



PLANNING COMMISSION

AGENDA

July 27, 2010

CITY OF OAK HARBOR
PLANNING COMMISSION
REGULAR MEETING
CITY HALL – COUNCIL CHAMBERS

AGENDA
July 27, 2010
7:30 P.M.

ROLL CALL: WIGGINS_____ JENSEN_____ NEIL_____

 FAKKEMA_____ FEY_____ WASINGER_____

 DALE_____

- Page 3*
1. **Approval of Minutes – June 22, 2010**

 2. **Public Comment** – Planning Commission will accept public comment for items not otherwise on the agenda for the first 15 minutes of the Planning Commission meeting.

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 3. **ADULT ENTERTAINMENT INTERIM ORDINANCE – Public Hearing**
Planning Commission will open a public hearing to consider the Interim Adult Entertainment Ordinance. The Public Hearing will be continued to the August 24th Planning Commission meeting.

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 4. **SIX-YEAR TRANSPORTATION IMPROVEMENT PROGRAM – Public Hearing**
The Planning Commission will conduct a public hearing to consider the updates to the Six-Year Transportation Improvement Program for the years 2011-2016. The Planning Commission is expected to forward a recommendation to the City Council.

MINUTES

June 22, 2010

**PLANNING COMMISSION
REGULAR MEETING
CITY HALL – COUNCIL CHAMBERS
June 22, 2010**

ROLL CALL: **Present:** Mark Wiggins, Bruce Neil, Kristi Jensen, Keith Fakkema, and Greg Wasinger.
 Absent: Nancy Fey and Julie Dale
 Staff Present: Development Services Director, Steve Powers; Senior Planner, Cac Kamak and Associate Planner Melissa Sartorius.

Chairman Wiggins called the meeting to order at 7:30 p.m.

MINUTES: MR. FAKKEMA MOVED, MR. WASINGER SECONDED, MOTION CARRIED TO APPROVE THE May 25, 2010 MINUTES AS PRESENTED.

PUBLIC COMMENT

None.

ADULT ENTERTAINMENT INTERIM ORDINANCE – Public Meeting

This agenda item is intended to provide information only and the Planning Commission will not be asked to make any recommendations or take any action at this time.

Mr. Kamak reported the following:

City Council Action - March 23, 2010, the City adopted ordinances that address public nudity and licensing of adult entertainment based on a recently expressed interest to open an adult entertainment establishment in the area. As part of adopting these regulations, the City also adopted an interim zoning control to restrict such uses to an overlay district. The ordinances are summarized as follows:

- **Ordinance Banning Public Nudity:** The City Council adopted an ordinance creating a new chapter 6.70 entitled “Nudity in Public Places” to Title 6 Public Peace, Safety and Morals of the Oak Harbor Municipal Code. The purpose of this ordinance is to ban public nudity with appropriate exceptions. Since this is not a land use related ordinance it will not be necessary for Planning Commission to review this language.
- **Ordinance adopting Adult Entertainment Licensing and Regulations:** The Ordinance created a new chapter 5.20 entitled “Adult Entertainment” in Title 5 Business Licenses and Regulations of the Oak Harbor Municipal Code. The regulations adopted with this ordinance address how the business should operate and deals directly with the details of the how the business is run to mitigate the secondary impacts that are caused by such uses. Since this deals with the business licensing and related requirements and is not a land use related ordinance it will not be necessary for Planning Commission to review this language.
- **Interim Ordinance adopting an Adult Entertainment Overlay Zone:** This Ordinance created an interim zoning control by adopting an overlay zone that determines where such uses may locate. The interim ordinance created a new chapter 19.52 entitled “Adult Entertainment Facilities Overlay Zone”. The interim created an overlay districts that includes C-3, Community Commercial, I-Industrial and PIP, Planned

Industrial Park zoned property. The extent of the overlay district was determined by creating a buffer of 750 feet from schools, parks and religious institutions and 100 feet from residentially zoned areas.

Mr. Kamak explained that RCW 36.70A.390 allows the adoption of interim zoning control measure without public hearing as long as one is held within 60 days of the initial adoption.

The City Council adopted the ordinances as proposed. However, as a result of public comments and Council discussion, the City Council encouraged staff to pursue changing the buffer for residential uses to 750 feet (originally 100 feet).

City Council Action – May 4, 2010

The City Council held a public hearing as required by RCW 36.70A.390 within 60 days of the initial adoption on May 4, 2010. The proposed ordinance included the increased buffer for residential uses from 100 feet to 750 feet. The result of the increased buffer eliminated all the C-3, Community Commercial zoned property from the overlay zone. The interim ordinance was thus adopted with an overlay district that includes only I, Industrial and PIP, Planned Industrial Park properties along Goldie Street. Map is attached as Attachment 1.

Mr. Kamak noted that the adopted interim ordinance is effective for no longer than six months in accordance with RCW 36.70A.390. Before the end of this period the City must adopt a final ordinance that has gone through the regular review process (SEPA review, Planning Commission review and recommendation, Department of Commerce notification) or develop a work plan for related studies that can extend the time by one or more six-month periods.

Mr. Kamak explained that the process of adopting a final ordinance will include a public hearing conducted by the Planning Commission. The date for the hearing is yet to be determined.

Commission Questions

Are the properties in the overlay district developed or vacant land? Mr. Powers indicated that there were some that were developed and some that are undeveloped.

If the buffer was increased to 1000 feet would those properties drop out and how was the 750 foot buffer was chosen? Mr. Kamak stated that the City could not increase the buffer to a point that would exclude all properties to adult entertainment and the 750 foot buffer is the size of the buffer that most communities use.

Is it preferable to have adult entertainment uses close or away from the core of the city? Mr. Powers indicated that there are two methods, the concentration method which keeps those land uses together and the dispersion method which spreads the uses out.

Are there any studies? Mr. Kamak indicated that there are many studies that other communities have done ranging from land uses and licensing. Mr. Kamak offered to make copies for everyone or that Planning Commissioners can stop by his office to review the materials.

Does Island County have any ordinances for adult uses? Mr. Powers indicated that they do not but have started the process at the staff level. Mr. Powers also stated that each community's geography is different and each community has a different spatial arrangement of land uses.

What is the timeline was for adopting a final ordinance? Mr. Kamak stated that the City is going to try and complete the final adoption within six months which would require a public hearing before the Planning Commission at the July business meeting.

Where do the police stand on the ordinance? Mr. Powers indicated that the police department was involved in the initial crafting of the interim ordinance.

2010 COMPREHENSIVE PLAN AMENDMENTS – LAND USE CHANGES – Public Meeting

Mr. Kamak reported that the 2010 Comprehensive Plan Docket includes three properties for which land use changes were requested. All three properties are owned by the City and the requested changes are intended to reflect the proposed use of the properties.

The three properties are described below:

- **Scenic Heights Trailhead site** - Land use change from Low Density Residential to Public Facilities. The property is located on SW Scenic Heights Street adjacent to SW 20th Court. The property was purchased by the City using Conservation Futures Funds with the intent to develop it into a trailhead site for the Waterfront Trail. The existing zoning for the property is R-1, Single Family Residential and the existing land use designation is Low Density Residential. The property is proposed to be developed as a trailhead site for the Waterfront Trail, which extends from SW Scenic Heights Street to Maylor Point. The site is currently in its planning stages and proposed design includes an area with informational displays, a viewing area and some parking. Construction of this project is expected to commence this summer. Upon completion the trailhead site would become part of Oak Harbor's park system. The Public Facilities classification is intended to accommodate public facilities such as parks, utilities, government offices, etc. and therefore would be the most appropriate land use category for the property. All parks in Oak Harbor are designated as Public Facilities and since the trailhead site would be part of the park system it would be logical to amend the land uses designation. If the requested change is approved the property would be zoned for Public Facilities which would permit the intended use by right. Since construction of the trailhead is scheduled to commence prior to a decision on the land use change, the project will need a conditional use permit under the current zoning classification. The hearing for the permit is scheduled for the June 18, 2010. Decision by the Hearing Examiner will take approximately 2-3 weeks. Staff will keep the Planning Commission updated regarding the project.
- **North Reservoir Site west of Oak Harbor Road near Gun Club Road** – Land use change from Planned Business Park to Public Facilities. This property is located near Gun Club Road in northwest Oak Harbor. The City currently owns a 10 acre tract but will retain only 5 acres to develop it for two water reservoirs. The five acre tract is approximately 1000 feet north of unimproved Gun Club Road between Oak Harbor Road and Heller Road. The existing zoning for the property is Planned Business Park and the existing land use designation is Planned Business Park. The Planned Business Park classification is intended to promote the development of larger-scaled master planned developments related to office complexes and other similar facilities. The use of this property for a water reservoir does not fit within the purpose of the Planned Business Park classification. The City has identified this site as an appropriate location for possibly two water reservoirs to serve Oak Harbor. The location for this project was determined following a technical analysis on the water system. The Public Facilities classification is intended to accommodate public facilities such as parks, utilities, government offices etc and therefore would be the best suited land use category for the use. Construction for this project is not expected to commence this year. If the requested change in land use is approved the project will be permitted by right and will be required to go through a Type II site plan review process.

- **SE corner of SR 20 and Fakkema Road** – Land use change from Auto/Industrial Commercial to Open Space. The property was formerly referred to as the Boyer Property. The property was purchased through a collaboration of the City, Island County, State of Washington and the Navy with the City retaining ownership in fee simple. The property was purchased by the City, County and Navy with the intention to restrict development activity due to its location within the flight path. The property is located in Accident Potential Sub-district One and Two and is currently zoned C-4, Highway Service Commercial with a land use designation of Auto/Industrial Commercial. The Parks and Recreation Plan adopted in 2009 identified this property as a potential location for an Oak Grove. Pursuing this idea will require a land use designation of Open Space. Staff is currently working with soil experts to determine the characteristics of the soil and its suitability for vegetation.

Commission Discussion

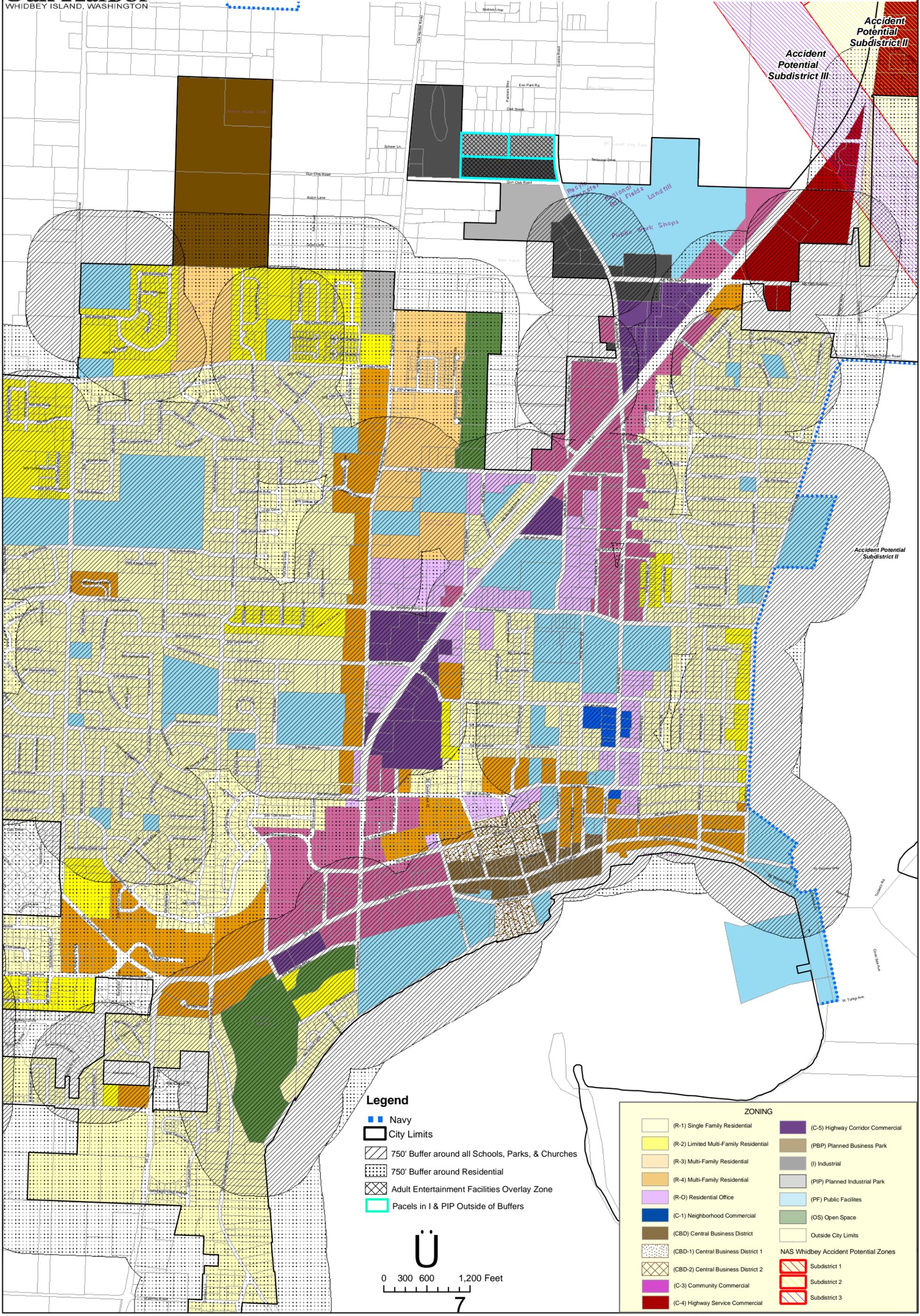
There was a suggestion to have a program that has an area for each school to cultivate Garry Oaks.

BEING NO FURTHER BUSINESS BEFORE THE PLANNING COMMISSION, THE MEETING WAS ADJOURNED AT 8:15 P.M.

DRAFT

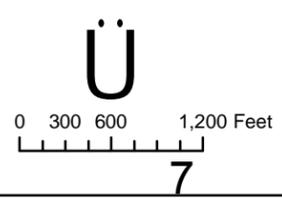


Adult Entertainment Facilities Overlay Zone I and PIP Zoning Outside of 750 Foot Buffers and 750 Foot Residential Buffer



Legend

- Navy
- City Limits
- 750' Buffer around all Schools, Parks, & Churches
- 750' Buffer around Residential
- Adult Entertainment Facilities Overlay Zone
- Parcels in I & PIP Outside of Buffers



ZONING	
 (R-1) Single Family Residential	 (C-5) Highway Corridor Commercial
 (R-2) Limited Multi-Family Residential	 (PBP) Planned Business Park
 (R-3) Multi-Family Residential	 (I) Industrial
 (R-4) Multi-Family Residential	 (PIP) Planned Industrial Park
 (R-O) Residential Office	 (PF) Public Facilities
 (C-1) Neighborhood Commercial	 (OS) Open Space
 (CBD) Central Business District	 Outside City Limits
 (CBD-1) Central Business District 1	NAS Whidbey Accident Potential Zones
 (CBD-2) Central Business District 2	 Subdistrict 1
 (C-3) Community Commercial	 Subdistrict 2
 (C-4) Highway Service Commercial	 Subdistrict 3

Adult Entertainment
Ordinance

Public Hearing

PLANNING COMMISSION

TO: CITY OF OAK HARBOR PLANNING COMMISSIONERS

FROM: CAC KAMAK, AICP, SENIOR PLANNER

SUBJECT: ADULT ENTERTAINMENT ORDINANCE – PUBLIC HEARING

DATE: 7/22/2010

CC: STEVE POWERS, AICP, DEVELOPMENT SERVICES DIRECTOR

Introduction: The Planning Commission is aware of the ordinances that the City Council adopted regulating adult entertainment facilities. Copies of the ordinances and supporting legal memorandums were provided to the Planning Commission at the June 22, 2010 meeting. This continued discussion of zoning for adult entertainment facilities is because the ordinance adopting the Adult Entertainment Overlay Zone was an interim ordinance and requires follow up procedures in accordance with RCW 36.70A.390.

Background: As mentioned above, the City adopted ordinances that address public nudity and licensing of adult entertainment and an interim zoning control to restrict such uses to an overlay district. A summary of the ordinances is provided below.

- **Ordinance Banning Public Nudity:** The City Council adopted an ordinance creating a new chapter 6.70 entitled “Nudity in Public Places” to Title 6 Public Peace, Safety and Morals of the Oak Harbor Municipal Code. The purpose of this ordinance is to ban public nudity with appropriate exceptions for children under ten years of age, breastfeeding, nudity in locker rooms, hospitals and other similar facilities, and for a licensed entertainer performing in an adult entertainment establishments. Public nudity itself is a conduct subject to regulation and a ban on public nudity is a content-neutral restriction that regulates conduct and not expression. Since this is not a land use related ordinance it will not be necessary for Planning Commission to review this language as per the requirements of RCW 36.70A.390.
- **Ordinance adopting Adult Entertainment Licensing and Regulations:** The Ordinance created a new chapter 5.20 entitled “”Adult Entertainment” in Title 5 Business Licenses and Regulations of the Oak Harbor Municipal Code. The regulations adopted with this ordinance address how the business should operate and the requirements that need to be met to comply with the provisions of the chapter. It deals directly with the details of the how the

business is run to mitigate the secondary impacts that are caused by such uses. Since this deals with the business licensing and related requirements and is not a land use related ordinance it will not be necessary for Planning Commission to review this language as per the requirements of RCW 36.70A.390.

- Interim Ordinance adopting an Adult Entertainment Overlay Zone: This Ordinance created an interim zoning control by adopting an overlay zone that determines where such uses may locate. Such interim ordinances are authorized under RCW 36.70A.390. The interim ordinance created a new chapter 19.52 entitled “Adult Entertainment Facilities Overlay Zone”. The interim ordinance entered findings of fact concerning the negative secondary impacts of adult entertainment facilities and created an overlay district that includes I-Industrial and PIP, Planned Industrial Park zoned property along Goldie Road.

Discussion: The interim Adult Entertainment Overlay Zone requires further discussion and hearing by the Planning Commission since it is a land use related ordinance. In the discussion below, staff will provide some information on legal cases that support the regulation of these land uses and also provide some options to consider when locating these facilities in Oak Harbor.

Regulating Adult Entertainment Facilities: The regulation of Adult Entertainment Facilities also known as Adult-Oriented Businesses (AOB) or Sex-Oriented Businesses (SOB) have been debated in the US Supreme and State Courts which have noted that such activity constitutes “expressive conduct” entitled to some protection under the state and federal constitution¹. However, the Supreme Court has also issued a number of decisions upholding adult business regulations aimed at reducing “secondary effects” such as increased criminal activity, sexual related crime, increased blight, increased vacancy rates etc.

In *Young v. American Mini Theaters, Inc.*, (1976) and *City of Renton v. Playtime Theaters, Inc.*, (1986) the Supreme Court concluded that adult oriented business regulations which are designed to reduce the secondary effects that such businesses have on their surrounding neighborhood are “content neutral” because they are enacted to reduce the secondary effects rather than suppress whatever message is being conveyed by the performer/entertainer. The harmful secondary effects the Court identified are:

1. Increased Crime – rape, sexual assault, prostitution and illegal drug sales
2. Decreased Property Values – both residential and commercial
3. Urban Blight – people and businesses fleeing the community

In adopting an ordinance regulating adult entertainment facilities, the courts do require that there must be a reasonable nexus between a municipality’s adult entertainment ordinance and the secondary effects evidence upon which it’s based.

¹ U.S. Const. amend.1. The state constitution contains a similar provision. Wash. Const. art. 1, § 5.

Although the passage of restrictive zoning ordinances must be supported by sufficient factual findings, the Supreme Court has held that this evidence may be borrowed from other cities where the secondary effects exist. Since Oak Harbor does not currently have any adult entertainment facilities to determine the secondary impacts, it will have to rely on studies performed elsewhere as long as whatever evidence the City relies upon is reasonably believed to be relevant to the problem it addresses.

Based on the above, Staff has provided a collection of summaries of studies (Attachment 1) related to the secondary effects of adult entertainment facilities. Some of these studies can be reviewed in more detail as the City progresses through the review and hearing process.

Regulating Adult Entertainment Facilities through Zoning: Zoning that has distinguished Adult Entertainment Facilities from other commercial uses has been upheld by the courts provided it is done within certain constitutional constraints. There are two primary methods of zoning Adult Entertainment Facilities. One is the “dispersion zoning” that regulates the uses by distance separations such as “within 1000 feet of any other such establishment or within 500 feet of a residential area”. The second is the “concentration zoning” where a particular use, in this case the Adult Entertainment Facility, is prohibited from locating anywhere except in a specific portion of the municipality. Both methods have been held to be constitutionally permissible as legitimate “time, place, and manner” restrictions of protected speech². Both methods of regulation are subject to the three-prong constitutional test listed below:

1. It should be unrelated to suppressing speech
2. It must be narrowly tailored to serve a substantial governmental interest
3. The regulations must permit reasonable alternative channels of communication

The above tests and other checks and balances are discussed in more detail in the article “Regulating Adult Entertainment” by Daniel Olsen (Attachment 2). The nuances of each prong of this test are complex but it also points to what zoning cannot do:

- Zoning cannot completely eliminate Adult Entertainment Facilities from the municipality
- Zoning cannot exclusively permit Adult Entertainment Facilities in an area that is “commercially unavailable”
- Zoning cannot force preexisting Adult Entertainment Facilities to cease operation and relocate.

² City of Renton v. Playtime Theatres, 475 U.S. at 52. Also, 427 U.S. at 63, n.18 (“Reasonable regulations of the time, place, and manner of protected speech, where those regulations are necessary to further significant governmental interests, are permitted by the First Amendment” citing Kovacs v. Cooper U.S. 77(1949) (limitation on use of sound trucks); Cox v. Louisiana, 379 U.S. 559 (1965) (ban on demonstration in or near courthouse with the intent to obstruct justice); Grayned v. City of Rockford, 408 U.S. 104 (1972) (ban on willful making, on grounds adjacent to school, of any noise which disturbs the good order of the school session))

Dispersed versus Concentrated Approach: The interim ordinance adopted by the City Council on May 4, 2010 established an overlay zone over three properties on Goldie Road that are zoned I, Industrial and PIP, Planned Industrial Park. If this were to be adopted as the final overlay zone it would be “concentrated zoning” similar to the approached in Times Square in New York City and the Combat Zone in Boston. However, it should be noted that Oak Harbor’s interim overly zone properties were identified using a separation distance from sensitive areas such as schools, parks and religious institutions. The advantages of the concentrated approach are:

1. Like uses are treated alike – the same uniform district standards apply to all uses equally. Any changes to other districts will not have an effect upon the adult entertainment facilities within the special overlay district.
2. Lower administrative costs – once the district is established and development standards set, there is not need for costly case-by-case review of adult business requests other than the regular site development or building permit review.
3. Control over the total growth of these uses and the development of specific new uses – the limits of the area for these uses are defined. The dispersal method may have no upper limit of these uses provided that all separation requirements are met.
4. Easier evaluation of total public services impact – heavier traffic, limited parking space, higher police costs and other effects of the adult entertainment facilities can be easier to identify if they are concentrated into one area.

The drawbacks of this approach are documented in the land use case study summaries provided in Attachment 1. Studies, such as the ones done in Austin, TX indicate that the crime rate is 66% higher in areas where there is a concentration of such uses.

The dispersion approach (also referred to as the Detroit Model) regulates adult entertainment facilities by separating them from each other and other sensitive uses. Cities typically will require that adult entertainment facilities be separated from each other by a distance that can vary from 300 feet to 2000 feet. The regulation will also call out separations from sensitive areas such as schools, churches and parks. Some cities have also required separations from other establishments that serve alcohol. This is a more popular model since studies show that the secondary effects of these uses such as crime rates etc. are less when they are dispersed.

Options to consider : In considering the final adoption of an overly zone, it would be prudent to explore the various option available to Oak Harbor and then pick an option that best meets the needs of the community and satisfy the legal requirements to accommodate Adult Entertainment Facilities.

1. Maintain the current properties in the interim ordinance: This would retain the properties identified in the interim ordinance in the overlay zone and will not add additional properties. This will be similar to the concentrated approach discussed earlier. If the City chooses this option, the properties must be studied to assure reasonable developability of the property for infrastructure and site development.
2. Dispersion method: This option will consider dispersing the Adult Entertainment Facilities in various locations within the city. The dispersion method is traditionally done by regulating the uses with separation distances from sensitive areas and similar uses. Due to the layout of Oak Harbor, this option will be challenging in identifying locations without reducing the separation distances significantly from some sensitive areas such as residential areas. Maps have been attached showing some queries on different separation distances for the various uses. Different buffers can be used for the various sensitive areas. A few examples of the combination of different distances have been provided for study.
3. Establish a corridor: This option will consider adding property to the ones that are currently in the interim ordinance. An example would be the Goldie Road corridor. This will provide more options for the Adult Entertainment Facilities and may lessen the burden for the City to prove the availability of land for such uses. This option is also a concentrated approach.

