

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060
27-4863



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January 13, 1999

To: Commissioners and Interested Persons

From: Tami Grove, Central Coast Deputy Director
Charles Lester, District Manager
Steve Guiney, Coastal Program Analyst

Subject: **City of Morro Bay Local Coastal Program Major Amendment Number 1-99.**
For public hearing and Commission action at its meeting of February 02 - 05, 1999, to be held at the Hotel del Coronado, 1500 Orange Avenue, Coronado 92118, (619) 435-6611.

Synopsis

The City of Morro Bay has submitted an amendment request to add a new chapter to its certified Implementation Plan in order to regulate "adult entertainment" businesses and modify the use charts for industrial districts to allow such businesses to locate in the City's industrial zone districts. On February 10, 1997, the City Council approved Ordinance 457, an interim ordinance prohibiting the establishment of adult entertainment businesses in the City. By subsequent ordinances, the City extended the prohibition, which will expire on February 11, 1999. The interim ordinance cannot be extended past that date. Some types of adult entertainment businesses currently, but for the interim ordinance, could conceivably be established as retail uses in the Central Business (C-1) District, General Business (C-2) District, Mixed Commercial/Residential (MCR) District, and the Visitor Serving Commercial (C-VS) District. The City's proposal would establish a procedure for applying for a special permit for an adult entertainment business and establish regulations for the location and operation of such businesses.

Summary of Staff Recommendation

Staff recommends that the Commission **approve the proposed amendment with suggested modifications** for the reasons given in this report. The suggested modifications would delete the City's proposal to allow the establishment of adult entertainment businesses in the Light Industrial (M-1) District and the Coastal-Dependent Industrial (M-2) zone district. The General Industry land use designation in the Land Use Plan does not contain a category that would encompass the use and so cannot be allowed in the M-1 district. The M-2 district is reserved for those uses that are coastal dependent, i.e., those uses that must be located on or adjacent to the sea in order to be able to function at all. Adult entertainment businesses need not locate on or adjacent to the sea in order to be able to function at all. If approved with the suggested modifications, the amendment would result in adult entertainment businesses being allowed, subject to a special permit, in the Central Business (C-1) District and General Business (C-2) District.

ANALYSIS CRITERIA

The relationship between the Coastal Act and a local government's Local Coastal Program (LCP) can be described as a three-tiered hierarchy with the Coastal Act setting generally broad statewide policies. The Land Use Plan (LUP) portion of an LCP incorporates and refines the Coastal Act policies for the local jurisdiction, giving local guidance as to the kinds, locations, and intensities of coastal development. The Implementation Plan (IP), or zoning, portion of an LCP typically sets out the various zone districts and site regulations which are the final refinement specifying how coastal development is to proceed on a particular parcel. The IP must be consistent with and adequate to carry out the policies of the LUP, and the LUP must be consistent with the Coastal Act.

ADDITIONAL INFORMATION

For further information about this report or the amendment process, please contact Steven Guiney or Charles Lester, Coastal Commission, 725 Front Street, Suite 300, Santa Cruz, CA 95060; Tel. (831) 427-4863.

TABLE OF CONTENTS

- I. STAFF RECOMMENDATION.....3.**
 - A. IMPLEMENTATION PLAN MOTIONS AND RESOLUTIONS.....3**
 - 1. Denial of Implementation Plan Amendment as Submitted.....3**
 - 2. Approval of Implementation Plan Amendment if Modified as Suggested.....3**
 - B. SUGGESTED MODIFICATIONS4**
- II. FINDINGS4.**
 - A. AMENDMENT SUBMITTAL BACKGROUND AND DESCRIPTION.....4**
 - 1. Background4.**
 - 2. Description5.**
 - B. ANALYSIS.....5.**
 - C. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA).....8**
- III. EXHIBITS**
 - A. Resolution No. 03-99**
 - B. Ordinance No. 470**
 - C. Zone District Map**

I. STAFF RECOMMENDATION

A. IMPLEMENTATION PLAN MOTIONS AND RESOLUTIONS

1. Denial of Implementation Plan Amendment as Submitted

MOTION 1

"I move that the Commission reject amendment #1-99 to the Implementation Plan of the City of Morro Bay LCP as submitted by the City."

Staff recommends a **YES** vote which would deny the amendment as submitted. An affirmative vote by a majority of the Commissioners present is needed to uphold the motion according to the staff recommendation (otherwise the amendments are approved as submitted).

RESOLUTION 1

The Commission hereby rejects amendment #1-99 to the Implementation Plan of the City of Morro Bay LCP for the specific reasons discussed in the following findings on the grounds that it does not conform with and is inadequate to carry out the provisions of the certified Land Use Plan. There are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impacts which the approval of the amendment would have on the environment.

2. Approval of Implementation Plan Amendment if Modified as Suggested

MOTION 2

"I move that the Commission certify amendment #1-99 to the Implementation Plan of the City of Morro Bay LCP if it is modified as suggested."

Staff recommends a **YES** vote. An affirmative vote by a majority of the commissioners present is needed to pass the motion.

RESOLUTION 2

The Commission hereby certifies amendment #1-99 to the Implementation Plan of the City of Morro Bay LCP as modified, for the specific reasons discussed in the following findings, on the grounds that, as modified, the amendment conforms with and is adequate to carry out the certified Land use Plan; and approval of the amendment as modified will not cause significant adverse environmental effects for which feasible mitigation measures have not been employed consistent with the California Environmental Quality Act.

B. SUGGESTED MODIFICATIONS

Key for modifications: Unaltered text represents City-proposed language. ***Bold, italicized*** is language suggested by Coastal Commission. ~~Struck through~~ language represents deletions suggested by Coastal Commission.

1. **Proposed Section 17.70.050, Location of Adult Entertainment Businesses.** Add the word "or" and delete the reference to the M-1 and M-2 zone districts, as follows:

Adult entertainment businesses, as defined in this ordinance, shall only be established in the C-1, ~~or C-2, M-1 or M-2~~ districts of the City. . . .

