

Seattle, WA
Department of Construction and Land Use

March 24, 1989

Dear Citizen:

The Department of Construction and Land Use has prepared the attached Director's Report and Recommendation on a proposed Land Use Code amendment regulating the location of topless dance halls.

The Department proposes to define topless dance halls as "adult cabarets" and establish them as a new category of use under entertainment uses. The proposal would limit the location of adult cabarets to three downtown zones where adult motion picture theaters and adult panorams are also now permitted. These zones are the Downtown Office Core 1 (DOC1), the Downtown Office Core 2/400' (DOC2/400') and the Downtown Retail Core (DRC). The removal of the Downtown Office Core 2/240' (D0C2/240') zone is a major change from the Draft Report published February 14, 1989.

A public hearing on the amendment will be held before the City Council's Public Safety Committee on Monday, April 10, 1989, at 7:00 F.M., Council Chamber, 11th floor, Municipal Building, 600 4th Avenue.

If you have questions about the proposed amendment or the public hearing, please contact Ikuno Masterson at the Department of Construction and Land Use, 400 Municipal Building, Seattle, WA 96104, or by calling 684-6880.

sincerely,

DENNIS J. MCLERRAN
Director

DIRECTOR'S REPORT
PROPOSED LAND USE CODE AMENDMENT
ADULT CABARETS
March 1989

SUMMARY

In response to Council Resolution #27905, the Department of Construction and Land Use (DCLU) is proposing an amendment to the Land Use Code which would define topless dance halls as "adult cabarets" and would authorize their location to specific zones. This report uses the term "adult cabaret" to refer to topless dance halls. The proposed changes balance the need of adult cabarets for adequate locational opportunities with the needs of residents for healthy, safe neighborhoods. The changes are also consistent with existing land use policies

Adult cabarets are entertainment uses where nude and/or semi-nude dancers perform for members of the public. Food and/or beverage may or may not be served. Liquor is generally not sold on the premises of adult cabarets due to provisions required state law. Presently, these businesses are defined in the Land Use Code as performing arts theaters and are permitted in all commercial (except Neighborhood Commercial 1), downtown and industrial zones.

The proposal recognizes a growing concern for maintaining the neighborhood character of the City's commercial areas. It does not intend to regulate the activity within adult cabarets but rather concerns itself with the effects these businesses have on the surrounding community. While there are many perceptions about what these effects are, this report concludes that as a class of use, adult cabarets have adverse impacts on public safety, welfare and property values. Impacts such as these indicate that adult cabarets are not compatible near residential development. For that reason, DCLU proposes to permit the location of adult cabarets in the non-residentially oriented downtown zones where adult motion picture theaters and adult panorams are now permitted. These zones are: Downtown Office Core 1 (DOCL), Downtown Office Core 2/400' (DOC2/400'), and Downtown Retail Core (DRC).

Topless dance halls, bars, and/or nightclubs have been regulated as performing arts theaters since the adoption of the Neighborhood Commercial Code in 1986. Historically, they have been treated as restaurants, dance halls, theaters

or indoor places of public assembly, depending on the type of operation. They have been prohibited in residential zones and permitted in commercial, industrial and downtown zones, as they are today.

Of the eight known adult cabarets now in operation, one is located in the Downtown Mixed Commercial zone (DMC 125). Some form of adult entertainment use has existed at this location intermittently for many years. Another, located in a Neighborhood Commercial 2 (NC2) zone, has been at the same location for over 20 years. There is one located in a Downtown Office Core 2/400' (DOC2/400') zone. Three adult cabarets are located in Neighborhood Commercial 3 (NC3) zones, and two are in Commercial 1 (C1) zones. The latter six have been newly established within the last two *years*.

This recent increase in the establishment of adult cabarets in Seattle's neighborhood commercial areas brought about a considerable number of citizen complaints. The Public Safety Committee of the Seattle City Council received numerous phone calls and letters, including many from northend community councils and merchants associations and several petitions with hundred of signatures. These citizens expressed their concerns about the decline in property values, increases in insurance rates and fears about burglary, vandalism, rape, assaults, drugs, prostitution and the overall detrimental influence on their neighborhoods.

This citizen concern prompted the City Council to adopt legislation which requires both new and existing adult entertainment businesses to be licensed (Ordinance 114225) and places a moratorium on the establishment of any new business until the Land Use Code is amended (Ordinance 114254 and Resolution 27905). This report is part of that Land Use Code amendment process, examining how best to regulate the location of adult cabarets.

