

AGENDA

Finance and Economic Development Committee Meeting

Tuesday, November 18, 2014

5:00 p.m. – 6:00 p.m.

South Conference Room

- 1. Call to Order**
- 2. Approval of the October 9, 2014 meeting minutes**
- 3. Development Updates**
- 4. Economic Development Element of the Comprehensive Plan**
- 5. Adult Entertainment Uses**
- 6. Pacific Highway South Corridor – Community Commercial Zoning
(252nd Street to 272nd Street)**
- 7. Committee member comments**

MINUTES – FINANCE AND ECONOMIC DEVELOPMENT COMMITTEE MEETING

October 9, 2014

South Conference Room

21630 11th Avenue South, Des Moines, WA

Council Members

Chair Matt Pina

Jeremy Nutting

City Staff

Tony Piasecki – City Manager

Michael Mathias – Asst. City Manager

Dan Brewer – PBPW Director

Denise Lathrop – Community Development Mgr

Grant Fredricks – Consultant

George Delgado – Police Chief

1. Call to Order

The meeting was called to order at 5:35 p.m. by Chair Matt Pina

2. Approval of the August 14, 2014 Meeting Minutes

Minutes approved as submitted.

3. Development Updates

The following projects were discussed:

- Landmark on the Sound
- Artemis Hotel
- Waterview Crossing
- DMCBP
- Tryg Fortun Property
- Marina Development Project
- Highline Place
- Wesley Homes Master Plan
- Adriana

4. Economic Development Element of the Comprehensive Plan

Assistant City Manager Matthias provided a summary of the draft Economic Development Element for the Comprehensive Plan. Matthias discussed the draft policies, and pointed out that once the Council provided direction on the policy statements, staff would prepare a set of strategies and action items for each policy. If the Council ultimately decided to include an Economic Development element in the Comprehensive Plan, staff would use the action items to develop an Economic Development Strategic Plan for use as a guiding and strategic document for economic development activities.

5. Pacific Highway South Land Use Designations (240th Node)

Community Development Manager Lathrop provided a summary of the October 1st community workshop, where members of the community provided feedback on the three land use concepts that reflected input from the March 26th Open House and the June 12th Council Finance and Economic Development Committee meeting. Lathrop indicated that staff would be preparing a hybrid land use concept that reflected the input staff received from the community. Chair Pina requested that staff make sure to label the hybrid concept as coming from the community. Staff will prepare land use designations for incorporation into the update of the Comprehensive Plan. PB&PW Director Brewer pointed out the importance of completing this step, and there was consensus from the committee.

6. Pacific Highway South Policy Discussion (272nd Node)

Community Development Manager Lathrop discussed options for addressing the remainder of the corridor currently zoned community commercial (C-C).

Option 1: Consider changing the zoning regulations for the commercial properties evaluated during the Envision Midway, similar to the process that was followed to create the T-C Transit Community Zone. The remaining area to be considered includes those properties zoned C-C Community Commercial between S 252nd Street and S 272nd Street.

Option 2: Similar to what is currently being done at the S 240th Street Node, looking at a larger subarea around the S 272nd Street Node and possibly around S 260th Street Node to identify opportunities to expand the commercial land supply. This would include developing land use options for consideration by citizens, stakeholders and Council and establishing Comprehensive Plan land use designations and goals/policies/ strategies regarding future vision for this area. Upon completion of this work, Council would have the option of adopting corresponding zoning regulations for this area. It is likely the zoning designations would be similar to what would be developed at the Pacific Highway S/S 240th Street Node.

PB&PW Director Brewer discussed the importance of taking a fresh look at the potential work program items, so that the Council's/Committee's highest priority policy issue is focused on next year. Staff resources will be extremely limited for the remainder of 2014 and the first 6 months of 2015 to: 1) prepare the update to the Comprehensive Plan, 2) respond to the Draft EIS for the extension of link light rail to the Federal Way Transit Center, 3) addressing land use proposals. Chair Pina indicated that potential policy work items should be tabled for discussion at the November 15th Council retreat. Councilmember Nutting concurred.

