

STAFF REPORT

Date: September 13, 2017

To: Mayor and City Council

Thru: Sabra Newby, City Manager

Subject: **J.2. Staff Report (For Possible Action): Presentation, update and potential direction to staff on the proposed adult business ordinance amendments. [6:00PM Time Certain]**

From: Aric Jensen, Community Development Director

Summary: Staff requests that Council accept the staff report and provide direction regarding staff proposed options on implementing revisions to adult business-related sections of the Reno Municipal Code.

Previous Council Action:

April 27, 2016 - Council adopted Resolution 8191, extending the 12-month moratorium on any approval of any adult business-related license, permit, or similar authorization until January 2017, to allow staff an opportunity to review all existing adult business-related code provisions, review existing studies concerning the secondary effects occurring in and around adult businesses, and hold public workshops and hearings to obtain testimony and gather evidence from the public regarding the number and location of all adult businesses. Currently, there is no moratorium in effect.

In addition to adopting the extension to the resolution and directing staff to continue its review and public outreach process, staff made a presentation and Council provided direction to staff to consider moving forward with the following policy proposals: (1) the elimination of alcohol use on-premises at non-conforming adult business locations within two years of the adoption of an ordinance; (2) separation of the issuance of an alcohol license and adult interactive cabaret license; and (3) limit exterior signs and displays at all adult businesses to static signs only where no pictures or other representations of products, entertainment services, or activity that takes place for sale or gift on premises may be visible from the sidewalk, street or any exterior portion of the building within six months of the adoption of an ordinance. *See Attachment 1, p. 15, Staff presentation.*

July 22, 2015 - Council adopted Resolution 8081, which established a 12-month moratorium on the acceptance, processing and approving of any adult business-related license, permit, or similar

authorization specifically provided for under the Reno Municipal Code to allow staff an opportunity to review all existing adult business-related code provisions, review existing studies concerning the secondary effects occurring in and around adult businesses, and hold public workshops and hearings to obtain testimony and gather evidence from the public regarding the number and location of all adult businesses.

April 15, 2015 - Councilmember Jardon requested that a future agenda item include the details of a moratorium on adult entertainment. Accordingly, it was directed that the City Manager utilize two or more hours of staff time to explore a moratorium on adult entertainment. It was moved by Councilmember Jardon and seconded by Councilmember Delgado, to direct staff to bring back a report on adult entertainment for discussion of what types of businesses the City wants in the downtown core.

Discussion: Staff was directed to continue conducting legal research, review secondary effects studies, and conduct public outreach regarding the proposed adult business ordinance modification. A description of the legal research and review of secondary effects studies and sources relied-upon are included below in the “Legal Implications” section of this staff report. This “Discussion” section addresses the public outreach conducted by staff and a review of the proposed adult business ordinance modifications.

Public Outreach

Upon direction of council to conduct public outreach, in July 2016, staff held an adult business stakeholder meeting to receive initial feedback from the adult business industry. Upon receiving that feedback, staff conducted additional legal research and review of secondary effects studies and held meetings amongst the City Attorney’s Office and Community Development Department personnel.

More recently, the City published on its website under the Community Development Department page on May 4, 2017, a news article explaining the City’s exploration of changes to the adult business-related sections of Reno Municipal Code, including links to the proposed changes for each section of code and denoting the start of the public outreach process. See link: <http://www.reno.gov/Home/Components/News/News/16297/87>. A print screen of the webpage content is also included herein as **Attachment 2**. Staff received public comment via email and letter included herein both for and against the proposed adult business ordinance revisions. See **Attachment 3** (supporting amendment) & **Attachment 4** (against amendment). Attachments include all public comment received as of August 31, 2017.

Staff presented the proposed adult business code revisions to all five of the Neighborhood Advisory Boards (NABs) during the months of May and June 2017. In summary, the NABs were supportive of the proposed revisions and made general inquiries as to the proposed modifications

to code. No official action was requested or taken by the NABs on the presentations made. The pertinent portions of the minutes for the NAB meetings are included under **Attachment 5**. Please note that no minutes were available for the NAB meeting held June 20, 2017, for lack of quorum, however a presentation was still made.

