

**ACTION REQUEST FORM**

**DATE:** September 13, 2016  
**TO:** The Honorable Mayor and City Council  
**FROM:** A. Paul Norby, Director of Planning and Development Services

**COUNCIL ACTION REQUEST:**

Request for Public Hearing on Zoning Text Amendment proposed by City Attorney's Office.

**SUMMARY OF INFORMATION:**

Zoning Text Amendment proposed by the City Attorney's Office amending Chapter B of the *Unified Development Ordinances* requiring the amortization of nonconforming adult establishments in the CB zoning district. (UDO-272).

**PLANNING BOARD ACTION:**

**MOTION ON PETITION:** APPROVAL  
**FOR:** UNANIMOUS  
**AGAINST:** NONE  
**SITE PLAN ACTION:** NOT REQUIRED

## STAFF REPORT

**DOCKET #** UDO-272

**STAFF:** Gary Roberts, Jr. AICP

### **REQUEST**

This text amendment is proposed by the City Attorney's Office to amend Chapter B of the *Unified Development Ordinances* (UDO) to require the amortization of nonconforming adult establishments in the CB zoning district.

### **BACKGROUND**

Adult Establishments (as defined in the UDO) are currently allowed in the GB (General Business) and GI (General Industrial) districts provided certain spacing requirements are met. In 2003, UDO-062 removed the use of Adult Establishments as a permitted use in the CB Central Business district. Any such establishments in existence at that time have been allowed to continue in operation as a nonconforming use provided the operation did not cease for more than one (1) year. In response to a recent increase in illegal activity occurring in or around the one remaining Adult Establishment in the CB district, the City Attorney's Office has initiated a text amendment that would establish an amortization period whereby any such existing establishments in the CB district would cease to operate.

### **ANALYSIS**

Adult Establishments are a protected form of "freedom of speech" under the First Amendment of the United States Constitution. Local governments may however regulate the time, place, and manner of such operations. The North Carolina General Statutes state that sexually oriented businesses can cause adverse secondary impacts such as increases in crime rates and decreases in property values on neighboring properties (see Attachment A).

Currently there is one (1) nonconforming Adult Establishment in the CB district located at 515 North Cherry Street. UDO Text Amendment 272 has been prepared in response to the adverse secondary impacts of the nonconforming Adult Establishment in the CB district.

One of the purposes of the 2003 UDO amendment, which made a number of changes in permitted uses including prohibiting the location of Adult Establishments in the CB district, was to allow the district to revitalize and flourish again. The character of downtown has changed dramatically in the past decade, with the increase of residential and retail uses and tourism in the CB district. The City Attorney's Office has received complaints from residents in the vicinity of the nonconforming Adult Establishment about noise, illegal activity, and other breaches of the peace. The City Attorney's Office has also reviewed calls for service for the nonconforming Adult Establishment at 515 North Cherry Street. It is apparent that, because of its adverse secondary impacts, the nonconforming Adult Establishment is no longer compatible with the character of the CB district.

The proposed ordinance sets forth a date of December 31, 2019 within which nonconforming Adult Establishments in the CB district must cease operations. It is believed that the three-plus (3+) year amortization period is sufficient to allow an owner to recoup his or her investment.

**RECOMMENDATION**

**APPROVAL**

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**CITY-COUNTY PLANNING BOARD  
PUBLIC HEARING  
MINUTES FOR UDO-272  
SEPTEMBER 8, 2016**

**PUBLIC HEARING**

FOR:

Jason Thiel, 305 W 4<sup>th</sup> Street, Winston-Salem, NC 27101

- Jason Thiel spoke for The Downtown Winston-Salem Partnership as their President and stated that the Partnership is in support of the amortization provisions of this text amendment.

AGAINST: None

**WORK SESSION**

MOTION: Melynda Dunigan moved approval of the zoning petition.

SECOND: Clarence Lambe

VOTE:

FOR: George Bryan, Melynda Dunigan, Arnold King, Clarence Lambe, Tommy Hicks, Paul Mullican, Brenda Smith, Allan Younger

AGAINST: None

EXCUSED: None

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A. Paul Norby, FAICP  
Director of Planning and Development Services

UDO-272

AN ORDINANCE PROPOSED BY THE CITY ATTORNEY'S OFFICE  
TO AMEND CHAPTER B OF THE *UNIFIED DEVELOPMENT ORDINANCES*  
REQUIRING THE AMORTIZATION OF NONCONFORMING  
ADULT ESTABLISHMENTS IN THE CB DISTRICT

Be it ordained by the City Council of the City of Winston-Salem, North Carolina, that the *Unified Development Ordinances* is hereby amended as follows:

Section 1. Chapter B, Article II of the UDO is amended as follows:

**Chapter B – Zoning Ordinance**  
**Article II – Zoning Districts, Official Zoning Maps, and**  
**Uses**

**2-5 USE CONDITIONS**

**2-5.5 Adult Establishments**

**(A) Location**

No activities permitted under State law shall be conducted in adult establishments in the following locations:

- (1) **Residential Districts.** Adult establishments may not be located within a distance of one thousand (1,000) feet from any RM or RS District;
- (2) **School.** Adult establishments may not be located within a distance of one thousand (1,000) feet from any public or private school;
- (3) **Child Day Care Center.** Adult establishments may not be located within a distance of one thousand (1,000) feet from any child day care center;
- (4) **Other Adult Establishment.** Adult establishments may not be located within a distance of one thousand (1,000) feet from any other adult establishment.