Process: In accordance with RCW 36.70A.390 the adopted interim ordinance is effective for no longer than six months. Before the end of this period the City must adopt a final ordinance that has gone through the regular review process (SEPA review, Planning Commission review and recommendation, Department of Commerce notification) or develop a work plan for related studies that can extend the time by one or more six-month periods.

This is the first step toward meeting the requirements of RCW 36.70A.390. Staff is anticipating filing a work plan to extend the time since the process will extend beyond the six month period that will end in September. Staff hopes to narrow down the options by the next Planning Commission meeting. However, SEPA review and Department of Commerce notification will add additional time due to the notice and comment periods.

Planning Commission Action:

- Open Public Hearing
- Continue the hearing after taking public comments
- Provide feedback on the options to pursue for the location of Adult Entertainment Facilities



**NATIONAL LAW CENTER
FOR CHILDREN AND FAMILIES**

NLC SUMMARIES OF "SOB LAND USE" STUDIES

*CRIME IMPACT STUDIES BY MUNICIPAL AND STATE GOVERNMENTS
ON HARMFUL SECONDARY EFFECTS OF
SEXUALLY ORIENTED BUSINESSES*

- | | |
|--|---------------------------------------|
| 1. <i>Phoenix, Arizona</i> | 17. <i>Cleveland, Ohio</i> |
| 2. <i>Tucson, Arizona</i> | 18. <i>Oklahoma City, Oklahoma</i> |
| 3. <i>Garden Grove, California</i> | 19. <i>Oklahoma City, Oklahoma II</i> |
| 4. <i>Los Angeles, California</i> | 20. <i>Amarillo, Texas</i> |
| 5. <i>Whittier, California</i> | 21. <i>Austin, Texas</i> |
| 6. <i>Adams Co., Colorado</i> | 22. <i>Beaumont, Texas</i> |
| 7. <i>Manatee Co., Florida</i> | 23. <i>Cleburne, Texas</i> |
| 8. <i>Indianapolis, Indiana</i> | 24. <i>Dallas, Texas</i> |
| 9. <i>Minneapolis, Minnesota</i> | 25. <i>El Paso, Texas</i> |
| 10. <i>Saint Paul, Minnesota</i> | 26. <i>Houston, Texas</i> |
| 11. <i>Las Vegas, Nevada</i> | 27. <i>Houston, Texas II</i> |
| 12. <i>Ellicottville, New York</i> | 28. <i>Newport News, Virginia</i> |
| 13. <i>Islip, New York</i> | 29. <i>Bellevue, Washington</i> |
| 14. <i>New York, New York</i> | 30. <i>Des Moines, Washington</i> |
| 15. <i>Times Square, New York</i> | 31. <i>Seattle, Washington</i> |
| 16. <i>New Hanover Co., North Carolina</i> | 32. <i>St. Croix Co., Wisconsin</i> |



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3819 Plaza Drive, Fairfax, Virginia 22030-2512 (703) 691-4626, Fax: (703) 691-4669

National Law Center Summary of the
PHOENIX, ARIZONA
LAND USE STUDY
DATED MAY 25, 1979

The study examines crime statistics for 1978 comparing areas which have sexually oriented businesses with those that do not. The results showed a marked increase in sex offenses in neighborhoods with sexually oriented businesses, and also proved increases in property and violent crimes as well. This study is not unique but is unusually significant, in covering the issue of property crimes more extensively.

Three study areas (near locations of sexually oriented businesses) and three control areas (with no sexually oriented businesses) were selected. The study and control areas were paired according to the number of residents, median family income, percentage of non-white population, median age of population, percentage of dwelling units built since 1950, and percentage of acreage used for residential and non-residential purposes.

Three categories of criminal activity were included in the study: property crimes (burglary, larceny, auto theft), violent crimes (rape, murder, robbery, assault), and sex crimes (rape, indecent exposure, lewd and lascivious behavior, child molestation).

On average, the number of sex offenses was 506% greater in neighborhoods where sexually oriented businesses were located. In one of the neighborhoods the number was 1,000% above the corresponding control area. Of the sex offenses, indecent exposure was the most common offense and the largest contributor to the increase of crimes in areas where sexually oriented businesses were located. Even without considering the crime of indecent exposure, the number of other sex crimes, such as rape, lewd and lascivious behavior, and child molestation, was 132% greater than in control areas without sexually oriented businesses.

On average the number of property crimes was 43% greater in neighborhoods where sexually oriented businesses were located, and the number of violent crimes was 4% higher in those areas.

The Phoenix ordinance requires sexually oriented businesses to locate at least 1,000 feet from another sexually oriented business and 500 feet from a school or residential zone. Approval by the City Council and area residents can waive the 500 foot requirement. A petition signed by 51% of the residents in the 500 foot radius who do not object must be filed and be verified by the Planning Director.



National Law Center Summary of the
TUCSON, ARIZONA
LAND USE STUDY
DATED MAY 1, 1990

OVERVIEW: This report is a memorandum from Police Department Investigative Services to the City Prosecutor describing events and activities at "adult entertainment bookstores and establishments" that demonstrate the need for stronger ordinances. Investigations had been in progress since 1986 following numerous complaints of illegal sexual activity and unsanitary conditions.

FINDINGS: Officers found a wide variety of illegal sexual conduct at all adult businesses. At virtually every such business, employees were arrested for prostitution or obscene sex shows. Dancers were usually prostitutes where, for a price, customers could observe them performing live sex acts. At several businesses, customers were allowed inside booths with dancers and encouraged to disrobe and masturbate. Many times, dancers would require customers to expose themselves before they would perform. Underage dancers were found, the youngest being a 15 year old female.

Within peep booths, officers found puddles of semen on the floor and walls. If customers had used tissues, these were commonly on the floor or in the hallway. On two occasions, fluid samples were collected from the booths. In the first instance, 21 of 26 samples (81%) tested positive for semen. In the second sampling, 26 of 27 fluid samples (96%) tested positive for semen. "Glory holes" in the walls between adjoining booths facilitated anonymous sex acts between men.

RECOMMENDATIONS: (1) The bottom of the door in peep booths must be at least 30 inches from the floor so that an occupant can be seen from the waist down when seated. (2) The booth cannot be modified nor can a chair be used to circumvent the visibility of the client. (3) Employee licensing procedures that include a police department background check should be put in effect. (4) In the event of a denied or revoked license, the requirement of a hearing before any action is taken.



National Law Center Summary of the
GARDEN GROVE, CALIFORNIA
LAND USE STUDY
DATED SEPTEMBER 12, 1991

OVERVIEW: This report by independent consultants summarizes statistics to determine whether adult businesses should be regulated because of their impact on the community in terms of crime, decreased property values and diminished quality of life. Statistics were measured from 1981 to 1990, and included crime data and surveys with real estate professionals and city residents. Garden Grove Boulevard, which has seven adult businesses, was selected as the study area. The study incorporated many control factors to insure accurate results. The report includes a brief legal history of adult business regulation and an extensive appendix with sample materials and a proposed statute.

CRIME: Crime increased significantly with the opening of an adult business, or with the expansion of an existing business or the addition of a bar nearby. The rise was greatest in "serious" offenses (termed "Part I" crimes: homicide, rape, robbery, assault, burglary, theft and auto theft). On Garden Grove Boulevard, the adult businesses accounted for 36% of all crime in the area. In one case, a bar opened less than 500 feet from an adult business, and serious crime within 1,000 feet of that business rose more than 300% the next year.

REAL ESTATE: Overwhelmingly, respondents said that an adult business within 200-500 feet of residential and commercial property depreciates that property value. The greatest impact was on single family homes. The chief factor cited for the depreciation was the increased crime associated with adult businesses.

HOUSEHOLD SURVEYS: 118 calls were completed in a random sample of households in the Garden Grove Boulevard vicinity. The public consensus was that adult businesses in that area were a serious problem. Nearly 25% of the surveyed individuals lived within 1,000 feet of an adult business. More than 21% cited specific personal experiences of problems relating to these businesses, including crime, noise, litter, and general quality of life. 80% said they would want to move if an adult business opened in their neighborhood, with 60% saying they "would move" or "probably would move." 85% supported city regulation of the locations of adult businesses, with 78% strongly advocating the prohibition of adult businesses within 500 feet of a residential area, school or church. Women commonly expressed fear for themselves and their children because of adult businesses.

RECOMMENDATIONS: The report concludes that adult businesses have a "real impact" on everyday life through harmful secondary effects and makes four recommendations: (1) Keep current requirement of 1,000 feet separation between adult businesses; (2) Prohibit adult establishments within 1,000 feet of residential areas; (3) Enact a system of conditional use permits for adult businesses with police department involvement in every aspect of the process; and (4) Prohibit bars or taverns within 1,000 feet of an adult business.



National Law Center Summary of the
LOS ANGELES, CALIFORNIA
LAND USE STUDY

DATED JUNE, 1977

OVERVIEW: The Department of City Planning studied the effects of the concentration of sexually oriented businesses on surrounding properties for the years 1969-75 (a time of proliferation for such businesses). The report focuses on five areas with the greatest concentration of these businesses (compared to five "control" areas free of them), and cites data from property assessments/sales, public meeting testimony, and responses from two questionnaires (one to business/residential owners within a 500 foot radius of the five study areas and a second to realtors/real estate appraisers and lenders). Crime statistics in the study areas were compared to the city as a whole. Also included: a chart of sexually oriented business regulations in eleven major cities, details of current regulations available under state/municipal law, and appendices with samples of questionnaires, letters, and other study materials.

PROPERTY: While empirical data for 1969-75 did not conclusively show the relation of property valuations to the concentration of sexually oriented businesses, more than 90% of realtors, real estate appraisers and lenders responding to city questionnaires said that a grouping of such businesses within 500-1,000 feet of residential property decreases the market value of the homes. Also, testimony from residents and business people at two public meetings spoke overwhelmingly against the presence of sexually oriented businesses citing fear, concern for children, loss of customers and difficulty in hiring employees at non-adult businesses, and the necessity for churches to provide guards for their parking lots.

CRIME: More crime occurred in areas of sexually oriented business concentration. Compared to city-wide statistics for 1969-75, areas with several such businesses experienced greater increases in pandering (340%), murder (42.3%), aggravated assault (45.2%), robbery (52.6%), and purse snatching (17%). Street robberies, where the criminal has face to face contact with his victim, increased almost 70% more in the study areas. A second category of crime, including other assaults, forgery, fraud, counterfeiting, embezzlement, stolen property, prostitution, narcotics, liquor laws, and gambling increased 42% more in the study areas over the city as a whole.

RECOMMENDATIONS: The study recommended distances of more than a 1,000 feet separating sexually oriented businesses from each other, and a minimum of 500 feet separation of such businesses from schools, parks churches and residential areas.



National Law Center Summary of the
WHITTIER, CALIFORNIA
LAND USE STUDY
DATED JANUARY 9, 1978

OVERVIEW: After experiencing a rapid growth of sexually oriented businesses since 1969, the Whittier City Council commissioned a study of the effects of the businesses on the adjacent residential and commercial areas. At the time of the study, Whittier had 13 "adult" businesses: 6 model studios, 4 massage parlors, 2 bookstores, and 1 theater. Utilizing statistics, testimonies, and agency reports, the study compared two residential areas and four business areas over a span of 10 years (1968-1977). One residential area was near the largest concentration of adult businesses, the other had no commercial frontage but was chosen because of similar street patterns, lot sizes and number of homes. For businesses, Area 1 had six adult businesses, Area 2 had one, Area 3 had three, and Area 4 had none. 1973 was selected as the year to compare before and after effects of the adult businesses. Two chief concerns cited in the report are residential and business occupancy turnovers and increased crime.

OCCUPANCY TURNOVER: After 1973, 57% of the homes in the adult business area had changes of occupancy, compared to only 19% for the non-adult business area. Residents complained of "excessive noise, pornographic material left laying about, and sexual offenders (such as exhibitionist) venting their frustrations in the adjoining neighborhood." Citizens also expressed concern about drunk drivers coming into the area. Business Area 1, with the most concentration of adult businesses (6), experienced a 134% increase in annual turnover rate. Area 3, with three adult businesses at one location, showed a 107% turnover rate. Area 2 (with 1 adult business) had no measurable change and Area 4 (with no commercial or adult businesses) experienced a 45% decrease in turnover from similar periods.

CRIME: The City Council looked at the two residential areas for the time periods of 1970-73 (before adult businesses) and 1974-77 (after adult businesses). In the adult business area, criminal activity increased 102% (the entire city had only an 8.3% increase). Certain crimes skyrocketed (malicious mischief up 700%; all assaults up 387%; prostitution up 300%). All types of theft (petty, grand, and auto) increased more than 120% each. Ten types of crime were reported for the first time ever in the 1974-77 period.

RECOMMENDATIONS: The Council's report recommended a dispersal type ordinance that prohibits adult businesses closer than 500 feet to residential areas, churches and schools. Distances between adult businesses was recommended at 1,000 feet. In addition, the study proposed a 1,000 foot separation from parks because of their use by citizens after normal working hours. Adult businesses would be given an 18-36 month amortization period (if the change involved only stock in trade, a 90 day period was recommended).



National Law Center Summary of the
ADAMS CO., COLORADO

LAND USE STUDY

DATED APRIL, 1988

OVERVIEW: This report, authored by Sgt. J.J. Long of the Adams County Sheriffs Department, was designed to accompany a new Nude Entertainment Ordinance. The report covers two parts: first, an April 1988 study of six representative locations in Adams County was undertaken to determine the transiency of adult business customers. Second, crime statistics in two Adams County areas featuring adult businesses were gathered for the years of 1986 and 1987. The study concluded that there was a clearly demonstrated rise in crime and violence, and an increase in the attraction to transients to the area as a result of nude entertainment establishments. This caused a danger to residents and an undesirable model for youth and the community at large.

FINDINGS: Adams County features 6 adult bookstores (all but one featuring nude entertainment), 1 all nude "pop shoppe," 7 massage parlors, 8 topless nightclubs (with liquor licenses), and 6 nude "rap," lingerie, and modeling-type studios (28 locations in all). An April 1988 study of six adult business locations in Adams County, revealed that 76% of patrons were transient. During the time when no adult ordinance was in effect in Adams County (1986 and 1987), 24 crimes were reported in one area featuring two adult businesses. Eighty-three percent of these crimes were linked to the adult businesses. Forty-two percent of these crimes occurred at the location of an all-nude establishment, and sixty-four percent occurred outside the hours of 4:00 p.m. to midnight. During 1987, 28 crimes were reported, 93% of which were linked to the adult businesses, 50% were alcohol-related offenses, and 77% occurred at a single establishment. Finally, 61% of those crimes occurred during hours other than those between 4:00 p.m. and midnight. Crime rates between 1986 and 1987 for another Adams County area featuring three adult bookstores, two topless nightclubs, a bar, a liquor store, and a beer outlet revealed a 15% increase in crime, (i.e., 55 crimes in 1986 as opposed to 63 in 1987). In 1986, 29 of those crimes involved alcohol, while in 1987, 41 were linked to alcohol (a 41% increase). A rural area of Adams County with a single topless nightclub experienced a 39% increase in crime between 1986 and 1987. There was a marked increase in the number of adult entertainment locations opening for business during 1986 and 1987. Further, a check of criminal histories of some of the offenders showed arrests for morals crimes, sexual assaults, alcohol-related offenses, and crimes of violence. A study of armed robbery in one area during the same time period revealed that 66% of all reported armed robberies occurred at the adult bookstores. Finally, seven homicides from 1977 to 1987 were directly linked to adult bookstores and nude entertainment businesses.

The 1988 enactment of the Nude Entertainment Ordinance, which was upheld by the Colorado Supreme Court, reduced the number of adult businesses in Adams County to only 14. The Adams County ordinance included the following provisions: 1) restricting hours of operation from 4:00 p.m. to midnight, Monday to Saturday; 2) restricting location of SOBs to 500 feet from sensitive uses; 3) an amortization clause requiring compliance within a six month period; and 4) a public nuisance provision for repeated or continuing violation of the ordinance.



National Law Center Summary of the
MANATEE CO., FLORIDA
LAND USE STUDY
DATED JUNE, 1987

OVERVIEW: This report, conducted by the Manatee County Planning and Development Department, examines the ramifications of a proposed adult entertainment ordinance. It depends upon the findings of other jurisdictions to forecast the effects of adult businesses in Manatee County. It also examines other land use studies in order to determine appropriate land use controls for Manatee County.

FINDINGS: The **Boston Model** of concentrating adult businesses into on "combat zone" has the following advantages: 1) like uses are treated alike; 2) lower administrative costs; 3) control over growth of pornographic uses and the development of specific new uses; 4) no definitional vagueness; 5) apparent constitutionality; and 6) easier evaluation of total public services impact of pornographic uses (traffic, limited parking, higher police costs and other effects). Disadvantages of this model center on the blighting effect when a central zone is created. It may also attract "undesirables" to one area. The **Detroit Model** has these advantages: 1) apparent constitutionality (withstood challenge in *Young v. American Mini Theatres*); and 2) creates a separation zone between other adult businesses and residential areas. However, it suffers from definitional weaknesses. Most jurisdictions have adopted some form of the Detroit model. Other cities have added additional buffer requirements.

Studies of secondary effects in other cities (Austin, TX, Indianapolis, IN, Los Angeles, CA, and St. Paul, MN) have examined the impact of adult businesses on property value, crime rates, and incidences of blighting. Based upon the negative findings in these areas, cities have recommended zoning and other land use regulations.

There are five adult businesses currently in the County. All five are separated from one another by more than 1,000 feet. None meet the minimum residential buffer distance of 500 feet.

RECOMMENDATIONS: The dispersal model ordinance should be considered. The present zoning ordinance should be amended to add buffer requirements to provide distance from 1) residential districts, 2) churches, schools, child care facilities, and public recreation areas, and 3) other established adult businesses. There should be at least 500 feet of separation between an adult business and the nearest residential zone. A 2000 foot buffer should be established for churches, schools, child care facilities, and recreation areas. Adult businesses should be separated from one another by at least 1000'. A one year amortization period for compliance should be considered (as provided in the draft ordinance). "Sign controls should be considered which still protect a business's freedom to advertise, but also minimize public's exposure to such uses."



National Law Center Summary of the
INDIANAPOLIS, INDIANA
LAND USE STUDY
DATED FEBRUARY, 1984

OVERVIEW: After a 10 year growth in the number of sexually oriented businesses (to a total of 68 on 43 sites) and numerous citizen complaints of decreasing property values and rising crime, the city compared 6 sexually oriented business "study" areas and 6 "control" locations with each other and with the city as a whole. The study and control areas had high population, low income and older residences. In order to develop a "best professional opinion," the city collaborated with Indiana University on a national survey of real estate appraisers to determine valuation effects of sexually oriented businesses on adjacent properties.

CRIME: From 1978-82, crime increases in the study areas were 23% higher than the control areas (46% higher than the city as a whole). Sex related crimes in the study areas increased more than 20% over the control areas. Residential locations in the study areas had a 56% greater crime increase than commercial study areas. Sex related crimes were 4 times more common in residential study areas than commercial study areas with sexually oriented businesses.

REAL ESTATE: Homes in the study areas appreciated at only 1/2 the rate of homes in the control areas, and 1/3 the rate of the city. "Pressures within the study areas" caused a slight increase in real estate listings, while the city as a whole had a 50% decrease, denoting high occupancy turnover. Appraisers responding to the survey said one sexually oriented business within 1 block of residences and businesses decreased their value and half of the respondents said the immediate depreciation exceeded 10%. Appraisers also noted that value depreciation on residential areas near sexually oriented businesses is greater than on commercial locations. The report concludes: "The best professional judgment available indicates overwhelmingly that adult entertainment businesses -- even a relatively passive use such as an adult bookstore -- have a serious negative effect on their immediate environs."

RECOMMENDATIONS: Sexually oriented businesses locate at least 500 feet from residential areas, schools, churches or established historic areas.



National Law Center Summary of the
MINNEAPOLIS, MINNESOTA
LAND USE STUDY
DATED OCTOBER, 1980

OVERVIEW: This report is divided into two sections: the relationship of bars and crime and the impact of "adult businesses" on neighborhood deterioration. In the study, an "adult business" is one where alcohol is served (including restaurants) or a sexually oriented business (i.e., saunas, adult theaters and bookstores, rap parlors, arcades, and bars with sexually oriented entertainment). Census tracts were used as study areas and evaluated for housing values and crime rates. Housing values were determined by the 1970 census compared to 1979 assessments. Crime rates were compared for 1974-75 and 1979-80. The study is strictly empirical and reported in a formal statistical manner; therefore it is difficult for layman interpretation of the data.

FINDINGS: The report concludes that concentrations of sexually oriented businesses have significant relationship to higher crime and lower property values. Other than statistical charts, no statements of actual crime reports or housing values are included in the report. thus, the lay reader has only the most generalized statements of how the committee interpreted the empirical data.

RECOMMENDATIONS: First, that adult businesses be at least 1/10 mile (about 500 feet) from residential areas. Second, that adult businesses should not be adjacent to each other or even a different type of late night business (i.e., 24-hour laundromat, movie theaters). third, that adult businesses should be in large commercial zones in various parts of the city (to aid police patrol and help separate adult businesses from residential neighborhood). The report said "policies which foster or supplement attitudes and activities that strengthen the qualities of the neighborhoods are more likely to have desired impacts on crime and housing values than simple removal or restriction of adult businesses."



National Law Center Summary of the
ST. PAUL, MINNESOTA
LAND USE STUDY

DATED APRIL, 1988 (SUPPLEMENTAL TO 1987 STUDY)

OVERVIEW: As a "result of a growing concern among St. Paul citizens that the City's existing adult entertainment zoning provisions, adopted in 1983," did not "adequately address the land use problems associated with adult entertainment", the City Council directed the Planning Commission to study possible amendments to the Zoning Code. The Commission's proposed amendment was based on findings made during public hearings. The "substitute" "Amendment", adopted by the City Council, is a result of those findings and the findings made by the Council during its public hearings. The 1988 Study includes the findings, addresses the nine key features of the "substitute" "Amendment", and gives the rationale for each.

FINDINGS, "AMENDMENT", AND RATIONALE:

1) "[A]dult uses are harmful to surrounding commercial establishments but that significant spacing requirements between adult uses can minimize the harm in zones reserved for the most intensive commercial activity."

2) The "Amendment" treats all nine defined adult uses the same. Included are: "adult bookstores", "cabarets", "conversation/rap parlors", "health/sport clubs", "massage parlors", "mini-motion picture theaters", "motion picture theatres", "steamroom/bathhouse facilities", and "other adult uses." Each is defined as providing "matter", "entertainment", or "services" which is "distinguished or characterized by an emphasis on the "depiction", "description", "display" or "presentation" of "specified sexual activities" or "specified anatomical areas." "Most, if not all, existing statistical studies of the impact of adult uses do not differentiate between different types of adult uses and do not recognize that the land use impact of various types of adult uses is significantly different." "[E]qual treatment is consistent with the emphasis on deconcentration".

3) The "Amendment" set spacing between adult uses at 2,640 feet outside of the downtown area and 1,320 feet downtown. A six-block goal could not be met because of the necessity to provide a "sufficient land mass". The Phoenix and Indianapolis land use studies indicate that "the negative land use impact of a single adult use extends for up to three blocks".

4) Distances between adult uses and residential zones were increased from 200 feet to 800 feet "outside of downtown" and from 100 to 400 feet downtown in the substitute "Amendment". The goal of 1,980 feet outside of "downtown" and 990 feet downtown could not be met because of the necessity to provide "enough land and sites for potential future adult uses."

5) Distances from "protected uses" outside of downtown were increased from zero to 400 feet and from 100 to 200 feet downtown. Protection for zones "other than residential or small neighborhood business zones" was "justified" because their populations are "particularly vulnerable to the negative impacts of adult uses." "Protected uses" are: day care centers; houses of worship; public libraries; schools; public parks/parkways/public recreation centers and facilities; fire stations (because of use for bicycle registration and school field trips); community residential facilities; missions; hotels/motels (which often have permanent residents).



National Law Center Summary of the
ST. PAUL, MINNESOTA
LAND USE STUDY
(CONTINUED)

6) Limiting one type of adult use per building was justified by experience with two pre-existing "multi-functional" adult businesses, numerous studies by other cities, and St. Paul's own study in 1978, which documented significantly higher crime rates associated with two adult businesses in an area, and significantly lower property values associated with three adult uses in an area. The 1987 study included statistics showing that most "prostitution arrests in the city occur within four blocks on either side of the concentration of four adult businesses." Other problems included "the propositioning" and "sexual harassment of neighborhood women mistaken for prostitutes", "discarding of hard-core pornographic literature" ("which is "most strongly associated with adult bookstores") "on residential property where it becomes available to minors", a "generally high crime rate," and "a general perception" that such an area "is an unsafe place due to the concentration of adult entertainment that exists there". Redevelopment experience in St. Paul showed that adult use areas caused a "blighting influence inhibiting development". Multi-functional adult uses will attract more customers which "increases the likelihood that such problems will occur." A "Sex for Sale Image" attracts more street prostitutes and their customers, and demoralizes other businesses and neighborhood residents".

