

CALIFORNIA COASTAL COMMISSION

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December 22, 2010

Th9b**TO: COMMISSIONERS AND INTERESTED PERSONS****FROM: SHERILYN SARB, DEPUTY DIRECTOR, SAN DIEGO COAST DISTRICT
DEBORAH LEE, DISTRICT MANAGER, SAN DIEGO COAST DISTRICT
TONI ROSS COASTAL PROGRAM ANALYST, SAN DIEGO COAST
DISTRICT****SUBJECT: STAFF RECOMMENDATION ON CITY OF CARLSBAD MAJOR LCP
AMENDMENT 4-09C (Adult Businesses) for Commission Meeting of January
12-14, 2011**

SYNOPSIS

The subject LCP implementation plan amendment was submitted and filed as complete on December 29, 2009. The amendment package included both land use and implementation plan revision. As such, a one-year time extension was granted on March 10, 2010. Therefore, the last date for Commission action on this item is March 29, 2011. This is the fourth component of five unrelated items submitted as LCP Amendment Number 4-09 (A-E) to be heard by the Commission. The first component 4-09B (Building Height) was certified by the Commission at its June, 2010 hearing. The second, 4-09D (Tabata Ranch), and third 4-09E (Tabata 10), were certified by the Commission at its December, 2010 hearing. The final component, 4-09A (Non-Conforming Structures) is tentatively scheduled for the Commission's February, 2011 hearing.

SUMMARY OF AMENDMENT REQUEST

The City of Carlsbad is proposing to amend a number of its zoning ordinances to update the definitions and locational restrictions for adult businesses, and to update their parking ordinance. Specifically, the proposed amendment includes:

- Amend Chapter 21.06 to exempt adult business as a permitted use from Chapter 21.06 (Q Qualified Development Overlay Zone);
- Amend chapters 21.30 (C-M Heavy Commercial-Limited industrial Zone), 21.32 (M Industrial Zone), and 21.34 (P-M Planned Industrial Zone) to add adult business to the table of permitted uses;
- Repeal and reenact Chapter 21.43 (Adult Entertainment) to amend the definitions and location requirements for adult businesses;

- Amend Chapter 21.44 (parking) by revising the joint use parking provisions.

SUMMARY OF STAFF RECOMMENDATION

Staff recommends that, following a public hearing, the Commission approve the proposed City of Carlsbad Implementation Plan amendment as submitted. Attached are the City's resolutions of approval for changes to the certified LCP implementation plan (ref. Exhibit #1).

The appropriate resolution and motion begin on Page 4. The findings for approval of the Implementation Plan Amendment as submitted begin on Page 4.

ADDITIONAL INFORMATION

Further information on the City of Carlsbad's LCP Amendment 4-09C may be obtained from Toni Ross, Coastal Planner, at (619) 767-2370.

PART I. OVERVIEW

A. LCP HISTORY

The City of Carlsbad's certified LCP contains six geographic segments as follows: Agua Hedionda, Mello I, Mello II, West Batiquitos Lagoon/Sammis Properties, East Batiquitos Lagoon/Hunt Properties, and Village Redevelopment. Pursuant to Sections 30170(f) and 30171 of the Public Resources Code, the Coastal Commission prepared and approved two portions of the LCP, the Mello I and II segments in 1980 and 1981, respectively. The West Batiquitos Lagoon/ Sammis Properties segment was certified in 1985. The East Batiquitos Lagoon/Hunt Properties segment was certified in 1988. The Village Redevelopment Area LCP was certified in 1988; the City has been issuing coastal development permits there since that time. On October 21, 1997, the City assumed permit jurisdiction and has been issuing coastal development permits for all segments except Agua Hedionda. The Agua Hedionda Lagoon LCP segment is a deferred certification area until an implementation plan for that segment is certified. This LCP amendment affects both the Mello II segment of the LCP and the HMP.

The Mello II Segment Land Use Plan and Implementation Plan were approved in 1981. The Mello II Segment is comprised of 5,500 acres, or approximately 75% of the City. Unresolved issues remained for the segment regarding preservation of agricultural lands, and protection of steep sensitive slopes. Multiple additional amendments were brought forward, and, with the incorporation of the Carlsbad Ranch Specific Plan, the City's LCP was certified by the Commission, and the City obtained permit authority in 1996.

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 Planning Commission and 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 for the City of Carlsbad No. LCPA 4-09C 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 for the the City of Carlsbad 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 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 CARLSBAD IMPLEMENTATION PLAN AMENDMENT, AS SUBMITTED

A. AMENDMENT DESCRIPTION

The City is proposing to amend the Adult Business Ordinance to ensure the City's adult business regulations comply with the most recent case law. Specifically, the City is requesting to:

- 1) Modify list of "sensitive" uses that require a buffer from adult businesses.

The City is proposing to amend existing regulations for locating adult businesses within 1,000 feet of other properties containing "sensitive" uses. The proposed amendment will maintain the 1,000 foot buffer requirements but amends the list of sensitive uses from

which adult businesses need to be buffered. This list of sensitive uses has been amended to include only those uses that have been found by the courts to require protection from the secondary effects of adult businesses, and include, other adult businesses, child day care, parks, religious institutions, residential land use designations, residential zoning, and schools.

2) Modify where Adult Business is a permitted use.

Currently, adult businesses are permitted within the following zones: C-1 (Neighborhood Commercial), C-2 (General Commercial), C-M (Heavy Commercial-Light industrial), M (Industrial), P-M (Planned Industrial), and P-U (Public Utility). The proposal includes removing adult businesses from the C-1, C-2, and P-U Zones. Additionally, while adult businesses are permitted in the remaining three zones, it is not listed in the “permitted uses” tables for any of these zones. As such, the proposed amendment also includes adding Adult Business to the “permitted uses” table in C-M, M, and P-M Zones.

3) Repeal any discretionary action required in relation to the establishment of adult businesses.

Currently, there are two components that provide for discretion when approving the establishment of an adult business. Chapter 21.32.01 in the City’s M (Industrial) zone includes a note stating “any use that is found to be objectionable or incompatible with the character of the city and its environs due to noise, dust, odors or other undesirable characteristics may be prohibited. The courts have ruled against this level of discretion in regard to whether or not a particular adult business is permitted, if it is listed as an allowable use. Additionally, the City has a zoning tool, the Q Qualified Development Overlay Zone, which can be applied to various properties throughout the City as a supplement to the primary (underlying) zone of the property by providing additional regulations for development. The City is, also, amending the Q Qualified Overlay zone to clarify that this overlay is not applicable to adult businesses.

4) Repeal definitions for Adult Businesses within the Adult Business Chapter.