2. **Chapter 17.24.140, Light Industrial (M-1) District.** Delete "Adult Entertainment Business" from the first column of the Light Industrial (M-1) District Table and ~~delete~~ "None – Special Permit pursuant to Chapt. 17.70" from the second column of the same table.
3. **Chapter 17.24.150, Coastal Dependent Industrial (M-2) District.** Delete "Adult Entertainment Business" from the first column of the Coastal Dependent Industrial (M-2) District Table and ~~delete~~ "None – Special Permit pursuant to Chapt. 17.70" from the second column of the same table.

II. FINDINGS

The Commission finds and declares the following for City of Morro Bay LCP amendment #1-99:

A. AMENDMENT SUBMITTAL BACKGROUND AND DESCRIPTION

1. Background

On February 10, 1997, in accordance with Government Code Section 65858, the City Council approved Ordinance 457, an interim ordinance prohibiting the establishment of adult entertainment businesses in the City. Prior to that date, the City had no regulations addressing adult entertainment businesses. An adult entertainment business could have been established with the approval of a business license, but without any regulations of the type of business per se. Unregulated establishment of adult entertainment businesses recently occurred in at least one other municipality in San Luis Obispo County. The reason for the interim ordinance, according to the City,

was the fact that there are known secondary effects of adult entertainment businesses that have negative impacts in the vicinities where they are located. These secondary effects include the reduction of the quality of urban life, increased crime, diminished retail trade, diminished property values, diminished tourism and urban blight.

Adult businesses may not be precluded within the City, but the City may regulate them under the police powers granted by the State. This proposed LCP amendment would govern the zone districts in which adult entertainment businesses could locate within the coastal zone.

2. Description

The City's proposal would allow adult entertainment businesses to locate in the Central Business (C-1) District, General Business (C-2) District, Light Industrial (M-1) District, and Coastal Dependent Industrial (M-2) District. The proposal would add a new chapter to the City's zoning ordinance specifically for the regulation of these types of businesses. The new chapter would include definitions, design and performance standards, application processing requirements, operational requirements and standards, and standards for locating these businesses in relation to residences, religious institutions, schools, public parks and recreation areas, public buildings, and other adult entertainment businesses.

B. ANALYSIS

As discussed earlier in this report, if the City did not have the interim ordinance in place, an adult entertainment business could be established in any one of several zone districts in the City where retail commercial uses can be established. The City cannot lawfully ban such businesses, but it can regulate their location, hours of operation, etc.

1. Commercial Zone Districts

Because this type of use could already be established in Central Business (C-1) District, General Business (C-2) District, Mixed Commercial/Residential (MCR) District, and the Visitor Serving Commercial (C-VS) District as a commercial retail use, no new use need be added to the zoning. However, rather than allowing the use in all of the commercial districts, the City proposes to allow adult entertainment businesses only in two of the commercial districts, C-1 and C-2. The proposed regulations governing such uses will be added to the Zoning Ordinance as a new Chapter 17.70, which requires amending the implementing portion of the LCP (the Zoning Ordinance). The two commercial zone districts currently allow all kinds of retail uses. The C-1 district allows retail sales, video arcades, and theaters. The C-2 district allows retail sales. The use proposed to be regulated by the City would generally fall into one or more of these existing allowable uses. The Land Use Plan describes the two types of commercial areas as providing for commercial uses oriented to the daily needs of residents within a neighborhood, and commercial uses oriented to the needs of areas larger than just one neighborhood. Adult entertainment businesses are consistent with the Land Use Plan descriptions of the purposes of the commercially designated areas. The regulations proposed to govern adult entertainment businesses include standards regarding where these businesses may locate. Locating them in the C-1 and C-2 districts is consistent with the Land Use Plan.

2. Industrial Zone Districts

a. Light Industrial

The City proposes to allow this use in the Light Industrial (M-1) District, which does not currently allow general commercial retail kinds of uses, although lumber yards and building materials sales are allowable uses. These uses entail both retail sales and wholesale, but are not considered *general* commercial retail sales uses. Adult entertainment businesses represent more general commercial retail sales uses and/or video arcade/theater type uses, which represent new kinds of uses in the M-1 district and therefore require amending the LCP. The M-1 district is a general, light industrial district centered near the mid-point of the City's length (see Exhibit C). The Land Use Plan describes the General Industry land use designation as one which has

Light industry land uses which do not require materials or equipment which would emit excessive air, audio, water or land pollutants, or would require considerable outdoor storage. The City would like to encourage the location of light industries that would specifically cater to commercial fishing and regional needs, such as machine shops, auto mechanic shops, black smithing, cold storage, warehousing, and food processing, light manufacturing, component assembling and small parts processing.

Besides these uses, interim uses are allowed in the M-1 district. These uses are to be allowed only until such time as the area is needed for its primary use. Interim uses are to be limited to projects which have relocatable (not permanent) structures, and are subordinate to the character of the visual setting. These uses are limited to the following:

1. visitor access, paths, lookout points, etc.
2. recreational vehicle parks
3. parking
4. picnic areas
5. campgrounds
6. restrooms and service facilities
7. playgrounds
8. temporary boat storage
9. temporary boat repair area
10. ancillary uses for the above
11. other uses serving visitors or commercial fishing which do not require permanent structures

With the kinds of permanent uses the Land Use Plan describes and the limitations on interim uses in the M-1 zone district, adult entertainment uses are not currently appropriate in the M-1 zone district. Although there is no coastal resource reason not to allow adult entertainment businesses to locate in the M-1 district, the Land Use Plan currently does not have any category which would encompass such a use. If the City wishes to have this use in the M-1 district, then the Land Use Plan will have to be amended to allow such a use. Thus, the proposed use in the M-1 zone district is currently inconsistent with the Land Use Plan and cannot be approved.

b. Coastal-Dependent Industrial (M-2) Zone District

The purpose of the M-2 district is to provide areas for industries that require a site on or adjacent to the ocean or harbor in order to operate. In Morro Bay, the M-2 zone district is located in two areas (see Exhibit C) and is currently oriented toward energy-related uses.

One area of M-2 zoning is at the far northern edge of the City where there are two M-2 parcels, both part of the Chevron Estero Bay Marine Terminal. The Marine Terminal is currently used to load oil onto tankers for transportation to refineries. The larger of the two parcels here is about three acres in size and lies between Toro Creek and Toro Creek Road on the inland side of Highway One. The other is just south of Toro Creek on the seaward side of the highway and is about one-quarter acre in size. These parcels are only a small part of the Marine Terminal, most of which is located in unincorporated San Luis Obispo County.

