

# MINNEAPOLIS CITY PLANNING DEPARTMENT REPORT

## ZONING TEXT AMENDMENT ANALYSIS

**Date:** March 18, 2002

**Initiator of Amendment:** Council Member Biernat

**Subject Matter of the Ordinance:** Amendments to Title 20 of the Minneapolis Code of Ordinances relating to Zoning Code, amending or adding sections of Chapter 549, Downtown Districts, related to sexually oriented uses.

**Affected Sections of the Zoning Code:** Section 549.330, *Regulated uses*; Section 549.340, *Definitions*; Section 549.350, *Location restrictions*; Section 549.360, *Existing uses*, 549.370, *Sign requirements*.

**Background:** Lawful, sexually oriented businesses are protected by the First Amendment. The regulation of sexually oriented businesses must be based upon their harmful secondary effects, and be unrelated to the suppression of speech or elimination of the material available in such businesses. A number of communities throughout the country, including Minneapolis, have conducted studies demonstrating the harmful secondary effects of sexually oriented businesses. These secondary effects include higher crime rates, lowered property values and neighborhood decline.

The city has a substantial governmental interest in preventing crime, maintaining property values and preserving the quality of its neighborhoods. Therefore, it may adopt “content-neutral” regulations governing sexually oriented businesses to address these harmful secondary effects. The regulations may not ban sexually oriented businesses altogether, but may restrict them to certain areas provided reasonable alternative locations are available. In addition, sexually oriented uses that do not conform to the zoning regulations may be amortized. In adopting regulations, the city may rely on the experiences of other cities to demonstrate the harmful effects of sexually oriented uses, provided the evidence relied upon is believed to be relevant to the problem being addressed.

The purpose of the city’s sexually oriented use regulations is to protect the city’s neighborhoods and certain facilities that serve city residents from the harmful secondary effects of such uses. The regulations permit all sexually oriented uses to locate in the downtown districts, and allow several specific uses in the C4 District as a conditional use. Sexually oriented uses must be located at least 1,000 feet from the nearest residence or office residence zoning district, and at least 500 feet from religious institutions, certain child care centers, public libraries and educational facilities, and K-12 schools. The regulations limit sexually oriented uses to no more than one per block face and prohibit such uses on any downtown property with its entrance on Nicollet Avenue. An inventory of existing sexually oriented uses is attached.

**Purpose of the Amendment:** In 1992 the city expanded its definition of *adult entertainment center* to include establishments that offer live nude dancing or that are licensed to sell liquor. (The earlier definition was limited to uses offering coin-operated machines for viewing nude persons, and uses that did not sell liquor.) The amortization requirement governing adult entertainment centers was not amended at that time. The city attorney's office has asked that a new amortization provision be added to address adult entertainment centers captured by the expanded 1992 definition. The proposed amendment establishes a one-year amortization period for nonconforming adult entertainment centers not governed by an earlier compliance deadline. The amendment also amends or adds definitions of terms related to sexually oriented uses; specifies that sexually oriented uses are subject to amortization only where the use is not allowed in the zoning district; and clarifies amortization procedures including requests for extension of time. The amendment includes the following changes:

**Section 549.330. Regulated uses.** Amend by clarifying that all sexually oriented uses are subject to the regulations of the article. The original provision lists several specific sexually oriented uses that are subject to the regulations. The change will eliminate the need for future code amendments to address new types of sexually oriented uses if developed.

**Section 549.340. Definitions.** Amend by making several clarifying changes to the wording and order of existing definitions. Amend the definition of *sexual conduct* and add a new definition of *sexually oriented use* which includes any use that is distinguished or characterized by an emphasis on matters or conduct relating to nudity, sexual conduct, sexual excitement or sadomasochism.

**Section 549.350. Location restrictions.** Amend by specifying that all sexually oriented uses are permitted in the downtown districts, subject to the provisions of the article. Specify that massage parlors, rap parlors or saunas may be allowed as a conditional use in the C4 District, subject to the provisions of the article. Replace the term *regulated use* with the term *sexually oriented use*.

**Section 549.360. Existing uses.** Amend the section heading by adding the term *amortization*. Amend subsection (a) by clarifying that amortization applies only to sexually oriented uses that are not allowed in the zoning district where located. Uses that do not comply with the required minimum distance or spacing requirements may continue to operate indefinitely as a nonconforming use, subject to the regulations of Chapter 531, Nonconforming Uses and Structures. Establish a general one-year amortization requirement for sexually oriented uses not otherwise governed by an earlier amortization requirement. Delete subsection (b) that contains procedures relating to 1963 zoning code amortization provisions. Add a new subsection (c) establishing a May 1, 2003 amortization date for adult entertainment centers not otherwise governed by an earlier amortization requirement. Add a new subsection (d) relating to requests for extension of the amortization period, including procedures and factors to be considered by the city council in determining whether an extension should be granted.

