

## **BOARD OF YAKIMA COUNTY COMMISSIONERS**

### **ORDINANCE 8-2012**

IN THE MATTER OF AMENDING ORDINANCE 1-2000 AND YAKIMA COUNTY CODE TITLE 15, LAST AMENDED BY ORDINANCE 1-2012, PERTAINING TO YAKIMA COUNTY ZONING, AND IN THE MATTER OF AMENDING ORDINANCE 10-1985 AND YAKIMA COUNTY CODE TITLE 15A, LAST AMENDED BY ORDINANCE 7-2011, PERTAINING TO YAKIMA URBAN GROWTH AREA ZONING.

WHEREAS, after providing public notice of a special agenda meeting, the Board of Yakima County Commissioners adopted Resolution 310-2012 on August 14, 2012 declaring a six-month zoning moratorium on the establishment and operation of adult entertainment facilities within the unincorporated areas of Yakima County; and,

WHEREAS, Resolution 382-2012, adopted by the Board at a duly advertised public hearing on October 9, 2012, adopted findings in support of the six-month zoning moratorium declared on August 14, 2012; and,

WHEREAS, said findings in support of the six-month zoning moratorium, adopted by Resolution 382-2012, identified that Titles 15 and 15A of the Yakima County Code must be amended to insure protection of Constitutional Due Process and Free Speech rights, and that time was needed to consider amendments to the regulation of adult entertainment facilities within the county; and,

WHEREAS, the Board requested the Yakima County Planning Commission and staff to prepare proposed official controls, in the form of text amendments to development regulations in the Yakima County Zoning Ordinance (YCC Title 15) and Yakima Urban Growth Area Zoning Ordinance (YCC Title 15A), to guide and regulate the physical development of land uses which feature or emphasize adult entertainment; and,

WHEREAS, the Yakima County SEPA Responsible Official reviewed the potential environmental impacts of the proposed text amendments to change the type of procedure used to review adult entertainment facilities and the proximity of such uses to residential uses, issued a Determination of Non-Significance (DNS) on September 19, 2012 for comment, and after considering all comments received, retained said DNS on October 9, 2012; and,

WHEREAS, the Planning Commission considered the proposed text amendments in light of Planning Division staff recommendations and public and agency comments received in writing concerning the proposed zoning regulations at a duly advertised public hearing held on September 19, 2012; and,

WHEREAS, after deliberating on the proposed amendments, the Planning Commission issued its Findings of Fact and Recommendation dated September 19, 2012 for consideration by the Board; and,

WHEREAS, the Board held a duly advertised public hearing on October 23, 2012, for the purpose of considering the amendments to Yakima County Code Titles 15 and 15A, wherein the Board offered the opportunity for interested persons to present oral and written testimony; and,

WHEREAS, the Board deliberated on the proposed text amendments on October 23, 2012, after considering the Planning Commission's findings and recommendations, and Planning Division staff recommendations; and,

WHEREAS, after considering all testimony and materials presented, the Board believes it is in the best public interest to amend Yakima County Code Titles 15 and 15A in a manner consistent with the Planning Commission's Findings and Recommendation, attached hereto as Exhibits A and B; now, therefore,

**BE IT HEREBY ORDAINED BY THE BOARD OF YAKIMA COUNTY COMMISSIONERS:**

**Section 1. Findings of fact.** The Board hereby adopts its own findings of fact and statement setting forth the factors considered at the public hearing and its own analysis of findings considered to be controlling:

**Factors Considered at and after the October 23, 2012 Public Hearing**

A. Following proper procedures, the Board has carefully considered the Planning Commission's Findings and Recommendation on this matter, attached hereto as Exhibits A and B, and accepts the recommendations as substantiated by the findings.

**Analysis of Findings Considered to be Controlling**

B. The added required separation distance between previously existing legally nonconforming residential uses from new adult entertainment facilities in industrial and light industrial districts, which is roughly a one block distance, maintains an adequate inventory of developable sites. The separation distance is specific, measurable, and is an objective criterion that will address adverse effects relative to the proximity of these uses.