The second area zoned M-2 is the Duke (formerly PG&E) electrical generating plant. The larger of the two parcels, about 75 acres, is the site of the plant itself and is located between Highway One, Morro Creek, and the harbor at the northern end of the harbor. Steam used to turn the turbines to create electricity must be cooled and condensed back into water so it can be reused. The plant depends on seawater for the cooling and condensation cycle. The other parcel, about one-half acre in size, is the site of the outfall structure, about one-half mile from the plant at the northeastern side of Morro Rock, where the cooling water is released back into the ocean.

Land Use Plan Policy 5.01 requires the City to "designate the existing PG&E parcel and the Chevron pier parcel as coastal-dependent industrial uses." Policy 5.02 allows interim uses on coastal-dependent properties only

until the existing owners have an approved coastal-dependent industrial development. Interim uses shall be limited to projects which have relocatable (not permanent) structures, are subordinate to the character of the visual setting, and are limited to the following uses:

1. visitor access, paths, lookout points, etc.
2. recreational vehicle parks
3. parking
4. picnic areas
5. campgrounds
6. restrooms and service facilities
7. playgrounds
8. temporary boat storage
9. temporary boat repair area
10. ancillary uses for the above
11. other uses serving visitors or commercial fishing which do not require permanent structures

Policy 5.04 requires that "coastal-dependent uses shall have priority over non-coastal-dependent uses" in industrially designated areas. The intent of the LCP in these policies is to protect and preserve the areas designated for coastal-dependent uses for those types of uses. An adult entertainment business is not coastal-dependent, nor could it be considered as one of the interim uses listed above. Therefore, modifications are required to delete the proposed use

from the M-2 zone district in order to make the proposed zoning ordinance changes consistent with the Land Use Plan.

C. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

The Coastal Commission's review and development process for LCPs and LCP amendments has been certified by the Secretary of Resources as being the functional equivalent of the environmental review required by CEQA. The Commission can and does utilize any environmental information the local government has developed in conjunction with local environmental review. CEQA requires that alternatives to the proposed action be reviewed and considered for their potential effect on the environment and that the least damaging feasible alternative be chosen as the alternative to undertake. The Commission's suggested modifications are the result of consideration of alternatives. Approval of the amendment, as modified, will not have significant environmental effects for which feasible mitigation measures have not been employed consistent with the California Environmental Quality Act.

RESOLUTION 03-99**A RESOLUTION OF THE CITY OF MORRO BAY ANNOUNCING FINDINGS
AND ADOPTING AMENDMENTS TO THE LOCAL COASTAL PROGRAM
IMPLEMENTATION PLAN TO REGULATE THE ESTABLISHMENT OF ADULT
ENTERTAINMENT BUSINESSES****THE CITY COUNCIL
City of Morro Bay, California****CASE NO. LCP/ZOA 01-98**

WHEREAS, the Planning Commission of the City of Morro Bay, on June 15, 1998 and July 20, 1998 after duly noticed **PUBLIC HEARINGS**, did forward a recommendation, by adoption of Planning Commission Resolution No. 02-98, that the City Council amend the Local Coastal Program Implementation Plan, Title 17 of the Morro Bay Municipal Code (Zoning Ordinance), to regulate the establishment of adult entertainment businesses as contained in attached Exhibit "A"; and

WHEREAS, on the 27th day of July 1998, the City Council of the City of Morro Bay did hold a duly noticed **PUBLIC HEARING** to consider the amendment regulating the establishment of adult entertainment businesses as contained in attached Exhibit "A"; and

WHEREAS, for the purposes of the California Environmental Quality Act (CEQA), said amendments to the Local Coastal Program have complied with the City of Morro Bay objectives, criteria and procedures for implementation of the California Environmental Quality Act, (CEQA); and

WHEREAS, CEQA does not apply to local agency adoption and amendment of an LCP; pursuant to Sections 15250 and 15251 of the CEQA Guidelines and Public Resources Code Section 21080.5; and

WHEREAS, the proposed amendments are consistent with the General Plan and Local Coastal Program Land Use Plan; and

WHEREAS, on September 14, 1998 following the **PUBLIC HEARING**, and upon consideration of the testimony of all persons, both written and oral, the City Council accepted the Planning Commission recommendation to adopt Ordinance No. 470 and approved the amendment based on the following findings:

1. The City of Morro Bay does not currently regulate adult bookstores, adult movie theaters and other adult oriented businesses, including live adult entertainment ("adult entertainment businesses") any differently than other businesses operating in the City; and
2. The City Council, on February 10, 1997, determined that there are substantial adverse secondary effects of adult entertainment businesses, which secondary effects include, among other things, an increase in crime and a decrease in property values and retail trade; and found an immediate threat to the public health, safety and welfare due to the lack of any regulation of adult entertainment businesses; and
3. The City Council adopted by unanimous vote Ordinance No. 457, prohibiting the establishment of adult entertainment businesses based on the findings contained therein; and said prohibiting has been extended to February 11, 1999 by adoption of Ordinance Nos. 458 and 467 in accordance with Government Code Section 65858(a); and

Ex A
MRB LCPA
1-99

Resolution No. 03-99

Page 2

- 4. The City Council accepts the Planning Commission recommendation for adoption of regulations for the establishment of adult entertainment businesses and finds that there has been no change in circumstances that led to the adoption of, nor during the term of, the interim ordinance prohibiting adult entertainment businesses; and
- 5. The City Council finds that there is a clear need to regulate adult business locations within the community; and
- 6. The City Council of the City of Morro Bay hereby finds that the Local Coastal Program Implementation Plan (Zoning Ordinance) Amendments are in compliance with the intent, objectives, and all applicable policies and provisions of the California Coastal Act.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Morro Bay, California, that the City of Morro Bay's Local Coastal Program Implementation Plan, Title 17 of the Morro Bay Municipal Code (Zoning Ordinance), is amended as contained in Exhibit "A", attached hereto and made a part of this resolution; and

BE IT FURTHER RESOLVED that to implement the amendment adopted herein, the City Council of the City of Morro Bay, California, hereby directs as follows:

- 1. Resolution 03-99 and Ordinance No. 470, amending Title 17 of the Morro Bay Municipal Code for the purpose of regulating the establishment of adult entertainment businesses, shall be transmitted promptly to the California Coastal Commission with the request that the Commission certify the amendment to the City's Local Coastal Program; and
- 2. The Local Coastal Plan Amendment will be carried out in accordance with the Coastal Act (pursuant to Section 30501[a] of the Coastal Act); and
- 3. The amendments to Title 17 shall take effect immediately upon certification by the California Coastal Commission.