A second adult business stakeholder meeting was held on June 22, 2017. Copies of the presentation materials, meeting notes, written public comment provided at that meeting are included under **Attachment 6**. The meeting was also streamed live and is maintained online at: <https://www.youtube.com/watch?v=4izOo99mbWU&feature=youtu.be>. Please note that due to technical difficulties, the audio from the meeting begins at 9 minutes and 40 seconds into the recording.

Staff also met and presented the proposed adult business ordinance amendments with Board members of The Chamber of Commerce Reno-Sparks-Northern Nevada (The Chamber) on May 17, 2017, and the Regional Alliance for Downtown (RAD) on June 8, 2017. On July 21, 2017, staff received an email communication from the RAD president that the “Board voted to officially support the proposed Adult Ordinance with some concerns for the unintended consequences which should not be underestimated.” No further official comment has been received as of the submission of this staff report from the RAD, or any official comment from The Chamber.

Summarily, the general public outreach conducted by the City staff disclosed that aside from those adult business stakeholders and employees, much of the public comment and feedback received generally favored the City’s proposed adult business ordinance amendments.

Staff communicated to the NAB liaisons, the individuals who signed in at the adult business stakeholder meeting, and the presidents of The Chamber and RAD regarding City Council’s September 13, 2017 planned meeting to discuss the proposed adult business ordinance amendments, and should anyone like to attend and provide public comment or submit written public comment, to do so accordingly. Additionally, the Community Development Department website news page was updated on August 1, 2017, denoting that the Reno City Council is scheduled to hear a presentation regarding the proposed adult business ordinance revisions on Wednesday, September 13, 2017, at 6 PM at Reno City Hall.

Summary of Proposed Ordinance Changes

Below is a detailed summary of the proposed changes to Code:

Title 4: Business License Code - Proposed Amendments

- Chapter 4.04
 - General Provisions; adding license application, issuance and appeal procedures

specifically for Adult Interactive Cabaret Performers (AICP) and Adult Bookstores/Theaters

Title 5: Privileged License - Proposed Amendments

- Chapter 5.05
 - Licenses Generally; adding AICP work card application, issuance and appeal procedures (formerly Chapter 8.21)
- Chapter 5.06
 - Adult Interactive Cabarets; amending and adding Adult Interactive Cabaret (AIC) license application, issuance and appeal procedures; amending and adding AIC operational regulations (formerly Chapter 8.21); clarifying the division and separate nature of AIC and alcohol licensed operations
- Chapter 5.07
 - Alcoholic Beverages; clarifying the division and separate nature of AIC and alcohol licensed operations
- Chapter 5.10
 - Escort and Out Call Services; removing redundancy in Code for escort and out call services regulations (formerly Chapter 8.21)

Title 8: Public Peace, Safety and Morals - Proposed Amendments

- Chapter 8.21
 - Adult Interactive Cabarets; Escort and Out Call Services; repealing chapter, moving regulations to respective business license Chapters 5.06 and 5.10

Title 18: Land Development Code - Proposed Amendments

There are many proposed modifications to Title 18 as shown in the draft ordinance posted on the City of Reno, Community Development Department website. Notable changes within the Title 18 adult business code that have been proposed by staff include, but are not limited to, revisions in the following subsections: the purpose and intent, adult business license exception requirements, locational spacing criteria, operational requirements, amortization regulations, and appeal and judicial review procedures. Significant changes are described in more detail below.

Liquor Sales

Adult businesses are permitted to be located within the Industrial Zoning District under certain spacing criteria. Adult businesses are prohibited within the Redevelopment District. Four of the five existing adult interactive cabarets are located in nonconforming locations within the Redevelopment Districts and currently hold active alcohol licenses. Redevelopment Districts are established to encourage reinvestment in an area, increase tourism, and provide residential opportunities.

The secondary effects of adult businesses work against the basic concepts of Redevelopment Districts. These secondary effects include decreased property values, illicit drug use, prostitution, lethargy of revitalization efforts, and more. Alcohol use does not cause, but further exacerbates these secondary effects. In order to reduce these secondary effects and support the redevelopment of the designated areas, staff recommends eliminating alcohol use at those nonconforming locations within six months of adoption of the proposed adult business code ordinance.

