

FARGO PLANNING COMMISSION AGENDA
Tuesday, December 6, 2022 at 3:00 p.m.

A: Approve Order of Agenda

B: Minutes: Regular Meeting of November 1, 2022

C: Public Hearing Items:

1. Hearing on an application requesting a Plat of **Westrac Fourth Addition** (Minor Subdivision) a replat of part of Lots 2 and 3, Block 3, Westrac Second Addition, to the City of Fargo, Cass County, North Dakota. (Located at 2900, 2920, 2924, 2928, 2932, and 2936 Fiechtner Drive South) (LJS Investments, LLP/ Nate Vollmuth) (dk)
2. Hearing on an application requesting a Plat of **Dakota Air Parts Addition** (Major Subdivision) a replat of Lots 1-3, Block 1, DDK Addition, to the City of Fargo, Cass County, North Dakota. (Located at 2505 39 1/2 Avenue North; 3910 and 4020 25th Street North) (MACO Leasing Inc./Nate Vollmuth) (dk)
3. Hearing on an application requesting a Plat of **Edition Fourth Addition** (Minor Subdivision) a replat of Lot 1, Block 1, Edition Third Addition, to the City of Fargo, Cass County, North Dakota. (Located at 4803 and 4809 38th Street South) (Bluegrass Offices, LLC/Houston Engineering, Inc.) (dk)
4. Hearing on an application requesting a Plat of **The District of Fargo Fifth Addition** (Minor Subdivision) a replat of Lots 1 and 2, Block 1, The District of Fargo Fourth Addition to the City of Fargo, Cass County, North Dakota. (Located at 3788 and 3770 55th Avenue South) (RRCOM LL/Houston Engineering) (lm)
5. Hearing on an application requesting a Text Amendment to amend Sections 20-0401, 20-0402, 20-0403, 20-1001, 20-1002, 20-1202, and 20-1203 of the Fargo Municipal Code (Land Development Code) relating to definitions, regulations, use standards, nonconformities, and references regarding adult entertainment centers and adult establishments. (City of Fargo) (mw)

D: Other Items:

1. Planned Unit Development Final Plan for **Metropolitan Park 3rd Addition**. (dk)
2. Introduction to BLOC Mixed-Use development on the 1600 block of University Drive South. (me)
3. 2023 Planning Commission Calendar.

Planning Commission meetings are broadcast live on cable channel TV Fargo 56 and can be seen live at www.FargoND.gov/streaming. They are rebroadcast each Wednesday at 8:00 a.m. and Sunday at 8:00 a.m.; and are also included in our video archive at www.FargoND.gov/PlanningCommission.

People with disabilities who plan to attend the meeting and need special accommodations should contact the Planning Office at 701.241.1474. Please contact us at least 48 hours before the meeting to give our staff adequate time to make arrangements.

Minutes are available on the City of Fargo Web site at www.FargoND.gov/planningcommission.

City of Fargo Staff Report			
Title:	Text Amendment	Date:	11/30/2022
Location:	Citywide and extra-territorial jurisdiction	Staff Contact:	Mark Williams
Owner(s)/Applicant:	City of Fargo/Zoning Administrator	Engineer:	N/A
Entitlements Requested:	Sections 20-0401, 20-0402, 20-0403, and 20-1202 of the Fargo Municipal Code (Land Development Code) relating to definitions, regulations, use standards, and references regarding adult entertainment centers and adult establishments.		
Status:	Planning Commission Public Hearing: December 6 th , 2022		

Proposed Text Amendment

The proposed text amendment would amend Sections 20-0401, 20-0402, 20-0403, and 20-1202 of the Fargo Municipal Code (Land Development Code) relating to definitions, regulations, use standards, and references regarding adult entertainment centers and adult establishments. Specifically, the edits listed are proposed, using the strike-through/underline format. Existing wording that is being eliminated is shown by ~~strike-through~~; new wording being added is shown by underline.

Section 20-0401 (Use Table) of Chapter 20 (Land Development Code) is hereby amended to read as follows:

Use Category	Definition (Excerpt; See Sec. 20-1203)	Specific Use Type	Zoning Districts																			
			A G	S R 0	S R 1	S R 2	S R 3	SS RR 4 5	M R 1	M R 2	M R 3	U M U	M H P	N O	N C	G O	L C	D M U	G C	L I	G I	P I
Commercial																						
Adult Entertainment Center Establishment	an <u>adult arcade</u> , adult bookstore, adult cinema, or adult entertainment facility, <u>or sexual device shop</u>		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	P/C [A]	P/C [A]	P/C [A]	-

Section 20-0402(A) of Chapter 20 (Land Development Code) is hereby amended to read as follows:

A. Adult Entertainment Center Establishment

Adult ~~Entertainment Centers~~ establishments are regulated based upon the documents, rationale, and findings set forth in the ordinance adopting this section. The city hereby adopts and incorporates herein its stated findings and legislative record related to the adverse secondary effects of adult establishments, including the judicial opinions and reports related to such secondary effects. Adult establishments shall be subject to all of the following standards:

1. An adult ~~entertainment center~~ establishment shall not be located within 1,250 feet of any religious institution, school, park or recreation facility (bike paths excluded), SR zoning district, MR zoning district or residential planned unit development.
2. An adult ~~entertainment center~~ establishment shall not be located within 1,250 feet of any establishment that dispenses alcohol on-premises and is licensed in accordance with Chapter 25 of the Fargo Municipal Code.
3. An adult ~~entertainment center~~ establishment shall not be located within ~~4,250~~ 750 feet of any other adult ~~entertainment center~~ establishment.
4. For the purpose of subsections (1), (2), and (3), distance shall be measured from the closest part of any structure, including signs and roof overhangs, used in conjunction with the adult establishment to the closest point on a property boundary of the land use(s) identified in those subsections. Where a use identified in those subsections is located in a multi-tenant development, the distance shall be measured to the closest part of the tenant space occupied by that use rather than the property line of the entire

development. The zoning and/or use of land in adjacent jurisdictions shall not disqualify any location within the City of Fargo from being available to an adult establishment.

5. Notwithstanding any provision in the Fargo Municipal Code to the contrary, an adult establishment in a location that satisfies the location standards in the Land Development Code shall not be deemed noncompliant by virtue of the subsequent establishment or expansion of another land use or zoning district identified in subsections (1), (2), or (3).
46. An adult ~~entertainment center~~ establishment must prohibit entrance by persons less than 18 years of age.
5. An adult ~~entertainment center~~ may not display any signs visible from the exterior of the adult entertainment center, except for signs identifying it as an adult entertainment center, adult bookstore, adult entertainment facility, adult cinema or combination thereof.
6. No materials depicting specified sexual activities or specified anatomical areas shall be visible from the exterior of an adult entertainment center.
7. The business premises of an adult ~~entertainment center~~ establishment that are generally open to its patrons are open equally at the same time to members of any law enforcement agency who may wish to enter thereon provided the entry is in the course of the discharge of the law enforcement officer's duties.

Section 20-0402(T)(3) of Chapter 20 (Land Development Code) is hereby amended to read as follows:

T. Non-farm Commercial Uses

...

3. **Prohibited Uses.** Dispatch Centers, Firearms and Ammunition Sales, and Adult Entertainment Centers ~~Uses Establishments~~ as defined in Section 20-0403.C.5 are prohibited uses.

Section 20-0403(C)(5)(f) of Chapter 20 (Land Development Code) is hereby amended to read as follows:

C. Home Occupations

...

5. **Prohibited Uses.**

...

f. Adult Entertainment Center ~~Uses Establishments~~

~~Entertainment or sale of goods defined as adult bookstore, adult cinema, adult entertainment facility, or adult entertainment center~~ Adult establishments as defined in Sec. 20-1202 are not allowed as a home occupation.