Currently, both Chapters 21.43 (Adult Business) and Chapter 8.6 (Adult Business Licenses and Operation Regulations) contain definitions and regulations for the operation and licensing of adult businesses. The proposed amendment would repeal these regulations and policies in Chapter 21.43, and instead, provide reference in Chapter 21.43 to those terms related to adult businesses that are defined within Chapter 8.6.

5) Repeal of discretionary review requirement for joint use parking.

Currently, the existing provisions of the Parking Chapter (Chapter 21.44) allow the joint use of parking facilities for uses with differing primary hours of operation. Because some adult businesses operate primarily during the nighttime, it is possible that joint use of parking facilities could be approved with another use that operates primarily during the day. Currently, joint parking is approved through an action by the Planning Commission.

As proposed, joint use of parking facilities would be subject to administrative evaluation by the Planning Director. However, no modifications are proposed to the specific joint use parking *standards* or *criteria*. This modification will be implemented Citywide.

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 Ordinance.

1) Chapter 21.43 (Adult Entertainment). The purpose and intent of this chapter is to provide for the orderly regulation of adult entertainment establishments.

2) Chapter 21.44 (Parking). The purpose and intent of this chapter is to regular parking standards for various land use designations throughout the City.

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

The certified Mello II LUP provides:

POLICY 7-10 PARKING

Parking standards set forth within the City of Carlsbad are appropriate for the future development of various land uses.

The majority of the proposed revisions consist of amendments to Zoning Ordinance, Chapter 21.43 – Adult Entertainment, the primary purpose of which is to regulate the location of adult businesses. The objective of the proposed LCP amendment is to update the zoning ordinance to ensure the City’s adult business regulations comply with the most recent case law. Therefore, the majority of the proposed revisions do not raise coastal resource concerns. However, the City proposed a revision to its joint parking standards, and therefore, consistency with the City’s Local Coastal Program must be determined.

The certified LUP (Policy 7-10) requires that parking standards be appropriate for the future development of various land uses. In this case, the proposed amendment does not modify parking standards. The proposed amendment simply restructures the subsection for joint parking within the City’s parking ordinance, to allow for the approval of joint parking through at administrative process. Previously, proposed joint parking was approved by the City’s Planning Commission, and was approved based on a series of standards/requirements. The proposed revision modifies the *process* by which they are approved, and does not modify any of the standards/requirements for approval. As such, there will be no impacts to public access and the parking standards will remain appropriate for the future development of various land uses.

In summary, the revisions proposed by the City generally relate to the procedures involved with approving and locating adult businesses. 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. 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 Carlsbad's 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.

RESOLUTION NO. 2009-242

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CARLSBAD, CALIFORNIA, APPROVING A LOCAL COASTAL PROGRAM AMENDMENT TO AMEND THE IMPLEMENTING ORDINANCE OF THE CARLSBAD LOCAL COASTAL PROGRAM (TITLE 21 – ZONING) BY: 1) AMENDING CHAPTER 21.06 TO EXEMPT ADULT BUSINESSES FROM CHAPTER 21.06 (Q QUALIFIED DEVELOPMENT OVERLAY ZONE); 2) AMENDING CHAPTERS 21.30, 21.32, AND 21.34 TO ADD ADULT BUSINESSES TO THE LIST OF PERMITTED USES IN CHAPTERS 21.30 (C-M HEAVY COMMERCIAL—LIMITED INDUSTRIAL ZONE), 21.32 (M INDUSTRIAL ZONE), AND 21.34 (P-M PLANNED INDUSTRIAL ZONE); 3) REPEALING AND REENACTING CHAPTER 21.43 (ADULT ENTERTAINMENT) TO AMEND THE DEFINITIONS AND LOCATION REQUIREMENTS FOR ADULT BUSINESSES; AND 4) AMENDING CHAPTER 21.44 (PARKING) BY REVISING THE JOINT USE PARKING PROVISIONS.

CASE NAME: ADULT BUSINESSES ORDINANCE
CASE NO.: ZCA 06-02/LCPA 06-04


WHEREAS, pursuant to the provisions of the Municipal Code, the Planning Commission did, on July 15, 2009, hold a duly noticed public hearing as prescribed by law to consider Zone Code Amendment (ZCA 06-02) and Local Coastal Program Amendment (LCPA 06-04) and adopted Planning Commission Resolution No. 6609 recommending to the City Council approval of ZCA 06-02 and LCPA 06-04; and

WHEREAS, the City Council did on the 6th day of October, 2009 hold a duly noticed public hearing as prescribed by law to consider the Zone Code Amendment and Local Coastal Program Amendment; and

WHEREAS, at said public hearing, upon hearing and considering all testimony and arguments, if any, of all persons desiring to be heard, the City Council considered all factors relating to the Zone Code Amendment and Local Coastal Program Amendment.

NOW, THEREFORE, the City Council of the City of Carlsbad, California does hereby resolve as follows:

1. That the above recitations are true and
2. That the findings of the Planning Commission Resolution No. 6609, on file with the City Council, constitute the findings of the City Council in this matter.

EXHIBIT #1
Resolution of Approval
LCPA #4-09C Adult Businesses
 California Coastal Commission


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PASSED, APPROVED AND ADOPTED at a Regular Meeting of the City Council
of the City of Carlsbad on the 6th day of October, 2009, by the following vote to wit:

AYES: Council Members Kulchin, Hall, Packard and Blackburn.


NOES: None.

ABSENT: Council Member Lewis.

Signature on file


CLAUDE A LEWIS, Mayor

ATTEST:

Signature on file


LORRAINE M. WOOD, City Clerk



Exhibit 1

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ORDINANCE NO. CS-063

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CARLSBAD, CALIFORNIA AMENDING TITLE 21 OF THE CARLSBAD MUNICIPAL CODE BY: 1) AMENDING CHAPTER 21.06 TO EXEMPT ADULT BUSINESSES FROM CHAPTER 21.06 (Q QUALIFIED DEVELOPMENT OVERLAY ZONE); 2) AMENDING CHAPTERS 21.30, 21.32, AND 21.34 TO ADD ADULT BUSINESSES TO THE LIST OF PERMITTED USES IN CHAPTERS 21.30 (C-M HEAVY COMMERCIAL—LIMITED INDUSTRIAL ZONE), 21.32 (M INDUSTRIAL ZONE), AND 21.34 (P-M PLANNED INDUSTRIAL ZONE); 3) REPEALING AND REENACTING CHAPTER 21.43 (ADULT ENTERTAINMENT) TO AMEND THE DEFINITIONS AND LOCATION REQUIREMENTS FOR ADULT BUSINESSES; AND 4) AMENDING CHAPTER 21.44 (PARKING) BY REVISING THE JOINT USE PARKING PROVISIONS.


