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# SALT LAKE CITY COUNCIL STAFF REPORT

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**DATE:** September 12, 2003

**SUBJECT:** **Sexually Oriented Business Temporary Zoning Ordinance and Secondary Impact Review**

**AFFECTED COUNCIL DISTRICTS:** Downtown, Citywide

**STAFF REPORT BY:** Michael Sears, Budget & Policy Analyst

**ADMINISTRATIVE DEPT.**

**AND CONTACT PERSON:** Office of the City Attorney, Ed Rutan

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## **KEY ELEMENTS:**

Several Council Members have asked that the City Attorney's Office prepare an ordinance for consideration by the City Council regarding sexually oriented businesses in the downtown zones. The ordinance would prohibit the businesses from locating in the downtown zones for a period of 6 months or until the City has the opportunity to evaluate the compatibility of these businesses and the impact they have on the surrounding area, whichever occurs first. Council staff has prepared this review of sexually oriented businesses and their secondary impacts as an informational report and not as analysis of the temporary zoning ordinance that has been prepared by the City Attorney's Office.

The temporary zoning ordinance is included in the Council packet for your consideration.

### ➤ **OPTIONS**

1. Adopt the temporary zoning ordinance with any changes that may be discussed during the briefing on September 16, 2003.
2. Forward the temporary zoning ordinance to a future Council meeting for consideration.
3. Request additional written information or refer to an additional Council work session.
4. Do not advance the temporary zoning ordinance.

### ➤ **POLICY CONSIDERATIONS AND ANALYSIS**

Under the zoning ordinance, sexually oriented businesses include the following types of businesses (see Section 21A.62.040 of the Salt Lake City Code):

- Adult bookstores
- Adult motion picture theaters
- Adult video stores
- Nude entertainment businesses (including adult theaters)

- Seminude dancing bars

Salt Lake City currently regulates sexually oriented businesses according to the provisions of the United States and Utah constitutions.

Currently Ordinance 21A.36.140 permits sexually oriented businesses (SOB) in the CG, D-1, D-2, M-1 and M-2 zones and the Table of Permitted uses for Downtown Districts – Section 21A.30.050 permits sexually oriented businesses in the D-4 as well as D-1 and D-2 zones. There is an inconsistency between the SOB zoning provisions and the Council's policy statement for the downtown.

Council Members have adopted a policy statement for the revitalization and support of the downtown zones. Because of the inconsistent listing of which zones sexually oriented businesses are allowed in and the secondary impacts that sexually oriented businesses have on surrounding businesses and areas, Council Members have requested a temporary zoning ordinance that would prohibit a SOB from locating in the D-4, D-1 and D-2 zones. The Council could request a full review of the zones in which sexually oriented businesses are permitted and consider prohibiting those businesses in those zones that the Council is trying to revitalize and strengthen.

Several years ago the City Attorney's Office reviewed City ordinances that deal with sexually oriented businesses. This temporary zoning ordinance does not address any proposed revisions to the SOB sections of the City Code that may have been developed previously other than the allowed zoning locations. If the Council wishes, additional instruction could be given to the City Attorney's Office and issues in addition to the SOB zoning provisions could be addressed at future Council meetings.

With regard to the secondary effects that sexually oriented businesses have on the area in which they are located, the Council could choose to conduct studies using the City's resources or rely on accepted SOB land use studies from cities with similar demographics to Salt Lake City. Furthermore, the Council may rely on input from law enforcement personnel, constituents, business owners, real estate professionals, as well as the personal experience and knowledge of Council Members. For the purposes of review, Council staff relied on SOB land use studies from other cities and did not seek information from the City's Police Department or other public safety resources. Some of the cities studied were Phoenix, AZ, Tucson, AZ, Austin, TX, Houston, TX and Seattle, WA.

The City Attorney's Office has reviewed cases of the United States Supreme Court and other courts regarding local regulation of sexually oriented businesses, including but not limited to: *Young v. American Mini-Theatres, Inc.*, 417 U.S. 50 (1976); *Renton v. Playtime Theatres*, 475 U.S. 41 (1986); *FW/PBS, Inc. v. Dallas*, 493 U.S. 215 (1990); *Barnes v. Glen Theatre*, 501 U.S. 560 (1991); *City of Los Angeles v. Alameda Books*, 535 U.S. 425 (2002); *Z.J. Gifts D-2, L.L.C. v. City of Aurora*, 136 F.3d 683 (10<sup>th</sup> Cir. 1998); and *Essence, Inc. v. City of Federal Heights*, 285 F.3d 1272 (10<sup>th</sup> Cir. 2002)

The City Attorney's Office advises the City Council that findings regarding adverse secondary effects are incorporated in those cases.

The following secondary impacts have been found to result from the presence of sexually oriented businesses:

- A marked increase in sex offenses in areas with sexually oriented businesses. (Phoenix, AZ, Austin, TX)
- An increase in property crime and violent crimes in areas with sexually oriented businesses. (Phoenix, AZ)

- Illegal sexual conduct at adult businesses. (Tucson, AZ)
- An increase in crime such as homicide, rape, robbery, assault, burglary, theft and auto theft. (Garden Grove, CA, Los Angeles, CA, St. Paul, MN, Cleveland, OH, Oklahoma, City, OK, Amarillo, TX, Austin, TX)
- Depreciation or lower appreciation rates of property value. (Garden Grove, CA, Los Angeles, CA, Indianapolis, IN, St. Paul, MN, Austin, TX)
- Increase in residential and business occupancy turnover. (Whittier, CA)
- Presence of an SOB in an area can create a “dead zone” which is avoided by shoppers and families with children. (Dallas, TX)
- Deterioration of community character and quality of life. (Dallas, TX)
- Concentration of SOBs has higher negative impact on surrounding communities than one isolated SOB. (Dallas, TX)
- Increased police calls. (Newport News, VA)
- Increased insurance rates. (Seattle, WA)

Council staff has attached information from the Community Defense Counsel titled “Summaries of Secondary Effects Reports” for review by the Council.

