

Date: January 11, 1988  
To: City Council Members  
From: Bruce Freeland, <sup>BF</sup> Planning Director  
Subject: Location of Adult Entertainment Uses - Background Material

FILED NO. 13246  
CITY OF BELLEVUE

DATE 2/16/88

CITY CLERK Travis

O. Connell

Ord. 3884

Attached please find the background materials described in the agenda memo for the ordinance to regulate the location of adult entertainment uses. Each of the attached items is labeled as follows:

- A. Part One of the study which provided background material on regulating the location of adult entertainment uses.
- B. The staff to Planning Commission memo of 9/22/87 which responded to definitional issues raised at the Planning Commission's Public Meeting of 9/16/87. Also included are minutes for that meeting.
- C. The staff to Planning Commission memo of 10/9/87 which responded to Planning Commission's questions raised as a result of Part One of the study and the public meeting. Also included is Part Two of the study which contains staff's conclusions and recommendations.
- D. The staff to Planning Commission memo of 10/29/87 which related to conditional use permit requirements as well as the segregation of adult materials.
- E. A bibliography which lists all the materials made available for review by the Planning Commission. (The material listed in the file is also available for your review and is located in the Council office.)

Should you have any questions, please contact me or Rob Odle at 455-6880.

BF:jb

Attachments

cc: Adult Entertainment File

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MINUTES FROM PUBLIC MEETINGS - JUNE 1987

## INTRODUCTION

The purpose of this study is to provide an information base on adult entertainment uses to aid the Planning Commission in their deliberations on the need to regulate the location of adult entertainment uses. Part I of this study, which is composed of background information, will be presented to the Planning Commission prior to their September 16th public meeting. At this public meeting, the public will provide their comments on the need and type of regulations that may be adopted for adult entertainment uses. At a subsequent Planning Commission meeting, staff will present Part II of the study, which will include an analysis and recommendation as to the need for regulation and the form that any necessary regulation should take.

The United States Supreme Court in The City of Renton vs. Playtime Theatres Inc. (U.S. 89 L.Ed.29, S.Ct. (1986)) recently upheld the City's authority to develop zoning regulations specifically for the location of adult entertainment uses. In addition to this determination that a regulation can not effectively ban such uses, the Court identified three factors which are critical in the preparation of such a regulation: that the regulation deal with only the secondary effects of adult entertainment uses; that the experiences of other cities can be used in developing this regulation; and that cities can choose the form of regulation which is appropriate for that particular city, even if the city cited used a different regulatory approach. In order to provide the appropriate information in a logical manner to the Planning Commission, this study will follow a format of responding to each of these factors.

Part I of this study will provide a general background on the issue of regulating the location of adult entertainment uses and then will discuss the secondary impacts of such uses. Next, the experiences of other communities will be discussed. Part I will conclude with a description of the current situation in Bellevue. Part II (to be presented at a later date) will address the third factor, the appropriate form of regulation within Bellevue (if necessary).

Included with Part I is a bibliography listing studies, articles, correspondence and reference materials from adjacent municipalities. All materials listed in the bibliography are available on file at the City of Bellevue Planning Department. Also included in Part I, as Appendix I, are the minutes from two public hearings, conducted by City of Bellevue staff, concerned with regulating the location of adult entertainment uses.

## SCOPE AND DEFINITIONS

Generally adult entertainment uses are those uses which cater to adults' interest in sex. Adult entertainment uses generally are grouped into three categories: adult theatre (which includes movie theatres, drive-ins, peep shows and panorams as well as live entertainment and dance halls/cabarets); adult retail stores such as bookstores, video rentals and novelty stores; and adult services such as massage parlors, bathhouses and saunas. Currently in Bellevue, with the exceptions listed below, adult uses are treated no differently than all other uses. Such uses are currently permitted or conditionally permitted in the following zones.

<u>USE</u>	<u>ZONES PERMITTED WITHIN</u>
Adult Theatre	Office - Limited Business, Community Business and all CBD zones (drive-ins only in Light Industrial, General Commercial and Community Business)
Adult Retail	Office - Limited Business, Community Business and all CBD zones
Adult Services	Office - Limited Business, Light Industrial, General Commercial, Neighborhood Business, Community Business and all CBD zones

Certain of the above described adult uses or their possible effects are regulated in Bellevue through either the Bellevue City Code (BCC) or the Revised Code of Washington (RCW). These regulations and their effects are described below.

RCW 7.48 A, entitled Moral Nuisances, provides a right of civil action for the exhibition of nonprotected adult materials. For constitutional purposes, "adult materials" can be divided into two categories, protected and nonprotected materials. Nonprotected materials can be regulated to the extent desired, even banned completely. Protected materials, however, even though objectionable, may be only regulated as to the time, manner, or place of their dissemination. In order to lose constitutional protection, adult material must: (1) depict or describe patently offensive explicit sexual acts, (2) which an average person, when applying contemporary community standards, would find appeal to the prurient interest and (3) lack any serious literary, artistic, political or scientific value. This chapter represents the enforcement vehicle for the regulation of nonprotected adult material in the State of Washington.

RCW 9.68, entitled Obscenity and Pornography, addresses the sale of protected adult material to minors. It is a criminal statute. The statute defines such "erotic material" as:

Printed material, photographs, pictures, motion pictures, and other material the dominant theme of which taken as a whole appeals to the prurient interest of minors in sex; which is patently offensive because it affronts contemporary community standards relating to description or representation of sexual matters or sadomasochistic abuse; and is utterly without redeeming social value.

A STUDY ON THE NEED TO REGULATE  
THE LOCATION OF ADULT ENTERTAINMENT USES

PART I

CITY OF BELLEVUE  
PLANNING DEPARTMENT  
SEPTEMBER, 1987

The definition of erotic material above, although very similar to the definition of nonprotected adult materials, is different in one important respect. It is defined in terms of the prurient interest of minors. Thus, the definition attempts to address material which, though not reaching the threshold of nonprotection, is considered inappropriate for minors.

Before any material may be regulated under this chapter, the County Prosecutor must first apply to the superior court for a hearing to determine the character of the material and serve notice of the hearing upon the distributor of the material. If the material is determined erotic by the court, the regulations take effect.

If the material is printed material, then an "adults only" label printed in 48 point bold face type must be affixed to the material. Once designated, that material may not be displayed publicly or in any manner which makes it readily accessible to minors; nor may it be sold to minors. If the material is a motion picture, the motion picture and any advertisement must be labeled "adults only," and a sign stating "adults only" must be displayed at the theater. Likewise, the exhibitor may not sell tickets to minors and must display a sign at the ticket window stating that it is unlawful for minors to misrepresent their age. RCW 9.68 also regulates exhibition of "sexually explicit material" upon a viewing screen that is easily visible from public areas (e.g., drive-ins).