Section 20-1202 of Chapter 20 (Land Development Code) is hereby amended to read as follows:

§20-1202 – Words Defined

(NOTE: In the interest of brevity, only those terms related to adult uses are listed below, rather than the entire list of definitions. Additions to the list of definitions have resulted in renumbering as noted)

The following terms shall have the meanings ascribed to them:

2. **Adult Arcade:** A commercial establishment to which the public is permitted or invited that maintains booths or rooms smaller than 100 square feet, wherein image-producing devices are regularly maintained to show images characterized by their emphasis upon matter exhibiting "specified sexual activities" or "specified anatomical areas."
23. **Adult Bookstore:** An enclosed building having as a substantial or significant portion of its stock in trade, books, magazines, or other periodicals that are distinguished or characterized by their emphasis on matter depicting or describing specified sexual activities or specified anatomical areas. A commercial establishment which, as one of its principal business activities, offers for sale or rental for any form of consideration any one or more of the following: books, magazines, periodicals or other printed matter, or

photographs, films, motion pictures, video cassettes, compact discs, digital video discs, slides, or other visual representations which are characterized by their emphasis upon the display of “specified sexual activities” or “specified anatomical areas.” A “principal business activity” exists where the commercial establishment meets any one or more of the following criteria:

- a. At least 30% of the establishment’s displayed merchandise consists of said items, or
- b. At least 30% of the establishment’s revenues derive from the sale or rental, for any form of consideration, of said items, or
- c. The establishment maintains at least 30% of its floor space for the display, sale, and/or rental of said items (aisles and walkways used to access said items, as well as cashier stations where said items are rented or sold, shall be included in “floor space” maintained for the display, sale, or rental of said items); or
- d. The establishment maintains at least five hundred square feet (500 sq. ft.) of its floor space for the display, sale, and/or rental of said items (aisles and walkways used to access said items, as well as cashier stations where said items are rented or sold, shall be included in “floor space” maintained for the display, sale, or rental of said items); or
- e. The establishment regularly offers for sale or rental at least five hundred (500) of said items; or
- f. The establishment regularly makes said items available for sale or rental and holds itself out, in any medium, as an establishment that caters to adult sexual interests.

In this definition, “floor space” means the floor area inside an establishment that is visible or accessible to patrons for any reason, excluding restrooms.

34. ~~**Adult Cinema:** An enclosed building used on a regular basis for presenting pictorial materials or other visual images by way of direct or indirect projection, which materials are distinguished or characterized by an emphasis on the depiction of specified sexual activities or specified anatomical areas, for observation by patrons therein in return for the payment of a consideration, irrespective of the number of patrons who may be able to view the presentation at one time. A commercial establishment to which the public is permitted or invited that maintains viewing rooms that are 100 square feet or larger wherein films or videos characterized by their emphasis upon “specified sexual activities” or “specified anatomical areas” are regularly shown.~~
45. ~~**Adult Entertainment Facility:** An enclosed building wherein an admission is charged for entrance, or food or nonalcoholic beverages are sold or intended for consumption, and wherein may be observed live presentation of entertainment distinguished or characterized by an emphasis on matters depicting, describing or relating to specified sexual activities or specified anatomical areas. A nightclub, juice bar, restaurant, or similar commercial establishment that regularly offers live semi-nude conduct. No establishment shall avoid classification as an adult entertainment facility by offering nude conduct.~~
56. ~~**Adult Entertainment Center Establishment:** An Adult Arcade, Adult Bookstore, Adult Cinema, Adult Entertainment Facility, or a Sexual Device Shop, or any combination thereof.~~
17. **Characterized by:** Describing the essential character or quality of an item. As applied in this chapter, no business shall be classified as an adult establishment by virtue of showing, selling, or renting materials rated NC-17 or R by the Motion Picture Association of America.
44. **Nudity or Nude Conduct:** The showing of the human male or female genitals, pubic area, vulva, or anus with less than a fully opaque covering, or the showing of the female breast with less than a fully opaque covering of any part of the nipple and areola. For purposes of this chapter, a “fully opaque covering” must not consist of any substance that can be washed or peeled off the skin (such as paint, make-up, or latex).
55. **Regional Shopping Mall (Enclosed):** A group of retail and other commercial establishments that is planned, developed, and managed as a single property, with on-site parking provided around the perimeter of the shopping center, and that is generally at least forty acres in size and flanked by two or more large “anchor” stores, such as department stores. The common walkway or “mall” is enclosed, climate-controlled and lighted, usually with an inward orientation of the stores facing the walkway.
58. **Regularly:** The consistent and repeated doing of an act on an ongoing basis.

62. **Semi-Nude or Semi-Nudity:** The showing of the female breast below a horizontal line across the top of the areola and extending across the width of the breast at that point, or the showing of the male or female buttocks, with less than a fully opaque covering. This definition shall include the lower portion of the human female breast, but shall not include any portion of the cleavage of the human female breasts exhibited by a bikini, dress, blouse, shirt, leotard, or similar wearing apparel provided the areola is not exposed in whole or in part. For purposes of this chapter, a “fully opaque covering” must not consist of any substance that can be washed or peeled off the skin (such as paint, make-up, or latex).

64. **Sexual Device:** Any three (3) dimensional object designed for stimulation of the male or female human genitals, anus, buttocks, nipple, or for sadomasochistic use or abuse of oneself or others and shall include devices commonly known as dildos, vibrators, penis pumps, cock rings, anal beads, butt plugs, nipple clamps, and physical representations of the human genital organs. Nothing in this definition shall be construed to include devices primarily designed for protection against sexually transmitted diseases or for preventing pregnancy.

65. **Sexual Device Shop:** A commercial establishment:
a. where more than 100 sexual devices are regularly made available for sale or rental; or
b. where sexual devices are regularly made available for sale or rental and the establishment regularly gives special prominence to sexual devices (e.g., by using lighted display cases for sexual devices, having a large variety of sexual devices, having a room or discrete area of the establishment significantly devoted to sexual devices, or positioning sexual devices near cash registers or similar points of sale).

This definition shall not be construed to include an establishment located within an enclosed regional shopping mall, an establishment containing a pharmacy that employs a licensed pharmacist to fill prescriptions on the premises, or an establishment that is enrolled in Medicare as a durable medical equipment, prosthetics, and supplies (DMEPOS) supplier.

78. **Viewing Room:** The room or booth where a patron of an adult establishment would ordinarily be positioned while watching a film, videocassette, digital video disc, or other video on an image-producing device.

Background and Existing Ordinances.

The Land Development Code's (LDC) regulations regarding adult uses have recently come to staff's attention. It appears there has been no update, revision, or amendment to the sections of the LDC that relate to the adult uses since the LDC's adoption in 1998. Further, the LDC's adult use regulations are almost verbatim the adult use regulations adopted in 1996 (Ordinance No. 2807). Review by staff and outside consultants specializing in adult use regulation has indicated that the area of adult use regulation has evolved considerably since the late 1990's, and an update to the LDC's adult use regulations is timely and appropriate. Thus, staff brings forward these proposed amendments.

Purpose

It is the purpose of this ordinance to regulate adult establishments in order to promote the health, safety, and general welfare of the citizens of the city, and to establish reasonable and uniform regulations to prevent the deleterious secondary effects of adult establishments within the city. The text amendments update adult use definitions and set forth the City's reliance on secondary effects as the rationale for regulating such establishments, which aligns with governing law.

Staff Analysis:

Approval Criteria

In accordance with §20-0904.E Review Criteria of the Land Development Code, proposed text amendments that satisfy all of the following criteria may be approved.

