral copulation, or masturbation.

b. Use of the establishment as a place where unlawful solicitations for sexual intercourse, sodomy, oral copulation, or masturbation openly occur.

c. Any conduct constituting a criminal offense which requires registration under section 290 of the California Penal Code.

d. The occurrence of acts of lewdness, assignation, or prostitution, including any conduct constituting violations of sections 315, 316, 318 or subdivision (b) of the section 647b of the California Penal Code.

e. Any act constituting a violation of provisions in the California Penal Code relating to obscene matter or distribution of harmful matter to minors including, but not limited to sections 311 through 313.4.

f. Any act constituting a felony involving the sale, use, possession, or possession for sale of any controlled substance specified in sections 11054, 11055, 11056, 11057, or 11058 of the California Health & Safety Code.

g. An act or omission in violation of any of the requirements of this chapter if such act or omission is with the knowledge, authorization, or approval of the license holder or is as a result of the license holder's negligent supervision of the employees or independent contractors of the adult facility. This includes the allowance of activities that are or become a public nuisance which includes the disruptive conduct of business patrons whether on or immediately off the premises where such patrons

disturb the peace, obstruct traffic, damage property, engage in criminal conduct, violate the law and otherwise impair the free enjoyment of life and property.

C. After holding the hearing in accordance with the provisions of this section, if the director finds and determines that there are grounds for suspension or revocation, the director shall impose one of the following:

1. Suspension of the license for a specified period not to exceed six (6) months; or

2. Revocation of the license.

The director shall render a written decision that shall be hand delivered or overnight mailed to the license holder within five (5) days of the public hearing.

D. In the event a license is revoked pursuant to this section, another adult business license to operate an adult business shall not be granted to the licensee or an entity related to the licensee within twelve (12) months after the date of such revocation.

5.44.080 Appeal procedures.

A. After approval, denial, suspension or revocation of a license, any affected person may appeal the decision to the city council in writing within ten (10) days after the written decision.

B. Consideration of an appeal of the decision shall be at a public hearing, notice of which shall be given pursuant to California Government Code §§ 65091 and 65905 and which hearing shall occur within thirty (30) days of the filing or initiation of the appeal.

C. The city council action on the appeal of the decision shall be by a majority vote of the members present and upon the conclusion of the de novo public hearing, the city council shall grant or deny the appeal. The city council's decision shall be final and conclusive and shall be rendered in writing within four (4) city business days of the hearing, such written decision to be mailed to the party appealing the director's decision.

D. In reaching its decision, the city council shall not be bound by the formal rules of evidence.

E. Notwithstanding any provisions in this section regarding the occurrence of any action within a specified period of time, the applicant may request additional time beyond that provided for in this section or may request a continuance regarding any decision or consideration by the city of the pending appeal. Extensions of time sought by applicants shall not be considered delay on the part of the city or constitute failure by the city to provide for prompt decisions on applications.

F. Failure of the city council to render a decision to grant or deny an appeal of a license denial within the time frames established by this section shall be deemed to constitute an approval of the adult business license.

G. The time for a court challenge to a decision of the city council is governed by California Code of Civil Procedure § 1094.8.

H. Notice of the city council's decision and its findings shall include citation to California Code of Civil Procedure § 1094.8.

I. Any applicant or license holder whose license has been denied pursuant to this section shall be afforded prompt judicial review of that decision as provided by California Code of Civil Procedure § 1094.8.

5.44.090 Violations.

A. Any owner, operator, manager, employee or independent contractor of an adult business violating or permitting, counseling, or assisting the violation of any of these provisions regulating adult businesses shall be subject to any and all civil remedies, including license revocation. All remedies provided herein shall be cumulative and not exclusive. Any violation of these provisions shall constitute a separate violation for each and every day during which such violation is committed or continued.

B. In addition to the remedies set forth in section 5.44.090 A, any adult business that is operating in violation of these provisions regulating adult businesses is hereby declared to constitute a public nuisance and, as such, may be abated or enjoined from further operation.

C. The restrictions imposed pursuant to this section constitute a licensing process, and do not constitute a criminal offense. Notwithstanding any other provision of the Benicia Municipal Code, the city does not impose a criminal penalty for violations of the provisions of this ordinance related to sexual conduct or activities.

5.44.100 Regulations non-exclusive. The provisions of this chapter regulating adult businesses are not intended to be exclusive, and compliance therewith shall not excuse non-compliance with any other provisions of the Municipal Code and/or any other regulations pertaining to the operation of businesses as adopted by the city council of Benicia.

Section 3.

Chapter 5.45 (Adult Business Performer License) of Chapter 5 (Business Taxes, Licenses And Regulations) of the Benicia Municipal Code is added to read as follows:

CHAPTER 5.45

ADULT BUSINESS PERFORMER LICENSE

Sections:

5.45.010 Purpose.
5.45.020 Adult business performer license.
5.45.030 Investigation and action on adult business performer license.
5.45.040 Revocation/suspension/denial of adult business performer license.
5.45.050 Display of identification cards.
5.45.060 Adult business performer license non transferable.
5.45.070 Violations.
5.45.080 Regulations non exclusive.

5.45.010 Purpose. It is the purpose and intent of this chapter to provide for the licensing of adult business performers in order to promote the health, safety, and general welfare of the city. The goals of the performer licensing provisions are (1) to protect minors by requiring that all performers be over the age of eighteen (18) years; (2) to assure the correct identification of persons performing in adult businesses; (3) to

enable the city to deploy law enforcement resources effectively; and (4) to detect and discourage the involvement of crime in adult businesses by precluding the licensing of performers with certain sex related convictions within a prior time period. It is neither the intent nor the effect of these regulations to invade the privacy of performers or to impose limitations or restrictions on the content of any communicative material. Similarly, it is neither the intent nor the effect of these regulations to restrict or deny access by adults to communicative materials or to deny access by the distributors or exhibitors of adult businesses to their intended lawful market. Nothing in these regulations is intended to authorize, legalize, or permit the establishment, operation, or maintenance of any business, building, or use which violates any city ordinance or any statute of the State of California regarding public nuisances, unlawful or indecent exposure, sexual conduct, lewdness, obscene or harmful matter, or the exhibition or public display thereof.

The definitions contained in the chapter 5.44 of the Benicia Municipal Code, shall govern for purposes of these regulations.

5.45.020 Adult business performer license.

A. No performer shall be employed, hired, engaged, or otherwise retained in an adult business to participate in or give any live performance displaying "specified anatomical areas" or "specified sexual activities" without first having a valid adult business performer license issued by the city.

B. The chief of police or his/her designee shall grant, deny, and renew adult business performer licenses in accordance with these regulations.

C. License applicants shall file a written, signed, and verified application or renewal application on a form provided by the chief of police. Such application shall contain the following information:

1. The license applicant's legal name and any other names (including "stage names" and aliases) used by the applicant.

2. Principal place of residence.

3. Age, date and place of birth.

4. Height, weight, hair and eye color, and tattoo descriptions and locations.

5. Each present and/or proposed business address(es) and telephone number(s) of the establishments at which the applicant intends to work.

6. Driver's license or identification number and state of issuance.

7. Social security number.

8. Satisfactory written proof that the license applicant is a least eighteen (18) years of age.

9. The license applicant's fingerprints on a Livescan form provided by the Benicia police department and two color two by two inch photographs clearly showing the applicant's face. Any fees for the photographs and fingerprints shall be paid by the applicant. Fingerprints and photographs shall be taken within six (6) months of the date of application.

10. Whether the license applicant has pled guilty or nolo contendere or been convicted of an offense classified by this or any other state as a sex related offense and (a) less than two years have elapsed since the date of conviction or the date of release from confinement for the conviction to the date of application, whichever is the later date, if the conviction is a misdemeanor; or (b) less than five years have

elapsed since the date of conviction or the date of release from confinement for the conviction to the date of conviction, whichever is the later date, if the conviction is a felony; or (c) less than five years have elapsed since the date of the last conviction or the date of release from confinement for the conviction to the date of application, whichever is the later date, if the convictions are two or more misdemeanors or combination of misdemeanor offenses occurring within any twenty-four (24) month period.

11. If the application is made for the purpose of renewing a license, the license applicant shall attach a copy of the license to be renewed.

D. The information provided above in subsection C of this section which is personal, private, confidential or the disclosure of which could expose the applicant to the risk of harm will not be disclosed under the California Public Records Act or the open government ordinance. Such information includes, but is not limited to, the applicant's residence address, telephone number, date of birth, age, driver's license and social security number. The city council in adopting the application and licensing and/or permit system set forth herein has determined in accordance with Government Code § 6255 that the public interest in disclosure of the information set forth above is outweighed by the public interest in achieving compliance with this chapter by ensuring that the applicant's privacy, confidentiality or security interests are protected. The city clerk shall cause the same to be redacted from any copy of a completed application form made available to any member of the public, the above-mentioned information.

E. The completed application shall be accompanied by a non refundable application fee and an annual license fee. The amount of such fees shall be as set forth in the schedule of fees established by resolution from time to time by the city council.

F. The completeness of an application shall be determined within six (6) business hours by the chief of police. The chief of police or his/her designee must be available during normal working hours Monday through Friday to accept adult business performer applications. If the chief of police determines that the application is incomplete, the chief of police shall immediately inform the applicant of such fact and the reasons therefor, including any additional information necessary to render the application complete. Upon receipt of a completed adult business performer application and payment of the license fee specified in section E above, the chief of police shall immediately issue a temporary license which shall expire of its own accord ten (10) business days from the date of issuance and shall only be extended as provided in section 5.45.030.

G. This temporary adult business performer license shall authorize a performer to commence performance at an adult business establishment that possesses a valid adult business license authorized to provide live entertainment.

H. The fact that a license applicant possesses other types of state or city permits or licenses does not exempt the license applicant from the requirement of obtaining an adult business performer license.

5.45.030 Investigation and action on application for adult business performer license.

A. Upon submission of a completed application, payment of license fees, and issuance of a temporary adult business performer license pursuant to section 5.45.020, the chief of police shall immediately stamp the application "Received" and in

conjunction with city staff, including members of the police department, shall promptly investigate the information contained in the application to determine whether the license applicant should be issued an adult business performer license.

B. Investigation shall not be grounds for the city to unilaterally delay in reviewing a completed application. The chief of police's decision to grant or deny the adult business performer license shall be made within ten (10) business days from the date the temporary license was issued and in no case shall the decision to grant or deny the license application be made after the expiration of the temporary license. In the event the chief of police is unable to complete the investigation within ten (10) business days, he shall promptly notify the license applicant and extend the temporary license for up to ten (10) additional business days. In no case shall the investigation exceed twenty (20) days, nor shall the decision to grant or deny the license application be made after the expiration of the temporary license.

C. The chief of police shall render a written decision to grant or deny the license within the foregoing ten (10) day time period set forth in section 5.45.030 B. Said decision shall be mailed first class postage prepaid or hand delivered to the applicant, within the foregoing ten (10) day period or twenty (20) day period if extended pursuant to section 5.45.030 B, at the address provided by the applicant in the application.

D. The chief of police shall notify the applicant as follows:

1. The chief of police shall write or stamp "Granted" or "Denied" on the application and date and sign such notation.

2. If the application is denied, the chief of police shall attach to the application a statement of the reasons for the denial. Such notice shall also provide that the license applicant may appeal the denial to the city manager. The city manager or a designated hearing officer shall conduct a hearing as described in section 5.45.040.

3. If the application is granted, the chief of police shall attach to the application an adult business performer license.

4. The application, as acted upon, and the license, if any, shall be placed in the United States mail, first class postage prepaid, or hand delivered, addressed to the license applicant at the residence address stated in the application in accordance with the time frames established herein.

E. The chief of police shall grant the application and issue the license unless the application is denied based on one of the grounds set forth in subsection F of this section.

F. The chief of police shall deny the application based on any of the following grounds:

1. The license applicant has made false, misleading, or fraudulent statement of material fact in the application for an adult business performer license.

2. The license applicant is under eighteen (18) years of age.

3. The adult business performer license is to be used for performing in a business prohibited by laws of the state or city or a business that does not have a valid adult business license.

4. The license applicant, has pled guilty, nolo contendere or been convicted of an offense classified by this or any other state as a sex related offense and (a) less than two years have elapsed since the date of conviction or the date of release from confinement for the conviction to the date of application, whichever is the later

date, if the conviction is a misdemeanor, or (b) less than five years have elapsed since the date of conviction or the date of release from confinement for the conviction to the date of application, whichever is the later date, if the conviction is a felony; or (c) less than five years have elapsed since the date of the last conviction or the date of release from confinement for the conviction to the date of application, whichever is the later date, if the convictions are two or more misdemeanors or combination of misdemeanor offenses occurring within any twenty-four (24) month period.

G. Failure of the chief of police to render a decision on the license within the time frames established by this section shall be deemed to constitute an approval.

H. Each adult business performer license, other than the temporary license described in section 5.45.020 F, shall expire one (1) year from the date of issuance and may be renewed only by filing with the chief of police a written request for renewal, accompanied by the annual license fee and a copy of the license to be renewed. If said application conforms to the previously approved application and there has been no change with respect to the license holder being convicted of any crime classified by this or any other state as a sex related offense, the chief or police or his/her designee shall renew the license for one (1) year. Any plea to or conviction of a sex related offense requires the renewal application to be set for hearing before the chief of police in accordance with the provisions of this section. The request for renewal shall be made at least thirty (30) days before the expiration date of the license. Applications for renewal shall be acted upon as provided herein for action upon applications for license. The chief of police's denial of a renewal application is subject to the hearing provisions of section 5.45.040.

5.45.040 Revocation/suspension/denial of adult business performer license.

A. On determining that grounds for denial of a license, license revocation or suspension exist, the chief of police or his designee shall furnish written notice of the proposed action to the applicant/license holder. Such notice shall set forth the time and place of a hearing before the city manager or a designated hearing officer and the ground or grounds upon which the hearing is based, the pertinent Benicia Municipal Code sections, and a brief statement of the factual matters in support thereof. The notice shall be mailed, postage prepaid, addressed to the last known address of the applicant/license holder, or shall be delivered to the license holder personally, at least ten (10) days prior to the hearing date.