BCC 5.28, entitled Massage Parlors and Public Bathhouses, licenses the use of such establishments in the City of Bellevue. However, the ordinance makes no distinction between "adult" and other such establishments, but merely sets forth licensing requirements. The ordinance, however, does address problems associated with "adult" massage parlors and bathhouses. First, the ordinance requires that anyone applying for issuance or renewal of a license for such an establishment must submit to a police record investigation and fingerprinting; a license can be suspended, revoked, or refused to be renewed on the basis of conviction of any crime involving moral turpitude, or a conviction of violating a federal, state or local law relating to sex offenses. Secondly, the ordinance prohibits admitting any prostitute, lewd or dissolute person upon the premises.

BCC 5.44, entitled Panoram Devices, addresses problems associated with "peep shows." The ordinance provides for licensing of such facilities and includes regulations which address problems associated with them: (1) all panoram booths must be visible from one continuous hall, (2) any door or curtain on the booths must be at least 42 inches from the floor, (3) no doors may be locked during operating hours, and (4) premises must be adequately illuminated. The ordinance is not content oriented and is not limited to facilities exhibiting adult material.

BCC 10A.88, entitled Offenses Against Public Morals, addresses public physical acts which are obscene. It is a criminal ordinance. Covered under this ordinance are such things as public nudity and lewd behavior, erotic dancing, and prostitution.

BCC 5.06 and BCC 5.08 deal with the licensing of Public Dances and Dance Halls (5.06) and Cabarets (5.08). Both regulations provide mechanisms for the suspension or revocation of the licenses for similar activities as those

described for Massage Parlors and Public Bathhouses. BCC 5.06 also deals with teenage dance halls.

RCW 67.12, entitled Dancing and Dance Halls - Billiards, Pool and Bowling, regulates public dance halls. Entrants' ages are restricted to eighteen or above without the escort of a parent or guardian. Hours of operation are limited and immoral, indecent, suggestive or obscene dance is prohibited.

As the permissible content of and activities within adult uses are defined on the federal and state level and since certain adult uses (massage parlors and dance halls) are already sufficiently regulated (to mitigate their secondary impacts) on the state and local level, staff recommends that this study deal only with the location of adult theatres and adult retail uses. Therefore, for the purposes and scope of this study and review, staff recommends that the uses to be considered for regulation be limited to Adult Motion Picture Theatres and Adult Retail Establishments. Further, for this study the following definitions will be utilized:

ADULT MOTION PICTURE THEATER:

An enclosed building or drive-in facility used for the commercial presentation of motion picture films, video cassettes, cable television, or any other such visual material, whose content is characterized by an emphasis on matter depicting, describing, or relating to "specified sexual activities" or "specified anatomical areas" for observation by patrons therein. Panoramas, picture arcades, and peep shows are included in this definition.

ADULT RETAIL ESTABLISHMENT:

An establishment engaged in the sale of goods in which ten percent or more of the "stock in trade" is characterized by an emphasis on matter depicting, describing, or relating to "specified sexual activities" or "specified anatomical areas." Items that are part of the stock in trade may include all or some of the following: books, magazines, posters, pictures, periodicals, or other printed matter; prerecorded video tapes, discs, or other such medium; instruments, devices or paraphernalia.

STOCK IN TRADE:

A commercial establishment's total merchandise kept on hand which is openly displayed.

SPECIFIED SEXUAL ACTIVITIES:

1. Acts of human masturbation, sexual intercourse or sodomy;
2. Fondling or other erotic touching of human genitals, pubic region, buttock or female breast; and
3. Human genitals in a state of sexual stimulation or arousal.

SPECIFIED ANATOMICAL AREAS:

1. Less than completely and/or opaquely covered human genitals, pubic region, buttock, or female breast below a point immediately above the top of the areola; and
2. Human male genitals in a discernably turgid state, even if completely or opaquely covered.

Having now described the type of uses that this study will review, it is appropriate to describe the legal basis for regulating the location of adult entertainment uses.

## LEGAL BASIS FOR REGULATION

Cities in Washington State have the authority to regulate land use impacts and development through the state constitution and the Revised Code of Washington. While this authority allows cities to regulate the location of adult land uses (as upheld in City of Renton vs. Playtime Theatres Inc., the federal constitution prevails in the regulation of the content of adult entertainment publications, films and personal conduct. Many materials or activities which may be considered to be pornographic are within the protection of the First Amendment, which prohibits laws "abridging freedom of speech, or of the press." This protection prevents the regulation of the content of such materials or activities as protected speech. However, this protection does not extend to materials which are determined by the appropriate court to be obscene.

Although the City cannot regulate the content of printed or visual materials, or performances, it may make reasonable regulations concerning the time, place or manner of their exhibition. In addition, as free speech is guaranteed by the federal constitution, land use regulations cannot have the effect of excluding certain adult materials. However, regulations which seek to mitigate the secondary effects of adult entertainment uses have been held to be valid. Such secondary effects include: increased crime, reduction in property values, deterioration of the quality of the environment of neighborhoods, lessening of the suitability of certain areas for children, seniors or other groups, or increased municipal expenses such as for police services. In Northend Cinema, Inc. vs. City of Seattle, 90 Wn.2d.709, 585 p.2d 1153 (1978), the Washington State Supreme Court upheld an ordinance restricting adult theaters to a certain area of the city (and putting two in other locations out of business). This regulation was based on the determination that the motion pictures were not harmful, but their secondary impacts on the surrounding neighborhoods were. In Schad vs. Mt. Ephraim (452 U.S. 61, 68 L.Ed. 671, 101A. Ct 2176 (1981)), three tests were established to measure the constitutionality of adult land use regulations:

1. The regulation must be no greater than the minimum necessary to further the governmental interest; and
2. The City must use the least intrusive method found to regulate this conduct; and
3. The regulation cannot be so restrictive as to constitute an actual ban on the activity.

However, it is the City of Renton vs. Playtime Theaters decision which most clearly gives authority to cities to regulate the location of adult uses.