- 1. The amendment must be consistent with the purpose of this Land Development Code;**

Section 20-0104 of the LDC stipulates that the purpose and intent of the Land Development Code is to implement Fargo's Comprehensive Plan and related policies in a manner that protects the health, safety, and general welfare of the citizens of Fargo. The ability to establish zoning regulations to protect health, safety, and general welfare is granted to the City by the State of North Dakota. The proposed amendment is consistent with the intent and purpose of the LDC because adult establishments, as a category of commercial uses, are associated with a wide variety of adverse secondary effects including, but not limited to, personal and property crimes, human trafficking, prostitution, potential spread of disease, lewdness, public indecency, obscenity, illicit drug use and drug trafficking, negative impacts on surrounding properties, urban blight, litter, and sexual assault and exploitation. Regulating adult establishments to reduce and abate secondary effects served to protect public health, safety, and welfare. **(Criteria Satisfied)**

- 2. The amendment must not adversely affect the public health, safety, or general welfare;**
Staff finds that the amendment does not adversely affect, but rather promotes, the public health, safety, or general welfare. **(Criteria Satisfied)**

- 3. The amendment is necessary because of changed or changing social values, new planning concepts or other social or economic conditions in the areas affected.**
Staff finds that the proposed amendment is necessary because, as noted above, the area of adult use regulation has evolved considerably since the LDC's regulations regarding adult uses were adopted in 1998. The amendments are proposed to bring the LDC's regulation of adult uses into line with modern planning and regulatory practices and intervening caselaw that has developed over time. **(Criteria Satisfied)**

Staff Recommendation:

Suggested Motion "To accept the findings and recommendations of staff and hereby recommend approval to the City Commission of the proposed text amendment to Sections 20-0401, 20-0402, 20-0403, and 20-1202 of the Fargo Municipal Code (Land Development Code) relating to definitions, regulations, use standards, nonconformities, and references regarding adult entertainment centers and adult establishments."

Planning Commission Recommendation: December 6th, 2022

Attachments:

1. Amendments to Sections 20-0401, 20-0402, 20-0403, and 20-1202 of the Land Development Code with proposed amendments

1
2 AN ORDINANCE AMENDING SECTIONS 20-0401, 20-0402,
3 20-0403, AND 20-1202 OF THE FARGO MUNICIPAL CODE
4 (LAND DEVELOPMENT CODE) RELATING TO ADULT
5 ENTERTAINMENT CENTERS AND ADULT
6 ESTABLISHMENTS

7 WHEREAS, adult establishments require special supervision from the public safety agencies
8 of the city in order to protect and preserve the health, safety, and welfare of the patrons of such
9 businesses as well as the citizens of the city; and

10 WHEREAS, the Board of City Commissioners finds that adult establishments, as a category of
11 establishments, are frequently used for unlawful sexual activities, including prostitution, and sexual
12 liaisons of a casual nature; and

13 WHEREAS, there is convincing documented evidence that adult establishments, as a category
14 of establishments, have deleterious secondary effects and are often associated with crime and
15 adverse effects on surrounding properties; and

16 WHEREAS, the board desires to protect the health, safety, and welfare of the citizenry; protect
17 the citizens from crime; preserve the quality of life; preserve the character of surrounding
18 neighborhoods and deter the spread of urban blight; and

19 WHEREAS, certain sexually oriented products and services offered to the public are
20 recognized as not inherently expressive and not protected by the First Amendment, *see, e.g.,*
21 *Heideman v. South Salt Lake City*, 348 F.3d 1182, 1195 (10th Cir. 2003) (“On its face, the
22 Ordinance applies to all ‘sexually oriented businesses,’ which include establishments such as ‘adult
23 motels’ and ‘adult novelty stores,’ which are not engaged in expressive activity.”); *Sewell v.*
24 *Georgia*, 233 S.E.2d 187 (Ga. 1977), *dismissed for want of a substantial federal question*, 435 U.S.
25 982 (1978) (sexual devices); *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215, 224 (1990) (escort
26 services and sexual encounter services); and

27 WHEREAS, there is documented evidence of adult establishments, including adult
28 bookstores and adult video stores, manipulating their inventory and/or business practices to
29 avoid regulation while retaining their essentially “adult” nature, *see, e.g., Z.J. Gifts D-4, L.L.C. v.*
30 *City of Littleton*, Civil Action No. 99-N-1696, Memorandum Decision and Order (D. Colo.
31 March 31, 2001) (finding retail adult store’s “argument that it is not an adult entertainment
32 establishment” to be “frivolous at best”); *People ex rel. Deters v. The Lion’s Den, Inc.*, Case No.
33 04-CH-26, Modified Permanent Injunction Order (Ill. Fourth Judicial Circuit, Effingham County,
34 July 13, 2005) (noting that “the accuracy and credibility” of the evidence on inventory in adult
35 retail store was suspect, and that testimony was “less than candid” and “suggested an intention to
36 obscure the actual amount of sexually explicit material sold”); *City of New York v. Hommes*, 724
37 N.E.2d 368 (N.Y. 1999) (documenting manipulation of inventory to avoid adult classification);
38 *Taylor v. State*, No. 01-01-00505-CR, 2002 WL 1722154 (Tex. App. July 25, 2002) (noting that
39 “the nonadult video selections appeared old and several of its display cases were covered with
40 cobwebs”); *HH-Indianapolis, LLC v. Consol. City of Indianapolis/Marion County*, 889 F.3d 432

1 (7th Cir. 2018); *HH-Indianapolis, LLC v. Consol. City of Indianapolis/Marion County*, 265 F.
2 Supp. 3d 873 (S.D. Ind. 2017); and

3 WHEREAS, the manner in which an establishment holds itself out to the public is a
4 reasonable consideration in determining whether the establishment is an adult establishment, *see*,
5 *e.g.*, *East Brooks Books, Inc. v. Shelby County*, 588 F.3d 360, 365 (6th Cir. 2009) (“A prominent
6 display advertising an establishment as an ‘adult store,’ moreover, is a more objective indicator
7 that the store is of the kind the Act aims to regulate, than the mere share of its stock or trade
8 comprised of adult materials.”); *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215, 261 (1991)
9 (Scalia, J., concurring in part and dissenting in part) (“[I]t is most implausible that any enterprise
10 which has as its constant intentional objective the sale of such [sexual] material does not
11 advertise or promote it as such.”); *see also Johnson v. California State Bd. of Accountancy*, 72
12 F.3d 1427 (9th Cir. 1995) (rejecting First Amendment challenge to statute which used the phrase
13 “holding out” to identify conduct indicative of the practice of public accountancy, but did not
14 ban any speech); *Spencer v. World Vision, Inc.*, 633 F.3d 723 (9th Cir. 2010) (O’Scannlain, J.,
15 concurring) (concluding that whether an entity “holds itself out” as religious is a neutral factor
16 and that factor helps to ensure that the entity is a *bona fide* religious entity); and

17 WHEREAS, the city intends to regulate such businesses as adult establishments through
18 narrowly tailored regulations designed to serve its substantial government interest in protecting
19 the health, safety, and welfare of the community, including by preventing the negative secondary
20 effects of adult establishments; and

21 WHEREAS, the city recognizes its constitutional duty to interpret and construe its laws to
22 comply with constitutional requirements as they are announced; and

23 WHEREAS, the board wishes to update the city’s definitions and land use regulations for
24 adult establishments; and

25 WHEREAS, with the passage of any ordinance, the city and the board of city
26 commissioners accept as binding the applicability of general principles of criminal and civil law
27 and procedure and the rights and obligations under the United States and North Dakota
28 Constitutions, the North Dakota Century Code, and the North Dakota Rules of Civil and
29 Criminal Procedure; and

30 WHEREAS, it is not the intent of this ordinance to suppress any speech activities protected by
31 the U.S. Constitution or the North Dakota Constitution, but to enact legislation to further the
32 content-neutral governmental interests of the city, to wit, the controlling of secondary effects of
33 adult establishments.

34 NOW, THEREFORE,

35 Be it Ordained by the Board of City Commissioners of the City of Fargo:

36
37 Section 1. Amendment.

1 Section 20-0401 of Chapter 20 (Land Development Code) is hereby amended so that the row
2 for “Adult Entertainment Center” in Table 20-0401 is amended to read as shown in Exhibit 1
3 attached hereto.

4
5 Section 2. Amendment.

