

ZTA-22-05 (Ord. 2022-15)
Exhibit "A"
Date: May 17, 2022

Revised: 07/14/2022
08/15/2022



DEVELOPMENT REVIEW COMMITTEE STAFF REPORT AND RECOMMENDATION

Subject/Agenda Item:

ZTA-22-05: Adult Entertainment

Recommendation to City Council: A City-initiated request for a text amendment to repeal the City's Adult Entertainment regulations and formally adopt Palm Beach County's Adult Entertainment with some opt-out provisions.

☒ Recommendation to APPROVE

☐ Recommendation to DENY

☐ Quasi-Judicial

☒ Legislative

☒ Public Hearing

Originating Department: Planning & Engineering Project Manager _____ Caryn Gardner-Young, Zoning Administrator	Reviewed By: Acting Director of Development and Neighborhood Services _____ Andrea McCue, City Manager
Approved By: City Manager _____ Andrea McCue	Public Notice: <input checked="" type="checkbox"/> Required <input type="checkbox"/> Not Required Dates: Paper: The Lake Worth Herald Mailing <input type="checkbox"/> Required <input checked="" type="checkbox"/> Not Required Notice Distance: _____
Attachments: <ul style="list-style-type: none">• Ordinance 2022-15_	City Council Action: <input checked="" type="checkbox"/> Approval <input type="checkbox"/> Approve with conditions <input type="checkbox"/> Denial <input type="checkbox"/> Continued to: _____

II. Proposed Zoning Code Amendments:

The following Zoning Code regulations are impacted by the proposed Zoning Text Amendments. Text shown in ~~strike through~~ is to be deleted. Text shown in underline is to be added.

ARTICLE II. – ADMINISTRATION

DIVISION 11. – ADULT ENTERTAINMENT ESTABLISHMENTS

~~Sec. 16-221. – Proximity to certain establishments restricted.~~

~~No adult entertainment establishment shall be operated or maintained within fifteen hundred (1,500) feet of:~~

~~(1) Any other adult entertainment establishment within or without the municipal limits of the city as defined in section 16-1.~~

~~(2) Any establishment for the sale of beer, wine, or intoxicating liquor for consumption on or off the premises; pawnshops, pool or billiard hall, penny arcade or other business establishment having as a substantial or significant portion of its business the operation of coin-operated amusement devices.~~

~~(3) Publicly owned lands used as recreational facilities, administrative functions, or public safety functions.~~

~~(4) Any church or house of worship.~~

~~(5) Any college, university, public school, private school, licensed private nursery or pre-school or day care center.~~

~~Sec. 16-222. – Measurement of distance.~~

~~For the purposes of section 16-221, all measurements of distances shall be along a straight airline route from the farthest point on any property line to the nearest point on any property line of any property or use described in paragraphs (1) through (2) of section 16-221.~~

~~Sec. 16-223. – Hours of operation.~~

~~Adult establishments shall be restricted to the following hours of operation:~~

~~(1) Adult bookstores, adult health studios, adult photography studios, and adult novelty stores shall not be open for business before 9:00 a.m. or after 9:00 p.m.~~

~~(2) Restaurants and lounges with adult entertainment shall not be open for business before 11:00 a.m. and after 2:00 a.m.~~

~~(3) Adult motion picture theaters shall not be open for business before 11:00 a.m. or after 2:00 a.m.~~

~~(4) No adult entertainment establishment as described herein shall be open for business on any Sunday or national legal holiday.~~

~~Sec. 16-224. -- Signs, etc.~~

~~All development concept plans submitted in support of applications for adult entertainment establishment special exceptions shall be subject to review of outdoor sign location, size, content, method of lighting, hours of operation and any other reasonable restrictions imposed by the city council. In addition, thereto, the development concept plan shall show and be subject to approval of all outdoor statues or other appurtenance, picture and or graphics which applicant intends to display at time of approval or at any time during the period of operation.~~

~~Sec. 16-225. -- Nonconforming use.~~

~~In the event that any permitted or special exception use allowed within a commercial intensive district is constructed within fifteen hundred (1,500) feet of an adult entertainment establishment as defined in [section 16-1](#), the adult entertainment establishment shall become a nonconforming use at the time of issuance of certificate of occupancy of such permitted or special exception use.~~