In Playtime, supra, the Supreme Court upheld a Renton zoning ordinance which prohibited adult motion picture theatres from locating within 1,000 feet of any residential zone, single or multifamily dwelling, church, park or school. The ordinance was upheld as a valid form of "content-neutral" regulation of time, place, and manner of expression. However, the court did identify factors that were critical to their favorable review: 1) that the ordinance did not ban adult theatres totally within the area, 2) that the City Council's predominant concern was with the secondary effects on the surrounding

community and not with the content of the films themselves, 3) that the City was entitled to rely on the experience of other cities (e.g. a Seattle study) in enacting the ordinance, and finally, 4) that the City's choice of a different method of adult theatre zoning to combat the secondary effects of adult theatres did not call into question either the City's identification of those secondary effects or the relevance of the other city's experience.

Therefore, it is permissible, as long as the various tests are met, for the City of Bellevue to enact regulations concerning the location of adult entertainment uses. Further, the City can utilize the experiences of other communities as a basis for enacting such legislation even if there are no secondary effects currently being created by any adult entertainment uses now in the city. In other words, the legislation can be preventive and not just corrective.

## SECONDARY EFFECTS

As was mentioned earlier, adult entertainment regulations must seek to mitigate the secondary impacts of the uses. The purpose of this section is to examine the experience of other communities and the literature on the subject in order to ascertain these secondary impacts. Although much of the data and experience with adult uses is taken from other jurisdictions, their implications to Bellevue are significant.

### Incidence of Crime

While it can be debated whether exposure to pornography causes delinquent or criminal behavior (please see the bibliography for research studies), police research, as described below, shows a linkage between crime rates and areas which contain concentrations of adult entertainment uses (also see the bibliography for further research).

For example, between 1969 and 1972, the number of adult theaters in the City of Detroit increased from 2 to 18 and the number of adult bookstores rose from 2 to 21. During the same period, the incidence of crime in and around these establishments increased dramatically, although hard data on the actual numbers is hidden in gross criminal statistics. The high incidence of crime together with the blighting or skid row effect of proliferating adult businesses led Detroit in 1972 to adopt stringent locational regulations for adult uses.

Similar to Detroit, the City of Cleveland experienced a rapid increase of adult uses during the early 1970's. Unlike Detroit, Cleveland kept detailed crime statistics by census tract and by location of adult businesses. In 1976, 26 adult businesses (8 theaters and 18 bookstores) were located in Cleveland's 204 census tracts. The same year, the two census tracts having the highest rates of crime had a total of 8 pornography outlets. Cleveland Police statistics showed that during 1976 there was an average of 20.5 robberies per census tract. In the 15 census tracts which contained adult businesses, the average was nearly double at 40.5 robberies. A single census tract which contained 5 pornography outlets and a population of only 730 persons had a total of 136 robberies. The statistics for rape echoed the same pattern as for robbery. The citywide average of rape in Cleveland in 1976 was 2.4 per census tract. In the 15 census tracts containing pornography outlets, the rate was double that.

The City of Kent, Washington had similar experiences with the Roadside Inn Tavern. Prior to its forced closing, the Roadside Inn offered topless dancing and table dancing in conjunction with its selling of alcoholic beverages. Kent police investigations conducted in the summer of 1981 revealed a very high incidence of criminal activity at the Roadside, related primarily to sex crimes (prostitution) and drug related offenses. As a result of 57 hours of on-premise investigation, 162 charges were brought against 21 persons by the Kent Police Department. The report filed by the police stated: "The total time involved, and the number of charges, break down to a time expenditure of slightly more than 20 minutes per charge, attesting to the relative ease by which the subject of prostitution arises within an environment such as the Roadside." In September, 1981, the Roadside Inn Tavern was closed by the City of Kent.

Bothell's experiences with Mama Hoopah's in 1982 demonstrated similar association between the use (an adult dance hall) and the occurrence of crime. Research by the Bothell Police Department also demonstrated the regional attraction that such an establishment can have. In one investigation of the 321 vehicles checked, 8 were registered in Bothell with most of the remainder from the Puget Sound region, though others had out of state registration. This is potentially significant in that nonresidents of an area may be less inhibited in their personal behavior when away from their community. Nonresidents may also be unaware of the needs or concerns of residents/owners of areas adjacent to the adult entertainment use.

Although crime statistics and police records seem to point to a connection between adult (primarily pornographic) uses and illicit behavior, psychological and behavioral studies attempting to link the two are more guarded. In 1970, the Presidential Commission on Obscenity and Pornography issued its final report which found no evidence to support the theory that exposure to explicit sexual materials plays a major role in causing delinquent or criminal behavior. Since then, there has been a significant debate as to the linkage with the Meese Commission's concluding that there is a linkage. This debate leads to the conclusion that while police records identify a clear linkage between the incidence of criminal activity near and in association with some adult uses, there is no clear consensus that exposure to pornography causes people to become criminals.

#### Impacts to Property Values

Many times adult uses are incompatible and inappropriate when adjacent to certain other land uses. A predictable result of such a situation is a reduction in property values in certain cases. This expectation was borne out in a recent telephone survey of real estate appraisers conducted by the Kent Planning Department. In this survey, all appraisers cautioned that each case must be evaluated individually and according to its particular circumstances. Nevertheless, the majority of appraisers agreed that the impact of adult uses on residential property values is probably negative although no general rule can be applied. One appraiser estimated that the adverse effect could be as much as one to three percent of the property's total value. The total effect on property value depended on several factors including proximity to the adult use, exterior building appearance and condition of the adult business, neighborhood characteristics, among other factors. This survey also stated that there was also a consensus among appraisers on the effects of adult uses on commercial properties. As a general rule, most appraisers felt that in cases where an adult use located in a commercial environment, little or no adverse impact would be expected either to surrounding businesses or property values. No appraiser surveyed expected that the impact on property values would be detrimental while one ventured that in a depressed commercial area the impact could be potentially favorable. This research can lead to the conclusion that in order to protect property values, adult uses should only be located in commercial areas and not adjacent to any residential uses.

Within Bellevue, where there are currently three adult uses (Love Pantry, Love Works and R&R Adult toys), there appears to be no inability to lease adjacent store spaces nor deterioration to surrounding structures and areas. Please note, however, that these uses are widely dispersed and centrally located in established commercial areas.

## Land Use Incompatibilities

Nationwide, the proliferation of adult uses has occurred primarily within the last 10-15 years. In the suburban Puget Sound area, the trend has been even more recent. As a result, comprehensive studies dealing with the compatibility of adult uses with other specific land uses are nonexistent. The reports and studies which have been prepared are essentially confined to the individual experiences of communities where adult uses have located. The following examples demonstrate these impacts.