6 Section 20-0402(A) of Chapter 20 (Land Development Code) is hereby amended to read as
7 follows:

8 **A. Adult Entertainment Center Establishment**

9 Adult Entertainment Centers establishments are regulated based upon the documents,
10 rationale, and findings set forth in the ordinance adopting this section. The city hereby
11 adopts and incorporates herein its stated findings and legislative record related to the adverse
12 secondary effects of adult establishments, including the judicial opinions and reports related
13 to such secondary effects. Adult establishments shall be subject to all of the following
14 standards:

- 15 1. An adult ~~entertainment center~~ establishment shall not be located within 1,250 feet of any
16 religious institution, school, park or recreation facility (bike paths excluded), SR zoning
17 district, MR zoning district or residential planned unit development.
- 18 2. An adult ~~entertainment center~~ establishment shall not be located within 1,250 feet of any
19 establishment that dispenses alcohol on-premises and is licensed in accordance with
20 Chapter 25 of the Fargo Municipal Code.
- 21 3. An adult ~~entertainment center~~ establishment shall not be located within ~~1,250~~ 750 feet of
22 any other adult ~~entertainment center~~ establishment.
- 23 4. For the purpose of subsections (1), (2), and (3), distance shall be measured from the
24 closest part of any structure, including signs and roof overhangs, used in conjunction
25 with the adult establishment to the closest point on a property boundary of the land
26 use(s) identified in those subsections. Where a use identified in those subsections is
27 located in a multi-tenant development, the distance shall be measured to the closest
28 part of the tenant space occupied by that use rather than the property line of the entire
29 development. The zoning and/or use of land in adjacent jurisdictions shall not
30 disqualify any location within the City of Fargo from being available to an adult
31 establishment.
- 32 5. Notwithstanding any provision in the Fargo Municipal Code to the contrary, an adult
33 establishment in a location that satisfies the location standards in the Land
34 Development Code shall not be deemed noncompliant by virtue of the subsequent
35 establishment or expansion of another land use or zoning district identified in
36 subsections (1), (2), or (3).
- 37 46. An adult ~~entertainment center~~ establishment must prohibit entrance by persons less than
38 18 years of age.
- 39 5. ~~An adult entertainment center may not display any signs visible from the exterior of the~~
40 ~~adult entertainment center, except for signs identifying it as an adult entertainment~~
41 ~~center, adult bookstore, adult entertainment facility, adult cinema or combination~~
42 ~~thereof.~~
- 43 6. ~~No materials depicting specified sexual activities or specified anatomical areas shall be~~
44 ~~visible from the exterior of an adult entertainment center.~~

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- 7. The business premises of an adult ~~entertainment center~~ establishment that are generally open to its patrons are open equally at the same time to members of any law enforcement agency who may wish to enter thereon provided the entry is in the course of the discharge of the law enforcement officer’s duties.

Section 3. Amendment.

Section 20-0402(T)(3) of Chapter 20 (Land Development Code) is hereby amended to read as follows:

T. Non-farm Commercial Uses

...

- 3. **Prohibited Uses.** Dispatch Centers, Firearms and Ammunition Sales, and Adult ~~Entertainment Centers Uses~~ Establishments as defined in Section 20-0403.C.5 are prohibited uses.

Section 4. Amendment.

Section 20-0403(C)(5)(f) of Chapter 20 (Land Development Code) is hereby amended to read as follows:

C. Home Occupations

...

- 5. **Prohibited Uses.**

...

f. ~~Adult Entertainment Center Uses~~ Establishments

~~Entertainment or sale of goods defined as adult bookstore, adult cinema, adult entertainment facility, or adult entertainment center~~ Adult establishments as defined in Sec. 20-1202 are not allowed as a home occupation.

Section 5. Amendment.

Section 20-1202 of Chapter 20 (Land Development Code) is hereby amended to read as follows:

§20-1202 – Words Defined

The following terms shall have the meanings ascribed to them:

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1. **Accessory Use:** a use or structure that:
- a. Is clearly incidental to and customarily found in connection with a principal structure or use;
 - b. Is subordinate in area, extent and purpose to the principal building or use;
 - c. Contributes to the comfort, convenience or necessity of occupants of the principal use; and
 - d. Is located on the same lot and in the same zoning district as the principal use.
2. **Adult Arcade:** A commercial establishment to which the public is permitted or invited that maintains booths or rooms smaller than 100 square feet, wherein image-producing devices are regularly maintained to show images characterized by their emphasis upon matter exhibiting “specified sexual activities” or “specified anatomical areas.”
23. **Adult Bookstore:** ~~An enclosed building having as a substantial or significant portion of its stock in trade, books, magazines, or other periodicals that are distinguished or characterized by their emphasis on matter depicting or describing specified sexual activities or specified anatomical areas.~~ A commercial establishment which, as one of its principal business activities, offers for sale or rental for any form of consideration any one or more of the following: books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, compact discs, digital video discs, slides, or other visual representations which are characterized by their emphasis upon the display of “specified sexual activities” or “specified anatomical areas.” A “principal business activity” exists where the commercial establishment meets any one or more of the following criteria:
- a. At least 30% of the establishment’s displayed merchandise consists of said items,
or
 - b. At least 30% of the establishment’s revenues derive from the sale or rental, for any form of consideration, of said items, or
 - c. The establishment maintains at least 30% of its floor space for the display, sale, and/or rental of said items (aisles and walkways used to access said items, as well as cashier stations where said items are rented or sold, shall be included in “floor space” maintained for the display, sale, or rental of said items); or
 - d. The establishment maintains at least five hundred square feet (500 sq. ft.) of its floor space for the display, sale, and/or rental of said items (aisles and walkways used to access said items, as well as cashier stations where said items are rented or sold, shall be included in “floor space” maintained for the display, sale, or rental of said items); or
 - e. The establishment regularly offers for sale or rental at least five hundred (500) of said items; or
 - f. The establishment regularly makes said items available for sale or rental and holds itself out, in any medium, as an establishment that caters to adult sexual interests.
- In this definition, “floor space” means the floor area inside an establishment that is visible or accessible to patrons for any reason, excluding restrooms.

- 1 ~~34.~~ **Adult Cinema:** ~~An enclosed building used on a regular basis for presenting pictorial~~
2 ~~materials or other visual images by way of direct or indirect projection, which materials~~
3 ~~are distinguished or characterized by an emphasis on the depiction of specified sexual~~
4 ~~activities or specified anatomical areas, for observation by patrons therein in return for~~
5 ~~the payment of a consideration, irrespective of the number of patrons who may be able~~
6 ~~to view the presentation at one time. A commercial establishment to which the public is~~
7 ~~permitted or invited that maintains viewing rooms that are 100 square feet or larger~~
8 ~~wherein films or videos characterized by their emphasis upon “specified sexual~~
9 ~~activities” or “specified anatomical areas” are regularly shown.~~
- 10
- 11 ~~45.~~ **Adult Entertainment Facility:** ~~An enclosed building wherein an admission is charged~~
12 ~~for entrance, or food or nonalcoholic beverages are sold or intended for consumption,~~
13 ~~and wherein may be observed live presentation of entertainment distinguished or~~
14 ~~characterized by an emphasis on matters depicting, describing or relating to specified~~
15 ~~sexual activities or specified anatomical areas. A nightclub, juice bar, restaurant, or~~
16 ~~similar commercial establishment that regularly offers live semi-nude conduct. No~~
17 ~~establishment shall avoid classification as an adult entertainment facility by offering~~
18 ~~nude conduct.~~
- 19
- 20 ~~56.~~ **Adult Entertainment Center Establishment:** ~~An Adult Arcade, Adult Bookstore,~~
21 ~~Adult Cinema, Adult Entertainment Facility, or a Sexual Device Shop. or any~~
22 ~~combination thereof.~~
- 23
- 24 ~~67.~~ **Airport:** ~~Hector International Airport.~~
- 25
- 26 ~~78.~~ **Airport Elevation:** ~~The established elevation of the highest point on the usable landing~~
27 ~~area.~~
- 28
- 29 ~~89.~~ **Airport Hazard:** ~~Any structure or tree or use of land which obstructs the airspace~~
30 ~~required for the flight of aircraft in landing or taking off at the airport or is otherwise~~
31 ~~hazardous to such landing or taking-off of aircraft.~~
- 32
- 33 ~~910.~~ **All Weather Surface:** ~~Any surface that is durable and reasonably free of dust or mud.~~
34 ~~Such surfaces shall include, but not be limited to concrete, asphalt, paving blocks, brick,~~
35 ~~and other similar materials intended for outdoor motor vehicle use. They shall not~~
36 ~~include dirt, grass, or gravel. Crushed concrete, asphalt millings, or approved similar~~
37 ~~materials are acceptable in LI or GI zoning districts in areas used for rear-yard~~
38 ~~circulation and/or loading, but not used for required parking.~~
- 39
- 40 ~~1011.~~ **Animal Confinement:** ~~Any lot or building or combination of lots or buildings~~
41 ~~intended for the confined feeding, breeding, raising, or holding of animals and~~
42 ~~specifically designed as a confinement area in which manure may accumulate, or where~~
43 ~~the concentration of animals is such that vegetative cover cannot be maintained within~~
44 ~~the enclosure.~~
- 45

