

SECTION 15.2: ADULT-ORIENTED BUSINESS

(Added by Ord. No. 3330, effective 7-25-06; amended by Ord. No. 3399, effective 1-1-10)

FINDINGS A.

The Board of Supervisors, in adopting this section, takes legislative notice of the existence and content of the studies concerning the adverse secondary effects of Adult-Oriented Businesses in other counties and cities, including: Houston, TX (1997); Dallas, TX (1997); Newport News, VA (1996); New York City, NY (1994); Garden Grove, CA (1991); Manatee County, FL (1987); Austin, TX (1986); Indianapolis, IN (1984); and Los Angeles, CA (1977). The Board of Supervisors relies upon these studies, believes them to be true, and finds that certain secondary adverse effects are associated with Adult-Oriented Businesses, including: increases in crimes, specifically sex crimes such as prostitution, pandering and indecent exposure; decreases in property values for property located near such businesses; physical deterioration and blight for areas surrounding such businesses; and a negative effect on the general quality of life for areas surrounding such businesses. The Board of Supervisors also specifically relies upon the evidentiary foundation set forth in *Renton v. Playtime Theaters, Inc*, 475 U.S. 41, 89 L.Ed.2d 29, 106 S. Ct. 925 (1986) as cited in *City of Erie, et al. v. Pap's A.M., TDBA "Kandyland"* 529 U.S. 277, 146 L.Ed.2d 265, 120 S. Ct. 1382 (2000).

The Board of Supervisors, based upon the evidence before it as presented by staff and members of the public, finds, in reliance on and in accordance with *Castner v. City of Oakland* (1982), 129 CA3d 94; *City of Whittier v. Walnut Properties, Inc.*(1983); and *World Wide Video v. City of Spokane* (9th Circ. 2004) 368 F3d 1186, that there are sufficient relocation sites within Tulare County to allow both relocation and alternative avenues of communication for any Adult-Oriented Businesses currently operating in Tulare County which will become legal nonconforming uses upon adoption of this ordinance and the effective date of the regulations set out herein. The Board therefore, based upon the nature of this use as recognized above, finds it appropriate to require amortization as set forth herein of any Adult-Oriented Businesses uses which become legal nonconforming uses by reason of the adoption of this ordinance.

PURPOSE AND INTENT B.

It is the intent of this section to reasonably regulate the locating of Adult-Oriented Businesses, to promote the health, safety, and general welfare of the citizens of the County of Tulare, and to prevent the adverse secondary effects of Adult-Oriented Businesses from occurring within the County of Tulare. It is the intent of this section to prevent community wide adverse economic impacts, increased crime, decreased property values, and the deterioration of neighborhoods which can be brought about by the concentration of Adult-Oriented Businesses in close proximity to each other or proximity to other incompatible uses such as schools for minors, day care facilities, churches, parks, and residentially zoned districts or uses. The Board of Supervisors finds that it has been demonstrated in various communities that the concentration of Adult-Oriented Businesses causes an increase in the number of transients in the area, and an increase in crime and in addition to the effects described above can cause other businesses and residents to move elsewhere. It is, therefore, the purpose of this section to establish reasonable and uniform regulations to prevent the concentration of Adult-Oriented Businesses or their close proximity to incompatible uses, while permitting the location of Adult-Oriented Businesses in certain areas.

It is neither the intent nor the effect of this section to impose limitations or restrictions on the content of any communicative material. Similarly, it is neither the intent nor the effect of this section to restrict or deny access by adults to adult-oriented materials as protected by the First Amendment or to deny access by the distributors or exhibitors of adult-oriented materials to their intended market.

Nothing in this section is intended to authorize, legalize or license the establishment, operation or maintenance of any business, building or use which violates any other county ordinance or any statute of the State of California, including those relating to public nuisances, unlawful or indecent exposure, sexual conduct, lewdness or obscene or harmful matter or the exhibition of public display thereof.

DEFINITIONS C.

An "Adult-Oriented Business" is defined in Part VI of the Ordinance Code of the County of Tulare, Chapter 3. Refer to Chapter 3, Part VI of the Ordinance Code for additional definitions regarding adult-oriented terminology.

MINIMUM PROXIMITY REQUIREMENTS D.