7) Amount of land available for 24 existing adult uses (which includes split-off of two multi-functional businesses with three-four types per business) was 6.5% of the City's total land mass, for a maximum of 44 sites based on "absolute site capacity", calculated without regard for existing infrastructure, or 28 sites based on "relative site capacity" on existing street frontage calculated without regard for existing development or suitability of land for development.

8) Annual review of the "Special Condition Use Permit" was included in the "Amendment" "to ensure that no additional uses are added to the type of adult use that is permitted."

9) Prohibition of obscene works and illegal activities was included in the "Amendment" to "guard against the conclusion that the Zoning Code permits activities which the City can and should prohibit as illegal."



National Law Center Summary of the
LAS VEGAS, NEVADA
LAND USE STUDY
DATED MARCH 15, 1978

OVERVIEW: Prior to adopting a zoning ordinance for adult businesses, the City of Las Vegas conducted a survey of businesses, residences, and real estate brokers and agents. The results of the survey are included in this report. Also included in the report: minutes of the March 15, 1978, City Commission meeting on the matter of adding an adult business zoning chapter to the City code; an affidavit from Donald Saylor, Director of the Department of Community Planning and Development for Las Vegas, on the blighting effect of adult businesses; an affidavit from William Powell, Vice and Narcotics detective with the Las Vegas Metropolitan Police Department, on the link between a high concentration of adult businesses and an increase in criminal activity; and an affidavit from Donald Carns, professor of Sociology at the University of Nevada, Las Vegas, on the problems adult businesses pose for the economic well-being and vitality of a city.

FINDINGS: Among brokers and realtors, overwhelming majorities said that adult entertainment establishments had negative effects on the market value (82%), saleability/rentability (78%), and rental value (76%) of properties located near these establishments. According to 81%, there is a decrease in the annual income of businesses in the vicinity of adult establishments. Strong majorities reported that a concentration of adult businesses near other businesses (from under 500 feet to more than 1000 feet) has negative effects on market values, rental values, and rentability/saleability of residential property. Among surveyed homeowners and residents living near adult businesses, the consensus was similar: adult establishments have a negative effect on the 1) neighborhood; 2) business conditions (sales and profits) in the area (2-square block radius); and 3) value and appearance of homes in the vicinity (within 500 feet). Reportedly, 85% said that their normal living habits had been limited or hindered in some way due to the presence of adult businesses in the area. Among surveyed business owners and proprietors, the results were mixed. The majority of respondents did report that adult businesses had a negative effect on homes immediately adjacent to and in the area (500 feet or more) of adult businesses. A majority believed adult businesses had the following secondary effects: complaints from customers (66%), additional crime (58%), and deteriorated neighborhood appearance (58%). Finally, among residents living in areas not located near adult businesses, the consensus was clear: adult establishments have negative effects on neighborhoods, business conditions in the City, the value and appearance of homes, property values, the amount of crime, and resident transiency. These residents were nearly unanimous (96%) in the belief that their living habits had been limited or hindered by the operation of adult businesses.

RECOMMENDATIONS: Adult businesses should be prohibited from locating in residential areas. They should also be restricted to designated areas and dispersed throughout those designated areas. Adult businesses should be located at least 1000 feet from playgrounds, churches, schools, and parks.



National Law Center Summary of the
ELLICOTTVILLE, NEW YORK
LAND USE STUDY
DATED JANUARY, 1998

OVERVIEW: On April 28, 1997, the Ellicottville Village Board of Trustees and Town Board placed a moratorium on approvals of new sexually oriented establishments. There were four purposes for the move: 1) to allow the community time to study the effects of adult entertainment businesses; 2) "to determine if a regulatory response was necessary;" and 3) "if stronger land use controls were warranted to draft the regulatory changes for the legislative board's consideration." As there were no adult businesses in Ellicottville at the time of the study, the report cites secondary effects studies in other jurisdictions as a means of forecasting the effects of an Ellicottville adult business. The negative secondary effects examined included: economic impacts, property values, fear of crime, and negative impact on community character.

FINDINGS: Ellicottville is a community that relies upon attracting tourists. As such, "the atmosphere and aesthetic features of the community take on an economic value." Though active land use controls have been practiced to maintain the look and vitality of the community, currently there are no differentiations made between the regulation of an adult business and, say, a juice bar.

To assess potential secondary effects, studies administered in other New York jurisdictions will be helpful. The 1994 NYC Adult Entertainment study found the following: adult businesses tend to cluster in certain areas, a rise in crime is linked to clusters of adult businesses, negative reactions toward adult businesses were common among adjacent business and home owners, isolation of adult businesses limited secondary effects, real estate brokers believe property values are negatively impacted by nearby adult establishments, and adult business signs are often larger and more graphic.

Allowing adult businesses to locate within the historic business district would negatively impact Ellicottville's efforts to provide a family-friendly community. Similarly, permitting adult businesses to locate near residences would have an eroding effect on "aesthetic qualities" and property values. The type of signage typically used by adult businesses would run counter to the business district. The following uses seemed most prone to negative secondary effects: the Ellicottville historic district, places of worship (6 churches in Ellicottville), the school, the child care facility, recreation parks/areas/playgrounds and public/civic facilities, and residential neighborhoods.

RECOMMENDATIONS: The Town and Village should adopt zoning regulations that create a land use category, and regulate adult establishment uses, allowing them to locate in industrial zones and the industrial-service commercial district. The establishment of adult businesses should be considered Conditional Uses (requiring approval of a special use permit). Exterior advertising, signs, and loudspeakers and sound equipment should be regulated. The following distance buffers should be set for: 500 feet (town) or 300 feet (Village) from residential areas; 1000 feet (town) or 500 feet (Village) from other adult businesses; and 500 feet (town and Village) from a church, school, day care center, park, playground, civic facility or historic resource. Definitions for adult uses should be added to existing zoning regulations.



National Law Center Summary of the
ISLIP, NEW YORK
LAND USE STUDY
DATED SEPTEMBER 23, 1980

OVERVIEW: This report, compiled by Daniel Dollmann of the Islip Department of Planning, features an analysis of studies and ordinances from other jurisdictions, a case study of an adult business in Islip, research of public outcry against the establishment of adult businesses in Islip, and a survey by hamlet of adult entertainment businesses in Islip. The study includes a lengthy appendix with news articles detailing the history of the Islip zoning ordinance, letters of complaint from local residents, a historical perspective about the Detroit ordinance, copies of ordinances from other jurisdictions, and a copy of the proposed Islip zoning ordinance, reflecting the findings in this report.

FINDINGS: The study looks at the Detroit ordinance, upheld by the U.S. Supreme Court in 1976, which restricted sexually oriented businesses (SOBs) from locating within 1,000 feet of other SOBs, and within 500 feet of residential areas. The Islip ordinance is modeled after the Detroit ordinance's approach to disperse SOBs ("anti-skid row") as opposed to creating a "combat zone," which was unsuccessfully attempted by the Town of Islip in 1975. The study notes that the ordinance incorporates "adults-only" definitions in an attempt to avoid First Amendment issues. In determining its distance requirement between adult businesses and sensitive uses, the Town of Islip took into consideration: distance requirements used in Detroit, MI, Norwalk, CA, Dallas, TX, Prince George's Co., MD, and New Orleans, LA zoning ordinances; its own measurements on an Islip zoning map of several distance proposals; information from the local case study; and resident feedback. The study analyzes the problems unique to an area called Sunrise Highway (23% of businesses are adult) and compares the differences between Islip and Detroit, including population size and number of SOBs, to justify needs for greater distance limitations between SOBs.

One of the goals of the Town is to protect its historic downtown district and keep it from further deterioration (which occurred in the past due to an increase in multi-family dwellings, transients and bars). The Study noted that limiting SOBs to the Town's light industrial zone would be in keeping with this goal. Currently, there is a "dead zone" in one of the healthier parts of the downtown area due to two adult businesses located there.

The Study includes a case study of the Bohemia Book Store which was located extremely close to a residential area. In 1980 the store was temporarily closed down by court order, as a result of citizen picketing and subsequent violence against the picketers. The operators of this particular SOB were reported to have associations with organized crime (i.e., mob-operated national porno ring, multiple obscenity charges and convictions).

RECOMMENDATIONS: the proposed zoning ordinance requires 500 feet between an adult business and residential areas or other sensitive uses, like churches and schools, and a ½ mile distance between SOBs. The ordinance includes a waiver clause for certain conditions, and an amortization clause.



National Law Center Summary of the
New York City, New York
LAND USE STUDY
DATED NOVEMBER, 1994

OVERVIEW: This study of the secondary impacts of adult entertainment uses on communities in New York City (NYC), prepared by the Department of City Planning (DCP), includes: a survey of studies in other jurisdictions, a description of the adult entertainment business in NYC, a review of studies previously done in NYC, a DCP survey of the impacts on NYC communities, and maps showing SOB locations.

FINDINGS: Recent trends in sexually oriented businesses (SOBs) in NYC show a 35% increase over the last decade (75% of which were located in zoning districts that permit residences). However, since the survey for this information focused only on XXX video and bookstores, adult live or movie theaters, and topless or nude bars, this may be an underestimate of total SOB uses. Also in the past decade the availability of pornographic material has increased, the price has decreased greatly, and the image of nude bars has become more sophisticated or “upscale”, contributing to the wide-spread availability of SOBs in NYC. SOBs have continued to concentrate in specific areas, specifically in three communities within Manhattan. Between 1984 and 1993: the concentrated areas of SOBs have nearly tripled; the number of SOBs has increased from 29 to 86 (74% of which were adult video stores – not included in the 1984 survey); adult theaters declined from 48 to 23, and topless/nude bars increased from 54 to 68 (54%).

After examining studies from other jurisdictions, this study concludes that the negative secondary impacts are similar in every jurisdiction, despite size of city, variations in land use patterns, and other local conditions. The study specifically examines the negative secondary impacts documented in Islip, NY, Indianapolis, IN, Whittier, CA, Austin, TX, Phoenix, AZ, Los Angeles, CA, New Hanover Co., NC, Manatee Co., FL, and MN,

which evidenced problems with “dead zones”, declining property values, high turnover rates in adjacent businesses, and higher sex crime rates. Various studies done on the City of New York (including Times Square) showed that concentration of SOBs had resulted in significant negative impacts, including economic decline, decreased property values, and deterrence of customers, and significantly increased crime incidence. Business owners strongly believed their businesses were adversely affected by SOBs. The DCP did its study in NYC boroughs where there was less concentration of SOBs. The negative impacts in these areas were harder to measure, but there was a definite negative perception among residents about the presence of SOBs. It has been shown that negative perceptions related to SOBs can lead to disinvestment and tendency to avoid shopping in adjacent areas – leading to economic decline. Residents reared potential proliferation of SOBs and the resultant negative impact on traditional neighborhood-oriented shopping areas. Eighty percent of real estate brokers surveyed responded that an SOB would have a negative impact on property values (consistent with a national survey). Residents were also concerned about exposure to minors of sexual images.

The DCP concluded that it would be appropriate to regulate SOBs differently from other commercial businesses, based on the significant negative impact caused by SOBs.



National Law Center Summary of the **TIMES SQUARE, NEW YORK**

LAND USE STUDY

DATED APRIL, 1994

OVERVIEW: The Times Square Business Improvement District (BID) conducted a study of the secondary effects of adult businesses on the Times Square area. Due to an increase in the number of adult use establishments from 36 in 1993¹ to 43 in 1994 the BID conducted this study to obtain evidence and documentation on the secondary effects of adult use businesses in the Times Square BID, and of their dense concentrations along 42nd Street and Eighth Avenue. The study was performed by combining available data on property values and incidence of crime, plus in-person and telephone interviews with a broad range of diverse business and real estate enterprises, including major corporations, smaller retail stores, restaurants, theatres and hotels, as well as with Community Boards, block associations, activists and advocates, churches, schools, and social service agencies.

FINDINGS: The study made the following four findings:

1) Surveys - All survey respondents voiced optimism about the future of Times Square, even as they bemoaned the increase of adult use establishments. Many respondents felt that some adult establishments could exist in the area, but their growing number and their concentration on Eighth Avenue constitute a threat to the commercial property and residential stability achieved in the past few years.

2) Crime - Although the study was unable to obtain data from before the recent increase in adult establishments and, thus, unable to show if there's been an increase in actual complaints, there were 118 complaints made to the police on Eighth Avenue between 45th and 48th compared to 50 on the control blocks on Ninth Avenue between 45th and 48th Streets. In addition, the study reveals a reduction in criminal complaints the further one goes north on Eighth Avenue away from the major concentration of these establishments.

3) Property Values - The rate of increase of total assessed values of the Eighth Avenue study blocks increased by 65% between 1985 and 1993 compared to 91% for the control blocks during the same period. Furthermore, acknowledging the many factors that lead to a property's increased value, including greater rents paid by some adult establishments, an assessment of the study blocks reveal that the rates of increases in assessed value for properties with adult establishments is greater than the increase for properties on the same blockfront without adult establishments.

4) Anecdotal evidence - Many property owners, businesses, experts, and officials provided anecdotal evidence that proximity to adult establishments hurts businesses and property values.

CONCLUSION: BID's findings support the results from other national studies and surveys. Adult use businesses in Times Square have a negative effect on property values, cause a greater number of criminal complaints, and have an overall negative impact on the quality of life for the residents and small businesses of Times Square.

¹ This number is a great deal lower than the all time high of 140 in the late 1970s. During that time the Times Square area was referred to as a "sinkhole" by the (The Daily News, August 1⁴, 1975).



National Law Center Summary of the
NEW HANOVER CO., NORTH CAROLINA
LAND USE STUDY

DATED JULY, 1989

OVERVIEW: This Planning Department report cites several studies and reports outlining adverse economic, physical, and social effects of adult businesses generally and specifically in jurisdictions across the country. While noting that New Hanover County does not currently have a noticeable problem with adult establishments, the report emphasizes the need to institute "preventative" zoning measures to protect and preserve the quality of life. It also offers an overview of common zoning approaches and the attendant constitutional issues.

FINDINGS:

- 1) Municipalities across the country have documented, both empirically and anecdotally, the adverse effects of adult businesses on property values, rental values, neighborhood conditions, and other commercial businesses in the immediate area.
- 2) Cities have documented a link between adult businesses and urban blight, increased traffic, and light and noise pollution.
- 3) Studies have linked concentrations of adult businesses to an increase in crime, specifically prostitution, drugs, assault, and other sex crimes.
- 4) Community reputations and general quality of life are also negatively impacted by the presence of adult businesses.
- 5) An adult bookstore has been closed and re-opened several times after raids by law enforcement authorities. It is also reported that a topless dancing establishment may be opened in the County.
- 6) New zoning regulations would control the establishment of adult businesses near churches, schools, and residential areas.

RECOMMENDATIONS: 1) New Hanover should adopt the dispersal (Detroit) zoning approach. 2) Adult businesses should not be permitted to locate within 1,000 feet of each other. 3) Adult businesses should not be permitted within 500 feet of any school, church, park, or residential zone. 4) Adult businesses should only be allowed to locate in designated business and industrial districts, and only by a special use permit. 5) Signs and displays used by adult businesses should be regulated to protect the public, especially teenagers and children, from exposure to obscene material ("any display, device or sign that depicts or describes sexual activities or specified anatomical areas should be out of view of the public way and surrounding property"). 6) The County Attorney's Office and Sheriff's Department should explore the viability of requiring licensing for adult businesses. 7) Definitions for "adult business establishments," "specified sexual activities," and "specified anatomical areas" should be added to the zoning ordinance.



National Law Center Summary of the
CLEVELAND, OHIO
LAND USE STUDY
DATED AUGUST 24, 1977

OVERVIEW: This is a Cleveland Police Department report from Captain Carl Delau, commander of the City's vice and obscenity enforcement units and reported by him while he participated in a panel discussion at the National Conference on the Blight of Obscenity held in Cleveland July 28-29, 1977. The topic was "The Impact of Obscenity on the Total Community." Crime statistics are included for 1976 robberies and rapes. Areas evaluated were census tracts (204 in the whole city, 15 study tracts with sexually oriented businesses). At the time of the study, Cleveland had 26 pornography outlets (8 movie houses and 18 bookstores with peep shows). their location was not regulated by city zoning laws.

FINDINGS: For 1976, study tracts had nearly double the number of robberies as the city as a whole (40.5 per study tract compared to 20.5 for other city tracts). In one study tract with five sexually oriented businesses and 730 people, there were 136 robberies. In the city's largest tract (13,587 people, zero pornography outlets) there were only 14 robberies. Of the three tracts with the highest incidence of rape, two had sexually oriented businesses and the third bordered a tract with two such businesses. In these three, there were 41 rapes in 1976 (14 per tract), nearly seven times the city average of 2.4 rapes per census tract.

CONCLUSION: "Close scrutiny of the figures from the Data Processing Unit on any and every phase of the degree of crime as recorded by census tracts indicates a much higher crime rate where the pornography outlets are located."



National Law Center Summary of the
OKLAHOMA CITY, OKLAHOMA
LAND USE STUDY
DATED MARCH 3, 1986

OVERVIEW: This study contains the results of a survey of 100 Oklahoma City Real Estate Appraisers. Appraisers were given a hypothetical situation and a section to comment on the effects of sexually oriented businesses in Oklahoma City. The hypothetical situation presented a residential neighborhood bordering an arterial street with various commercial properties which served the area. A building vacated by a hardware store was soon to be occupied by an "adult" bookstore. No other sexually oriented businesses were in the area and no other vacant commercial space existed. With less than a one month response time, 34 completed surveys were received by the city.

FINDINGS: 32% of the respondents said that such a bookstore within one block of the residential area would decrease home values by at least 20%. Overwhelmingly, respondents said an "adult" bookstore would negatively effect other businesses within one block (76%). The level of depreciation is greater for residents than businesses. The negative effects on property values drop sharply when the sexually oriented business is at least three blocks away. In the subjective portion, 86% of the respondents noted a negative impact of sexually oriented businesses on Oklahoma City. Frequent problems cited by the appraisers included the attraction of undesirable clients and businesses, safety threats to residents and other shoppers (especially children), deterrence of home sales and rentals, and immediate area deterioration (trash, debris, vandalism).

CONCLUSIONS: Oklahoma City's findings supported results from other national studies and surveys. Sexually oriented businesses have a negative effect on property values, particularly residential properties. The concentration of sexually oriented businesses may mean large losses in property values.



National Law Center Summary of the
OKLAHOMA CITY, OKLAHOMA II
LAND USE STUDY
DATED JUNE 1992

This study, written by Jn Stephen Gustin, a retired sergeant for the Oklahoma City Police Department, examines a history of the successful abatement of sexually oriented businesses (SOBs) in Oklahoma City between 1984 - 1989, which ultimately reduced an alarmingly high crime rate in the city, which is one of many harmful secondary effects related to the operation of SOBs in the community.

This study indicates that in the early 1980's there was a large growth of SOBs in Oklahoma City in conjunction with a boom in the oil industry resulting in a large influx of oil field workers in the area. Houses of prostitution, nude bars and adult theaters spread throughout the city. SOB promoters and entrepreneurs from around the country came to the area to compete for their share in the market. By 1984, over 150 SOBs and an estimated 200 prostitutes operated in the city. SOB owners competed by using more and more blatant signs and advertising. As a result, the city experienced epidemic proportions of crime problems associated with the SOBs. Citizens began to voice concerns over the decay of community moral standards, the increased crime rate, and decreased property values.

Although Oklahoma City had a history of unsuccessful prosecution of cases related to pornography, prostitution, and related SOBs, public pressure from citizens and elected officials ultimately resulted in support by the Chief of Police, the City Council and the city's District Attorney to prosecute SOBs that were in violation of the law. Abating prostitution and related businesses was the first priority. The media aided this effort by publishing names of arrested customers and prostitutes, and airing live coverage of arrests and raids. This bolstered citizen support of police and prosecutors.

At adult bookstores and peep booths arrests were made for customers propositioning undercover officers to engage in sex acts, for the sale and possession of pornography, the display of pornography and for health department violations (including seminal fluids on the walls and floors of peep show booths). [Note that the author uses the term "pornography" referring to illegal pornography, also known as "obscenity."]

The city next focused on prosecution for violations at nude and semi-nude dance bars, where customers engaged in sexual favors with nude employees in exchange for the purchase of expensive cocktails. Repeated arrests in these bars forced them into compliance, causing a lack of customer support. Simple arrests at escort services, which were organized fronts for prostitution, did little to abate the illegal activity. Therefore, police worked undercover, arresting solicitors of the service. Also an attempt was made to prohibit businesses that had been convicted on prostitution charges from having access to phone service.

As a result of the aggressive arrest and prosecution efforts, only a handful of the original 150 SOBs remained by early 1990. All remaining SOBs operated within statutory guidelines. It has been documented that incidents of reported rape in Oklahoma City decreased 27% during that period, while it increased 16% in the rest of the state. In 1983 nearly one-half of the rapes in Oklahoma occurred in Oklahoma City, decreasing to one-third by 1989. This is an example of the benefits of stringent enforcement and prosecution of the so called "victimless crimes" associated with SOBs.



National Law Center Summary of the
AMARILLO, TEXAS
LAND USE STUDY
DATED SEPTEMBER 12, 1977

OVERVIEW: This Planning Department report cites several sources including national news magazines, "adult business" ordinances from other cities, an American Society of Planning Officials report and pertinent Supreme Court decisions. Lengthy explanation of the *Miller* test (with legal definitions), discussion of *Young v. American Mini Theatres*, and a comparison of the Boston and Detroit zoning models are included. The city defined "adult businesses" as taverns, lounges, lounges with semi-nude entertainment, and bookstores or theaters with publications featuring nudity and explicit sexual activities. (At the time, Amarillo had 3 such theaters and 4 bookstores with space for such publications).

FINDINGS: The police department provided an analysis showing that areas of concentrated "adult only" businesses had 2 1/2 times the street crime as the city average. The Planning Department concluded that concentrations of these businesses have detrimental effects on residential and commercial activities caused by 1) noise, lighting and traffic during late night hours 2) increased opportunity for street crimes and 3) the tendency of citizens to avoid such business areas. The study noted that lack of zoning regulations would lead to concentrations of sexually oriented businesses (causing increased crime) or more such establishments locating near residential areas or family and juvenile oriented activity sites (churches, parks, etc.)

RECOMMENDATIONS: 1) Adult businesses locate 1,000 feet from each other. No recommended distance was specified from residential zones or family/juvenile activities. 2) City development of an amortization schedule and permit/licensing mechanism. 3) City regulation of signs and similar forms of advertising. 4) Vigorous enforcement of State Penal Code, especially relating to "Harmful to Minors." 5) City amendments prohibiting minors from viewing or purchasing sexually oriented materials (enforced physical barriers).



National Law Center Summary of the
AUSTIN, TEXAS
LAND USE STUDY
DATED MAY 19, 1986

OVERVIEW: The report was the basis for developing an amendment to existing sexually oriented business ordinances. At the time, 49 such businesses operated in Austin, mostly bookstores, theaters, massage parlors and topless bars. The study examined crime rates, property values, and trade area characteristics.

The report focused on sexually related crimes in four study areas (with sexually oriented businesses) and four control areas (close to study areas and similar). Two study areas had one sexually oriented business and the others had two such businesses. To determine the effects of these businesses on property values, the city sent surveys to 120 real estate appraising or listing firms (nearly half responded). For trade area characteristics, three businesses (a bookstore, theater and topless bar) were observed on a weekend night to determine customer addresses.

CRIME: Sexually related crime ranged from 177-482% higher in the four study areas than the city average. In the two study areas containing two sexually oriented businesses, the rate was 66% higher than in the study areas with one such business. All control areas had crime rates near the city average.

REAL ESTATE: 88% said that a sexually oriented business within one block of a residential area decreases the value of the homes (33% said depreciation would be at least 20%). Respondents also said such a business is a sign of neighborhood decline, making underwriters hesitant to approve the 90-95% financing most home buyers require. They said commercial property is also negatively effected by such businesses.

TRADE AREA CHARACTERISTICS: Of 81 license plates traced for owner address, only 3 lived within one mile of the sexually oriented business. 44% were from outside Austin.

RECOMMENDATIONS: 1) Sexually oriented businesses should be limited to highway or regionally-oriented zone districts. 2) Businesses should be dispersed to avoid concentration. 3) Conditional use permits should be required for these businesses.



National Law Center Summary of the
BEAUMONT, TEXAS
LAND USE STUDY
DATED SEPTEMBER 14, 1982

OVERVIEW: This report by the city Planning Department encourages amendments to existing "adult business" ordinances to include eating or drinking places featuring sexually oriented entertainment (strippers, etc.). Zoning laws required "adult uses" to locate 500 ft. from residential areas; 300 ft. from any other adult bookstore, adult theater, bar, pool hall or liquor store; and 1,000 feet from a church, school, park, or recreational facility where minors congregate.

CRIME: Police verified that bars, taverns, and lounges (especially those with sexually oriented entertainment) are frequent scenes of prostitution and the sale/use of narcotics. On the whole, all criminal activity was higher at sexually oriented businesses.