- 1 ~~11~~12. **Antenna Array:** One or more rods, panels, discs or similar devices used for the
2 transmission or reception of radio frequency signals, which may include omni-
3 directional antenna (rod), directional antenna (panel) and parabolic antenna (disc). It
4 does not include a “telecommunications support structure.”
5
- 6 ~~12~~13. **Block:** An area of land bounded entirely by streets.
7
- 8 ~~13~~14. **Boundary Line Adjustment:** An adjustment in the boundary between adjoining
9 lots if the adjustment does not create an additional or substandard lot or necessitate new
10 roadway construction or right-of-way dedication.
11
- 12 ~~14~~15. **Building:** A structure having a roof supported by columns or walls.
13
- 14 ~~15~~16. **Building Coverage:** The area of a lot covered by buildings (principal and
15 accessory) or roofed areas, as measured along the outside wall at ground level, and
16 including all projections, other than open porches, fire escapes, canopies and the first
17 three feet of a roof overhang.
18
- 19 17. **Characterized by:** Describing the essential character or quality of an item. As applied in
20 this chapter, no business shall be classified as an adult establishment by virtue of showing,
21 selling, or renting materials rated NC-17 or R by the Motion Picture Association of
22 America.
23
- 24 ~~16~~18. **Decision-Making Body:** A person or group authorized in this Land Development
25 Code to conduct land use reviews and take action on the matter under review.
26
- 27 ~~17~~19. **Density:** The number of dwelling units for each acre of land. See also Sec. 20-
28 0504. Density may also be expressed as the amount of land area per dwelling unit.
29
- 30 ~~18~~20. **Developer.** The person proposing to develop land, either as an owner of said land
31 or as an agent of the owner.
32
- 33 ~~19~~21. **Dwelling Unit:** A building or portion of it designed and used for residential
34 occupancy by a single household and that includes exclusive sleeping, cooking, eating
35 and sanitation facilities. Buildings with more than one set of cooking facilities are
36 considered to be multi-dwelling structures unless the additional cooking facilities are
37 clearly accessory, such as an outdoor grill.
38
- 39 ~~20~~22. **Essential Services:** The erection, construction, alteration, maintenance by public
40 utilities or by governmental departments or commissions of such underground or
41 overhead gas, electrical, steam, or water transmission or distribution systems,
42 collection, communication, supply or disposal systems, including towers, poles, wires,
43 mains, drains, sewers, pipes, conduits, cables, fire alarm boxes, police call boxes, street
44 lights, traffic signals, hydrants, and other similar equipment, and accessories in
45 connection therewith, but not including buildings, as are reasonably necessary for the
46 furnishing of adequate service by such public utilities or governmental departments or

1 commissions or as are required for protection of the public health, safety, or general
2 welfare.

3
4 ~~21~~23. **Floor Area (Gross):** The total square footage within a structure calculated by
5 using the measurements from the exterior walls.

6
7 ~~22~~24. **Garage:** An accessory building or portion of a main building used for the storage
8 of motor vehicles.

9
10 ~~23~~25. **Height, Building:** The vertical distance between the average finished grade at the
11 base of the building and: 1) the highest point of the coping of a flat roof; 2) the highest
12 point of a mansard roof; or 3) the average height level between the eaves and ridge line
13 of a gable, hip or gambrel roof. For the purpose of the HIA-O, Hector International
14 Airport Overlay district regulations the datum shall be mean sea level elevation unless
15 otherwise specified.

16
17 ~~24~~26. **Home Occupation:** A business, profession, occupation or trade conducted for
18 gain, conducted within a dwelling unit, including an attached or detached garage
19 accessory to the dwelling unit, for gain or support by a resident of the dwelling unit.

20
21 ~~25~~27. **Household:** Any one of the following:
22 a. One or more persons related by blood, marriage, adoption, or legal guardianship,
23 including foster children, living together in a dwelling unit; or
24 b. A group of not more than 3 persons not related by blood, marriage, adoption, or
25 legal guardianship living together in a dwelling unit;
26 c. Two unrelated persons and their children living together in a dwelling unit; or
27 d. Any group of people living together that meets the definition of “protected class,”
28 as that term is defined in the North Dakota law.

29
30 ~~26~~28. **Landing Area:** the area of the airport used for the landing, taking off or taxiing
31 of aircraft.

32
33 ~~27~~29. **Lot:** The entire parcel of land occupied or intended to be occupied by a principal
34 building and its accessory buildings, or by a group such as a dwelling group or
35 automobile court and accessory buildings, including the yards, setbacks and open
36 spaces required by this Land Development Code and other applicable law. When a lot is
37 used together with 1 or more contiguous lots for a single use or unified development, all
38 of the lots so used, including any lots used for off-street parking, shall be considered a
39 single lot.

40
41 ~~28~~30. **Lot, Legal:**
42 a. A lot that is shown on a Subdivision plat that has been recorded in the office of the
43 County Register of Deeds; or
44 b. A lot created through a Boundary Line Adjustment.

45
46 ~~29~~31. **Lot, Corner:** A lot abutting two or more streets at their intersection.

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- 3032. **Lot, Interior:** A lot other than a corner lot.
- 3133. **Lot Lines:** The property lines along the edge of a lot or site.

 - a. **Front Lot Line:** A lot line that abuts a street. A through lot has 2 front lot lines.
 - b. **Side Lot Line:** Any lot line except a front or rear lot line.
 - c. **Rear Lot Line:** A lot line that is opposite a front lot line. A triangular lot has two side lot lines but no rear lot line. For other irregularly shaped lots, the rear lot line is all lot lines that are most nearly opposite the front lot line.
 - d. **Interior Side Line:** A side lot line that does not abut a street.
 - e. **Street Side Lot Line:** A lot line that is both a side lot line and a street lot line.
 - f. **Lot Line, Street:** Any lot lines that abut a street. Street lot line does not include lot lines that abut an alley. On a corner lot, there are two (or more) street lot lines. Street lot line can include front lot lines and side lot lines.
- 3234. **Lot, Reverse Corner:** A corner lot whose front does not face the same street as the adjacent lot.
- 3335. **Lot, Through:** A lot having its front and rear lines on different streets.
- 3436. **Lot Width:** The horizontal distance between side lines measured along a line that is parallel to the front lot line and located the minimum exterior setback distance from the front lot line.
- 3537. **Mobile Home Space:** That part of a Mobile Home Park that has been reserved for the placement of the mobile home, appurtenant structures, or additions.
- 3638. **Mobile Home Park:** A parcel of land under single ownership that has been planned and improved for the placement of mobile homes for nontransient use.
- 3739. **Negative Access Easement:** An easement, usually designated on a plat, which operates to deny direct access to a street or public way from the lot or lots adjacent to such street or way.
- 3840. **Nonconforming Lot:** Lots that were legally created in accordance with zoning district minimum lot size and dimensional standards in effect at the time of their creation, but which, because of amendments to the zoning regulations, no longer comply with the minimum lot size or other dimensional standards of the zoning district.
- 3941. **Nonconforming Structure:** Buildings or structures that were established in accordance with all zoning regulations in effect at the time of their establishment, but which, because of amendments to the zoning regulations, no longer comply with the dimensional standards of the underlying zoning district.
- 4042. **Nonconforming Use:** Uses that were established in accordance with zoning regulations in effect at the time of their establishment, but which, because of

1 amendments to the zoning regulations, no longer comply with the use regulations of the
2 underlying zoning district.

3
4 **4143. Nonprecision Instrument Runway:** a runway equipped or to be equipped with
5 an instrument approach procedure utilizing air navigation facilities with only horizontal
6 guidance or area-type navigation equipment.

