

CALIFORNIA COASTAL COMMISSION

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October 17, 2002

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TO: COMMISSIONERS AND INTERESTED PERSONS

**FROM: DEBORAH LEE, SOUTH COAST DEPUTY DIRECTOR
SHERILYN SARB, DISTRICT MANAGER, SAN DIEGO
GARY CANNON, COASTAL PROGRAM ANALYST, SAN DIEGO**

**SUBJECT: STAFF RECOMMENDATION ON MAJOR AMENDMENT NO. 2-2002
(Adult Businesses) TO THE CITY OF ENCINITAS LOCAL COASTAL
PROGRAM (For Public Hearing and Possible Action at the Meeting of
November 5-8, 2002)**

SYNOPSIS**SUMMARY OF AMENDMENT REQUEST**

The City is proposing to amend its certified LCP implementation plan to regulate adult businesses in the GC (General Commercial) and ER-C (Encinitas Ranch-Commercial) zones. The amendment proposes to remove the requirement that a Major Conditional Use Permit (CUP) be required for adult businesses within the GC and ER-C zones and provides that they be Permitted by Right (P) within the GC and ER-C zones with a provision prohibiting their establishment within 750 feet of an existing residential zone, park, religious institution, school or child day care facility. The amendment also proposes to revise the definitions of various adult business types and activities and includes new definitions for a "child care facility", "park", "religious institution", "residential zone" and "school". On August 27, 2002 the City of Encinitas Local Coastal Program Amendment (LCPA) No. 2-2002 was filed in the San Diego District office. At the October 2002 Commission hearing, a time extension (not to exceed one year) on the LCP amendment package was granted by the Commission to allow scheduling of the item at the Southern California (San Diego) location in November.

SUMMARY OF STAFF RECOMMENDATION

Staff recommends that, following a public hearing, the Commission approve the proposed City of Encinitas Implementation Plan Amendment No. 2-2002 as submitted. Attached are the City's resolutions of approval for changes to the certified LCP implementation plan (Exhibit #1).

The appropriate resolutions and motions begin on page 2. The findings for approval of the Implementation Plan Amendment as submitted begin on page 3.

ADDITIONAL INFORMATION

Further information on the City of Encinitas LCP Amendment #2-2002 may be obtained from Gary Cannon, Coastal Planner, at (619) 767-2370.

PART I. OVERVIEW

A. LCP HISTORY

On November 17, 1994, the Commission approved, with suggested modifications, the City of Encinitas Local Coastal Program (both land use plan and implementing ordinances). The City accepted the suggested modifications and, on May 15, 1995, began issuing coastal development permits for those areas of the City within the Coastal Zone. The subject LCPA will be the tenth amendment to the City's certified LCP.

B. STANDARD OF REVIEW

Pursuant to Section 30513 of the Coastal Act, the Commission may only reject zoning ordinances or other implementing actions, as well as their amendments, on the grounds that they do not conform with, or are inadequate to carry out, the provisions of the certified land use plan. The Commission shall take action by a majority vote of the Commissioners present.

C. PUBLIC PARTICIPATION

The City has held City Council meetings with regard to the subject amendment request. All of those local hearings were duly noticed to the public. Notice of the subject amendment has been distributed to all known interested parties.

PART II. LOCAL COASTAL PROGRAM SUBMITTAL - RESOLUTIONS

Following a public hearing, staff recommends the Commission adopt the following resolutions and findings. The appropriate motion to introduce the resolution and a staff recommendation are provided just prior to each resolution.

- I. **MOTION:** *I move that the Commission reject the Implementation Program Amendment Number 2-2002 for the Encinitas as submitted.*

STAFF RECOMMENDATION OF CERTIFICATION AS SUBMITTED:

Staff recommends a **NO** vote. Failure of this motion will result in certification of the Implementation Program Amendment as submitted and the adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the Commissioners present.

