



DOCKET ITEM #5

Text Amendment #2009-0006

Adult Uses

Issue: Consideration of an amendment to Section 7-2600 of the City's Zoning Ordinance to define and regulate the location of sexually oriented businesses within the City.	Planning Commission Hearing:	November 5, 2009
	City Council Hearing:	November 21, 2009

Staff Recommendation: Staff recommends APPROVAL of the amendment to section 7-2600 of the City's Zoning Ordinance.

Staff: Barbara Ross, Deputy Director, Planning and Zoning Barbara.ross@alexandriava.gov
Christopher Spera, Deputy City Attorney Christopher.spera@alexandriava.gov

Summary

This text amendment addresses the issue of sexually oriented businesses and the appropriate degree of regulation for such businesses in Alexandria. The regulations proposed here do not prohibit such uses, but they do require that they be located outside of the City's historic districts and dispersed so that no two such businesses are close together.

I. BACKGROUND

Sexually Oriented Businesses in Alexandria. With the redevelopment of Foxchase Shopping Center several years ago, the City's two historical adult uses – a theater with adult movies, and a video store with adult videos available for purchase or on premises viewing – were closed. However, two retail spaces in Old Town were recently occupied with stores that sell lingerie as well as sexually oriented paraphernalia. At 210 King Street, La Tache opened approximately one year ago; just last month, a second, similar retail operation, Lotus Blooms, opened at 1017 King Street. Whether to regulate what are typically called “adult” or “sexually oriented” businesses raises legal as well as policy issues for the City.

Legal Issues. As a legal matter, the Supreme Court has determined that land use regulation designed to protect against secondary impacts from such businesses, and executed without prior restraint of First Amendment rights, is permissible. In other words, cities may legally impose restrictions on businesses which sell sexual material, such as stores and theaters, even if the material does not rise to the level of obscenity, under the First Amendment. The restrictions must relate to the time, place or manner of doing business and not to the content of the material being sold. Cities may not overregulate the use so that they are completely or near-completely disallowed, but can limit them to appropriate locations, with appropriate distances from other similar uses, or from other uses which require protection, such as schools, homes, and churches. One type of regulation that the Fourth Circuit Court has ruled inappropriate is a special use permit or special exception, because that type of requirement is too discretionary, takes too long, and is too uncertain of its outcome, thus potentially creating an impermissible prior restraint. See Attachment 2 (City Attorney's Office memorandum, June 22, 2009.)

Policy Issues. The Supreme Court has recognized that sexually oriented businesses, especially if grouped together, have the potential of creating secondary negative impacts on their surroundings. The Court has specifically discussed the following secondary effects, as ones that content-neutral regulation may be designed to avoid: harm to children, impairment of community improvements, contributing to crime, public health problems and neighborhood blight. Thus, the City must determine as a policy matter whether and how to appropriately regulate these uses to best protect the community. After the opening of La Tache, citizens and businesses had mixed reactions. While some were concerned that the store unduly affects the ambiance and character of Old Town, and expressed a reluctance to shop in the immediate area, others, while not welcoming the new store, expressed a firm belief that businesses, especially in an economic downturn, should not be limited.

II. PROPOSED TEXT AMENDMENT

The new zoning ordinance language proposed here (Attachment 1) regulates sexually oriented businesses by defining them as either retail or theater operations for zoning purposes. It also prohibits their establishment within either of the City's regulated historic districts, the Old and Historic Alexandria District or the Parker-Gray Historic District. Finally, the new text language requires that there be adequate spacing between any two such uses.

Definitions. In addition to provide guidance and to ensure that sexually oriented businesses are identifiable, the proposed classification and definitions of adult uses assist with the regulation of such businesses as a zoning matter. Sexually oriented businesses are classified as either adult bookstores, novelty stores, or video stores on the one hand, or adult motion picture theaters on the other. By definition, sexually oriented businesses are thus either retail uses (adult bookstores, adult novelty stores, or adult video stores) or amusement enterprises (adult motion picture theater) for zoning purposes. The zoning ordinance already provides appropriate places and processes for such uses, without any regard to the content of the retail goods or theater productions. Based on existing zoning no adult or sexually oriented store is permitted in residential zone; as a retail use, such stores would be allowed in almost all commercial zones throughout the City. Any theater proposed to be located in the City now requires a special use permit as an amusement enterprise; an adult motion picture theater would require that approval.

Historic Districts. The two historic districts in and near Old Town are unique areas of the City, designed to preserve the historically significant character of those two areas. They also function, especially in the Old and Historic Alexandria District, as tourist destinations, and are the central focus of Alexandria for many who do not live here. In order to maintain the integrity of the buildings, character and history of those areas, the City, its citizens and its businesses live with significant regulation. The City has historically made extensive investment of resources in the two districts. For these reasons, it is appropriate to exclude sexually oriented businesses, with their secondary effects on the community, from those areas.