~~Sec. 16-226. -- Expiration of approval.~~

~~The adult entertainment establishment approval shall expire twelve (12) months after the date of the abovementioned certificate of occupancy.~~

~~Sec. 16-227. -- Violations.~~

~~(a) It shall be a violation for the owner or operator of any adult entertainment establishment as described herein to permit any person under the age of eighteen (18) years to enter or remain upon the premises of the establishment, or to sell any product or service to any person under the age of eighteen (18) years on the premises of a regulated use.~~

~~(b) It shall be a violation for any person under the age of eighteen (18) years to enter or remain upon the premises of any regulated use, or to purchase any product or service upon the premises of an adult entertainment establishment as described herein.~~

~~(c) It shall be a violation for any person to touch any of the specified anatomical areas of another person while upon the premises of an adult entertainment establishment as described herein.~~

~~Secs. 16-228 — 16-250. — Reserved.~~

Sec. 16-221. – Title.

This Division shall be known as the “Adult Entertainment Code” of the City.

Sec. 16-222. – Authority and Jurisdiction.

The Adult Entertainment Code of the City is enacted in the interest of the public health, safety, and general welfare of the people of the City and pursuant to the authority of the City to regulate the sale and consumption of alcoholic beverages under the Twenty-First Amendment to the Constitution of the United States.

The Adult Entertainment Code shall be effective throughout the City.

Sec. 16-223. – Findings of Fact.

In addition, and supplemental to the findings and determinations contained in the "Whereas" provisions, which are incorporated by reference into this section, the City Council acting in its legislative capacity for the purpose of regulating adult entertainment establishments, hereby makes the following findings of fact:

Based on the evidence and testimony presented at public hearings before the City Council, and on the findings incorporated in the United States Attorney General's Commission on Pornography (1986), A Summary of a National Survey of Real Estate Appraisers Regarding the Effect of Adult Bookstores on Property Values, conducted by the Department of Metropolitan Development, City of Indianapolis, 1984; Adult Entertainment Businesses Study for Manatee County, Manatee County Planning and Development Department, June 1987; Adult Entertainment Study, Department of City Planning, City of New York, November 1994; Director's Report Proposed Land Use Code Text Amendment adult Cabarets, Department of Construction and Land Use, City of Seattle, March 1989; Report of the Attorney General's Working Group on the Regulation of Sexually Oriented Businesses, Hubert H. Humphrey, III, Attorney General, State of Minnesota, June 6, 1989; Study of the Effects of the Concentration of Adult Entertainment Establishments in the City of Los Angeles, Department of City Planning, City of Los Angeles, June 1997; and the Palm Beach County Adult Entertainment Code, the City finds that:

(1) Establishments exist or may exist within the city where books, magazines, motion pictures, prints, photographs, periodicals, records, novelties and/or devices which depict, illustrate, describe, or relate to specified sexual activities are possessed, displayed, exhibited, distributed and/or sold.

(2) Establishments exist or may exist within the City:

a. Where the superficial tissues of one person are manipulated, rubbed, stroked, kneaded, and/or tapped by a second person, accompanied by the display or exposure of specified anatomical areas;

b. Where dancers, entertainers, performers, or other individuals, who, for any form of commercial gain, perform or are presented while displaying or exposing any specified anatomical areas; or

c. Where lap dancing occurs.

(3) The activities described in subsections (1) and (2) of this section occur at establishments for the purpose of making a profit, and, as such, are subject to regulation by the City in the interest of the health, safety, and general welfare of the people of the City.

(4) The competitive commercial exploitation of such nudity and semi-nudity is adverse to the public's interest and the quality of life, tone of commerce, and total community environment in the City.

(5) The commercial exploitation of nudity and semi-nudity consists of the use of nude and seminude entertainment in connection with or for the promotion of the sale of goods or services, and the receipt of money by the person engaging in nude or seminude entertainment in exchange for, or as consideration for nude or seminude performance by such individuals.

(6) In order to preserve the public peace and good order, and to safeguard the health, safety and welfare of the community and citizens thereof, it is necessary and advisable to regulate and restrict the conduct of owners, operators, agents, employees, entertainers, performers, patrons, spectators, and persons on the premises of the commercial establishments subject to this article.