PASSED AND ADOPTED by the City Council of the City of Morro Bay on the 11th day of January, 1999, by the following vote:

AYES: Anderson, Crotzer, Elliott, Peirce, Peters

NOES: None

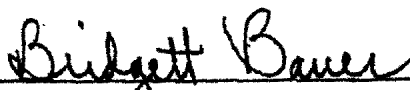
ABSTAIN: None

ABSENT:



 RODGER ANDERSON, Mayor
 City of Morro Bay

ATTEST:



 BRIDGET BAUER, City Clerk
 City of Morro Bay

Ex A, p2
 MRB LCPA 1-99

ORDINANCE NO. 470
AN ORDINANCE OF THE CITY OF MORRO BAY
ANNOUNCING FINDINGS AND ADOPTING
AMENDMENTS TO THE ZONING ORDINANCE
TO REGULATE THE ESTABLISHMENT
OF ADULT ENTERTAINMENT BUSINESSES

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CALIFORNIA
PLANNING COMMISSION
CENTRAL COAST AREA

THE CITY COUNCIL
City of Morro Bay, California

CASE NO. LCP/ZOA 01-98

WHEREAS, the Planning Commission of the City of Morro Bay, on June 15, 1998 and July 20, 1998 after duly noticed PUBLIC HEARINGS, did forward a recommendation, by adoption of Planning Commission Resolution No. 02-98, that the City Council amend Title 17 of the Morro Bay Municipal Code (Zoning Ordinance) to regulate the establishment of adult entertainment businesses as contained in attached Exhibit "A"; and

WHEREAS, on the 27th day of July 1998, the City Council of the City of Morro Bay did hold a duly noticed PUBLIC HEARING to consider the amendment regulating the establishment of adult entertainment businesses as contained in attached Exhibit "A"; and

WHEREAS, the Environmental Coordinator determined that the California Coastal Commission is the lead agency for local coastal plan amendments for the purposes of the California Environmental Quality Act; and

WHEREAS, following the PUBLIC HEARING, and upon consideration of the testimony of all persons, both written and oral, the City Council accepted the Planning Commission recommendation and approved the amendment based on the following findings:

1. The City of Morro Bay does not currently regulate adult bookstores, adult movie theaters and other adult oriented businesses, including live adult entertainment ("adult entertainment businesses") any differently than other businesses operating in the City; and
2. The City Council, on February 10, 1997, determined that there are substantial adverse secondary effects of adult entertainment businesses, which secondary effects include, among other things, an increase in crime and a decrease in property values and retail trade; and found an immediate threat to the public health, safety and welfare due to the lack of any regulation of adult entertainment businesses; and
3. The City Council adopted by unanimous vote Ordinance No. 457, prohibiting the establishment of adult entertainment businesses based on the findings contained therein; and said prohibiting has been extended to February 11, 1999 by adoption of Ordinance Nos. 458 and 467 in accordance with Government Code Section 65858(a); and

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MRB LCFA 1-99

4. The City Council accepts the Planning Commission recommendation for adoption of regulations for the establishment of adult entertainment businesses and finds that there has been no change in circumstances that led to the adoption of, nor during the term of, the interim ordinance prohibiting adult entertainment businesses; and
5. The City Council finds that there is a clear need to regulate adult business locations within the community; and
6. This Ordinance, adding Chapter 17.70 to, and modifying Sections 17.24.140 and 17.24.150 (allowable uses in the Industrial District Tables) of the Zoning Ordinance, contains clear and valid definitions; and
7. This Ordinance is based on evidence of adverse secondary effects of such businesses; and
8. This Ordinance does not operate as "prior restraint" on freedom of speech; and
9. There remains sufficient area available in the city for location of these businesses.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Morro Bay, California, as follows:

SECTION 1: Title 17 of the Morro Bay Municipal Code (Zoning Ordinance) is amended as contained in Exhibit "A", attached hereto and made a part of this ordinance:

SECTION 2: To implement the amendment adopted herein, the City Council of the City of Morro Bay, California, hereby directs as follows:

1. This Ordinance No. 470, amending Title 17 of the Morro Bay Municipal Code for the purpose of regulating the establishment of adult entertainment businesses, shall be transmitted promptly to the California Coastal Commission with the request that the Commission certify the amendment to the City's Local Coastal Program; and
2. The City Council of the City of Morro Bay hereby finds that the Local Coastal Program Implementation Program (Zoning Ordinance) Amendments are in compliance with the intent, objectives, and all applicable policies and provisions of the California Coastal Act; and
3. The amendments to Title 17 shall take effect immediately upon certification by the California Coastal Commission.

EXB, p 2
MRB LCRA 1-99

INTRODUCED at the regular meeting of the City Council held on the 27th day of July, 1998, by motion of Mayor Novak, and seconded by Councilmember Pierce.

PASSED AND ADOPTED by the City Council of the City of Morro Bay on the 14th day of September, 1998, by the following vote:

AYES: Anderson, Elliott, Peirce, Peters, Novak

NOES: None

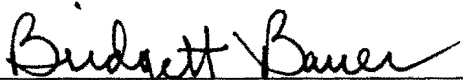
ABSTAIN: None

ABSENT: None



CATHY NOVAK, Mayor
City of Morro Bay

ATTEST:



BRIDGETT BAUER, City Clerk
City of Morro Bay

APPROVED AS TO FORM:



ROBERT W. SCHULZ, Esq.
City Attorney

EXB, p3

MRB LCPA 1-99

EXHIBIT "A"
ORDINANCE NO. 470

CHAPTER 17.70 ADULT ENTERTAINMENT BUSINESSES

SECTIONS:

17.70.010	Purpose and Intent
17.70.020	Applicability
17.70.030	Definitions
17.70.040	Exceptions
17.70.050	Location of Adult Entertainment Businesses
17.70.060	Design and Performance Standards
17.70.070	Additional Design and Performance Standards
17.70.080	Application Requirements
17.70.090	Required Findings for Approval
17.70.095	Time Limit for Action on Application
17.70.100	Appeal of Zoning Administrator Action
17.70.110	Inspections
17.70.120	Violations
17.70.130	Severance Clause

17.70.010 PURPOSE AND INTENT

The intent of this ordinance is to regulate adult entertainment businesses to promote the health, safety and general welfare of the citizens of the City to prevent community wide adverse economic impacts, increased crime, decreased property values, and the deterioration of neighborhoods which can be brought about by the concentration of adult entertainment businesses in close proximity to each other in proximity to other incompatible uses such as schools for minors, religious institutions, and residential uses. Adult entertainment businesses, because of their nature, are recognized as producing negative secondary impacts, particularly when these businesses are concentrated or located near sensitive uses. The purpose of this ordinance is to establish reasonable and uniform regulations to reduce or eliminate the adverse secondary effects and prevent any deleterious location or concentration of adult entertainment businesses, while permitting the location of adult entertainment businesses within the City limits. The provisions of this ordinance have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including adult-oriented materials. Similarly, it is not the intent nor effect of this ordinance to restrict or deny access by adults to adult-oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of adult-oriented entertainment to their intended market.

17.70.020 APPLICABILITY

The provisions of this Section apply to uses operated as adult entertainment business establishments in addition to all other applicable requirements of this Title. The establishment of an adult use shall include the opening of such business as a new business, the relocation of such business, the conversion of an existing business location to any adult use, or the granting of permits required of masseurs and masseuses which would have the effect of the establishment of an adult use or the intensification of an existing adult use.

Ex B, p 4
MKB LCPA 1-99

17.70.030 DEFINITIONS

For purposes of this Chapter, the following definitions shall apply:

- A. "Adult entertainment business" means an adult bookstore, adult novelty store, or adult video store establishment with more than 25% of (a) its floor area devoted to; or (b) stock-in-trade consisting of; or (c) gross revenues derived from, and offering for sale for any form of consideration, any one or more of the following:
1. Books, magazines, periodicals or other printed matter, photographs, drawings, motion pictures, slides, films, tapes, videocassettes, records, or other visual or audio representations which are characterized by an emphasis upon the depiction or description of "specified sexual activities" or "specified anatomical areas."
 2. Instruments, devices or paraphernalia which are designed to be used in connection with "specified sexual activities"; or
 3. Goods which are replicas of, or which simulate "specified anatomical areas," or goods which are designed to be placed on or in "specified anatomical areas," or to be used in conjunction with "specified sexual activities."
- B. "Adult live entertainment theater" means any place, building, enclosure or structure, partially or entirely used for "live adult entertainment" performances or presentations characterized by an emphasis on depicting, exposing, displaying, describing or relation to "specified sexual activities" or "specified anatomical areas" for observation by patrons or customers therein.
- C. "Live adult entertainment" means 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, simulation, wrestling or pantomiming, in which the performer or performers expose to public view without opaque covering "specified anatomical areas" for entertainment value for any form of consideration.
- D. "Adult motion picture or video arcade" means any business wherein coin, paper, note, or token operated or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are maintained to show images to four or fewer persons per machine, at any one time, and where the predominant character or theme of the images so displayed is distinguished or characterized by its emphasis on matter depicting, or relating to "specified sexual activities" or specified anatomical areas."

Ex B, p 5

MRB LCFA 1-99

- E. "Adult motion picture theater" means any business, other than a hotel or motel which provides closed circuit viewing to each individual room as a secondary service to its motel customers, with the capacity of five or more persons where, for any form of consideration, films, motion pictures, video cassettes, slides, or similar photographic reproductions in which the predominant character and theme is distinguished or characterized by its emphasis on matter depicting or relating to "specified sexual activities" or "specified anatomical area" as defined in this section. This includes, without limitation, showing any such slides, motion picture or videos by means of any video tape system, which has a display, viewer, screen, or a television set.
- F. "Public building" means any building owned, leased or held by the United States, the state, the county, the city, any special district, school district, or any other agency or political subdivision of the state or the United States, such as city hall, county offices, library, community centers, post offices, police and fire stations.
- G. "Public park" or "recreation area" means public land which has been designated for park or recreational activities, including but not limited to a park, playground, nature trails, swimming pool, athletic field, basketball court, tennis court, pedestrian or bicycle paths, beaches, open space, or similar public land within the city or which is under the control, operation or management of the city Recreation and Parks Department.
- H. "Religious institution" means any church, synagogue, mosque, temple, or building which is used primarily for religious worship, religious education and related religious activities.
- I. "School" means any public or private educational facility primarily attended by minors including but not limited to child day care facilities, nursery schools, preschools, kindergartens, elementary schools, primary school, intermediate schools, junior high schools, middle schools, secondary schools, vocational schools, continuation schools, special education schools, and includes school grounds.
- J. "Specified anatomical areas" shall include the following:
1. Less than completely and opaquely covered human genitals, pubic region, buttock, anus, and/or the female breast below a point immediately above the top of the areola; and
 2. Human male genitals in a discernibly turgid state even if completely and opaquely covered.

K. "Specified sexual activities" shall include the following:

1. Actual or simulated sexual intercourse, oral copulation and intercourse, oral-anal copulation, bestiality, direct physical stimulation of unclothed genitals, flagellation or torture in the context of a sexual relationship, or the use of excretory functions in the context of a sexual relationship, and any of the following sexually oriented acts or conduct: anilingus, buggery, coprophagy, coprophilia, cunnilingus, fellatio, necrophilia, pederasty, pedophilia, piquerism, sapphism, zoerasty; or
2. Clearly depicted human genitals in a state of sexual stimulation, arousal or tumescence; or
3. Human or animal masturbation, sodomy, oral copulation, coitus, ejaculation; or
4. Fondling or touching of nude human genitals, pubic region, buttocks or female breast; or
5. Masochism, erotic or sexually oriented torture, beating or the infliction of pain; or
6. Erotic or lewd touching, lewd fondling or other lewd contact with an animal by a human being; or
7. Human excretion, urination, menstruation, vaginal or anal irrigation.