Dispersal Requirement. The proposed text amendment requires that no two sexually oriented businesses be located within 1000 feet from one another. This regulation is specifically designed to preclude the establishment of a "red light district," an area where several such businesses co-locate in order to attract a similar clientele. A distance of 1000 feet is roughly the length of four Old Town blocks. While sexually oriented businesses will not be permitted within the historic district on King Street, the reference provides a recognizable dimension to support the proposed rule. Four Old Town blocks provides an appropriate distance because a shopper may not travel that far on any one outing. Retail studies in Old Town and on Mount Vernon Avenue have shown that retail areas divide into natural subdistricts by virtue of the types of stores and distances between them. Thus, the 1000 foot spacing requirement allows adult uses but does not allow them to monopolize any one commercial area, or to create a cluster of similar adult uses so as to dominate any one area.

Grandfathering. The proposed text recognizes that a use that has been in the City for more than one year, such as La Tache, has established itself. On the other hand, the recently opened store at 1017 King Street is different and should not be allowed to remain permanently. It violates the

pending prohibition on additional stores in the historic district, and, under the proposed zoning amendment, would be required to close after 18 months, a reasonable period within which to recoup its limited investment in the retail space.

III. STAFF ANALYSIS AND RECOMMENDATION

Staff recommends approval of the proposed regulations. They represent a balance between no regulation at all, which is the approach the City has taken to date, and a set of minimal regulations designed to target the most troubling aspects of the uses. By limiting the regulations to definitions which support existing zoning, prohibiting the undesired uses in the historic districts, and spacing them to avoid a concentration in one area, the text amendment interferes with business development in a very limited way.

Although not reflected in the proposed text, attempts have been made to mirror what is common in other jurisdictions, and to require that adult uses not be located close to residential areas, to churches, schools or similar uses that the community may wish to protect from adult uses. However, after several iterations testing a variety of dispersal requirements, mapping technology, and zone and land use distinctions, Planning and Zoning staff concluded that such dispersal rules would not be successful in Alexandria. Because such large areas of the City are devoted to residential neighborhoods, and because so much of the remaining area – including the newest development areas – contains a mix of uses, it was near impossible to map out a strategy for isolating adult uses at a distance from residentially zoned or used land. The result of staff's mapping exercise was that either a very small percentage of commercial land would remain for adult uses, a circumstance not legally viable, or all of the remaining commercial land would be in a single small area of the City, such as at its southwest corner, an equally undesirable and potentially illegal circumstance.

Instead, under the proposed rules, adult retail businesses will be permitted in all commercial areas of the city where retail is generally allowed, and will not be prohibited, except in the historic districts. Furthermore, the regulations do prohibit the clustering or concentration of such uses in any one small area, thus avoiding the worst effects associated with these troublesome uses.

For these reasons, Staff recommends approval of the proposed text amendment.

STAFF: Faroll Hamer, Director, Planning and Zoning
Barbara Ross, Deputy Director, Planning and Zoning
Christopher Spera, Deputy City Attorney

Attachments: 1. Proposed Text Changes
2. City Attorney Memo to City Council, June 22, 2009

Section 7-2600 Regulation of Adult Uses

7-2601 *Classification.* Sexually oriented businesses are classified as follows:

- (A) adult bookstores, adult novelty stores, or adult video stores; and
- (B) adult motion picture theaters.

7-2602 *Definitions.* For purposes of this section 7-2601, the following terms shall have the following meaning.

- (A) “Adult bookstore, adult novelty store or adult video store” means a commercial establishment which has as a significant or substantial portion of its stock-in-trade or derives a significant or substantial portion of its revenues or devotes a significant or substantial portion of its interior business or advertising, or maintains a substantial section of its sales or display space for the sale or rental, for any form of consideration, of any one or more of the following:
 - (1) books, magazines, periodicals or other printed matter, photographs, films, motion pictures, video cassettes, compact discs, slides, or other visual representations which are characterized by their emphasis upon the exhibition or display of "specified sexual activities" or "specified anatomical areas";
 - (2) instruments, devices, or paraphernalia which are designed for use or marketed primarily for stimulation of human genital organs or for sadomasochistic use or abuse of themselves or others.
- (B) “Adult motion picture theater” means a commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, slides, or similar photographic reproductions are regularly shown which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas."
- (C) “Establish or establishment” means and includes any of the following:
 - (1) the opening or commencement of any sexually oriented business as a new business;
 - (2) the conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business;

- (3) the additions of any sexually oriented business to any other existing sexually oriented business; or
 - (4) the relocation of any sexually oriented business.
- (D) “Operate or cause to be operated” means to cause to function or to put or keep in a state of doing business. "Operator" means any person on the premises of a sexually oriented business who is authorized to exercise operational control of the business or who causes to function or who puts or keeps in operation the business. A person may be found to be operating or causing to be operated a sexually oriented business regardless of whether that person is an owner, part owner, or licensee of the business.
- (E) “Person” means an individual, proprietorship, partnership, corporation, association, or other legal entity.