(7) There is a direct relationship between the display or depiction of specified anatomical areas as defined in this article and an increase in criminal activities, moral degradation and disturbances of the peace and good order of the community, and the concurrences of these activities is hazardous to the health and safety of those persons in attendance and tends to depreciate the value of adjoining property and harm the economic welfare of the community as a whole. These secondary effects are adverse to the public's interest and quality of life, tone of commerce and total community environment in the City.

(8) When the activities described in subsections (1) and (2) of this section are presented in establishments within the City, other activities which are illegal, immoral, or unhealthy tend to accompany them, concentrate around them, and be aggravated by them. Such other activities include but are not limited to prostitution, solicitation for prostitution, lewd and lascivious behavior, possession, distribution and transportation of obscene materials, sale or possession of controlled substances, and violent crimes against persons and property.

(9) When the activities described in subsections (1) and (2) of this section are present in establishments within the City, they tend to blight neighborhoods, adversely affect neighboring businesses, lower property values, foster an atmosphere which promotes crime, and ultimately lead residents and businesses to move to other locations.

(10) Physical contact within establishments at which the activities described in subsections (1) and (2) of this section occur between workers exhibiting specified anatomical areas and customers poses a threat to the health of both and may lead to the spread of communicable, infectious, and social diseases.

(11) In order to preserve and safeguard the health, safety, and general welfare of the people of the City, it is necessary and advisable for the city to regulate the conduct of owners, managers, operators, agents, employees, entertainers, performers, and customers at establishments where the activities described in subsections (1) and (2) of this section occur.

(12) The potential dangers to the health, safety, and general welfare of the people of the City from the activities described in subsections (1) and (2) of this section occurring at establishments without first obtaining a license under this chapter are so great as to require the licensure of such establishments prior to their being permitted to operate.

(13) Sexually oriented businesses are frequently used for unlawful and unhealthy sexual activities, including prostitution and sexual liaison of a casual nature.

(14) The concern over sexually transmitted diseases is a legitimate health concern of the City which demands reasonable regulations of sexually oriented businesses in order to protect the health and well-being of the citizens.

(15) Licensing is a legitimate reasonable means of accountability to ensure that operators of sexually oriented businesses comply with the reasonable regulations within the adult entertainment code and the locational requirements of the city zoning regulations and to ensure that operators do not knowingly allow their establishments to be used as places of illegal sexual activity or solicitation.

Sec. 16-224. – Opting into County Adult Entertainment Code.

(1) The City hereby opts into the County Adult Entertainment Code, as amended from time to time.

(2) The City Manager, or their representative, shall provide to the occupational licensing department of the County, the designation of city departments and contact persons for the City who have been delegated the responsibilities outlined in following sections:

a. The Building Division is responsible for inspecting any proposed establishment for which a license is being applied for in order to ascertain whether it complies with division 3 of the County Adult Entertainment Code and all applicable building codes, statutes,

ordinances, and regulations in effect in the City. The respective building official shall compare and certify that all aspects of the submitted floor plan, site plan and certified survey accurately depict the actual structure and comply with the provisions of the County Adult Entertainment Code.

b. The Fire Rescue Department is responsible for the inspection of licensed premises or any proposed or existing establishment to ascertain whether it complies with division 3 of the county adult entertainment code and all applicable fire codes, statutes, ordinances, and regulations in effect in the City.

c. The Planning, Engineering and GIS Division of the Development and Neighborhood Services Department is responsible for ascertaining whether a proposed or existing establishment for which a license is being applied for complies with division 3 of the County Adult Entertainment Code and all applicable zoning regulations in effect in the city.

Sec. 16-225. – Replacement of the County Adult entertainment Code’s prohibitions at establishments allowing alcoholic beverages.

(1) The City hereby opts out of those provisions set forth in section 17-182 of the County Adult Entertainment Code to the extent that such provisions allow or permit alcoholic beverages at an adult entertainment establishment. This opt-out provision shall apply to the extent that any such adult entertainment establishment dealing in alcoholic beverages as set forth in this Code and section 17-182 of the County Adult Entertainment Code shall not be permitted, authorized, or licensed to sell, serve, consume, or possess any alcoholic beverages.