CASE NAME: ADULT BUSINESSES ORDINANCE
CASE NO.: ZCA 06-02/LCPA 06-04

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

A. The City Council finds that it is necessary and appropriate to amend Chapter 21.43 of the Carlsbad Municipal Code to refine and update the locational criteria for adult businesses. The public health, safety and welfare of the City of Carlsbad and its residents require the enactment of this Ordinance regulating locational criteria for adult businesses in order to: (1) mitigate and reduce the judicially recognized potential adverse secondary effects of adult businesses, including but not limited to crime, the prevention of blight in neighborhoods and the increased threat of the spread of sexually transmitted diseases; (2) protect the quality of life and neighborhoods in the City, the City's retail and commercial trade, and local property values, and minimize the potential for nuisances related to the operation of adult businesses; and (3) protect the peace, welfare and privacy of persons who own, operate and/or patronize adult businesses.

B. On July 15, 2009, 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 this proposed Ordinance.

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EXHIBIT #2
Ordinance
LCPA #4-09C Adult Businesses
 California Coastal Commission

1 C. On October 6, 2009, the City Council held a duly-noticed public hearing
2 during which it received input and testimony from the public concerning the subject of regulation
3 of adult businesses and this proposed Ordinance.
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5 D. The City Council, in adopting this Ordinance, takes legislative notice of
6 the existence and content of the following studies and reports concerning the adverse
7 secondary effects of adult businesses in other cities: Garden Grove, California (1991); Tucson,
8 Arizona (1990); Seattle, Washington, Department of Construction and Land Use (1989); Austin,
9 Texas, Office of Land Development Services (1986); Oklahoma City, Oklahoma (1986);
10 Indianapolis, Indiana, Department of Metropolitan Development (1984); Houston, Texas, City
11 Council Report (1997); Beaumont, Texas (1982); Report of the Attorney General's Working
12 Group on the Regulation of Sexually Oriented Businesses, State of Minnesota (1989); Phoenix,
13 Arizona (1979); Los Angeles, California, Department of City Planning (1977); Amarillo, Texas,
14 Planning Department (1977); and Cleveland, Ohio (1977); New York, New York (1994);
15 Newport News, Virginia (1996); Times Square, New York City (1994); Whittier, California
16 (1978); and 1986 Attorney General's Report on Pornography. The City Council also takes
17 legislative notice of the existence and content of the following additional studies and reports
18 concerning the adverse secondary effects of adult businesses: A Methodological Critique of the
19 Linz-Paul Report: A Report to the San Diego City Attorney's Office (2003); Sexually Oriented
20 Businesses: An Insider's View – Testimony of David Sherman before the Michigan House
21 Committee on Ethics and Constitutional Law (2000); Stripclubs According to Strippers: Exposing
22 Workplace Sexual Violence (1998); and Summaries of Key Reports Concerning the Negative
23 Secondary Effects of Sexually Oriented Businesses, by Louis Comus III; Closin' Time: Effective
24 Regulation of Adult Businesses' Hours of Operation, by Scott Bergthold (2000); Peep Show
25 Establishments, Police Activity, Public Place and Time: A Study of Secondary Effects in San
26 Diego, California, by Daniel Linz *et al.* (2006); and Do Peep-shows "Cause" Crime? A response
27 to Linz, Paul, and Yao, by Richard McCleary *et al.* (2006). The City Council finds that these
28 studies and reports are relevant to the problems addressed by the City in enacting this

1 Ordinance to regulate the adverse secondary effects of adult businesses and more specifically
2 finds that these studies provide convincing evidence that:
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4 1. There is substantial evidence that an increase in crime tends to
5 accompany, concentrate around, and be aggravated by adult businesses, including but not
6 limited to an increase in the crimes of narcotics distribution and use, prostitution, pandering, and
7 violence against persons and property. The studies from other cities establish by convincing
8 evidence that adult businesses that are not regulated with locational criteria often have a
9 deleterious effect on nearby businesses and residential areas, causing, among other adverse
10 secondary effects, an increase in crime and a decrease in property values.
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12 2. Regulations for adult businesses should be developed to prevent
13 deterioration and/or degradation of the vitality of the community before the problem exists,
14 rather than waiting for problems to be created.
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17 E. In developing this Ordinance, the City Council is mindful of legal
18 principles relating to regulation of adult businesses, and the City Council does not intend to
19 suppress or infringe upon any expressive activities protected by the First Amendment of the
20 United States and California Constitutions but instead desires to enact reasonable time, place,
21 and manner regulations that address the adverse secondary effects of adult businesses. The
22 City Council has considered decisions of the United States Supreme Court regarding local
23 regulation of adult businesses, including but not limited to: *City of Littleton, Colorado v. Z.J. Gifts*
24 *D-4*, 541 U.S. 744, 124 S.Ct. 2219, 159 L.Ed.2d 84 (2004); *City of Los Angeles v. Alameda*
25 *Books*, 535 U.S. 425, 122 S. Ct. 1728, 152 L.Ed.2d 670 (2002); *City of Erie v. Pap's A.M.*
26 *("Kandyland")*, 529 U.S. 277, 120 S.Ct. 1382, 146 L.Ed.2d 265 (2000); *Barnes v. Glen Theatre,*
27 *Inc.*, 501 U.S. 560, 111 S.Ct. 2456, 115 L.Ed.2d 504 (1991); *FW/PBS, Inc. v. City of Dallas*, 493
28 U.S. 215, 110 S.Ct. 596, 107 L.Ed.2d 603 (1990); *City of Renton v. Playtime Theatres, Inc.*, 475
U.S. 41, 106 S.Ct. 925, 89 L.Ed.2d 29 (1986); and *Young v. American Mini Theaters, Inc.*, 427
U.S. 50, 96 S.Ct. 2440, 49 L.Ed.2d 310 (1976); decisions of the United States Court of Appeals
for the Ninth Circuit, including but not limited to: *Gammoh v. La Habra*, 395 F.3d 1114 (9th Cir.