7-2603

Location of Sexually Oriented Businesses.

- (A) Sexually oriented businesses may not be established or operated in the Old and Historic Alexandria District or the Parker Gray Historic District.
- (B) A sexually oriented business may not be established or operated within 1,000 feet of any other sexually oriented business.
- (C) For the purpose of section 2604(B) of this ordinance, measurement shall be made in a straight line, without regard to the intervening structures or objects, and in order to measure the shortest distance between two legal parcels of property, from the property line of the premises where a sexually oriented business is conducted, to the nearest property line of the premises where the other sexually oriented business is located. Presence of a city, county or other political subdivision boundary shall be irrelevant for purposes of calculating and applying the distance requirements.
- (D) The location requirements of Section 7-2604 of this ordinance shall not apply to any sexually oriented business which has been lawfully operating for more than twelve months in its current location on the effective date of this ordinance. Sexually oriented businesses which have been operating for fewer than twelve months on the effective date of this ordinance shall be deemed nonconforming uses and required to abate within 18 months of the effective date of this ordinance.

City of Alexandria, Virginia
MEMORANDUM

DATE: June 22, 2009

TO: THE HONORABLE MAYOR AND MEMBERS OF CITY COUNCIL

FROM: JAMES L. BANKS, CITY ATTORNEY
FAROLL HAMER, DIRECTOR, PLANNING AND ZONING

SUBJECT: REGULATION OF ADULT USES

After the opening of the adult-oriented business at 210 King Street, the Department of Planning & Zoning and the Office of the City Attorney have worked together to make recommendations concerning options to City Council regarding how to approach regulation of such businesses in the City. This memorandum sets forth the legal framework and limitations of such regulation and then sets forth a series of options for Council's consideration.

LEGAL SUMMARY

Adult businesses that sell sexually explicit, but lawful, printed or video material cannot be banned in their entirety due to protections afforded by the First Amendment of the Constitution.¹ However, the Supreme Court has held that local governments may adopt certain types of restrictions designed to minimize the potentially negative effects of such businesses on the surrounding area. The following bases for restriction have withstood judicial scrutiny:

1. Zoning Restrictions –
 - a. Allow “by right” in commercial zones, but include restrictions on proximity.
 - i. Limitation on proximity to another adult oriented business
 - ii. Limitation on proximity to schools, churches or residential neighborhoods.
 - b. Force adult businesses to concentrate in a particular area to create a “red-light” district.
 - c. Prohibit in residential zones or historic districts.
 - d. Zone or distance restrictions must allow adequate portion of jurisdiction to be open to adult use (e.g. 5% of land area deemed adequate by the S. Ct. in Renton, WA case)
 - e. SUP’s generally not an appropriate control mechanism because they impose too many potential prior restrictions on protected activity and are too discretionary
2. Non-Zoning Restrictions –
 - a. Issuance of adult business license – must be a reasonable period for review and approval and have defined rights for approval and appeal
 - b. Requirement of criminal background checks for owners
3. Physical Restrictions on Structure and Appearance
 - a. May specify layout requirements for interior of business
 - b. May require exterior security or screening devices

¹ / Note that sale of sexual devices, unlike books, magazines or video, is likely not protected under the First Amendment, although most appellate cases find that sale of such items is protected by the buyer's right to privacy and the right to due process. Accordingly, most jurisdictions treat devices and video/printed material the same.

LAWS IN NEIGHBORING JURISDICTIONS

The following chart sets forth how our neighboring jurisdictions approach adult uses:

Jurisdiction	Nature of Restriction	Limited to particular zone	Proximity Limitations	License Required	Physical restrictions
Fairfax County	Regulates “adult book stores”, adult mini motion picture theaters” and “commercial nudity establishments”	Located only within a “regional shopping center”	More than 1000 feet from any church, school or other adult use; may not abut residentially zoned or used property	Yes; granted by BZA pursuant to defined criteria	No
Arlington County	Regulates “adult book stores”	Limited to zones in which retail use is allowed	No	Yes; granted by County Board pursuant to defined criteria	No
Prince William County	Regulates “adult businesses”	Not expressly, but appears to be limited to zones in which retail use is allowed	No	Yes; application to Chief of Police with right to hearing if denied and appeal to circuit court	No
District of Columbia	Regulates “sexually oriented business establishments”	Limited to two commercial zones (C-3 and C-4)	More than 600 feet from any residence, church, school, library, playground or federal monument areas; More than 300 feet from another sexually rented business	Special exception required from Board of Zoning Adjustment	Yes – no display of goods or services visible from exterior of premises
Montgomery County	Regulates “adult entertainment businesses”	Limited to certain commercial zones	More than 750 feet from residence, school, church, library, day care center, library, playground, rec center or another adult entertainment establishment	No	Yes – adult entertainment materials must not be visible from outside the establishment; adequate interior lighting and no booths may close
Prince George’s County	Regulates “Adult businesses”	Allowed in specified commercial zones	More than 500 feet from residence, nursing home, school, church, library, day care center, library, park, hotel, or another adult business	No	No adult merchandise may be visible from outside the establishment; limitations on contents of signage/exterior advertising; must be adequate interior and exterior lighting