**RESOLUTION TO CERTIFY IMPLEMENTATION PROGRAM AMENDMENT
AS SUBMITTED:**

The Commission hereby certifies the Implementation Program Amendment Number 2-2002 for the City of Encinitas certified LCP as submitted and adopts the findings set forth below on grounds that the Implementation Program Amendment conforms with, and is adequate to carry out, the provisions of the certified Land Use Plan, and certification of the Implementation Program Amendment will meet the requirements of the California Environmental Quality Act, because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the Implementation Program Amendment on the environment, or 2) there are no further feasible alternatives or mitigation measures that would substantially lessen any significant adverse impacts on the environment that will result from certification of the Implementation Program.

**PART III. FINDINGS FOR APPROVAL OF THE CITY OF ENCINITAS
IMPLEMENTATION PLAN AMENDMENT NO. 2-2002, AS
SUBMITTED**

A. AMENDMENT DESCRIPTION

The amendment request will modify several provisions of the zoning code pertaining to the establishment of adult business. Currently, adult businesses are permitted in the General Commercial (GC) zone and within the Encinitas Ranch Specific Plan Commercial zone (ER-C) with approval of a Major Conditional Use Permit (CUP). The proposed amendment eliminates the need for a Major CUP for adult businesses within the GC and ER-C zones and allows them by right provided that they are not located within 750 feet of an existing residential zone, park, religious institution, school or child day care facility.

To implement these changes, the City will revise its zoning matrix in Section 30.09 for adult business use within the GC zone by deleting the "C" connoting "conditional use permit required major" and adding a "P" to connote "permitted by right". In addition, Section 6.8 of the Encinitas Ranch Specific Plan is proposed to be revised so as to remove "adult businesses" from the list of uses requiring a Major Use Permit and inserting "adult businesses" as a "permitted use" identified in the Commercial Zone chart.

The City's amendment also revises the definitions within Section 30.04 of the City's certified LCP Implementation Plan (IP) dealing with several types of adult businesses, sexual activities or anatomical areas so as to conform to the definitions used in Section 6.10 of the City's municipal code. The applicable words to be defined by reference are:

Adult Arcade

Adult Retail

Adult Booth/Individual Viewing Area

Adult Business
Adult Cabaret
Adult Hotel/Motel
Adult Live Entertainment
Adult Modeling Studio
Adult Motion Picture Theater
Adult Oriented Material
Sexually Oriented Merchandise
Specified Anatomical Areas
Specified Sexual Activities

Since Section 6.10 of the City's municipal code is not currently part of the City's LCP, any definitions within Section 6.10 used to define the specific words revised in Section 30.04 will, by reference, become part of the City's IP and any future revisions to these definitions will require an amendment to the certified IP. In addition, new definitions for "child care facility", "park", "religious institution", "residential zone" and "school" are added to Section 30.04 of the City's IP.

In addition to modifications of definitions, the amendment adds Section 30.26 to the zoning code to regulate the location of adult businesses within the GC and ER-C zones. Specifically, adult businesses are not allowed to be established within 750 feet of an existing residential zone, park, religious institution, school or child day care facility.

B. FINDINGS FOR APPROVAL

The standard of review for LCP implementation submittals or amendments is their consistency with and ability to carry out the provisions of the certified LUP.

a) **Purpose and Intent of the Ordinances**. The purpose and intent of the definitions section of the City's IP is to provide definitions of terms utilized within the City's Zoning Ordinance such that the terms are applied consistently throughout the City. The purpose of the GC and ER-C zones is to provide areas for businesses to meet the both local and visitor demand for commercial goods and services. Currently adult businesses are permitted within both the GC and ER-C zones with approval of a Major Conditional Use Permit.

b) Adequacy of the Ordinance to Implement the Certified LUP Segments.

The proposed changes involve procedural changes in the way adult businesses are permitted within the GC and ER-C zones. The proposal will allow adult businesses within the GC and ER-C zones by right, eliminating the need for a Major Use Permit. However, Section 30.26 is proposed to be added to the City's IP which will require that any new adult business within the GC and ER-C zones must also be located at least 750 feet from any existing residential zone, park, religious institution, school or child day care facility. The City has documented through mapping that this added restriction would still provide adequate locations for the adult businesses within the GC and ER-C zones.