With regard to the above mentioned impacts that sexually oriented businesses can have on areas, the Council might want to review their policy on the revitalization of downtown and determine if the sexually oriented businesses should be allowed in the downtown zones or other neighborhood or commercial zones.

### ➤ **CITY CODE SECTION 21A.36.140**

#### 21A.36.140 Sexually Oriented Businesses:

A. Purpose Statement: The purpose of this section is to establish reasonable and uniform regulation to prevent the concentration of sexually oriented businesses or their location in areas deleterious to the community of Salt Lake City and to regulate the signage of such businesses to control the adverse effects of such signage and to prevent their inappropriate exposure to the community. The provisions of this section are to be construed as a regulation of time, place and manner of the operation of these businesses consistent with the limitation provided by provisions of the United States and Utah constitutions.

B. Zoning Districts In Which Sexually Oriented Businesses Are Permitted: Subject to the additional restrictions set forth in subsections C, D and E of this section, sexually oriented businesses, as listed on the tables of principal uses set forth in part III of this title, for each zoning district or category of districts, shall be permitted as of right in the following zoning districts:

1. CG general commercial district;
2. D-1 central business district;
3. D-2 downtown support commercial district;
4. M-1 manufacturing district; and
5. M-2 heavy manufacturing district.

C. Required Distance From Other Uses: No sexually oriented business shall be located within a one thousand foot (1,000') radius of any place of worship, park, school or residential zoning district as measured in a straight line, without regard to intervening structures, from the property line of the school, park, place of worship or residential zoning district to the property line of the sexually oriented business.

D. Required Distance From Gateway Corridors: No sexually oriented business shall be permitted to locate within one hundred sixty five feet (165') of any gateway corridor. If any block shall be surrounded on all four (4) sides by a designated gateway then no sexually oriented business shall be permitted in that block.

E. Required Distance From Landmark Sites: No sexually oriented business shall be permitted within a three hundred thirty foot (330') linear distance on the block face of any landmark site. The distance shall be measured from the property line of the landmark site along the linear block face to the property line of the sexually oriented business.

F. Concentration Prohibited: No sexually oriented business shall be allowed within a one thousand foot (1,000') radius of another sexually oriented business.

G. Sign Regulations: Sexually oriented business signs shall be limited as follows:

1. No more than one sign shall be allowed on sexually oriented business premises;
2. No sign on the sexually oriented business premises shall be allowed to exceed eighteen (18) square feet;
3. No animation shall be permitted on or around any sexually oriented business sign or on the exterior walls or roof of the premises;
4. No descriptive art or designs depicting any activity related to, or inferring, the nature of the business shall be allowed on any sexually oriented business sign which shall contain alphanumeric copy only;
5. Only flat wall signs shall be permitted for any sexually oriented business;
6. Painted signs or painted wall advertising shall not be allowed; and
7. Other than the signs specifically allowed by this title the sexually oriented business shall not construct or allow to be constructed any temporary sign, banner, light or other device designed to draw attention to the business location.

H. Gateway Corridors: For the purposes of regulating sexually oriented businesses, gateway corridors shall include:

1. Beck Street from the northern city limits, becoming 300 West Street to 900 South Street;
2. 600 South Street from 200 East Street to 200 West Street;
3. 500 South Street from 200 East Street to 300 West Street;
4. Main Street from 600 South Street to North Temple Street;
5. State Street from 600 South Street to North Temple Street; and
6. West Temple Street from 900 South Street to North Temple Street. (Ord. 26-95 § 2(18-14), 1995)

➤ **BUDGET RELATED FACTS**

As noted in the land use studies conducted in comparable cities to Salt Lake City, the presence of sexually oriented businesses requires increased enforcement by public safety agencies. Increased enforcement may take the form of increased patrol and investigative services over levels which would need to be provided if the area did not contain a sexually oriented business. Besides the immediate expenses for additional police officers, the City's legal department and court function are also impacted by the secondary impacts of sexually oriented businesses.

If an area is allowed to have sexually oriented businesses, it is possible that property values would decrease (or increase at a reduced rate) comparable to if the area did not have a SOB. As an example of the downtown zones where the Redevelopment Agency of Salt Lake City (RDA) is funded by tax increments, the effect of lower property values and the resulting lower tax would result in lower revenue to the RDA.

The presence of sexually oriented businesses may also influence the location of new businesses to a specific area. Sexually oriented businesses may have a negative impact on occupancy rates, development opportunities and property values. If a sexually oriented business creates a "dead zone" where pedestrian activity is reduced and retailers are unable to attract patrons, sales tax revenue is impacted and unoccupied commercial and retailer space could increase.

cc: Rocky Fluhart, Cindy Gust-Jenson, Ed Rutan and Boyd Ferguson

File location: Michael\Staff Reports\