7
8 **44. Nudity or Nude Conduct:** The showing of the human male or female genitals, pubic
9 area, vulva, or anus with less than a fully opaque covering, or the showing of the female
10 breast with less than a fully opaque covering of any part of the nipple and areola. For
11 purposes of this chapter, a “fully opaque covering” must not consist of any substance
12 that can be washed or peeled off the skin (such as paint, make-up, or latex).

13
14 **4245. Official Map:** A map established by the Board of City Commissioners showing
15 the streets, highways and drainage systems theretofore laid out, adopted and established
16 by law, including new subdivision plats approved by the Board of City Commissioners
17 and the subsequent filing of such approved subdivision plats.

18
19 **4346. Open Space:** an outdoor, unenclosed area, located on the ground or on a roof,
20 balcony, deck, porch or terrace designed and accessible for outdoor living, recreation,
21 pedestrian access or landscaping, but not including roads, parking areas, driveways, or
22 other areas intended for vehicular travel.

23
24 **4447. Open Space, Common:** open space within a development, not in individually
25 owned lots or dedicated for public use, but which is designed and intended for the
26 common use or enjoyment of the residents or occupants of the development. Common
27 Open Space does not include areas used for streets, alleys, driveways, or off-street
28 parking or loading areas. However, the area of recreational activities such as swimming
29 pools, tennis courts, shuffleboard courts, etc., may be counted as common open space.

30
31 **4548. Parcel:** A contiguous area of land in the possession of, owned by, or recorded as
32 the property of the same person or persons.

33
34 **4649. Perimeter Street:** Any street or road which is on the perimeter of the parcel of
35 land to be subdivided and which abuts said parcel on only one side.

36
37 **4750. Precision Instrument Runway:** a runway equipped or to be equipped with an
38 Instrument Landing System (ILS), or a Precision Approach Radar (PAR).

39
40 **4851. Principal Building:** A building occupied by the principal use of the lot on which
41 it is situated.

42
43 **4952. Property Owner:** The person who is shown by the County Register of Deeds as
44 the record owner of a lot or parcel.

1 ~~50~~53. **Public Improvement:** Any improvement for use by the general public and for
2 which a governmental unit may ultimately assume the responsibility for maintenance
3 and operation.

4
5 ~~51~~54. **Public Utility:** Any person, firm, corporation, municipal department, or board
6 duly authorized to furnish, and furnishing, under public regulation, to the public,
7 electricity, gas, heat, power, steam, telephone, telegraph, transportation, or water.

8
9 55. **Regional Shopping Mall (Enclosed):** A group of retail and other commercial
10 establishments that is planned, developed, and managed as a single property, with on-
11 site parking provided around the perimeter of the shopping center, and that is generally
12 at least forty acres in size and flanked by two or more large “anchor” stores, such as
13 department stores. The common walkway or “mall” is enclosed, climate-controlled and
14 lighted, usually with an inward orientation of the stores facing the walkway.

15
16 ~~52~~56. **Registered Engineer:** An individual licensed and registered as a professional
17 engineer under the laws of the state of North Dakota.

18
19 ~~53~~57. **Registered Land Surveyor:** An individual licensed and registered as a
20 professional land surveyor under the laws of the state of North Dakota.

21
22 58. **Regularly:** The consistent and repeated doing of an act on an ongoing basis.

23
24 ~~54~~59. **Residential Structure Types:**

- 25 a. **House, Attached:** A dwelling unit that shares one or more common or abutting
26 walls with one or more dwelling units. An attached house does not share common
27 floor/ceilings with other dwelling units. An attached house is also called a
28 townhouse.
- 29 b. **House, Detached:** A dwelling unit located on its own lot that is not attached to
30 any other dwelling unit, including a residential-design manufactured housing unit.
- 31 c. **Duplex:** A single structure that contains 2 primary dwelling units on one lot. The
32 units may share common walls or common floor/ceilings.
- 33 d. **Group Living Structure:** A structure that contains sleeping areas and at least one
34 set of cooking and sanitary facilities that is used as a residence for Group Living
35 uses.
- 36 e. **Manufactured Housing Unit:** A dwelling unit constructed in accordance with
37 Federal Manufactured Housing Construction and Safety Standards (HUD code) in
38 effect after June 15, 1976. For the purpose of this Land Development Code, the
39 term “manufactured housing unit,” when used by itself, shall not include a
40 “residential-design manufactured housing unit” as defined in this section.
- 41 f. **Mobile Home:** A transportable, factory-built structure that was manufactured
42 prior to enactment of or otherwise does not comply with the federal Manufactured
43 Housing Construction and Safety Standards Act of 1974 (42 U.S.C. Sec. 5401) and
44 that is designed to be used as a single dwelling unit.
- 45 g. **Multi-Dwelling Structure:** A structure that contains 3 or more dwelling units that
46 share common walls or floor/ceilings with one or more units. The land underneath

1 the structure is not divided into separate lots. Multi-dwelling includes structures
2 commonly called garden apartments, apartments and condominiums.

3 **h. Residential-Design Manufactured Housing Unit:** A manufactured housing unit
4 that meets the following criteria:

- 5 (1) Is constructed on a permanent foundation that complies with the Uniform
6 Building Code and the City's Building Code;
7 (2) Has a minimum front width of 24 feet and a minimum depth of 20 feet;
8 (3) Has a predominantly double-pitched roof with a minimum vertical rise of 2.2
9 inches for every 12 inches of horizontal run and a minimum eave projection
10 and roof overhang of 10 inches on at least 2 sides. Gutters shall be counted in
11 calculating roof overhang.
12 (4) Uses siding and roofing materials customarily used on site-built homes
13 within the City of Fargo;
14 (5) Has a minimum gross floor area of 960 square feet; and
15 (6) Has a minimum ceiling height of 7 feet.

16
17 5560. **Review Body:** A person or group authorized in this Land Development Code to
18 conduct land use reviews and offer recommendations but not to take final action on the
19 matter under review.

20
21 5661. **Runway:** the paved surface of an airport landing strip.

22
23 62. **Semi-Nude or Semi-Nudity:** The showing of the female breast below a horizontal line
24 across the top of the areola and extending across the width of the breast at that point, or
25 the showing of the male or female buttocks, with less than a fully opaque covering. This
26 definition shall include the lower portion of the human female breast, but shall not
27 include any portion of the cleavage of the human female breasts exhibited by a bikini,
28 dress, blouse, shirt, leotard, or similar wearing apparel provided the areola is not
29 exposed in whole or in part. For purposes of this chapter, a “fully opaque covering”
30 must not consist of any substance that can be washed or peeled off the skin (such as
31 paint, make-up, or latex).

32
33 5763. **Setback:** The distance that is required by this Land Development Code to be
34 maintained in an unobstructed state between a structure and the lot line of the lot on
35 which the structure is located. Note: The term “setback” refers to a required minimum
36 area, while the term “yard” refers to the actual open area.

- 37 **a. Front Setback:** A setback that is to extend across the full width of a lot, the
38 required depth of which is measured as the minimum horizontal distance between
39 the front lot line and a line parallel thereto on the lot.
40 **b. Interior Side Setback:** A setback that is to extend from the front lot line to the
41 rear lot line along the side of a lot that is adjacent to another lot, the required depth
42 of which is measured as the minimum horizontal distance between the side lot line
43 and a line parallel thereto on the lot.
44 **c. Rear Setback:** A setback that is to extend across the full width of a lot, the
45 required depth of which is measured as the minimum horizontal distance between
46 the rear lot line and a line parallel thereto on the lot.