C. The changes and legislation enacted herein further the purpose and objectives of the Yakima County and Yakima Urban Area Comprehensive Plans.

district in Table 15.18 of the Yakima County Code to a Type I use as follows. Much of the existing text within the table is unchanged; therefore the remainder of the table is omitted here for clarity:

	Agricultural		Forest Watershed		Mountain Rural		Valley Rural		Remote / ELDPP		Rural Transitional		One-Family Residential		Two-Family Residential		Multi-Family Residential		Rural Settlement		Professional Business		Local Business		Commercial		Highway / Tourist Commercial		Industrial		Mining	
	AG	FW	MR	VR	R/E L	RT	R1	R2	R3	RS	B1	B2	C	HC	I	MIN	(H) I	(H) I	(H) I	(H) I	(H) I	(H) I	(H) I	(H) I	(H) I	(H) I	(H) I	(H) I	(H) I	(H) I		
<b>AMUSEMENT AND RECREATION</b>																																
Adult entertainment facility* (ff)																																

**Section 3. Yakima County Urban Growth Area Ordinance land use table.** The existing use, "Adult entertainment facility" is changed from a Class 2 use in the Light Industrial (M-1) zoning district in the "Permitted Land Uses" Table 4-1 in Chapter 15A.04 of the Yakima County Code to a Class 1 use as follows. The existing text within other areas of the table is unchanged; therefore, the remainder of the table is omitted here for clarity:

Table 4-1	SR	R1	R2	R3	B1	B2	SCC	LCC	GC	M1	M2
	Suburban Residential	Single-Family Residential	Two-Family Residential	Multi-Family Residential	Professional Business	Local Business	Small Convenience Center	Large Convenience Center	General Commercial	Light Industrial	Heavy Industrial
<b>AMUSEMENT AND RECREATION</b>											
Adult Entertainment Facilities (*), (#)										(H) I	

**Section 4.** Sections not modified by this ordinance remain as originally adopted in Ordinance 1-2000 and codified in Yakima County Code Title 15, or as originally adopted in Ordinance 10-1985 and codified in Yakima County Code Title 15A, together with all amendments to date.

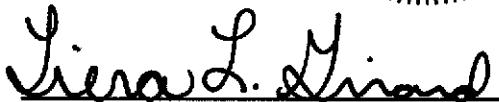
**Section 5. Severability.** The provisions of this ordinance are declared separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, sections, or portion of this ordinance, or the invalidity of the application thereof to any person or circumstance, shall not affect the validity of the remainder of the ordinance, or the validity of its application to any other persons or circumstances.

**Section 6. Effective date.** This ordinance shall be effective immediately.

Dated this 30<sup>th</sup> day of Oct. 2012.



Attest:



Tiera Girard, Clerk of the Board

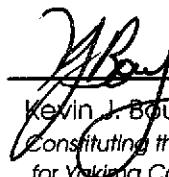
BOARD OF YAKIMA COUNTY  
COMMISSIONERS



J. Rand Elliott, Chairman



Michael D. Leita, Commissioner



Kevin J. Bouchey, Commissioner  
*Constituting the Board of County Commissioners  
for Yakima County, Washington*

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## EXHIBIT A

### Yakima County Planning Commission Findings of Fact and Recommendation

**In the Matter of Recommending Official  
Controls Related to Zoning Regulation of  
Adult Entertainment Businesses**      )

**File No.: TXT12-10**

Pursuant to RCW 36.70.550, RCW 36.70.600, and RCW 36.70.610, the Planning Commission makes the following statements and recommendations:

#### **Reasons for Action**

1. Zoning regulations adopted by Yakima County on June 24, 2011 provided for a Type 2 zoning review procedure for the review of new adult entertainment businesses in specified zones, subject to minimum separation requirements from specified protected uses and areas. A Type 2 zoning review includes a review by the Administrative Official to consider compatibility (YCC 15A.04.020(b)). An order issued on July 17, 2012, by the U.S. District Court for the Eastern District of Washington, in the case captioned *Muffett v. City of Yakima*, No. CV-10-3092-RMP, ruled that the criteria for review of compatibility were too broad in the City of Yakima's Urban Area Zoning Ordinance. It is likely that similar provisions would also be considered a prior restraint on constitutionally protected speech in the corresponding sections of the Yakima County Zoning Ordinance (YCC Title 15) and Yakima County's Yakima UGA Zoning Ordinance (YCC Title 15A).
2. On August 14, 2012, the Board of Yakima County Commissioners adopted a moratorium on proposed adult businesses in the unincorporated county to allow time to develop draft regulations for its consideration. A public hearing is scheduled for October 2, 2012 in accordance with RCW 36.70.795 and RCW 36.70A.390. The proposed amendments to Yakima County Code Titles 15 and 15A are recommended to achieve the purpose of the moratorium.
3. The Board requested the Planning Commission and staff to prepare proposed official controls to change the procedure used in review and evaluation of the physical development of land uses which feature or emphasize adult entertainment, consistent with the Court's decision.

#### **Findings of Fact**

4. On September 4, 2012, notification for expedited review of development regulation amendment was provided to the Washington State Department of Commerce in accordance with RCW 36.70A.106. Acknowledgement that Commerce received the notification was received by the Yakima County Planning Division on September 6, 2012.
5. The Planning Commission held a meeting on September 19, 2012, to consider issues, proposed text amendments, and to formulate direction for the zoning regulations.
6. On September 19, 2012, a Determination of Non-Significance and Adoption of Existing Environmental Document was issued and mailed with a copy of the SEPA environmental checklist to interested agencies and parties with environmental expertise. The adopted document was the Final Determination of Non-Significance, issued March 31, 2011 (File SEP 2011-00012). The adopted document was previously sent to agencies with jurisdiction and

other interested agencies on March 31, 2011, and the public can read or obtain copies of the document at Yakima County Public Services, 128 North 2nd Street, Fourth Floor County Courthouse, Yakima, WA, 98901, 8:00 A.M. – 4:00 P.M. Monday through Friday.

7. On September 9, 2012, notice of Adoption of Existing Environmental Document and public hearing was published on page 4D of the Yakima Herald-Republic.
8. On September 19, 2012, the Planning Commission held a duly advertised public hearing at the Yakima County First Street Conference Room on the draft zoning regulations entitled Ordinance 8-2012 and provided an opportunity for all attendees to be heard.
9. The Planning Commission accepted oral comments at the public hearing and accepted additional written comments until the public hearing was adjourned.
10. A packet of information was submitted by a private community organization. No other written comments were received from members of the public.
11. The Planning Commission deliberated following the public hearing on September 19, 2012, carefully reviewing each page and suggesting revisions to the draft zoning regulations entitled Ordinance 8-2012 as deemed appropriate.

#### **Factors Considered at and after the Public Hearing**

The following comments were provided at and after the public hearing on September 19, 2012 and considered by the Planning Commission:

12. Staff presented maps showing industrially-zoned locations and existing nonconforming residential uses entered as Exhibits 1 through 6 of the Planning Commission's hearing record.
13. Exhibit 7 of the Planning Commission's hearing record contains results of research conducted on secondary effects of adult entertainment facilities and other items.
14. Oral testimony in support of increased regulation of the adult entertainment industry presented results of research from other areas outside Yakima County and favored the strongest possible regulation of adult entertainment facilities.
15. Oral testimony urged the Planning Commission to consider that that nudity is not inappropriate and that Yakima County should not impose any additional limitations on adult businesses.

#### **Analysis of Findings Considered to Be Controlling**

16. The proposed amendments to YCC Titles 15 and 15A are intended to ensure that adult entertainment facilities are located only in appropriate locations where secondary effects can be minimized.
17. Adult entertainment facilities are appropriately classified as a Type I Permitted Use in Industrial (I) Zoning District in the proposed amendments to YCC Title 15, where the zoning district's purpose is to preserve areas for industrial uses, compatible related uses, and certain kinds of commercial uses which are most appropriately located as neighbors of industrial uses. YCC Title 15 states that "Type I Permitted Uses are allowed subject to review by the Administrative Official for compliance with 15.12.035," which lists that review for Type I

permits includes compliance with the standards and provisions of the zoning ordinance, that adequate infrastructure improvements exist, and that if the proposed Type I use does not meet one or more of the requirements, it shall either be conditioned or denied. YCC 15.12.015(2), 15.12.035.