1 2005), modified 402 F.3d 875; *Dream Palace v. County of Maricopa*, 384 F.3d 990 (9th Cir.
2 2004); *World Wide Video. v. City of Spokane*, 368 F.3d 1186 (9th Cir. 2004); *Center for Fair*
3 *Public Policy v. Maricopa County*, 336 F.3d 1153 (9th Cir. 2003); *Diamond v. City of Taft*, 215
4 F.3d 1052 (9th Cir. 2000), *cert. denied* 531 U.S. 1072 (2001); *Young v. City of Simi Valley*, 216
5 F.3d 807 (9th Cir. 2000), *cert. denied* 531 U.S. 1104 (2001); *Lim v. City of Long Beach*, 217
6 F.3d 1050 (9th Cir. 2000), *cert. denied* 121 S.Ct. 1189 (2001); *Baby Tam & Co., Inc. v. City of*
7 *Las Vegas ("Baby Tam I")*, 154 F.3d 1097 (9th Cir. 1998); *Baby Tam & Co., Inc. v. City of Las*
8 *Vegas ("Baby Tam II")*, 199 F.3d 1111 (9th Cir. 2000); *Baby Tam & Co., Inc. v. City of Las*
9 *Vegas ("Baby Tam III")*, 247 F.3d 1003 (9th Cir. 2001); *4805 Convoy, Inc. v. City of San Diego*,
10 183 F.3d 1108 (9th Cir. 1999); *Topanga Press, Inc. v. City of Los Angeles*, 989 F.2d 1524
11 (9th Cir. 1993), *cert. denied* 511 U.S. 1030 (1994); *Kev, Inc. v. Kitsap County*, 793 F.2d 1053
12 (9th Cir. 1986); *Colacurcio v. City of Kent*, 163 F.3d 545 (9th Cir. 1998), *cert. denied* 529 U.S.
13 1053 (2000); several California cases, including but not limited to: *Tily B., Inc. v. City of Newport*
14 *Beach*, 69 Cal.App.4th 1 (1998); *City of National City v. Wiener*, 3 Cal.4th 832 (1993), *cert.*
15 *denied* 510 U.S. 824; *People v. Superior Court (Lucero)* 49 Cal.3d 14 (1989); *Department of*
16 *Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Board of California*
17 *("Vicary")*, 99 Cal.App.4th 880 (2002); *City of Vallejo v. Adult Books*, 167 Cal.App.3d 1169
18 (1985), *cert. denied* 475 U.S. 1064 (1986); *Isbell v. City of San Diego*, 450 F.Supp.2d 1143
19 (S.D.Cal); and other federal cases, including but not limited to: *Doctor John's, Inc. v. City of*
20 *Roy*, 465 F.3d 1150 (10th Cir. 2006); *G.M. Enterprises v. Town of St. Joseph*, 350 F.3d 631,
21 639 (7th Cir. 2003); *SOB, Inc. v. County of Benton*, 317 F.3d 856, 863 (8th Cir. 2003); *DiMa*
22 *Corp. v. Town of Hallie*, 185 F.3d 823 (7th Cir. 1999); *Richland Bookmart, Inc. v. Nichols*, 137
23 F.3d 435 (6th Cir. 1998); *Tee & Bee v. City of West Allis*, 936 F.Supp. 1479 (E.D. Wis. 1996);
24 *National Amusements, Inc. v. Town of Dedham*, 43 F.3d 731 (1st Cir. 1995); *TK's Video, Inc. v.*
25 *Denton County, Tex.*, 24 F.3d 705 (5th Cir. 1994); *N.W. Enterprises, Inc. v. City of Houston*, 372
26 F.3d 333 (5th Cir. 2004); *DLS, Inc. v. City of Chattanooga*, 107 F.3d 403 (6th Cir. 1997); *N.W.*
27 *Enterprises, Inc. v. City of Houston*, 352 F.3d 162 (5th Cir. 2003); *Hang On, Inc. v. City of*
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1 *Arlington*, 65 F.3d 1248 (5th Cir. 1995); *Mitchell v. Commission on Adult Entertainment*, 10 F.3d
2 123 (3rd Cir. 1993); *Lakeland Lounge v. City of Jacksonville*, 973 F.2d 1255 (5th Cir. 1992),
3 *cert. denied* 507 U.S. 1030 (1993); *International Eateries v. Broward County*, 941 F.2d 1157
4 (11th Cir. 1991), *cert. denied* 503 U.S. 920 (1992); and *Star Satellite, Inc. v. City of Biloxi*, 779
5 F.2d 1074 (5th Cir. 1986).
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8 F. In addition to the findings and studies conducted in other cities regarding
9 increases in crime rates, decreases in property values and the blighting of areas in which such
10 businesses are located, the City Council takes legislative notice of the following: (1) the facts
11 recited in the case of *Kev, Inc. v. Kitsap County*, 793 F.2d 1053 (9th Cir. 1986), regarding how
12 live adult entertainment results in secondary effects such as prostitution, drug dealing, and other
13 law enforcement problems; and (2) the facts and holding of the case of *Gammoh v. La Habra*,
14 395 F.3d 1114 (9th Cir. 2005), modified 402 F.3d 875, wherein the Ninth Circuit recognized that
15 off-stage performances by performers who also perform nude and/or semi-nude at an adult
16 establishment can cause the same secondary effects as other activities documented in studies
17 and case law regarding adult establishments, even if the performer is clothed and the
18 establishment does not serve alcohol.
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23 G. The City Council further finds the following, based in part upon its
24 understanding of the documents, including but not limited to the experiences of Carlsbad, the
25 declarations of police officers in Anaheim and La Habra setting forth their experiences, and
26 judicial decisions in the public record:
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1. Evidence indicates that some dancers, models, entertainers, performers,
and other persons who publicly perform specified sexual activities or publicly display specified
anatomical areas in adult businesses (collectively referred to as "performers") have been found
to engage in sexual activities with patrons of adult businesses on the site of the adult business.

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

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

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

8 5. The public health, safety, welfare, and morals of all persons in the City
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10 must be protected to diminish the possibility of infection of contagious diseases.

11 H. The City Council is cognizant of the specific danger from the sexually
12 transmitted disease AIDS, which is currently irreversible and fatal. The City Council takes
13 legislative notice of the AIDS Surveillance Report dated September 30, 2005, by the County of
14 San Diego Health and Human Services Agency, Division of AIDS and Community Epidemiology
15 ("AIDS Surveillance Report") and the report entitled San Diego County HIV/AIDS Status dated
16 June 2000, also by the County of San Diego Health and Human Services Agency ("AIDS Status
17 Report"). According to the AIDS Surveillance Report, 12,504 AIDS cases were reported
18 throughout the County through September 30, 2005, 224 of which were reported in the first
19 three quarters of 2005, 396 of which were reported in 2004, and 425 of which were reported in
20 2003. The City also takes legislative notice of the County of Orange Communicable Disease
21 Summary July 2002, County of Orange Health Care Agency, issued January 2002
22 ("Communicable Disease Summary"). The Communicable Disease Summary states that 5,746
23 cases of AIDS were reported in Orange County between 1982 and 2000. In 1998, 322 cases of
24 AIDS were reported in Orange County, a 5% increase over the 3,073 reported cases in 1999.
25 As of December 1998, an estimated 2,345 residents of Orange County were living with AIDS,
26 over double the number six years prior. As of December 2000, an estimated 6,800 Orange
27 County residents were living with HIV or AIDS.
28

 I. The City is also concerned with preventing the spread of other sexually
transmitted diseases such as syphilis, gonorrhea and chlamydia and hepatitis B. The
Communicable Disease Summary further indicates that between 1996 and 2000, 1,053 cases of