The changes also involve revisions to several definitions for adult businesses, activities and anatomical areas in order to be uniform and consistent with all such definitions identified in the IP. Currently some definitions of adult businesses, activities and anatomical areas defined in Section 30.04 of the City's IP are at variance with the definitions within Chapter 6.10 of the City's municipal code. The proposed changes will correct these differences by substituting the definitions used within Chapter 6.10 of the municipal code for those words currently defined in Section 30.04 of the IP. Also proposed is the inclusion of several new definitions for "child care facility", "park", "religious institution", "residential zone" and "school". The purpose of adding definitions for "child care facility", "park", "religious institution", "residential zone" and "school" is related to the proposed locational criteria for establishing adult businesses within the GC or ER-C zones (i.e., such uses will not be permitted near schools, among other types of uses).

The City has concluded that a proliferation of adult business establishments has the potential of adversely affecting the community in terms of crime, blight and increased threat of sexually transmitted diseases. Thus, the purpose of the proposed revisions to the zoning ordinance is to establish locational criteria to discourage the use of adult businesses in certain parts of the city and to protect the quality of life and neighborhoods. As such, the proposed revisions to the City's Ordinance will result in permitting adult businesses within GC and the ER-C zones provided such uses are not located within 750 feet of an existing residential zone, park, religious institution, school or child day care facility. Restricting such uses is analogous to restricting, for example, the location of bars and liquor stores. However, the potential change in land use associated with the proposed LCP amendment does not result in any conflicts with the policies of the certified land use plan (LUP).

The revisions proposed by the City generally relate to the procedure involved with locating adult businesses within the GC and ER-C zones. There will be no impacts to coastal resources resulting from approval of the proposed LCP amendment. Since the proposed amendment conforms with the certified land use plan and does not have the potential to adversely affect coastal resources or related policies, the proposed ordinance conforms with, and is adequate to implement, the certified LUP.

PART IV. CONSISTENCY WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Section 21080.5 of the California Environmental Quality Act (CEQA) exempts local government from the requirement of preparing an environmental impact report (EIR) in connection with its local coastal program. Instead, the CEQA responsibilities are assigned to the Coastal Commission and the Commission's LCP review and approval program has been found by the Resources Agency to be functionally equivalent to the EIR process. Thus, under CEQA Section 21080.5, the Commission is relieved of the responsibility to prepare an EIR for each LCP.

Nevertheless, the Commission is required in an LCP submittal or, as in this case, an LCP amendment submittal, to find that the LCP, or LCP, as amended, does conform with

CEQA provisions. In the case of the subject LCP amendment, the Commission finds that approval of the subject LCP amendment, as submitted, would not result in significant environmental impacts under the meaning of the California Environmental Quality Act.

All portions of the proposed amendment to the City of Encinitas' Implementing Ordinances have been found consistent with and adequate to carry out the policies of the certified land use plan. Any specific impacts associated with individual development projects would be assessed through the environmental review process, and, an individual project's compliance with CEQA would be assured. Therefore, the Commission finds that no significant unmitigable environmental impacts under the meaning of CEQA will result from the approval of the proposed LCP amendment.

ORDINANCE NO. 2002-02

AN ORDINANCE OF THE CITY OF ENCINITAS, CALIFORNIA
AMENDING TITLE 30 OF THE ENCINITAS MUNICIPAL CODE
BY ADDING PROVISIONS ESTABLISHING CERTAIN DEFINITIONS AND
ESTABLISHING LOCATIONAL CRITERIA FOR ADULT BUSINESSES WITHIN THE
CITY OF ENCINITAS, AMENDING THE
ENCINITAS RANCH SPECIFIC PLAN AND AMENDING THE
LOCAL COASTAL PROGRAM

The City Council of the City of Encinitas does hereby ordain as follows:

SECTION 1. FINDINGS. The City Council of the City of Encinitas hereby finds, determines, and declares that:


A. The City Council finds that it is necessary and appropriate to amend Title 30 of the Encinitas Municipal Code by adding Section 30.26.010 to provide locational criteria for adult businesses, to establish definitions relating to adult uses and to clarify the elimination of the use permit for an adult facility as reflected in the zoning matrix of Section 30.09.

B. The public health, safety and welfare of the City of Encinitas and its residents require the enactment of this Ordinance and locational 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; and (2) protect the quality of life and neighborhoods in the City, the City's retail and commercial trade, local property values, and minimize the potential for nuisances related to the operation of adult businesses.