B. On determining that grounds for denial of a license exist, the chief of police shall furnish written notice of the proposed action to the applicant/license holder. The decision of the chief of police shall be appealable to the city manager by filing a written request for a hearing with the city clerk within fifteen (15) days following the day of mailing of the chief of police 's decision and paying the fee for appeals provided under this code. All such appeals shall be filed with the city clerk and shall be public records. The city manager shall issue a notice which shall set forth the time and place of a hearing before the city manager or a designated hearing officer which is within thirty (30) days from the date the appeal was filed and the ground or grounds upon which the hearing is based, the pertinent Benicia Municipal Code sections, and a brief statement of the factual matters in support thereof. The notice shall be mailed, postage prepaid, addressed to the last known address of the applicant/license holder, or shall be delivered to the license holder personally, at least ten (10) days prior to the hearing date.

C. The applicant shall have the right to offer testimonial, documentary, and tangible evidence bearing upon the issues and may be represented by counsel. The city manager or designated hearing officer shall not be bound by the formal rules of evidence. Any hearing under this section may be continued for a reasonable time for the convenience of a party or a witness at the request of the licensee. Extensions of time or continuances sought by a licensee/appellant shall not be considered delay on the part of the city or constitute failure by the city to provide for prompt decisions on license suspensions or revocations.

D. A license may be revoked, based on any of the following causes arising from the acts or omissions of the license holder:

1. The licensee has made any false, misleading, or fraudulent statement of material fact in the application for a performer license.

2. The licensee has pled guilty, nolo contendere or been convicted of an offense classified by this or any other state as a sex related offense and (a) less than two years have elapsed since the date of conviction or the date of release from confinement for the conviction to the date of application, whichever is the later date, if the conviction is a misdemeanor, or (b) less than five years have elapsed since the date of conviction or the date of release from confinement for the conviction to the date of application, whichever is the later date, if the conviction is a felony; or (c) less than five years have elapsed since the date of the last conviction or the date of release from confinement for the conviction to the date of application, whichever is the later date, if the convictions are two or more misdemeanors or combination of misdemeanor offenses occurring within any twenty-four (24) month period.

3. Failure to comply with the operating standards of chapter 5.44 or the requirements of this chapter.

E. After holding the hearing in accordance with the provisions of this section, if the city manager or designated hearing officer finds and determines that there are grounds for revocation or suspension, the city manager or designated hearing officer shall revoke or suspend the license. After holding the hearing in accordance with the provisions of this section on the denial of a license, the city manager or designated hearing officer shall decide to sustain the decision, modify the decision or order the decision stricken and issue such order as the city manager or designated hearing officer finds is supported by the entire record. The city manager or designated hearing officer shall render a written decision that shall be hand delivered or overnight mailed to the applicant/license holder within four (4) working days of the hearing. The city manager or designated hearing officer's failure to render such a decision within this time frame shall constitute an approval or reinstatement of the license.

F. In the event a license is revoked pursuant to this section, another adult business performer license shall not be granted to the licensee within twelve (12) months after the date of such revocation.

G. The decision of the city manager or designated hearing officer shall be final.

H. The time for a court challenge to a decision of the city manager or designated hearing officer is governed by California Code of Civil Procedure § 1094.8.

I. Notice of the city manager's or designated hearing officer's decision and his/her findings shall include citation to California Code of Civil Procedure § 1094.8.

J. Any applicant or license holder whose license has been denied, suspended, or revoked, pursuant to this section shall be afforded prompt judicial review of that decision as provided by California Code of Civil Procedure § 1094.8.

5.45.050 Display of license identification cards. The chief of police shall provide each adult business performer required to have a license pursuant to this chapter with an identification card containing the name, address, photograph, and license number of such performer. Every performer shall have such card available for inspection at all times during which he or she is on the premises of the adult business at which he or she performs.

5.45.060 Adult business performer license non transferable. No adult business performer license may be sold, transferred, or assigned by any licensee or by operation of law, to any other person, group, partnership, corporation, or any other entity. Any such sale, transfer, or assignment, or attempted sale, transfer, or assignment shall be deemed to constitute a voluntary surrender of the adult business performer license, and the license thereafter shall be null and void.

5.45.070 Violations.

A. Any licensee violating or causing the violation of any of these provisions regulating adult business performer licenses shall be subject to license revocation/suspension pursuant to section 5.45.040 above, a fine of not more than one thousand dollars ($1,000.00) pursuant to Government Code §§ 36900 and 36901, and any and all other civil remedies. All remedies provided herein shall be cumulative and not exclusive. Any violation of these provisions shall constitute a separate violation for each and every day during which such violation is committed or continued.

B. In addition to the remedies set forth in section 5.45.070 A, any violation of any of these provisions regulating adult business performer licenses is hereby declared to constitute a public nuisance and may be abated or enjoined.

C. The restrictions imposed pursuant to this section are part of a regulatory licensing process, and do not constitute a criminal offense. Notwithstanding any other provision of the Benicia Municipal Code, the city does not impose a criminal penalty for violations of the provisions of this ordinance related to sexual conduct or activities.

5.45.080 Regulations non exclusive. The provisions of this chapter regulating adult business performer licenses are not intended to be exclusive, and compliance therewith shall not excuse non compliance with any other regulations pertaining to the licensing provisions as adopted by the city council of Benicia.

Section 4.

Section 17.28.020 (CC, CO, CG, and CW districts – Land use regulations) is amended as follows:

Adult Business classification in the table is changed from "L3" to "P", "L3" is deleted and note (C) is amended as follows:

CC, CO, CG, and CW Districts: Land Use Regulations

P – Permitted
U – Use Permit
L – Limited (See "Additional Use Regulations")
– – Not Permitted

	CC	CO	CG	CW	Additional Regulations
Adult Businesses	–	–	P	–	(C)

(C) An adult business offering live entertainment shall be subject to the requirements of BMC 5.44 and 17.70.102.

Section 5.

Section 17.32.020 (IL, IG, IW and IP districts – Land use regulations) is amended to add Adult Businesses as follows:

Adult Business classification is added to the table and note (C) is amended as follows:

IL, IG, IW, and IP Districts: Land Use Regulations

P – Permitted
U – Use Permit
L – Limited (See "Additional Use Regulations")
– – Not Permitted

	IL	IG	IW	IP	Additional Regulations
Adult Businesses	P	P	–	P	(C)

(C) An adult business offering live entertainment shall be subject to the requirements of BMC 5.44 and 17.70.102.

Section 6.

A new Chapter 17.102 (Adult Businesses: Zoning) of Title 17 (Zoning) of the Benicia Municipal Code is added to read as follows:

CHAPTER 17.102

ADULT BUSINESSES: ZONING

Sections:

17.102.010 Purpose.
17.102.020 Definitions.
17.102.030 Location of adult businesses.
17.102.040 Violations.

17.102.010 Purpose. It is the purpose and intent of this chapter of the Benicia Municipal Code to regulate the operations of adult businesses, which tend to have judicially recognized adverse secondary effects on the community, including, but not limited to, increases in crime in the vicinity of adult businesses; degradation of the city's

commercial and industrial base; increases in vacancies in residential areas in the vicinity of adult businesses; interference with residential property owners' enjoyment of their properties when such properties are located in the vicinity of adult businesses as a result of increases in crime, litter, noise, and vandalism; and the deterioration of neighborhoods. Special regulation of these businesses is necessary to prevent these adverse secondary effects and the blighting or degradation of the neighborhoods in the vicinity of adult businesses while at the same time protecting the First Amendment rights of those individuals who desire to own, operate or patronize adult businesses.

17.102.020 Definitions. The words and phrases included in this chapter shall employ the Definitions found in chapter 5.44 of Title 5 of the Benicia Municipal Code, entitled "Adult business licenses and operating regulations" unless it is clearly apparent from the context that another meaning is intended.

In addition to those definitions set forth in chapter 5.44 of Title 5, the following definitions shall apply to this chapter:

A. "Park" shall mean a city park so designated on the General Plan or zoning map of Benicia.

B. "School" shall mean 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 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.

17.102.030 Location of adult businesses.

A. Adult businesses, as defined in chapter 5.44 of this code, shall be:

1. Located exclusively in the C-G, Community General zone; IL, Limited Industrial zone, IG, General Industrial zone, and IP, Industrial Park Districts zone.

2. Distanced three hundred feet (300') from any residentially zoned property which includes the City's RS Single-Family Residential; RM Medium Density Residential; and RH High Density Residential. The distance between the adult use and the residentially zoned property shall be measured from the closest exterior wall of the adult use and the nearest property line included within the residential zone, along a straight line extended between the two (2) points, without regard to intervening structures.

3. Distanced three hundred feet (300') from any park or school. The distance between the adult use and the park or school shall be measured from the closest exterior wall of the adult use and the nearest property line included within the park or school, along a straight line extended between the two (2) points, without regard to intervening structures

B. Any person violating or causing the violation of any of these locational provisions regulating adult business shall be subject to the remedies of section 17.102.040 of this chapter.

17.102.040 Violations.

A. Any owner, operator, manager, employee or independent contractor of an adult business violating or permitting, counseling, or assisting the violation of any of these provisions regulating adult businesses shall be subject to any and all civil remedies, including license revocation. All remedies provided herein shall be cumulative and not exclusive. Any violation of these provisions shall constitute a separate violation for each and every day during which such violation is committed or continued.

B. In addition to the remedies set forth in section A, any adult business that is operating in violation of these provisions regulating adult businesses is hereby declared to constitute a public nuisance and, as such, may be abated or enjoined from further operation.

Section 7.

California Environmental Quality Act ("CEQA") findings. The city council, acting as lead agency, has reviewed and considered the information contained in the Initial Study and the Negative Declaration prepared with respect to this ordinance together with all public comment received during the public review process. The city council has, as a result of its consideration, and the evidence presented at the hearings on this matter, determined that, as required pursuant to the California Environmental Quality Act ("CEQA") and the state and city CEQA Guidelines, a Negative Declaration adequately addresses the potential environmental impacts of this ordinance. Based upon the whole record before it, the city council finds that due to the provisions of this ordinance, which establish terms and conditions pursuant to which an adult business can be located, open and operate within the city, there is no substantial evidence from which it can be fairly argued that the project will have a significant effect on the environment and that the Negative Declaration reflects the city's independent judgment and analysis. The city council hereby adopts the Negative Declaration and directs that the Notice of Determination be prepared and filed with the County Clerk/Recorder of Solano County in the manner required by law. The record of proceedings upon which this decision is based is under the custody of the Benicia city clerk.

Section 8.

Severability. If any section, subsection, paragraph, sentence, clause, or phrase of this ordinance, or any part thereof is held for any reason to be unconstitutional, invalid, or ineffective by any court of competent jurisdiction, the remaining sections, subsections, paragraphs, sentences, clauses, and phrases shall not be affected thereby. The city council hereby declares that it would have adopted these sections and the ordinance to which they are a part regardless of the fact that one or more sections, subsections, paragraphs, sentences, clauses, or phrases may be determined to be unconstitutional, invalid, or ineffective.

Section 9.

Effective Date. This ordinance shall be effective thirty (30) days after its adoption, and the city clerk shall certify the adoption of this ordinance.

DRAFT
10/6/08

Section 10.

Publication. The city clerk shall certify to the passage of this ordinance and cause the same to be published in the manner prescribed by law.

*****

On motion of Council Member , seconded by Council Member , the foregoing ordinance was introduced at a regular meeting of the City Council on the ____ day of _____, 2008, and adopted at a regular meeting of the Council held on the ____ day of _____, 2008 by the following vote:

Ayes:

Noes:

Absent:

_____
Elizabeth Patterson, Mayor

ATTEST:

_____
Lisa Wolfe, City Clerk

1010433.3
Rev. 10/30/08

NEGATIVE DECLARATION

THE CITY OF BENICIA CALIFORNIA

INITIAL STUDY

and

NEGATIVE DECLARATION

Project Title:	Adult Business Ordinance
Lead Agency Name and Address:	City of Benicia 250 East L Street Benicia, CA 94510
Project Location:	Citywide
Project Sponsor's Name and Address:	City of Benicia 250 East L Street Benicia, CA 9451
General Plan Designation(s):	Citywide – Applies to all General Plan designations
Zoning:	Citywide – Applies to Commercial General, General Industrial, Limited Industrial and Industrial Park Districts
Assessor's Parcel Nos.	Citywide – Applies to all parcels in the City
Contact Person:	Damon Golubics, Principal Planner
Phone Number:	707-746-4280
Date Prepared:	September 2008

INITIAL STUDY

PROJECT DESCRIPTION

The proposed project is an ordinance that would amend the City of Benicia Municipal Code by adding, repealing and amending various code sections relating to adult businesses. The City's current adult business regulations have not kept pace with the changes that have occurred in the adult entertainment industry. The major changes proposed in this ordinance will regulate adult businesses to protect public health, safety and welfare, while still providing constitutional protections to such businesses. The intent of the regulations is to reduce or preclude undesirable, secondary effects including, but not limited to increased crime, blighting influences in the community, decrease in property values, and the spread of sexually transmitted diseases. The ordinance would allow adult businesses in the limited industrial, general industrial, industrial park and general commercial districts. The proposed ordinance is attached to this environmental initial study.

This ordinance will require review and approval by the City of Benicia Planning Commission and City Council.

EnVironmental Setting and Surrounding Land Uses

Benicia is approximately 35 northeast of San Francisco and 57 miles southwest of Sacramento. It lies on the north shore of the Carquinez Strait, where the combined flow of the Sacramento and San Joaquin rivers have cut a deep gorge through the coast range.