**Section 549.370. Signs.** Amend by replacing the term *regulated use* with the term *sexually oriented use*.

**What Problem is the Amendment Designed to Solve?** Sexually oriented businesses can have harmful secondary effects upon nearby residential and commercial areas, as well as uses such as schools, child care centers and religious institutions. These harmful secondary effects have been found to include:

- Areas located near sexually oriented businesses generate more calls for police service and have higher crime rates, including higher sex-related crime rates.
- Values of both commercial and residential properties are reduced when located near sexually oriented businesses. The negative effect on residential property values is somewhat greater than on commercial properties.
- Neighborhood deterioration, including higher numbers of home sales and greater difficulty for home buyers to obtain mortgage financing, occurs when a sexually oriented business is located near a residential area.
- The harmful secondary effects of sexually oriented businesses are increased where there is more than one sexually oriented business nearby.
- The harmful secondary effects of sexually oriented businesses decrease as the distance from the sexually oriented business increases.

A summary of selected studies from several cities demonstrating the harmful secondary effects of sexually oriented businesses follows. Copies of the complete studies are included for your review:

**Adult Use Study, Newport News, Virginia. March 1996.** The report includes summaries of studies of several cities including Indianapolis, Los Angeles, St. Paul, Austin, Texas and Newport News. The Newport News study involved several different types of types of sexually oriented businesses within the study areas, including several adult entertainment establishments and nightclubs, an adult bookstore, an adult video store and an adult merchandise store. The study showed that those areas that included sexually oriented businesses generated between 37 percent and 143 percent more calls for police service than the study control area, and between 32 percent and 213 percent higher crime rates than the control area. A survey of Newport News realtors showed that the presence of sexually oriented businesses can reduce the number of people interested in occupying a property and hurt property values and the resale of property in adjacent residential neighborhoods. Most of the realtors responding (93 percent) thought that a sexually oriented business located within one block likely would decrease residential property values. A smaller proportion (36 percent) thought that commercial property values within one block of a sexually oriented business would decrease. The survey showed that the impact of

sexually oriented businesses on property values decreased when the business is located two or three blocks away.

**Report of the Minnesota Attorney General's Working Group on the Regulation of Sexually Oriented Businesses. June 1989.** The report summarizes issues surrounding the regulation of sexually oriented businesses and includes summaries of studies of several cities including Minneapolis, St. Paul, Indianapolis, Phoenix and Los Angeles. The 1980 Minneapolis study found that sexually oriented businesses tended to concentrate in deteriorated areas and that they only weakly contribute to the decline in property values. The study found a high relation between the location of sexually oriented businesses and the crimes of robbery, burglary, rape and assault. The 1978 St. Paul study looked at the impact of both sexually oriented and alcohol oriented businesses and concluded that although sexually oriented businesses tended to locate in areas that already were somewhat deteriorated, additional neighborhood deterioration follows the location of a sexually oriented businesses into the area. The study showed that there is a significantly higher crime rate when there are two or more sexually oriented businesses in an area, and that housing values are significantly lower in an area where there are several sexually oriented businesses. The report discusses a number of approaches to the regulation of sexually oriented businesses, including zoning and licensing, and includes summaries of several controlling court decisions, including *Young v. American Mini Theaters, Inc.*, 427 U.S. 50 (1976), and *City of Renton v. Playtime Theaters, Inc.*, 475 U.S. 41 (1986).

**Report on Adult Oriented Businesses in Austin, Texas. May 1986.** The city compared crime rates for study areas with sexually oriented businesses and control areas without such businesses, and surveyed real estate appraisers and lenders to determine the effects of sexually oriented businesses on property values. Two of the study areas contained only one sexually oriented use; the two other study areas contained two sexually oriented uses each. Sexually oriented businesses that were located within the study areas included adult bookstores, adult theaters, massage parlors and topless bars. The study showed that sex-related crime rates within the study areas were substantially higher than citywide, ranging from 177 percent to 482 percent of the citywide average. The rates within the control areas were lower than citywide, ranging from 65 percent to 88 percent of the citywide average. Sex-related crime rates within the study areas with more than one sexually oriented business were 66 percent higher than in the study areas with just one sexually oriented business. The survey of appraisers and lenders showed that an adult bookstore would have a negative effect on the value of both residential and commercial properties located within one block. The impact would be greater for residential properties, with thirty-one percent saying that decline would exceed 20 percent. In addition, the survey showed that the introduction of an adult bookstore would lead lenders to be less willing to make 90 to 95 percent financing available for these properties.