(2) In addition, and supplemental to the findings and determinations contained in the "Whereas" provisions and the Findings of Fact, the City Council, acting in its legislative capacity for the purpose of regulating nudity and other sexual conduct in establishments dealing in alcoholic beverages, as authorized pursuant to the Twenty-First Amendment, finds that:

a. Considering what has happened in other communities, the acts prohibited in subsection (3) herein, encourage or create the potential for the conduct of prostitution, attempted rape, rape, assault, and other crimes, in and around establishments dealing in alcoholic beverages;

b. Actual and simulated nudity and sexual conduct and the depiction thereof, coupled with alcohol in public places produces and has the potential for producing undesirable behavior;

c. Sexual, lewd, lascivious, and salacious conduct among patrons and employees within establishments dealing in alcoholic beverages results in violation of law and creates dangers to the health, safety, morals, and welfare of the public and those who engage in such conduct; and

d. It is the intent of this ordinance to prohibit nudity, gross sexuality, and the simulation and depiction thereof in establishments dealing in alcoholic beverages.

(3) The following prohibitions and criteria shall apply within and around those establishments that are either dealing in or are permitted, authorized, or licensed to sell, serve, consume, or possess any alcoholic beverages:

a. No person shall knowingly or intentionally appear, or cause another person to appear nude, or expose to public view his or her genitals, pubic area, vulva, anus, anal cleft or cleavage, or buttocks, or any simulation thereof.

b. No female person shall knowingly, intentionally, or recklessly expose any portion of her breasts directly or laterally below the top of the areola, or any simulation thereof, and no person shall knowingly, intentionally, or recklessly cause a female person to expose any portion of her breasts directly or laterally below the top of the areola, or any simulation thereof.

c. No person or entity maintaining, owning, or operating an establishment dealing in alcoholic beverages shall encourage, allow, or permit any person to appear nude or to expose to public view his or her genitals, pubic area, vulva, anus, anal cleft or cleavage, or any portion of the buttocks or simulation thereof.

d. No person or entity maintaining, owning, or operating an establishment dealing in alcoholic beverages shall encourage, allow, or permit any female person to expose to public view her breasts, directly or laterally, below the top of the areola or any simulation thereof.

c. No person shall engage in and no person maintaining, owning, or operating an establishment dealing in alcoholic beverages shall suffer or permit any sexual intercourse; masturbation; sodomy; bestiality; oral copulation; flagellation; any sexual act which is prohibited by law; touching, caressing, or fondling of the breasts, buttocks, anus, or genitals; or the simulation thereof.

d. No person shall cause and no person maintaining, owning, or operating an establishment dealing in alcoholic beverages shall suffer or permit the exposition of any graphic representation, including pictures or images by the projection of film or video images on a television or a monitor, which depicts human genitals, pubic area, vulva, anus, anal cleft or cleavage, buttocks, female breasts directly or laterally below the top of the areola; sexual intercourse; masturbation; sodomy; bestiality; oral copulation; flagellation; any sexual act prohibited by law; touching, caressing, or fondling of the breasts, buttocks, anus, or genitals; or any simulation thereof. This subsection shall not be construed to prohibit the showing of movies, tapes or video cassettes that contain a movie industry rating of "R" or "PG-13."

Sec. 16-226. – Replacement of Prohibited Locations and Measurement of Distance of the County Adult Entertainment Code; establishing the proximity to certain establishments restricted.

- (1) Notwithstanding any other provision of this Chapter or any provision of the City's Zoning Regulations or the Greenacres Code, no person shall propose, cause, or permit the operation of, or enlargement of, an adult entertainment establishment which, while in operation or after enlargement, would or will be located within fifteen hundred (1,500) feet of:
 - a. Any other adult entertainment establishment within or without the municipal limits of the city as defined in [section 16-1](#).
 - b. Any establishment for the sale of beer, wine, or intoxicating liquor for consumption on or off the premises; pawnshops, pool or billiard hall, penny arcade or other business establishment having as a substantial or significant portion of its business the operation of coin-operated amusement devices.
 - c. Publicly owned lands used as recreational facilities, administrative functions, or public safety functions.
 - d. Any church or house of worship.
 - e. Any college, university, public school, private school, licensed private nursery or pre-school or day care center.
- (2) In addition to the distance requirements set forth in subsection (1), an adult entertainment establishment shall only be allowed in areas designated as Commercial Intensive adjacent to South Military Trail.
- (3) The distance requirements of subsection (1) are independent of and do not supersede the distance requirements for any other establishment that may be contained in other laws, rules, ordinances, or regulations.
- (4) All measurements of distances shall be along a straight airline route from the farthest point on any property line to the nearest point on any property line of any property or use described herein for establishing the proximity restrictions to certain establishments.