C. On January 10, 2002, the Planning Commission held a duly-noticed public hearing during which it received input and testimony from the public concerning the subject of adult businesses and the proposed Municipal Code revisions.

D. On January 23, 2002, the City Council held a duly-noticed public hearing during which it received input and testimony from the public concerning the subject of regulation of adult businesses and this proposed Ordinance.

E. The City Council, in adopting this Ordinance, takes legislative notice of the existence and content of the following studies concerning the adverse secondary effects of adult businesses in other cities: Garden Grove, California (1991); Tucson, Arizona (1990); Seattle, Washington, Department of Construction and Land Use (1989); Austin, Texas, Office of Land Development Services (1986); Oklahoma City, Oklahoma (1986); Indianapolis, Indiana, Department of Metropolitan Development (1984); Houston, Texas, City Council Report (1983); Beaumont, Texas (1982); Minnesota Crime Prevention Center, Inc., Minneapolis (1980); Phoenix, Arizona (1979); Los Angeles, California, Department of City Planning (1977); Amarillo, Texas, Planning Department (1977); Cleveland, Ohio (1977); Newport News, Virginia (1996); New York, New York

EXHIBIT NO. 1
Encinitas LCPA
2-2002
City Resolution of Approval
 California Coastal Commission

(1994); Times Square, New York City (1994); and Whittier, California (1978). 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 effects of adult 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 as to 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 than waiting for problems to occur.

F. 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 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: *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); *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); *Alameda Books v. City of Los Angeles*, 222 F.3d 719 (9th Cir. 2000), *cert. granted* 121 S.Ct. 1223 (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); *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); 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 (1993), *cert. denied* 510 U.S. 824; *People v. Superior Court (Lucero)* 49 Cal.3d 14 (1989); 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: *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); and *Star Satellite, Inc. v. City of Biloxi*, 779 F.2d 1074 (5th Cir. 1986).

G. 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. A copy of the Attorney General's Report on Pornography is available for public review upon request and is on file with the City Clerk's office.

H. 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 also takes legislative notice of the facts recited in *Kev, Inc., v. Kitsap County*, 793 F.2d 1053 (9th Cir. 1986); *Colacurcio v. City of Kent*, 163 F.3d 545 (9th Cir. 1998); and *Tily B. v. City of Newport Beach* (1999) 69 Cal.App.4th 1, regarding how live adult entertainment facilities result in secondary effects such as prostitution, drug dealing, and other law enforcement problems. *See also BSA, Inc. v. King County*, 804 F.2d 1104, 1110-11 (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. 1996).

I. The City Council further finds the following, based in part upon its understanding of the documents, including but not limited to the San Diego County Sheriff's Report of November 9, 1998, the declarations of police officers in other jurisdictions setting forth their experiences, and judicial decisions in the public record that:

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 adult businesses.

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. 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.

6. 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 reducing 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 the experience of Encinitas and the need to regulate the secondary effects of adult businesses within the community.

J. The City Council is cognizant of the specific danger from the sexually transmitted disease AIDS, which is currently irreversible and fatal. The City takes legislative notice of the AIDS Surveillance Report dated July 31, 2001 by the County of San Diego Health and Human Services Agency, Division of AIDS and Community Epidemiology ("AIDS Surveillance Report") and the report entitled San Diego County HIV/AIDS Status dated June 2000, also by the County of San Diego Health and Human Services Agency ("AIDS Status Report"). According to the AIDS Surveillance Report, 10,876 AIDS cases were reported throughout the County since 1981 through July 2001, 150 of which were reported in 2001 and 420 of which were reported in 2000. As well for this same time period, 6,209 deaths from AIDS were reported throughout the County. According to the AIDS Status Report, San Diego County ranks third in the state among counties for the number of AIDS cases, and ranks sixth in the state in total cases per 100,000 population.