17.70.040 EXCEPTIONS

An "adult entertainment business" shall not include:

- A. Bona fide medical establishments operated by properly licensed and registered medical and psychological personnel with appropriate medical or professional credentials for the treatment of patients.
- B. Persons depicting "specified anatomical areas" in a modeling class operated:
 1. By a college, junior college, or university supported entirely or partly by public revenue; or
 2. By a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by public revenue; or

3. Where, in order to participate in a class a student must enroll at least three days in advance of the class.

C. The practice of massage in compliance with the City of Morro Bay Municipal Code, is not in violation of this Ordinance.

17.70.050 LOCATION OF ADULT ENTERTAINMENT BUSINESSES

Adult entertainment businesses, as defined in this ordinance, shall only be established in the C-1, C-2, M-1 or M-2 districts of the City and shall be located a minimum of 500 feet away from the following sensitive uses: religious institutions, schools, public parks or recreation areas, public buildings and other adult entertainment businesses.

A. Adult entertainment businesses locating within 500 feet of any residential use shall be subject to additional design and performance standards to help mitigate potential impacts (see Section 17.70.070).

B. Distance shall be measured in a straight line, without regard to intervening structures, from the closest property line of the adult entertainment business to the closest property line of the sensitive use or residential use.

17.70.060 DESIGN AND PERFORMANCE STANDARDS

The establishment or operation of an adult entertainment business shall comply with the applicable fees and site development standards, including, but not limited to, parking and design review, and the requirements of the Uniform Codes and building regulations and standards adopted by the City of Morro Bay. An adult entertainment business shall comply with the following design and performance standards:

A. Signs, advertisements, displays, or other promotional materials depicting or describing "specified anatomical areas" or specified sexual activities" or displaying instruments, devices or paraphernalia which are designed for use in connection with "specified sexual activities" shall not be shown or exhibited so as to be discernible by the public beyond the walls of the building or portion thereof in which the adult entertainment business is conducted.

B. Each adult entertainment business shall have a business entrance separate from any other non-adult business located in the same building.

C. All building openings, entries, and windows for an adult entertainment business shall be located, covered or screened in such a manner as to prevent a view into the interior of an adult entertainment business from any area open to the general public.

Ex B, p 8

MEB LCA 1-99

- D. No adult entertainment business shall be operated in any manner that permits the observation by the public of any material or activity depicting, describing, or relating to "specified sexual activities" or "specified anatomical areas" from any public way or from any location beyond the walls of the building or portion thereof in which the adult entertainment business is conducted.
- E. The building entrance to the adult entertainment business shall be clearly and legibly posted with a notice indicating that minors are precluded from entering the premises.
- F. No loudspeakers or sound equipment shall be used by an adult entertainment business for amplification of sound to a level discernible by the public beyond the walls of the building or portion thereof in which the adult entertainment business is conducted.
- G. Each adult entertainment shall be provided with a manager's station which shall be used for the purpose of supervising activities within the business. A manager shall be on the premises during all times that the adult entertainment business is open to the public.
- H. The interior of the adult entertainment business shall be configured in such a manner that there is an unobstructed view from a manager's station of every area of the adult entertainment business to which any patron is permitted access for any purpose, excluding restrooms. If the adult entertainment business has two or more manager's stations designated, then the interior of the adult entertainment business shall be configured in such a manner that there is an unobstructed view of each area of the adult entertainment business to which any patron is permitted access for any adult purpose, excluding restrooms, from at least one of the manager's stations. The view required in this subsection must be by direct line of sight from the manager's station.
- I. No individual viewing area may be occupied by more than one person at any one time "Individual viewing area" shall mean a viewing area designed for occupancy by one person. Individual viewing areas of the adult entertainment business shall be operated and maintained without any hole or other opening or means of direct communication or visual or physical access between the interior space of two or more individual viewing areas.
- J. Off-street parking shall be provided for the adult entertainment business as specified in accordance with the parking provisions.

K. The following additional requirements shall pertain to Adult Businesses providing live entertainment depicting Specified Anatomical Areas or involving Specified Sexual Activities:

1. No person shall perform live entertainment for patrons of an Adult Business except upon a stage at least eighteen (18) inches above the level of the floor which is separated by a distance of at least (6) feet from the nearest area occupied by patrons, and no patron shall be permitted within six (6) feet of the stage while the stage is occupied by an entertainer. "Entertainer" shall mean any person who is an employee or independent contractor of the Adult Business, or any person who, with or without any compensation or other form of consideration, performs live entertainment for patrons of an Adult Business.
2. The Adult Business shall provide separate dressing room facilities for entertainers which are exclusively dedicated to the entertainer's use.
3. The Adult Business shall provide an entrance/exit for entertainers which is separate from the entrance/exit used by patrons.
4. The Adult Business shall provide access for entertainers between the stage and the dressing rooms which 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 entertainers between the dressing room area and the stage, with a railing, fence, or other barrier separating the patrons and the entertainers capable of (and which actually results in) preventing any physical contact between patrons and entertainers.
5. No entertainer acting within the scope of their employment, either before, during, or after performances, shall have physical contact with any patron, and no patron shall have physical contact with any entertainer either before, during, or after performances by such entertainer.

L. An off-site security program shall be prepared and implemented including the following items:

1. All off-street parking areas and building entries serving the adult entertainment business shall be illuminated during all hours of operation with a lighting system which provides a minimum maintained horizontal illumination of one foot-candle (ten luxes) (one candlepower) of light on the parking surface and/or walkway.

2. All interior portions of the adult entertainment business, except those areas devoted to mini-motion or motion pictures shall be illuminated during all hours of operation with lighting system which provides a minimum maintained horizontal illumination of not less than two foot-candles (twenty luxes) (two candlepower) of light on the floor surface.
3. Security guards for other Adult Businesses may be required if it is determined by the Chief of Police that their presence is necessary in order to prevent any unlawful conduct from occurring on the premises.

The foregoing applicable requirements shall be deemed conditions of a permit for an Adult Business and failure to comply with every such requirement shall be grounds for revocation of the permit issued pursuant to these regulations.