18. Adult entertainment facilities are appropriately classified as a Class (1) Use in the Light Industrial (M-1) Zoning District in the proposed amendments to YCC Title 15A, where the zoning district's purpose is to provide areas for light manufacturing, processing, research and wholesale trade, storage and distribution facilities, and to minimize conflicts between uses in the Light Industrial District and surrounding land uses. YCC Title 15A states that Class (1) uses "... are considered compatible and are permitted on any site in the district provided district standards are met. The Administrative Official shall review Class (1) uses for compliance with the provisions and standards of this Title." YCC 15A.02.020
19. Required separation distances of 800 feet from residential districts, community entranceways and listed land uses are adequate existing measures for assuring that adult entertainment facilities are sited in locations which minimize adverse secondary effects. The distance of 800 feet from residential districts and listed land uses is adequate to mitigate adverse impacts based on crime studies, but is not so great as to take too much property out of consideration as available sites for the purposes of complying with case law.
20. Additional distances between adult entertainment facilities and nonconforming residences located in close proximity, set forth in Exhibit B to Ordinance 8-2012 attached hereto, would provide protection against the secondary effects associated with such businesses, including, without limitation, the potential for underage children accessing such facilities.
21. The number and types of uses listed from which adult entertainment facilities must be separated by 800 feet in YCC Titles 15 and 15A are adequate to provide the adequate benefits of separation from adult entertainment facilities.
22. An adequate inventory of land and developable sites exists to comply with the requirement to allow adult entertainment facilities featuring content that has Constitutional protection.

#### **Recommendation**

23. Review under the State Environmental Policy Act was conducted adequately.
24. In the Planning Commission's judgment, the proposed amendments to YCC Titles 15 and 15A are required to preserve the integrity of the Yakima County and Yakima Urban Area comprehensive plans and assure their systematic execution.
25. The proposed amendments to YCC Titles 15 and 15A are specific regulations and controls that effectively define the type and degree of permissible land uses in each of the identified zones.
26. The Planning Commission recommends that, prior to adoption, the Board consider whether the mutual exclusion language that was developed in YCC 15.18.030(ff)(1)(b) and 15A.09.200(2)(b) be reviewed by Corporate Counsel for the purpose of consideration of adverse legal consequences.

**Motion**

27. The Yakima County Planning Commission recommends the proposed amendments to YCC Titles 15 and 15A to the Board of County Commissioners for Yakima County for adoption.

By: Ed Burns  
Seconded: John Crawford  
In Favor: 5  
Opposed: 0

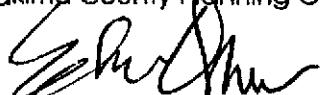
Action taken this 19 day of September, 2012

Alfred D. Schwegger  
Alfred G. Schwegger, Chair  
Yakima County Planning Commission

9/19/2012

Date

Zella West, Vice Chair  
Yakima County Planning Commission



Edward Burns, Planning Commissioner

Date

Nancy  
Nancy Charron, Planning Commissioner

9-19-12

Date

Patrick Rawn, Planning Commissioner

Date

John Crawford  
John Crawford, Planning Commissioner

9-19-12

Date

Gary Ekstedt  
Gary Ekstedt, Planning Commissioner

9/19/12

Date

ATTEST:

Steve Erickson  
Steve Erickson, Planning Commission Secretary

9/19/2012

Date

## EXHIBIT B

### to Yakima County Ordinance 8-2012

#### Alternative residential nonconforming uses buffer language

**Section 1.** Subsection 15.18.030(ff) of the Yakima County Code is amended to read:

(ff) Adult Entertainment Facilities, as defined in Section 15.08.027, and uses listed in subsections (1)(b) and (c) of this subsection shall comply with the requirements of this subsection. The purpose and intent of requiring standards for adult entertainment facilities and listed uses is to mitigate the adverse secondary effects caused by such facilities and to maintain compatibility with other land uses and services permitted within the County. The standards established in this section shall not be construed to restrict or prohibit the following activities or products: (i) plays, operas, musicals, or other dramatic works that are not obscene; (ii) classes, seminars, or lectures which are held for a serious scientific or educational purpose that are not obscene; and (iii) exhibitions, performances, expressions, or dances that are not obscene.