1. The City is also concerned with preventing the spread of other sexually transmitted diseases such as syphilis, gonorrhea and chlamydia and hepatitis B. The City takes legislative notice of the STD Fact Sheet of 2000 by the County of San Diego Health and Human Services Agency ("STD Fact Sheet") and the Sexually Transmitted Diseases Annual Summary, San Diego County, 1993-1994, by the Sexually Transmitted Disease Control Program, dated December 1995 ("STD Annual Summary"). According to the STD Fact Sheet and STD Annual Summary, 1,109 cases of syphilis were reported throughout the County between 1990 and 2000, 27 of which were reported in 2000. With respect to gonorrhea, 27,890 cases of gonorrhea were reported between 1990 and 2000, 1,797 of which were reported in 2000. The number of cases of chlamydia reported within the County dramatically exceeds the number of reported cases of syphilis and gonorrhea: 74,079 cases were reported between 1990 and 2000, 8,637 of which were reported in 2000. It should also be noted that according to the AIDS Status Report, numerous studies have shown that sexually transmitted diseases such as syphilis, gonorrhea and chlamydia facilitate the transmission of HIV.

2. The City Council also takes notice of the County of Orange Communicable Disease Summary 1998, County of Orange Health Care Agency, issued January 2000 ("Communicable Disease Summary"). The Communicable Disease Summary states that 5,149 cases of AIDS were reported in Orange County between 1982 and 1998. In 1998, 305 cases of AIDS were reported in Orange County, an 8% increase over the 283 reported cases in 1997. As of December 1998, an estimated 2,345 residents of Orange County were living with AIDS, over double the number six years prior. As of January 2000, an estimated 6,700 Orange County residents were living with HIV or AIDS. The Communicable Disease Summary further indicates that between 1994 and 1998, 211 cases of syphilis were reported, 3,094 cases of gonorrhea were reported, and 17,349 cases of chlamydia were reported in the County. The City Council has a reasonable basis to believe that the experience of Orange County is relevant to the experience of Encinitas.

K. 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).

L. The City Council also finds the establishment of locational standards for adult businesses is a legitimate and reasonable means of ensuring that the recognized adverse secondary impacts of a proposed adult business are mitigated.

M. While the City Council desires 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 operation 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.

N. Locational criteria is a legitimate and reasonable means of ensuring that adult businesses are conducted in a manner so as to minimize their adverse secondary effects and thereby protect the health, safety, and welfare of Encinitas 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 the City of Encinitas 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.

O. The City Council also finds that these locational standards do not preclude reasonable alternative avenues of communication. 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. 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, 329 (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.

P. It is not the intent of the City Council of the City of Encinitas 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 Encinitas.

Q. 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").

R. 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.

S. This Ordinance is further justified by the fact that without these locational regulations the City will be prohibited from furthering its substantial governmental interest in protecting its residents from the aforementioned deleterious secondary effects of adult use businesses.

T. The City Council finds that the occurrence of nudity in alcoholic beverage establishments located in close proximity to residential areas, churches, schools, parks, and playgrounds has a detrimental effect on such uses, and that the location of such establishments in close proximity to each other has a detrimental effect on the entire neighborhood. The Council takes note of the recent data showing that in the Specific Plan North Highway 101 Corridor Specific Plan the City has an oversaturation of alcohol facilities and that the calls for service within this general area is disproportionately high as compared to similar commercial areas. Therefore, the City Council finds that in order to preserve public peace and good order, the integrity of residential neighborhoods, and other sensitive land uses, it is necessary and advisable to regulate alcoholic beverage facilities permitting nudity.

U. The locational standards are necessary in order to protect the public health, safety and welfare by reducing the adverse secondary effects associated with adult use businesses.

SECTION 2. REPEAL OF CERTAIN DEFINITIONS.

Section 30.04 entitled "Definitions" of the Encinitas Municipal Code is hereby amended by repealing the following definitions:

“Adult Arcade”;
“Adult Bookstore”;
“Adult Cabaret”;
“Adult Drive In Theater”;
“Adult Hotel or Motel”;
“Adult Mini-Motion Picture Theater”;
“Adult Model Studio”;
“Adult Motion Picture Arcade”;
“Adult Motion Picture Theater”;
“Adult Sexual Encounter Establishment”;
“Adult Theater”;
“Child Day Care Facility”;
“Specified Anatomical Areas”;
“Specified Sexual Activities”; and
“Other Adult Entertainment Business.”