Chair Pina indicated that if work on the C-C zoned properties was the direction chosen by the Council, that he felt that Option 1 (above) would be the appropriate direction, taking a look at building heights, setback and buffers, and allowed uses.

7. Adult Entertainment/Uses Code Discussion

City Manager Piasecki introduced the topic by providing a brief review of the permitted uses Table from DMMC 18.52-010B, Chapter 18.160 DMMC, and Chapter 5.48 DMMC. Piasecki indicated that staff would be conducting some research on what additional regulations, if any, can be imposed on this use. Police Chief Delgado provided a short discussion on some of the enforcement activities and neighborhood concerns associated with the two existing adult uses locations in the Pacific Ridge area. The topic will be scheduled for further discussion at the next Committee meeting.

8. Committee Member Comments

None.

The next regular meeting is scheduled for November 13th, 2014, from 5:30-6:50 p.m. in the South Conference room.

Adjourned at 6:52 p.m.

Respectfully submitted by:

Dan Brewer, Planning, Building and Public Works Director

Tim George, Assistant City Attorney
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**OFFICE OF THE
DES MOINES
CITY ATTORNEY**

Memo

Date: November 6, 2014
To: Council Finance & Economic Development Committee
From: Tim George, Assistant City Attorney
Re: Adult Entertainment

Introduction

Local governments regulation of sexually-oriented businesses and services, including movie theaters, bookstores, video stores, adult-only hotels/motels, massage parlors, peep shows, and erotic dancing establishments must be carefully considered in light of federal and state constitutional guarantees regarding freedom of expression.

Regulations imposed on sexually-oriented businesses have been challenged in the courts over many years. The result of these challenges is a body of court decisions that conclude that *local governments may impose reasonable time, place, and manner regulations on adult businesses as long as a substantial public interest in regulating the use (in a way that does not suppress speech) is demonstrated, and as long as reasonable alternative locations are provided for the use.* While it is established that local governments may not totally ban sexually-oriented businesses, location and licensing restrictions may be imposed since the courts recognize that communities are entitled to protect themselves against the "secondary effects" of such businesses.

Washington cities and counties have enacted a variety of regulatory approaches for adult entertainment businesses. The primary focus has been on zoning and licensing regulations. These regulations help facilitate enforcement of legitimate location and distance requirements and help law enforcement monitor potential criminal activity. The issuance of adult business licenses is generally contingent on compliance with regulations regarding interior illumination, floor plan, distance between performers and patrons,

physical contact between employees and patrons, stage height, door height, sight lines, and so forth. According to the courts, licensing requirements must establish clear guidelines and standards which limit the discretion of the licensing official, and must expressly limit the time a locality has to act on a license application.

Court Decisions

The cases listed below are "settled law" for purposes of municipal regulation of adult entertainment in Washington State. There have been no major challenges to local government ordinances in the past few years.

- [*Acorn Investments v. City of Seattle*](#), 887 F.2d 219 (1989) - Cannot require identities of owners of adult video booths

In this decision the 9th Circuit Court of Appeals struck down as unconstitutional a Seattle city ordinance that required applicants for businesses with adult video viewing booths to also provide the identities of all owners.

- [*Adult Entertainment v. Pierce County*](#), 57 Wn. App. 435 (1990) - Licenses must be processed quickly; open booths okay

This case is important because it requires that a license to engage in adult business be issued or denied within a period that is reasonable brief under the circumstances. It also held that open booth requirements for businesses displaying sexually explicit videotapes are valid.

- [*BSA, Inc. v. King County*](#), 804 F.2d 1104 (1984) - Topless dancing okay as free expression

Complete ban on topless dancing directly suppresses free expression and is unconstitutional.

- [*City of Everett v. Heim*](#), 71 Wn. App. 392, 859 P.2d 55 (1993) - Touching patrons not allowed

Ordinance forbidding entertainers from touching, fondling, or caressing patrons, sitting on a patron's lap, or separating a patron's legs is constitutional.