**(B) Measurements**

All measurements shall be made by drawing straight lines from the nearest point of the lot line where the proposed adult establishment is to be located to the nearest point of the lot line or boundary of the closest RM or RS District; elementary, secondary or private school; or adult establishment.

**(C) Hours of Operation**

The hours of operation for Adult Establishments shall be limited to between the hours of 7:00 a.m. and 2:30 a.m.

**(D) Amortization of Nonconforming Adult Establishments in the CB District**

All nonconforming adult establishments in the CB District shall be discontinued on or before December 31, 2019.

Section 2. This ordinance shall be effective upon adoption.

**§ 160A-181.1. Regulation of sexually oriented businesses.**

(a) The General Assembly finds and determines that sexually oriented businesses can and do cause adverse secondary impacts on neighboring properties. Numerous studies that are relevant to North Carolina have found increases in crime rates and decreases in neighboring property values as a result of the location of sexually oriented businesses in inappropriate locations or from the operation of such businesses in an inappropriate manner. Reasonable local government regulation of sexually oriented businesses in order to prevent or ameliorate adverse secondary impacts is consistent with the federal constitutional protection afforded to nonobscene but sexually explicit speech.

(b) In addition to State laws on obscenity, indecent exposure, and adult establishments, local government regulation of the location and operation of sexually oriented businesses is necessary to prevent undue adverse secondary impacts that would otherwise result from these businesses.

(c) A city or county may regulate sexually oriented businesses through zoning regulations, licensing requirements, or other appropriate local ordinances. The city or county may require a fee for the initial license and any annual renewal. Such local regulations may include, but are not limited to:

- (1) Restrictions on location of sexually oriented businesses, such as limitation to specified zoning districts and minimum separation from sensitive land uses and other sexually oriented businesses;
- (2) Regulations on operation of sexually oriented businesses, such as limits on hours of operation, open booth requirements, limitations on exterior advertising and noise, age of patrons and employees, required separation of patrons and performers, clothing restrictions for masseuses, and clothing restrictions for servers of alcoholic beverages;
- (3) Clothing restrictions for entertainers; and
- (4) Registration and disclosure requirements for owners and employees with a criminal record other than minor traffic offenses, and restrictions on ownership by or employment of a person with a criminal record that includes offenses reasonably related to the legal operation of sexually oriented businesses.

(d) In order to preserve the status quo while appropriate studies are conducted and the scope of potential regulations is deliberated, cities and counties may enact moratoria of reasonable duration on either the opening of any new businesses authorized to be regulated under this section or the expansion of any such existing business. Businesses existing at the time of the effective date of regulations adopted under this section may be required to come into compliance with newly adopted regulations within an appropriate and reasonable period of time.

(e) Cities and counties may enter into cooperative agreements regarding coordinated regulation of sexually oriented businesses, including provision of adequate alternative sites for the location of constitutionally protected speech within an interrelated geographic area.

(f) For the purpose of this section, "sexually oriented businesses" means any businesses or enterprises that have as one of their principal business purposes or as a significant portion of their business an emphasis on matter and conduct depicting, describing, or related to anatomical areas and sexual activities specified in G.S. 14-202.10. Local governments may adopt detailed definitions of these and similar businesses in order to precisely define the scope of any local regulations. (1998-46, s. 1.)

Attachment A

UDO-272

APPROVAL  
STATEMENT OF CONSISTENCY WITH COMPREHENSIVE PLAN  
UDO TEXT AMENDMENT 272 AMENDING CHAPTER B OF THE UDO TO REQUIRE  
THE AMORTIZATION OF NONCONFORMING  
ADULT ESTABLISHMENT USE IN CB ZONING DISTRICT

The proposed UDO Text Amendment 272 (“Text Amendment”) amending chapter B of the UDO to require the amortization of nonconforming adult establishment use in CB zoning district is consistent with the *Legacy Comprehensive Plan* and approval of the Text Amendment is reasonable and in the public interest because said Text Amendment, if approved, will, pursuant to G.S. 160A-181.1, (i) eliminate the negative secondary impacts, including but not limited to crime, breaches of the peace, and noise of the existing non-conforming adult establishment use in the CB district; (ii) remove from the CB district the existing non-conforming adult establishment use that is too close to residential uses, that provides not buffer or separation from said residential uses and that is simply incompatible with said residential uses; and (iii) remove from the CB district the existing non-conforming adult establishment use that is no longer compatible with other adjacent and surrounding uses.