Based on the experience of certain Puget Sound communities, it has been demonstrated in the past that adult uses are incompatible with residential, educational, and religious uses. This fact was best demonstrated in the Greenwood area of Seattle in the mid-1970's when a local theater began showing X-rated films. Residents of Greenwood complained loudly about increased traffic, undesirable patrons, lowered property values and other adverse impacts. Residents argued that theirs was an area of residences, churches, schools, and social gathering places, a closely-knit neighborhood unaccustomed to adult theaters and the disruptive impacts associated with such uses. In order to safeguard the character and quality of residential life in the Greenwood neighborhood, the City of Seattle adopted zoning regulations which, in effect, forced the closure of the adult theater. The owner then sued the City. In the litigation which ensued, Seattle was able to demonstrate in the record that the location of the adult theater in the Greenwood area had a harmful effect on that area and contributed to neighborhood blight. In upholding the City of Seattle, the Washington State Supreme Court (Northend Cinema vs. City of Seattle) agreed that the goal of preserving the quality of residential neighborhoods by prohibiting disruptive adult uses was a valid and substantial public interest.

The Greenwood example also points out that residents'/owners' perceptions may be major factors in siting adult uses. While there may be no tangible reasons that an adult use may negatively affect the property values of a neighborhood, if enough owners believe this to be the case, their actions or inactions may cause their perceptions to become reality.

Likewise, a "topless" tavern disrupted the quality of life for some Kent residents. The incident involved the Roadside Inn Tavern - a tavern offering topless table dancing -- and the residents of an adjacent mobile home court. In July 1981, the residents of Bonel Mobile Home Court submitted a petition requesting the Kent City Council to revoke the business license of the Roadside. At the public hearing on the license revocation, residents complained about the Roadside's excessive noise and litter impacts which spilled over onto adjacent residential properties. As a result of public complaints and a police investigation of criminal activity at the tavern, the license for the Roadside was revoked by the City in September 1981.

To conclude, research has shown that there may be negative secondary effects which occur when adult entertainment uses (or a concentration of such uses) are located in a neighborhood. Such factors as higher crime rates, lowered property values, or neighborhood deterioration may be associated with adult uses. However, each situation is different and it is not possible to state that adult uses will lead to the identified secondary effects, only that there is a possibility that the secondary effects may occur. It also is reasonable

to conclude that as the numbers and concentration of adult uses increase (particularly if adjacent to residential or other sensitive areas), there is a greater potential for the secondary effects associated with adult uses to occur. With the potential secondary impacts described, it is now appropriate to review the types of provisions that other cities have utilized to regulate the location of adult uses.

## TYPES OF REGULATION

Because zoning regulations are an expression of local public policy, they differ widely from one community to another. This is certainly true for adult use zoning ordinances which have been adopted in the past 10-15 years. Some communities, such as Detroit, require adult uses to disperse throughout the commercial areas of the City. Other communities have chosen different paths. Boston, for example, concentrates adult businesses in a seven-acre zoning district located in the commercial core. Seattle follows a similar scheme of concentrating adult uses, but allows them in a much larger area of the downtown. Norwalk, California designates certain adult uses as conditional uses and requires them to obtain a conditional use permit.

The nature of adult use zoning regulations is inextricably related to a city's unique local circumstances. As the above examples demonstrate, there is no standard formula which can be applied to all communities. Regulations reflect local development policy, existing development patterns, local zoning practice, and methods of impact mitigation. But while the specific requirements of adult use zoning ordinances vary greatly, there appear to be four generalized approaches to land use regulations which are commonly used.

1. Dispersion Ordinances;
2. Concentration Ordinances;
3. Modified Dispersion/Concentration Ordinances; and
4. Special Ordinances (includes licensing approaches).

### Dispersion Approaches

Dispersion-type ordinances seek to spread adult uses throughout a city as opposed to concentrating them.

Dispersion regulations commonly require that adult uses locate in designated commercial or industrial zone districts while maintaining specified minimum distances from such uses as schools, churches, public parks and residences. In addition, dispersion ordinances (also called "anti-clustering" ordinances) usually require that adult uses maintain certain distances between themselves.

Perhaps the best known example of a dispersal approach is the City of Detroit ordinance mentioned earlier. Detroit's regulations prohibit adult uses from locating within 500 feet of a residential zone, and require that a minimum distance of 1,000 feet be maintained between any two adult uses. The result of these restrictions is a dispersed pattern of location.

### Concentration Approaches

The concentration approach seeks to cluster or concentrate adult uses in certain areas, the opposite effect of a dispersion approach. The most common way to concentrate adult uses is by restricting them to a certain zone or district of the City.

Boston's "adult entertainment zone" is the most prominent example of a concentration approach. Boston zoning regulations restrict adult uses to a special "overlay" district that applies to the City's downtown area. Called the "combat zone," this is the only area in the city where adult bookstores, theaters and peep shows may locate. The ordinance simply defines certain adult uses and adds them to the list of permitted uses in a specific part of downtown Boston. The City of Seattle ordinance is also a good example of a concentration policy. According to Seattle's regulations, adult theaters are restricted to two commercial zoning districts located only in the downtown core area.

#### Modified Dispersion/Concentration Approaches

In many instances, the regulatory approach of a local government is neither purely a dispersion nor a concentration policy. Regulations often times are borrowed from both types of approaches. In order to reduce adverse impacts while assimilating adult uses, it may be necessary to use a combination of regulations. The courts have allowed a variety of regulatory approaches for adult use zoning as long as the purposes of such regulations are valid.

The City of Renton employs a modified dispersion approach for adult theaters. Renton's ordinance allows adult motion picture theaters in certain commercial zoning districts as long as minimum distances are maintained from schools, churches, residences, and public parks. The ordinance both concentrates adult theaters in certain zones and disperses them away from residences and social and educational institutions. It is not a pure dispersion ordinance, however, since it does not require a minimum distance between like uses.

#### Special Approaches

A number of regulatory approaches do not fall neatly under either of the approaches previously mentioned. Some of these "special" approaches still involve zoning, however, while others deal with licensing procedures and regulations.

An example of a special type of zoning approach is that of Norwalk, California. The Norwalk ordinance classifies adult bookstores as conditional uses, subject to the terms and procedures of a conditional use permit.

Licensing of businesses or operators is a very common method of controlling or regulating the location of adult businesses. Most licensing ordinances relate only to such adult uses as massage parlors, panorams, and the like where the activity is not necessarily protected under the First Amendment and where local officials may exercise greater discretion in their decision making. Adult theaters and adult bookstores, whose content is protected under the First Amendment, generally are not included in adult use licensing or ordinances. In ordinances where they do appear, regulations and procedures must be sensitive to the constitutional issues associated with the control of speech. In Bellevue, such uses as public dances/dance halls, cabarets, massage parlors/bathhouses and panoram devices are all licensed uses.