17.70.070 ADDITIONAL DESIGN AND PERFORMANCE STANDARDS WHEN LOCATED NEAR A RESIDENTIAL USE

The following requirements apply to adult entertainment businesses which locate within 500 feet of residential uses:

- A. There shall be an intervening street between the residential use and the adult entertainment business.
- B. No access from an adult entertainment business to a residential street shall be permitted.
- C. A six-foot tall barrier shall be constructed to prevent pedestrian and vehicular access to the adult entertainment business from the residential street.
- D. The barrier shall be screened by landscaping to provide a more aesthetically pleasing appearance.

17.70.080 APPLICATION REQUIREMENTS

Adult Entertainment Business permit applications shall be submitted for review and approval by the Zoning Administrator.

- A. In addition to the submittal and review requirements for a permit as specified in the City's Code, the following must be submitted prior to an application being deemed complete:
 1. The name and permanent address of applicant;

Ex B, p 11
MRB LCPA 1-99

2. The name and proposed business address of the applicant. If the applicant is a corporation, the name must be exactly as set forth in its articles of incorporation and the applicant shall show the name and residence address of each of the officers, directors, and each stockholder owning not less than twenty-five percent of the stock of the corporation. If the applicant is a partnership, the applicant shall show the name and residence address of each of the members, including limited partners;
 3. A detailed description of the proposed entertainment, including type of entertainment and number of persons engaged in the entertainment;
 4. A diagram of the premises showing a floor plan thereof, specifying where the specific entertainment uses are proposed to be conducted within the building, the location of one (1) or more manager's stations, the location of all overhead lighting, fixtures, and designating any portion of the premises in which patrons will not be permitted;
 5. Hours of operation and the admission fee, if any, to be charged;
 6. The name or names of the person or persons who have the management or supervision responsibilities of the applicant's business, and of any entertainment;
 7. A statement of the nature and character of the applicant's business, if any, to be carried on in conjunction with such entertainment;
 8. A site area map showing the proposed business location and plotting all of the listed sensitive uses within 500 feet of the proposed location;
 9. A mailing list of all property owners within 1000 feet of the proposed business location.
- B. Prior to the issuance of a permit, the Police Department shall complete a background investigation of all parties identified in A.1 and A.2 above.

17.70.090 REQUIRED FINDINGS FOR APPROVAL

The City Council finds and determines that there are substantial adverse secondary effects of adult entertainment businesses, which secondary effects include, among other things, an increase in crime and a decrease in property values and retail trade. There is a need to regulate adult entertainment businesses because of the adverse secondary effects of such businesses. The following additional findings are to be made by the Zoning Administrator prior to the approval of any permit for an adult entertainment business:

ExB, p12

MRD LPA 1-99

- A. The adult entertainment business and its proposed site are consistent with the general plan.
- B. The proposed use will not adversely affect the adjacent neighborhood.
- C. The proposed site has an appropriate shape and is of sufficient size to allow the development of the proposed use without detrimental effects to the surrounding area.
- D. The proposed use complies with all applicable city, county, state, and other governmental laws.

17.70.095 TIME LIMIT FOR ACTION ON APPLICATION

Within sixty (60) days of receipt of a completed application, the Zoning Administrator shall act to approve or deny the application in accordance with the provisions of this Chapter, and so notify the applicant. No such action to approve or deny the application shall take place prior to noticing those property owners within 1000 feet of the proposed business location. Said noticing shall occur at least 30 days prior to the Zoning Administrator's final action.

17.70.100 APPEAL OF ZONING ADMINISTRATOR ACTION

After denial or approval of an application for an adult entertainment business permit, the applicant, or an aggrieved person, may seek review of such administrative action by the City Council upon filing a request with the City Clerk within ten (10) days of the Zoning Administrator denial or approval action. The request for additional review shall be scheduled before the City Council within sixty (60) days of the filing with the City Clerk. If the denial or approval is affirmed on review, the applicant or aggrieved person may seek prompt judicial review of such administrative action pursuant to California Code of Civil Procedure Section 1094.5. The City shall make all reasonable efforts to expedite judicial review, if sought by the applicant.

17.70.110 INSPECTION

An applicant or Permittee shall permit representatives of the Police Department, Health Department, Planning and Building Department, Fire Department, or other City Departments or Agencies to inspect the premises of an Adult Entertainment Business for the purpose of ensuring compliance with the law and the development standards applicable to Adult Entertainment Businesses, at any time it is occupied or opened for business. A person who operates an Adult Entertainment business or his or her agent or employee is in violation of the provisions of the Section if he or she refuses to permit such lawful inspection of the premises at any time it is occupied or opened for business.

ExB, p13
MRB LCPA 1-99

17.70.120 VIOLATIONS

It shall be unlawful to establish or operate an adult entertainment business in violation of this chapter. Any person who violates any provision of this chapter shall be deemed guilty of a misdemeanor. Nothing in the chapter shall be deemed or constituted to prevent the City from commencing any civil proceeding otherwise authorized by law for the declaration or abatement of a public nuisance

17.70.130 SEVERANCE CLAUSE

If any provision, section, subsection, sentence, clause or phrase of this ordinance, or the application of same to any person or set of circumstances if for any reason is held to be unconstitutional, void or invalid, the invalidity of the remaining portions of this Ordinance shall no be affected thereby, it being the intent of the City Council in adoption this Ordinance that no portion thereof, or provisions, or regulation contained herein, shall become inoperative, or fail by reason of any unconstitutionality of any other portion hereof, and all provisions of this Ordinance are declared to be severable for that purpose.

Ex B, p 14
MRB LCRA 1-99

17.24.140 Light Industrial (M-1) District Table

Unless otherwise designated, the following uses or other uses which are found to be similar and consistent with the General Plan and Local Coastal Plan may be allowed with the appropriate permits and licenses.	Conditional Use Permit Required.	Maximum Building Height	Minimum Building Site Area	Minimum Lot Area Per Unit	Minimum Front Yard Setback	Minimum Side Yard Setback (Exterior Yard)	Minimum Side Yard Setback (Interior Yard)	Minimum Rear Yard Setback	Landscaping	Maximum Lot Coverage
The following uses within a building or surrounded by landscaping and a solid fence or wall at least six (6) feet high; blacksmith shop; lumber yard; boat building; machine shop; bottling plant; heavy equipment and building materials sales and storage; cabinet shop; pipe yard; locker plant; contractors yard; service yard; feed and fuel yard; outdoor storage and sales but not including self-service fuel dispensing facilities; sheet metal shop; auto mechanic shop; auto body paint and repairs shop, warehousing; dry cleaning plant and laundry; nursery for plants.	None except when within 300' of other non M-1 Districts a Minor Use Permit is required, or within 100' or across the street from a residential zone in which case a regular CUP is required	30 ft.	Refer to Subdivision Regulations for sizes for new lots	N/A	25 ft.	10 ft.	0 ft. except 10 ft when adjacent to a residential zone or use	Plan Required	90%	
Light manufacturing, fabrication; component assembling; small parts processing.										
Residence for security purposes										
Food and seafood processing	Yes									
Aquaculture										
<u>Adult Entertainment Businesses</u>	None - special permit pursuant to Chpt. 17.70									

35

Morro Bay 2-97

MRD LCA 1-99
Ex B p 15

EXHIBIT A-1.