1 syphilis were reported, 2,557 cases of gonorrhea were reported, and 18,948 cases of chlamydia
2 were reported in the County. The City also takes legislative notice of the STD Fact Sheet of
3 2005 by the County of San Diego Health and Human Services Agency ("STD Fact Sheet"), the
4 1998-2007 Reportable Diseases and Conditions Provisional Data ("1998-2007 Reportable
5 Diseases Data"), also published by the County of San Diego Health and Human Services
6 Agency, dated April 2004, and the Sexually Transmitted Diseases Annual Summary, San Diego
7 County, 1993-1994, by the Sexually Transmitted Disease Control Program, dated December
8 1995 ("STD Annual Summary"). According to the STD Fact Sheet and the 1993-2003
9 Reportable Diseases Data, 838 cases of syphilis were reported throughout the County between
10 1993 and 2004, 142 of which were reported in 2004, a 21% increase from the 117 reported in
11 2003. With respect to gonorrhea, 25,039 cases of gonorrhea were reported between 1993 and
12 2004, 2,376 of which were reported in 2004, a 20% increase from the 1972 cases reported in
13 2003. The number of cases of chlamydia reported within the County dramatically exceeds the
14 number of reported cases of syphilis and gonorrhea: 95,159 cases were reported between 1993
15 and 2004, 10,822 of which were reported in 2004, a six percent increase from the 10,249 cases
16 reported in 2003. It should also be noted that according to the AIDS Status Report, numerous
17 studies have shown that sexually transmitted diseases such as syphilis, gonorrhea and
18 chlamydia facilitate the transmission of HIV.

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The City Council has a reasonable basis to believe that the experiences of both San Diego County and Orange County as to these sexually transmitted or blood borne diseases are relevant to the experiences of Carlsbad.

J. 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. The City Council further recognizes that the regulation of adult uses in and of itself is not sufficient to preclude the above noted secondary effects and that zoning restrictions on the location of such facilities are necessary in order to combat these secondary effects. In addition to the cases noted above,

1 the City further finds the facts recited in the following case is relevant to the City's experience:
2
3 *In re Tennessee Public Indecency Statute*, 172 F.3d 873 (6th Cir. 1999), *cert. denied* 529 U.S.
4 1052 (2000) [holding that the secondary effects rationale is applicable to sex oriented
5 businesses already subject to an ordinance requiring a six foot buffer zone between performers
6 and patrons, and forbidding alcohol consumption; while the possibility of disease and violence
7 may be diminished by the distance restriction and lack of alcohol, the associated crime effects
8 still exist]. The City has a reasonable basis to believe this in light of the record from sister
9 jurisdictions of enforcement problems at such facilities and the judicial case law that both
10 operational standards and zoning limitations are necessary to combat the deleterious secondary
11 effects from adult businesses.
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15 K. Locational criteria are a legitimate and reasonable means of ensuring that
16 adult businesses are conducted in a manner so as to minimize their adverse secondary effects
17 and to thereby protect the health, safety, and welfare of Carlsbad residents, protect citizens
18 from increased crime, preserve the quality of life, preserve property values and the character of
19 surrounding neighborhoods and businesses, and deter the spread of urban blight. The
20 locational requirements contained in this Ordinance do not unreasonably restrict the
21 establishment or operation of constitutionally protected adult businesses in the City of Carlsbad
22 and a sufficient and reasonable number of alternative locations for adult businesses are
23 provided by this Ordinance. The City Council takes legislative notice of the United States
24 Supreme Court decision in *Renton* that requires the City provide adult businesses a reasonable
25 opportunity to open and operate. The City Council also takes legislative notice of the Ninth
26 Circuit's decisions in *Topanga Press*, *Lim* and *Isbell* with respect to availability of sites for adult
27 businesses and finds that under the distance and locational restrictions imposed by this
28 Ordinance there are sufficient sites available for adult businesses within the City.

L. The City Council recognizes that these locational criteria do not preclude
reasonable alternative avenues of communication. Adult businesses are permitted to locate in
designated zones that meet the distance requirements. The City Council takes note of the

1 proliferation of adult material on the Internet, satellite television, direct television, CDs, DVDs,
2 and that these various media provide alternative avenues of communication. The City Council
3 also considers and relies on published decisions examining the proliferation of communications
4 on the Internet. *Reno v. American Civil Liberties Union*, 521 U.S. 844, 117 S.Ct. 2329, 138
5 L.Ed.2d 874 (1997) [the principal channel through which many Americans now transmit and
6 receive sexually explicit communication is the Internet]; *Anheuser-Busch v. Schmoke*, 101 F.3d
7 325 (4th Cir. 1996), *cert. denied* 520 U.S. 1204 (1997) [the Fourth Circuit rejected a First
8 Amendment challenge to a Baltimore ordinance restricting alcohol advertisements on billboards
9 acknowledging that the Internet is one available channel of communication]; *U.S. v. Hockings*,
10 129 F.3d 1069 (9th Cir. 1997); *see also U.S. v. Thomas*, 74 F.3d 701 (6th Cir. 1996), *cert.*
11 *denied* 519 U.S. 820 [recognizing the Internet as a medium for transmission of sexually explicit
12 material in the context of obscenity prosecutions]. The emergence of the Internet brings with it
13 a virtually unlimited additional source of adult oriented sexual materials available to interested
14 persons in every community with a mere keystroke. An adult business no longer has to be
15 "actually" physically located in a city to be available in the community.

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

25 N. The City further finds that definite and specified locational requirements
26 are necessary between an adult business and residential uses, schools, child day care centers,
27 religious institutions, or active parks (collectively "sensitive uses") in order to (1) ensure that the
28 adverse secondary effects on these sensitive uses caused by adult businesses are mitigated to
the maximum extent possible; (2) prevent ad hoc decisions with respect to a potential adult
business site which does not meet the City's locational criteria; and (3) provide certainty to the
residents of the City along with the adult business operators with respect to potential adult use
sites.