EXISTING BUSINESSES

The City has options with respect to the existing adult businesses (at this time, we are aware of only one “full-time” adult business at 210 King Street, and two other video stores that sell adult videos as well as other videos), assuming that any legislation would prohibit its current location if it had sought to locate there after the law went into effect.

1. Grandfather the existing businesses and allow them to remain unaffected by new law, so long as it retains its current ownership, location and scope.
2. Classify the existing businesses as a nonconforming use and impose a reasonable abatement period to allow the owner to amortize its investment in the nonconforming use. In prior advice to Council, this office has opined that an abatement period of 18 months would be appropriate for an adult theater and an adult video store, neither of which remain in business at this time. The greater the capital investment, the longer the abatement period that would be allowed.

OPTIONS/RECOMMENDATION

1. Require specific license for sexually oriented business; require application to be submitted not less than 60 days in advance of planned opening. This application can go to Police or to the same staff that handle business licenses. As a supplement to this requirement, we may want to consider requiring a separate license for employees of these businesses.
2. Restrict sexually oriented businesses from residential and historic areas and from being within 1000 feet of another sexually oriented business. Imposing additional distance requirements potentially presents problems in complying with having adequate amount of City’s available area open to these uses – recall the 5% of available land/Renton, WA standard set by the Supreme Court.
3. Impose restrictions on what is observable from exterior of premises
4. Must come to a decision about the existing businesses. Either grandfather and allow to remain for current owner/location/scope or declare nonconforming use and give abatement period.

JK
2

Docket Item # 5
TA 2009-0006

City of Alexandria, Virginia

MEMORANDUM

DATE: NOVEMBER 2, 2009
TO: CHAIRMAN AND MEMBERS OF THE PLANNING COMMISSION
FROM: FAROLL HAMER, DIRECTOR, PLANNING AND ZONING *FH*
SUBJECT: PROPOSED ADULT USE REGULATIONS, DOCKET ITEM #5

Staff recommends that the following definitions be added to the proposed regulations for adult uses in docket item #5:

- (F) "Specified Anatomical Areas" means:
 - (1) the human male genitals in a discernibly turgid state, even if completely and opaquely covered; or
 - (2) less than completely and opaquely covered human genitals, pubic region, buttocks or a female breast below a point immediately above the top of the areola.

- (G) "Specified Sexual Activities" means any of the following:
 - (1) the fondling of another person's genitals, pubic region, anus, or female breasts;
 - (2) sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, masturbation, or sodomy; or
 - (3) excretory functions as part of or in connection with any of the activities set forth in (1) and (2) above.

These added definitions will add specificity to the language of the regulations.

BR
PC

Docket Item # 5
TA 2009-0006



Cicely Woodrow/Alex
10/29/2009 09:35 AM

To Kendra Jacobs/Alex@Alex
cc Graciela Moreno/Alex@Alex, Barbara Ross/Alex@ALEX
bcc
Subject Fw: COA Contact Us: Text Amendment #2009-0006



Aimee Houghton
<aimeereeve@comcast.net>
10/29/2009 01:23 AM

Please respond to
Aimee Houghton
<aimeereeve@comcast.net>

To pnzfeedback@alexandriava.gov,
cicely.woodrow@alexandriava.gov,
graciela.moreno@alexandriava.gov
cc
Subject COA Contact Us: Text Amendment #2009-0006



Time: [Thu Oct 29, 2009 01:23:02] Message ID: [16493]

Issue Type: Planning and Zoning General Feedback
First Name: Aimee
Last Name: Houghton
Street Address: 1410 Cameron Street
City: Alexandria
State: VA
Zip: 22314
Phone: 202-340-1817
Email Address: aimeereeve@comcast.net
Subject: Text Amendment #2009-0006

I would like to express my extreme displeasure with seeing this item on the Planning Commission Docket for November 5, 2009. Is the City of Alexandria now making it a priority to run out of town and subsequently disuade profitable, tax-paying businesses from locating here?

I chose to live in Old Town because of the historic aspect, the friendly neighborhood, the diversity of the independent business community and, what I assumed, was the open-mindedness of the local government. It seems I was wrong on this last point. I would also like to point out that London, England (another

historic town) has upscale lingerie shops in some of its most historic and affluent areas and the neighborhoods have not deteriorated and the historic culture has been preserved. My, how do they do it?