In conclusion, various cities have approached the problem of regulating the location of adult entertainment uses differently but successfully. The courts have also been quite specific in allowing cities to choose the course most

suitable to their conditions. The next section will describe how various adjacent cities have chosen to regulate the location of adult entertainment issues.

## ADJACENT CITIES' REGULATIONS

Having described the various approaches that can be taken by other cities to regulate the location of adult entertainment uses, it is now appropriate to focus on cities adjacent to Bellevue.

### Seattle

As was described earlier, Seattle initiated a change to their zoning code to restrict and concentrate adult entertainment uses to the downtown core area. This amendment caused the closure of an adult theatre in the Greenwood area for which there was a court challenge. The Washington State Supreme Court upheld the City's ordinance and adult theatres continue to be restricted as to location in Seattle. In Seattle, however, adult retail uses are not specifically regulated as to location. The current regulations are viewed by Seattle staff as effective as they removed the adult theatre from the Greenwood neighborhood and no new theatres have opened outside of the downtown core.

### Redmond

Redmond regulates adult uses by a dispersal approach. No adult entertainment use can be located within 1,000 feet of a similar use and no closer than 1,000 feet from any zone permitting residential uses, a public park, a public library, day-care homes or centers, preschools, nursery schools, primary or secondary schools or churches. These listed zones or uses can either be located within or outside the city limits. Adult theatres, adult retail uses and adult services are all regulated in a like manner. The impetus for these regulations was the 1982 conversion of a movie theatre in Redmond to an adult movie theatre. This resulted in the current regulations which were adopted in April of 1983. Currently, there are no adult entertainment uses located in Redmond.

### Renton

Renton utilizes a modified dispersal approach to regulating the location of adult motion picture theatres. This use is prohibited from locating within one thousand feet of any residential zone, any single or multiple family residential use, any school, church, park or a P-1 zone. However, separation of adult theatres is not required. Renton's regulations were enacted in April of 1981 in order to prevent the secondary impacts of adult theatres from occurring in Renton. The regulation was challenged in 1982 when Playtime Theatres purchased two community movie theatres to convert to adult movie theatres. As has been described earlier, the Renton ordinance was eventually upheld by the United States Supreme Court. There are no adult movie theatres currently in Renton. There is, however, one adult retail use in Renton. In Renton, adult retail uses are not regulated differently than other similar retail uses.

### Kirkland

Kirkland regulates the location of adult theatres, bookstores and cabarets by a combination of the modified dispersal approach and the special regulation approach. Within Kirkland, adult uses can only be located in an Adult

Activities Overlay Zone. This special zone can only occur where the underlying zoning is community business, central business district or in a planned area where commercial or theatre uses are permitted. Once the overlay zone is created by City Council action, an applicant for an individual use may apply for a permit with a hearing before the Planning Commission. No adult use can be located closer than 1,500 feet to any school, public park, athletic or recreation center, or any use which caters substantially to minors. Signage is also restricted. Kirkland enacted their regulations in 1983 to prevent the secondary effect of adult entertainment uses from occurring in Kirkland. To date, no applications for adult uses have been received by the City of Kirkland.

### Mercer Island

In February, 1987, the City of Mercer Island adopted regulations concerning the location of all adult theatres and retail stores in the city. This regulation uses a dispersal approach in regulating the location of any adult use. Under Mercer Island's regulations, the entrance to any adult use can not be located within 800 feet from any R-zoned property, the proposed landscape area for I-90, any single or multiple family dwelling, rest or retirement home, preschool, nursery school or day-care, publicly owned park or open space, recreational area, primary or secondary school, religious institution, government building or establishment which primarily caters to minors. Further, no adult use can locate closer than 400 feet to any other adult use. Signage is also limited. Regulation of adult uses in Mercer Island was adopted in order to have regulations in place (to mitigate secondary impacts) prior to any uses locating within the city. Since enactment, there have been no applications for adult uses, nor are there any adult uses located within the city.

### Issaquah

Issaquah, in February of 1985, adopted a dispersal approach to regulating the location of adult entertainment uses. All adult uses (theatre, retail and service) are similarly regulated in Issaquah. Under the regulation, the adult use cannot be located within 500 feet of any primary or secondary school or school facility, day-care or preschools, public parks, churches, public facilities, facilities oriented to the disabled, senior centers, historic landmarks, other facilities which are oriented towards children or families, any residential zones, any residential use, and certain street frontages. Also, adult uses cannot be located within 200 feet of Issaquah Creek. Adult uses must be separated by 500 feet. Also, the following uses cannot in the future locate within 500 feet of any adult entertainment facility: primary or secondary school, day-care or preschool, public parks, churches, public facilities, facilities oriented to the disabled, senior centers, historic landmarks, or facilities oriented to children or families. These regulations were adopted to prevent the secondary effects of adult entertainment uses from occurring within the city. Since enactment, one adult retail store was opened for three weeks and then closed for no known reason. There are currently no adult uses in Issaquah.

King County

King County currently does not allow any adult facility within 2,000 feet of a school. Uses regulated by this requirement include cabarets and dance halls which feature "nude" dancing, panorams and peep shows.

While these are brief descriptions of each municipality's regulations, complete ordinances and background materials and minutes for the Cities of Kirkland, Redmond, Mercer Island, Renton and Issaquah are available for review in the Planning Department. This brief summary does show how each of the municipalities have created regulations to meet the specific needs of their community.

## THE CURRENT SITUATION IN BELLEVUE

Presently, there are three adult entertainment uses in Bellevue (see Map 1). Love Works and Love Pantry are strictly adult retail stores. R and R Adult Toys is an adult retail store which also contains an on-premise panoram. Both R and R Adult Toys and Love Pantry have video cassettes for rental.

An analysis of police reports for the areas in which these uses are located show no higher incidence of crime than in adjacent areas without adult uses. All properties are centrally located in established commercial areas and all structures in which these uses are located are all in excellent condition as are the adjacent structures. Recently, R and R Adult Toys moved into a newly refurbished structure. These adult entertainment uses are not located adjacent to any schools, parks or facilities oriented primarily to children. All three sites are not adjacent to predominantly residential areas although there is a multifamily structure located across 120th NE from Love Works. However, please note that this residential use is separated from the Love Works site by a major street, by a restaurant facility and the surrounding area is also primarily commercial.