RECOMMENDATIONS: 1) Add eating/drinking places that exclude minors (under Texas law), unless accompanied by a consenting parent, guardian or spouse. 2) Require specific permits for areas zoned as General Commercial-Multiple Family Dwelling Districts. 3) Reduce the required distance of sexually oriented businesses from residential areas, schools, parks, and recreational facilities from 1,000 to 750 ft.



National Law Center Summary of the
CLEBURNE, TEXAS
LAND USE STUDY
DATED October 27, 1997

OVERVIEW: This is a report by Regina Atwell, City Attorney for the City of Cleburne, Texas, on how and why the city organized a joint, county-wide sexually oriented business (SOB) task force. The purpose of this report is to educate and provide assistance to other jurisdictions on what the author considers important aspects of organizing, drafting and adopting an SOB ordinance or amendment to an SOB ordinance. In the introduction, Ms. Atwell cautions that although SOBs now appear more sophisticated and have begun to integrate into the mainstream, the secondary effects of these businesses are still harmful to the community. She offers a set of questions to help assess a local government's needs to enact or update its SOB ordinance. Also, she gives a brief legal history of zoning regulations for SOBs.

ORDINANCE ENACTMENT: The City of Cleburne decided to update its existing SOB ordinance in response to plans by Houston and Dallas to revise their SOB ordinances, as well as related concerns that Dallas-Ft. Worth SOBs might subsequently infiltrate the Cleburne area. After learning that the County did not have an SOB ordinance, county officials and officials from all cities in the county were invited to appoint task force members to join the Cleburne's SOB Task Force. Due to an excellent response from the county and many cities within the county, a Joint County-Wide SOB Task Force was formed, realizing that a united stand on this issue was imperative.

After researching the law, consulting experts, examining sample ordinances from other jurisdictions, thoroughly investigating SOBs and their negative secondary effects on the community, and deciding which time/place/manner regulations were most appropriate to protect the governmental interests of their area, the Joint Task Force presented a draft of an SOB Ordinance to their city and county officials. For all its functions, the Task Force relied on the following guidelines: (1) Drafting an ordinance is done by the city planning office, the city attorney and the ordinance review committee, in reliance on case studies discussing secondary effects of SOBs. It is important that the actual studies be presented to legislators; (2) Public hearings should be held to discuss the ordinance and a legislative record created to preserve testimony, studies, maps, and other evidence; (3) Draft a good "Preamble" indicating the council's concern with secondary effects of SOBs; (4) Keep legislative record clean from any suggestions that impermissible motives have influenced the legislative process; (5) Be sure the ordinance allows reasonable "alternative avenues of communication" for SOBs to locate, and include zoning maps with measurements and available sites for the record; and (6) If interested in enacting a licensing ordinance, be sure that it is narrowly drawn to serve legitimate state interests without restricting 1A speech of SOBs. The report also gives extensive tips for how to hold public hearings.

CONCLUSIONS: Regulation of SOBs, including licensing, was necessary to combat the detrimental effects of SOBs, including high crime rate, depreciated property values, and spread of communicable diseases. In addition, the Task Force recommended enforcement of public nuisance laws, diligent prosecution of obscenity and sexual offense cases, and specialized training for local police and sheriffs.



National Law Center Summary of the
DALLAS, TEXAS
LAND USE STUDY
DATED APRIL 29, 1997

This study, which is an update of a December 14, 1994 report prepared by The Malin Group, analyzes the effects of sexually oriented businesses (SOBs), specifically those that offer or advertise live entertainment and operate as an adult cabaret, on the property values in the surrounding neighborhoods. The study concludes that there is a much greater impact on the surrounding neighborhoods when there is a high concentration of these businesses in one locale.

The study found that the presence of an SOB in an area can create a "dead zone" which is avoided by shoppers and families with children that do not want to be in areas that also have adult uses. Also, the late hours of operation combined with loitering by unsavory people in the area where SOBs are located, appear to lead to higher crime in the area. In fact, a look at police calls for service over a four year period (1993-1996) shows that SOBs were a major source of the calls. One area averaged more than one call to police per day, where there was a concentration of seven SOBs. In that same area there was a much higher incidence of sex crime arrests than in similar areas with none or fewer SOBs.

This study applied the conclusions of several other studies completed by New York, Phoenix, Indianapolis, Austin, and Los Angeles, finding that the methodology used was appropriate and the conclusions were sound. This study concludes that the finding in these other studies would not be any different in Dallas. The studies found that SOBs have negative secondary impacts such as increased crime rates, depreciation of property values, deterioration of community character and the quality of life. In addition, real estate brokers interviewed in the Dallas area reported that SOBs are "perceived to negatively affect nearby property values and decrease market values." There were similar results from surveys taken in New York City and a national survey completed in Indianapolis and Los Angeles. The study also showed that community residents were concerned that the business signs used by SOBs were out of keeping with neighborhood character and could expose minors to sexual images. In areas where SOBs were concentrated, the signs were larger more visible and more graphic, to compete for business.

The study shows that a concentration of SOBs has a higher negative impact on the surrounding communities than an area with one isolated SOB. When concentrated, SOBs tend to be a magnet for certain businesses such a pawn shops, gun stores, liquor stores, etc., while driving away more family-oriented businesses. It can be harder to rent or sell vacant land in areas where SOBs are located. In fact, the negative perceptions associated with these areas have a significant impact on declining property values, even where other negative effects of SOBs are difficult to measure. Interviews with owners of commercial property near SOBs confirmed that the loss of property value manifested in a variety of ways, including: increased operating costs, like additional security patrols, burglar alarms, and trash cleanup; properties selling at much lower sales prices; and extreme difficulty in leasing properties. Owners thought that if the SOBs were gone, their property values would increase.



National Law Center Summary of the
EL PASO, TEXAS
LAND USE STUDY
DATED SEPTEMBER 26, 1986

OVERVIEW: This study done by the Department of Planning, Research and Development, the City Attorney's Office, the Police Department Data Processing Division, and New Mexico State University involved one year of studying the impacts of SOBs on the El Paso area. A separate report by the New Mexico State University on perceived neighborhood problems is also included. The study is in response to resident concern about the negative impacts resulting from the significant growth in SOBs over the past ten years. The study results show that SOBs are an important variable in the deviation from normal rates for real estate market performance or crime. Also included in the study are detailed maps showing the locations of SOBs in El Paso and within the selected study areas.

FINDINGS: In studying the impacts caused by SOBs, three study areas (with SOBs located in the area) and three control areas (similar areas in size and population, but without SOBs) within El Paso were identified and studied. Using the results of the study areas and the attitudes of the residents living near SOBs, the study concluded that the following conditions existed within the study areas: (1) the housing base within the study area decreases substantially with the concentration of SOBs; (2) property values decrease for properties located within a 1-block radius of SOBs; (3) there is an increase in listings on the real estate market for properties located near SOBs; (4) the presence of SOBs results in a relative deterioration of the residential area of a neighborhood; (5) there is a significant increase in crime near SOBs; (6) the average crime rate in the study areas was 72% higher than the rate in the control areas; (7) sex-related crimes occurred more frequently in neighborhoods with even one SOB; (8) residents in the study areas perceived far greater neighborhood problems than residents in control areas; (9) residents in study areas had great fear of deterioration and crime than residents in control areas.

The study of perceived neighborhood problems done by the New Mexico State University revealed strong concern by residents of the impact of SOBs on children in the neighborhood. In addition, some respondents told survey interviewers they feared retaliation from SOBs if they gave information about problems related to SOBs. Overall, this survey showed a strong, consistent pattern of higher neighborhood crime, resident fear and resident dissatisfaction in the neighborhoods containing SOBs.

RECOMMENDATIONS: The main recommendations included that a zoning ordinance be adopted with distance requirements between SOBs and sensitive uses, that a licensing system be established, that annual inspections be required, that signage regulations be established, and that a penalty/fine section be included for violations.



National Law Center Summary of the
HOUSTON, TEXAS
LAND USE STUDY
DATED NOVEMBER 3, 1983

OVERVIEW: Report by the Committee on the Proposed Regulation of Sexually Oriented Businesses determining the need and appropriate means of regulating such businesses. Four public hearings provided testimony from residents, business owners, realtors, appraisers, police, and psychologists. The committee and legal department then reviewed the transcripts and drafted a proposed ordinance. More hearings obtained public opinion on the proposal and the ordinance was refined for vote by the City Council.

TESTIMONY: The testimony was summarized into six broad premises: (1) The rights of individuals were affirmed. (2) Sexually oriented businesses can exist with regulations that minimize their adverse effects. (3) The most important negative effects were on neighborhood protection, community enhancement, and property values. (4) Problems increased when these businesses were concentrated. (5) Such businesses contribute to criminal activities. (6) Enforcement of existing statutes was difficult.

ORDINANCE: (1) Required permits for sexually oriented businesses (non-refundable \$350 application fee). (2) Distance requirements: 750 ft. from a church or school; 1,000 ft. from other such businesses; 1,000 ft. radius from an area of 75% residential concentration. (3) Amortization period of 6 months that could be extended by the city indefinitely on the basis of evidence. (4) Revocation of permit for employing minors (under 17), blighting exterior appearance or signage, chronic criminal activity (3 convictions), and false permit information. (5) Age restrictions for entry.



National Law Center Summary of the
HOUSTON, TEXAS II
LAND USE STUDY
DATED JANUARY 7, 1997

OVERVIEW: This is a summary of a legislative report prepared by the Sexually Oriented Business Revision Committee for the Houston City Council, analyzing the strengths and weaknesses of the City's current SOB ordinance, and making recommendations for amendments and additions principally pertaining to employee licensing, lighting configurations, location requirements, prohibition of "glory holes," elimination of closed-off areas, public notification of SOB applications, clear lines of vision inside SOBs, and dancer "no-touch" policies. This report summary includes discussion of prior regulation efforts, testimony by HPD Vice Department, citizen correspondence, industry memos, legal research, and summaries of public testimony.

SUMMARY: This study was a result of increasing community concern over increasing proliferation of SOBs under the existing SOB ordinance and the HPD's need for better control over increasingly repetitive serious violations at numerous SOBs. The Committee made the following findings: (1) Due to criminal activity associated with SOBs, licenses should be required for all SOB employees (requiring criminal background investigations); (2) There are obstacles to successful enforcement of public lewdness, prostitution, indecent exposure, and other criminal activities (i.e. entertainers can detect when a patron is an undercover cop); (3) "Glory holes" between enclosed booths promote anonymous sex and facilitate the spread of disease, so prohibition of these openings was recommended; (4) The lack of a clear line of vision between manager's stations and booths or secluded areas (V IP rooms) encourages lewd behavior and sexual contact (also difficult to observe during inspections); (5) Multi-family tracts were being counted as one tract, so new formula devised based on homeowners' property size; (6) Inadequate lighting in SOBs makes it difficult for SOB managers and police to monitor illegal activities, so minimum requirements for "exit" signs in Uniform Building Code was suggested; (7) Locked rooms within SOBs are usually fronts for prostitution, so prohibition of enclosed rooms recommended; (8) Public and expert testimony requested the inclusion of "public parks" as a sensitive use in the zoning location ordinance; (9) Repeated testimony requested notification to public regarding pending SOB permits, so posting of a sign notifying of pending permit was required; and (10) Continuing amortization provisions was preferable to grandfathering in those SOBs not in compliance with the amended ordinance (i.e. 6 months plus extensions for recouping investment).

CONCLUSIONS: The Committee concluded that strengthening the ordinance would achieve expedited revocation process, accountability to SOB employees through licensing, aid to police investigations by improved lighting and configurations, protections to the community by increasing distance requirements, and reduction of disease from anonymous spread by eliminating "glory holes."



National Law Center Summary of the
NEWPORT NEWS, VIRGINIA
LAND USE STUDY
DATED MARCH, 1996

OVERVIEW: As of November, 1995, there were 31 "adult use" establishments: 14 "adult entertainment" establishments ("exotic dancing girls", "go-go" bars, "gentlemen's clubs", etc.); 8 "adult book/video stores" (outlets selling and renting pornographic magazines, videos, and sex devices); and 9 night clubs (music, dancing, or other live entertainment). Of the 31 uses, 17 are in the General Commercial zone, 5 in the Regional Business District zone, 7 in the Retail Commercial zone, and 2 are in the Light Industrial zone. They are dispersed along two streets with a few clusters. A proposed ordinance would require "adult uses" to be 500 feet from other "adult" uses and to locate at least 500 feet away from sensitive uses (churches, schools, homes, etc.), with no distance limits in the downtown zone.

CRIME: The Police Department researched calls for police responses to the 31 businesses, by address, for the period of January 1, 1994, to October 31, 1995, with a cross-check to assure accuracy of the calls to the correct address. The effects of concentrations of "adult uses" were also checked by comparing study areas with control areas. Study area 1, with 4 "adult" uses, had 81% more police calls than nearby control area 1. When adjusted for population differences, the study area had 57% higher police calls and 40% higher crimes than the control area. For the 31 sexually oriented businesses, there were 425 calls of those: 65% were to strip clubs and go-go bars, averaging 23 calls per "adult entertainment" business; night clubs had 30% of the calls, averaging 14 calls per business; and "adult" bookstores and video stores had 4%, averaging 2 calls per business; . The reasons for the calls included: 25 assaults; 18 malicious destructions of property; 39 intoxications; 60 fights; and 151 disorderly conduct incidents. A selected list of restaurants with ABC licenses averaged 11 calls for service during the same period. One particular downtown "adult entertainment" establishment had 116.7 "police calls per 100 occupancy" compared to a regular restaurant, non-adult use, located across the street, with 50 calls per 100 occupancy.

MERCHANTS/REAL ESTATE: A very high percentage of realtors indicated that having "adult uses" nearby can reduce the number of people interested in occupying a property by 20 to 30%; would hurt property values and resale of adjacent residential property. Realtors expressed concern for personal safety, increased crime, noise, strangers in the neighborhood, and parking problems. Merchants associations surveyed supported strengthening the city's regulations of "adult uses" and expressed a common concern that additional "adult uses" would contribute to deterioration of their areas.



National Law Center Summary of the
BELLEVUE, WASHINGTON
LAND USE STUDY
DATED FEBRUARY, 1988

OVERVIEW: This is a compilation of materials prepared for the City Council Members of Bellevue, Washington for use in enacting an SOB zoning ordinance. The study includes general information about regulation of SOBs, secondary impacts from SOBs, experiences from nearby communities, description of Bellevue's current situation, and recommendations for appropriate forms of regulation of SOBs within Bellevue. Also included is a bibliography of land use studies, articles, correspondence and reference materials from adjacent municipalities made available for council members' use. Minutes from two public hearings about regulation of SOBs, maps showing the location of current SOBS, and memos from the planning department are also included.

FINDINGS: The study begins by explaining the legal basis history behind regulating SOBs. Existing provisions in the State and local codes relating to obscenity or licensing are mentioned. The study notes that the goal of regulating SOBs is to mitigate the secondary impacts of these uses in the communities. It concludes that the implications of the data and experience studied in other jurisdictions are significant to Bellevue. It discusses the link between crime rates and areas with concentrations of SOBs, as revealed by police research, noting the "skid row" effect that occurred in Detroit, and the higher percentages of crime documented in Cleveland (in the 1970's), and other cities. The study noted that while police crime statistics showed a strong connection between criminal activity and some adult uses, there is no clear consensus (in psychological studies) that exposure to pornography causes criminal behavior. The study also discusses the impact to property values. It notes a Kent survey of real estate appraisers that revealed an overall consensus that the impact on residential property values is probably negative. In Bellevue, the three existing SOBs are widely dispersed and centrally located in commercial areas, which have thusfar not experienced deterioration in surrounding structures and areas. Based on a Puget Sound study, it was noted that SOBs are incompatible with residential, educational and religious uses. *The Northend Cinema v. Seattle* case agreed that the goal of preserving the quality of residential neighborhoods by prohibiting disruptive adult uses was a valid, substantial interest. This case also points out that residents' perceptions may be a major factor in siting SOBs. Overall the study concludes that research has shown SOBS may lead to the secondary effects mentioned above, but it is not possible to say definitely in each case. The study goes on to review regulations adopted by different jurisdictions, analyzing approaches of dispersal and concentration of SOBs. The study enumerates several sections of code showing public policy concerns to be considered when deciding Bellevue's approach to regulating SOBs. Currently, the three existing SOBs in Bellevue show no particular negative impacts on the surrounding community, and are widely dispersed from each other and other sensitive uses (residences, etc). However, there is not guarantee that future concentrations of SOBs will not occur.

RECOMMENDATIONS: The study recommended the adoption of a modified dispersal/concentration approach (i.e. dispersal within CB, OLB and CBD zones), with a 600-foot distance limitation between SOBs and other sensitive uses.



National Law Center Summary of the
DES MOINES, WASHINGTON

LAND USE STUDY

DATED AUGUST, 1984

OVERVIEW: This land use study includes an independent report prepared by R. W. Thorpe & Associates, Inc for the Des Moines City Council, and a report from the City Administration on the impacts of Sexually Oriented Businesses (SOBs) on the area. Appendices include: a theater admission report, a 1978 Des Moines Community opinion survey, a copy of a Des Moines ordinance requiring an impact study of SOBs on the city, a list of criminal incidents related to the adult theater, a business activity chart of businesses adjacent to the adult theater, a copy of *Northend Cinema, Inc. v. City of Seattle*, 585 P.2d 1153 (1978), and transcripts of the hearing and testimonies.

FINDINGS: When the study was made, Des Moines had an adult theater operating in the Revitalization area/central business district of the city. It had been operating as such since the 1970's. The Administration report noted a 1978 Community Opinion Survey reporting that the majority of residents in the area were opposed to the theater. The Administration's report also lists several negative impacts caused by the presence of the adult theater in the community, including: decreased property values, refusal to shop in stores adjacent to the adult theatre, noticeable deterioration of the district, deferred maintenance, parking and traffic problems, attraction of transients, increased crime, and interference with parental responsibilities for children. As a result, the study noted that there had been numerous business failures and high business turnover in the commercial areas near the adult theater. Public testimony, staff studies and the independent study all concluded that the continued presence of the adult theater would nullify any investment in the revitalization efforts of downtown Des Moines. The study examined efforts to regulate SOBs in North Carolina, Detroit, Maryland, and Seattle. The Administration's study took particular note of Seattle's zoning ordinance, which restricted location of SOBs to a certain part of the city. It was upheld by that state's highest court, which said the city's important interest in regulating the use of its property for commercial purposes was sufficient justification.

The independent study submitted by R. W. Thorpe & Associates, Inc for the Des Moines City Council mostly focused on and made comparisons to studies done in cities in the western part of Washington State. However, the study also looked at other jurisdictions like Boston, and New Orleans. It looks at various negative impacts on the community including crime, decline in adjacent land uses, economic impact (decreased property values), and community impact (incompatibility with sensitive uses and areas where minors may meet collectively). It discussed differing approaches to regulating SOBs, including clustering and dispersal.

RECOMMENDATIONS: The Administration's report, based partly on the independent study, concluded that a zoning ordinance should be enacted, locating adult businesses in the CG zone along Highway 99. This would keep SOBs away from the central business district that the city was trying to revitalize and maintain a family friendly atmosphere there. Dispersal of SOBs was also recommended to minimize impact of crime potential volatile situations associated with close proximity of SOBs.



National Law Center Summary of the
SEATTLE, WASHINGTON
LAND USE STUDY
DATED MARCH 24, 1989

OVERVIEW: The report concerns a proposed amendment to add topless dance halls to existing land use regulations for "adult entertainment establishments." Seattle had eight such dance halls (termed "adult cabarets"), six established since 1987. The study relies on reports from a number of cities, including Indianapolis, Los Angeles, Phoenix, Austin and Cleveland.

FINDINGS: The increased number of cabarets resulted in citizen complaints, including phone calls, letters (from individuals and merchants associations), and several petitions with hundreds of signatures. Protests cited decreased property values; increased insurance rates; fears of burglary, vandalism, rape, assaults, drugs, and prostitution; and overall neighborhood deterioration. The report notes that patrons of these cabarets most often are not residents of nearby neighborhoods. Without community identity, behavior is less inhibited. Increased police calls to a business, sirens, and traffic hazards from police and emergency vehicles are not conducive to healthy business and residential environments.

RECOMMENDATIONS: Since city zoning policy is based on the compatibility of businesses, the report recommends that the cabarets locate in the same zones as "adult motion picture theaters." This plan allows about 130 acres for such businesses to locate throughout the city.



National Law Center Summary of the
ST. CROIX CO., WISCONSIN
LAND USE STUDY
DATED SEPTEMBER, 1993

OVERVIEW: At the time the St. Croix County Planning Department did this study, the County had two adult cabarets, but did not have a problem with concentration of sexually oriented businesses (SOBs). The study acknowledges that SOB zoning ordinances have generally been upheld by the courts as constitutional and suggests the County consider following the lead of other communities who have enacted similar ordinances. The main concern surrounded possible growth of SOBs resulting from future plans for an interstate highway system linking St. Croix County and the great Twin Cities metro area. To preserve the County's "quality of life" the study indicates the need to take preventative vs. after-the-fact action.

SUMMARY: The study notes the continued growth of the SOB industry and analyzes the economic, physical, and social impact it has on the community. It examines documented economic impact of SOBs in Los Angeles, CA, Detroit, MI, Beaumont, TX, and Indianapolis, IN, noting that concentrations of SOBs results in decreased property values, rental values, and rentability/salability. General economic decline is also associated with concentration of SOBs. Residents surveyed in other studies perceived a less negative impact on property values of residential and commercial areas the further away SOBs were located. The study also noted that economic decline caused physical deterioration and blight. During night time operation hours, traffic congestion and noise glare could also be problems. Social impacts studied included negative effects on morality, crime, community reputation and quality of life. It noted the 1970 Commission on Obscenity and Pornography saying porn has a deleterious effect upon the individual morality of American citizens. It cites the Phoenix, AZ study reporting a tremendous increase in crime in three study areas containing SOBs (43% more property crimes, 4% more violent crimes, and over 500% more sex crimes). The study mentions Justice Powell's quote in *Young v. American Mini-Theatres* regarding using zoning to protect "quality of life."

The study analyzes different zoning techniques, including dispersal and concentration of SOBs, and their constitutionality. It also discusses the use of "special use" and "special exception" permits. Other regulatory techniques discussed include licensing ordinances, active law enforcement, sign regulations, and nuisance provisions. The study includes detailed examples of SOB definitions, a proposed zoning ordinance, and a bibliography of the sources used for this study.

RECOMMENDATIONS: The study recommended that the county adopt a zoning ordinance using the dispersal technique. It also suggested the county explore the possibility of licensing SOBs.



REGULATING ADULT ENTERTAINMENT:

Daniel Olson, Assistant Legal Counsel

The phrase "adult entertainment" might be used to describe a women's slow-pitch softball tournament or a men's horseshoe competition but these are not the circumstances to which local officials usually apply it. Rather, "adult entertainment" is commonly used to broadly describe a range of communicative conduct (dancing) or material (books, magazines, videos) with a substantial erotic or sexual character. Thus, a city council or village board member who learns that "adult entertainment" will soon be part of their community does not immediately think about preparing a letter thanking the provider.

Sometimes, the news of commercial adult entertainment activity precedes the adoption of any local sexually-oriented business (SOB) or adult-oriented business (AOB) regulation. This prompts contact with the municipal attorney who is asked what regulations can be implemented after-the-fact. The response leaves the local official unsatisfied because she is advised that the books, magazines, movies, dances and other communicative materials or conduct sold or offered by the SOB or AOB are constitutionally protected speech, provided they are not obscene communications under the three-part test set forth in *Miller v. California*, 413 U.S. 15 (1973) and codified in Wis. Stat. sec. 944.21, which severely diminishes the prospect of meaningful after-the-fact regulation.

The constitutionally protected status of non-obscene adult entertainment speech creates some tension for local officials. Despite a substantial societal presence, it is disfavored speech and the personal or political tendency of a local official is to try and keep adult entertainment speech businesses out of their community. However, she must act contrary to that tendency because there is no legally permissible method to exclude all adult entertainment speech businesses from a city or village. Total bans on adult entertainment speech businesses are unconstitutional. And, implementing policies and regulations that seek such a goal will expose the municipality and the official to significant financial liability. Therefore, this comment seeks to advance effective and legally permissible alternatives by identifying constitutional adult entertainment regulation systems, key constitu-

tional principles and important unresolved issues.

REGULATION SYSTEMS

Zoning is probably the most common form of adult entertainment business regulation. There are two types of zoning utilized. The first is "dispersion zoning" which requires specified separation distances between adult entertainment businesses as well as other types of uses such as residences, schools, etc. The second is "concentration zoning" also known as "red light district" zoning which seeks to concentrate adult entertainment businesses to particular areas of a community by prohibiting their location anywhere but selected areas. Both methods are constitutionally permissible "time, place, and manner" restrictions of protected speech, provided the implementing regulations satisfy applicable constitutional principles and rules.