SECTION 3. AMENDMENT OF CODE.

Title 30 is hereby amended by adding the following:

Section 30.04 Definitions.

In addition to any other definitions contained elsewhere in the Encinitas Municipal Code, the following words and phrases shall, for the purpose of this Title, 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 the current provisions of the Municipal Code, these definitions shall prevail.

“*Adult Arcade*” shall mean a business establishment as defined in Chapter 6.10.

“*Adult Retail Store*” shall mean a business establishment as defined in Chapter 6.10.

"Adult Booth/Individual Viewing Area" shall be defined as set forth in Chapter 6.10.

"Adult Business" shall be defined as set forth in Chapter 6.10.

"Adult Cabaret" shall mean a business establishment as defined in Chapter 6.10.

"Adult Hotel/Motel" shall mean a hotel or motel as defined in Chapter 6.10.

"Adult Live Entertainment" shall be defined as set forth in Chapter 6.10.

"Adult Modeling Studio" shall mean a business establishment as defined in Chapter 6.10.

"Adult Motion Picture Theater" shall mean a business establishment as defined in Chapter 6.10.

"Adult Oriented Material" shall be defined as set forth in Chapter 6.10.

"Child Day Care Facility" shall mean any child day care facility as defined in Section 1596.750 of the California Health and Safety Code other than family day care homes.

"Park" shall mean any park, playground, swimming pool, golf course within the City which is under the City's control, operation and management.

"Religious Institution" shall mean a structure or facility that is used primarily for religious worship and related religious activities.

"Residential zone" shall mean any property within the City which carries a zoning designation permitting the location of a residence, including the RFP [Rural Residential/Flood Plan]; RR [Rural Residential]; RR-1 [Rural Residential 1]; RR-2 [Rural Residential 2]; R-3 [Residential 3]; R-5 [Residential 5]; R-8 [Residential 8]; RS-11 [Single Family Residential 11]; R11 [Residential 8.01-11.0 dwelling units per acre ("du/ac")]; R-15 [Residential 15]; R-20 [Residential 20]; R-25 [Residential 25]; MHP [Mobile Home Park]; D-R11 [Residential 8.01-11.0 du/ac]; D-R15 [Residential 11.01-15.0 du/ac]; D-R25 [Residential 15.01-25.0 du/ac]; ER-SFR3 [Encinitas Ranch Specific Plan Residential 3.0 du/ac]; ER-SFR3V [Encinitas Ranch Specific Plan Residential 3.0 du/ac variance]; ER-SFR5 [Encinitas Ranch Specific Plan Residential 5.0 du/ac]; N-R3 [Residential 2.01-3 du/ac]; N-R8 [Residential 5.01-8 du/ac]; N-R11 [Residential 8.01-11 du/ac]; N-R15 [Residential 11.01-15 du/ac]; N-R20 [Residential 15.01-20 du/ac]; and N-R25 [Residential 20.01-25 du/ac]. However, residential zone does not include zones where a residence is permitted pursuant to a conditional use permit or other special permit.

"School" shall mean any institution of learning for minors, whether public or private, offering instruction in those courses of study required by the California Education Code and/or which is maintained pursuant to standards set by the Board of Education of the State of California. This definition includes a nursery school, kindergarten, elementary school, middle or junior high school, senior high school, or any special institution of education under the jurisdiction of the California Department of Education. For the purposes of this Section, "school" does not include a vocational or professional institution of higher education, including a community or junior college, college, or university.

"Sexually Oriented Merchandise" shall be defined as set forth in Chapter 6.10.

"Specified Anatomical Areas" shall be defined as set forth in Chapter 6.10.

"Specified Sexual Activities" shall be defined as set forth in Chapter 6.10.

Section 30.26 Adult Businesses.

Section 30.26.010 Zoning and Locational Restriction - Distance From Sensitive Uses.

(a) In addition to the requirements of this Section, no adult businesses shall be established or located in any area in the City other than the General Commercial zone (GC) and the ER-C zone of the Encinitas Ranch Specific Plan.