While there are no major secondary effects presently attributable to the adult uses located in Bellevue, a greater concentration of such uses or changes in location may cause secondary impacts to occur. The City of Bellevue Comprehensive Plan provides guidance for decision makers in evaluating various strategies for regulation.

Within the Comprehensive Plan there are many policies which are important in describing the residential and economic goals for the City and are pertinent in reviewing the suitable locations for adult entertainment uses:

### 21.B.005 (General Land Use Policy)

The City shall offer a harmonious blend of opportunities for living, working, recreation and culture to its residents through planned retention of its natural amenities and balanced development of appropriate services, by judicious control of residential and commercial development and by recognition of its regional role.

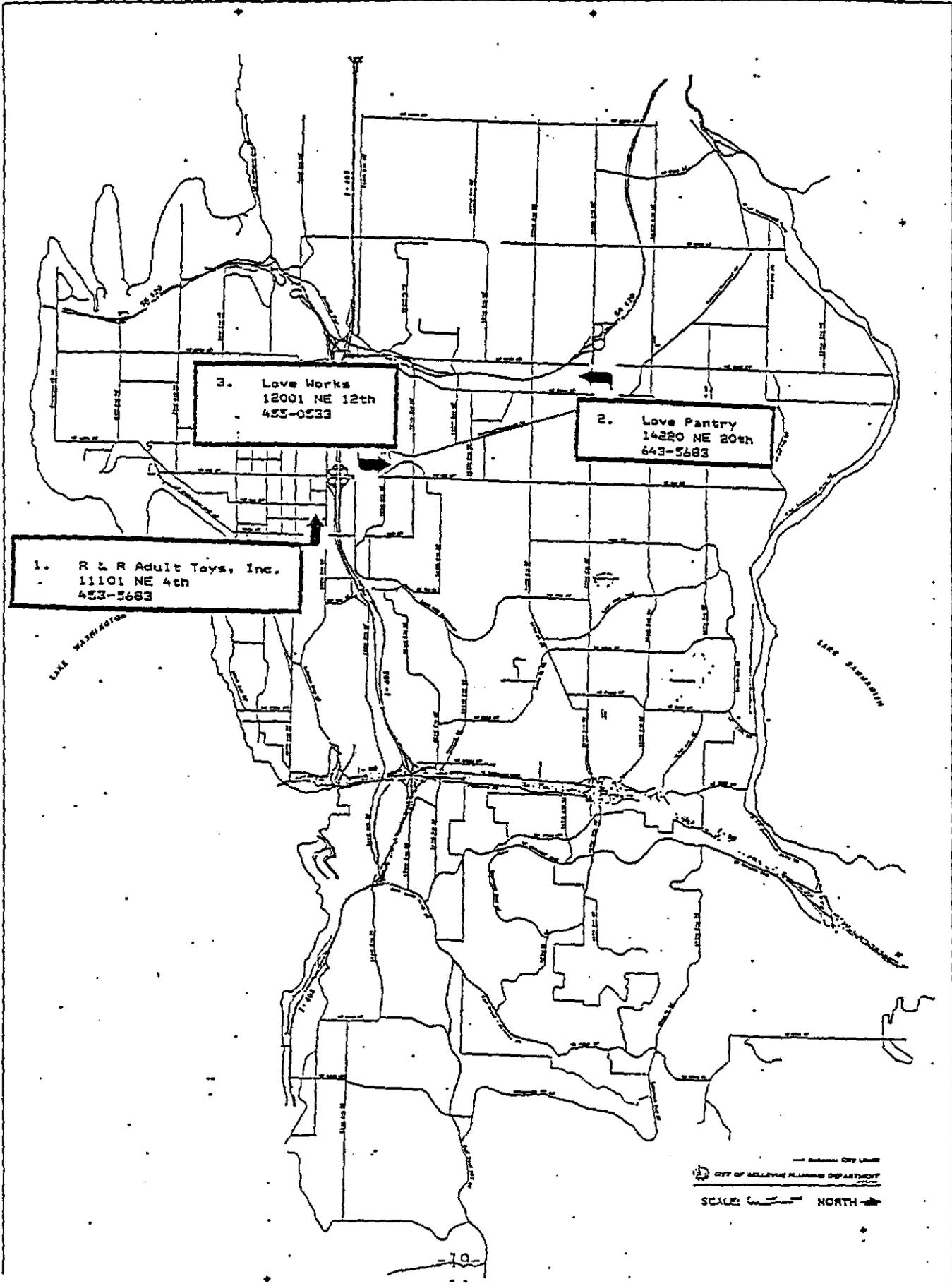
### 21.B.040 (General Land Use Policy)

Decisions in land use should be made only after consideration of the interests of the community. Each type of land use shall be located in designated districts. Any change in zoning must be justified. The hearing body may take into consideration, but not be limited to, the following:

- the effect upon the physical environment;
- the effect on the economic environment;
- the effect on the social environment;
- the effect upon open space, streams and lakes;
- compatibility with the impact on the adjacent land uses and surrounding neighborhoods;

# EXISTING ADULT ENTERTAINMENT FACILITIES

MAP 1



- adequacy of the impact on community facilities including utilities, roads, public transportation, parks, recreation facilities and schools;
- benefit to the neighborhood, city or region;
- quantity and location of vacant land zoned for this use in the city;
- current and projected population density in the general area;
- and general conformance with the Comprehensive Plan.

21.F.070 (Economic Element)

Growth: The City shall foster a positive economic climate which facilitates responsible business growth in the community.

21.F.110 (Economic Element)

The City shall encourage the availability of local employment opportunities by fostering development of long-term working or trading activities which create or add value to the community.

21.F.150 (Economic Element)

Goal: To establish and maintain economic activities in carefully delineated areas which are properly separated from incompatible uses and appropriately served by community facilities.

To implement the above goals and policies, the City has emphasized the careful consideration of land use compatibility and land use impacts upon the community.

In conclusion, while the three existing adult uses do not have any secondary effects associated with them, this situation may change in the future. Presently, all three are widely dispersed from each other as well as from residences and other sensitive uses (parks, schools or areas frequented by children). However, since there is no regulation preventing adult uses from locating near sensitive uses, there is no guarantee that adult uses will not locate adjacent to sensitive uses. Further, there is no guarantee that greater concentrations of adult uses will not occur in the future. The Comprehensive Plan clearly states that adjacent land uses should be compatible. Therefore, it may be appropriate to consider that certain sensitive uses are not compatible with adult entertainment uses.