1 O. The City Council recognizes the possible harmful effects on children and
2 minors exposed to the secondary effects of adult businesses and recognizes the need to enact
3 regulations which will minimize and/or eliminate such exposure. The City Council takes
4 legislative notice of the Penal Code provisions authorizing local governments to regulate matter
5 that is harmful to minors (*i.e.*, Penal Code § 313 *et seq.*). The City Council further takes
6 legislative notice of the cases that recognize that protection of minors from sexually explicit
7 materials is a compelling government interest, including *Crawford v. Lungren*, 96 F.3d 380 (9th
8 Cir. 1996), *cert. denied* 520 U.S. 1117 (1997) and *Berry v. City of Santa Barbara*, 40
9 Cal.App.4th 1075 (1995).
10

11 P. While the City Council is obligated to protect the rights conferred by the
12 United States Constitution to adult businesses, it does so in a manner that ensures the
13 continued and orderly use and development of property within the City and diminishes, to the
14 greatest extent feasible, those undesirable adverse secondary effects which the above
15 mentioned studies have shown to be associated with the operation of adult businesses.
16

17 Q. The City Council recognizes that numerous courts have found the
18 definition of an adult business based on the "regular and substantial course of conduct"
19 standard provides sufficient guidance for people of ordinary intelligence to know whether the
20 adult business regulations apply to them and for law enforcement personnel to enforce the
21 provisions of the ordinance, including *People v. Superior Court (Lucero)* 49 Cal.3d 14 (1989),
22 and *Doctor John's v. City of Roy*, 465 F.3d 1150 (10th Cir. 2006). These cases have specifically
23 held that the "regular and substantial" standard is constitutionally sound and not
24 unconstitutionally vague. (*Id.*) The City Council is mindful that identification of specific
25 percentages of floor space or inventory often leads to creative manipulation of inventory and
26 floor space numbers by adult business owners and operators to avoid application of the
27 ordinance.
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2 R. It is not the intent of the City Council of the City of Carlsbad in enacting
3 this Ordinance or any provision thereof to condone or legitimize the distribution of obscene
4 material, and the City and its Council recognize that State law prohibits the distribution of
5 obscene materials and expect and encourage law enforcement officials to enforce State
6 obscenity statutes against such illegal activities in Carlsbad.
7

8 S. The City Council does not intend to regulate in any area preempted by
9 California law, including but not limited to, regulation of obscene speech, nor is it the intent of
10 the City Council to preempt regulations of the State Alcoholic Beverage Control ("ABC").
11

12 T. Nothing in this Ordinance is intended to authorize, legalize, or permit the
13 establishment, operation, or maintenance of any business, building, or use which violates any
14 City ordinance or any statute of the State of California regarding public nuisances, unlawful or
15 indecent exposure, sexual conduct, lewdness, obscene or harmful matter, or the exhibition or
16 public display thereof.
17

18 U. The locational standards are necessary in order to protect the public
19 health, safety and welfare by reducing the adverse secondary effects associated with adult use
20 businesses.
21

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

1 W. The City Council does not intend to regulate in any area preempted by
2 California law including, but not limited to, regulation of obscene speech, nor is it the intent of
3 the City Council to preempt regulations of the state Alcoholic Beverage Control ("ABC").
4

5 X. Nothing in this ordinance is intended to authorize, legalize, or permit the
6 establishment, operation, or maintenance of any business, building, or use which violates any
7 city ordinance or any statute of the State of California regarding public nuisances, unlawful or
8 indecent exposure, sexual conduct, lewdness, obscene or harmful matter, or the exhibition or
9 public display thereof.
10

11 Y. That the proposed Zone Code Amendment, ZCA 06-02, is consistent with
12 the adopted Airport Land Use Compatibility Plan for the McClellan-Palomar Airport (ALUCP),
13 dated October 2004, in that:
14

15 1. The proposed Zone Code Amendment does not involve any land use
16 changes within the Airport Influence Area and therefore does not affect compatibility with the
17 safety and noise criteria; and,
18

19 2. The proposed zone code amendment does not allow adult businesses in
20 any zone or on any site where they were not allowed previous to the adoption of this ordinance,
21 nor propose any regulation that will conflict with the applicability of the ALUCP.
22

23 **SECTION II. AMENDMENT OF CODE.** Section 21.06.015 of the Carlsbad
24

25 Municipal Code is amended to read as follows:
26

27 21.06.015 Application of Q Zone
28

 A. It is intended that the Q zone be placed on properties with unique circumstances.

Examples of situations that are considered unique include but are not limited to the following:

1. Special treatment areas as indicated in the general plan;
2. Commercial zones that are in close proximity and relationship with residentially zoned properties;
3. Property proposed to be developed within a floodplain;

1 4. Property proposed to be developed as hillside development or other physically
2 sensitive areas;

3
4 5. Property where development could be detrimental to the environment, or the
5 health, safety and general welfare of the public.

6
7 B. The requirements of this Chapter shall not apply to adult businesses that are
8 located on properties in the Q zone.

9
10 SECTION III. AMENDMENT OF CODE. Table A of Section 21.30.010 of the
11 Carlsbad Municipal Code is amended to read as follows:

12
13 **Table A**
14 **Permitted Uses**

15 In the table, below, subject to all applicable permitting and development requirements of the
16 municipal code.

17 "P" indicates use is permitted

18 "CUP" indicates use is permitted with approval of a conditional use permit.

19 1 = Administrative hearing process

20 2 = Planning commission hearing process

21 3 = City council hearing process

22 "ACC" indicates use is permitted as an accessory use.

USE	P	CUP	ACC
Adult businesses (subject to Chapter 21.43 of this title, and Chapter 8.60 of CMC Title 8)	X		
Agricultural farm worker housing (temporary) (subject to Section 21.42.140(B)(2))		3	
Airports		3	
Alcoholic treatment centers		2	
Amusement parks		3	
Any use permitted in other commercial zones is permitted in the C-M zone, with exceptions as set out in note 1, below	X		
Aquaculture (defined: Section 21.04.036)		2	
Arcades -- coin-operated (subject to Section 21.42.140(B)(15)) (defined: Section 21.04.091)		1	

no changes from 13-17

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**Table A
Permitted Uses**

In the table, below, subject to all applicable permitting and development requirements of the municipal code:

"P" indicates use is permitted

"CUP" indicates use is permitted with approval of a conditional use permit.

1 = Administrative hearing process

2 = Planning commission hearing process

3 = City council hearing process

"ACC" indicates use is permitted as an accessory use.

USE	P	CUP	ACC
Adult businesses (subject to Chapter 21.43 of this title, and Chapter 8.60 of CMC Title 8)	X		
Agricultural farm worker housing (temporary) (subject to Section 21.42.140(B)(2))		3	
Airports		3	
Alcoholic treatment centers		2	
Any industrial use not specifically permitted herein must be reviewed as provided in Chapter 21.42 for a conditional use permit in order to locate industry in its proper and available location in the region and prevent conflict with the high degree of residential development existing in and around the city		X	
Aquaculture (defined: Section 21.04.036)		2	
Auto storage/impound yards (i.e., overnight product storage)		2	
Auto wrecking yards (defined: Section 21.04.040)		2	
Automobile painting. All painting, sanding and baking shall be conducted wholly within a building	X		
Bakeries	X		
Biological habitat preserve (subject to Section 21.42.140(B)(30)) (defined: Section 21.04.048)		2	
Body and fender works, including painting	X		
Book printing and publishing	X		
Bookbinding	X		

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USE	P	CUP	ACC
Transit storage (ex. rolling stock)		2	
Truck steam cleaning equipment	X		
Veterinary clinic/animal hospital (small animals) (defined: Section 21.04.378)		1	
Windmills (exceeding height limit of zone) (subject to Section 21.42.140(B)(160))		2	
Wireless communications facilities (subject to Section 21.42.140(B)(165)) (defined: Section 21.04.379)		1 / 2	
Zoos (private) (subject to Section 21.42.140(B)(170)) (defined: Section 21.04.400)		2	

Note:

- Any use permitted in the C-M zone, except child day care centers, except that a dwelling conforming to the yard requirements of the R-3 zone shall be permitted on the same lot on which a factory is located, and which dwelling is used exclusively by a caretaker or superintendent of such factory and his family.