Secs. 16-227—16-250. - Reserved.

III. Staff Analysis:

Background:

In the past thirty years the number of topless bars, adult bookstores, X-rated theaters, massage parlors—even exotic car washes—has mushroomed. These uses generate intense community

concern about the morality of such businesses, their exploitation of women, and their “secondary effects” impact on surrounding neighborhoods. Business owners call city council members with concerns that prospective customers will stay away if a massage parlor sets up shop next door. Landowners in a rural area who previously opposed any zoning as an undue restriction on private property rights suddenly turn out in great numbers to demand zoning “protection” when they learn a topless bar is proposed to be located nearby. Conservative religious groups and liberal advocates of women’s rights join forces to protest the moral climate set by a proliferation of sexually oriented businesses.

The upshot of this outpouring of concern has been a strong trend among local governments around the country to regulate sexually oriented businesses. Regulations must be carefully considered in light of federal and state constitutional guarantees regarding freedom of expression. In particular, regulations imposed on sexually oriented businesses have been challenged in the courts over many years. The result of these challenges is a body of court decisions that conclude that local governments may impose reasonable time, place, and manner regulations on adult businesses as long as a substantial public interest in regulating the use (in a way that does not suppress speech) is demonstrated, and as long as reasonable alternative locations are provided for the use. While it is unlikely that local governments may totally ban sexually oriented businesses, location and licensing restrictions may be imposed since the courts recognize that communities are entitled to protect themselves against the "secondary effects" of such businesses.

Development Review Committee Comments:

The petition was reviewed by the Development Review Committee on May 19, 2022 and recommended approval.

Planning Department:	No comments
Building Department:	No comments
Recreation and Parks	Comments addressed in Staff Report
Fire Department:	No comments
PBSO District #16	Comments addressed in Staff Report
Public Works Department:	No comments

IV. Zoning Text Amendment Criteria:

A. The need and justification for these changes:

The purpose and intent of this chapter is to regulate adult-oriented businesses which, unless closely regulated, tend to have serious secondary effects on the community, which effects include, but are not limited to, the following: depreciation of property values and increase in vacancies in residential and commercial areas in the vicinity of adult businesses; interference with residential property owners’ enjoyment of their property when such property is located in the vicinity of adult businesses as a result of increases in crime, litter, noise and vandalism; higher crime rates in the vicinity of adult businesses; and blighting

conditions such as low-level maintenance of commercial premises and parking lots, which thereby have a deleterious effect upon adjacent areas. Special regulation of these businesses is necessary to prevent these adverse effects and the blighting or degradation of the neighborhoods in the vicinity of the adult businesses. The proposed text amendments to the City Code are to adopt Palm Beach County Adult Entertainment regulations which the City is already bound by but to opt-out of provisions that are not beneficial to Greenacres residents.

- B. *The relationship of the proposed amendments to the purpose and objectives of the City's Comprehensive Plan, and whether the proposed change will further the purposes of the City's Zoning Code regulations and other City codes, regulations and actions designed to implement the Comprehensive Plan.*

The proposed amendments are consistent with the City's Comprehensive Plan and will further the purposes of the City's Zoning Code regulations and other City Codes by ensuring the Adult Entertainment standards are in compliance with legal cases and with Palm Beach County regulations.

V. Staff Recommendation:

Approval of ZTA-22-05 through the adoption of Ordinance 2022-15.

**PLANNING AND ZONING BOARD OF ADJUSTMENTS RECOMMENDATION –
July 14, 2022**

The Planning and Zoning Board of Adjustment, on a motion made by Commissioner Litowsky and seconded by Commissioner Edmundson, by a vote of five (5) to zero (0) recommended approval of Zoning Text Amendment **ZTA-22-05** (*Adult Entertainment*) as presented by the City Attorney.

CITY COUNCIL ACTION First Reading – August 15, 2022

The City Council on a motion made by Council Member Bousquet and seconded by Council Member Dugo, by a vote of five (5) to zero (0) recommended approval of Zoning Text Amendment **ZTA-22-05** as presented by the City Attorney.

CITY COUNCIL ACTION Second Reading – September 14, 2022

Attachments:

1. Ordinance 2022-15