## PART II

Subsequent to the public meeting scheduled for September 16th and based on the information contained in Part I of this study, as well as public comments, staff will prepare an analysis of the need for greater regulation, respond to any Planning commission research requests and provide a recommended course of action. This information and recommendation will be contained in Part II of this study.

## BIBLIOGRAPHY

### Reference Materials On Hand For Review

#### Studies

Effects On Surrounding Area Of Adult Entertainment Businesses In St. Paul. Division of Planning, Department of Planning and Economic Development, St. Paul, Minn. June 1978.

Regulating Sex Businesses. William Toner; Planning Advisory Services, 1977.

Study Of The Effects Of The Concentration Of Adult Entertainment Establishment In The City Of Los Angeles. Department of City Planning, City of Los Angeles, CA. June 1977.

#### Articles

"Aggressive Erotica And Violence Against Women", Edward Donnerstein, Journal of Personality and Social Psychology, Volume 39 Number 2.

"Cities Are Turning To Zoning To Regulate Pornographic Uses", The Building Official And Code Administrator, Feb/March 1978.

"The Effects Of Aggressive - Pornographic Mass Media Stimuli", Neil M. Malamuth and Ed Donnerstein, Advances In Experimental Social Psychology, Volume 15.

"Is One Women's Sexuality Another Women's Pornography", MaryKay Blakely, Ms., April 1985.

"New Rules For Zoning Adult Uses: The Supreme Court's Renton Decision", Alan Weinstein, Land Use Law, August 1986.

"Pines, Funk Offer Guidance, Based on Young Decision, for Regulating Adult Entertainment Establishments", Burt Pines and John Funk, The Municipal Attorney, December 1976.

"Regulation Of Adult Theaters By Zoning", Howard Dobbins, Virginia Town and City, Nov/Dec 1976.

"Regulating Pornography: Recent Legal Trends", Alan Weinstein, Land Use Law, February 1982

"Sex And Aggression: Proving The Link", Seymour Feshbach and Neal Malamuth, Psychology Today, Volume 12 Number 6.

"The War Against Pornography", Newsweek, March 18, 1985.

"Why People Don't Fight Porn", Harry Genet, Chronicle News, January 1, 1982.

"Zoning For Adults Only", Bruce McClendon, Zoning News, August 1985.

#### Other Resources

Bothell Police Department, Material On Police Experience With Adult Entertainment Establishment, 1984.

"City of Renton vs. Playtime Theatres, Inc., The U.S. Supreme Court Revitalizes The Regulation Of Adult Entertainment Land Uses Through Zoning," Daniel Kellogg.

Cleveland Ohio Police Department, Effect of Smut Shops On Increased Crime Rates, 1977.

"Community Impact Statements Required Of Certain Businesses", James H. Allendoerfer, City Attorney of Marysville.

Shirley Feldman-Summers, letter to Nick Gallow

"Local Government's Control on Pornography", League Of Women Voters Of Lake Washington East, 1985.

"Pornography Effects: Empirical Evidence", Victor Cline Ph.D.

Text of Talk Given By John L. Harmer President Of Citizens For Decency Through Law, on Tuesday, December 1, 1981 at Phoenix Arizona.

#### Existing Statutes And Regulations In Effect In Bellevue

RCW 7.48A - Moral Nuisances  
RCW 9.68 - Obscenity And Pornography  
RCW 9.68A - Sexual Exploitation Of Children  
BCC 5.06 - Public Dances And Dance Halls  
BCC 5.08 - Cabarets  
BCC 5.28 - Massage Parlors And Public Bath Houses  
BCC 5.44 - Panaram Devices

#### Resources From Adjacent Municipalities

Bothell - Ordinance 1170 (Adult Entertainment Uses) and Zoning Code Chapter 5.18 (Adult Entertainment Studios).

Issaquah - Ordinance 1701 (Adult Entertainment Uses) and all minutes of public meetings and staff reports relating to the Ordinance.

Kent - Adult Use Zoning Study, November 1982.

King County - Ordinance 7216 (Business Licenses And Adult Entertainment Uses).

- Kirkland - Ordinance 2877 (Adult Activities Overlay Area) and all minutes of public meetings, staff reports and correspondence relating to the ordinance.
- Mercer Island - Ordinance A-51 (Adult Entertainment Uses) and all minutes of public meetings, staff reports and correspondence relating to the ordinance.
- Redmond - Ordinance 1120 (Adult Entertainment Uses) and all minutes of public meetings and staff reports relating to the ordinance.
- Renton - Ordinances 3526, 3629 and 3637 and Resolution 2368, Legal Briefs to the U.S. Supreme Court, and various analyses of the Renton vs. Playtime Theatres decision, Zoning Code for Renton.
- Seattle - Zoning Code Chapters 6.280 (Adult Entertainment Studios), 6.42 (Panorams and Peepshows), 24.46 (Metropolitan Business Zone) and 24.48 (Metropolitant Commercial Zone).

Also, there are copies of Adult Entertainment Use Regulations from the following cities: Detroit, Michigan; Duluth, Minn.; Inkster, Michigan, Melvindale, Michigan; Oak Park, Michigan; Peoria, Ill.; San Bernardino, Ca; Tucson, Arizona; Wayne, Michigan and Wyoming, Michigan

#### Correspondence

Monique Roggenkamp to the Bellevue City Council - April 14, 1987  
 Monique Roggenkamp to the Bellevue City Council - May 13, 1987  
 Gerald John Sheehan to Sandra Korbek (Planning) - June 9, 1987  
 Concerned Citizen to Sandra Korbek (Planning) - June 16, 1987  
 Darrell Hines to Sandra Korbek (Planning) - June 18, 1987  
 Andrea K. Vangor to Sandra Korbek (Planning) - June 18, 1987  
 J. R. Copitzley to Cary Bozeman - July 5, 1987  
 Chief Harris to Terence P. Lukens - September 10, 1987

#### Other References

The current file also contains numerous newspaper articles on Adult Entertainment regulations in the region. There are also many summaries of recent court decisions as concerns adult entertainment.

APPENDIX I

MINUTES FROM THE PUBLIC MEETINGS OF  
JUNE 18 AND JUNE 25, 1987

ADULT ZONING

MINUTES

June 18, 1987

I. Introduction

Rob Beem, principal planner with the Planning Department and staff contact for this project, introduced himself and other members of the planning staff: Sandra Korbelik, senior planner with the Planning Department; and Lt. Bourgette of the Police Department.

II. Objective

The objective of this meeting was to get the benefit of Bellevue citizens' experience, understanding, and studies of the impacts of adult land uses. The City is in the process of developing regulations which will use zoning to locate adult businesses appropriately within the City of Bellevue. This is one of the City Council's high priorities for the year. A schedule of events was made available to participants.

