

CITY OF BEAUMONT, TEXAS

TO: Planning Commission and City Council

FROM: Planning Department

SUBJECT: Regulation of Adult Uses; Revised September 14, 1982

Issues and Analysis

At present, the Zoning Ordinance of the City of Beaumont regulates certain adult uses by establishing a set of "special conditions" that must be met before such uses may be approved. By adult uses, the ordinance refers to "adult bookstores," "adult motion picture theaters," and other adult uses such as Massage parlors or nude modeling or photography studios. The definition of an adult use is tied to situations where minors, by virtue of age, are excluded from the premises. This approach was used to eliminate the need to make individual subjective judgements and to take advantage of Texas Statutes concerning the sale, distribution or display of harmful material to minors. The special conditions which must be met before an adult "use"- can be permitted are:

- a) An adult use shall not be located within five hundred (500) feet of the district boundary line of any residential zoning district.
- (b) An adult use shall not be established or expanded within three hundred (300) feet of any other adult bookstore, adult theater, bar, pool hall, or liquor store.
- (c) An adult use shall not be established or expanded within one thousand (1000) feet of the property line of a church, school, public park or other recreational facility-where minors congregate.

Unfortunately, these special conditions do not apply to eating and drinking places which offer live entertainment that would normally be considered as an adult use. It is the position of the planning staff that eating or drinking places which have entertainment such as exotic dancers, strippers, go-go girls, and other similar activities from which minors are excluded by virtue of age under the laws of Texas

unless accompanied by a consenting parent, guardian or spouse should be considered and classified as adult uses. This should necessitate amending the zoning ordinance.

Currently, all adult uses recognized in the zoning ordinance are allowed in the General Commercial - Multiple Dwelling Districts (GC-MD) only with a specific use permit. They are permitted in the C-M, LI, and H1 Districts as a use of right. If and only if all of the following conditions are found then the City Council Is required to Issue a specific use permit for adult uses in a *GC-MD* District:

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- 1) That the specific use will be compatible with and not injurious to the use and enjoyment of other property, nor significantly diminish or impair property values within vicinity;
- 2) That the establishment of the specific use will not impede the normal and orderly development and improvement of surrounding vacant property;
- 3) That adequate utilities, access roads, drainage and other necessary supporting facilities have been or will be provided;
- 4) The design, location and arrangement of all driveways and parking Spaces provides for the safe and convenient movement of vehicular and pedestrian traffic without adversely affecting the general public or adjacent developments;
- 5) That adequate nuisance prevention Measures have been or will be taken to prevent or control offensive odor, fumes, dust, noise and vibration;
- 6) That directional lighting will be provided so as not to disturb or adversely affect neighboring properties;
- 7) That there are sufficient landscaping and screening to insure harmony and compatibility with adjacent property; and
- 8) That the proposed use is in accordance with the comprehensive plan.

From a planning perspective, the key conditions to the analysis of a request for a specific use permit are conditions #1 and #2. As a general rule, uses which are permitted in a zoning district only with a specific use permit have unusual nuisance characteristics which often are incompatible or injurious to the uses that are permitted as a right in the same zoning district. If unregulated, these incompatible uses may significantly diminish or impair area property values and impede the normal and orderly development of surrounding areas.

The requirement that adult uses must qualify for a specific use permit in a *GC-MD* District is justified on the basis of local analysis and reference to the studies on the subject prepared by the City Development of Kansas City Missouri., the Planning Department of

the City of Amarillo, the City of Detroit, and the Planning Advisory Service of the American Planning Association.

The City of Detroit adopted adult use regulations in 1972 as part of an "Anti-Skid Row Ordinance" that prohibited locating adult uses within 500-feet of a residential area or within 1000 feet of any two other "regulated" uses. The term "regulated uses" applied to 10 different kinds of establishments

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including adult theaters, adult bookstores, cabarets, bars, taxi dance halls and hotels. Detroit subsequently amended its ordinance as a result of a District Court ruling by prohibiting the location of adult uses within 500-feet of a residential zoning district instead of any residential area.