Regulation of adult entertainment uses is a constant challenge for communities. Regulating these uses is different from regulating other uses like grocery stores or restaurants because arts and entertainment uses involve protected forms of expression, such as dancing. Local governments must be cautious in regulating adult entertainment uses because of the constitutional issues involved. The First and Fourteenth Amendments to the United States Constitution are often cited in case law as the standards against which regulations affecting adult entertainment must be measured. The First Amendment protects the right of citizens to freedom of speech or expression, and this federal-right extends to the states under the Fourteenth Amendment.

One traditional method used by local governments to regulate adult entertainment uses has been through licensing. This approach often requires owners, operators, and/or employees to provide detailed business information and specifies facility and operational standards. The City's recently adopted legislation which requires adult entertainment businesses to be licensed with the Department of Licenses and Consumer Affairs is an effective method for addressing performance-oriented standards. Standards which regulate the planning effects of different uses are best incorporated into zoning or land use legislation. As a general rule these are more effective at addressing locational issues.

In the 1976 landmark decision of *Young v. American Mini Theaters*,¹ the U.S. Supreme Court declared that as a land use, adult entertainment uses are subject to carefully tailored regulation to minimize adverse land use impacts. In order for a land use regulation of such uses to be valid, several conditions must first be satisfied. One condition is that the local government must provide opportunities for this type of expression. In other words, zoning cannot be used directly or effectively to ban adult motion picture theaters, bookstores, or dancing. Another condition requires that limits not be placed on the number of establishments or on the accessibility of such facilities to those who wish to patronize them. The Court determined that zoning can legitimately be used to regulate such uses by establishing zones where adult entertainment uses are most compatible with other uses or the surrounding neighborhood, or by requiring minimum distances to be maintained between adult uses and other uses. Another more recent U.S. Supreme Court case, *City of Renton v. Playtime Theaters*,² reaffirmed these concepts. It also verified that a city is entitled to rely on the experience of other cities in enacting legislation to regulate adult entertainment uses. Both of these decisions have been used in many cities to support local government zoning regulation of adult entertainment uses.

Seattle, like many other jurisdictions, relied on the *Young* decision to locate adult motion picture theaters only in the central business district. Citing *Young* again in 1979, the City limited the areas where adult panorams could be located. In 1985, reflecting a decisive policy in the newly adopted Downtown Plan to encourage downtown residential development, adult motion picture theaters and adult panorams were authorized only in the Downtown Office Core 1 (DOC1), Downtown Office Core 2 (DCO2) and the Downtown Retail Core (DRC) zones. To date, these are the only two forms of adult entertainment uses identified specifically in Seattle's land use regulations.

ANALYSIS AND RECOMENDATION

Land use regulation is based on the concept of compatibility. Generally, the City's commercial and downtown policies encourage a variety of businesses which are compatible with each other and the residential areas they serve. However, some commercial uses have impacts which are not compatible with the nature of some business areas or create unavoidable impacts on surrounding residential areas. Animal shelters, towing services, and construction yards, to name a few, are examples of commercial uses which may have objectionable impacts near residential areas and are identified and regulated accordingly in the Land Use Code. In a study entitled "Zoning Controls for Adults-Only Theaters" prepared by the City in 1976, it was determined that adult motion picture theaters were not compatible near residential neighborhoods. (This study was cited by the City of Kenton in their U.S. Supreme Court case with Playtime Theaters, Inc.) In order to determine in what zones adult cabarets should be permitted, it is necessary to survey their impacts and determine with what other uses they are compatible.

During the review of Seattle's licensing ordinance, the Public safety Committee of the City Council held a public hearing. Many citizens spoke of their concerns and fears about these businesses in their neighborhoods. Problems with parking and traffic, deteriorating property values, attraction of undesirable transients, increases in crime, hazards for children and personal safety, once again were some of the impacts expressed about adult cabarets on the overall quality of neighborhoods. A recent rezone application proposed by an adult entertainment business has generated many letters opposing this rezone. Citizens have complained that this business interferes with their ability to raise their children in a healthy family environment.

A decision by the City in 1976, to allow adult motion picture theaters only in the downtown area was upheld by the Washington State Supreme Court based on findings that these same impacts, mentioned above, were indeed detrimental to residential areas.³ In another case, Village of Belle Terre v. Borass the U.S. Supreme Court recognized that local governments have the right to use zoning based on impacts on family values to protect the public welfare.⁴ Studies undertaken in other communities have verified that these same impacts are associated with adult entertainment uses in those communities as well.

Of these impacts, this study found that impacts on public safety and property values had the most quantifiable documentation.