The city is made up primarily of rolling hills, rising up to an elevation of 1,160 feet. On the west boundary, Sulphur Springs Creek Mountain reaches approximately 950 feet. The rolling hills reach almost to the shoreline; very little of Benicia is flat. On the southern margins of the city, the land slopes gently down to the Carquinez Strait. Most of the older residential areas and Downtown are here. The eastern city limits are bordered by the marshlands of the Suisun Bay. Relatively flat areas adjacent to the marshes provide sites for industry. At the southwestern boundary of the city, another flat marshy area has been preserved as the Benicia State Recreation Area.

The proposed ordinance would apply to adult businesses within the City of Benicia. Adult businesses are currently only allowed in CG – General Commercial zones of the City with a use permit, subject to the requirements of BMC 5.44.010, et seq. Land uses in the CG zone include but are not limited to: retail, restaurants, service commercial type uses, and offices, business and professional.

OTHER PUBLIC AGENCIES WHOSE APPROVAL IS REQUIRED (E.G, PERMITS, FINANCING APPROVAL, OR PARTICIPATION AGREEMENT.)

Discretionary approval of public agencies other than the City of Benicia is not required for the proposed project.

PURPOSE OF THIS INITIAL STUDY

This Initial Study has been prepared consistent with CEQA Guidelines Section 15063, to determine if the project, as proposed, may have a significant effect upon the environment. Based upon the findings contained within this report, the Initial Study will be used in support of the preparation of a negative declaration or mitigated negative declaration or to determine if an environmental impact study is required.

INITIAL STUDY CHECK LIST

ENVIRONMENTAL FACTORS POTENTIALLY AFFECTED:

The environmental factors checked below would be potentially affected by this project, as indicated by the checklist and corresponding discussion on the following pages.

- ☐ Aesthetics
- ☐ Biological Resources
- ☐ Hazards & Hazardous Materials
- ☐ Mineral Resources
- ☐ Public Services
- ☐ Utilities/Service Systems
- ☐ Agricultural Resources
- ☐ Cultural Resources
- ☐ Hydrology/Water Quality
- ☐ Noise
- ☐ Recreation
- ☐ Mandatory Findings of Significance
- ☐ Air Quality
- ☐ Geology/Soils
- ☐ Land Use/Planning
- ☐ Population/Housing
- ☐ Transportation/ Traffic

EVALUATION OF ENVIRONMENTAL IMPACTS

1) A brief explanation is required for all answers except "No Impact" answers that are adequately supported by the information sources a lead agency cites in the parentheses following each question. A "No Impact" answer is adequately supported if the referenced information sources show that the impact simply does not apply to projects like the one involved (e.g., the project falls outside a fault rupture zone). A "No Impact" answer should be explained where it is based on project-specific factors as well as general standards (e.g., the project will not expose sensitive receptors to pollutants, based on project-specific screening analysis).

2) All answers must take into account the whole action involved, including offsite as well as onsite, cumulative as well as project-level, indirect as well as direct, and construction as well as operational impacts.

3) Once the lead agency has determined that a particular physical impact may occur, then the checklist answers must indicate whether the impact is potentially significant, less than significant with mitigation, or less than significant. "Potentially Significant Impact" is appropriate if there is substantial evidence that an effect may be significant. If there are one or more "Potentially Significant Impact" entries when the determination is made, an EIR is required.

4) "Negative Declaration: Potentially Significant Unless Mitigation Incorporated" applies where the incorporation of mitigation measures has reduced an effect from "Potentially Significant Impact" to a "Less Than Significant Impact." The lead agency

must describe the mitigation measures, and briefly explain how they reduce the effect to a less than significant level mitigation measures from Section XVII, "Earlier Analyses," may be cross-referenced.

5) Earlier analyses may be used where, pursuant to the tiering, program EIR, or other CEQA process, an effect has been adequately analyzed in an earlier EIR or negative declaration. Section 15063(c)(3)(D). In this case, a brief discussion should identify the following:

   a) Earlier Analysis Used. Identify and state where they are available for review.

   b) Impacts Adequately Addressed. Identify which effects from the above checklist were within the scope of and adequately analyzed in an earlier document pursuant to applicable legal standards, and state whether such effects were addressed by mitigation measures based on the earlier analysis.

   c) Mitigation Measures. For effects that are "Less than Significant with Mitigation Measures Incorporated," describe the mitigation measures, which were incorporated or refined from the earlier document and the extent to which they address site-specific conditions for the project.

6) Lead agencies are encouraged to incorporate into the checklist references to information sources for potential impacts (e.g., general plans, zoning ordinances). Reference to a previously prepared or outside document should, where appropriate, include a reference to the page or pages where the statement is substantiated.

7) Supporting Information Sources: A source list should be attached, and other sources used or individuals contacted should be cited in the discussion.

8) The explanation of each issue should identify:

   a) The significance criteria or threshold, if any, used to evaluate each question; and

   b) The mitigation measure identified, if any, to reduce the impacts to a less than significance.

	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
I. AESTHETICS. Would the project:				
a) Have a substantial adverse effect on a scenic vista?	☐	☐	☐	☒
b) Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway?	☐	☐	☐	☒
c) Substantially degrade the existing visual character or quality of the site and its surroundings?	☐	☐	☐	☒
d) Create a new source of substantial light or glare that would adversely affect day or nighttime views in the area?	☐	☐	☐	☒

a) The proposed modifications to the City's Adult Business regulations generally apply to the interior operations of adult businesses and no physical changes in the environment are expected to result from the proposed ordinance. Therefore, the proposed project would have no impact on scenic vistas.

b) There are no designated scenic highways through the City of Benicia. The proposed modifications to the City's Adult Business regulations generally apply to the interior operations of adult businesses and no physical changes in the environment are expected to result from the proposed ordinance. Therefore, the proposed project would have no impact on scenic resources, including scenic resources within a state scenic highway.

c) The proposed modifications to the City's Adult Business regulations generally apply to the interior operations of adult businesses and no physical changes in the environment are expected to result from the proposed ordinance. Adult businesses will have to comply with all ordinances and requirements regarding the exterior façade including signage, parking areas, landscaping, etc. There would be no adverse impacts on aesthetics as the proposed project would not substantially degrade the existing visual character or quality of the site and it's surrounding.

d) The proposed modifications to the City's Adult Business regulations generally apply to the interior operations of adult businesses and no physical changes in the environment are expected to result from the proposed ordinance. Therefore, the proposed project would not create a new source of substantial light or glare that would adversely affect day or nighttime views in the area.

	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
II. AGRICULTURE RESOURCES. In determining whether impacts to agricultural resources are significant environmental effects, lead agencies may refer to the California Agricultural Land Evaluation and Site Assessment Model (1997), prepared by the California Department of Conservation as an optional model to use in assessing impacts on agriculture and farmland. Would the project:				
a) Convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland), as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non-agricultural use?	☐	☐	☐	☒
b) Conflict with existing zoning for agricultural use, or a Williamson Act contract?	☐	☐	☐	☒
c) Involve other changes in the existing environment, which, due to their location or nature, could result in conversion of Farmland to non-agricultural use?	☐	☐	☐	☒

a) The Farmland Mapping and Monitoring Program of the California Resources Agency has not designated the City or project area as Prime Farmland, Unique Farmland, or Farmland of Statewide Importance. Therefore no impact to farmland would occur.

b) No parcel within the incorporated city limits of Benicia is covered by a Williamson Act contract. No impacts to Williamson Act Contracts would occur because of proposed modifications to the City's Adult Business regulations.

c) Implementation of the proposed Adult Business regulations would not result in conversion of farmland to non-agricultural uses. No Impacts to conversion of agricultural land would occur in adopting new Adult Business regulations.

	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
III. AIR QUALITY. Where available, the significant impact criteria established by the applicable air quality management or air pollution control district may be relied upon to make the following determinations. Would the project:				
a) Conflict with or obstruct implementation of the applicable air quality plan?	☐	☐	☐	☒
b) Violate any air quality standard or contribute substantially to an existing or projected air quality violation?	☐	☐	☐	☒
c) Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is in non-attainment under an applicable federal or state ambient air quality standard (including releasing emissions that exceed quantitative thresholds for ozone precursors)?	☐	☐	☐	☒
d) Result in significant construction-related air quality impacts?	☐	☐	☐	☒
e) Expose sensitive receptors to substantial pollutant concentrations?	☐	☐	☐	☒
f) Create objectionable odors affecting a substantial number of people?	☐	☐	☐	☒

a) The City of Benicia is located in the San Francisco Bay air basin and is within the jurisdiction of the Bay Area Air Quality Management District (BAAQMD). The 2004 Ozone Attainment Plan and the 2000 Bay Area Clean Air Plan contain District-wide control measures to reduce ozone precursor and carbon monoxide emissions.

The BAAQMD monitoring site in Benicia monitors SO2 and gross hydrocarbons. The Inspection Program of the Compliance and Enforcement Division of BAAQMD routinely conducts inspections and audits of potential polluting sites to ensure compliance with applicable federal, State, and BAAQMD regulations.

The proposed modifications to the City's Adult Business regulations generally apply to the interior operations of adult businesses and no physical changes in the environment are expected to result from the proposed ordinance. Therefore, the proposed project would not conflict with or obstruct implementation of any applicable air quality plan.

b) There are no projected vehicle trips associated with the proposed Adult Business regulations which would result in the emission of ozone precursor and carbon monoxide. Therefore, the proposed modifications to the City's Adult Business regulations trips would not generate any increase in ozone, carbon monoxide, or other pollutants associated

with fuel combustion, or obstruct implementation of the Ozone Attainment Plan or the Clean Air Plan since the new Adult Business ordinance applies to the interior operations of adult businesses and no physical changes in the environment are expected to result from the proposed ordinance. As such, the proposed ordinance would not conflict with or obstruct compliance with applicable federal, State, and BAAQMD regulations.

In short, the proposed modifications to the City's Adult Business regulations generally apply to the interior operations of adult businesses and no physical changes in the environment are expected to result from the proposed ordinance. Therefore, the proposed project would not violate any air quality standard or contribute substantially to an existing or projected air quality violation.

c) As of August 2005, the San Francisco Bay air basin is under non-attainment status for ozone and particulate matter – 10 micron (PM10) per State standards. The air basin is preliminarily under nonattainment status for particulate matter – fine (PM2.5) per State standards. The air basin is under marginal attainment status for ozone at the federal level. Therefore, implementation of the proposed project would not generate any additional amounts of ozone that would substantially contribute to the air basin's existing nonattainment status for ozone.

The proposed modifications to the City's Adult Business regulations generally apply to the interior operations of adult businesses and no physical changes in the environment are expected to result from the proposed ordinance. As such, the proposed ordinance would not conflict with or obstruct compliance with applicable federal, State, and BAAQMD regulations. Therefore, the proposed project would not conflict with or obstruct implementation of the applicable federal, State, and BAAQMD air quality regulations.

The proposed modifications to the City's Adult Business regulations generally apply to the interior operations of adult businesses and no physical changes in the environment are expected to result from the proposed ordinance. Therefore, the proposed project would not result in a cumulatively considerable net increase of any criteria pollutant for which the project region is in non-attainment under an applicable federal or state ambient air quality standard including releasing emissions that exceed quantitative thresholds for ozone precursors.

d) The proposed modifications to the City's Adult Business regulations generally apply to the interior operations of adult businesses and no physical changes in the environment are expected to result from the proposed ordinance. There are no proposed construction activities associated with the proposed modifications to the City's Adult Business Ordinance, thus there would be no generation of emissions and dust that would contribute to the air basin's nonattainment status for PM10. Therefore, the proposed project would not result in significant construction-related air quality impacts.

e) Sensitive receptors are facilities or land uses that include members of the population that are particularly sensitive to the effects of air pollutants, such as children, the elderly, and people with illnesses. The proposed modifications to the City's Adult Business regulations apply to the interior operations of adult businesses and no physical changes in the environment are expected to result from the proposed ordinance. As such, the proposed ordinance would not conflict with or obstruct compliance with applicable federal, State, and BAAQMD regulations. Therefore, the proposed project would not conflict with or obstruct implementation of the applicable federal, State, and BAAQMD air quality

regulations and implementation of the proposed project would not expose sensitive receptors to substantial pollutant concentrations.

f) Implementation of new Adult Business regulations would not generate objectionable odors. The proposed modifications to the City's Adult Business regulations generally apply to the interior operations of adult businesses and no physical changes in the environment are expected to result from the proposed ordinance. As such, the proposed ordinance would not create objectionable odors affecting a substantial number of people or subject persons to objection-able odors.

	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
IV. BIOLOGICAL RESOURCES. Would the project:				
a) Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?	☐	☐	☐	☒
b) Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?	☐	☐	☐	☒
c) Have a substantial adverse effect on federally protected wetlands, as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal wetlands, etc.), through direct removal, filling, hydrological interruption or other means?	☐	☐	☐	☒
d) Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?	☐	☐	☐	☒
e) Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?	☐	☐	☐	☒
f) Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional or state habitat conservation plan?	☐	☐	☐	☒

a-f) The proposed modifications to the City's Adult Business regulations generally apply to the interior operations of adult businesses and no physical changes in the environment are expected to result from the proposed ordinance. As such, the proposed ordinance would not affect special status species or their habitat; riparian habitat or other sensitive

natural community; wetlands; wildlife movement, wildlife corridors, or wildlife nursery sites; local policies or ordinances protecting biological resources, including the City's Tree Protection Ordinance; or habitat/natural community conservations plans. Therefore, the proposed project would have no impact on biological resources.

	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
V. CULTURAL RESOURCES. Would the project:				
a) Cause a substantial adverse change in the significance of a historical resource as defined in § 15064.5?	☐	☐	☐	☒
b) Cause a substantial adverse change in the significance of an archaeological resource pursuant to § 15064.5?	☐	☐	☐	☒
c) Directly or indirectly destroy a unique paleontological resource or site or unique geological feature?	☐	☐	☐	☒
d) Disturb any human remains, including those interred outside of formal cemeteries?	☐	☐	☐	☒

a-d) The proposed modifications to the City's Adult Business regulations generally apply to the interior operations of adult businesses and no physical changes in the environment are expected to result from the proposed ordinance. As such, the proposed ordinance would have no impact on historic resources, archeological resources, paleontological resources, unique geological features or human remains.