How can The City,

during an economic downturn that has contributed to the closing of numerous businesses along King Street, justify running two successful businesses out of town after they have invested significant resources into establishing their shops, pay city taxes, bring in customers to our area who shop in our stores, eat at our restaurants and put money in our parking meters?

I

Comments:

can only speak for Lotus Blooms, but has city staff even been in the store or talked to the owners? It is so far from an establishment one would find in a "red light district" that the answer to that question has to be no. Has city staff talked to the owners of the store to understand their business model, learn about their philanthropic ventures of these business women, understand their background--registered nurses--which brings an educational component to their shop. Has staff set foot into this shop? If so, they would have seen that it is incredibly sophisticated and tasteful.

Finally, I am appalled at the way my tax

dollars are being wasted. I've been a resident of Alexandria for 10 years and a home owner for 7. I shop in Old Town almost exclusively and am happy to do so as I want my taxes go to pay for many of the services we have in this town, but this is an abuse of the trust I place in my government and my elected officials.

Rest assured I will attend the November 5th

meeting to understand what possible reason you can give for even placing this amendment on the docket, let alone recommending it for passage. Mind boggling.

3A
>C

Docket Item #5
TA 2009-0006



Kendra Jacobs/Alex
11/03/2009 10:55 AM

To
cc
bcc
Subject Fw: COA Contact Us: Restricting sex shops in Alexandria

Jonathan Krall <jonathan@dcsma.org>



Jonathan Krall
<jonathan@dcsma.org>
11/02/2009 09:58 PM

Please respond to
Jonathan Krall
<jonathan@dcsma.org>

To pnzfeedback@alexandriava.gov,
cicely.woodrow@alexandriava.gov,
graciela.moreno@alexandriava.gov
cc
Subject COA Contact Us: Restricting sex shops in Alexandria



Time: [Mon Nov 02, 2009 21:58:33] Message ID: [16576]

Issue Type: Planning and Zoning General Feedback
First Name: Jonathan
Last Name: Krall
Street Address: 6A E Mason Ave
City: Alexandria
State: VA
Zip: 22301
Phone: 7035283517
Email Address: jonathan@dcsma.org
Subject: Restricting sex shops in Alexandria
To the Planning Commission:

I am writing about the possible amendment to
Section 7-2400 of the City's Zoning Ordinance to define and regulate the
location of sexually oriented businesses within the City. As a resident of
Alexandria, I am concerned whenever our leadership imposes new restrictions
on commerce. In a discussion on my neighborhood e-mail list, numerous
business leaders came out against this amendment and I agree with

them.

Comments:

Further, I do not believe that all "sexually oriented businesses" fit the sleazy stereotype that is so often applied to them. Let us please allow adults to be adults and allow commerce to proceed without unnecessary impediments. If we need to restrict window displays to keep sexually-explicit images out of the public eye, I am certain that there are better ways to do so than the proposed amendment.

Sincerely,

Jonathan Krall

DR
PC

Docket Item # 5
TA 2009-0006



Cicely Woodrow/Alex
10/30/2009 06:59 AM

To Kendra Jacobs/Alex@Alex
cc
bcc
Subject Fw: COA Contact Us: Docket 2009-0006

Another docket comment for your response.
Cicely

— Forwarded by Cicely Woodrow/Alex on 10/30/2009 06:59 AM —



Jan Scott
<scott0744@aol.com>
10/29/2009 11:05 PM

Please respond to
Jan Scott
<scott0744@aol.com>

To przfeedback@alexandriava.gov,
cicely.woodrow@alexandriava.gov,
graciela.moreno@alexandriava.gov
cc
Subject COA Contact Us: Docket 2009-0006



Time: [Thu Oct 29, 2009 23:05:34] Message ID: [16509]

Issue Type: Planning and Zoning General Feedback
First Name: Jan
Last Name: Scott
Street Address: 708 Duke Street
City: Alexandria
State: VA
Zip: 22314
Phone: 703 8871983
Email Address: scott0744@aol.com
Subject: Docket 2009-0006
Would appreciate my name being added to the list of Old Town residents who
vehemently object to the Planning and Zoning
Board's actions in trying to
close Lotus Blooms. The store is 8 blocks (>1000ft) from the store at
210 King Street and does not
in any way appear to be distasteful. In
fact, they cater to a discriminating and appreciative clientele who not
only are local

residents but also traveling here on business or tourists
from all different parts of the world. The nurses in the shop are

helpful, pleasant, and community minded individuals who all live locally.

Please stop by the shop and meet them, it is a
beautiful and tastefully

appointed place of business.