1724

17.24.150 Coastal Dependand Industrial (M-2) District Table

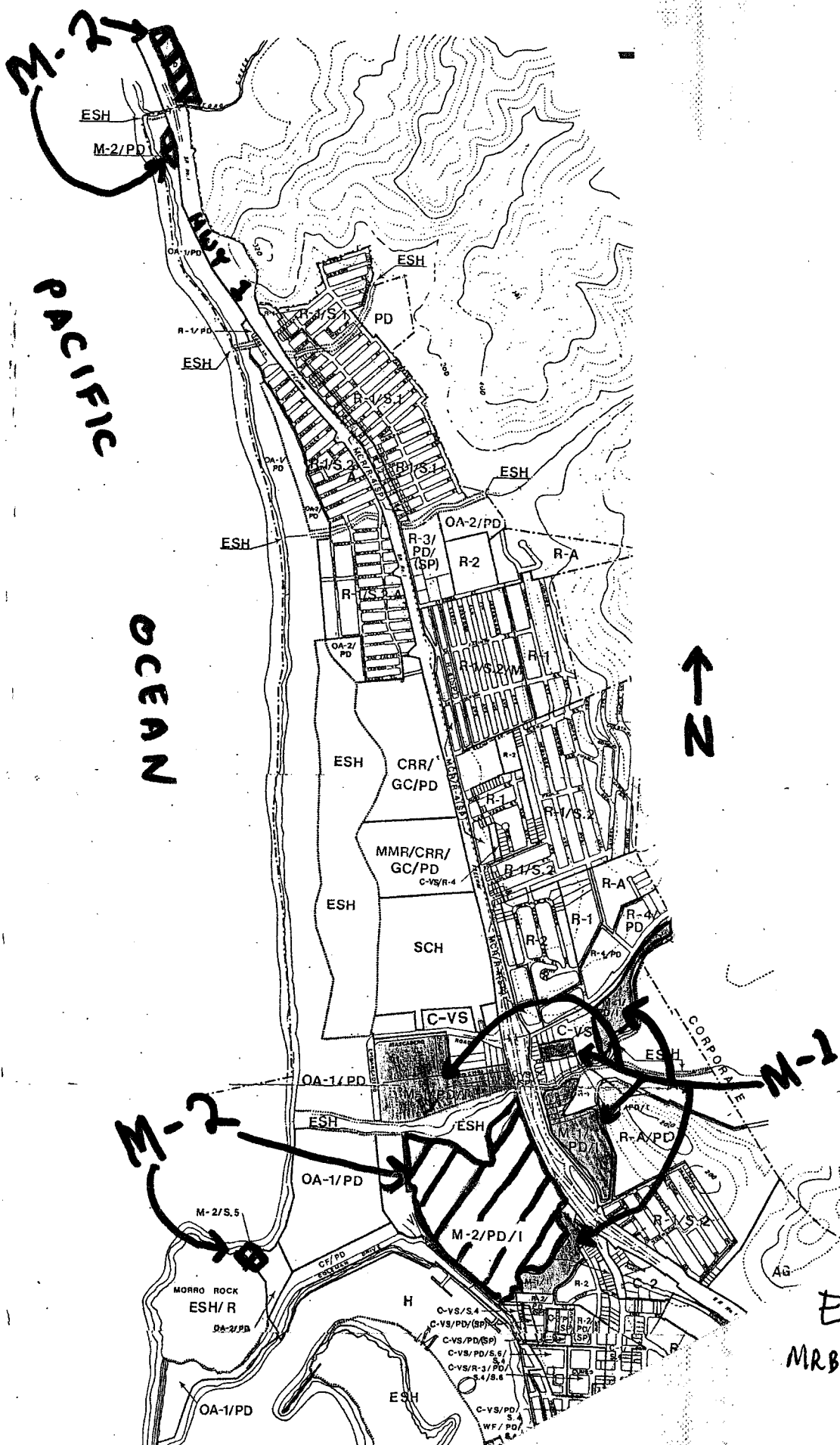
Unless otherwise designated, the following uses or other uses which are found to be similar and consistent with the General Plan and Local Coastal Plan may be allowed with the appropriate permits and licenses.	Conditional Use Permit Required.	Maximum Building Height	Minimum Building Site Area	Minimum Lot Area Per Unit	Minimum Front Yard Setback	Minimum Side Yard Setback (Exterior Yard)	Minimum Side Yard Setback (Interior Yard)	Minimum Rear Yard Setback	Landscaping	Maximum Lot Coverage
Thermal power plant and support facilities; pipelines; storage tanks; wastewater treatment facilities ; other industrial uses which must be located on or adjacent to the sea in order to function; Excluding: OCS land-based support facilities including but not limited to support bases, pipe storage yards and pipeline coating yards	Yes	30 ft. (For new construction only - does not apply to replacement or repair of existing structures)	Refer to Subdivision Regulations	N/A	25 ft.	10 ft.	0 ft. except 10 ft. when adjacent to residential use or zone.	Plan Required		90%
Aqua-culture and fish processing plants.										
Uses allowed in the M-1 Zone if coastal related, such as but not limit to: boat construction marine supply and repair, Recreational Vehicle service and other Coastal Related Manufacturing uses.										
<u>Adult Entertainment Businesses</u>	None - Special Permit pursuant to Chpt. 17.70									

EXHIBIT A-2

1724

37
 Added
 Morro Bay 2-97

ERB, p16.
 MRB CCPA 1-99



Ex C
MRB LCPA 1-99