	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
VI. GEOLOGY AND SOILS. Would the project:				
a) Expose people or structures to potential substantial adverse effects, including the risk of loss, injury or death, involving:				
i) Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault? Refer to Division of Mines and Geology Special Publication 42.	☐	☐	☐	☒
ii) Strong seismic ground shaking?	☐	☐	☐	☒
iii) Seismic-related ground failure, including liquefaction?	☐	☐	☐	☒
iv) Landslides?	☐	☐	☐	☒
b) Result in substantial soil erosion or the loss of topsoil?	☐	☐	☐	☒
c) Be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction or collapse?	☐	☐	☐	☒
d) Be located on expansive soil, as defined in Table 18-1-B of the Uniform Building Code (1994), creating substantial risks to life or property?	☐	☐	☐	☒
e) Have soils incapable of adequately supporting the use of septic tanks or alternative wastewater disposal systems where sewers are not available for the disposal of wastewater?	☐	☐	☐	☒

a, i – a, iv) The proposed modifications to the City's Adult Business regulations generally apply to the interior operations of adult businesses. No physical changes in the environment are expected to result from the proposed ordinance and the proposed ordinance would not affect the City's building standards. Therefore, the proposed project would cause no impacts related to rapture of a known earthquake fault, strong seismic ground shaking, seismic-related ground failure, liquefaction, or landslides.

b) No construction or physical changes to the environment are proposed or anticipated. As such, approval of the adult business ordinance revisions would not result in soil erosion or loss of topsoil.

c) No construction or physical changes to the environment are proposed or anticipated. As such, approval of the adult business ordinance revisions would not cause on- or off-site landslides, lateral spreading, subsidence, liquefaction or collapse. Therefore, the proposed project would have no impacts related to unstable geologic units or soils.

d) No construction or physical changes to the environment are proposed or anticipated. As such, approval of the adult business ordinance revisions would not involve any grading or construction activities involving expansive soils, as defined in Table 18-1-B of the Uniform Building Code (1994). Therefore, the proposed project would cause no impacts to sites in the city with expansive soils, thus creating substantial risks to life or property.

e) The City is served by a sewer system and all development projects are required to connect to this system. Therefore, soil suitability for septic tanks or alternative wastewater disposal systems is not applicable in this case, and the proposed project would have no associated impacts.

	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
VII. HAZARDS AND HAZARDOUS MATERIALS. Would the project:				
a) Create a significant hazard to the public or the environment through the routine transport, use or disposal of hazardous materials?	☐	☐	☐	☒
b) Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment?	☐	☐	☐	☒
c) Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances or waste within one-quarter mile of an existing or proposed school?	☐	☐	☐	☒
d) Be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code §65962.5 and, as a result, would it create a significant hazard to the public or the environment?	☐	☐	☐	☒
e) For a project located within an airport land use plan area or, where such a plan has not been adopted, within two miles of a public airport or a public use airport, would the project result in a safety hazard for people residing or working in the project area?	☐	☐	☐	☒

	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
f) For a project within the vicinity of a private airstrip, would the project result in a safety hazard for people residing or working in the project area?	☐	☐	☐	☒
g) Impair implementation of, or physically interfere with, an adopted emergency response plan or emergency evacuation plan?	☐	☐	☐	☒
h) Expose people or structures to a significant risk of loss, injury or death involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands?	☐	☐	☐	☒

a - d) The proposed modifications to the City's Adult Business regulations generally apply to the interior operations of adult businesses. No physical changes in the environment are expected to result from the proposed ordinance and the proposed ordinance would not affect any local, state or federal regulations governing hazardous materials. Therefore, the proposed ordinance would cause no impacts related to the transport, use, or disposal of hazardous materials; upset or accident conditions involving the release of hazardous materials; the emission or handling of hazardous materials in the vicinity of schools; or hazardous materials sites complied pursuant to Government Code Section 65962.5;

e - f) The proposed modifications to the City's Adult Business regulations generally apply to the interior operations of adult businesses and no physical changes in the environment are expected to result from the proposed ordinance. Therefore, the proposed ordinance revisions would cause no hazards related to placing people or structures within the vicinity of an airport, airport land use plan, or private air strip.

g) The proposed modifications to the City's Adult Business regulations generally apply to the interior operations of adult businesses and no physical changes in the environment are expected to result from the proposed ordinance. Therefore, the proposed ordinance revisions would not impair implementation of any emergency response or evacuation plans.

h) The proposed modifications to the City's Adult Business regulations generally apply to the interior operations of adult businesses and no physical changes in the environment are expected to result from the proposed ordinance. Therefore, the proposed ordinance revisions would not expose people or structures to a significant risk of loss, injury or death involving wild land fires, and the project would have no associated impacts.

	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
VIII. HYDROLOGY AND WATER QUALITY. Would the project:				
a) Violate any water quality standards or waste discharge requirements?	☐	☐	☐	☒
b) Substantially deplete groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level (e.g., the production rate of pre-existing nearby wells would drop to a level which would not support existing land uses or planned uses for which permits have been granted)?	☐	☐	☐	☒
c) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, in a manner, which would result in substantial erosion or siltation on- or off-site?	☐	☐	☐	☒
d) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, or substantially increase the rate or amount of surface runoff in a manner that would result in flooding on- or off-site?	☐	☐	☐	☒
e) Create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff?	☐	☐	☐	☒
f) Otherwise substantially degrade water quality?	☐	☐	☐	☒
g) Place housing within a 100-year flood hazard area as mapped on a federal Flood Hazard Boundary or Flood Insurance Rate Map or other flood hazard delineation map?	☐	☐	☐	☒
h) Place within a 100-year flood hazard area structures that would impede or redirect flood flows?	☐	☐	☐	☒
i) Expose people or structures to a significant risk of loss, injury or death involving flooding, including flooding as a result of a failure of a levee or dam?	☐	☐	☐	☒

	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
j) Inundation by seiche, tsunami or mudflow?	☐	☐	☐	☒

a - f) The proposed modifications to the City's Adult Business regulations generally apply to the interior operations of adult businesses and no physical changes in the environment are expected to result from the proposed ordinance. Therefore, the proposed ordinance revisions would not 1) cause a violation of any water quality standards or waste discharge requirements; 2) deplete groundwater supplies or interfere with groundwater recharge; 3) alter drainage patterns; 4) create runoff; or 5) degrade water quality.

g - i) Some possible site for Adult Businesses may be located within a 100-year flood hazard area, but would not impede or redirect flood flows. Implementation of the proposed project would not involve any construction activity within a 100-year flood hazard area. The proposed modifications to the City's Adult Business regulations generally apply to the interior operations of adult businesses, thus no physical changes in the environment are expected to result from the proposed ordinance.

j) The City of Benicia is located near the Carquinez Strait and Lake Herman is within the city's boundaries. There are no areas of the city that would be subject to inundation by seiche, tsunami, or mudflow according to city records. Implementation of the proposed changes to the City's Adult Business regulations generally applies to the interior operations of adult businesses, thus no physical changes in the environment are expected to result from the proposed ordinance.

	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
IX. LAND USE AND PLANNING. Would the project:				
a) Physically divide an established community?	☐	☐	☐	☒
b) Conflict with any applicable land use plan, policy or regulation of an agency with jurisdiction over the project (including, but not limited to, the general plan, specific plan, local coastal program or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect?	☐	☐	☐	☒
c) Conflict with any applicable habitat conservation plan or natural community conservation plan?	☐	☐	☐	☒

a) The proposed modifications to the City's Adult Business regulations generally apply to the interior operations of adult businesses and no physical changes in the environment are expected to result from the proposed ordinance. The circulation pattern (streets and sidewalks) would not be altered to create additional barriers to movement. Therefore, the proposed ordinance revisions would not divide an existing community and would cause no related impacts.

b) The proposedordinance provides that adult businesses, which are business enterprises, may only be located in the General Commercial, Limited Industrial, General Industrial and Industrial Park District zones. The proposed Adult Business regulations modify and update existing City regulations for adult uses, and are consistent with all existing land use plans, policies or regulations of an agency with jurisdiction over the project, including the City's General Plan and zoning ordinance. It is not anticipated that implementation of the proposed project would conflict with any land use plan, policy, or regulation of any agency adopted for the purpose of avoiding or mitigating an environmental effect.

c) Sites in the City that are proposed for regulation by the City's Adult Business ordinance are not located within areas that are included in a habitat conservation plan or natural community conservation plan. Therefore, the proposed project would not conflict with any approved local, regional or state habitat conservation plans.

	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
X. MINERAL RESOURCES. Would the project:				
a) Result in the loss of availability of a known mineral resource that would be of value to the region and the residents of the state?	☐	☐	☐	☒
b) Result in the loss of availability of a locally important mineral resource recovery site delineated on a local general plan, specific plan or other land use plan?	☐	☐	☐	☒

a,b) The General Plan does not designate any mineral resources on commercial or industrial sites that could be used for a potential Adult Business under the City's proposed regulations. Therefore, the proposed ordinance revisions would not result in the loss of availability of any mineral resources.

	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
XI. NOISE. Would the project result in:				
a) Exposure of persons to or generation of noise levels in excess of standards established in the local general plan or noise ordinance or of applicable standards of other agencies?	☐	☐	☐	☒
b) Exposure of persons to or generation of excessive groundborne vibration or groundborne noise levels?	☐	☐	☐	☒
c) A substantial permanent increase in ambient noise levels in the project vicinity above levels existing without the project?	☐	☐	☐	☒
d) A substantial temporary or periodic increase in ambient noise levels in the project vicinity above levels existing without the project?	☐	☐	☐	☒
e) For a project located within an airport land use plan area or, where such a plan has not been adopted, within two miles of a public airport or a public use airport, would the project expose people residing or working in the project area to excessive noise levels?	☐	☐	☐	☒
f) For a project within the vicinity of a private airstrip, would the project expose people residing or working in the project area to excessive noise levels?	☐	☐	☐	☒

a,b,c,d) The proposed modifications to the City's Adult Business regulations generally apply to the interior operations of adult businesses and no physical changes in the environment are expected to result from the proposed ordinance. Therefore, the proposed ordinance revisions would not 1) expose persons to, or generate noise levels in excess of established standards; 2) expose persons to vibrations or generate vibrations; 3) permanently increase ambient noise levels; or 4) temporarily or periodically increase ambient noise levels.

e,f) The City of Benicia, also designated as the proposed project area, is not within an airport land use plan or located within two miles of a public or public use airport. Therefore, the proposed ordinance revisions would cause no noise impacts related to placing people or structures within the vicinity of an airport, airport land use plan, or private airstrip.

	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
XII. POPULATION AND HOUSING. Would the project:				
a) Induce substantial population growth in an area, either directly (e.g., by proposing new homes and businesses) or indirectly (e.g., through extension of roads or other infrastructure)?	☐	☐	☐	☒
b) Displace substantial numbers of existing housing, necessitating the construction of replacement housing elsewhere?	☐	☐	☐	☒
c) Displace substantial numbers of people, necessitating the construction of replacement housing elsewhere?	☐	☐	☐	☒

a) The proposed modifications to the City's Adult Business regulations generally apply to the interior operations of adult businesses and no physical changes in the environment are expected to result from the proposed ordinance. Therefore, the proposed ordinance revisions would not induce population growth and would have no related impacts.

b,c) The proposed modifications to the City's Adult Business regulations generally apply to the interior operations of adult businesses and no physical changes in the environment are expected to result from the proposed ordinance. No displacement of housing or residents is proposed or expected.

	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
XIII. PUBLIC SERVICES. Would the project result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives for any of the following public services:				
a) Fire protection?	☐	☐	☐	☒
b) Police protection?	☐	☐	☐	☒
c) Schools?	☐	☐	☐	☒
d) Parks?	☐	☐	☐	☒
e) Other public facilities?	☐	☐	☐	☒

a,b,c,d,e) The proposed modifications to the City's Adult Business regulations generally apply to the interior operations of adult businesses and no physical changes in the environment are expected to result from the proposed ordinance. Implementation of the ordinance would not result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities in order to maintain acceptable service ratios, response times or other performance objectives related to fire and police protection, schools, parks or other facilities. Existing public services are in place to provide fire and police protection, and emergency medical services in the City. The intent of the proposed ordinance is to minimize and eliminate the secondary effects associated with adult businesses that might require an increased demand on police services. Additional Police Department support is anticipated to regulate adult businesses, but this level of service can be accommodated within the existing Police public services already in place. Therefore, the proposed ordinance revisions would not result in substantial adverse environmental impacts associated with the provision of 1) fire protection, 2) police services, 3) schools, 4) parks, or 5) other public facilities.

	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
XIV. RECREATION.				
a) Would the project increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated?	☐	☐	☐	☒
b) Does the project include recreational facilities, or require the construction or expansion of recreational facilities, which might have an adverse physical effect on the environment?	☐	☐	☐	☒

a) The proposed modifications to the City's Adult Business regulations generally apply to the interior operations of adult businesses and no physical changes in the environment are expected to result from the proposed ordinance. Therefore, the proposed ordinance revisions would not increase the use of any existing neighborhood park, regional park or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated.

b) The proposed modifications to the City's Adult Business regulations generally apply to the interior operations of adult businesses and no physical changes in the environment are expected to result from the proposed ordinance. Therefore, the proposed ordinance revisions would not be required to include any planned recreational facilities, or require construction or expansion of recreational facilities, which might have an adverse physical effect on the environment. The project does not include recreational facilities, nor is it required to incorporate the construction or expansion of City recreational facilities.