If the planning and zoning board has

Comments: plans for ultimately regulating the adult themed businesses, that would be

fine if that is
what the majority of residents favor, but at no time

should any existing business be forced to close because it violates an

ordinance that has yet to be passed. Do that and no new and unique

business will take the chance of investing in a business
here for fear

that they may be closed down in the near future. The planning staff should

be looking at ways to attract new and
varied forms of business to Old

Town instead of focusing on what has already been approved, is legal, and a

positive
customer draw to the community.

Thank you for your time and

attention.

Jan Scott

SL
PC

Wocket Item # 5
TA 2009 - 0006



Kendra Jacobs/Alex
11/04/2009 09:47 AM

To
cc
bcc
Subject Fw: COA Contact Us: Proposed Amendment - #2009-0006

— Forwarded by Elaine Scott/Alex on 10/30/2009 01:03 PM —



Germaine Schaefer
<germaineschaefer@hotmail.com>
10/30/2009 10:33 AM

Please respond to
Germaine Schaefer
<germaineschaefer@hotmail.com>

To william.euille@alexandriava.gov,
frank.fannon@alexandriava.gov,
kerry.donley@alexandriava.gov,
alicia.hughes@alexandriava.gov, council@krupicka.com,
delpepper@aol.com, paulcsmedberg@aol.com,
rose.boyd@alexandriava.gov,
jackie.henderson@alexandriava.gov,
elaine.scott@alexandriava.gov

cc
Subject COA Contact Us: Proposed Amendment - #2009-0006



Time: [Fri Oct 30, 2009 10:33:26] Message ID: [16513]

Issue Type: Mayor, Vice Mayor, and Council Members
First Name: Germaine
Last Name: Schaefer
Street Address: 124 E. Randolph Avenue
City: Alexandria
State: va
Zip: 22301
Phone: 7035358864
Email Address: germaineschaefer@hotmail.com
Subject: Proposed Amendment - #2009-0006

I would like to voice my opinion against the proposed amendment to the city rules - #2009-0006.

I disagree with staff opinion that it is appropriate to exclude sexually oriented business from the Old & Historic District - but allow it in other parts of the city. If the exclusion cannot legally be made for the entire city, then it should not be made at all.

I would
be in favor of requiring 1000 feet between such establishments, and
requiring them to be at least 1000 feet from schools, daycares, playgrounds
Comments: and other places where children congregate.

I also feel that there
should be limits to what is placed in windows. But, considering the window
displays that raised such a fuss at Victorias' Secret in Tyson's Corner a
few years ago; I would consider it difficult to draw the
line.

Sincerely,

Germaine Schaefer

10
32

Docket Item # 5
TA 2009-0006

Barbara Ross/Alex
10/30/2009 11:01 AM

To Kendra Jacobs/Alex@Alex
cc
bcc
Subject Fw: Text Amendment 2009-0006 Adult Uses

— Forwarded by Barbara Ross/Alex on 10/30/2009 11:01 AM —



Frank Magarone
<frankmagarone@yahoo.com>
10/30/2009 10:14 AM

To Barbara.ross@alexandriava.gov
cc christopher.spera@alexandriava.gov
Subject Text Amendment 2009-0006 Adult Uses

Dear Ms Ross/Mr Spera:

Please take note of my letter and please forward to the Commission.

Dear Planning Commission:

I am opposed to this amendment.

We should not support the selective discriminatory targeting of individual/business, personal preference, and basic freedoms.

The business in question does not violate laws, is in compliance, and no one is being harmed.

Neighbors who do not like it should not live in a business district.

We cannot afford to jeopardize our businesses, tax-base, or freedoms...nor discriminate against anyone!

We have no right to intrude upon personal freedoms.

Please oppose.

Thank you.

Frank Magarone.
Beverly Hills
Alexandria

pc

Old Town Civic Association, Inc.
P.O. Box 1213
Alexandria, Virginia 22313

Docket Item # 5
TA 2009-0006

The City of Alexandria Planning Commission

RE: 5. TEXT AMENDMENT #2009-0006
ADULT USES

Dear Chairman Komoroske and members of the Planning Commission

Old Town Civic Association is appreciative for this amendment coming forth and strongly supports it, but we are not happy about the grandfathering provision for the existing stores.

One critical thing that's missing is the definition of "specified sexual activities" and "specified anatomical areas," and "Specified Sexual Activities". Without those terms defined in the ordinance, it (a) doesn't make any sense, and (b) will be void for vagueness if challenged.

Therefore the following terms should be added as (F) through (H) of section 7-2602. These are "sexually oriented business"; "specified anatomical areas"; and "specified sexual activities" defined bellow.

SEXUALLY ORIENTED BUSINESS means an adult book store, adult novelty store, adult video store or adult motion picture theater.

SPECIFIED ANATOMICAL AREAS means:

- (a) the human male genitals in a discernibly turgid state, even if completely and opaquely covered; or
- (b) less than completely and opaquely covered human genitals, pubic region, buttocks or a female breast below a point immediately above the top of the areola.