The second common regulation system is licensing. In general, such systems establish requirements for owners and employees of adult establishments. These requirements focus on how the adult entertainment business is operated rather than where it is located. Thus, they differ from zoning requirements, which apply to the physical property involved irrespective of the owners or operators, in that they establish management requirements on owners/operators. However,

LEGAL PRINCIPLES AND ISSUES

as with zoning requirements, there are important constitutional principles restricting adult entertainment business licensing systems that must be followed.

CONSTITUTIONAL PRINCIPLES

It is well established law that constitutional protection extends to books, magazines, photographs, sculptures, paintings, movies, speeches, plays, dances and other forms of communication that primarily convey an erotic or sexual message and are not deemed obscene under the law. Thus, effective adult entertainment speech regulation hinges on compliance with the principles or rules that define its constitutionally protected status.

The Content Neutrality Principle. When analyzing speech regulations, courts distinguish between content-neutral and content-based regulations. Content-neutral regulations of speech are not concerned with the nature of the speech affected by the regulation. For example, a regulation that requires all signs in residential neighborhoods to be located at least three feet from a lot line is content-neutral. The regulation applies irrespective of whether the sign message is about a garage sale or

a political candidate. In contrast, content-based regulations distinguish favored speech from disfavored speech on the basis of the ideas expressed. An ordinance that places time limits on political signs is one example because the ordinance is concerned with the sign's message.

Content-based regulations are subject to strict judicial scrutiny and are presumed invalid.¹ This presumption may be overcome only by a showing that the regulation is "necessary to serve a compelling state interest and employs the least restrictive means to accomplish it."²

There are few judicially recognized "compelling" governmental interests and prohibiting the expression of an idea simply because society finds the idea itself offensive or disagreeable is not one of them. Thus, it is very rare for a court to find a content-based speech regulation valid and adult entertainment speech regulation cannot be based on the fact that a local official or her community is offended by such communication.

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1. *City of Renton v. Playtime Theaters, Inc.* 475 U.S. 41, 47 (1986).
2. *See, e.g., Austin v. Michigan Chamber of Commerce*, 494 U.S. 652 (1990).

It is well established that content-based regulations are subject to strict judicial scrutiny and are presumed invalid.

““THERE IS AN IMPORTANT EXCEPTION TO THE GENERAL RULE THAT STRICT SCRUTINY APPLIES TO CONTENT-BASED REGULATIONS. SOME TIME, PLACE OR MANNER REGULATIONS ARE TREATED AS CONTENT-NEUTRAL, EVEN THOUGH THEY ARE CONTENT-BASED.””

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Upon examination, it is apparent that adult entertainment speech regulations are content-based. They universally specify coverage of only particular types of speech such as live performances characterized by the exposure of specified anatomical areas or by specified sexual activities; or films, motion pictures, video cassettes, slides, photographic reproductions, or other image producing devices that are characterized by the depiction or description of specified anatomical areas or specified sexual activities; or exotic or erotic dancing or performances that are intended for the sexual interests or titillation of an audience or customers. These adult entertainment speech regulations target certain communicative activities because of their erotic or sexual content. Thus, they could be subjected to the tough strict scrutiny standard by our courts but they are not.

There is an important exception to the general rule that strict scrutiny applies to content-based regulations. Some time, place or manner regulations are treated as content-neutral, even though they are content-based.³

Time, place, or manner restrictions are those government uses to direct speech through certain avenues rather than others. These include restrictions on operating hours, the locations within the community it might occur and specifying open video booths,

separation distances between patrons and dancers and other limitations on the way erotic or sexual messages can be conveyed. Significantly, such restrictions are only subject to content-neutral intermediate scrutiny if they “are justified without reference to the content of the regulated speech.”⁴ “Such justification is present if the regulation’s predominant concern is with the ‘secondary effects’ of the regulated speech, rather than with the content of that speech.”⁵

Accordingly, content-based time, place or manner restrictions imposed on adult entertainment speech by municipalities are not required to satisfy the more demanding compelling governmental interest test associated with content-based speech regulations, so long as the predominant concern of the regulation is controlling adverse secondary effects. However, such regulations cannot go too far and must also be narrowly tailored to serve the government’s significant interest in curbing adverse secondary effects.⁶ And, finally, they must leave open “reasonable alternative avenues” for “adult entertainment” speech communication.⁷

It is important to note that there are two lines of cases in the adult entertainment speech context with slightly different tests. The *Renton* line deals with zoning regulations aimed at dispersing adult entertainment establishments. The other line, represented by *United States v. O’Brien*, 391 U.S. 367

3. See *City of Erie v. Pap’s A.M.*, 529 U.S. 277 (2000).

4. *City of Renton*, 475 U.S. at 48.

5. *Id.* at 47.

6. *Id.*

7. *Id.*

(1968), deals with regulations directed at expressive conduct such as dancing. However, lower courts recognize that the analytical differences between the tests in each line are not significant.⁸ Given that zoning is arguably the more prevalent means for controlling adult entertainment speech business and the similarity between the tests, this comment will focus on the three *Renton* test elements.

Secondary Effects.

Recognized adverse secondary effects connected with adult entertainment include increased crime, decreased property values, prostitution, illicit sex, sexually transmitted disease and urban blight.⁹ It is not constitutionally necessary for any local regulation to be based on all or more than one adverse secondary effect associated with adult entertainment speech. Instead, the secondary effects justification for a content-based time, place and manner regulation of "adult entertainment" speech is present when the "municipality can demonstrate a connection between the speech regulated by the ordinance and the secondary effects that motivated the adoption of the ordinance."¹⁰

When evaluating the sufficiency of an asserted connection between speech and secondary effects, the courts must

"examine evidence concerning regulated speech and secondary effects."¹¹ Thus, local officials must be able to identify for the courts the secondary effects evidence they relied upon for their regulation decision.

Municipalities are not, however, required to produce their own independent evidence of secondary effects. Rather, a municipality may rely on studies performed elsewhere "so long as whatever evidence the [municipality] relies upon is reasonably believed to be relevant to the problem that [it] addresses."¹² However, the Supreme Court cautioned that even though municipalities are not required to independently produce secondary effects evidence, "[t]his is not to say that a municipality can get away with shoddy data or reasoning."¹³ For the regulation to be upheld, "[t]he municipality's evidence must fairly support the municipality's rationale for its ordinance."¹⁴ Thus, there must be a reasonable nexus between a municipality's adult entertainment regulation and the secondary effects evidence upon which it is based.

Narrowly Tailored.

The adverse secondary effects associated with adult entertainment speech provides the constitutionally permissible grounds for content-based time,

place and manner regulations. The permissible scope of such regulations is provided by the "narrowly tailored" limitation.

At one level, the "narrowly tailored" requirement is intertwined with the secondary effects justification. An adult entertainment speech ordinance is not narrowly tailored if it captures speech that does not generate the adverse secondary effects linked to erotic speech.¹⁵ Thus, local officials must draft regulations that are not overinclusive to avoid violating the "narrowly tailored" requirement.¹⁶

On another level, the "narrowly tailored" analysis is not strictly connected to the secondary effects rationale. Here the concern is simply imprecise regulatory language. If regulation terms are too ambiguous or vague, the regulation is arguably not narrowly tailored. However, mathematical precision is not the standard courts use to determine whether a particular term or phrase is constitutionally adequate and avoiding successful claims that regulations are not narrowly tailored because they contain impermissible vague terms or phrases has been relatively easy for municipalities. But, local officials must understand that

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8. See *Hodgkins v. Peterson*, 355 F.3d 1048 (7th Cir. 2004) (explaining that the *O'Brien* expressive conduct analysis and the time, place and manner analysis are really just "variations on the same principle."); see also *Ben's Bar, Inc. v. Village of Somerset*, 316 F.3d 702 (7th Cir. 2003).

9. *City of Renton*, 475 U.S. at 48.

10. *R.V.S., L.L.C. v. City of Rockford*, 361 F.3d 402, 408 (7th Cir. 2004).

11. *Id.*

12. *City of Renton* at 51-52.

13. *City of Los Angeles v. Alameda Books*, 535 U.S. 435, 438 (2002).

14. *Id.*

15. See *Schad v. Mount Ephraim*, 452 U.S. 61 (1981).

16. See e.g., *MDK, Inc. v. Village of Grafton*, 345 F.Supp.2d 952 (E.D. Wis. 2004).

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inadequately drafted ordinances are still inadequate and can lead to adverse court decisions.¹⁷

Reasonable Alternative Avenues of Communication.

A content-based time, place or manner regulation of adult entertainment speech is constitutional only if it preserves "reasonable opportunity" to disseminate the speech at issue.¹⁸ Thus, "only the provisions of [ordinances] that regulate the time, place or manner of adult entertainment without removing alternative channels of communication are reasonable under the First Amendment."¹⁹

In general, the reasonable opportunity for alternative channels or avenues of adult entertainment speech communication duty of municipalities relates to the availability of places in it where adult entertainment speech might be conducted under the regulation. If a regulation effectively eliminates all opportunity, a total ban, than the regulation is unquestionably unconstitutional. But, where is the other end of the "opportunity" spectrum? In other words, how much "opportunity" is constitutionally required?

There is no definitive answer to this question because the courts advise that the analysis is case-by-case.²⁰ To some extent, this makes sense given the variability of circumstances between

municipalities. On the other hand, the analytical flexibility this approach attaches to a constitutional right, makes the underlying free speech right appear variable. Nonetheless, in general, "reasonable opportunity" compliance hinges on whether application of the regulation leaves some locations within the municipality's commercial real estate market that could reasonably be used for adult entertainment speech.

An adult entertainment business ordinance that satisfies the foregoing elements of the intermediate scrutiny *Renton* test or even the *O'Brien* test, is not automatically valid. It is a restriction on protected speech and, accordingly, subject to several other important general principles controlling all speech regulations, which include overbreadth, vagueness and prior restraint.

Overbreadth Doctrine.

The overbreadth principle in the speech regulation context is used by the courts in at least two ways. Both applications focus on the constitutional precision of the regulation's language.

In one form, overbreadth refers to a circumstance where a party in a case is allowed to challenge speech restrictions of a regulation that do not directly apply to the party but allegedly chill the speech rights of others who are not a party in the case but "who may be unwilling or unlikely to raise a challenge in their own stead." How-

ever, in these "facial challenge" cases, the challenging party must show that the overbreadth of the ordinance "must not only be real but substantial as well, judged in relation to the [ordinance's] plainly legitimate sweep."²¹ In other words, substantial overbreadth is not demonstrated by a few hypothetical examples of overreach.

Nonetheless, some overbreadth claims have been successful. In *Erznoznik v Jacksonville*, 422 U.S. 205 (1975), the Supreme Court struck down as substantially overbroad a city ordinance that made it illegal for drive-in theater operators to show movies including any form of nudity if the film could be seen from any public road or place. Explaining the ordinance could prohibit clearly constitutional speech with nudity such as newsreel footage of an art exhibit with nude paintings, an image of a baby's buttocks, or film of bare-breasted African dancers, the Court concluded the ordinance reached too much protected speech outside of the city's legitimate concern for protecting minors from sexual images.

Application of the facial "substantial overbreadth" test in "adult entertainment" speech cases is sometimes muddled with the "narrowly tailored" prong of the content-based time, place and manner exception test. Judicial analysis can be found where the court finds that an "adult entertainment" speech regulation is not narrowly tailored because it prohibits speech not

17. See e.g., *Entertainment Concepts, Inc. v. Maciejewski*, 631 F.2d 497 (7th Cir. 1980), cert. denied, 450 U.S. 919 (1981) (Ordinance that applied to "adult theaters" without defining the term held to be impermissibly vague).

18. *City of Renton*, 475 U.S. at 52.

19. *Schultz v. City of Cumberland*, 228 F.3d 831, 846 (7th Cir. 2000).

20. See *Schad v. Borough of Mt. Ephraim*, 452 U.S. 61, 78-79 (1981) (Blackmun, J., concurring).

21. *Broadrick v Oklahoma*, 413 U.S. 601, 615 (1973).

associated with negative secondary effects of such speech and concludes the regulation is unconstitutionally overbroad. However, such overlapping analysis is flawed. While a substantially overbroad regulation is certainly not narrowly tailored, an ordinance that is not narrowly tailored is not always substantially overbroad. In such cases, a more sound overbreadth inquiry focuses directly on whether the regulation reaches too much speech unrelated to the secondary effects justification, ignoring the "narrowly tailored" analysis altogether.²²

In its second form, overbreadth refers to a circumstance where a litigant claims the regulation impermissibly denies the litigant, not a third party, too much protected speech. In these "as applied" cases, the litigant does not have to show **substantial** overbreadth. Rather, this type of overbreadth claim succeeds where the litigant demonstrates that the regulatory language prohibits a constitutionally protected form of speech.²³ This means ordinances must be carefully reviewed to determine whether they impermissibly prohibit protected speech.

Vagueness Doctrine.

Related to the overbreadth doctrine is the vagueness doctrine. Like overbreadth, vagueness is concerned with

the level of precision provided by the regulation's language.

The vagueness doctrine, an aspect of the due process requirement of notice, provides that a law is facially invalid if persons of common intelligence must necessarily guess at its meaning and differ as to its application. Consequently, a law is void for vagueness if it fails to give fair warning of what is prohibited, if it fails to provide explicit standards for the persons responsible for enforcement and thus creates a risk of discriminatory enforcement, and if its lack of clarity chills lawful behavior.²⁴

In general, greater clarity is required under the vagueness doctrine when the subject regulation affects fundamental rights such as free speech. Nonetheless, "perfect clarity and precise guidance have never been required even of regulations that restrict expressive activity."²⁵ Thus, "[t]o say that precision is a precondition to enforcement is to say that no ordinance regulating speech may stand — a proposition the Supreme Court has rejected over and over again."²⁶

Noted earlier in regard to the "narrowly tailored" requirement, constitution-

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22. See e.g., *Lounge Mgmt., Ltd. v. Town of Trenton*, 219 Wis. 2d 13, 580 N.W.2d 156 (1998).

23. See *Schultz v. City of Cumberland*, 228 F.3d 831, 848 (7th Cir. 2000) (Ordinance definition of "specified sexual activities" deprived "the performer of a repertoire of expressive elements with which to craft an erotic, sensual performance" and substantially interfered "with the dancer's ability to communicate her erotic message.").

24. *Grayned v. City of Rockford*, 408 U.S. 104 (1972).

25. *Ward v. Rock Against Racism*, 491 U.S. 781, 194 (1989).

26. *Anderson v. Milwaukee County*, 433 F.3d 975, 978 (7th Cir. 2006).

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ally permissible imprecision in adult entertainment regulation is an effective shield in most cases to claims that terms or phrases are unconstitutionally vague. However, constitutionally acceptable imprecision is not a shelter for poor drafting. Thus, local officials must faithfully seek to produce an ordinance that is readily understood, given that the alternative will virtually assure litigation.

Prior Restraint Doctrine

Permit and licensing systems for adult entertainment speech enterprises such as conditional use permits and business licenses are prior restraints on speech since they require government permission to speak. Accordingly, these regulatory practices are subject to the doctrine of prior restraint which seeks to prevent the government from quelling expression in advance of its communication.²⁷

While not *per se* unconstitutional, a prior restraint bears a heavy presumption against constitutionality.²⁸ However, prior restraints are upheld where procedural safeguards are in place to "reduce the danger of suppressing constitutionally protected speech."²⁹

The Supreme Court addressed licensing schemes for adult entertainment speech as prior restraints in *FW/PBS*, where the local ordinance required all "sexually oriented businesses" to be

licensed in order to operate. A majority of the Court could not agree on whether all of the standards set forth in its leading prior restraint decision, *Freedman v. Maryland*, 380 U.S. 51 (1965), should apply. However, a plurality did agree that an adult entertainment licensing scheme must provide clear standards to guide the decisionmaker and there must be prompt judicial review, prior to which the status quo must be maintained.

The clear standards requirement is designed to eliminate the risk of government censorship. Accordingly, adult entertainment permit or license regulations must not vest a decisionmaker with unbridled discretion that permits either undue delay or subjective decisions. Rather, under *FW/PBS*, such systems must contain narrow, objective and definite standards, including explicit and reasonable time limits for a decision.

For a while, the *FW/PBS* prompt judicial review requirement generated considerable court activity. The issue was whether local regulations must create access to prompt judicial review (difficult since municipalities generally have no power to dictate judicial action) or whether they must guarantee a judicial decision within a specified time. The Supreme Court resolved this issue in *City of Littleton v. Z.J. Gifts D-4, L.L.C.*, 541 U.S. 774 (2004), wherein the Court held that ordinary judicial review is sufficient. Thus, mu-

nicipalities are not required to create judicial review access through their local regulation.

ONGOING ISSUES

So, are the legal principles guiding adult entertainment speech regulation settled? The answer is no. In part, evidence for this answer is found in the significant number of adult entertainment decisions of the Supreme Court decided by slim majorities or only pluralities. Additional evidence is provided by recent cases which highlight continuing issues tied to one or more of the legal principles already discussed.

Secondary Effects Evidence.

The "reasonably believed to be relevant" standard for secondary effects evidence set forth *Renton* is fairly lenient. Courts regularly defer to the legislative judgment of local officials about what studies are relevant. However, an ongoing issue is the degree of consistency between the secondary effects evidence relied on and the type of adult entertainment speech business regulated.³⁰

Until recently, this issue did not generate a reported judicial decision by a court with Wisconsin jurisdiction. This changed with the *New Albany DVD, L.L.C v. City of New Albany*, 581 F.3d

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27. See *Alexander v. United States*, 509 U.S. 544, 550 (1993).

28. See *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215, 225 (1990).

29. See *Southeastern Promotions, Ltd. v. Conrad*, 420 U.S. 546, 559 (1975).

30. See *Wolff v. City of Monticello*, 803 F. Supp. 1568, 1572-73 (D. Minn. 1992) (holding an ordinance based on studies of adult uses as principal use is not narrowly drawn if applied to uses where adult aspects were an accessory use); *World Wide Video v. City of Tukwila*, 816 P.2d 18, 21 (Wash. 1991), *cert. denied*, 503 U.S. 986 (1992) (city can not rely on studies of impact of peep show businesses to justify regulation location of adult video store with "take out" only fare).

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556 (7th Cir. 2009), decision of a three-judge Seventh Circuit panel.

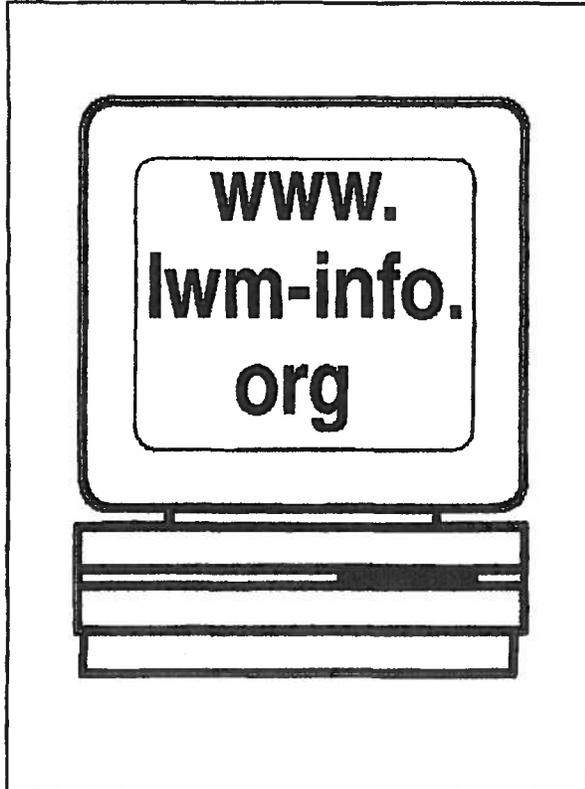
The case involved an adult store that sold books, magazines and videos for off-premises reading or viewing. The store did not provide any "live or recorded entertainment on site," which undermined the local regulation. The court explained that the local regulation rested on studies that "principally reflect the effects of adult businesses that offer live entertainment or peep

shows." Apparently considering this "evidence implying that take-home adult stores do not have adverse secondary effects," the court remanded the case to the trial court for an evidentiary hearing. Thus, *New Albany* appears to add Wisconsin and Indiana to the places where a specific connection between the secondary effects study evidence supporting the regulation and the type of business regulated is constitutionally required.

Narrowly Tailored.

In *Reno v. American Civil Liberties Union*, 521 U.S. 844 (1997), the Supreme Court intimated that the internet is the principal medium for sexually explicit communication in America. The Court identified the widespread availability of sexually explicit material online, including hard core pornography.³¹ However, the internet represents an entirely different means of communicating such speech that presents some new challenges for local regulation of adult entertainment businesses.

30. *Id.* at 2336.



One issue is drafting language to bring such operations within the scope of the adult entertainment regulation. The *Voyeur Dorm, L.C. v. City of Tampa*, 265 F.3d 1232 (11th Cir. 2001), decision is an interesting example.

Voyeur Dorm, L.C. operated a website that allowed paid subscribers to observe, through the use of webcams and the internet, women living in a dorm residence in Tampa, Florida. This included seeing the women disrobed and potentially involved in intimate acts. City of Tampa officials concluded that the activities at the Voyeur Dorm residence constituted an adult business use and sought to enforce applicable regulations. On appeal, the Eleventh Circuit rejected the City's arguments. It noted that the entertainment occurred in the "virtual space" of the internet and, as such, there was no offering of adult entertainment at the dorm residence as required by the court's interpretation of the City ordinance language.

However, even assuming an ordinance is written or rewritten with sufficient precision to bring internet adult entertainment speech delivery within its regulatory framework, this leaves a potentially more difficult issue for regulation that *Voyeur Dorm* did not answer. The issue is whether such operations generate any recognized secondary effects that would justify a content-based regulation given that such operations do not involve on-site patrons — customers are at home or otherwise off-site. If a sufficient secondary effects nexus cannot be established, like other regulations with this problem in cases noted above, the regulation would presumably be inval-

idated as not narrowly tailored since it would not further the government's interest in curbing secondary effects.

Reasonable Alternative Avenues.

The widespread availability of internet sources may someday yield a judicial decision accepting the argument that such availability should be considered when evaluating whether a local regulation unduly denies reasonable alternative avenues of communication for adult entertainment speech. The argument however must confront the general "alternative avenues" concept that the alternatives be located within the jurisdictional boundary of the regulating municipality. However, this aspect of "alternative avenues" analysis is being questioned, particularly in cases involving small communities.

For example, in *Boss Capital, Inc. v. City of Casselberry*, 187 F.3d 1251, n. 2 (11th Cir. 1999), the court determined that the relevant real estate market contained available sites for adult entertainment, including those as far as one and a quarter miles outside city limits. More recently, Judge Easterbrook, writing for a three-judge panel of the Seventh Circuit, commented on this issue in *Illinois One News, Inc. v. City of Marshall*, 477 F.3d 461 (2007).

The case involved a claim that the adult entertainment business regulation of the City of Marshall, Illinois, a small community of 3.2 square miles located in Clark County, which left only four percent of its area for adult business operations failed the "alternative avenues" requirement. The court disagreed and found that four percent was adequate.