	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
XV. TRANSPORTATION/TRAFFIC. Would the project:				
a) Cause an increase in traffic that is substantial in relation to the existing traffic load and capacity of the street system (i.e., result in a substantial increase in either the number of vehicle trips, the volume-to-capacity ratio on roads, or congestion at intersections)?	☐	☐	☐	☒
b) Exceed, either individually or cumulatively, a level of service standard established by the county congestion management agency for designated roads or highways?	☐	☐	☐	☒
c) Result in a change in air traffic patterns, including either an increase in traffic levels or a change in location that results in substantial safety risks?	☐	☐	☐	☒
d) Substantially increase hazards due to a design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)?	☐	☐	☐	☒
e) Result in inadequate emergency access?	☐	☐	☐	☒
f) Result in inadequate parking capacity?	☐	☐	☐	☒
g) Conflict with adopted policies, plans or programs supporting alternative transportation (e.g., bus turnouts, bicycle racks)?	☐	☐	☐	☒

a) The proposed modifications to the City's Adult Business regulations will result in an increased number of potential locations where an adult business may locate. However, such businesses would be replacing an existing business and adult businesses must still compete with other businesses as part of the general real estate market in order to locate at any of these sites. Traffic impacts are not expected to increase from existing traffic levels generated by existing enterprises. No physical changes in the environment are expected to result from the proposed ordinance and no alterations to the existing circulation system would occur as a result of the ordinance. Therefore, the proposed ordinance revisions would not cause an increase in traffic that is substantial in relation to the existing traffic load and capacity of the street system or result in a substantial increase in either the number of vehicle trips, the volume-to-capacity ratio on roads, or congestion at intersections.

b) The proposed modifications to the City's Adult Business regulations generally apply to the interior operations of adult businesses and no physical changes in the environment are expected to result from the proposed ordinance. Therefore, the proposed ordinance revisions would not exceed, either individually or cumulatively, a level of service standard

established by the county congestion management agency for designated roads or highways

c) The proposed modifications to the City's Adult Business regulations generally apply to the interior operations of adult businesses and no physical changes in the environment are expected to result from the proposed ordinance. Therefore, the proposed ordinance revisions would not result in a change in air traffic patterns, including either an increase in traffic levels or a change in location that results in substantial safety risks.

d,e,f) The proposed modifications to the City's Adult Business regulations generally apply to the interior operations of adult businesses and no physical changes in the environment are expected to result from the proposed ordinance. Therefore, the proposed ordinance revisions would not substantially increase hazards due to a design feature (e.g., sharp curves or dangerous intersections), incompatible uses (e.g., farm equipment), result in inadequate emergency access or result in inadequate parking capacity.

g) The proposed modifications to the City's Adult Business regulations generally apply to the interior operations of adult businesses and no physical changes in the environment are expected to result from the proposed ordinance. Therefore, the proposed ordinance revisions would not conflict with adopted policies, plans or programs supporting alternative transportation (e.g., bus turnouts, bicycle racks).

	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
XVI. UTILITIES AND SERVICE SYSTEMS. Would the project:				
a) Exceed wastewater treatment requirements of the applicable Regional Water Quality Control Board?	☐	☐	☐	☒
b) Require or result in the construction of new water or wastewater treatment facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?	☐	☐	☐	☒
c) Require or result in the construction of new storm water drainage facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?	☐	☐	☐	☒
d) Have sufficient water supplies available to serve the project from existing entitlements and resources, or are new or expanded entitlements needed?	☐	☐	☐	☒
e) Result in a determination by the wastewater treatment provider that serves or may serve the project that it has adequate capacity to serve the project's projected demand, in addition to the provider's existing commitments?	☐	☐	☐	☒
f) Be served by a landfill with sufficient permitted capacity to accommodate the project's solid waste disposal needs?	☐	☐	☐	☒
g) Comply with federal, state and local statutes and regulations related to solid waste?	☐	☐	☐	☒

a) The proposed modifications to the City's Adult Business regulations generally apply to the interior operations of adult businesses and no physical changes in the environment are expected to result from the proposed ordinance. Therefore, the proposed ordinance revisions would not exceed wastewater treatment requirements of the applicable Regional Water Quality Control Board since there are no physical construction requirements associated with revisions to the City's Adult Business ordinance.

b) The proposed modifications to the City's Adult Business regulations generally apply to the interior operations of adult businesses and no physical changes in the environment are expected to result from the proposed ordinance. Therefore, the proposed ordinance revisions would not require or result in the construction of new water or wastewater

treatment facilities or expansion of existing facilities, the construction of which could cause significant environmental effects.

c) The proposed modifications to the City's Adult Business regulations generally apply to the interior operations of adult businesses and no physical changes in the environment are expected to result from the proposed ordinance. Therefore, the proposed ordinance revisions would not require or result in the construction of new storm water drainage facilities or expansion of existing facilities, the construction of which could cause significant environmental effects.

d) The proposed modifications to the City's Adult Business regulations generally apply to the interior operations of adult businesses and no physical changes in the environment are expected to result from the proposed ordinance. Therefore, the proposed ordinance revisions have has nothing to do with sufficient water supplies available to serve future adult businesses since the proposed ordinance revisions do not involve construction activities for new structures or buildings. No existing entitlements, resources, or new or expanded entitlements are needed as part of this project.

e) The proposed modifications to the City's Adult Business regulations generally apply to the interior operations of adult businesses and no physical changes in the environment are expected to result from the proposed ordinance. Therefore, the proposed ordinance revisions would not result in a determination by the City's wastewater treatment facility that the project has adequate capacity to serve the project's projected demand, in addition to the provider's existing commitments since there is no physical construction associated with the proposed Adult Business ordinance revisions.

f) The proposed modifications to the City's Adult Business regulations generally apply to the interior operations of adult businesses and no physical changes in the environment are expected to result from the proposed ordinance. Therefore, the proposed ordinance revisions would have no affect on area landfills and their desired need for sufficient permitted capacity to accommodate a project's solid waste disposal needs.

g) The proposed modifications to the City's Adult Business regulations generally apply to the interior operations of adult businesses and no physical changes in the environment are expected to result from the proposed ordinance. Therefore, the proposed ordinance revisions would comply with federal, state and local statutes and regulations related to solid waste.

	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
XVII. MANDATORY FINDINGS OF SIGNIFICANCE. Does the Project:				
a) Have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wild-life population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of rare or endangered plants or animals, or eliminate important examples of the major periods of California history or prehistory?	☐	☐	☐	☒
b) Have impacts that are individually limited, but cumulatively considerable? ("Cumulatively considerable" means that the incremental effects of a project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects)?	☐	☐	☐	☒
c) Have environmental effects that will cause substantial adverse effects on human beings, either directly or indirectly?	☐	☐	☐	☒

ENVIRONMENTAL DETERMINATION:

On the basis of this initial evaluation:

☒ I find that the proposed project COULD NOT have a significant effect on the environment, and a NEGATIVE DECLARATION will be prepared.

☐ I find that although the proposed project could have a significant effect on the environment there will not be a significant effect in this case because revisions in the project have been made by or agreed to by the project proponent. A MITIGATED NEGATIVE DECLARATION will be prepared.

☐ I find that the proposed project MAY have a significant effect on the environment, and an ENVIRONMENTAL IMPACT REPORT is required.

☐ I find that the proposed project MAY have a "potentially significant impact" or "potentially significant unless mitigated" impact on the environment, but at least one effect 1) has been adequately analyzed in an earlier document pursuant to applicable legal standards, and 2) has been addressed by mitigation measures based on the earlier analysis as described on attached sheets. An ENVIRONMENTAL IMPACT REPORT is required, but it must analyze only the effects that remain to be addressed.

☐ I find that although the proposed project could have a significant effect on the environment, because all potentially significant effects (a) have been analyzed adequately in an earlier EIR or NEGATIVE DECLARATION pursuant to applicable standards, and (b) have been avoided or mitigated pursuant to that earlier EIR or NEGATIVE DECLARATION, including revisions or mitigation measures that are imposed upon the proposed project, nothing further is required.

Planner's Signature & Date

10/8/08

Damon Golubics,
Principal Planner
City of Benicia

Director's Signature & Date

10/8/08

Charlie Knox,
Community Development Director
City of Benicia

Attachments:

a. Proposed Adult Business Ordinance

REFERENCES:

1. City of Benicia General Plan, 1999, Land Use Diagram.
2. General Plan.
3. City of Benicia Zoning Ordinance
4. City Staff
5. Project description
6. Draft Environmental Impact Report, Benicia General Plan, 1998
7. Bay Area Air Quality Management District Guidelines, 1999

NEGATIVE DECLARATION

Project Title:	Adult Business Ordinance
Lead Agency Name and Address:	City of Benicia 250 East L Street Benicia, CA 94510
Project Location:	Citywide
Project Sponsor's Name and Address:	City of Benicia 250 East L Street Benicia, CA 9451
General Plan Designation(s):	Citywide – Applies to all General Plan designations
Zoning:	Citywide – Applies to all zoning districts
Assessor's Parcel Nos.	Citywide – Applies to all parcels in the City
Contact Person:	Damon Golubics, Principal Planner
Phone Number:	707-746-4280
Date Prepared:	September 2008

PROJECT DESCRIPTION

The proposed project is an ordinance that would amend the City of Benicia Municipal Code by adding, repealing and amending various code sections relating to adult businesses. The major changes proposed in this ordinance will regulate adult businesses to protect public health, safety and welfare, while still providing constitutional protections to such businesses. The intent of the regulations is to reduce or preclude undesirable, secondary effects including, but not limited to increased crime, blighting influences in the community, decrease in property values, and the spread of sexually transmitted diseases. This ordinance, the Initial Study and Negative Declaration will require review and approval by the City of Benicia Planning Commission and City Council.

COMMUNITY DEVELOPMENT DEPARTMENT DETERMINATION:

On the basis of the initial environmental study prepared for the proposal, it has been determined that the proposed project could not have a significant effect on the environment.

Planner's Signature & Date

10/8/08

Damon Golubics,
Principal Planner
City of Benicia

Director's Signature & Date

10/8/08

Charlie Knox,
Community Development Director
City of Benicia

LIST OF EXHIBITS

City of Benicia
Exhibits to Staff Report to Planning Commission
October 14, 2008

Volume I

A. **Studies Conducted By Cities Documenting The Negative Secondary Side Effects Of Adult Businesses**

1. Partial Summary of Secondary Effect Studies
2. Summaries of Key Reports Concerning the Negative Secondary Effects of Sexually Oriented Businesses, compiled by Louis F. Comus III
3. Amarillo, Texas, Planning Department (1977)
4. Austin, Texas, Office of Land Development Services (1986)
5. Beaumont, Texas (1982)
6. Cleveland, Ohio (1977)
7. Garden Grove, California (1991)
8. Houston, Texas, City Council Report (1997)
9. Indianapolis, Indiana, Department of Metropolitan Development (1984)
10. Los Angeles, California, Department of City Planning (1977)
11. Report of the Attorney General=s Working Group on the Regulation of Sexually Oriented Businesses, State of Minnesota (1989)

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12. New York, New York (1994)
13. Newport News, Virginia (1996)
14. Oklahoma City, Oklahoma (1986)
15. Phoenix, Arizona (1979)

16. Seattle, Washington, Department of Construction and Land Use (1989)

17. Times Square, New York City (1994)

18. Tucson, Arizona (1990)

19. Whittier, California (1978)

20. A Methodological Critique of the Linz-Paul Report: A Report to the San Diego City Attorney=s Office (March 21, 2003)

21. Testimony of David Sherman Before the Michigan House Committee on Ethics and Constitutional Law (2000)

22. Closin= Time: Effective Regulation of Adult Businesses= Hours of Operation, by Scott Berthold (2000)

23. Peep Show Establishments, Police Activity, Public Place and Time: A Study of Secondary Effects in San Diego, California, by Daniel Linz *et al.* (2004)

24. Do Peep-shows "Cause" Crime? A Response to Linz, Paul, and Yao, by Richard McCleary *et al.* (2006)

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25. 1986 Attorney General's Report on Pornography, Volume 1

Volume IV

26. 1986 Attorney General's Report on Pornography, Volume 2

Volume V

B. **Other Supporting Documentation**

1. Declarations from Fullerton Police Officers Craig Brower, Mike Chocek, and ABC Investigator Kevin Ortega related to the City of La Habra's Nuisance Abatement Action for a Totally Nude Facility

2. Police reports of investigations conducted by City of La Habra

3. Interview of Julia (Nude Dancer)

4. Det. Robert Navarro's presentation on "Harmful Effects of Pornography, Los Angeles Case Study" (1994)

5. "My Personal Experience With Sexually Oriented Business" by Gene McConnell

6. Letter from Lorraine Day, M.D. regarding the AIDS virus

7. Sheriff's Report to City Council of City of Encinitas, November 9, 1998

8. City of Arcadia Police Department undercover surveillance reports, 2000

9. County of Contra Costa Health Services HIV/AIDS Epidemiology Report, April 2002

10. Trends in HIV/AIDS, Yolo County Health Department, 2006

11. Solano County Public Health Briefs, September 2007

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C. **Published Cases**

1. *4805 Convoy, Inc. v. City of San Diego*, 183 F.3d 1108 (9th Cir. 1999)

2. *Anheuser-Busch v. Schmoke*, 101 F.3d 325 (4th Cir. 1996), *cert. denied* 520 U.S. 1204 (1997)

3. *Baby Tam & Co., Inc. v. City of Las Vegas* (A*Baby Tam I*@), 154 F.3d 1097 (9th Cir. 1998)

4. *Baby Tam & Co., Inc. v. City of Las Vegas* (A*Baby Tam II*@), 199 F.3d 1111 (9th Cir. 2000)

5. *Baby Tam & Co., Inc. v. City of Las Vegas* (A*Baby Tam III*@), 247 F.3d 1003 (9th Cir. 2001)

6. *Bamon Corporation v. City of Dayton*, 923 F.2d 470 (6th Cir. 1991)

7. *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560, 111 S.Ct. 2456 (1991)

8. *Berry v. City of Santa Barbara*, 40 Cal.App.4th 1075 91995)

9. *BSA, Inc. v. King County*, 804 F.2d 1004 (9th Cir. 1986)