SPECIFIED SEXUAL ACTIVITIES means any of the following:

- (a) the fondling of another person's genitals, pubic region, anus, or female breasts;
- (b) sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, masturbation, or sodomy; or
- (c) excretory functions as part of or in connection with any of the activities set forth in (a) through (b) above.

Sincerely
Poul Hertel, President Old Town Civic Association

Docket Item # 5
TA 2009-0006



Kendra Jacobs /Alex
11/04/2009 04:25 PM

To Planning Commission Members,
cc
bcc
Subject Fw: Adult Use Text Amendment

----- Forwarded by Kendra Jacobs/Alex on 11/04/2009 04:25 PM -----

Barbara Ross /Alex
11/04/2009 04:25 PM

To Kendra Jacobs/Alex@Alex
cc Faroll Hamer/Alex
Subject Adult Use Text Amendment

Attached are two documents with proposed revisions to the adult use regulations for forwarding to the Planning Commission. They include

1. The full text revised to include staff's recommended additional definitions, as well as a few corrections and clarifications.
2. Some potential language the Commission may wish to use if it determines that additional revisions to the proposed regulations are advisable.



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PROPOSED AMENDED LANGUAGE

[inserting staff's recommended additional definitions, a word change in 7-2602(A)(2) for clarity and corrected section references in 7-2603(C) and (D)]

Section 7-2600 Regulation of Adult Uses

7-2601 *Classification.* Sexually oriented businesses are classified as follows:

- (A) adult bookstores, adult novelty stores, or adult video stores; and
- (B) adult motion picture theaters.

7-2602 *Definitions.* For purposes of this section 7-2601, the following terms shall have the following meaning.

- (A) "Adult bookstore, adult novelty store or adult video store" means a commercial establishment which has as a significant or substantial portion of its stock-in-trade or derives a significant or substantial portion of its revenues or devotes a significant or substantial portion of its interior business or advertising, or maintains a substantial section of its sales or display space for the sale or rental, for any form of consideration, of any one or more of the following:
 - (1) books, magazines, periodicals or other printed matter, photographs, films, motion pictures, video cassettes, compact discs, slides, or other visual representations which are characterized by their emphasis upon the exhibition or display of "specified sexual activities" or "specified anatomical areas";
 - (2) instruments, devices, or paraphernalia which are designed for use or marketed primarily for stimulation of human genital organs or for sadomasochistic use or abuse of the purchasers ~~themselves~~ or others.
- (B) "Adult motion picture theater" means a commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, slides, or similar photographic reproductions are regularly shown which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas."
- (C) "Establish or establishment" means and includes any of the following:

- (1) the opening or commencement of any sexually oriented business as a new business;
 - (2) the conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business;
 - (3) the additions of any sexually oriented business to any other existing sexually oriented business; or
 - (4) the relocation of any sexually oriented business.
- (D) “Operate or cause to be operated” means to cause to function or to put or keep in a state of doing business. “Operator” means any person on the premises of a sexually oriented business who is authorized to exercise operational control of the business or who causes to function or who puts or keeps in operation the business. A person may be found to be operating or causing to be operated a sexually oriented business regardless of whether that person is an owner, part owner, or licensee of the business.
- (E) “Person” means an individual, proprietorship, partnership, corporation, association, or other legal entity.
- (F) “Specified Anatomical Areas” means
- (1) the human male genitals in a discernibly turgid state, even if completely and opaquely covered; or
 - (2) less than completely and opaquely covered human genitals, pubic region, buttocks or a female breast below a point immediately above the top of the areola.
- (G) “Specified Sexual Activities” means any of the following:
- (1) the fondling of another person’s genitals, pubic region, anus, or female breasts;
 - (2) sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, masturbation, or sodomy; or
 - (3) excretory functions as part of or in connection with any of the activities set forth in (1) and (2) above.

7-2603

Location of Sexually Oriented Businesses.

- (A) Sexually oriented businesses may not be established or operated in the Old and Historic Alexandria District or the Parker Gray Historic District.
- (B) A sexually oriented business may not be established or operated within 1,000 feet of any other sexually oriented business.

- (C) For the purpose of section 26034(B) of this ordinance, measurement shall be made in a straight line, without regard to the intervening structures or objects, and in order to measure the shortest distance between two legal parcels of property, from the property line of the premises where a sexually oriented business is conducted, to the nearest property line of the premises where the other sexually oriented business is located. Presence of a city, county or other political subdivision boundary shall be irrelevant for purposes of calculating and applying the distance requirements.
- (D) The location requirements of Section 7-26034(B) of this ordinance shall not apply to any sexually oriented business which has been lawfully operating for more than twelve months in its current location on the effective date of this ordinance. Sexually oriented businesses which have been operating for fewer than twelve months on the effective date of this ordinance shall be deemed nonconforming uses and required to abate within 18 months of the effective date of this ordinance.