Signs

Staff proposes that within six months of adoption of the proposed adult business code ordinance, adult businesses located in nonconforming locations: (1) shall only be allowed one square foot of sign area per lineal foot of building frontage, (2) shall be limited to flat wall signs only, and (3) shall be prohibited from the use of electrically activated signs (including, but not limited to, digital signs). Please note that the proposed code revisions online do not reflect all these proposed sign regulation changes. Flashing/animated signs (such as digital) are not permitted under code in the Industrial-zoned districts where adult businesses are an allowable use. **Attachment 7** is a slide show of pictures taken of current adult business signs as of June 2017.

Location

In order to support the purpose of redevelopment and to reduce the secondary effects of adult businesses, staff recommends that any adult business that is nonconforming due to its location shall come into conformance within five years of the adoption of the proposed adult business code ordinance.

Financial Implications: None at this time. There are no proposed changes to any fees associated with an adult business-related license, permit, or similar authorization.

Legal Implications: Legal review completed for compliance with City procedures and Nevada Law. For the purpose of promoting health, safety, morals, or the general welfare of the community, the City Council is authorized and empowered pursuant to NRS 278.020 to regulate and restrict the number and location of adult businesses. Under NRS 278.022 the Legislature asserts that the location of adult motion picture theaters and bookstores are of vital concern to society in regard to their location near areas where youth may learn, play, pass by, or would be exposed to their advertising, window displays, or the general atmosphere encompassing their operation.

The Supreme Court of the United States holds that regulation of adult businesses is permissible so long as the focus remains solely on regulating the secondary effects of adult businesses and not on censoring the content of such adult entertainment. *See Renton v. Playtime Theaters, Inc.*, 475 U.S. 41, (1986).

In *City of Renton*, the United States Supreme Court held that the level of scrutiny used to determine whether restrictions on sexually oriented speech are constitutional depends on whether the statutory provisions at issue are considered content-based or content-neutral. *Id.* at 46-48. If restrictions on sexually oriented speech are content-neutral, they will be reviewed under an intermediate scrutiny standard. *Id.* Under an intermediate scrutiny standard, legislation is examined to determine whether: (1) it is aimed at the negative secondary effects associated with the restricted activity and not the content of the restricted speech; (2) it is a time, place and manner restriction and not a total ban on speech; and (3) it is designed to serve a substantial government interest and leaves open alternative avenues of communication. *Id.* at 50.

Legislation that is focused on reducing the secondary effects of sexually oriented businesses long has been considered “content-neutral.” This is because, although the legislation nominally looks at the content of the speech in the sense that it is aimed at sexually oriented conduct, it is nevertheless “content-neutral” if the “‘predominate concerns' motivating [it] ‘[are] with the secondary effects [caused by the speech], and not with the content of [the speech].’” *City of Los Angeles v. Alameda Books, Inc.*, 535 U.S. 425, 440-41 (2002) (quoting *Renton*, 475 U.S. at 47).

Adult businesses, as a category of commercial uses, are associated with a wide variety of adverse secondary effects, including but not limited to: person and property crimes, prostitution, potential spread of disease, lewdness, public indecency, obscenity, illicit drug use and drug trafficking, negative impacts on surrounding properties, businesses, and tourism, exposure of minors to adult business materials, lethargy of revitalization efforts, aesthetic impacts, and sexual assault and exploitation.

The United States Supreme Court has held that local governments have an “undeniably important” interest in combating the adverse secondary effects of adult businesses. *City of Erie v. Pap’s A.M.*, 529 U.S. 277, 296 (2000). Furthermore, the Court stated that in considering a city’s justification for its regulation of adult businesses, “[t]he First Amendment does not require a city, before enacting such an ordinance, to conduct new studies or produce evidence independent of that already generated by other cities, so long as whatever evidence the city relies upon is reasonably believed to be relevant to the problem that the city addresses.” *City of Renton*, 475 U.S. at 51. Beyond the caselaw referenced in this staff report discussing the secondary effects doctrine and adult businesses, see **Attachment 8**.