1. Adult-Oriented Businesses shall not be established or located in any zone in the County of Tulare, nor shall any building or land be used for such businesses, other than the M-2 (Heavy Manufacturing), M-1 (Light Manufacturing), and C-3 (Service Commercial) zones. In addition, no Adult-Oriented Business shall be located:
 - a. Within one thousand five hundred (1,500) feet of any other Adult-Oriented Business located either inside or outside county boundaries;
 - b. Within one thousand five hundred (1,500) feet of any existing public or private schools, including licensed day care facilities, parks or other recreational facilities where minors congregate, located either inside or outside of county boundaries;
 - c. Within one thousand five hundred (1,500) feet of any existing or planned park set forth in the general plan or other recreational facility where minors congregate, located either inside or outside of county boundaries;
 - d. Within one thousand five hundred (1,500) feet of any land which carries an existing county or city general plan land use designation which contains the words residence or residential within its title.
 - e. Within one thousand five hundred (1,500) feet of any land designated as R-A, MR, R-O, R-1, R-2, or R-3 on the county zoning map.
 - f. Within one thousand five hundred (1,500) feet of any existing church or religious institution, located either inside or outside of county boundaries.
2. As used in this sub-section, "existing" means existing at the time the Adult-Oriented Business is to be established.
3. The distances set forth above shall be measured in a straight line, without regard to intervening structures, as a radius from the property line of the Adult-Oriented Business to the property line of the other use.

MORTIZATION; ABANDONMENT E.

1. Amortization: Any use of real property existing on the effective date of this section which does not conform to the provisions of subsection D, but which was constructed, operated, and maintained in compliance with all County of Tulare, State and Federal regulations, rules and ordinances shall be regarded as a nonconforming use which may be continued for up to five (5) years after the effective date of this ordinance. On or before such date, all such nonconforming uses shall be terminated unless a hardship extension of time has been approved by the Board of Supervisors in accordance with the provisions of subsection F. All nonconforming uses continuing without a hardship extension of time shall be public nuisances.
2. Abandonment. Notwithstanding the above, any discontinuance or abandonment of the legal nonconforming use of any real property, lot, parcel or structure as an Adult-Oriented Business for a period of six (6) months or more shall result in a loss of legal nonconforming status of such use and shall be a public nuisance if resumed without compliance with this section.

HARDSHIP EXTENSION OF TIME FOR TERMINATION OF NON- CONFORMING USE F.

1. To mitigate any potential economic impact and to prevent any alleged taking of private property that could be caused by the operation subsection E, the owner or operator of a nonconforming use as described in subsection E may apply under the provisions of this section to the Board of Supervisors for an extension of time within which to terminate the nonconforming use on the ground that the effect of subsection E causes undue hardship by depriving that person of all economically viable, reason or beneficial use of his or her affected property as these terms are understood within the meaning of the United States and California Constitutions or that during the original amortization period no alternative sites or reasonable avenues of communication became available.
2. Time and Manner of Application - An application for an extension of time within which to terminate a use made nonconforming by the provisions of subsection D may be filed by the owner of the real property upon which such use is operated, or by the operator of the use. Such an application must be filed with the County of Tulare Resource Management Agency at least ninety (90) days but no more than one hundred eighty (180) days prior to the time established in subsection E for termination of such use.
3. Procedure and Decision: If an application is made to the Board pursuant to this subdivision, a public hearing shall be set by the Clerk of the Board and duly noticed pursuant to Government Code section 65091 at least ten (10) days prior to hearing. After considering all of the evidence submitted in support of and opposition to the application for hardship extension, the Board may grant a limited extension on terms and conditions that are fair, reasonable and consistent with the protection of the public health, safety and welfare so as to prevent a taking of private property without just compensation. Such application shall be subject to any fee set by the Board of Supervisors from time to time by resolution.

DEVELOPMENT STANDARDS G.

1. Any Adult-Oriented Business located in the County of Tulare is subject to the following development standards when operating an Adult Oriented Business.
 - a. All windows of businesses classified as an Adult-Oriented Business shall have

window screens or shields in order to

- (1) Protect from public view and protect the surrounding community from the adverse secondary effects of the Adult-Oriented Business.
 - (2) Protect the privacy of the Adult-Oriented Businesses' clientele.
- b. Outdoor advertising display signs for businesses classified as an Adult-Oriented Business shall not contain any graphically obtrusive display, such as neon lighting portraying sexual acts or nudity.
2. Any Adult-Oriented Business that lawfully existed at the time this section takes effect shall conform to these development standards within one (1) year.
 3. Any Adult-Oriented Business located in the County of Tulare is subject to the regulations as established in Chapter 3, Part VI of the Tulare County Ordinance Code.

IN ADDITION TO OTHER REMEDIES; CONTROL AND PRIORITY H.

The provisions and regulations of this Chapter are not to be the exclusive regulation of Adult-Oriented Businesses in Tulare County but shall be in addition thereto. The provisions of this Chapter, including but not limited to the provisions and regulations pertaining to definitions, minimum proximity requirements, development standards, amortization and abandonment, shall supersede, control and have priority over any conflicting or less stringent provisions of the Tulare County Zoning Ordinance No. 352, as amended from time to time, as to the Adult-Oriented Business uses defined herein.