10. *Center for Fair Public Policy v. Maricopa County*, 336 F.3d 1153 (9th Cir. 2004)

11. *Chamblee Visuals, LLC v. City of Chamblee*, 506 S.E.2d 113 (Ga. 1998)

12. *City of Colorado Springs v. 2354 Inc. dba Baby Dolls*, 896 P.2d 272 (Co. 1995)

13. *City of Erie v. Pap's A.M.* ("*Kandyland*"), 529 U.S. 277, 120 S.Ct. 1382 (2000)

14. *City of Littleton, Colorado v. Z.J. Gifts D-4*, 541 U.S. 744, 124 S.Ct. 2219 (2004)

15. *City of Los Angeles v. Alameda Books, Inc.* 535 U.S. 425, 122 S.Ct. 1728 (2002)

16. *City of National City v. Wiener*, 3 Cal.4th 832 (1993), *cert. denied* 510 U.S. 824

17. *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41, 106 S.Ct. 925 (1986)

18. *City of Vallejo v. Adult Books*, 167 Cal.App.3d 1169 (1985), *cert. denied* 475 U.S. 1064 (1986)

19. *Colacurcio v. City of Kent*, 163 F.3d 545 (9th Cir. 1998), *cert. denied* 529 U.S. 1053 (2000)

20. *Crawford v. Lungren*, 96 F.3d 380 (9th Cir. 1996)

21. *Deluxe Theater & Bookstore, Inc. v. City of San Diego*, 175 Cal.App.3d 980 (1985)

22. *Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Board of California* ("*Vicary*"), 99 Cal.App.4th 880 (2002)

23. *Diamond v. City of Taft*, 215 F.3d 1052 (9th Cir. 2000), *cert. denied* 531 U.S. 1072 (2001)

24. *DiMa Corp. V. Town of Hallie*, 185 F.3d 823 (7th Cir. 1999

25. *Dream Palace v. County of Maricopa*, 384 F.3d 990 (9th Cir. 2004)

26. *DLS, Inc. v. City of Chattanooga*, 894 F.Supp. 1140 (E.D. Tenn. 1995)

27. *Doe v. City of Minneapolis*, 898 F.2d 612 (8th Cir. 1990)

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28. *Ellwest Stereo Theatre, Inc. v. Wenner*, 681 F.2d 1243 (9th Cir. 1982)

29. *Ford v. State of Texas*, 753 S.W.2d 451 (Tx. 1988)

30. *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215, 110 S.Ct. 596 (1990)

31. *Gammoh v. City of La Habra*, 395 F.3d 1114 (9th Cir. 2005), *amended* 402 F.3d 875, *cert. denied* 126 S.Ct. 374

32. *G.M. Enterprises v. Town of St. Joseph*, 350 F.3d 631 (7th Cir. 2003)

33. *Hang On, Inc. v. City of Arlington*, 65 F.3d 1248 (5th Cir. 1995)

34. *International Eateries v. Broward County*, 941 F.2d 1157 (11th Cir. 1991), *cert. denied* 503 U.S. 920 (1992)

35. *Isbell v. City of San Diego*, 450 F.Supp.2d 1143 (S.D. Cal 2006)

36. *Isbell v. City of San Diego*, 258 F.3d 1108 (9th Cir. 2001)

37. *Kev, Inc. v. Kitsap County*, 793 F.2d 1053 (9th Cir. 1986)

38. *Lady J. Lingerie, Inc. v. City of Jacksonville*, 973 F.Sup. 1428 (M.D. Fla. 1997)

39. *Lady J. Lingerie, Inc. v. City of Jacksonville*, 176 F.3d 1358 (11th Cir. 1999)

40. *Lakeland Lounge v. City of Jacksonville*, 973 F.2d 1255 (5th Cir. 1992) *cert. denied* 507 U.S. 1030 (1993)

41. *Lim v. City of Long Beach*, 217 F.3d 1050 (9th Cir. 2000), *cert. denied* 121 S.Ct. 1189 (2001)

42. *Mitchell v. Commission on Adult Entertainment*, 10 F.3d 123 (3rd Cir. 1993)

43. *National Amusements, Inc. v. Town of Dedham*, 43 F.3d 731 (1st Cir. 1995)

44. *N.W. Enterprises, Inc. v. City of Houston*, 352 F.3d 162 (5th Cir. 2003)

45. *N.W. Enterprises, Inc. v. City of Houston*, 372 F.3d 333 (5th Cir. 2004)

46. *Parker dba Paperdolls v. Whitfield County*, 463 S.E.2d 116 (Ga. 1995)

47. *People v. Superior Court* (*Lucero*), 49 Cal.3d 14 (1989)

48. *Pleasureland Museum, Inc. v. Beutter*, 288 F.3d 988 (7th Cir. 2002)

49. *Red Bluff Drive-In, Inc. v. Vance*, 648 F.2d 1020 (5th Cir. 1981)

50. *Reno v. American Civil Liberties Union*, 521 U.S. 844, 117 S.Ct. 2329 (1997)

51. *Richland Bookmart, Inc. v. Nichols*, 137 F.3d 435 (6th Cir. 1998)

52. *Sewell v. State of Georgia*, 233 S.E.2d 187 (Ga. 1977)

53. *SOB, Inc. v. City of Benton*, 317 F.3d 856, 863 (8th Cir. 2003)

54. *Spokane Arcade, Inc. v. City of Spokane*, 75 F.3d 663 (9th Cir. 1996)

55. *Star Satellite, Inc. v. City of Biloxi*, 779 F.2d 1074 (5th Cir. 1986)

56. *Tily B., Inc. v. City of Newport Beach*, 69 Cal.App.4th 1 (1998)

57. *Tollis v. County of San Diego*, 505 F.3d 935 (9th Cir. 2007)

58. *Topanga Press, Inc. v. City of Los Angeles*, 989 F.2d 1524 (9th Cir. 1993), *cert. denied* 511 U.S. 1030 (1994)

59. *U.S. v. Hockings*, 129 F.3d 1069 (9th Cir. 1997)

60. *U.S. v. Thomas*, 74 F.3d 701 (6th Cir. 1996), *cert. denied* 519 U.S. 820 (1996)

61. *Wall Distributors, Inc. v. City of Newport News, Virginia*, 782 F.2d 1165 (4th Cir. 1986)

62. *World Wide Video v. City of Spokane*, 368 F.3d 1186 (9th Cir. 2004)

63. *Young v. American Mini Theaters, Inc.*, 427 U.S. 50, 96 S.Ct. 2440 (1976)

64. *Young v. City of Simi Valley*, 216 F.3d 807 (9th Cir. 2000), *cert. denied* 531 U.S. 1104 (2001)

65. *Berg v. Health and Hosp. Corp. of Marion County, Ind.,* 865 F.2d 797, 799 (7th Cir. 1989)

66. *Michigan ex rel. Wayne County Prosecutor v. Dizzy Duck,* 449 Mich. 359, 364, 535 N.W. 2d 178 (1995)

67. *SDJ. Inc. v. City of Houston,* 837 F.2d 1274 (5th Cir. 1988), cert. denied 480 U.S. (1989)

SUMMARY OF STUDIES

SUMMARY OF LAND USE STUDIES RELATING TO SECONDARY EFFECTS OF "ADULT" BUSINESSES

1. LAND USE STUDY: Amarillo, Texas
   DATE: September 12, 1977

OVERVIEW: This planning department report cites several sources including national news magazines, "adult business" ordinances from other cities, and American Society of Planning Officials report and pertinent Supreme Court decisions. Lengthy explanation of the Miller test (with legal definitions), discussions of *Young v. American Mini Theaters*, and a comparison of the Boston and Detroit zoning models are included. The city defined "adult businesses" as taverns, lounges, lounges with semi-nude entertainment, and bookstores or theaters with publications featuring nudity and explicit sexual activities. At the time, Amarillo had three such theaters and four bookstores with space for such publications.

FINDINGS: The police department provided an analysis showing that areas of concentrated "adult only" businesses had 22 times the street crime as the city average. The planning department concluded that concentrations of these businesses have detrimental effects on residential and commercial activities caused by: (1) noise, lighting and traffic during late night hours; (2) increased opportunity for street crimes; and (3) the tendency of citizens to avid such business areas. The study noted that lack of zoning regulations would lead to concentrations of sexually oriented businesses (causing increased crime) or more such establishments locating near residential areas or family and juvenile oriented activity sites (churches, parks, etc.).

RECOMMENDATIONS: (1) Adult businesses locate 1,000 feet from each other; no recommended distance was specified from residential zones or family/juvenile activities; (2) city development of an amortization schedule and permit/licensing mechanism; (3) city regulation of signs and similar forms of advertising; (4) vigorous enforcement of State Penal Code, especially relating to "harmful to minors;" and (5) city amendments prohibiting minors form viewing or purchasing sexually oriented materials (enforced physical barriers).

2. LAND USE STUDY: Austin, Texas
   DATED: May 19, 1986

OVERVIEW: The report was the basis for developing an amendment to existing sexually oriented business ordinances. At the time, 49 such businesses operated in Austin, mostly bookstores, theaters, massage parlors and topless bars. The study examined crime rates, property values, and trade area characteristics.

The report focused on sexually related crimes in four study areas (with sexually oriented businesses) and four control areas (close to study areas and similar). Two study areas had one sexually oriented business and the others had two such businesses. To determine the effects of these businesses on property values, the city sent surveys to 120 real estate appraising or lending firms (nearly half responded). For trade area characteristics, three businesses (a bookstore, theater and topless bar) were observed on a weekend night to determine customer addresses.

CRIME: Sexually related crime ranged from 177-482% higher in the four study areas than the city average. In the two study areas containing two sexually oriented businesses, the rate was 66% higher than in the study areas with one such business. All control areas had crime rates near the city average.

REAL ESTATE: 88% said that a sexually oriented business within one block of a residential area decreases the value of the homes (33% said depreciation would be at least 20%). Respondents also said such a business is a sign of neighborhood decline, making underwriters hesitant to approve the 90-95% financing most home buyers require. They said commercial property is also negatively effected by such businesses.

TRADE AREA CHARACTERISTICS: Of 81 license plates traced for owner address, only three lived within one mile of the sexually oriented business. 44% were from outside Austin.

RECOMMENDATIONS: (1) Sexually oriented businesses should be limited to highway or regionally-oriented zone districts; (2) businesses should be dispersed to avoid concentration; and (3) conditional use permits should be required for these businesses.

3. LAND USE STUDY: Beaumont, Texas
DATE: September 14, 1982

OVERVIEW: This report by the city planning department encourages amendments to existing "adult business" ordinances to include eating or drinking places featuring sexually oriented entertainment (strippers, etc.). Zoning laws required "adult uses" to locate 500 feet from residential areas; 300 feet from any other adult bookstore, adult theater, bar, pool hall or liquor store; and 1,000 feet from a church, school, park, or recreational facility where minors congregate.

CRIME: Police verified that bars, taverns, and lounges (especially those with sexually oriented entertainment) are frequent scenes of prostitution and the sale/use of narcotics. On the whole, all criminal activity was higher at sexually oriented businesses.

RECOMMENDATIONS: (1) Add eating/drinking places that exclude minors (under Texas law), unless accompanied by a consenting parent, guardian or spouse; (2) require specific permits for areas zoned as General Commercial-Multiple Family Dwelling Districts; and (3) reduce the required distance of sexually oriented businesses from residential areas, school, sparks, and recreational facilities from 1,000 to 750 feet.

4. LAND USE STUDY: Cleveland, Ohio
DATE: August 24, 1977

OVERVIEW: This police department report is taken from information given by Captain Delau participating in a panel discussion at the National Conference on the Blight of Obscenity held in Cleveland July 28-29, 1977. The topic was "The Impact of Obscenity on the Total Community." Crime statistics are included for 1976 robberies and rapes. Areas evaluated were census tracts (204 in the whole city, 15 study tracts with sexually oriented businesses). At the time of the study, Cleveland had 26 pornography outlets (8 movie houses and 18 bookstores with peep shows). Their location was not regulated by city zoning laws.

FINDINGS: For 1976, study tracts had nearly double the number of robberies as the city as a whole (40.5 per study tract compared to 20.5 for other city tracts). In one study tract with five sexually oriented businesses and 730 people, there were 136 robberies. In the city's largest tract (13,587 people, zero pornography outlets) there were only 14 robberies. Of the three tracts with the highest incidence of rape, two had sexually oriented businesses and the third bordered a tract with two such businesses. In these three, there were 41 rapes in 1976 (14 per tract), nearly seven times the city average of 2.4 rapes per census tract.

CONCLUSION: "Close scrutiny of the figures from the Data Processing Unit on any and every phase of the degree of crime as recorded by census tracts indicates much higher crime rate where the pornography outlets are located."

5. LAND USE STUDY: Garden Grove, California
DATE: October 23, 1991

OVERVIEW: This report by independent consultants summarizes statistical analyses to determine a basis for adult business regulations because of their negative impact on the community in terms of crime, decreased property values and diminished quality of life. Statistics were measured form 1981-90 and included crime data, and surveys of real estate professionals and city residents. Garden Grove Boulevard, with seven adult businesses, was selected as the study area. The study incorporated many control factors to insure accurate results. The report includes a brief legal history of adult

business regulation and an extensive appendix with samples, materials and a proposed statute.

CRIME: Crime increases significantly with the opening of an adult business or with the expansion of an existing business or the addition of a bar nearby. The rise was greatest in "serious" offenses (termed "Part I" crimes: homicide, rape, robbery, assault, burglary, theft and auto theft). On Garden Grove Boulevard, the seven adult businesses accounted for 36% of all crime in the area. In one case, a bar opened less than 500 feet from an adult business, and serious crime within 1,000 feet of that business rose more than 300% the next year.

REAL ESTATE: Overwhelmingly, respondents said that an adult business within 200-500 feet of residential and commercial property depreciates the property value. The greatest impact was on single family homes. The chief factor cited for the depreciation was the increased crime associated with adult businesses.