Generally, there are five categories of sources for secondary effects evidence, which are:

- Land Use Reports
 - Generally conducted by planning departments or private planning agencies
- Crime Impact Reports
 - Police incident reports and other analyses of crime data
- Judicial Opinions
 - The United States Supreme Court has stated that local governments may rely upon the documented secondary effects in prior judicial decisions
- Expert Reports
 - Criminologist and statistician conducted analyses of crime data to document the ambient crime hazards associated with adult businesses
 - Real Estate Land Appraiser analyses of effects of land uses on market values
- Anecdotal Data
 - Personal testimony collected in an informal, unscientific manner
 - Courts have stated that local governments may rely upon this type of information

City staff reviewed secondary effects studies conducted in other jurisdictions, the most relevant and recent of which are included in **Attachment 9**. Similarly, scholarly literature and expert testimony reviewed by City staff are included in **Attachment 10**. Generally, the expert findings noted in the caselaw, studies, literature, and testimony conclude that (1) the finding of secondary effects from adult businesses is scientifically robust, and being confirmed in a wide variety of data sources; (2) a governmental entity such as the City of Reno has a substantial governmental interest in regulating adult businesses to prevent the identified negative secondary effects; (3) adult business industry-led “studies” violate methodological rules, such as reliance on calls for service, which are weakly correlated to actual crimes; and (4) all subclasses of adult businesses, including retail-only stores, have secondary effects.

The proposed adult business code amendments regulating adult business signage, location, and alcohol use—among the other notable proposed revisions referenced in this staff report and included in the draft ordinances—are supported by the attached secondary effects studies, caselaw, scholarly literature, and expert testimony.

***** See CHART OPTIONS below *****

RMC Title 18 - Chart Options

Staff recommendations are denoted in gray shading

	<u>Alcohol</u>	<u>Signs</u>	<u>Location</u>
<u>Current Ordinance</u>	Alcohol permitted in non-conforming locations	Digital signs permitted No square footage limitations on signage	Non-conforming adult business use permitted downtown/RDA 1 & 2
<u>2016 City Council Direction</u>	Alcohol in <i>conforming</i> locations only 2 year amortization in nonconforming locations	Digital prohibited No depiction of adult use 6 month amortization	--
<u>Staff #1 Recommendations</u> Proposed Regulations & Amortization Periods	Alcohol in conforming locations only 6 month amortization of alcohol use in nonconforming locations	Nonconforming locations only: (1) digital prohibited; (2) wall sign only; and (3) limited to one sq. ft. of sign area per lineal foot of bldg frontage 6 month amortization for nonconforming locations	Conforming Locations Only 5 year amortization for nonconforming locations
<u>Staff Alternative Recommendations</u> Proposed Regulation &	No alcohol 6 month amortization in <u>all</u>	Nonconforming locations only: (1) digital prohibited; (2) wall sign only; and (3) limited to one sq. ft. of sign area per lineal foot of bldg	Conforming Locations Only 7 year amortization

Amortization Period	locations	frontage 1 year amortization for nonconforming locations	for nonconforming locations
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Recommendation: In adopting the proposed adult business ordinance amendments, Council is relying on caselaw, secondary effects studies, scholarly literature, and expert testimony discussed and attached to this staff report. The enactment of the proposed amendments will seek to mitigate the identified secondary effects on the surrounding areas associated with the current location of adult businesses within the City of Reno. Accordingly, staff recommends Council accept the staff report and direct staff to move forward with the Staff #1 Recommendations as shown on the RMC Title 18 Chart Options, and the remaining proposed revisions within Titles 4, 5, 8 and 18 as described in the staff report.

Proposed Motion: I move to approve staff recommendation.

Attachments:

- Attachment 1_Adult Bus Moratorium Update_04.27.16 (PDF)
- Attachment 2_COR website_AB ord (PDF)
- Attachment 3_Public Comment_supporting amendment (PDF)
- Attachment 4_Public Comment_against amendment (PDF)
- Attachment 5_NAB minutes (PDF)
- Attachment 6_AB stakeholder mtg (PDF)
- Attachment 7_Signs (PDF)
- Attachment 8_Caselaw (electronic attachment only; hard copy on file with City Clerk) (PDF)
- Attachment 9_Secondary Effects Studies (electronic attachment only; hard copy on file with City Clerk) (PDF)
- Attachment 10_Scholarly Lit_Expert Testimony (electronic attachment only; hard copy on file with City Clerk) (PDF)
- Attachment 11_Correspondence re Adult Business Ordinance Amendments 9-13-2017 (PDF)