In the law and planning literature on adult entertainment uses, public safety hazards are the most often cited adverse impacts on surrounding communities. New York city police have found that serious crime complaints ran almost 70% higher on police posts that contained adult uses.⁵ The cities of Cleveland, Ohio;⁶ Indianapolis Indiana;⁷ Los Angeles, California;⁸ and Austin, Texas; among others have documented that crime rates were any where from 15% to 77% higher in areas containing adult businesses than those areas containing no adult businesses. A study in Phoenix, Arizona¹⁰ concluded that not only was there a higher rate of sex-related crimes in areas where adult businesses were located, but that rate was significantly higher where there was a concentration of adult businesses. Boston is one of the few cities that has taken the concentrated zoning approach, limiting adult-only uses to one, seven-acre area in their downtown. Their "red light" district, commonly referred to as the "Combat Zone" also has a higher incidence of crimes than other business districts in the city.¹¹

To date, no analyses or comparative studies have been conducted in Seattle to verify correlation between adult cabarets and criminal activity. It is assumed that adult cabarets in Seattle are not unlike those in other cities. While not every adult business is predisposed to be involved with criminal activity there is enough documentation, as evidenced above, to demonstrate a direct link between the potential for increased criminal activity and adult cabarets.

Like adult motion picture theaters and panorams, adult cabarets are auto-oriented or destination-type uses attracting a regional clientele. Trade characteristics studies in Bothell, Washington¹² and Austin, Texas, confirmed that at least one half of all customers frequenting adult businesses were located outside the city limits (one investigation in Bothell found that of 321 vehicles checked, only 8 were registered in their city). And in Austin, less than 5% were located within a one-mile radius of the establishment. While there are many businesses which may have regional attraction, the fact that adult cabarets also have an increased potential for crime make them more of a public safety risk on a neighborhood. People who patronize these establishments may have no sense of identity **with** or regard for the neighborhood in which these businesses may be located and therefore less inhibited in their personal-behavior than if they were in their own community. Secondary effects of police calls to a business are also created. Noise **from** sirens and flashing lights and

traffic hazards from police and emergency vehicles *are* disturbances not conducive to healthy business or residential environments. The increased potential for crime, together with these secondary effects, result in impacts which are more substantial than those of other neighborhood commercial uses which are intended to serve the needs of surrounding residents.

Decline of property values is another impact that can have serious effects on residential, commercial and industrial areas. Many jurisdictions have indicated property values are likely to decline as a result of an adult cabaret locating in the vicinity. In 1984, an analysis of adult entertainment businesses in Indianapolis was conducted by that city's Department of Metropolitan Development.⁷ With the assistance of the Indiana university School of Business, they conducted a national survey of members from the Member Appraisers Institute and the American Institute of Real Estate Appraisers regarding the market effect of adult entertainment businesses on nearby land values. It was concluded that **"adult entertainment businesses - even a relatively passive one such as an adult bookstore - have serious negative effects on their immediate environment."** While respondent felt that both residential and commercial properties were affected, residential properties were more severely impacted. The cities of Kent, Washington,¹³ Los Angeles, California⁸, and Oklahoma City, Oklahoma,¹⁴ also conducted analyses with similar conclusions. Detroit, Michigan is well known for basing their dispersion requirement for adult uses on protecting property value. Their zoning ordinance was designed to protect business districts from the blighting influences and the "skid row" effect caused by the concentration of adult businesses.¹⁵ Rental rates and occupancy of office-retail space in Washington, D.C.'s Franklin Square have nearly doubled since adult-only businesses have relocated out of the area.¹⁶ Seattle has very little land devoted to neighborhood commercial use. Such zones represent only about 6% of the City's land area. The City's industrial lands are similarly scarce. Allowing the location of adult cabarets with the potential for negatively impacting property values would be detrimental to these areas and contrary to the adopted policy to promote healthy industrial and business climates.

Within the scope of adopted City policy, the following changes to the Land Use Code are proposed to provide compatible locations for adult cabarets with other commercial enterprises in the community. Major changes are discussed under the topics of Definitions, Nonconforming Uses, commercial Zones, Downtown Zones and Industrial Zones.

DEFINITIONS

Currently, there is no terminology in the Land Use Code which specifically describes an establishment where live entertainment is almost exclusively provided by nude and/or semi-nude performers. With the adoption of the Neighborhood commercial Code in 1986, these types of uses have fallen under the category of performing arts theaters. The major impacts associated with most performing arts theaters focus around parking and traffic. However, public safety and welfare is the major area of concern associated with adult cabarets. Since the impacts associated with adult cabarets are significantly different than those of other performing arts theaters, DCLU recommends that the use "adult cabaret" be specifically defined.