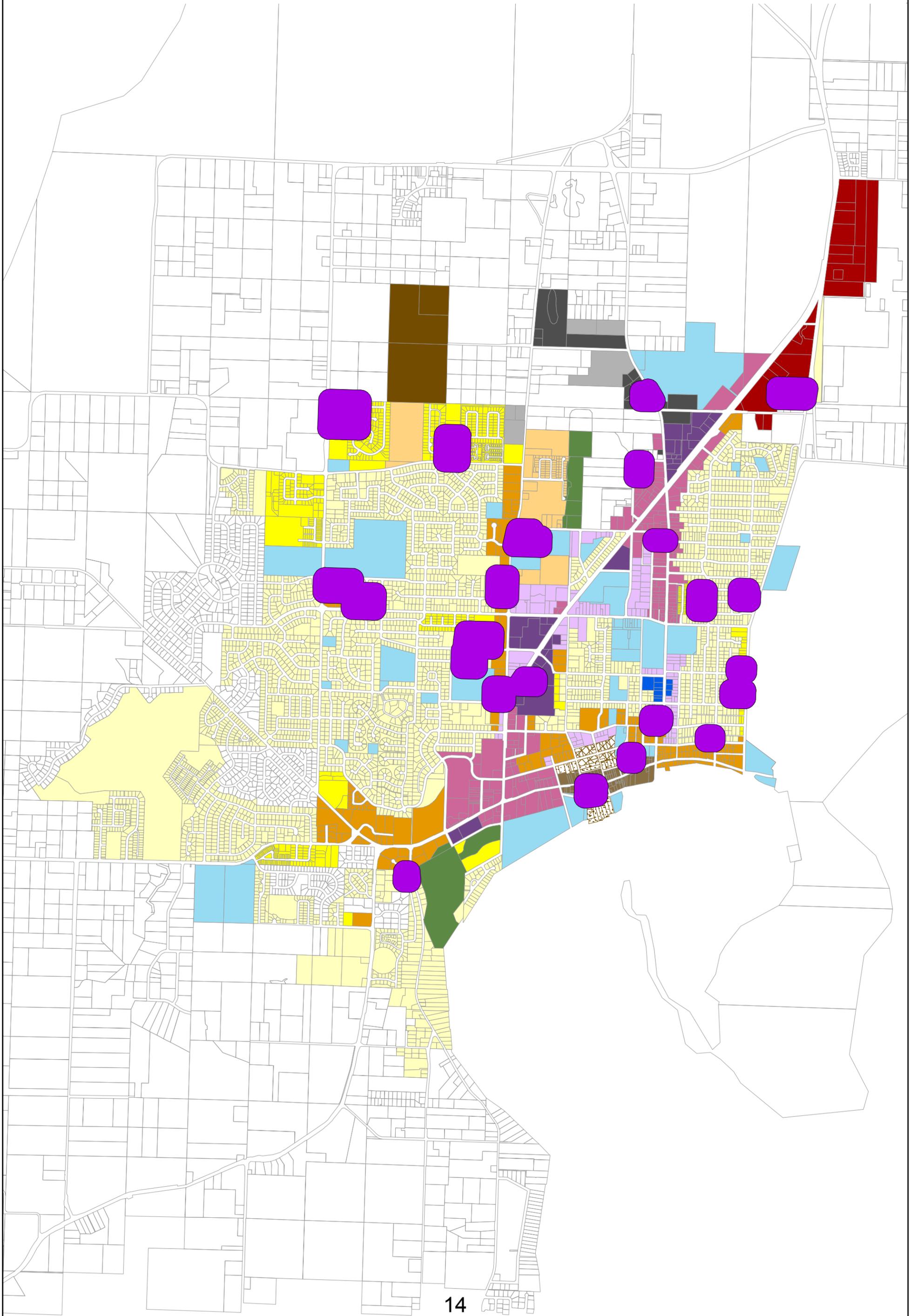
The more interesting aspect of the case is Judge Easterbrook's commentary on the relationship between the constitutionally mandated "alternative avenues" duty and the arbitrariness of municipal boundaries. In it, he asked, "But, if land to the north of the City's border would supply a constitutionally adequate venue for the speech if the City extended its border by a half mile or so, why is the same parcel a constitutionally inadequate venue when it is outside the City's border?" He answered this rhetorical question by stating that the "Constitutional rule is that a person have adequate opportunity to speak, not that the land be in one polity (the City of Marshall) rather than another (Clark County)." Thus, there is some support in the Seventh Circuit for the proposition that arbitrary municipal boundaries should not be the touchstone for "alternative avenues" analysis. A future case will show whether that support is converted to legal authority or remains mere dicta.

CONCLUSION

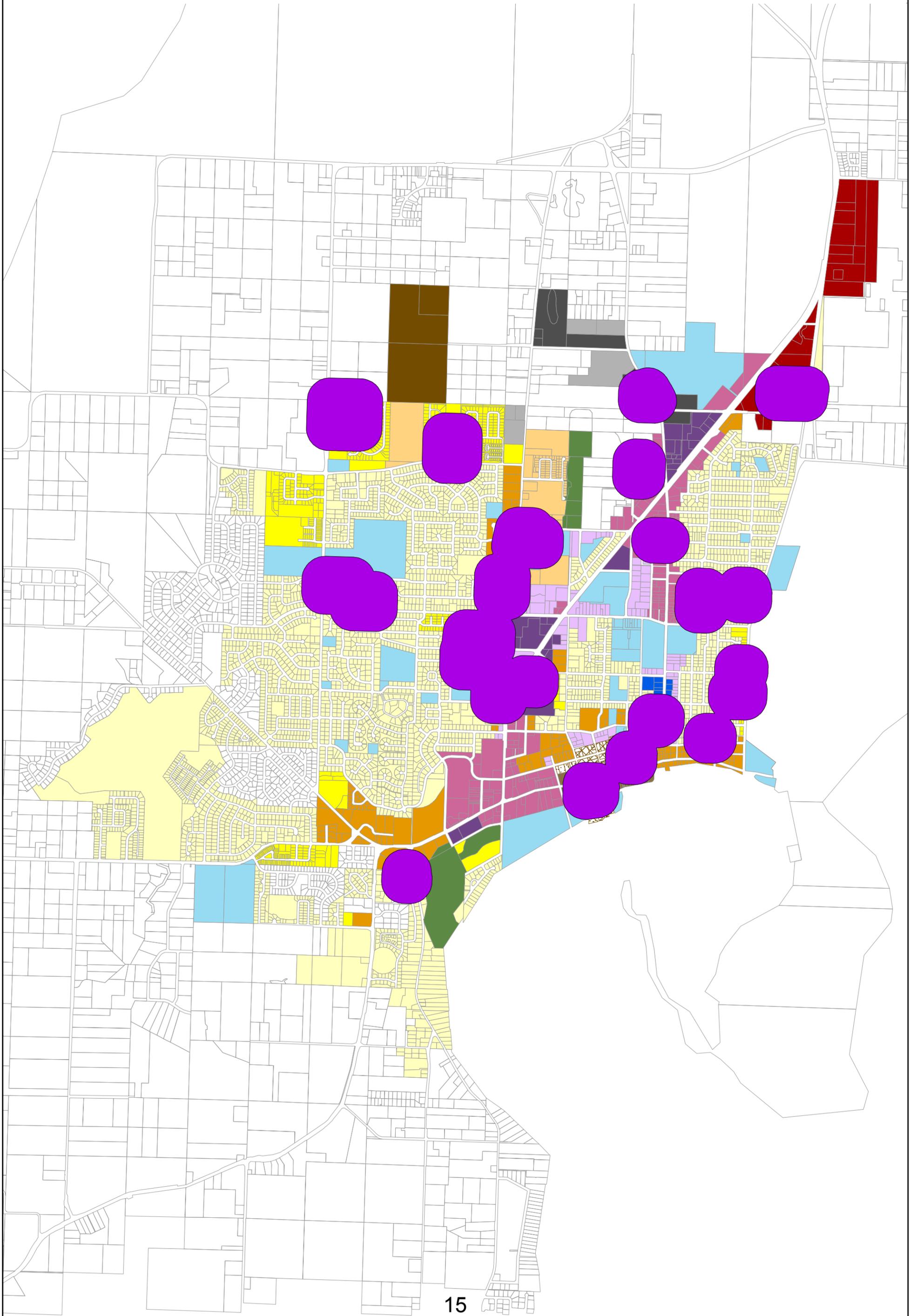
Municipalities that fail to adopt proactive adult entertainment business regulations may find themselves in an unsatisfactory and unnecessary situation. Many municipalities have successfully adopted zoning and licensing systems which seek to address the negative secondary effects of such businesses. That success follows from a faithful adherence to relevant constitutional principles, careful drafting and attention to ongoing issues.

Licensing & Reg. 391
Powers of Municipality 910
Zoning 503

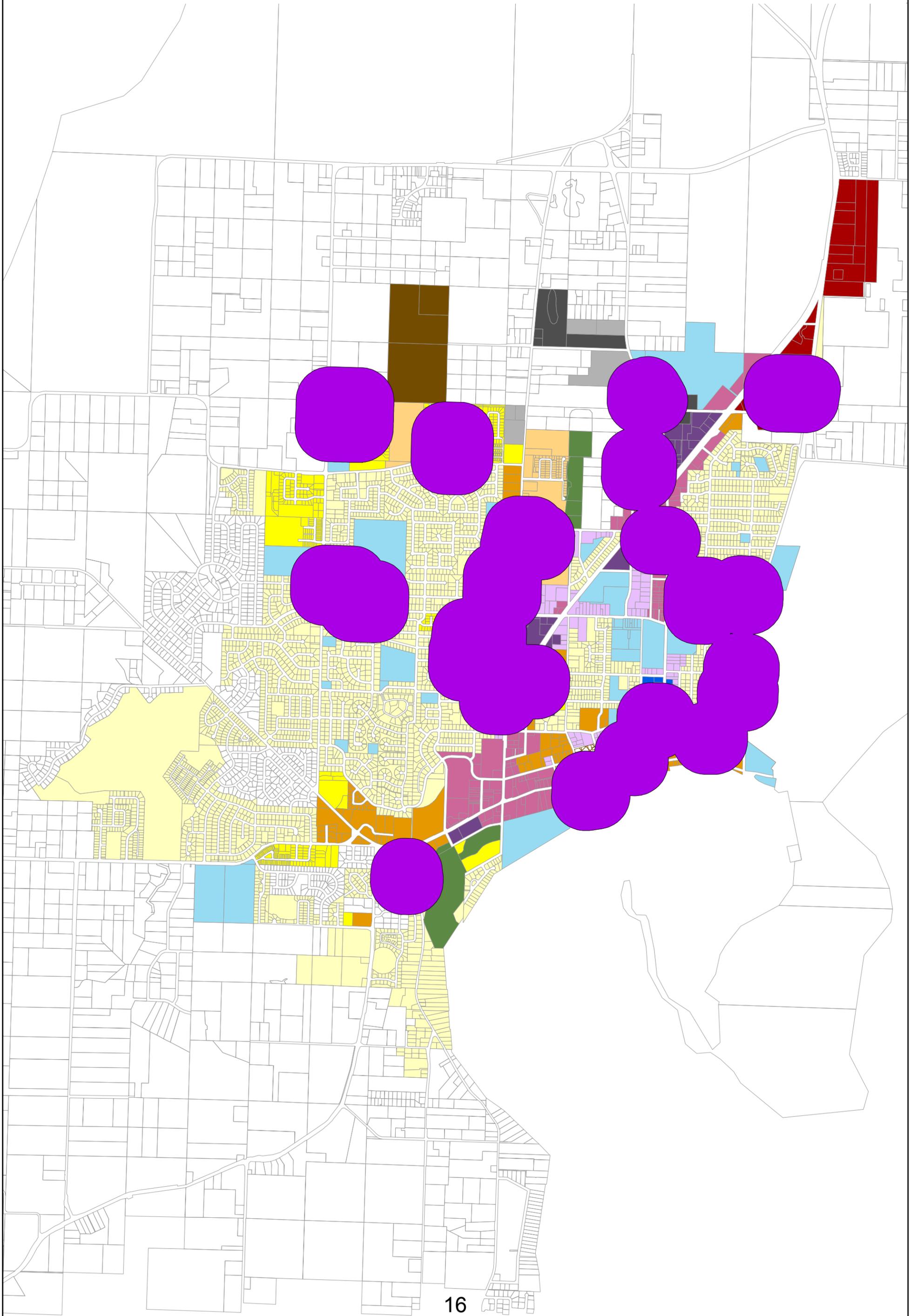
Adult Entertainment Facilities Working Map (Churches 250 Foot Buffer)



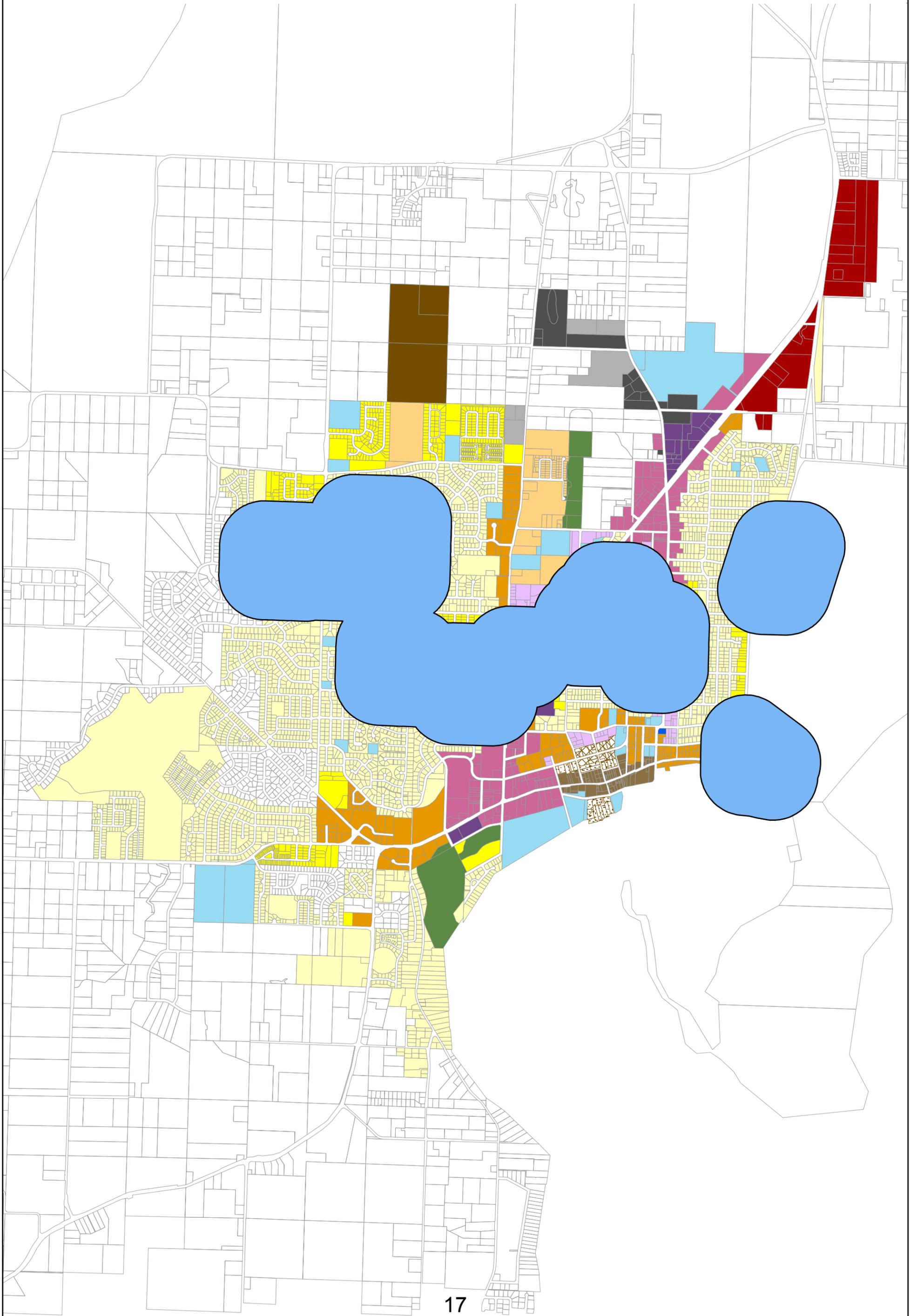
Adult Entertainment Facilities Working Map (Churches 500 Foot Buffer)



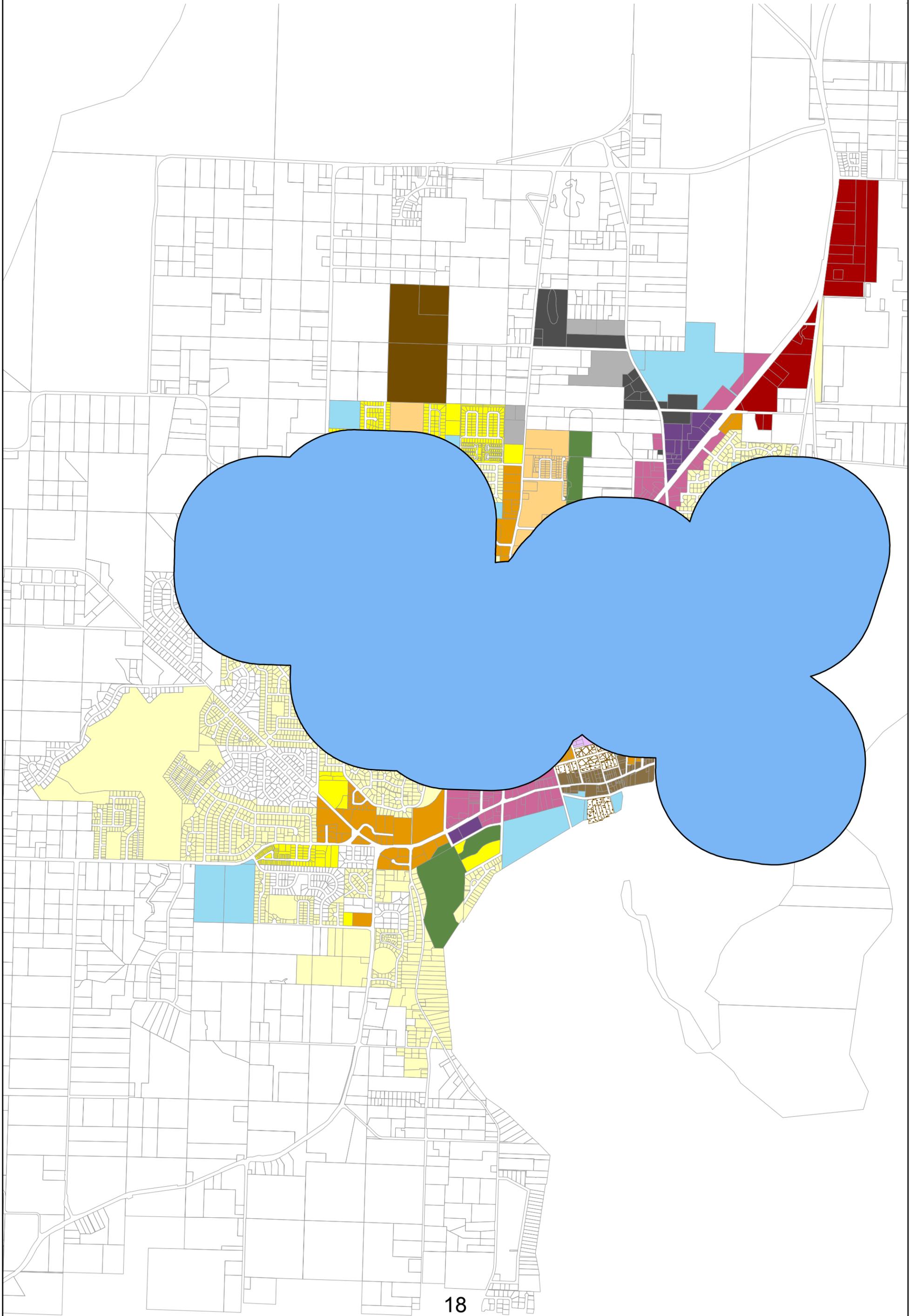
Adult Entertainment Facilities Working Map (Churches 750 Foot Buffer)



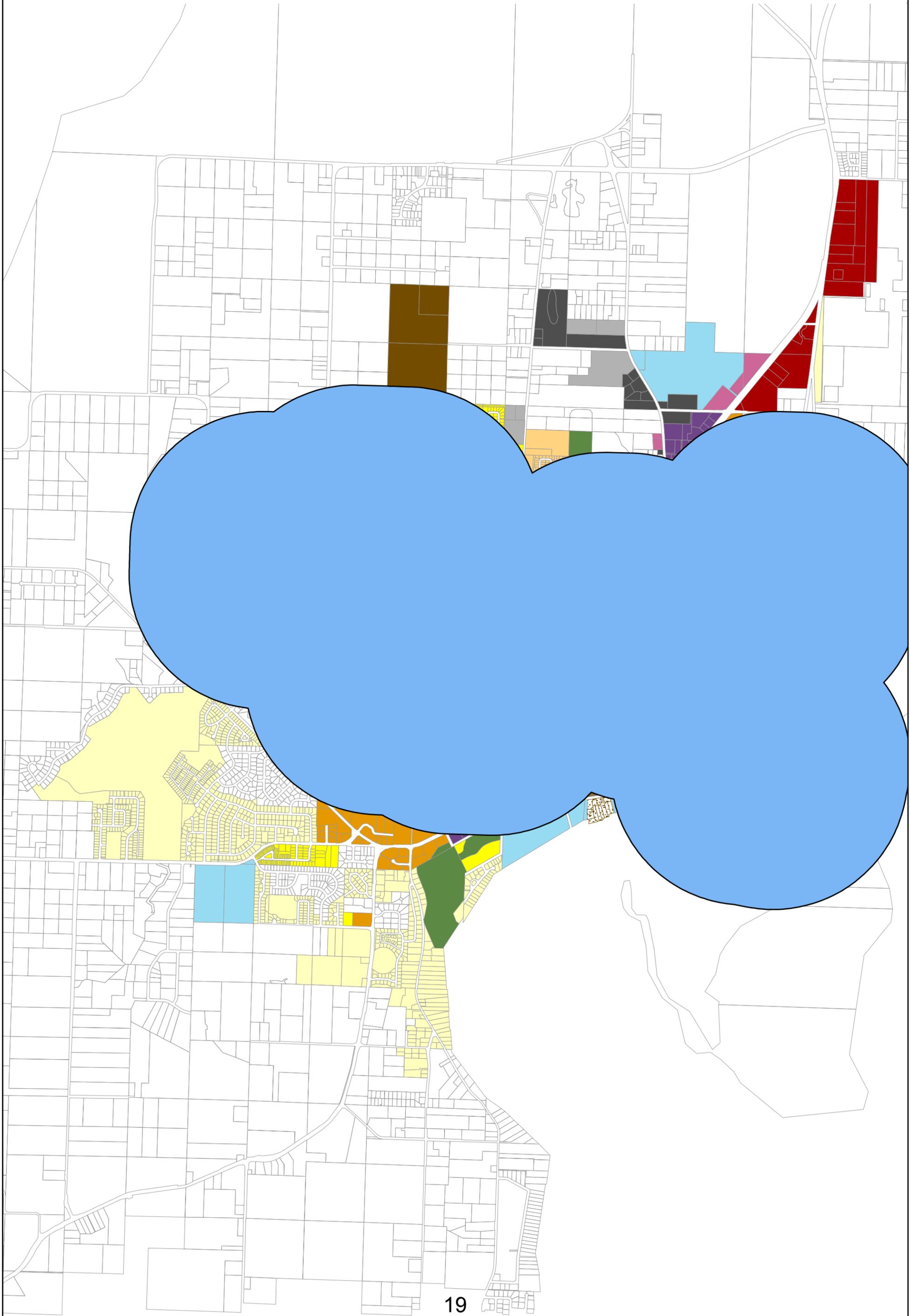
Adult Entertainment Facilities Working Map (Schools 1,000 Foot Buffer)



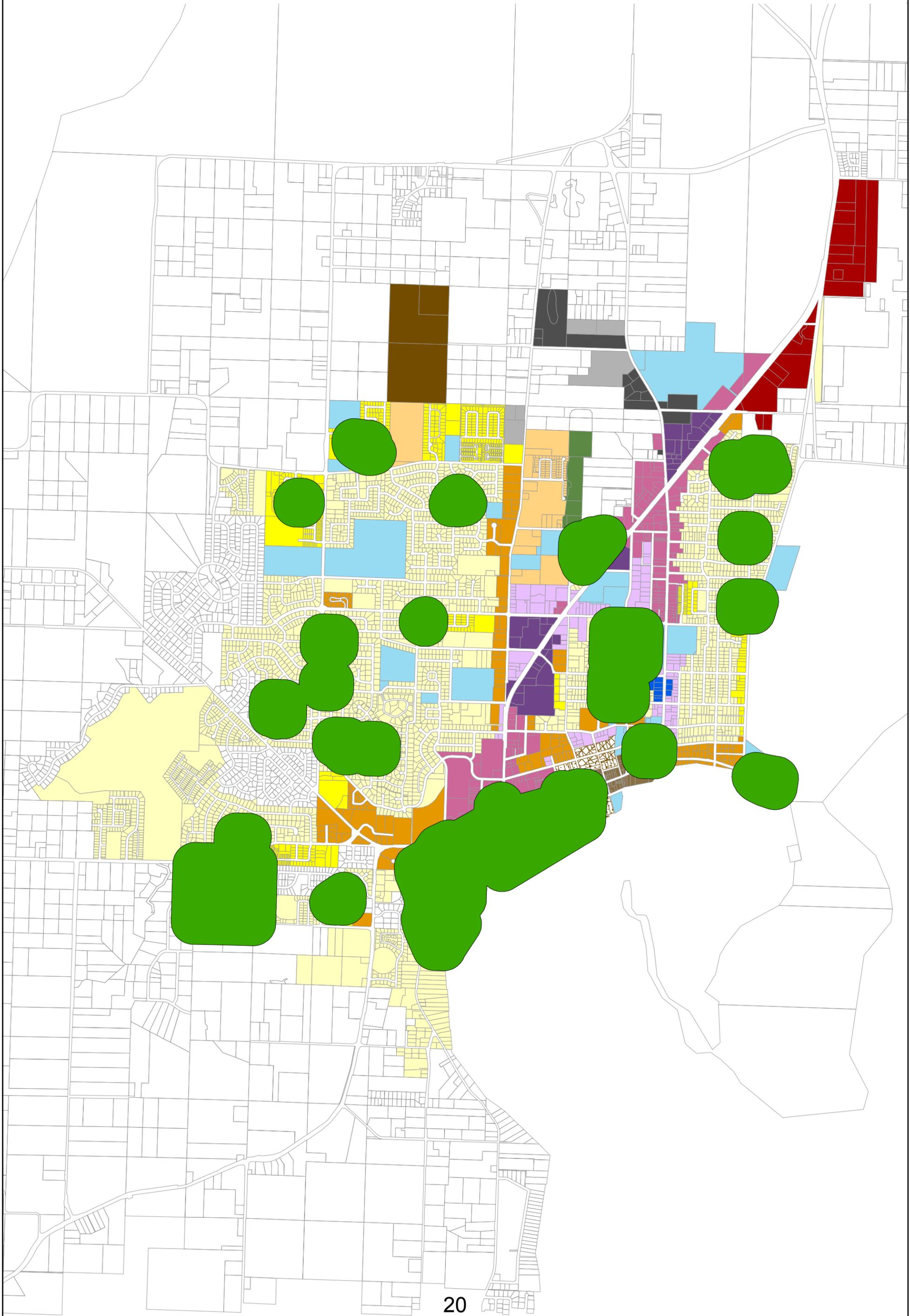
Adult Entertainment Facilities Working Map (Schools 2,000 Foot Buffer)