1 **d. Street Side Setback:** A setback that is to extend from the front lot line to the rear
2 lot line along the street side of a corner lot, the required depth of which is
3 measured as the minimum horizontal distance between the street side lot line and a
4 line parallel thereto on the lot.
5

6 **64. Sexual Device:** Any three (3) dimensional object designed for stimulation of the male
7 or female human genitals, anus, buttocks, nipple, or for sadomasochistic use or abuse of
8 oneself or others and shall include devices commonly known as dildos, vibrators, penis
9 pumps, cock rings, anal beads, butt plugs, nipple clamps, and physical representations
10 of the human genital organs. Nothing in this definition shall be construed to include
11 devices primarily designed for protection against sexually transmitted diseases or for
12 preventing pregnancy.
13

14 **65. Sexual Device Shop: A commercial establishment:**

15 a. where more than 100 sexual devices are regularly made available for sale or rental;
16 or

17 b. where sexual devices are regularly made available for sale or rental and the
18 establishment regularly gives special prominence to sexual devices (e.g., by using
19 lighted display cases for sexual devices, having a large variety of sexual devices,
20 having a room or discrete area of the establishment significantly devoted to sexual
21 devices, or positioning sexual devices near cash registers or similar points of sale).

22 This definition shall not be construed to include an establishment located within an
23 enclosed regional shopping mall, an establishment containing a pharmacy that employs
24 a licensed pharmacist to fill prescriptions on the premises, or an establishment that is
25 enrolled in Medicare as a durable medical equipment, prosthetics, and supplies
26 (DMEPOS) supplier.
27

28 ~~58~~66. **Solar Energy Collector:** A device or combination of devices, structure, or part of
29 a device or structure that transforms direct solar energy into thermal, chemical or
30 electrical energy and that contributes significantly to a structure's energy supply.
31

32 ~~59~~67. **Specified Anatomical Areas:**

33 a. Less than completely and opaquely covered:

34 (1) Human genitals, pubic region;

35 (2) Buttocks;

36 (3) Female breast below a point immediately above the top of the areola; and

37 b. Human male genitals in a discernibly turgid state, even if completely and opaquely
38 covered.
39

40 ~~60~~68. **Specified Sexual Activities:**

41 a. Human genitals in a state of sexual stimulations or arousal;

42 b. Acts of human masturbation, sexual intercourse, or sodomy; and

43 c. Fondling of human genitals, pubic region, buttock or female breast.
44

- 1 ~~61~~69. **Street:** A public or private way used or intended to be used for passage or travel by
2 motor vehicles. Streets are further classified according to their design and the function they
3 perform. The hierarchy of streets is as follows:
- 4 a. **Local Street:** A street intended to provide direct access to abutting property and
5 access to higher classification streets.
 - 6 b. **Local Collector Street:** A street that connects traffic from local streets and higher
7 classification streets and that may provide direct access to abutting property.
 - 8 c. **Collector Street:** A street that connects traffic from lower classification streets and
9 higher classification streets and that does not provide direct access to abutting
10 property.
 - 11 d. **Minor Arterial Street:** A street with signals at major intersections and stop signs at
12 side streets and that collects and distributes traffic to and from collector streets.
 - 13 e. **Principal Arterial Street:** A street with access control, channelized intersections,
14 restricted parking, and that collects and distributes traffic to and from minor arterial
15 streets.
- 16
- 17 ~~62~~70. **Structural Alteration:** Any change, addition or modification in construction in the
18 supporting members of a building, such as exterior walls, bearing walls, beams, columns,
19 foundations, girders, floor joists, roof joists, rafters or trusses.
- 20
- 21 ~~63~~71. **Structure:** Anything constructed or erected having location on or under the ground
22 or attached to something having location on or under the ground.
- 23
- 24 ~~64~~72. **Subdivision:** The division of a tract or parcel of land into lots for the purpose of,
25 whether immediate or future, sale or of development.
- 26
- 27 ~~65~~73. **Subdivision, Major:** Any subdivision that does not meet the definition of a “Minor
28 Subdivision.”
- 29
- 30 ~~66~~74. **Subdivision, Minor:** A subdivision that meets all of the following criteria:
- 31 a. Does not require the dedication of rights-of-way or construction of new streets;
 - 32 b. Does not create any public improvements other than sidewalks;
 - 33 c. Does not land-lock or otherwise impair convenient ingress and egress to or from the
34 rear or side of the subject tract or any adjacent property;
 - 35 d. Does not fall within the corridors of any planned or proposed street as shown upon
36 the Official Map or approved Area Plans; and
 - 37 e. Does not violate any local, state or federally adopted law, ordinance, regulation, plan
38 or policy.
- 39
- 40 ~~67~~75. **Telecommunication Facility, Attached:** An antenna array that is attached to an
41 existing building or structure, including utility poles, signs, water towers, and similar
42 structures with any associated connection cables, and an equipment facility which may be
43 located either inside or outside of the attachment structure.
- 44
- 45 ~~68~~76. **Telecommunications Support Structure:** A structure designed and constructed
46 specifically to support an antenna array, and may include a monopole, self supporting

(lattice) tower, guy-wire support tower and other similar structures. Any device used solely to attach an attached telecommunications facility to an existing building or structure shall be excluded from this definition. A monopole, self-supporting (lattice) tower, Guy-wire support tower and other similar structures which are erected or constructed on a building, water tower, or other structure for the purpose of elevating an attached telecommunications facility shall be included in this definition.

~~69~~77. **Use:** The purpose for which land or a building or structure thereon is designed, arranged, intended, or maintained or for which it is or may be used or occupied.

78. **Viewing Room:** The room or booth where a patron of an adult establishment would ordinarily be positioned while watching a film, videocassette, digital video disc, or other video on an image-producing device.

~~70~~79. **Yard:** The actual unobstructed open space that exists or that is proposed between a structure and the lot lines of the lot on which the structure is located. See “Setback.”

~~71~~80. **Zoning District:** The separate geographic areas to which a specific zoning district is assigned.

a. **Base Zoning District:** A zoning district that establishes the primary permitted uses, conditional uses, and dimensional standards.

b. **Overlay Zoning District:** A zoning district that is applied to a parcel of land to add special or additional development requirements in addition to or in place of the requirements of the Base Zoning District requirements.

~~72~~81. **Bed and Breakfast:** A facility of residential character that provides sleeping accommodations and breakfast for hire on a day-to-day basis in which the proprietor resides.

Section 6. Purpose; findings and rationale.

- A. *Purpose.* It is the purpose of this ordinance to regulate adult establishments in order to promote the health, safety, and general welfare of the citizens of the city, and to establish reasonable and uniform regulations to prevent the deleterious secondary effects of adult establishments within the city. The provisions of this chapter have neither the purpose nor effect of imposing a limitation or restriction on the content or reasonable access to any communicative materials, including sexually oriented materials. Similarly, it is neither the intent nor effect of this chapter to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent nor effect of this chapter to condone or legitimize the distribution of obscene material.
- B. *Findings and Rationale.* Based on evidence of the adverse secondary effects of adult uses presented in hearings and in reports made available to the Board of City Commissioners, and on findings, interpretations, and narrowing constructions incorporated in the cases of *City of*