(1) Separation Requirements. Adult entertainment facilities shall be permitted as indicated in Table 15.18 "Allowable Land Uses" set forth in Chapter 15.18 only if the following separation requirements are met:

(a) No adult entertainment facility shall be located closer than eight hundred feet to any residential zoning district including, but not limited to, the R1, R2, R3, RT, VR, and RS zoning districts designated in this title, and the R1, R2, R3 and SR zoning districts designated in YCC Title 15A (Yakima Urban Area Zoning). This separation requirement applies whether such residential zoning district is located within or outside the boundaries of any adjacent city, town, or other zoning jurisdiction.

(b) No adult entertainment facility shall be located closer than eight hundred feet to any of the following uses or community entranceways, and no use listed in this subsection (b) shall be located closer than eight hundred feet to any adult entertainment facility, whether or not such use or entranceway is located within or outside the corporate boundaries of any adjacent city or town:

- i. Any public park;
- ii. Any public library;
- iii. Any public or private nursery school or preschool;
- iv. Any public or private primary or secondary school;
- v. Any licensed day care;
- vi. Any community youth center;
- vii. Any church or other house of worship;

- viii. Any multifamily residential use located in the B1, B2, or C zoning districts;
- ix. Any other adult entertainment facility;
- x. Any ((existing)) establishment selling alcoholic beverages for consumption on premises.
- xi. Any entranceway to the community, including rights-of-way of State highways (SR 12, SR 22, SR 24, SR 223, SR 241, SR 97, SR 821, SR 823, I-82), Yakima Valley Highway, and the intersection of two streets nearest any entranceway or gateway to the community identified in any adopted neighborhood plan, whether such entranceway is located within or outside the corporate boundaries of any adjacent city or town.

(c) No adult entertainment facility shall be located closer than four hundred feet to any legally established, nonconforming single-family dwelling, whether such dwelling is located within or outside the corporate boundaries of any adjacent city or town.

(2) Measurement.

(a) The eight-hundred-foot buffer required by subsection (1)(a) and (b) of this subsection shall be measured by extending a straight line from the nearest point on the property line of the lot containing the proposed adult entertainment facility to the nearest point on the boundary lines of the zoning districts, parcels containing uses, and the right-of-way of entranceways listed in subsection (1) of this subsection.

(b) The four-hundred-foot buffer required by subsection (1)(c) of this subsection shall be measured by extending a straight line from the nearest point on the edge of the improved area of the proposed adult entertainment facility use, such as a parking area or structure other than a sign, to the nearest part of a structure containing a single-family dwelling.

(3) The separation requirements of subsection (1) of this subsection may only be reduced through the provisions of Section 15.70.040, Variances.

(4) Signage. Signage of adult entertainment facilities shall comply with the provisions of YCC Chapter 15.66, Signs, together with the following specific conditions. Each adult business use shall be allowed one on-premise sign, in addition to the entrance sign required by YCC Subsection 5.06.200(10), if applicable, which shall be limited to displaying the name of the establishment, the street address, the days and hours of operation, restrictions on the age of persons that may be admitted to the building and the nonspecific identification of the nature of the stock-in-trade or entertainment offered therein (e.g., "adult entertainment," "adult films"). Nowhere on the signage or on the building visible to outside passersby shall appear any verbiage, insignias, pictures, drawings or other descriptions suggestive of sexual acts or actions, or which represent the sexually oriented material and/or performances of the adult entertainment use.