ADDITIONAL POTENTIAL LANGUAGE FOR ADULT USE REGULATIONS

[The following potential revisions result from discussions with Planning Commission members and from comments received from the public.]

1. *Grandfather provision.* Section 7-2603 (D) should be revised as follows if the Commission recommends grandfathering both existing adult uses on King Street:

(D) ~~The location requirements of Section 7-2603(B) of this ordinance shall not apply to any sexually oriented business which has been lawfully operating on (effective date of ordinance) for more than twelve months in its current location on the effective date of this ordinance. Sexually oriented businesses which have been operating for fewer than twelve months on the effective date of this ordinance shall be deemed nonconforming uses and required to abate within 18 months of the effective date of this ordinance.~~

2. *Exterior Display.* The following new language could be added if the Commission recommends a prohibition on the display of sexually oriented material from the exterior of a sexually oriented business.

7-2604 Exterior Display. No pictures, merchandise, instruments, devices, paraphernalia, including three dimensional displays, or other items involved in or depicting specified sexual activities or specified anatomical areas shall be visible from any point on the exterior of a sexually oriented business.

Docket Item #5
TA 2009-0006



Kendra Jacobs /Alex
11/05/2009 01:19 PM

To Planning Commission Members,
cc
bcc
Subject Fw: COA Contact Us: Text Amendment 2009-0006 Adult
Uses

Maria Wasowski <mariawasowski@comcast.net>



Maria Wasowski
<mariawasowski@comcast.net>

11/04/2009 11:03 PM

Please respond to
Maria Wasowski
<mariawasowski@comcast.net>

To przfeedback@alexandriava.gov,
cicely.woodrow@alexandriava.gov,
graciela.moreno@alexandriava.gov
cc
Subject COA Contact Us: Text Amendment 2009-0006 Adult Uses

Time: [Wed Nov 04, 2009 23:03:19] Message ID: [16644]

Issue Type: Planning and Zoning General Feedback
First Name: Maria
Last Name: Wasowski
Street Address: 306 Hume Ave.
City: Alexandria
State: VA
Zip: 22301
Phone: 703-684-1490
Email Address: mariawasowski@comcast.net
Subject: Text Amendment 2009-0006 Adult Uses
Comments: Please find attached a letter to be forwarded to the Planning Commission.
Attachment: 259efa4cdbab8128dbbe185087605b8e.doc



259efa4cdbab8128dbbe185087605b8e.doc

Mr. Chairman and Planning Commissioners,

As the co-owner of a small retail store, I find it alarming that someone who has just gone through the difficult and costly process of opening a business could be shut down because people don't like what he/she is selling. Can the City decide to prohibit alcohol sales and close down Grape and Bean, or some of the other new wine bars in town? Should Virginia Paving be shut down because people don't want to live near an industrial site?

Staff seems to think that Lotus Blooms should be able to "recoup its limited investment in the retail space" over 18 months. Although I have great respect for Planning Department staff, I think in this case their judgment has no basis in reality. I know of no small business that can recoup startup costs in 18 months. Assuming the business survives, the norm is 3 to 5 years before a small business owner begins to break even. Very few are able to even begin to pay themselves a salary until that happens so after 18 months the owner has paid out tens of thousands of dollars and has very little coming in. What little income there is goes to making payments on loans and other costs so there is negative cashflow for several years. If a business were forced to close down so soon after opening, the owner would lose years of work and probably their entire college or retirement fund. There would soon be nothing to sell and no new income but he/she would still be obliged to pay rent, insurance, taxes, etc. Not to mention having to find a new source of income to support him or herself and family.

Another issue is that of consistency and fairness. Why are adult shops ok in Del Ray or Carlyle but not appropriate in Old Town? Why not keep these types of businesses from opening up near schools and rec centers, limit their hours, and require spacing of more than 1000 feet but make it consistent throughout the City? One of the reasons Alexandria is considered not friendly to business is the patchwork of zoning rules that govern different areas of the City in different ways for different types of businesses. Sorting through all the regulations often means spending a lot on legal fees just to find out if one will be allowed to even think about starting a new business. On top of that, many businesses pay out thousands of dollars in rent and building costs before they even know that they will have permission to open.

Imagine having to come up with \$30,000 in order to find out if you can get a certain job, and then working for free, without being paid, for at least 5 years. Then, one day, your business is shut down by the government, and you have lost both your financial investment and the income you would have made working elsewhere.

I can understand the need for some regulation but it's important to be fair and consistent towards all residents of the City, not just an elite group. I can also understand avoiding a business one finds distasteful. However, I'm very uncomfortable with trying to legislate it out of existence.

Thanks for your consideration,

Maria Wasowski
306 Hume Avenue
Alexandria, VA 22301