1 *Littleton v. Z.J. Gifts D-4, L.L.C.*, 541 U.S. 774 (2004); *City of Los Angeles v. Alameda Books,*
 2 *Inc.*, 535 U.S. 425 (2002); *City of Erie v. Pap's A.M.*, 529 U.S. 277 (2000); *City of Renton v.*
 3 *Playtime Theatres, Inc.*, 475 U.S. 41 (1986); *Young v. American Mini Theatres*, 427 U.S. 50
 4 (1976); *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560 (1991); *California v. LaRue*, 409 U.S. 109
 5 (1972); *N.Y. State Liquor Authority v. Bellanca*, 452 U.S. 714 (1981); *Sewell v. Georgia*, 435
 6 U.S. 982 (1978); *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215 (1990); *City of Dallas v.*
 7 *Stanglin*, 490 U.S. 19 (1989); and
 8 *McCrothers Corp. v. City of Mandan*, 728 N.W.2d 124 (N.D. 2007); *Adam and Eve*
 9 *Jonesboro, LLC v. Perrin*, 933 F.3d 951 (8th Cir. 2019); *Farkas v. Miller*, 151 F.3d 900 (8th
 10 Cir. 1998); *Jakes, Ltd. v. City of Coates*, 284 F.3d 884 (8th Cir. 2002); *BZAPS, Inc. v. City of*
 11 *Mankato*, 268 F.3d 603 (8th Cir. 2001); *SOB, Inc. v. County of Benton*, 317 F.3d 856 (8th Cir.
 12 2003); *Scope Pictures v. City of Kansas City*, 140 F.3d 1201 (8th Cir. 1998); *Excalibur Group*
 13 *v. City of Minneapolis*, 116 F.3d 1216 (8th Cir. 1997); *ILQ Invs. v. City of Rochester*, 25 F.3d
 14 1413 (8th Cir. 1994); *Ambassador Books & Video v. City of Little Rock*, 20 F.3d 858 (8th Cir.
 15 1994); *Alexander v. Minneapolis*, 928 F.2d 278 (8th Cir. 1991); *John Doe v. Minneapolis*, 898
 16 F.2d 612 (8th Cir. 1990); *Thames Enters. v. St. Louis*, 851 F.2d 199 (8th Cir. 1988); *Xiong v.*
 17 *City of Moorhead*, 2009 WL 322217 (D. Minn. Feb. 2, 2009); *Enlightened Reading, Inc. v.*
 18 *Jackson County*, 2009 WL 792492 (W.D. Mo. March 24, 2009); *Stardust, 3007 LLC v. City of*
 19 *Brookhaven*, 899 F.3d 1164 (11th Cir. 2018); *HH-Indianapolis, LLC v. Consol. City of*
 20 *Indianapolis/Marion County*, 889 F.3d 432 (7th Cir. 2018); *HH-Indianapolis, LLC v. Consol.*
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 31 *84 Video/Newsstand, Inc. v. Sartini*, 2011 WL 3904097 (6th Cir. Sept. 7, 2011); *Plaza Group*
 32 *Properties, LLC v. Spencer County Plan Commission*, 877 N.E.2d 877 (Ind. Ct. App. 2007);
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 36 1186 (9th Cir. 2004); *Ben's Bar, Inc. v. Village of Somerset*, 316 F.3d 702 (7th Cir. 2003);
 37 *Heideman v. South Salt Lake City*, 348 F.3d 1182 (10th Cir. 2003); *H&A Land Corp. v. City of*
 38 *Kennedale*, 480 F.3d 336 (5th Cir. 2007); *Hang On, Inc. v. City of Arlington*, 65 F.3d 1248
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1 July 25, 2002); *Fantasyland Video, Inc. v. County of San Diego*, 505 F.3d 996 (9th Cir. 2007);
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 4 (9th Cir. 2010); *Mutschler v. City of Phoenix*, 129 P.3d 71 (Ariz. Ct. App. 2006); *Fleck &*
 5 *Assocs. v. City of Phoenix*, 356 F. Supp. 2d 1034 (D. Ariz. 2005); and in *Recreational*
 6 *Developments of Phoenix, Inc. v. City of Phoenix*, 220 F. Supp. 2d 1054 (D. Ariz. 2002);
 7 *Gammoh v. City of La Habra*, 395 F.3d 1114 (9th Cir. 2005); *Z.J. Gifts D-4, L.L.C. v. City of*
 8 *Littleton*, Civil Action No. 99-N-1696, Memorandum Decision and Order (D. Colo. March 31,
 9 2001); *People ex rel. Deters v. The Lion’s Den, Inc.*, Case No. 04-CH-26, Modified Permanent
 10 Injunction Order (Ill. Fourth Judicial Circuit, Effingham County, July 13, 2005); *Reliable*
 11 *Consultants, Inc. v. City of Kennedale*, No. 4:05-CV-166-A, Findings of Fact and Conclusions
 12 of Law (N.D. Tex. May 26, 2005);
 13 and based upon reports concerning secondary effects occurring in and around adult
 14 establishments, including, but not limited to, “Correlates of Current Transactional Sex among
 15 a Sample of Female Exotic Dancers in Baltimore, MD,” *Journal of Urban Health* (2011);
 16 “Does the Presence of Sexually Oriented Businesses Relate to Increased Levels of Crime?”
 17 *Crime & Delinquency* (2012) (Louisville, KY); *Metropolis, Illinois – 2011-12; Manatee*
 18 *County, Florida – 2007; Hillsborough County, Florida – 2006; Clarksville, Indiana – 2009,*
 19 *2013-2019; El Paso, Texas – 2008; Memphis, Tennessee – 2006; New Albany, Indiana –*
 20 *2009; Louisville, Kentucky – 2004; Fulton County, GA – 2001; Chattanooga, Tennessee –*
 21 *1999-2003; Jackson County, Missouri – 2008; Ft. Worth, Texas – 2004; Kennedale, Texas –*
 22 *2005; Greensboro, North Carolina – 2003; Dallas, Texas – 1997; Houston, Texas – 1997,*
 23 *1983; Phoenix, Arizona – 1995-98, 1979; Tucson, Arizona – 1990; Spokane, Washington –*
 24 *2001; St. Cloud, Minnesota – 1994; Austin, Texas – 1986; Indianapolis, Indiana – 1984;*
 25 *Garden Grove, California – 1991; Los Angeles, California – 1977; Whittier, California – 1978;*
 26 *Oklahoma City, Oklahoma – 1986; New York, New York Times Square – 1994; the Report of*
 27 *the Attorney General’s Working Group On The Regulation Of Sexually Oriented Businesses,*
 28 *(June 6, 1989, State of Minnesota); Dallas, Texas – 2007; “Rural Hotspots: The Case of Adult*
 29 *Businesses,” 19 Criminal Justice Policy Review 153 (2008); “Stripclubs According to*
 30 *Strippers: Exposing Workplace Sexual Violence,” by Kelly Holsopple, Program Director,*
 31 *Freedom and Justice Center for Prostitution Resources, Minneapolis, Minnesota; “Sexually*
 32 *Oriented Businesses: An Insider’s View,” by David Sherman, presented to the Michigan*
 33 *House Committee on Ethics and Constitutional Law, Jan. 12, 2000; Sex Store Statistics and*
 34 *Articles; Indianapolis / Marion County Board of Zoning Appeals Documents; Law*
 35 *Enforcement and Private Investigator Affidavits (Adult Cabarets in Forest Park, GA and*
 36 *Sandy Springs, GA); DeKalb County Testimony and Reports – 2014; and Strip Club-*
 37 *Trafficking Documents,*

38
 39 the board finds:

- 40
 41 1. Adult establishments, as a category of commercial uses, are associated with a wide
 42 variety of adverse secondary effects including, but not limited to, personal and property
 43 crimes, human trafficking, prostitution, potential spread of disease, lewdness, public
 44 indecency, obscenity, illicit drug use and drug trafficking, negative impacts on
 45 surrounding properties, urban blight, litter, and sexual assault and exploitation. Alcohol

consumption impairs judgment and lowers inhibitions, thereby increasing the risk of adverse secondary effects.

2. Adult establishments should be separated from sensitive land uses to minimize the impact of their secondary effects upon such uses, and should be separated from other adult establishments, to minimize the secondary effects associated with such uses and to prevent an unnecessary concentration of adult establishments in one area.

3. Each of the foregoing negative secondary effects constitutes a harm which the city has a substantial government interest in preventing and/or abating. The city’s interest in regulating adult establishments extends to preventing future secondary effects of either current or future adult establishments that may locate in the city. The city finds that the cases and documentation relied on in this ordinance are reasonably believed to be relevant to said secondary effects.

Section 7. Effective Date.

This ordinance shall be in full force and effect from and after its passage, approval and publication.

Timothy J. Mahoney, Mayor

(Seal)

Attest:

Steven Sprague, City Auditor

First Reading:
Second Reading:
Final Reading:
Publication:

Exhibit 1 – Amendment to Table 20-0401

Use Category	Definition (Excerpt; See Sec. 20-1203)	Specific Use Type	Zoning Districts																				
			A G	S R 0	S R 1	S R 2	S R 3	SS RR 4 5	M R 1	M R 2	M R 3	U M U	M H P	N O	N C	G O	L C	D M U	G C	L I	G I	P I	
...																							
Commercial																							
Adult Entertainment Center Establishment	an <u>adult arcade</u> , <u>adult bookstore</u> , <u>adult cinema</u> , or <u>adult entertainment facility</u> , or <u>sexual device shop</u>		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	P/C [A]	P/C [A]	P/C [A]	-	
...																							