**Section 2.** Section 15A.09.200 of the Yakima County Code is amended to read:

**15A.09.200 Adult Entertainment Facilities and Separated Uses.**

- (1) **Scope of Restrictions.** All adult entertainment facilities and uses listed in subsections (2)(b) and (c) of this section shall comply with the requirements of this section. The purpose and intent of requiring standards for adult entertainment facilities and listed uses is to mitigate the adverse secondary effects caused by such facilities and to maintain compatibility with other land uses and services permitted within the County. The standards established in this section shall not be construed to restrict or prohibit the following activities or products: (i) plays, operas, musicals, or other dramatic works that are not obscene; (ii) classes, seminars, or lectures which are held for a serious scientific or educational purpose that are not obscene; and (iii) exhibitions, performances, expressions, or dances that are not obscene.
- (2) **Separation Requirements.** Adult entertainment facilities shall be permitted as indicated in Table 4-1 "Permitted Land Uses" set forth in Chapter 15A.04 only if the following separation requirements are met:
  - (a) No adult entertainment facility shall be located closer than eight hundred feet to any residential zoning district including, but not limited to, the SR, R1, R2 and R3 zoning districts designated in this title, and the R1, R2, R3, RT, VR, and RS zoning districts designated by YCC Title 15 (Zoning). This separation requirement applies whether such residential zoning district is located within or outside the city limits of any adjacent city or zoning jurisdiction.
  - (b) No adult entertainment facility shall be located closer than eight hundred feet to any of the following uses or community entranceways, and no use listed in this subsection (b) shall be located closer than eight hundred feet to any adult entertainment facility, whether or not such use or entranceway is located within or outside the city limits of any adjacent city:
    - (i) Any public park;
    - (ii) Any public library;
    - (iii) Any public or private nursery school or preschool;
    - (iv) Any public or private primary or secondary school;
    - (v) Any licensed day care;
    - (vi) Any community youth center;
    - (vii) Any church or other house of worship;
    - (viii) Any multifamily residential use located in the B1, B2, SCC, LCC, or GC ((, or CBDS)) zoning districts;
    - (ix) Any other adult entertainment facility;
    - (x) Any ((existing)) establishment selling alcoholic beverages for consumption on premises.
    - (xi) Any entranceway to the community, including rights-of-way of State highways (SR 12, SR 24, SR 97, I-82), and the intersection of two streets nearest any entranceway or gateway to the community identified in any adopted neighborhood plan, whether such entranceway is located within or outside the city limits of any adjacent city or zoning jurisdiction.

(c) No adult entertainment facility shall be located closer than four hundred feet to any legally established, nonconforming single-family dwelling, whether such dwelling is located within or outside the corporate boundaries of any adjacent city or town.

(3) Measurement.

(a) The eight-hundred-foot buffer required by subsections (2)(a) and (b) of this section shall be measured by extending a straight line from the nearest point on the property line of the lot containing the proposed adult entertainment facility to the nearest point on the boundary lines of the zoning districts, parcels containing uses, and the right-of-way of entranceways listed in subsection (2) of this subsection.

(b) The four-hundred-foot buffer required by subsection (2)(c) of this subsection shall be measured by extending a straight line from the nearest point on the edge of the improved area of the proposed adult entertainment facility use, such as a parking area or structure other than a sign, to the nearest part of a structure containing a single-family dwelling.

(4) The separation requirements of subsection (2) of this section may only be reduced through the provisions of Chapter 15A.21, Variances.

(5) Signage. Signage of adult entertainment facilities shall comply with the provisions of YCC Chapter 15A.08, Signs, together with the following specific conditions. Each adult business use shall be allowed one on-premise sign, in addition to the entrance sign required by YCC Subsection 5.06.200(10), if applicable, which shall be limited to displaying the name of the establishment, the street address, the days and hours of operation, restrictions on the age of persons that may be admitted to the building and the nonspecific identification of the nature of the stock-in-trade or entertainment offered therein (e.g., "adult entertainment," "adult films"). Nowhere on the signage or on the building visible to outside passersby shall appear any verbiage, insignias, pictures, drawings or other descriptions suggestive of sexual acts or actions, or which represent the sexually oriented material and/or performances of the adult entertainment use.

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