An adult cabaret is an entertainment use proposed to be defined as:

a place of public assembly, where licensing as an "adult entertainment premises"¹ is required by SMC 6.270.

NONCONFORMING USES

There are eight known adult cabarets currently in operation in Seattle. Seven are located in zones, which as a result of this amendment would make them nonconforming uses. They would be allowed to continue but would be subject to the provisions for nonconforming uses in the zones in which they are located.

COMMERCIAL ZONES

The commercial area use policies generally encourage business by promoting flexibility of business activity compatible with the neighborhood-serving character of business districts and with the residential character of the surrounding residential neighborhood.

The function of the Neighborhood Commercial 1, 2, and 3 zones (NC1, NC2, NC3) specifically emphasize pedestrian-oriented shopping, serving adjoining or surrounding residential neighborhoods. Single purpose residential structures are allowed through the conditional use process and residential uses mixed with commercial uses are permitted outright. These zones are typically nodal areas in residentially zoned neighborhoods or along arterials adjacent to residential areas.

The commercial 1 (C1) zone begins to provide for more of a city-wide clientele, with auto-oriented retail sales and services. The C1 zone also allows residential development on the same basis as NC1, NC2 and NC3 zones. These zones are generally located along arterial streets abutting residentially zoned land.

The Commercial 2 (C2) zone is also auto-oriented providing land for city-wide business support and light manufacturing. Residential development is allowed on a case by case basis through conditional use review. This review is intended primarily to preserve scarce commercially zoned land for preferred commercial uses, prevent displacement of commercial uses, and to ensure the compatibility of commercial and residential uses in the zone. These zones are generally strips of land along major arterial streets which often abut residentially zoned or less intensively zoned land.

Because these commercial zones are oriented towards the needs of nearby residential users and either allow some residential development or are located very near residential zones, it is proposed that adult cabarets not be allowed to locate in the NC1, NC2, NC3, C1, and C2 zones. Adjacent residential neighborhoods and residents in 'business districts will then be protected from the adverse impacts often associated with adult cabarets. This will also assure that the business districts will be protected from declining property values and remain able to provide services to a residential clientele in a healthy and safe environment.

DOWNTOWN ZONES

Residential development is also encouraged in most downtown zones, the exceptions being the Downtown Office Core 1 (DOC1) zone, the Downtown Office Core 2 (DOC2) zone, and the Downtown Retail Core (DRC) zone. In order to promote residential neighborhoods in the downtown, adult motion picture theaters and adult panorama were prohibited in all but those three zones when the downtown chapter of the Land Use Code was adopted in 1985.

Having comparable impacts and being entertainment uses, adult cabarets are similar in use to adult motion picture theaters. And because downtown Seattle is a regional urban center where cultural diversity is more widely accepted, it is proposed that adult cabarets continue to be permitted in the same three zones as adult motion picture theaters:

DOC1, DOC2, with the exception of DOC2/240', and DRC. These three zones total approximately 130 acres of land area..

The southern portion of the DOC2 zone, (the DOC2/240') zone, is proposed as an exception because of the highly sensitive public safety issues surrounding this *area*. The zone is located south of the DOC1 zone and north of the Pioneer Square area. There are several correctional facilities near *or* in this zone. The King County Jail (located in DOC1) borders this zone, and two large work-release facilities (with a total of approximately 300 residents) are located here. Individuals associated with these facilities are often serviced by the many programs provided by human service agencies located in the Pioneer Square area. These include programs for shelter, food, health, employment, substance abuse and sex therapy. Given the statistic that nearly 30% of the inmates in Washington's prison system are serving time for sex-related offenses, the siting of adult cabarets in this area poses a substantial threat to public safety. Adult cabarets are proposed to be prohibited from locating in the DOC2/240' zone.

Adult cabarets would also be prohibited from locating in the remaining downtown mixed commercial and residential zones and in the Special Review Districts (Pioneer Square and the International District), Pike Market and the Downtown Harborfront.

INDUSTRIAL ZONES

Industrial land in the City is a scarce resource. The intent of the Industrial Land Use Policies is to provide some measure of protection to viable industries from uses competing for this resource. With a limited supply of land in the City zoned for industrial use, care must be taken to protect it from the potential blighting influences which often accompany adult cabarets. While most entertainment uses are permitted in the Industrial zones, adult motion picture theaters and adult panorama are prohibited, based on a 1976 decision that they be concentrated downtown. Adult cabarets would similarly be prohibited in the industrial zones under this recommendation.