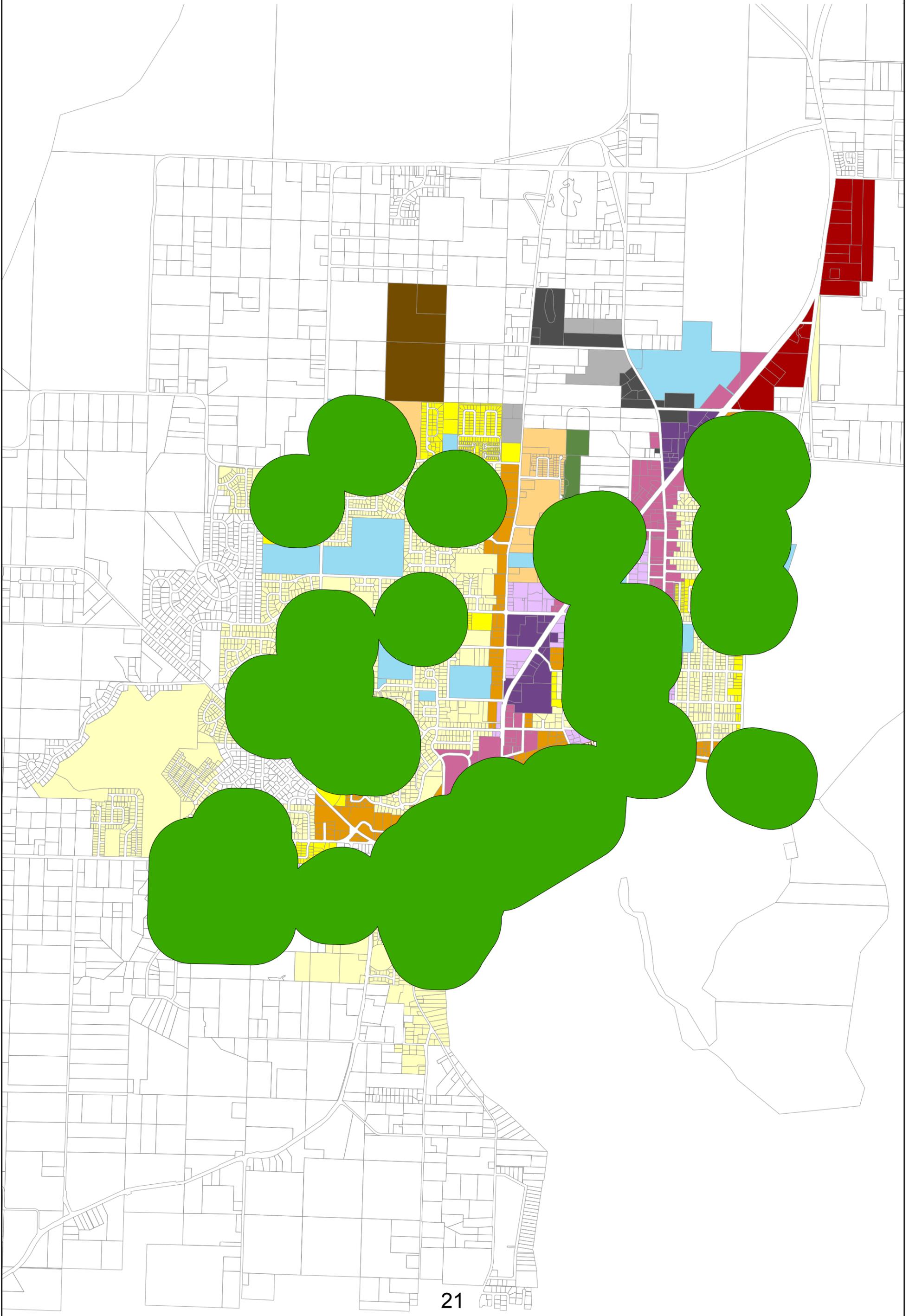
Adult Entertainment Facilities Working Map (Schools 3,000 Foot Buffer)



Adult Entertainment Facilities Working Map (Parks 500 Foot Buffer)



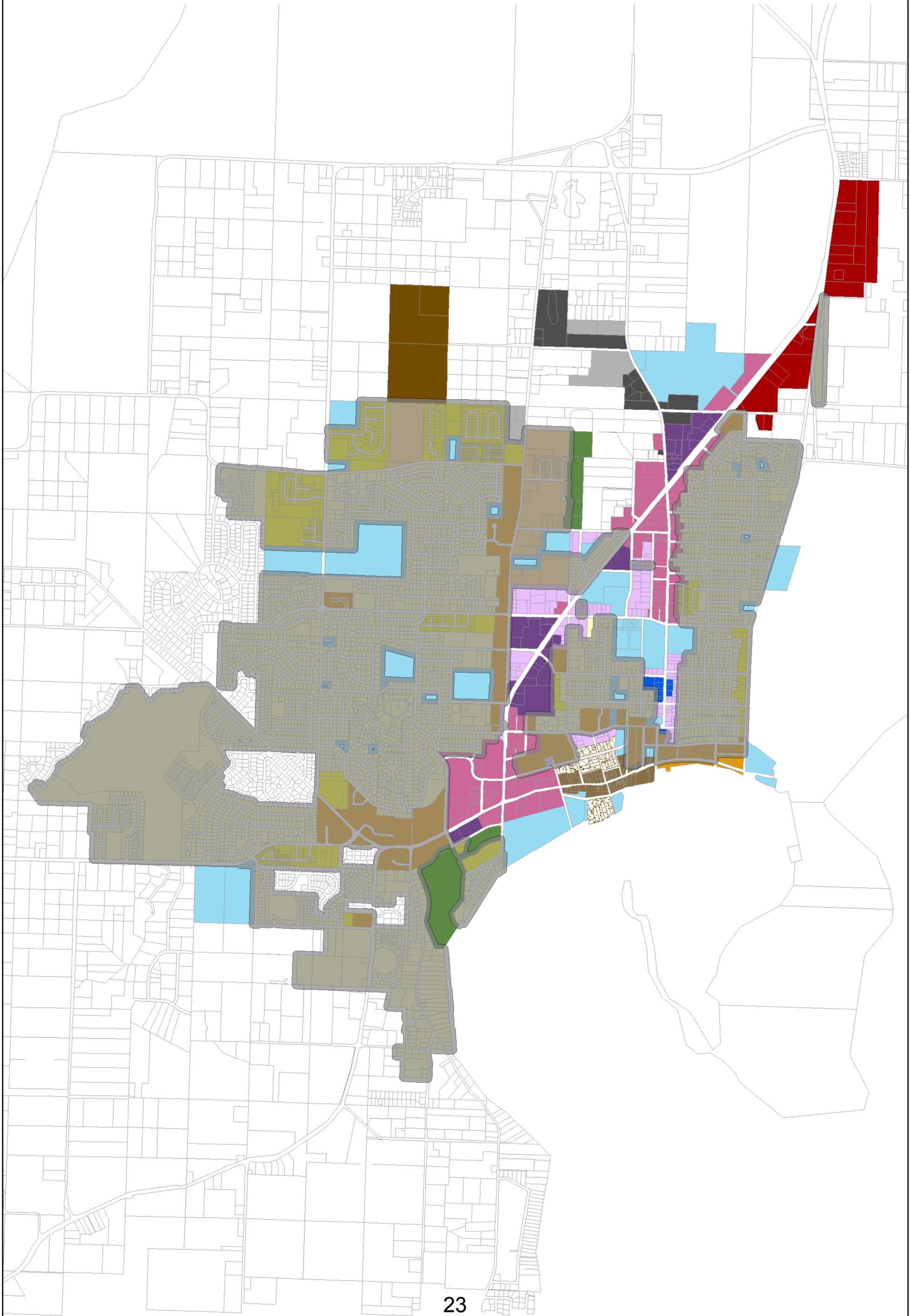
Adult Entertainment Facilities Working Map (Parks 1,000 Foot Buffer)



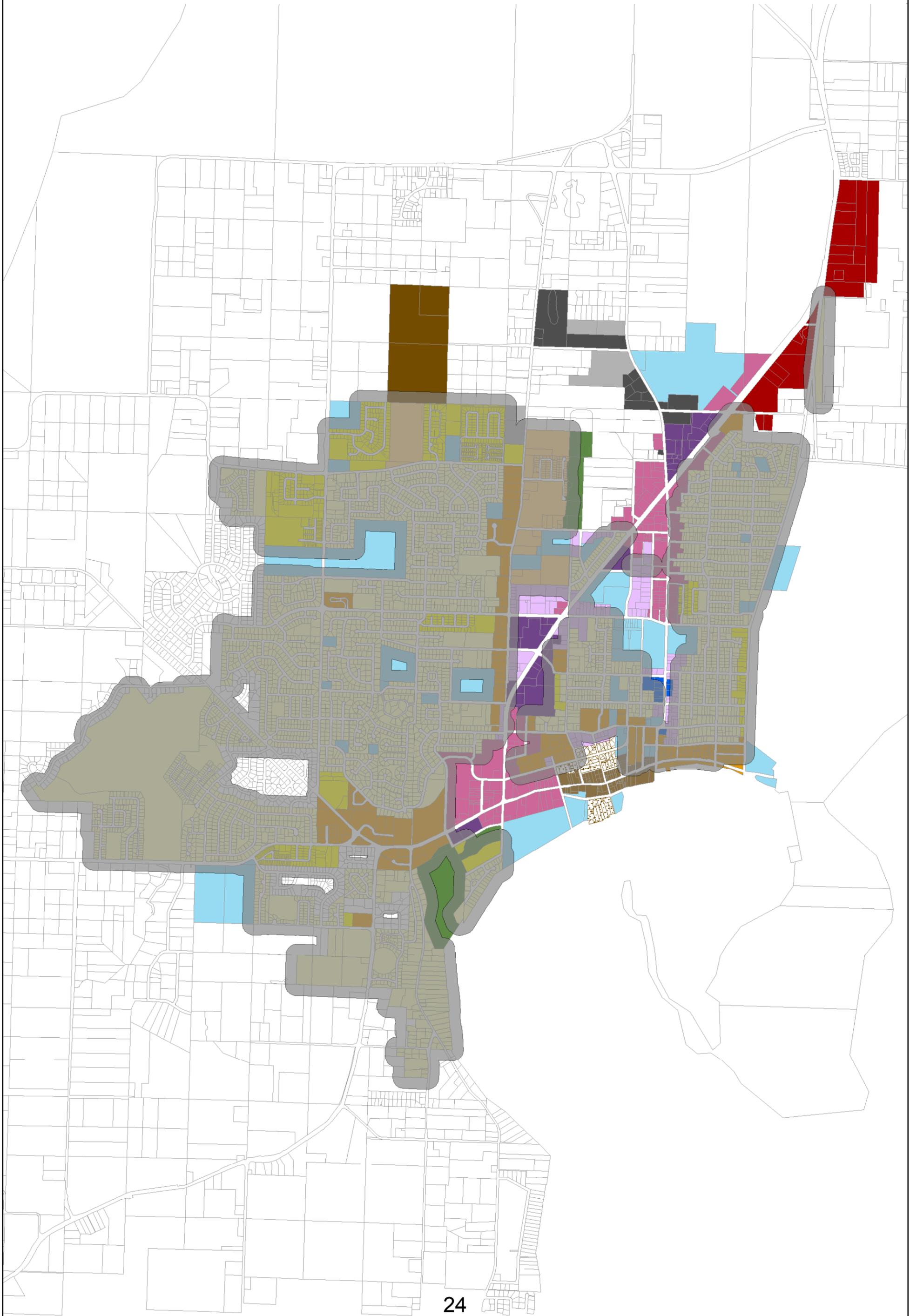
Adult Entertainment Facilities Working Map (Parks 1,500 Foot Buffer)



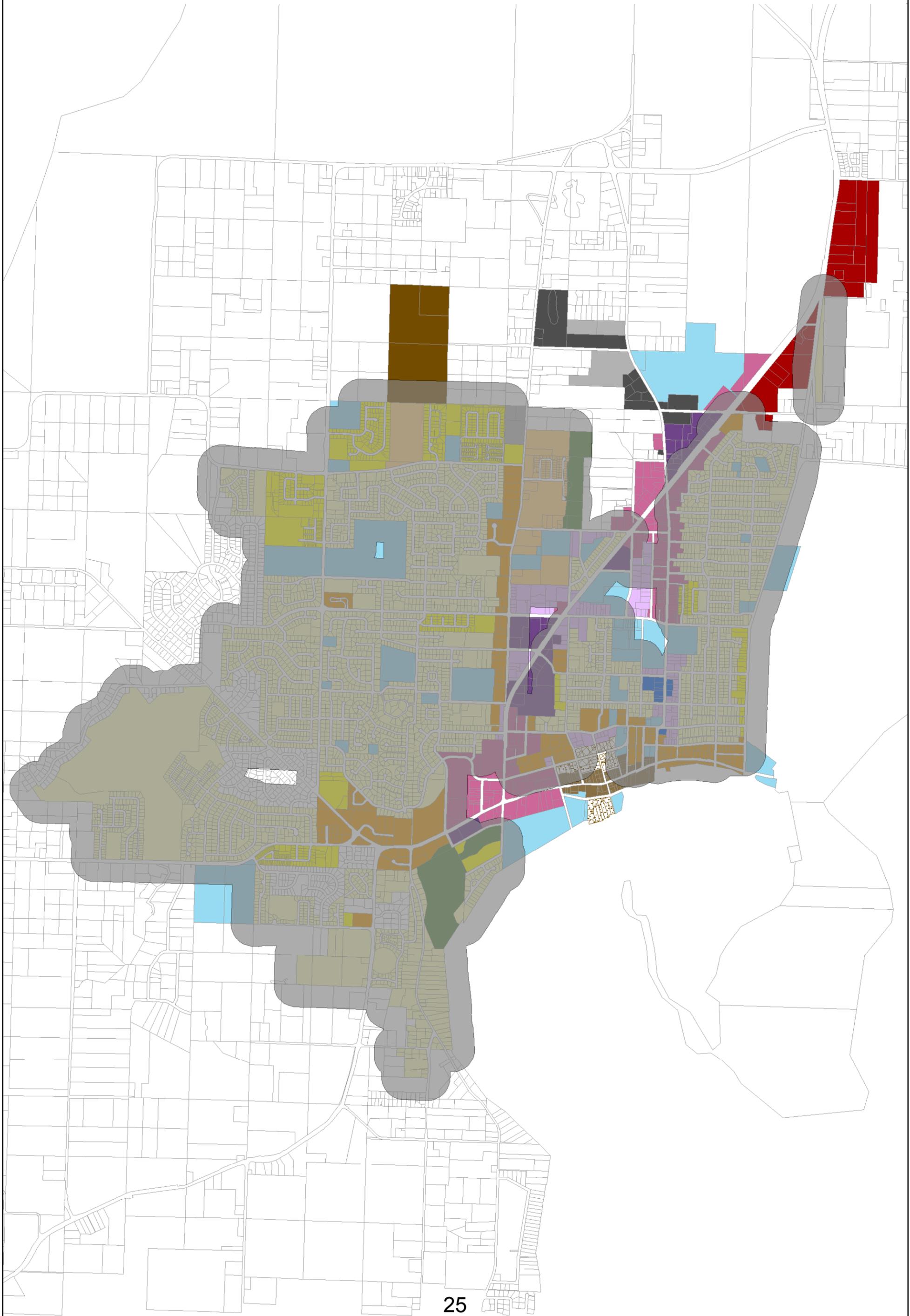
Adult Entertainment Facilities Working Map (Residential 100 Foot Buffer)



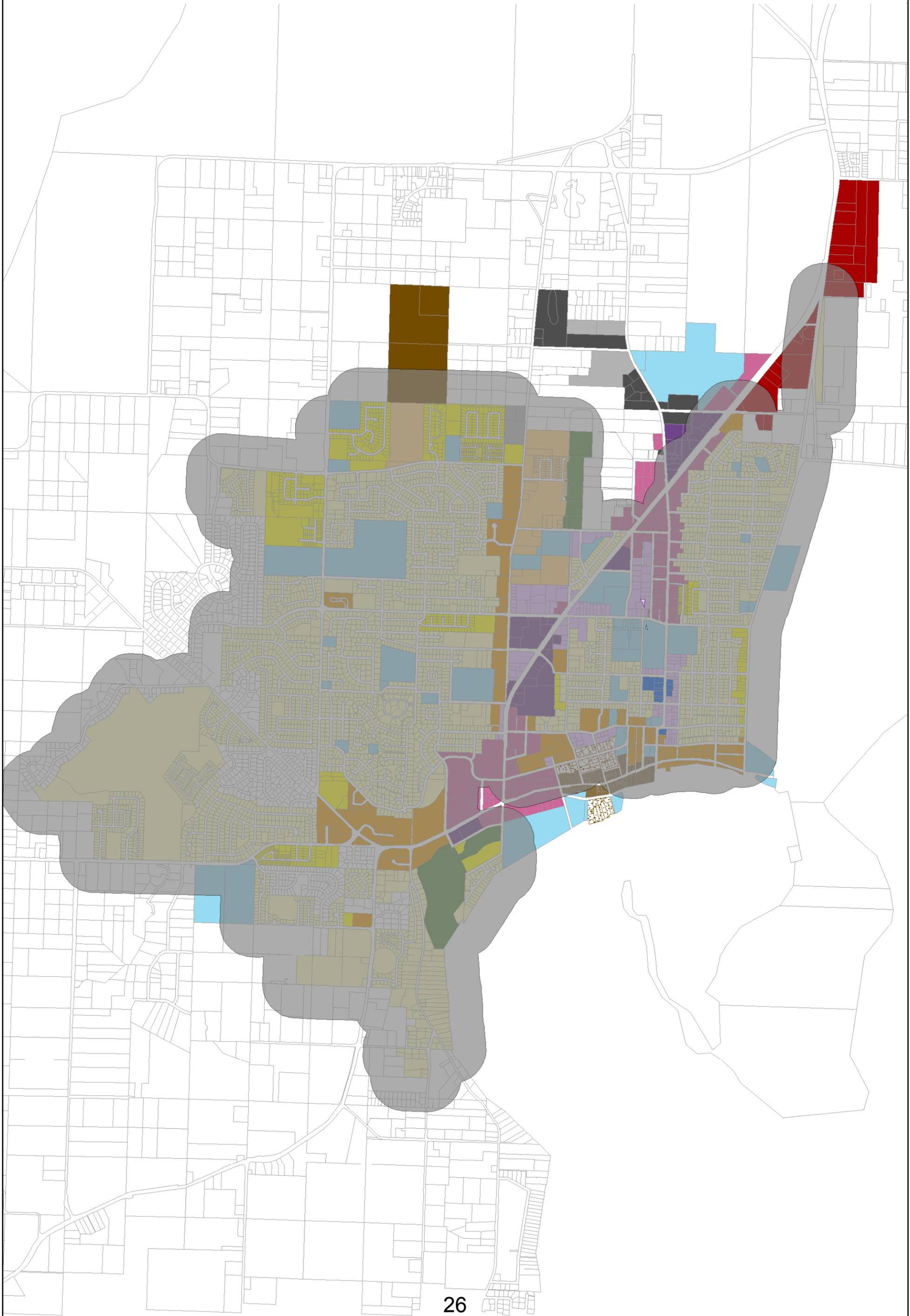
Adult Entertainment Facilities Working Map (Residential 250 Foot Buffer)



Adult Entertainment Facilities Working Map (Residential 500 Foot Buffer)



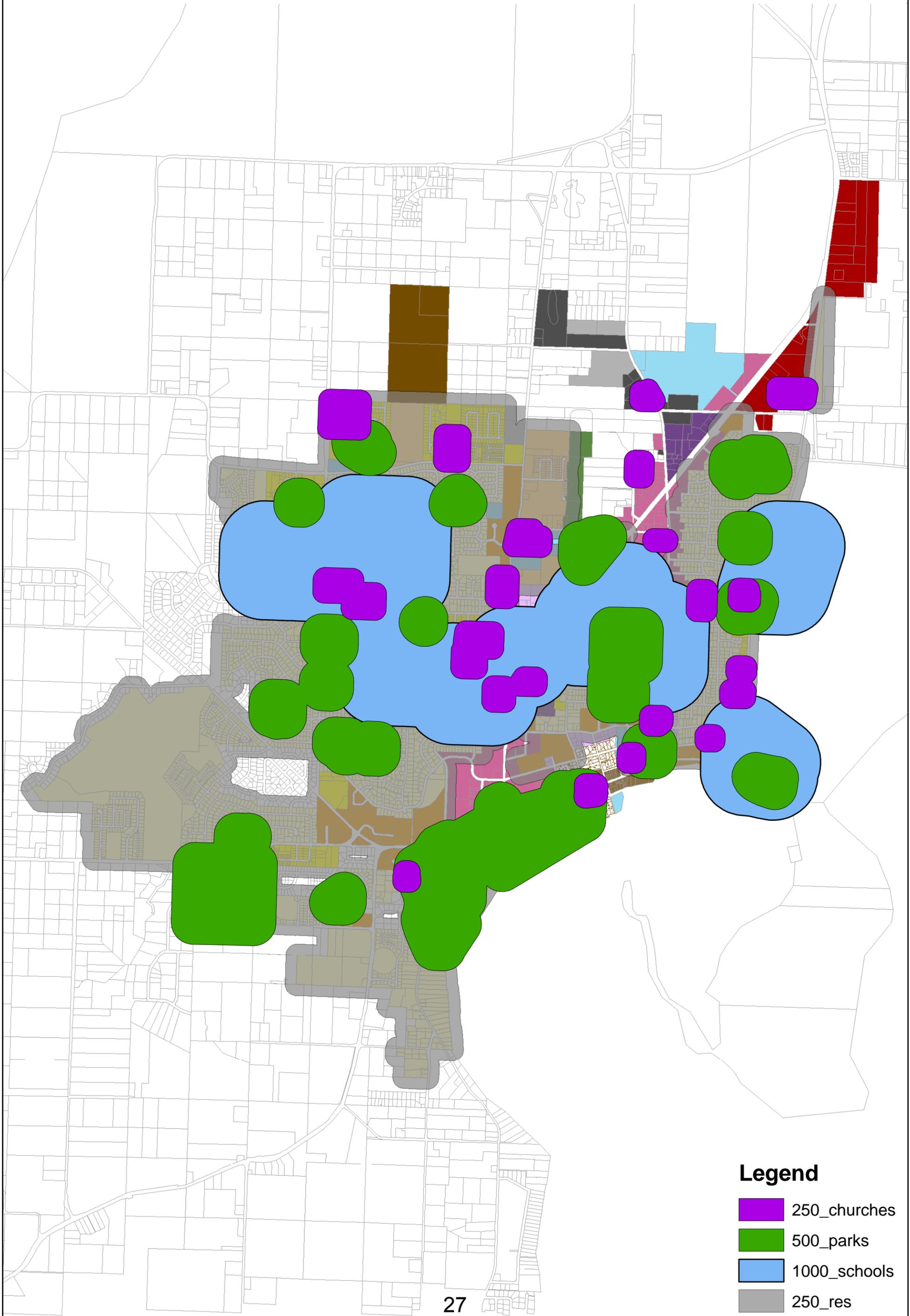
Adult Entertainment Facilities Working Map (Residential 750 Foot Buffer)



Adult Entertainment Facilities Working Map

Combination #1

(Schools 1,000, Parks 500, Churches 250, and Residential 250 Foot Buffers)