SECTION V. AMENDMENT OF CODE. Table A of Section 21.34.020 of the Carlsbad Municipal Code, is amended to read as follows:

**Table A
Permitted Uses**

In the table, below, subject to all applicable permitting and development requirements of the municipal code:

- "P" indicates use is permitted
- "CUP" indicates use is permitted with approval of a conditional use permit.
- 1 = Administrative hearing process
- 2 = Planning commission hearing process
- 3 = City council hearing process
- "ACC" indicates use is permitted as an accessory use.

USE	P	CUP	ACC
Accessory uses and structures where related and incidental to a permitted use			X
Accountants (see note 1 below)	X		
Administrative offices associated with and accessory to a permitted use	X		
Administrative offices (see note 1 below)	X		
Adult businesses (subject to Chapter 21.43 of this title and Chapter 8.60 of CMC Title 8)	X		

No changes on Dec 23-30

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USE	P	CUP	ACC
Tax service and consultants (no consumer-oriented uses) (see note 1 below)	X		
Telephone cable companies (see note 1 below)	X		
Telephone systems (see note 1 below)	X		
Title companies (see note 1 below)	X		
Tour operators (see note 1 below)	X		
Trademark consultants (see note 1 below)	X		
Transit passenger terminals (bus and train)		2	
Translators and interpreters (see note 1 below)	X		
Trust companies (see note 1 below)	X		
Veterinary clinic/animal hospital (small animals) (defined: Section 21.04.378)		1	
Windmills (exceeding height limit of zone) (subject to Section 21.42.140(B)(160))		2	
Wireless communications facilities (subject to Section 21.42.140(B)(165)) (defined: Section 21.04.379)		1 / 2	
Zoos (private) (subject to Section 21.42.140(B)(170)) (defined: Section 21.04.400)		2	

Note:
1. Business and professional offices which are not retail in nature, do not cater to the general public, and do not generate walk-in or drive-in traffic, and are incidental to the industrial uses in the vicinity.

SECTION VI. AMENDMENT OF CODE. Chapter 21.43 of the Carlsbad

Municipal Code is hereby repealed in its entirety and replaced with the following:

**Chapter 21.43
Adult Businesses**

- Sections:
- 21.43.010 Intent and purpose.
 - 21.43.020 Definitions.
 - 21.43.030 Location requirements for adult businesses.
 - 21.43.040 Other requirements for adult businesses.
 - 21.43.050 Violations.

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1 21.43.010 Intent and purpose.

2 A. The intent and purpose of this chapter is to regulate the location of adult
3 businesses, which is necessary due to the following:

4 1. Adult businesses tend to have judicially recognized adverse secondary effects on
5 the community, including but not limited to:

6 a. Increases in crime in the vicinity of adult businesses;
7 b. Decreases in property values in the vicinity of adult businesses;
8 c. Increases in vacancies in residential and commercial areas in the vicinity of adult
9 businesses;

10 d. Interference with residential property owners' enjoyment of their properties (when
11 such properties are located in the vicinity of adult businesses) as a result of increases in crime,
12 litter, noise, and vandalism; and

13 e. The deterioration of neighborhoods.

14 B. In addition to the operational regulations for adult businesses mandated in
15 Chapter 8.60 of the Municipal Code, the regulations in this chapter are necessary to prevent
16 adverse secondary effects of adult businesses, while at the same time protecting the
17 constitutional rights of those individuals who desire to own, operate or patronize adult
18 businesses.

19 21.43.020 Definitions.

20 A. The definitions found in Section 8.60.020 of the Municipal Code are incorporated
21 herein by reference.

22 B. In addition to any other definitions contained in the Municipal Code, the following
23 words and phrases shall, for the purpose of this Chapter, be defined as follows, unless it is
24 clearly apparent from the context that another meaning is intended. Should any of the
25 definitions be in conflict with any current provisions of the Municipal Code, these definitions shall
26 prevail.

27 1. "Child day care center" means any child day care facility as defined in Carlsbad
28 Municipal Code Section 21.04.086 and Section 1596.750 of the California Health and Safety
Code other than family day care homes.

2. "Park" means any public or private parks, whether for passive or active
recreational uses or both. Active recreational uses may include but are not limited to skate
parks, tot lot and play lot areas, structures and special use facilities such as swimming pools,
basketball courts, tennis courts, handball and racquetball courts, horseshoes, and picnic
facilities.

3. "Religious institution/place of worship" means any portion of a building or
structure that is used primarily for religious worship and religious activities.

4. "Residential land use designation" means any property within the City that carries
a residential general plan land use designation permitting the location of a dwelling or dwellings,
including RL (Residential Low Density), RLM (Residential Low Medium Density), RM
(Residential Medium Density), RMH (Residential Medium High Density) and RH (Residential
High Density).

5. "Residential zone" means any property within the City that carries a zoning
designation permitting the location of a dwelling or dwellings, including R-A (Residential
Agricultural), R-E (Rural Residential Estate), R-1 (One-Family Residential), R-2 (Two-Family
Residential), R-3 (Multiple-Family Residential), RMHP (Residential Mobile Home Park), RD-M
(Residential Density-Multiple), R-P (Residential Professional), R-T (Residential Tourist), and R-
W (Residential Waterway).

6. "School" means 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"

1 does not include a vocational or professional institution of higher education, including a
2 community or junior college, college, or university.

3 21.43.030 Location requirements for adult businesses.

4 A. Zones where adult businesses are permitted.

5 1. Adult businesses are permitted only on sites that are within the C-M, C-M/Q, M,
6 M-Q, P-M, or P-M/Q zones, provided such uses are not precluded by any applicable specific
7 plan or master plan.

8 B. Distance requirements.

9 1. In addition to the zone requirements specified in subsection A of this section, an
10 adult business shall not be established or located within one thousand (1,000) feet of any of the
11 following:

12 a. Another adult business;

13 b. Child day care center;

14 c. Park;

15 d. Religious institution/place of worship;

16 e. Residential land use designation;

17 f. Residential zone; or

18 g. School;

19 2. For the purpose of measuring the distance requirements set forth in subsection
20 B.1 of this section, all distances shall be measured (without regard to intervening structures) in a
21 straight line extended between the nearest property lines of:

22 a. The property on which the adult business is or will be located; and

23 b. The property on which one of the uses/zones/designations specified in
24 subsection B.1. of this section is located.