**Adult Entertainment Businesses in Indianapolis, Indiana. February 1984.** The city compared changes in crime rates and property values in six sexually oriented business study areas and six control areas (areas that were similar to the study areas

but contained no sexually oriented businesses), with each other and with the city as a whole, and surveyed real estate appraisers to determine the valuation effects of an adult bookstore on surrounding properties. Sexually oriented businesses that were located within the study areas included several adult bookstores, topless dancing establishments, massage parlors and an adult theater. The study showed that during the study period the increase in crime in the study areas was 23 percent higher than in the control areas, and 46 percent higher than the increase citywide. The sex related crime rate in the study areas over the period was 46.4 compared to 26.2 in the control areas. Sex related crimes occurred four times more frequently within residential study areas compared to similar control areas without adult entertainment nearby. The value of homes in the study areas increased at one-half the rate of the control areas and just one-third the rate citywide. Twice as many homes were placed on the market at substantially lower prices in the study areas than would be expected compared to the city as a whole. Three-fourths of appraisers surveyed stated that an adult bookstore located within one block would have a negative effect on the value of both residential and commercial properties. Half responded that the immediate decline in value would be in excess of ten percent. The survey showed a generally greater residual effect on the value of residential properties than commercial properties as distance from the business increased.

**What Public Purpose will be Served by the Amendment?** The amendment establishes an amortization period for nonconforming adult entertainment centers not governed by an earlier amortization requirement. The amendment also specifies that amortization applies only to sexually oriented uses that do not conform to zoning district requirements, and clarifies amortization procedures, including requests for extension of time.

**What problems might the Amendment Create?** The amendment will assist in the amortization of adult entertainment centers and other sexually oriented uses that do not conform to zoning district requirements. Compliance with the ordinance may be obtained either by eliminating the sexually oriented component of the business or by relocating the business to a lawful location. There are approximately 379 acres within the B4, B4S and B4C downtown zoning districts, comprising twenty-five percent of all commercially zoned land in the city. Currently, 13 sexually oriented businesses occupy 12 block faces within the downtown area. There are numerous additional downtown locations for sexually oriented uses to relocate. In addition, the amendment allows the city council to grant an extension of time where it is determined that the amortization period is unreasonable as applied to a particular use.

**Is the Amendment Timely?** Adult entertainment centers are permitted only in the B4, B4S and B4C Districts. However, two adult entertainment centers exist outside of the downtown districts: BJ's, located at 229 West Broadway, and 22<sup>nd</sup> Ave. Station, located at 2121 University Avenue Northeast. Both properties have had on-sale intoxicating liquor licenses since 1959, and both have included live nude dancing since at least 1991. Without the amendment, these nonconforming adult entertainment centers will be allowed to remain in neighborhood commercial locations indefinitely, subject only to the requirements of Chapter 531, Nonconforming Uses and Structures. In addition, in

October 2000 the city council amended Chapter 549 relating to adults-only video stores and provided a one-year amortization period for existing uses. Six video businesses were identified as nonconforming at that time. Adoption of the amendment will assist in enforcing the amortization requirement relating to adults-only video stores.

**Is the Amendment Consistent with Practices in other Areas?** State law authorizes cities to amortize nonconforming sexually oriented uses. Cities throughout Minnesota employ amortization as a means of addressing preexisting nonconforming sexually oriented uses.

**How will the Amendment Implement the Comprehensive Plan?** The purpose of the amendment is to protect the city's neighborhoods and certain sensitive facilities from the harmful secondary effects produced by sexually oriented uses, including higher crime rates, lowered property values and neighborhood decline. The amendment supports the major themes of the comprehensive plan, including: *Minneapolis will maintain its excellent quality of life*, and *Minneapolis will be a safe place to live work and play*, and implements the following specific plan policies:

*Policy 1.9* Minneapolis will work to enhance the appeal of city living by improving residents' actual and perceived sense of security.

*Policy 9.15.* Minneapolis will protect residential areas from the negative impact of nonresidential uses by providing appropriate transitions.

*Policy 9.18.* Minneapolis will establish land use regulations, in order to achieve the highest possible development standards, enhance the environment, promote flexibility in approaches and otherwise carry out the comprehensive plan.

*Policy 9.8.* Minneapolis will maintain and strengthen the character of the city's various residential areas.

**Recommendation of the City Planning Department:** The City Planning Department recommends that the City Planning Commission and City Council adopt the above findings and **approve** the text amendment.