(b) In those zoning district(s) where the adult businesses regulated by this Section would otherwise be permitted uses, it shall be unlawful to establish any adult business if the location is within seven hundred fifty (750) feet of any existing residential zone, park, religious institution, school, or child day care facility. The distances set forth above shall be measured between the nearest property line of the facility or tenant space housing the adult business or the proposed adult business, and the nearest property line included within the residential zone, park, religious institution, school or child day care facility, along a straight line extended between the two points.

(c) No building permit or zoning clearance, business tax receipt, adult business regulatory permit, or other permit or entitlement for use shall be legally valid if issued to any adult business proposed to operate or to be established in the City except if the zoning and locational requirements set forth above are satisfied.

Section 30.26.020 Subsequent Location of Sensitive Uses.

An adult business or establishment operating as a conforming use with an approved adult business regulatory permit from the City shall not be rendered a non-conforming use by the subsequent location of residential zones, religious institution(s), school(s), day care facility, or park(s) within the locational limitations of Section 30.26.010. For purposes of this Section, a use shall be deemed to be subsequently located if it occurs following the date an application for an adult business regulatory permit is filed pursuant to Chapter 6.10.

Section 30.26.030 Regulations Non-Exclusive.

The provisions of this Section regulating adult businesses are not intended to be exclusive, and compliance therewith shall not excuse non-compliance with any other regulations pertaining to the operation of businesses as adopted by the City Council of the City of Encinitas.

Section 30.26.040 Public Nuisance.

In addition to the penalties set forth in this Title, 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 4. AMENDMENT OF CODE - ZONING MATRIX.

The zoning uses shown on the matrix found at Section 30.09 are hereby amended as to the adult business use designation under the General Commercial (GC) heading as follows: the "C" (Conditional Use Permit Required Major) is deleted and replaced with a "P" (Permitted by Right). And, a footnote is added thereto that this use must still meet the locational requirements of Title 30.

SECTION 5. AMENDMENT TO ENCINITAS RANCH SPECIFIC PLAN.

Section 6.8 Commercial Zone ("ER-C" Zone) of the Encinitas Ranch Specific Plan is hereby amended as follows:

- (a) Section 6.8.1B (Major Use Permit) is amended by deleting Adult Businesses from this section.
- (b) Section 6.8.1A (Permitted Uses) is amended by adding Adult Businesses as a permitted use.

SECTION 6. SEVERABILITY.

If any section, subsection, paragraph, sentence, clause, or phrase of this Title and the Ordinance to which it is a part, 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 each and every section and the Ordinance to which it is 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 7. CALIFORNIA ENVIRONMENTAL QUALITY ACT ("CEQA") FINDING.

The adoption of the Zoning Code and Local Coastal Program Amendments is exempt from environmental review pursuant to California Code of Regulations, Title 14, Chapter 3, Section

15061(b)(3) since there is no possibility of a significant effect on the environment because the amendments impose distance standards on adult businesses and establish definitions.

SECTION 8. LCP AMENDMENT

This Ordinance is intended to be carried out in a manner fully in conformance with the California Coastal Act of 1976, and the Community Development Director is hereby authorized to submit this Ordinance as a Local Coastal Program Amendment to the California Coastal Commission for their review and adoption.

SECTION 9. EFFECTIVE DATE.

This Ordinance shall take effect on the date of the adoption by the California Coastal Commission, but not sooner than thirty (30) days after its adoption by the City Council. The City Clerk shall certify to the passage and adoption of this Ordinance and cause the same to be published in the manner prescribed by law.

This ordinance was introduced on January 23, 2002.

PASSED AND ADOPTED this 13th day of February 2002, by the following vote, to wit:

- AYES:** Bond, Guerin, Holz, Houlihan, Stocks.
- NAYS:** None.
- ABSTAIN:** None.
- ABSENT:** None.



Christy Guerin, Mayor

ATTESTATION AND CERTIFICATE:

I hereby certify that this is a true and correct copy of Ordinance No. 2002-02, which has been published pursuant to law.



Deborah Cervone
City Clerk

I, Deborah Cervone, City Clerk of the City of Encinitas, California do hereby certify under penalty of perjury that the above and foregoing is a true and correct copy of this document on file in my office. In witness whereof, I have set my hand and the Seal of the City of Encinitas this 24th day of July, 2002
Deborah Cervone, City Clerk 