- [*City of Los Angeles v. Alameda Books, Inc.*](#), 122 S.Ct. 1728, 70 USLW 4369 (2002) - No multiple adult businesses in one building

The U.S. Supreme Court upheld the city's ordinance which prohibited the establishment or maintenance of more than one adult entertainment business in

the same building. The court held that the city could reasonably rely on a study it conducted some years before enacting the present version of the ordinance to demonstrate that its ban on multiple-use adult establishments served its interest in reducing crime.

- [*Colacurcio v. City of Kent*](#), No. 9636197, ___F. 3d___ (1998, 9th Cir.) - Ten-foot rule for nude dancers okay

Ordinance requiring nude dancers to maintain 10 foot distance from patrons is permissible under the First Amendment because it is justified without reference to the content of the regulated speech, prevents public sexual contact, and leaves open alternative channels for the protected speech.

- [*D.C.R. Entertainment v. Pierce County*](#), 55 Wn. App. 505, 778 P.2d 10 (1989) - Must issue AE license within reasonable time

County auditor has no discretion to deny an adult entertainment license; issuance of license is mandatory when grounds for denial are not present. A county may deny a license only if ordinance violations are so pervasive that denying a license is the only practical remedy.

- [*Ino Ino, Inc. v. Bellevue*](#), 132 Wn.2d 103 (1997) - Background checks, distance rules, illumination, hours of dancing, secondary impacts

Upheld city's right to (1) require an applicant for a nude dancer's license to disclose recent criminal convictions and employment history; (2) require nude or semi-nude erotic dancers to stay four feet away from their patrons; (3) require specific level of illumination where nude or semi-nude erotic dancing may be performed; (4) restrict times when erotic dancing may be performed (not during early morning hours); (5) prohibit outdoor performances or depictions of performances of nude or semi-nude erotic dancing; and (6) rely on the experiences of other jurisdictions to establish that legislation restricting expressive conduct furthers substantial interest in curbing secondary unlawful behavior.

- [*KEV, Inc. v. Kitsap County*](#), 793 F.2d 1053 (9th Cir. 1986) - Right to license both owners/operators and dancers; no touching rule okay; unreasonable delay in granting license not okay

Upheld an ordinance regulating "erotic dance" facilities which required licenses for both operators and dancers. Upheld provisions which prohibited touching and require dancers to perform on a two-foot high stage 10 feet away from patrons. A

provision requiring a five-day delay period between a dancer's filing an application and the granting of the license was found to be unreasonable.

- [*Renton v. Playtime Theatres, Inc.*](#), 475 U.S. 41 (1986) - Adult motion pictures; secondary effects; zoning restrictions