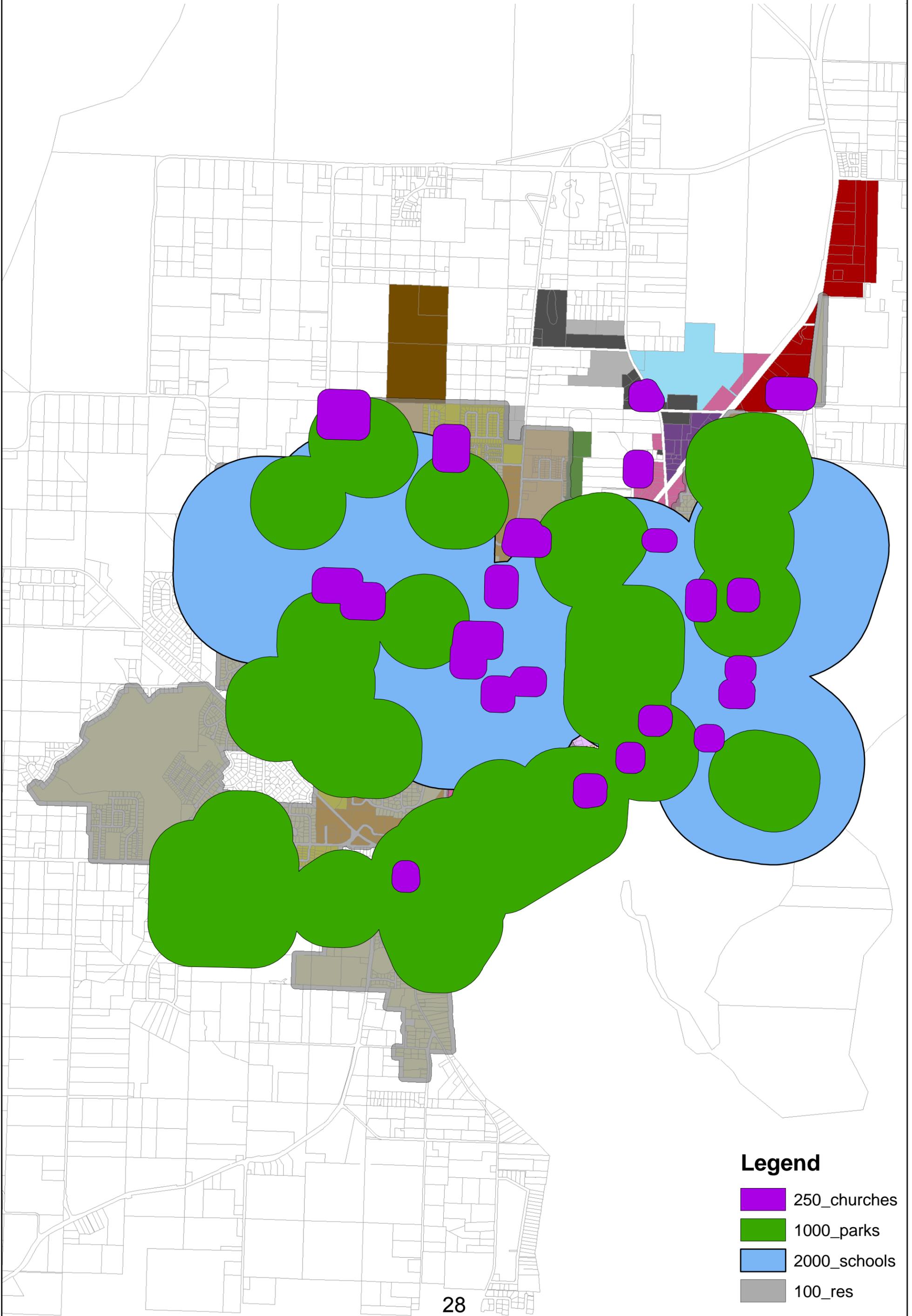


Legend

-  250_churches
-  500_parks
-  1000_schools
-  250_res

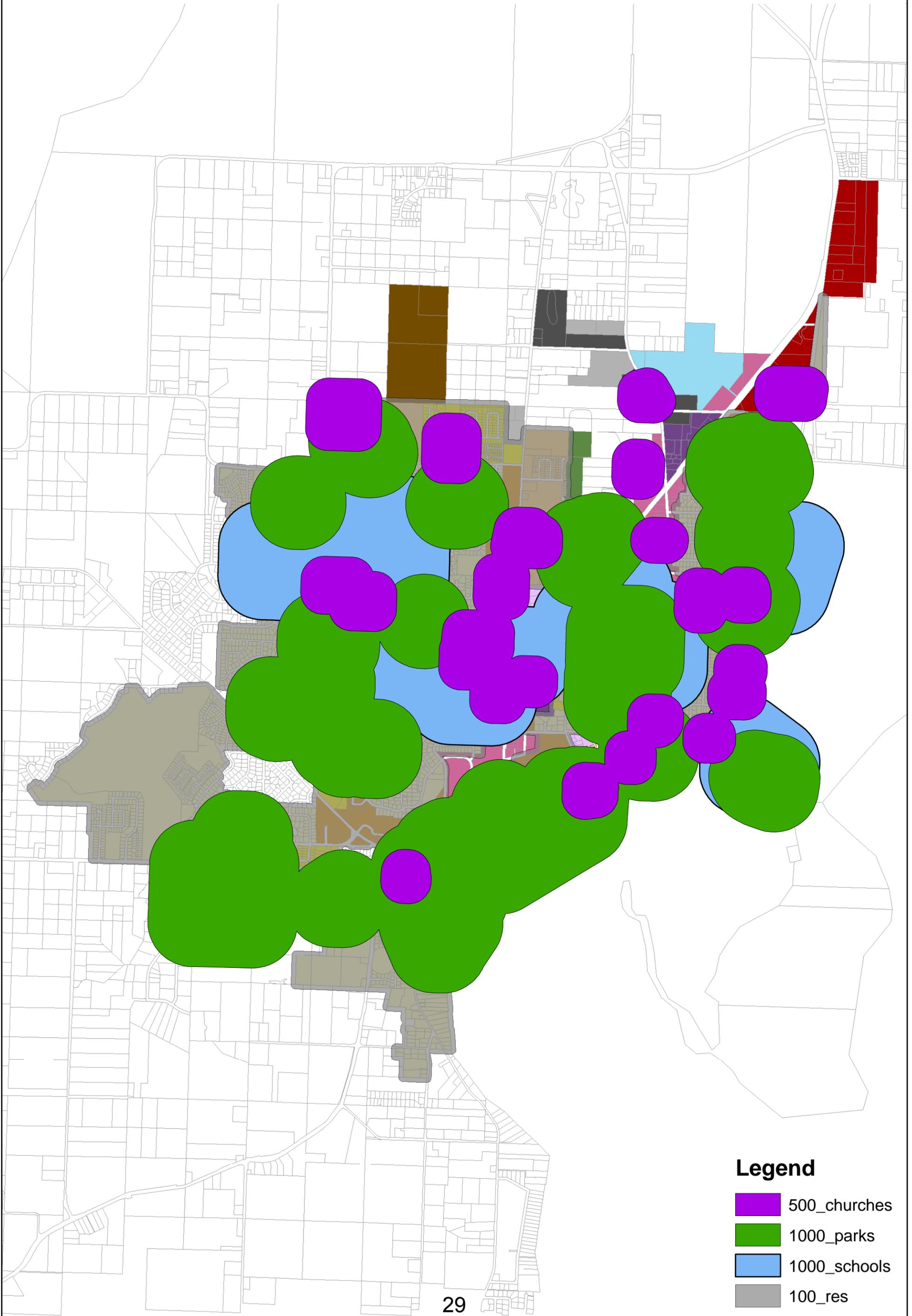
Adult Entertainment Facilities Working Map Combination #2

(Schools 2,000, Parks 1,000, Churches 250, and Residential 100 Foot Buffers)



Adult Entertainment Facilities Working Map Combination #3

(Schools 1,000, Parks 1,000, Churches 500, and Residential 100 Foot Buffers)



Legend

- 500_churches
- 1000_parks
- 1000_schools
- 100_res

Six-Year
Transportation Improvement
Program (TIP)

Public Hearing

**City of Oak Harbor
Planning Commission**

Date: July 27, 2010
Subject: Six-Year Transportation
Improvement Program

FROM: Cathy Rosen, Public Works Director
Eric Johnston, City Engineer

PURPOSE:

The Planning Commission is requested to hold a public hearing for the 2011-2016 Six-Year Transportation Improvement Program (TIP) and make a recommendation to the City Council for consideration and adoption.

AUTHORITY:

The City is authorized and required to adopt a six-year Transportation Improvement Program and forward the program to the State of Washington in accordance with RCW 35.77.010

DISCUSSION

The City is required by State law to submit an approved six-year Transportation Improvement Program (TIP). The primary purpose of the TIP is to facilitate use of Federal transportation funds awarded to the City. Projects that have federal funding must appear in the six-year TIP at the local and state level so that the City can obligate and eventually use the federal funds.

The projects listed on the TIP are coordinated with those listed in the Transportation Element of the Comprehensive Plan. Three projects listed on the previous TIP and in the Transportation Element of the Comprehensive Plan are under construction and will be completed this summer. These projects are: The North Oak Harbor Street Improvement, the NE 7th Avenue Intersection Improvement and the Arterial Sidewalk Phase II projects. The NE 7th Avenue Intersection Improvement and Arterial Sidewalk Phase II projects were listed separately in the TIP but were included under the North Oak Harbor Street Improvements in the Transportation Element. No new projects have been added to the TIP.

Coordinating projects in the Transportation Comprehensive Plan, the six-year TIP and the Capital Facilities Plan improve our communication and coordination with other agencies and utility companies and help the City remain focused on a manageable list of transportation projects. Coordination of projects enhances communication with the public on planned transportation projects.

The six-year TIP form includes a number of codes and symbols used in the statewide management of the regional TIP documents. A copy of the TIP code key is attached. A symbol in the status column of "S" means funding is secured while a symbol of "P" indicates the project is not funded. As Council is aware, the form of the six-year TIP includes a priority number

associated with each project. Please note that the priority numbering in the TIP is not intended to supersede or be superimposed into the citywide effort of overall capital project prioritization.

As was previously noted, the City is required by State law to submit an approved six-year TIP. This submittal process is accomplished in conjunction with the Regional Transportation Planning Organization (RTPO). Once approved by the Council, the City's TIP is submitted to the RTPO. In turn, the RTPO submits a regional TIP to the State by October of each year. The State then prepares a statewide TIP in January of each year. The incorporation of the City's projects into this statewide TIP is what enables us to spend Federal funds on local transportation projects.

RECOMMENDED ACTION:

1. Conduct a public hearing.
2. Recommend that the City Council adopt the 2011-2016 Six-Year Transportation Improvement Program.

ATTACHMENTS:

- ✓ Six-Year Transportation Improvement Program (TIP)
- ✓ TIP code key
- ✓ Map of improvement locations

Agency: Oak Harbor
 Co. No.: 15 Co. Name: Island Co.
 City No.: 0895 MPO/RTPO: RTPO

Hearing Date: 7/27/2010 Adoption Date: 8/4/2010
 Amend Date: Resolution No.:

Functional Class	Priority Number	Project Identification					Improvement Type(s)	Status	Total Length	Utility Codes	Project Costs in Thousands of Dollars						Expenditure Schedule (Local Agency)				Federally Funded Projects Only			
		A. PIN/Federal Aid No.		B. Bridge No.							Project Phase	Phase Start (mm/dd/yyyy)	Fund Source Information				1st	2nd	3rd	4th Thru 6th	Envir. Type	R/W Required Date (MM/YY)		
		C. Project Title											Federal Funding		State Fund Code	State Funds							Local Funds	Total Funds
		D. Street/Road Name or Number											Federal Fund Code	Federal Cost by Phase										
E. Beginning MP or Road - Ending MP or Road																								
F. Describe Work to be Done																								
1	2	3					4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21
17	1	SE Pioneer Way Improvements SE Pioneer Way from: SE City Beach Street to: SE Midway Blvd Sidewalk, curb & gutter, utilities, street, lighting, circulation.					03	S	0.42	C G O P S T W	ALL	1/1/2011				132	8218	8350	7000	1350			CE	Yes 6/1/2012
Totals														132	8218	8350	7000	1350						
16	2	SW Heller Street Improvements SW Heller St from: SW Swantown Ave to: W Whidbey Ave R/W Acq., pave, curb, gutter, sidewalk, utilities, transit facilities, joint project w/ Island County					12	P	0.78	C G O P S T W	ALL	6/1/2013			OTHER	1000	6630	7630				7630	CE	Yes 1/1/2013
Totals														1000	6630	7630				7630				
16	3	Whidbey Avenue Reconstruction Whidbey Ave from: Heller St to: Regatta Dr Sidewalk, curb & gutter, drainage, transit facilities, non-motorized, street					03	P	1.80	C G O P S T W	ALL	1/1/2011					8300	8300				8300	CE	No
Totals																8300	8300				8300			
00	4	Oak Harbor Multimodal Facility Oak Harbor Multimodal Facility from: S. End Dock St to: S. End Dock St Construction of terminal facilities					01	S	0	P S T W	CN	6/1/2011	5309(Bus)	836			209	1045		1045			EA	No
Totals													836			209	1045		1045					
17	5	NE 7th Ave Reconstruction NE 7th Ave from: NE 7th Ave to: SR-20 Street Reconstruction & Improvements.					03 06	P	.47	C G O P S T W	ALL	6/1/2011					2800	2800				2800	EA	Yes 1/1/2015
Totals																2800	2800				2800			
16	6	Midway Blvd / NE 7th Avenue Intersection from: Intersection to: Intersection Traffic signal.					12	P		C P T	ALL	1/1/2012					825	825				825	CE	No
Totals																825	825				825			
01	7	Eagle Vista Street - West Extension Eagle Vista Street from: SR-20 to: SW Rosario Pl Street Extension					01	P	.44		ALL	1/1/2014					2800	2800				2800	EA	No 1/1/2014
Totals																2800	2800				2800			

From 2011 to 2016

Agency: Oak Harbor
 Co. No.: 15 Co. Name: Island Co.
 City No.: 0895 MPO/RTPO: RTPO

Hearing Date: 7/27/2010 Adoption Date: 8/4/2010
 Amend Date: Resolution No.:

Functional Class	Priority Number	Project Identification					Project Costs in Thousands of Dollars										Expenditure Schedule (Local Agency)				Federally Funded Projects Only				
		A. PIN/Federal Aid No.		B. Bridge No.			Improvement Type(s)	Status	Total Length	Utility Codes	Project Phase	Phase Start (mm/dd/yyyy)	Fund Source Information						1st	2nd	3rd	4th Thru 6th	Envir. Type	R/W Required Date (MM/YY)	
		C. Project Title		D. Street/Road Name or Number		E. Beginning MP or Road - Ending MP or Road							Federal Funding		State Fund Code	State Funds	Local Funds	Total Funds							
		F. Describe Work to be Done		Federal Fund Code	Federal Cost by Phase																				
1	2	3					4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	
19	8	SE 4th Avenue Reconstruction SE 4th Ave from: SE Ely St to: SE Midway Blvd Curb & gutter, sidewalk, utilities, drainage, pavement.					03 12 06	P	0.41	C G O O P S T W	ALL	1/1/2015					2300	2300	90	1500	710		CE	No	
Totals															2300	2300	90	1500	710						
14	9	SR20 Improvement from: S Beeksma Dr to: SW Swantown Ave R/W Acq., intersection improvements & channelization, widening, sidewalk, curb & gutter, retaining walls, signal, GMA.					04	P	0.60	C G O O P S T W	ALL	12/31/2015			OTHER	13000	175	13175				13175	CE	Yes 6/1/2016	
Totals															13000	175	13175				13175				

9. Appendices

A. Six Year Form Instructions

Heading

Agency	Enter name of the sponsoring agency.
County No.	Enter the assigned number (see LAG Appendix 21.44).
City No.	Enter the assigned number (see LAG Appendix 21.45).
MPO/RTPO	Enter the name of the associated MPO (if located within urbanized area) or RTPO (if located in a rural area).
Hearing Date	Enter the date of the public hearing.
Adoption Date	Enter the date this program was adopted by council or commission.
Resolution No.	Enter Legislative Authority resolution number (if applicable.)
Amendment Date	Enter the date this program was amended by council or commission.

Column Number

1. Functional Classification. Enter the appropriate 2-digit code denoting the Federal Functional Classification. (**Note:** The Federal Functional Classification must be one approved by FHWA.)

Description

00- No Classification

Rural (< 5000 pop.)

- 01 - Interstate
- 02 - Principal Arterials
- 06 - Minor Arterials
- 07 - Major Collector
- 08 - Minor Collector
- 09 - Local Access

Urban (> 5000 pop.)

- 11 - Interstate
- 12 - Freeways & Expressways
- 14 - Other Principal Arterials
- 16 - Minor Arterial
- 17 - Collector
- 19 - Local Access

1. Priority Numbers. Enter local agency number identifying agency project priority (optional).

2. Project Identification. Enter (a) Federal Aid Number if previously assigned; (b) Bridge Number; (c) Project Title; (d) Street/Road Name or Number/Federal Route Number; (e) Beginning and Ending Termini (milepost or street names); and (f) Describe the Work to be Completed.

3. Improvement Type Codes. Enter the appropriate federal code number.

Description

01 - New construction on new alignment	07 - Resurfacing	14 - Bridge Program-Special
02 - Relocation	08 - New Bridge Construction	21 - Transit Capital Project
03 - Reconstruction	09 - Bridge Replacement	22 - Transit Operational Project
04 - Major Widening	10 - Bridge Rehabilitation	23 - Transit Planning
05 - Minor Widening	11 - Minor Bridge Rehabilitation	24 - Transit Training/Admin.
	12 - Safety/Traffic Operation/TSM	31 - Non Capital Improvement

06 - Other Enhancements

13 - Environmentally Related

32 - Non Motor Vehicle Project

4. **Funding Status.** Enter the funding status for the entire project or phase that describes the current status.

S - Project is 'selected' by the appropriate selection body and funding has been secured by the lead agency.

P - Project is subject to selection by an agency other than the lead and is listed for planning purposes. (Funding has *not* been determined.)

6. **Total Length.** Enter project length to the nearest hundredth (or code "00" if not applicable).

7. **Utility Code(s).** Enter the appropriate code letter(s) for the utilities that need to be relocated or are impacted by the construction project.

C - Cable TV

G - Gas

O - Other

P - Power

S - Sewer (other than agency-owned)

T - Telephone

W - Water

8. **Project Phase.** Select the appropriate phase code of the project.

PE - Preliminary Engineering, including Design (or Planning)

RW - Right of Way or land acquisition

CN - Construction only (or transit planning or equipment purchase)

ALL - All Phases: from Preliminary Engineering through Construction

(Use only in Years 4, 5, & 6)

9. **Phase Start Date.** Enter the month/day/year in MM/DD/YY format that the selected phase of the project is *actually* expected to start.

10. **Federal Fund Code.** Enter the Federal Fund code from the table.

		<i>FTA Discretionary for Capital Expenditures</i>	
BIA	- Bureau of Indian Affairs	5307	- FTA Urban Areas
BR	- Bridge Replacement or Rehab.	5309(Bus)	- Bus
CDBG	- Community Development Block Grant (HUD)	5309(FG)	- Fixed Guideways
		5309(NS)	- New Starts
CMAQ	- Congestion Mitigation Air Quality	5310	- FTA Elderly/Disabled
DEMO	- ISTEAD Demo Project (Selected)	5311	- FTA Rural Areas
Discretionary	- Ferry Boat Discretionary, Public Lands Highways, or Scenic Byways, etc.	REV	- Rural Economic Vitality Program
		STP(C)	- STP Statewide Competitive Program
DOD	- Dept. of Defense	STP(E)	- STP Transportation Enhancements
IC	- Interstate Construction	STP(S)	- STP Safety Including Hazard and RR
IM	- Interstate Maintenance	STP(R)	- STP Rural Regionally Selected
NHS	- National Highway System	STP(U)	- STP Urban Regionally Selected
3037	- FTA Job Access/Reverse Commute	STP	- WSDOT use only

11. **Federal Funds.** Enter the total federal cost (in thousands) of the phase regardless of when the funds will be spent.

12. **State Fund Code.** Enter the appropriate code for any of the listed state funds to be used on this project.

CAPP - County Arterial Preservation Program	PWTF - Public Works Trust Fund
CHAP - City Hardship Assistance Program	RAP - Rural Arterial Program
TPP - Transportation Partnershis Program	SCP - Small City Program
AIP - Urban Arterial Program (formerly Arterial Improvement Program)	SCPP - Small City Pavement Program
PSMP - Pedestrian Safety & Mobility Program	FMSIB - Freight Mobility Strategic Investment Board
PTSP - Public Transportation Systems Program	WSDOT - WSDOT provided funding
	OTHER - Any other unlisted state fund codes

13. **State Funds.** Enter all funds from the State Agencies (in thousands) of the phase regardless of when the funds will be spent.

14. **Local Funds.** Enter all the funds from Local Agencies (in thousands) of the phase regardless of when the funds will be spent.

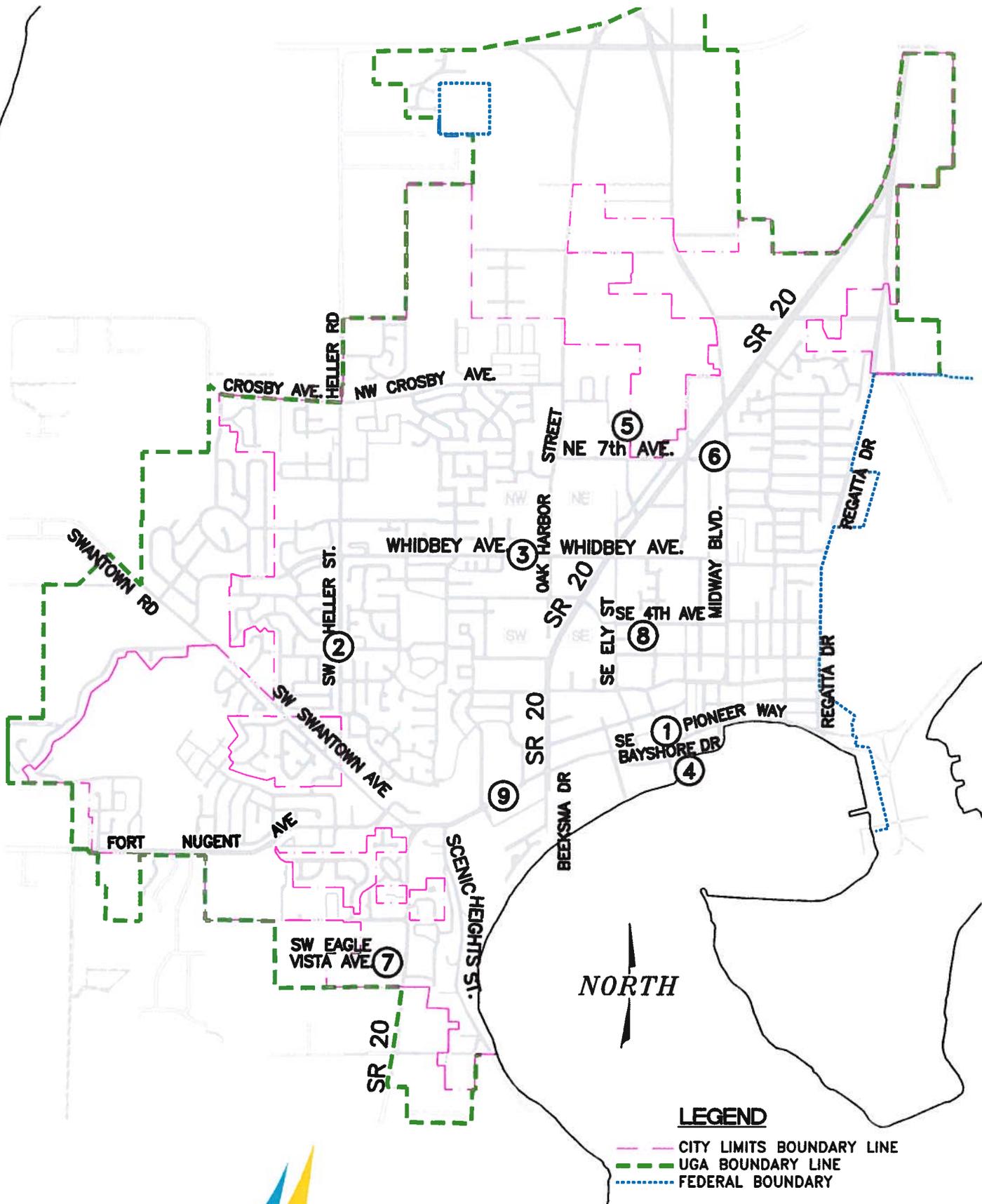
15. **Total Funds.** Enter the sum of columns 10, 12, and 14. (Auto-calculation in the "STIP Too" program.)

16-19. **Expenditure Schedule - (1st, 2nd, 3rd, 4th thru 6th years).** Enter the estimated expenditures (in thousands) of dollars by year. (For Local Agency use.)

20. **Environmental Data Type.** Enter the type of environmental assessment that will be required for this project. (This is "required" for Federally funded projects, but may be filled in for state or locally funded projects.)

EIS	- Environmental Impact Statement
EA	- Environmental Assessment
CE	- Categorical Exclusion

21. **R/W Certification.** Click Y if Right of Way acquisition is or will be required. If yes, enter R/W Certification Date, if known. (This is "required" for Federally funded projects.)



SIX YEAR TRANSPORTATION IMPROVEMENT PLAN 2011 - 2016