Adult entertainment establishments were added to the "Anti-Skid Row Ordinance" by the City of Detroit because of evidence of the adverse socioeconomic and blighting impact that such uses have.

"That evidence consisted of reports and affidavits from sociologists and urban planning experts, as well as some laymen, on the cycle of decay that had been started in areas of other cities, and that could be expected in Detroit, from the influx and concentration of such establishments."¹

In Texas, the Planning Department of the City of Amarillo has prepared and published a study entitled "A Report on Zoning and Other Methods of Regulating Adult Entertainment Uses in Amarillo." The essence of the report has that adult entertainment uses have impacts upon surrounding land uses that are distinguished from other businesses permitted in the same zoning districts. The following are two of the causal factors identified in their analysis of adult entertainment uses.

1. The Amarillo Police Department's statistical survey of street crime in the vicinity of adult-only business indicates that crime rates are considerably above the City average immediately surrounding the adult-only businesses analyzed.
2. Concentrations of these adult-only activities have detrimental effects upon surrounding residential and commercial activities. These effects are caused by (a) the noise, lighting and traffic generated by the pedestrian and vehicular traffic frequenting these businesses whose primary hours of operation are from late evening to late night, (b) the increased opportunity for "street crimes" in areas with high pedestrian traffic, and (c) the tendency to avoid areas where adult businesses (especially pornographic) are established. This avoidance and other

factors can lead to the deterioration of surrounding commercial and residential activities.²

The analysis of the adverse impact of adult entertainment uses provided for the City of Amarillo is consistent with local experiences here in Beaumont. The local consequences of the concentration of adult entertainment uses were clearly illustrated in the "Commercial Revitalization Plan for the Charlton-Pollard Neighborhood" which was prepared by the Planning Department in May of 1981. This plan was prepared as a "demonstration project" under a grant from the Economic Development Administration and was developed to

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be used as a model or prototype for the revitalization of other areas that have experienced commercial deterioration, neglect and disinvestment. The major points of the plan which have bearing on this report are as follows:

- The concentration of bars, lounges, and package stores on Irving Street represents a semi-developed adult entertainment zone. Adult entertainment uses tend to have a "skid-row effect" on adjoining properties and, when concentrated, often result in deteriorating residential and commercial property values, higher crime rates and depressed neighborhood living conditions.
- Between 1970 and 1980 the total number of businesses located on Irving declined from 23 to 19. At the same time the number of package stores and lounges increased from 6 to 9. Neighborhood commercial uses such as washaterias, restaurants, and grocery stores left the area and were partially replaced by lounges, body shops and car washes.
- The character of commercial development along Irving has changed in recent years from neighborhood commercial to highway or nuisance commercial with a high degree of incompatibility.
- The high incidence of lounges and package stores on Irving actually discourages the retention or new development of neighborhood commercial uses and is not conducive to neighborhood commercial revitalization."³

The plan described in detail the downhill economic decline in this neighborhood which was caused by the presence and concentration of adult entertainment uses. Neighborhood convenience commercial establishments which were needed to meet the market demands of the residents in the area were driven away by the growing presence of these incompatible uses. Many residents in the area who were former shoppers testified that they and their children were threatened and verbally abused by the customers of the various adult entertainment uses and they feared for their safety and well-being. This existence is consistent with the evidence used by the City of Detroit in deciding to disperse and regulate the locational aspects of adult entertainment uses. This local experience also was the basis for the recommendation by the Planning Department that

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...the adult nuisance uses in the area which are not compatible with either residential or convenience commercial development and which diminish the chances for local economic revitalization should be amortized out and removed at the earliest opportunity.

The Police Department of the City of Beaumont has concluded that adult uses such as bars, lounges or taverns, and especially those featuring such sexually-oriented activities as exotic dancers and go-go girls, are the frequent scene of illegal sexual activities such as prostitution and the sale and use of narcotics. Criminal activity in an area with adult uses is above

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average and is often attributable to the need of drug users to obtain money to finance the purchase of narcotics. Crimes against persons, such as mugging, are also above average in such areas.