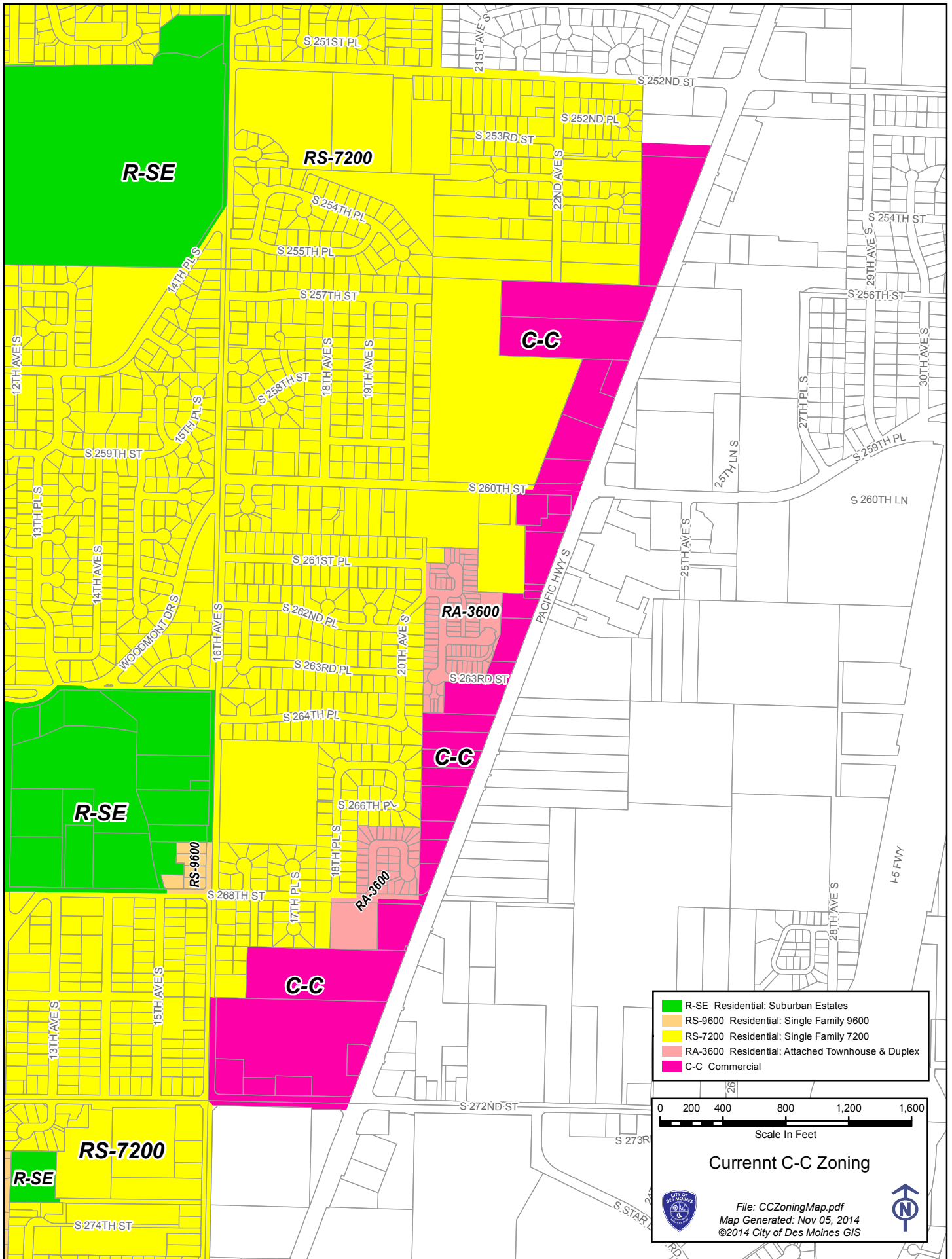
Zoning restrictions on adult motion picture theatres based on secondary effects of such businesses in other cities. No new studies required if previous studies are relevant. Allowed zoning restrictions in certain areas.

- [*Spokane Arcade, Inc. v. City of Spokane*](#), 75 F.3d 663 (1996) - Video arcade booths must be observable

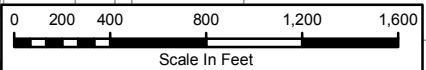
Upheld the validity of requiring video arcade booths to be visible to employees in adjacent public rooms and requiring an employee to be on duty in the public room whenever a customer is present. Regulations which increase the cost of doing business but do not prohibit businesses from engaging in protected speech are constitutional.

- [*World Wide Video v. City of Tukwila*](#), 117 Wn.2d 382, 816 P.2d 18 (1991) - Adult video stores; secondary effects


Permitting adult uses to locate only within a heavy industrial zone violates the First Amendment because the ordinance's definition of "adult use" includes adult businesses with predominantly take-home merchandise which are not shown to cause the harmful secondary effects traditionally associated with adult movie theaters and peep shows.



- R-SE Residential: Suburban Estates
- RS-9600 Residential: Single Family 9600
- RS-7200 Residential: Single Family 7200
- RA-3600 Residential: Attached Townhouse & Duplex
- C-C Commercial



Current C-C Zoning



File: CCZoningMap.pdf
 Map Generated: Nov 05, 2014
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