CONCLUSION

The most compelling argument for limiting adult cabarets is to reduce the potential public safety impacts. These impacts make adult cabarets incompatible in areas where residential development is promoted in combination with or adjacent to commercial development. Additionally, adult cabarets are

incompatible in the neighborhood commercial and industrial areas because there is a potential for a decrease in adjacent property values. In order to protect the health, safety and general welfare of the residential, commercial and industrial neighborhoods adult cabarets are most compatible in *areas* where other adult entertainment uses are located and where their impacts on the surrounding area can be more closely monitored.

The Department of Construction and Land Use recommends the attached Land Use Code amendment be adopted for adult cabarets in the downtown, commercial and industrial zones. By adopting the proposed amendment, the City will be providing adequate locational opportunities for adult cabarets while assuring that the residential and business environment of the City's neighborhoods and industrial areas will be protected from the impacts of these establishments.

REFERENCES

- 1 Young v. American Mini Theaters, Inc., 427 U.S. 50, 49 L.Ed. 2d.310, 96 S.Ct.2440 (1976).
- 2 City of Renton v. Playtime Theaters, Inc., 415 U.S. 41, 89 L.Ed. 2d.29, 106 S.Ct.925 (1966).
- 3 Northend Cinema, Inc. V. City of Seattle, 90 Wn.2nd 709.585 P2nd 1153. (1978).
- 4 Village of Belle Terre v. Borass, 416 U.S. 1, 39 L.Ed. 2d.797, 94 s.Ct.1536 (1974).
- 5 Toner, William. ~U.S. Cities Face Combat in the Erogenous Zone," Planning, Vol.43. Chicago: American Society of Planning Officials, September 1977.
- 6 City of Cleveland, Ohio, Police Department. Special Investigation Unit Report, August 1977.
- 7 City of Indianapolis, Indiana, Department of Metropolitan Development, Division of Planning. "Adult Entertainment Businesses in Indianapolis: An Analysis." 1984.
- 8 City of Los Angeles, California, Department of City Planning. "Study of the Effects of the Concentration of Adult Entertainment Establishments in the City of Los Angeles." June 1977.
- 9 City of Austin, Texas, Office of Land Development Services. "Report on Adult Oriented Businesses in Austin." May 1986.
- 10 City of Phoenix, Arizona, Planning Department. "Adult Business Study." May 1979.
- 11 Pratter, Jerome and Connie Hager, "Zoning Laws, Not Obscenity Laws, Offer the Way to Control Adult Entertainment," Nation's Cities Weekly, vol.3, April 21, 1980.
- 12 City of Bothell, Police Department Investigations. 1984.
- 13 City of Kent, Planning Department. "Adult Use Zoning study." November 1982.
- 14 City of Oklahoma City, Community Development, Planning Division. "Adult Entertainment Businesses in Oklahoma City: A Survey of Real Estate Appraisers. March 1986.
- 15 Toner, William... Regulating Sex Businesses, Planning Advisory Service, Report No.7. Chicago: American Society of Planning Officials, May 1977.

16 Schultz, Arthur J. III. "Franklin Square: Porn Free and Booming, Urban Land. Urban Land Institute, August 1977.

DRAFT

PROPOSED AMENDMENT

SEATTLE MUNICIPAL CODE
CHAPTER 23 LAND USE

23.84.006 "C"

"Cabaret, adult see Places of Public Assembly "

1. Cabaret, adult means a place of public assembly, where licensing as an "Adult entertainment premises" is required by SMC 6.270.

2. "Motion picture theater" means a place of public assembly intended and expressly designed for the presentation of motion pictures, other than an adult motion picture theater.

3. "Motion picture theater, adult" means a place of public assembly in which, in an enclosed building, motion picture films are presented which are distinguished or characterized by an emphasis on matter depicting, describing or relating to "specific sexual activities" or "specified anatomical areas." As defined in this subsection, for observation by patron therein

a "Specified sexual activities"

1. Human genitals in a state of sexual stimulation or arousal:

2. Acts of human masturbation, sexual intercourse or sodomy;

3. Fondling or other erotic touching of human genitals, pubic region, buttock or

female breast

b. "Specified anatomical Areas":

1. Less than completely and opaquely covered:

(a) Human Genitals, pubic region,

(b) Buttock, or

(c) Female breast below a point immediately above the top of the areola;

or

2. Human male genital in a discernibly turgid state, even if completely and opaquely

covered.

4. Panoram, adult," means a device which exhibits or displays for observation by a patron a picture or view from film or videotape or similar means which is distinguished or characterized by an emphasis on matter depicting, describing, or relating to " Specified Sexual Activities" or Specified anatomical areas" as defined in subsection 3.