HOUSEHOLD SURVEYS: 118 calls were completed in a random sample of households in the Garden Grove Boulevard vicinity. The public consensus was that adult businesses on Garden Grove Boulevard were a serious problem. Nearly 25% of the surveyed individuals lived within 1,000 feet of an adult business. More than 21% cited specific personal experiences of problems relating to these businesses, including crime, noise, litter, and general quality of life. 80% said they would want to move if an adult business opened in their neighborhood, 60% saying they "would move" or "probably would move." 85% supported city regulation of the locations of adult businesses, with 78% strongly advocating the prohibition of adult businesses within 500 feet of a residential area, school or church. Women commonly expressed fear for themselves and their children because of adult businesses.

RECOMMENDATIONS: The report concludes that adult businesses have "real impact" on everyday life through harmful secondary effects and makes four recommendations: (1) keep current requirement of 1,000 feet separation between adult businesses; (2) prohibit adult establishments within 1,000 feet of residential areas; (3) enact a system of conditional use permits for adult businesses with Police Department involvement in every aspect of the process; and (4) prohibit bars/taverns within 1,000 feet of an adult business.

6. LAND USE STUDY: Houston, Texas
DATE: November 3, 1983

OVERVIEW: Report by the Committee on the Proposed Regulation of Sexually Oriented Businesses determines the need and appropriate means of regulating such businesses. Four public hearings provided testimony from residents, business owners, realtors, appraisers, police and psychologists. The committee and legal department then

reviewed the transcripts and drafted a proposed ordinance. More hearings obtained public opinion on the proposal and the ordinance was refined for vote by the City Council.

TESTIMONY: The testimony was summarized into six broad premises: (1) the rights of individuals were affirmed; (2) sexually oriented businesses could exist within regulations that minimize their adverse effects; (3) the most important negative effects were on neighborhood protection, community enhancement, and property values; (4) problems increased when these businesses were concentrated; (5) such businesses contributed to criminal activities; and (6) enforcement of existing statutes were difficult.

ORDINANCE: (1) Required permits for sexually oriented businesses (non-refundable $350 application fee); (2) distance requirements: 750 feet from a church or school; 1,000 feet from other such businesses; 1,000 foot radius from an area of 75% residential concentration; (3) amortization period of six months that could be extended by the city indefinitely on the basis of evidence; (4) revocation of permit for employing minors (under 17), blighting exterior appearance or signage, chronic criminal activity (three convictions), and false permit information; and (5) age restrictions for entry.

7. LAND USE STUDY: Houston, TX
DATED: January 7, 1997

OVERVIEW: This report by the Sexually Oriented Business Revision Committee to the City Council concerns a proposed amendment and addition to the present ordinance. The report summarizes prior efforts to regulate sexually oriented businesses, testimony by the Vice Division of the Houston Police Department, reports and requests, citizen correspondence, industry memos, legal department research, the public testimony taken by the Committee. The purpose of this report was to review the existing city ordinance and the city's ability to enforce it, and to assess and analyze the ordinance with respect to its strengths and weaknesses in terms of how effectively the ordinance protects the public and the businesses subject to regulation.

FINDINGS/CONCLUSIONS: (1) Because of criminal activities associated with sexually oriented businesses, requiring the licensing of entertainers and managers can establish a foundation for documenting those with prior convictions for prostitution, public lewdness, etc. and can help eliminate underage entertainers (under 18); (2) a serious predicament in obtaining convictions for public lewdness, prostitution, indecent exposure, and other criminal activities exists because police officers do not engage in inappropriate behavior and the entertainer thus avoids lewd behavior that might normally occur; (3) "glory holes" are used to promote anonymous sex and facilitate the spread of sexually transmitted diseases; (4) sexually oriented businesses that did not have clear lines of vision encouraged lewd behavior or sexual contact; (5) multi-family tracts were being counted as one tract in the residential quota, although many families were living

independently upon one tract; (6) inadequate lighting prevents managers and police officers from monitoring illegal activities, and one possible approach is to make lighting requirements similar to the minimum requirements of the Uniform Building Code for "exit" signs; (7) businesses with locked rooms were often used as fronts for prostitution; (8) public parks and possibly private parks should be included in distancing restrictions; (9) notification of a pending sexually oriented business permit should be given to surrounding neighbors of proposed sites; and (10) continuation of the amortization provisions of the previous ordinances would be preferable to grandfathering nonconforming sexually oriented businesses since grandfathering such businesses allows those uses to continue in perpetuity, creates a monopolistic position for such uses and prevents the municipality from exercising its power to protect its residents.

ORDINANCE: (1) Include "arcade devices" (enclosed booths) intended for viewing by less than one hundred persons in the prohibition for enclosed booths; (2) prohibit wall penetrations ("glory holes"); (3) increase distance requirements from 750 feet to 1,500 feet for churches, schools and day care centers, and increase the radius for counting residential tracts from 1,000 feet to 1,500 feet, without unduly restricting availability of locations; (4) for each acre of multi-family tract, utilize a ratio of eight single family tracts; (5) extend signage and exterior appearance restrictions to businesses located in multi-tenant centers; (6) require lighting of intensity to illuminate customer areas to not less than one foot candle as measured at four feet above floor level; (7) include public parks and if possible, private parks as protected land uses; (8) upon filing of a permit application, applicants must place signs at the premises and publish notices in the newspaper; (9) require permits for all entertainers and managers; (10) prohibit entertainers from touching customers; and (11) continue amortization of existing businesses with extensions of time for affected businesses to comply (prior average extensions were for about 2 to 3 years).

8. LAND USE STUDY: Indianapolis, Indiana
DATED: February 1984

OVERVIEW: After a ten year growth in the number of sexually oriented businesses (to a total of 68 of 43 sites) and numerous citizens' complaints of decreasing property values and rising crime, the city compared six sexually oriented business "study" areas and six "control" locations with each other and with the city as a whole. The study and control areas had high population, low income and older residences. In order to develop a "best professional opinion," the city collaborated with Indiana University on a national survey of real estate appraisers to determine valuation effects of sexually oriented businesses on adjacent properties.

CRIME: From 1978-82, crime increases in the study areas were 23% higher than the control areas (46% higher than the city as a whole). Sex related crimes in the study areas increased more than 20% over the control areas. Residential locations in the study

areas had a 56% greater crime increase than commercial study areas. Sex related crimes were four times more common in residential study areas than commercial study areas with sexually oriented businesses.

REAL ESTATE: Homes in the study areas appreciated at only ½ the rate of homes in the control areas, and 1/3 the rate of the city. "Pressures within the study areas" caused a slight increase in real estate listings, while the city as a whole had a 50% decrease, denoting high occupancy turnover. Appraisers responding to the survey said one sexually oriented business within one block of residences and businesses decreased their value and half of the respondents said the immediate deprecation exceeded 10%. Appraisers also noted that value depreciation on residential areas near sexually oriented businesses is greater than commercial locations. The report concludes: "the best professional judgment available indicates overwhelmingly that adult entertainment businesses - even a relatively passive use such as an adult bookstore - have a serious negative effect on their immediate environs."

RECOMMENDATIONS: Sexually oriented businesses locate at least 500 feet from residential areas, schools, churches or established historic areas.

9. LAND USE STUDY: Los Angeles, California
DATE: June 1977

OVERVIEW: The department of city planning studied the effects of the concentration of sexually oriented businesses on surrounding properties for the years 1969-75 (a time of proliferation for such businesses). The report focuses on five areas with the greatest concentration of these businesses (compared to five "control" areas free of them), and cites data from property assessments/sales, public meeting testimony, and responses from two questionnaires (one to business/residential owners within a 500 foot radius of the five study areas and a second to realtors/real estate appraisers and lenders). Crime statistics in the study areas were compared to the city as a whole. Also included: a chart of sexually oriented business regulations in eleven major cities, details of current regulations available under state/municipal law, and appendices with samples of questionnaires, letters, and other study materials.

PROPERTY: While empirical data from 1969-75 did not conclusively show the relation of property valuations to the concentration of sexually oriented businesses, more than 90% of realtors, real estate appraisers and lenders responding to city questionnaires said that a grouping of such businesses within 500-1,000 feet of residential property decreases the market value of the homes. Also, testimony from residents and business people at two public meetings spoke overwhelmingly against the presence of sexually oriented businesses citing fear, concern for children, loss of customers and difficulty in hiring employees at non-adult businesses, and the necessity for churches to provide guards for their parking lots.

CRIME: More crime occurred in areas of sexually oriented business concentration. Compared to city-wide statistics for 1969-75, areas with several such businesses experienced greater increases in pandering (340%), murder (42.3%), aggravated assault (45.2%), robbery (52.6%), and purse snatching (17%). Street robberies, where the criminal has face-to-face contact with his victim, increased almost 70% more in the study areas. A second category of crime, included other assaults, forgery, fraud, counterfeiting, embezzlement, stolen property, prostitution, narcotics, liquor laws, and gambling increased 42% more in the study areas over the city as a whole.

RECOMMENDATIONS: The study recommended distances of more than 1,000 feet separating sexually oriented businesses from each other, and a minimum of 500 feet separation of such businesses from schools, parks, churches and residential areas.

10. LAND USE STUDY: Minneapolis, Minnesota
DATE: October 1980

OVERVIEW: This report is divided into two sections: the relationship of bars and crime and the impact of "adult businesses" on neighborhood deterioration. In the study, an "adult business" is one where alcohol is served (including restaurants) or a sexually oriented business (*i.e.*, saunas, adult theaters and bookstores, rap parlors, arcades, and bars with sexually oriented entertainment). Census tracts were used as study areas and evaluated for housing values and crime rates. Housing values were determined by the 1970 census compared to 1979 assessments. Crime rates were compared for 1974-75 and 1979-80. The study is strictly empirical and reported in a formal statistical manner; therefore it is difficult for layman interpretation of the data.

FINDINGS: The report concludes that concentrations of sexually oriented businesses have significant relationship to higher crime and lower property values. Other than statistical charts, no statements of actual crime reports or housing values are included in the report. Thus, the lay reader has only the most generalized statement of how the committee interpreted the empirical data.

RECOMMENDATIONS: First, that adult businesses be at least 1/10 mile (about 500 feet) from residential areas. Second, that adult business should not be adjacent to each other or even a different type of late night business (*i.e.*, 24-hour laundromat, movie theaters). Third, that adult businesses should be in large commercial zones in various parts of the city (to aid police patrol and help separate adult businesses from residential neighborhoods). The report said "policies which foster or supplement attitudes and activities that strengthen the qualities of the neighborhood are more likely to have desired impacts on crime and housing values than simple removal or restriction of adult businesses."

11. LAND USE STUDY: New York, New York
DATE: November 1994

OVERVIEW: This study by the Department of City Planning evaluates the nature and extent of adverse impacts associated with adult entertainment uses in communities in New York City, in response to the proliferation of such uses (35% increase in past 10 years) and the fact that current zoning regulations did not distinguish between adult entertainment uses and other commercial uses without an "adult character." The study reviewed studies in other localities, including Islip, Los Angeles, Indianapolis, Whittier, Austin, Phoenix, and the State of Minnesota, as well as prior studies conducted in New York City. Surveys in six study areas within the city (with lesser concentrations of adult uses than Times Square) were conducted of representatives from community boards, local organizations and local businesses, as well as real estate brokers, police and sanitation officers, and representatives of the adult entertainment industry to gather information on land use, street and signage conditions, and other impacts of adult entertainment uses. An analysis of assessed values and crime data was also made.

FINDINGS: More than 75% of adult uses are located in zoning districts that permit residential uses. Adult uses tend to concentrate, as 75% of the adult uses are located in ten of the city's 59 Community Districts. Adult uses tend to cluster in central locations or along major vehicular routes. Adult use accessory business signs are characterically at odds with neighborhood character - such signs generally occupy a greater percentage of storefront surface area, are more often illuminated and more often portray graphic, sexually-oriented images than the signs of other nearby commercial uses. 80% of surveyed real estate brokers reported that an adult entertainment use would have a negative impact upon the market value of property within 500 feet, and a majority indicated the same would occur within 500 to 1,000 feet. 80% of surveyed community organizations responded that adult entertainment uses negatively impact the community in some way, and almost 50% of surveyed businesses responded that they believed their businesses would be negatively affected if more adult uses were to locate nearby. Community residents expressed the strongest negative reactions to adult uses, and expressed fear of the consequences of the proliferation and concentration of adult uses in neighborhood-oriented shopping areas and of a deterioration in the quality of urban life,

even in study areas where it could not be readily determined that negative impacts were being felt. Attitudinal data of the surveys are significant even where the negative impacts are currently difficult to measure, since negative perceptions associated with an area can lead to disinvestment in residential neighborhoods and economic decline because of a tendency to avoid such shopping areas. The analysis of criminal complaint data and property assessed valuation data was less conclusive than the surveys.

RECOMMENDATIONS: The study concludes that it is appropriate to regulate adult entertainment establishments differently from other commercial establishments. Because of the negative impacts of adult uses in concentration, restrictions on the location of adult uses in proximity to residential areas, to houses of worship, to schools and to each other should be considered in developing adult use regulations.

12. LAND USE STUDY: Newport News, Virginia
DATED: March 1996

13. LAND USE STUDY: Oklahoma City, Oklahoma
DATED: March 3, 1986

OVERVIEW: This study contains the results of a survey of 100 Oklahoma City real estate appraisers. Appraisers were given a hypothetical situation and a section to comment on the effect of sexually oriented businesses in Oklahoma City. The hypothetical situation presented a residential neighborhood bordering an arterial street with various commercial properties which served the area. A building vacated by a hardware store was soon to be occupied by an "adult" bookstore. No other sexually oriented businesses were in the area and no other vacant commercial space existed. With less than a one month response time, 34 completed surveys were received by the city.

