



**Request for City Council Committee Action
From the Department of Community Planning & Economic Development**

Date: September 15, 2004

To: Council Member Gary Schiff, Chair, Zoning and Planning Committee, and
Members of the Committee

Prepared by: Blake Graham, Phone 612-673-3241

Presenters in Committee: Blake Graham, Manager, Zoning & Development Controls

Approved by: Barbara Sporlein, Director, Planning _____

Subject: Request for extension of amortization period for Video Lease, 3927 East Lake Street.

RECOMMENDATION: That the City Council find that an amortization date of October 1, 2001 would have been unreasonable as applied to Video Lease, an adults-only video store operating at 3927 East Lake Street. Further, that the Council find that August 31, 2004 is a reasonable date for extension of the amortization period for Video Lease and that the Council extend the amortization period for Video Lease to that date.

Previous Directives: N/A

Financial Impact (Check those that apply)

- No financial impact - or - Action is within current department budget.
(If checked, go directly to Background/Supporting Information)
- Action requires an appropriation increase to the Capital Budget
- Action requires an appropriation increase to the Operating Budget
- Action provides increased revenue for appropriation increase
- Action requires use of contingency or reserves
- Other financial impact (Explain):
- Request provided to the Budget Office when provided to the Committee Coordinator

Community Impact:

Ward: 9
Neighborhood Notification:
City Goals:
Comprehensive Plan:
Zoning Code: C1, Neighborhood Commercial District
Living Wage/Job Linkage:
Other

Background/Supporting Information

On September 15, 2000, the City Council amended the provisions of the Zoning Code found in Chapter 549 relating to sexually-oriented uses in order to provide for the regulation and amortization of adults-only video stores. The amendments established the following definition of “adults-only bookstore or video store”:

Adults-only bookstore or video store. An establishment having as a substantial or significant portion of its stock in trade for sale, rental or display, books, magazines, periodicals, films, videos, digital video disks, slides, or other media, which are distinguished or characterized by an emphasis on matters depicting, describing or relating to nudity, sexual conduct, sexual excitement or sadomasochism, or an establishment with a segment or section devoted to the sale, rental or display of such material which comprises fifteen (15) percent or more of the total sale, rental or display area of such establishment, or five hundred (500) square feet, whichever is less. An adults-only bookstore or video store also shall include an establishment that offers films, videos, digital video disks, slides or similar media for viewing on premises.

Adults-only bookstores and video stores are permitted only in the B4, B4S and B4C Districts. The September 2000 amendments to Chapter 549 also provided that any adults-only video stores existing on September 23, 2000, could continue to operate as nonconforming uses until October 1, 2001, at which time they would become unlawful. A survey conducted by the Planning Department in 2000 of video stores in the City determined that six video stores located outside of the downtown districts were adults-only stores due to the size of the of the display area devoted to sexually-oriented material. Since that time, the Inspections Department informed these six businesses of the Code requirements and conducted follow up inspections to determine compliance with Chapter 549. Businesses that wished to continue to operate in their current locations could become lawful by reducing the area of the store devoted to sexually-oriented materials. Alternatively, these businesses could relocate to a downtown district and continue to operate as sexually-oriented uses. Currently, only Video Lease, located at 3927 E. Lake Street, has failed to come into compliance with the ordinance.

Video Lease is a video rental business located at 3927 E. Lake Street in a C-1 zoning district. Video Lease was established by Tony Reklis at this location in 1999 or 2000. The Inspections Department has determined that it is an adults-only video store because Video Lease devotes more than 15% of its total sale, rental and display area to material which is distinguished or characterized by an emphasis on matters depicting, describing or relating to nudity, sexual conduct, sexual excitement or sadomasochism. At the time of the 2000 survey by the Planning Department, Video Lease devoted over 60% of its floor area to the display of sexually-oriented material.

Although Chapter 549 generally provides that adult-only video stores outside of the downtown districts became unlawful as of October 1, 2001, Section 549.360(d) provides a mechanism by which the business can request an extension of this amortization period.

549.360. Existing uses; amortization.

- (d) *Extension of time.* The city council may extend the date upon which a nonconforming use becomes unlawful under this section where it is established that the amortization period is unreasonable as applied to a particular use.

- (1) *Procedure for requesting extension of time.* Any person with a legal or equitable interest in the use to be amortized may seek an extension by making a written request to the zoning administrator together with all supporting information, such as purchase agreements, leases, property appraisals, evidence of costs of improvements to the property, or business records and tax returns that the applicant would like to be considered. The burden of proving that an amortization period is unreasonable is on the applicant.
- (2) *Determination.* In determining whether such date should be extended, the city council may consider information relating to the useful life of the nonconforming use and any other factors or information relevant to determination of the reasonableness of the amortization period. Information relevant to the useful life of the nonconforming use may include: the cost of the property and any improvements, the tax depreciation status of the property or use, the condition of the structures on the property, the potential for alternative use of the property, and the potential and cost to relocate the use or otherwise bring the use into compliance with the zoning district requirements.

Through his attorney, Randall Tigue, Mr. Reklis has requested an extension of the amortization period for Video Lease to August 31, 2004. By letter dated September 4 2001 (attached), Mr. Tigue provided to the Planning Department tax and account information that projected that Video Lease would recoup its initial investments by August 2004. In subsequent communications between Mr. Tigue and City staff in the Fall of 2003, Mr. Tigue affirmed the position of Video Lease that an extension to August 31, 2004 would be a reasonable amortization period. Notwithstanding the "reasonableness" of the amortization period imposed upon Video Lease, Mr. Tigue's September 28, 2001 letter notes that Video Lease does not concede that the ordinance or amortization requirement is otherwise constitutionally valid.

Based upon the fact that Video Lease opened its business shortly before the September 2000 amendment that imposed a new amortization requirement on adult video stores, and based upon the documentation provided by Video Lease regarding their income projections, the Zoning Administrator recommends that the Council find that an amortization date of October 1, 2001 would have been unreasonable as applied to Video Lease. The Zoning Administrator further recommends that the Council find that August 31, 2004 is a reasonable date for extension of the amortization period for Video Lease to operate as an adults-only video store at 3927 East Lake Street. This extended date is a reasonable period for amortization based on Video Lease's expectation that it will have recouped its initial investment by that time and because Video Lease can continue to operate legally at its current location if it reduces the amount of adults-only material to comply with the ordinance.

Attachments:

Letter from Randall Tigue dated September 4, 2001, with attachments