The bunching or grouping of adult uses has an even greater adverse impact. The character of the area attracts a distinct class of people and a criminal element. It results in a reinforcing multiplier effect on criminal behavior and leads to a higher incidence of crime.

The preservation of residential neighborhoods and business districts against the deteriorating influence of crime and blight ranks among the highest functions that city dwellers expect its planners, commissioners and elected officials to perform. Current zoning regulations in Beaumont are not adequate to control the adverse impact of sexually oriented adult uses on surrounding residential areas or to prevent commercial deterioration and blight.

In deciding what additional minimum regulations of adult uses are needed to protect the residents of the City of Beaumont, it is significant to note the recent efforts of the City of Galveston to regulate adult uses. The City of Galveston permits adult motion picture theaters and adult book stores in commercial and industrial zoning districts but only with a specific use permit. In addition, these adult uses are not permitted within 500 feet of any residential zoning district or within 1000 feet of the property line of a church, school public park or recreational facility where minors congregate. The legal validity of the Galveston Ordinance which has some similarities with the Beaumont Zoning Ordinance was upheld in District Court. However, upon subsequent appeal, the decision of the District Court was reversed. It was the opinion of **the Fifth Circuit** of the United States Court of Appeals that the Galveston Ordinance went too far in that, under the guise of regulation, it banned theaters from showing motion pictures for adult audiences.⁵ The decision of the Fifth Circuit Court is a clear warning to local governments that they cannot adopt regulations which have the affect of banning adult uses.

Summation and Recommendations

There is clear and convincing documented evidence that adult entertainment uses, because of their very nature, have serious objectionable operational characteristics, particularly when several of them are concentrated, that produce or result in a deleterious

effect upon adjacent areas and the surrounding neighborhood. Special regulation of these uses is necessary **to ensure** that these adverse affects are minimized and controlled so as not to contribute to the blighting or downgrading of adjacent property and the surrounding neighborhood.

At present, Section 30-33.B.2) of the Beaumont Zoning Ordinance establishes special conditions for adult bookstores, adult motion picture theaters and other adult uses such as massage parlors, nude modeling or photography studios. The planning staff recommends that these special conditions should

Summation and Recommendations (cont'd)

also be applied to eating or drinking places which offer live entertainment from which minors are excluded under the laws of Texas unless accompanied by a consenting parent, guardian or spouse.

In addition, the planning staff recommends that a specific use permit should be required for all adult entertainment uses in the GC-MD District. In particular Section 30-33.B.2) would be amended by adding the following condition:

- d) Because adult uses generally have unusual nuisance characteristics which can be incompatible and injurious to other commercial or residential uses and which may significantly diminish or impair area property values and impede the normal and orderly development of surrounding areas, a specific use permit shall be required when the proposed use is to be located in a GC-MD, General Commercial - Multiple Family Dwelling district.

The planning staff would also recommend that condition "c" in Section 30-33.B.2 which prohibits an adult use being established or expanded within 1000 feet of the property line of a church, school, public park or other recreational facility where minors congregate be reduced to 750. The reduction is recommended after consultation with the Legal Department concerning the impact of the decision of the Fifth Circuit Appeal Court on the Galveston Zoning Ordinance. The planning staff has prepared a series of maps which will be presented at the public hearing which demonstrate that with this proposed reduction in separation between uses that there are numerous commercially viable locations for adult entertainment uses. **These** text amendments do not represent **an** attempt to ban adult entertainment uses from the City of Beaumont.

FOOTNOTES

¹Young v. American Mini Theaters, Inc., 96S.Ct. 2440 (1976)

²"A Report on Zoning and Other Methods of Regulating Adult Entertainment in Amarillo". Planning Department - City of Amarillo, Texas (1977), pp. 14-15.

³"Commercial Revitalization Plan for the Charlton-Pollard Neighborhood,"

Planning Department - City of Beaumont, Texas (1981).

⁴" Memo on Neighborhood Commercial Revitalization Plan for the Charlton-Pollard Neighborhood," Planning Department - City of Beaumont (June 23, 1982).

5. *Basiardines v. City of Galveston*, 682 F.2d 1203 (1982).