FINDINGS: 32% of the respondents said that such a bookstore within one block of the residential area would decrease home values by at least 20%. Overwhelmingly, respondents said an "adult" bookstore would negatively effect other businesses within one block (76%). The level of depreciation is greater for residences than businesses. The negative effects on property values drop sharply when the sexually oriented business is at least three blocks away. In the subjective portion, 85% of the respondents noted a negative impact on sexually oriented businesses on Oklahoma City. Frequent problems cited by the appraisers included the attraction of undesirable clients and businesses, safety threats to residents and other shoppers (especially children), deterrence of home sales and rentals, and immediate area deterioration (trash, debris, vandalism).

CONCLUSIONS: Oklahoma City's findings supported results from other national studies and surveys. Sexually oriented businesses have a negative effect on property values, particularly residential properties. The concentration of sexually oriented businesses may mean large losses in property values.

14. LAND USE STUDY: Phoenix, Arizona
DATE: May 25, 1979

OVERVIEW: The study examines crime statistics for 1978 comparing areas which have sexually oriented businesses with those that do not. The results show a marked increase in sex offenses in neighborhoods with sexually oriented businesses, with modest increases in property and violent crimes as well.

Three study areas (near locations of sexually oriented businesses) and three control areas (with no sexually oriented businesses) were selected. The study and control areas were paired according to the number of residents, median family income, percentage of non-white population, median age of population, percentage of dwelling units built since 1950, and percentage of acreage used for residential and no-residential purposes.

CRIME: Three categories of criminal activity were included in the study: property crimes (burglary, larceny, auto theft), violent crimes (rape, murder, robbery, assault), and sex crimes (rape, indecent exposure, lewd and lascivious behavior, child molestation).

Average results from all three study/control areas, sex offenses were 506% greater in neighborhoods where sexually oriented businesses were located. (In one study area, sex crimes were more than 1,000% above the corresponding control area.) Property crimes were 43% greater. Violent crimes were only slightly higher (4%). Even excluding indecent exposure arrests (the most common sex offense), other sex crimes (rape, lewd and lascivious behavior, child molestation) in the study areas were 132% greater than control areas.

REQUIREMENTS: The Phoenix ordinance requires sexually oriented businesses to located at least 1,000 feet from another sexually oriented business and 500 feet from a school or residential zone. Approval by the city council and area residents can waive the 500 foot requirement. A petition which is signed by 51% of the residents in the 500 foot radius who do not object must be filed and verified by the planning director.

15. LAND USE STUDY: Seattle, Washington
DATED: March 24, 1989

OVERVIEW: The report concerns a proposed amendment to add topless dance halls to existing land use regulations for "adult entertainment establishments." Seattle had eight such dance halls (termed "adult cabarets"), six established since 1987. The study relies on reports from a number of cities, including Indianapolis, Los Angeles, Phoenix, Austin and Cleveland.

FINDINGS: The increased number of cabarets resulted in citizen complaints, including phone calls, letters (from individuals and merchant associations), and several petitions with hundreds of signatures. Protests cited decreased property values; increased insurance rates; fears of burglary, vandalism, rape, assaults, drugs, and prostitution; and overall neighborhood deterioration. The report notes that patrons of these cabarets most often are not residents of nearby neighborhoods. Without community identity, behavior is less inhibited. Increased police calls to a business, sirens, and traffic hazards from police and emergency vehicles are not conducive to healthy business and residential environments.

RECOMMENDATIONS: Since city zoning policy is based on the compatibility of businesses, the report recommends that the cabarets locate in the same zones as "adult motion picture theaters." This plan allows about 130 acres for such businesses to locate throughout the city.

16. LAND USE STUDY: Times Square (New York City), New York
DATE: April 1994

OVERVIEW: This study commissioned by the Times Square Business Improvement District ("TSBID") evaluates the effect of adult use businesses on the city's TSBID, and more specifically, on the areas within the TSBID where such businesses are densely concentrated. The study combined analysis of available data on property values and incidence of crime with a demographic and commercial profile of the area to determine the relationship between the concentration of adult use businesses and negative impacts on businesses and community life. The study also included 54 interviews conducted with a broad range of diverse business and real estate enterprises, including major corporations, smaller retail stores, restaurants, theatres and hotels, as well as Community Boards, block associations, activists and advocates, churches, schools and social service agencies.

REAL ESTATE: This part of the study compared the assessed property values over time, and the rate of change, of four study blocks and contrasting control blocks where no adult use businesses existed. This analysis also compared the study and control blocks' assessed valuation to that of the TSBID, Manhattan, and the city as a whole. The rate of increase of the total actual assessed values of the study blocks between 1985 and 1993 was less than the rate of increase for the control blocks during the same period. An assessment of the study blocks also revealed that the rates of increases in assessed value for properties with adult establishments was greater than the increase for properties on the same blockfront without adult establishments (possibly because of greater rents paid by some adult establishments). A high official in the Department of Finance indicated that the presence of adult use businesses adversely affects neighboring properties since such presence is factored into the locational aspect of the appraisal formula.

CRIME: This part of the study compared the number of criminal complaints over a three month period for the study blocks and the control blocks. There were about twice as many criminal complaints for the study blocks as the control blocks. There was a reduction in criminal complaints the further away from the study block area of dense concentration of adult use businesses. The heaviest incidence of prostitution arrests also occurred in the study block area of dense concentration of adult use businesses. The study also noted that police statistics showed a decrease in crime in Times Square for the past five year period, which paralleled the decrease in the number of adult use businesses.

INTERVIEWS: Property and business owners expressed the view that adult use businesses have a negative effect on the market or rental values of businesses located in their vicinity, and emphasized the negative effects of a concentration of such businesses in affecting the overall image of the area. Restaurant owners expressed that the presence of adult use businesses was not good for their businesses, created a perception that the area was unsavory, made it difficult to book corporate parties, and negatively affected their businesses because of the flamboyant advertising. Community residents and organizations expressed their belief that adult use businesses attract loiterers, drug dealers, and prostitutes, and result in increased instances of criminal activity.

17. SURVEY, FINDINGS AND RECOMMENDATIONS OF SEXUALLY ORIENTED BUSINESSES: Toledo, Ohio
DATE: August 26, 2002

OVERVIEW: The City of Toledo ("Toledo") determined it needed to address adult entertainment uses as a result of litigation over its zoning ordinance. Additionally, the City was experiencing an increased number of taverns that were featuring adult entertainment in violation of the City's zoning ordinance. At the time of the study, the City was only regulating adult entertainment through zoning, it did not have a licensing mechanism. The City defined "adult entertainment" as massage parlors operated by anyone not licensed as a medical doctor, chiropractor, osteopath, nurse, physical therapist

or a person practicing massage of the face and hands in a beauty parlor or barber shop licensed by the City; adult bookstores, adult motion picture theaters, adult mini-motion picture theaters or adult entertainment cabarets. When the study was conducted the City had six adult cabarets, one adult theater that rented videos, eight adult bookstores, two retail shops, four massage parlors, a bathhouse and a lingerie modeling establishment.

CRIME: The consultants reviewed police calls to adult entertainment establishments and provided an analysis on crime. Five adult businesses were clustered in one area of the City and accounted for 39 percent of the crime for that area, but only accounted for 20 percent of the total businesses in the area. Additionally, the consultants noted significant differences in the number of police calls to different types of adult businesses. While adult cabarets comprised only 20 percent of the businesses included in the crime study, they were involved in 44 percent of the total police calls. The consultants concluded that adult entertainment establishments which feature live entertainment are likely to have the greatest adverse impact with respect to the number of incidents which require a police response.

PROPERTY VALUES: To address concerns of the effect of adult businesses on property values, the consultants relied on studies conducted in other cities. A study from Rochester, New York showed that: (1) bars with nude servers and live entertainment have a negative impact on property values; (2) sexually oriented businesses have a measurable negative impact on property values; (3) there is more of a negative impact on residential property than on commercial uses; (4) the greatest impact on property values is on those residences located on the same block as the adult use; (5) the negative impact decreases with distance, and stops between 1,000 and 1,500 feet. Another study conducted in Indianapolis, Indiana examined the relationship between crime rates and real estate appreciation and showed that: (1) crime rates in areas with adult businesses were 23 percent higher than in control areas and 46 percent higher than in the police jurisdiction as a whole; (2) the sex-related crime rate in areas with adult businesses was 80 percent higher than the rate in the control areas; (3) the appreciation of residential real estate in areas with adult businesses was only one-half that of the control areas; and (4) twice as many homes were placed on the market at a significantly lower rate in the areas with adult businesses than in the control areas.

RECOMMENDATIONS: Adopt definitions for different types of adult businesses and use those definitions as the basis for applying distance and location requirements. Permit book, video or other media stores where sexually oriented media accounts for less than 10 percent of the total inventory, or in which that type of media accounts for more than 10 percent, but less than 40 percent of the inventory and occupies less than 40 percent of the floor area, to be treated as regular retail stores. Modify the separation requirement between adult businesses to allow co-location or neighboring location of a business with on-premises entertainment and a purely retail shop. Increase the separation distance between businesses offering on-premises entertainment to 1,500

feet. Impose a 500 foot separation requirement between sexually oriented businesses and sensitive uses such as residences, schools, and churches. Adopt a licensing ordinance for adult businesses and their employees which contains objective criteria for granting or denying a license, a limited review period for a license application, and a direct appeal to the courts.

Establish licensing criteria specifically for adult cabarets which: (1) eliminates lap dances; (2) requires dancers to perform on a stage which is separated from the audience by a vertical rise of at least 30 inches and by a barrier that either keeps dancers or customers 30 inches or more from the edge of the stage; (3) prohibits touching between dancers and customers; and (4) if lap dancing is permitted, it should be conducted only in public areas. Require all operators and employees performing massages to be licensed by the state. Require all sexually oriented theaters to have low-level lighting maintained at all times customers are present, that management monitor activities in the theater at all times by using windows, mirrors or cameras. Establish criteria for video arcades that includes: (1) removal of doors from the booths; (2) elimination of glory holes between booths; (3) permitting only one person per booth; (4) modification of L-shaped booths to make the entire booth visible from the aisle; (5) installation of video monitoring equipment; (6) minimum lighting standards for hallways; and (7) implementation of sanitation standards.

18. LAND USE STUDY: Tucson, Arizona
DATED: May 1, 1990

OVERVIEW: This report is a memorandum from Police Department Investigative Services to the City Prosecutor describing events and activities at "adult entertainment bookstores and establishments" that support stronger ordinances. Investigation had been in progress since 1986 following numerous complaints of illegal sexual activity and unsanitary conditions.

FINDINGS: Officers found a wide variety of illegal sexual conduct at all adult businesses. At virtually every such business, employees were arrested for prostitution or obscene sex shows. Dancers were usually prostitutes where, for a price, customers could observe them performing live sex acts. At several businesses, customers were allowed inside booths with dancers and encouraged to disrobe and masturbate. Many times, dancers would require customers to expose themselves before they would perform. Underage dancers were found, the youngest being a 15 year old female.

Within peep booths, officers found puddles of semen on the floor and walls. If customers had used tissues, these were commonly on the floor or in the hallway. On two occasions, fluid samples were collected from the booths. In the first instance, 21 of 26 samples (81%) tested positive for semen. In the second sampling, 26 of 27 fluid samples (96%) tested positive for semen. "Glory holes" in the walls between adjoining booths facilitated anonymous sex acts between men.

RECOMMENDATIONS: (1) The bottom of the door in peep booths must be at least 30 inches from the floor so that an occupant can be seen from waist down when seated; (2) the booth cannot be modified nor can a chair be used to circumvent the visibility of the client; (3) employee licensing that includes a Police Department background check; and (4) in the event of a denied or revoked license, the requirement of a hearing before any action is taken.

19. LAND USE STUDY: Whittier, California
DATE: January 9, 1978

OVERVIEW: After experiencing a rapid growth of sexually oriented businesses since 1959, the Whittier City Council commissioned a study of the effects of businesses on the adjacent residential and commercial area. At the time of the study, Whittier had 13 such businesses: six model studios, four massage parlors, two bookstores, and one theater. Utilizing statistics, testimonies, and agency reports, the study compared two residential areas and four business areas over a span of ten years (1968-1977). One residential area was near the largest concentration of sexually oriented businesses, the other had no commercial frontage but was chosen because of similar street patterns, lot sizes and number of homes. For businesses, Area 1 had six sexually oriented businesses, Area 2 had one, Area 3 had three, and Area 4 had none. 1973 was selected as the year to compare before/after effect of these businesses. Two chief concerns cited in the report are residential/business occupancy turnover and increased crime.

OCCUPANCY TURNOVER: After 1973, 57% of the homes in the sexually oriented business area had changes of occupancy, compared to only 19% of the non-sexually oriented business area. Residents complained of "excessive noise, pornographic material left laying about, and sexual offenders (such as exhibitionists) venting their frustrations in the adjoining neighborhood." Citizens also expressed concern about drunk drivers coming into the area. Business Area 1, with the highest concentration of sexually oriented businesses (6), experienced a 134% increase in annual turnover rate. Area 3, with three adult businesses at one location, showed a 107% turnover rate. Area 2 (with one adult business) had no measurable change and Area 4 (with no commercial or sexually oriented businesses) experienced a 45% decrease in turnover from similar periods.

CRIME: The city council looked at the two residential areas for the time periods of 1970-73 (before sexually oriented businesses) and 1974-77 (after such businesses). In the sexually oriented business area, criminal activity increased 102% (the entire city had only an 8.3% increase). Certain crimes skyrocketed (malicious mischief up 700%; all assaults up 387%; prostitution up 300%). All types of theft (petty, grant, and auto), increased more than 120% each. Ten types of crime were reported of the first time ever in the 1974-77 period.

RECOMMENDATIONS: The council's report recommended a disbursement type ordinance that prohibits sexually oriented businesses closer than 500 feet to residential areas, churches, and schools. Distances between such businesses was recommended at 1,000 feet. In addition, the study proposed a 1,000 foot separation from parks because of their use by citizens after normal working hours. Sexually oriented businesses would be given an 18-36 month amortization period (if the change involved only stock in trade, a 90 days period was recommended).

summary of land use studies
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