

MEMORANDUM

February 17, 2015

TO: HLUET COMMITTEE

FROM: Rob Eastwood, Principal Planner, Department of Planning and Development.

RE: Supplemental Memo to Item #5 of the February 19th HLUET Agenda – Adult Uses

This Supplemental Memo updates the HLUET Committee on feedback the Department of Planning and Development staff received from the Sheriff's Office regarding the potential amendments to the zoning ordinance referenced in the April 15, 2014 Board Referral ("Referral"). Based on this feedback and a re-evaluation of potential approaches in amending the zoning ordinance, the Administration has modified its recommended action regarding amendments to the *adult uses – adult entertainment facilities* definition.

During the week of February 5th, Captain Nuno Ribeiro of the Sheriff's Office provided feedback to Planning staff on the Referral and amendments to the zoning ordinance to expand the definition of *adult uses – adult entertainment facilities*. Captain Ribeiro identified ongoing issues regarding an existing bar located in East San Jose on Mckee Road, in unincorporated Santa Clara County. He reported the establishment features female waitresses wearing bikinis and providing lap dances to male patrons. He explained that the waitresses sometimes show nudity to the customers, and that overall the activities taking place at the bar fall under the classification of adult use. Captain Ribeiro reported that the Sheriff's Office has received numerous complaints regarding this establishment and these activities.

When asked about the Board Referral and amendments to the zoning ordinance expanding the definition of *adult use – adult entertainment establishment*, Captain Ribeiro's recommendation is that the definition be expanded to encompass lap dancing when the dancing is used to sexually stimulate or arouse patrons.¹ Captain Ribeiro did not include clothed cage dancing or pole dancing in this recommendation.

¹ Lap dancing when the dancer is nude or semi-nude is currently covered under the definition of *adult use – adult entertainment establishment*.

In light of this feedback, Planning Staff has reviewed options to amend the Zoning Ordinance to expand the definition of adult uses – adult entertainment establishments to specifically encompass clothed lap dancing when the dancing is used to sexually stimulate or arouse patrons. Currently, the adult entertainment establishment definition references “topless or bottomless dancers, strippers, or any entertainers regularly displaying specified anatomical areas for observation by patrons or customers.” Thus, clothed waitresses providing lap dances would not meet this adult use definition.

However, the Adult Uses classification category includes a separate definition for “specified sexual activities” as an activity subject to the “Adult Use” definition. Specified sexual activities is defined as

(a) Human genitals in a state of sexual stimulation or arousal; (b) acts of human masturbation, sexual intercourse, sodomy or bestiality; or, (c) fondling or other erotic handling of human genitals, pubic region, buttock, or female breast.

This definition only references activities and does not reference the state of dress (i.e., nudity or semi-nudity). “Specified sexual activities” is used in describing activities associated with Adult Movie Theater and Adult Book / Video Store, but is not described under the Adult Entertainment Establishment.

If the “specified sexual activities” definition is included under the Adult Entertainment Establishment use classification, it would address clothed lap dancing when the activity entails the fondling or erotic handling of human genitals, public region, buttock, or female breast.

In short, the Administration recommends that the County pursue amendments to the Zoning Ordinance to identify “Specified sexual activities” as an activity that occurs under the Adult Uses – Adult Entertainment Establishments.

As described in the February 19th report, adult uses are provided certain protections under the federal constitution with respect to the freedom of speech and expression. An expansion of the definition of *adult uses-adult entertainment establishment* to include *specified sexual activities* as an activity that occurs at an *adult entertainment establishment* should be designed to serve a substantial governmental interest, should not unreasonably limit alternative avenues of communication, and should be based on narrow, objective, and definite standards. The information shared by the Sheriff’s Office to Department staff shows that specified sexual activities may be undertaken at establishments when the dancers are clothed and this is causing complaints. If the HLUET Committee and the Board concur with the Administration’s recommendation to pursue zoning ordinance amendments pertaining to “specified sexual activity” and *adult uses-adult entertainment*

establishment, the Planning Department will conduct mapping research to determine if there will be sufficient sites available for such uses in unincorporated County. The current definition of *specified sexual activities* in the zoning ordinance is based on narrow, objective, and definite standards and it will not be further amended.

Other jurisdictions already include *specified sexual activities* as part of the definition of *adult entertainment establishment*. For example, both Contra Costa County and the City of Santa Clara include *specified sexual activities* as part of the definition (similar to the definition in the County's ordinance) for the "Adult Cabaret" or "Cabaret" use classification.

It is important to note that should the County adopt amendments to the *adult uses-adult entertainment establishment* definition within the Zoning Ordinance, these amendments (and resulting regulatory requirements) would affect any new establishment that meets the *adult uses-adult entertainment establishment* definition. Any *adult entertainment establishment* that was legally established prior to the adoption of the zoning ordinance amendments would be classified as a legal, non-conforming use.

Attachment –

Zoning Ordinance Definition – Adult Uses