25 3. The distance requirements established by subsection B.1.a of this section shall
26 apply to:

27 a. Any adult business operating as a legal conforming use with an approved adult
28 business license from the city;

29 b. Any adult business that has an approved adult business license from the city, but
30 has not yet begun operating the business at the approved business location.

31 4. The distance requirements established in subsection B.1 of this section shall
32 apply to those uses/designations/zones specified in subsections B.1.b through B.1.g of this
33 section that:

34 a. Are existing, or

35 b. Have received approval by the City for the use/zone/designation and said
36 approval has not expired or become invalid.

37 5. The distance requirements from the uses/designations/zones specified in
38 subsections B.1.b through B.1.g of this section shall not apply to those uses/designations/zones
39 for which the City is reviewing but has not yet approved an application to establish the
40 use/designation/zone.

41 C. Other location requirements.

42 1. An adult business that either: a) has an approved adult business license from the
43 city, but has not yet begun operating the business at the approved business location, or b) is
44 operating as a legal conforming use with an approved adult business license from the City, shall
45 not be rendered a nonconforming or illegal use by the subsequent location of child day care
46 centers, parks, religious institutions/places of worship, residential land use designations,
47 residential zones, or schools that are within the locational limitations set forth in this section.

48 a. A use shall be deemed to be subsequently located if it is established within the
49 locational limitations of this section following the date an application for an adult business
50 license is filed pursuant to the requirements of Chapter 8.60 of the Municipal Code.

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1 21.43.040 Other requirements for adult businesses.
2 A. All adult businesses shall comply with the requirements of Chapter 8.60 of the
3 Municipal Code.
4 B. All adult business performers shall comply with the requirements of Chapter 8.70
5 of the Municipal Code.
6 C. No building permit, adult business license, or other permit or entitlement for use
7 shall be legally valid if issued to any adult business proposed to operate or to be established in
8 the city unless the location requirements specified in Section 21.43.030 are satisfied.

7 21.43.050 Violations.

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

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

18 C. The restrictions imposed pursuant to this Section do not constitute a criminal
19 offense. Notwithstanding any other provision of the Carlsbad Municipal Code, the City does not
20 impose a criminal penalty for violations of the provisions of this ordinance related to adult
21 businesses.

18 **SECTION VII. AMENDMENT OF CODE.** Section 21.44.080 of the Carlsbad

19 Municipal Code is amended to read as follows:

21 21.44.080 Joint use of off-street parking facilities.

22 A. Joint use of off-street parking facilities shall be allowed for uses or activities listed
23 in subsection A.1 of this section, subject to the requirements of subsection A.2 of this section.

23 1. Uses or activities.

24 a. Up to 50% of the parking facilities required by this chapter for a use considered
25 to be primarily a daytime use may be provided by the parking facilities of a use considered to be
26 primarily a nighttime use;

27 b. Up to 50% of the parking facilities required by this chapter for a use considered
28 to be primarily a nighttime use may be provided by the parking facilities of a use considered to
be primarily a daytime use;

c. Up to 100% of the parking facilities required by this chapter for a church or for an
auditorium incidental to a public or parochial school may be supplied by parking facilities of a
use considered to be primarily a daytime use;

d. Up to 50% of the parking facilities required by this chapter for a church may be
jointly utilized by an on-site, accessory, child day care center provided there is no substantial
conflict in the principal operating hours of the church and child day care center;

e. The following uses are typical daytime uses: banks, business offices, retail
stores, personal service shops, clothing or shoe repair or service shops, manufacturing or
wholesale buildings and similar uses;

f. The following uses are typical of nighttime uses: dance halls, theaters and bars.

2. Requirements for joint use of off-street parking.

a. The owner or lessee of the subject property shall provide written evidence to the
Planning Department to demonstrate compliance with the provisions and requirements of this
section.

- 1 b. The buildings or uses associated with the joint use of a parking facility shall be
2 located within 150 feet of such parking facility;
- 3 c. The application shall show that there is no substantial conflict in the principal
4 operating hours of the buildings or uses for which the joint use of a parking facility is proposed;
- 5 d. Parties involved in the joint use of a parking facility shall provide evidence of
6 agreement for such joint use by a proper legal instrument approved by the city attorney as to
7 form and content. Such instrument, when approved as conforming to the provisions of this title,
8 shall be recorded in the office of the county recorder and copies thereof filed with the planning
9 director.

8 **SECTION VIII. SEVERABILITY CLAUSE.** If any section, subsection, sentence,
9 clause, phrase or part of this ordinance is for any reason held to be invalid or unconstitutional by
10 the final decision of any court of competent jurisdiction, such decision shall not affect the validity
11 of the remaining parts of this ordinance. The City Council hereby declares that it would have
12 adopted this ordinance and each section, subsection, sentence, clause, phrase or part thereof
13 irrespective of the fact that any one or more of the sections, subsections, sentences, clauses,
14 phrases or parts are declared invalid or unconstitutional.

17 **SECTION IX. EFFECTIVE DATE FOR PROPERTIES LOCATED IN THE**
18 **COASTAL ZONE.** This Ordinance shall be effective no sooner than thirty (30) days after its
19 adoption but not until approved by the California Coastal Commission, and the City Clerk shall
20 certify the adoption of this Ordinance and cause it to be published at least once in a newspaper
21 of general circulation in the City of Carlsbad within fifteen (15) days after its adoption.

25 **SECTION X. EFFECTIVE DATE FOR PROPERTIES LOCATED OUTSIDE THE**
26 **COASTAL ZONE.** This Ordinance shall be effective no sooner than thirty (30) days after its
27 adoption and the City Clerk shall certify the adoption of this Ordinance and cause it to be
28 published at least once in a newspaper of general circulation in the City of Carlsbad within
fifteen (15) days after its adoption.

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INTRODUCED AND FIRST READ at a regular meeting of the Carlsbad City Council on the 6th day of October, 2009, and thereafter.

PASSED, APPROVED AND ADOPTED at a Regular Meeting of the City Council of the City of Carlsbad on the 20th day of October, 2009, by the following vote to wit:

AYES: Council Members Lewis, Kulchin, Hall, Packard and Blackburn.

NOES: None.

ABSENT: None.

ABSTAIN: None.

APPROVED AS TO FORM AND LEGALITY

Signature on file

RONALD R. BALL, City Attorney

City Attorney

Signature on file

CLAUDE A LEWIS, Mayor

ATTEST:

Signature on file

LORRAINE M. WOOD, City Clerk
(SEAL)