It is hoped that regulations will be enacted by the latter part of 1987.

The meeting this week is focused on input from citizens on what they understand to be the effects of adult land uses located within the City of Bellevue. Next week's meeting will focus on a number of approaches taken by other municipalities in the nation, particularly in the Northwest, to their zoning regulations for adult land use, with the end goal of deciding which method would be best for Bellevue.

Tonight participants are encouraged to submit their views and give the planning staff the benefit of the information learned by research, experience, or opinions on the effects of adult entertainment businesses on the community that they may want to control through the use of zoning power. Written comments are also invited.

III. Comments by Citizens

Monique Roggencamp  
12140 S.E. 15th  
Bellevue

Ms. Roggencamp read a letter from Andrea VanGore of Washington Together Against Pornography, commending the City of Bellevue for their efforts to protect the community from the adverse effects of adult businesses. She cited three distinct adverse effects: decreased property values of neighboring businesses; increased local incidents of sexual and other crimes; provision of a base of operation for organized crime. She called on the City of Bellevue to do all that lies within their power to do, to make the laws as strict as possible consistent with the constitutional freedom.

Ms. Roggencamp gave an example of a business forced to relocate because their customers did not want to be seen in the same parking lot as an adult business. Ms. Roggencamp supports dispersed zoning.

Louise Woodward

East King County Chapter of American Civil Liberties Union

Ms. Woodward was chiefly concerned about the potential for First Amendment rights to be violated. She submitted a letter refuting claims made by Ms. VanGore about the negative effects of adult businesses. The letter was addressed to Nick Gallo from Shirley Feldman Sommers.

From Ms. Woodward's personal analysis, she has read a lot of studies and found little evidence of adult businesses being harmful to the community. She felt that putting adult businesses in one location tends to enhance an unhealthy stigma toward sexuality, and favored dispersment, the least restrictive method of zoning.

Mr. Ullery

R & R Adult Toys

Mr. Ullery informed the group that the printing business referred to by Ms. Roggencamp went out of business and left that location because they were unable to make the rent payment, fact which can be verified by the landlord. The problem existed before the adult business rented there.

Mr. Ullery described his business in Bellevue, now in existence four years, doubling in size each year. His new store will be triple the size, based on the demand of the people of Bellevue. He described his clientele as professional people, 55-60% men, the rest ladies, 40% couples, 95% located within a 10 mile radius of the store. Mr. Ullery offered his services as an advisor as a representative of adult businesses.

Jeff Spencer

13457 - 92nd Pl. N.E.

Kirkland

Mr. Spencer gave a personal testimony of the negative effects of adult entertainment business, stating that an R-rated movie had very significantly affected his own life. He felt we should make the laws as strong as legally possible in order to restrict adult businesses.

IV. Closing Comments by Rob Beem

Rob reviewed the coming agenda; with next week's meeting on approaches to developing zoning ordinances; followed shortly thereafter by a study session with the City Council; and then work with the Planning Commission over the balance of the summer. Attendees on the sign-up sheet will be on the mailing list. Participants were invited to contact the Planning Department if they have further questions or comments.

# ADULT ZONING

## MINUTES

June 25, 1987

### I. Introduction

Rob Beam introduced himself and explained the function of the Planning Staff: to assist the City Council and the Planning Commission in investigating the wisdom of developing regulations for the location of adult land uses and advising them of what these regulations may be.

### II. Purpose

The purpose of this meeting, Rob Beam explained, was to provide information regarding methods used nationwide to develop zoning regulations, and to seek comments regarding their appropriateness to the City of Bellevue, in an effort to gain a better understanding of the specific effects of adult businesses on the city, which is primarily a residential community.

Adult businesses were defined as those businesses relating to sexual matter which restrict entrance to individuals over the age of 18.

Rob Beam clarified that the City has the authority to regulate, but cannot legally prohibit legitimate land uses from existing within the City of Bellevue. They should have a reasonable opportunity to pursue their business within the city.

### III. Three Approaches to Take

Rob reviewed the three approaches the committee can take:

- 1) No action - leave as is
- 2) Dispersion approach - locate the business so it is one of a number of businesses in an area, thus reducing its impact
- 3) Concentration approach - limit adult businesses to one single area

Difficulties involved with the dispersion approach would be mainly administrative, and the need to insure that there are reasonable opportunities throughout the community to locate the businesses.

The disadvantage of the concentration approach is that it would create an adult zone detrimentally affecting the area.

A fourth option, conditional use, was considered to be more burdensome than the dispersion approach.

### IV. Comments by Attendees

Pat O'Connor  
15401 N.E. 10th, E106  
Bellevue 98007

Pat favors the conditional use approach in zoning, to assure that enough conditions are given to help prevent mistakes, and to give opportunity for those affected to give their input to the City Council.

Louise Woodward

East King County Chapter of American Civil Liberties Union

Louise was more concerned about preserving freedom of speech for herself and her children than any harmful effects of adult business in the community, and wanted no more restrictions than are presently in effect. She referred to the Technical Report of U.S. Government Commission on Obscenity and Ponography.

Mr. Ullery

11101 N.E. 4th, Bellevue  
owner of R & R Adult Toys

His business has existed in the city for four years without any problems. He believes there is a need for his product as shown by its steady growth, and the city allows it under the rights of the City and the Constitution.

Jeff Spencer

13457 - 92nd Pl. N.E.  
Kirkland

Jeff stated that all laws are by definition moral, based on the distinction between right and wrong, and he wants to legislate by the original Judean Christian morality this nation was founded on as one nation under God.

Len Smolen

12119 S.E. 10th  
Bellevue 98005

As a counselor and ordained Christian minister, Mr. Smolen spoke against the previous definition of morality, feeling that it inferred that sex was dirty or immoral, when God authored sex. There is a distinction between erotica and ponography.

Pat O'Connor

(see above)

Feels the personal conditional approach is needed in line with the previous speaker's comments.

Len Smolen

(see above).

Against the conditional approach as too broad to be legally viable. Supports the dispersion approach based on the history of adult businesses operating in the area.

Mitch Lopez

4045 - 134th Ave.  
Bellevue, 98006

Supports the dispersion approach, not the conditional. We should establish exact policies and perimeters based on good choices and decisions to begin with, and coordinate from within that basis.

XV. Final Comments

Those on the sign-up sheet will be alerted to further public meetings on this process, and are encouraged to submit written comments until the hearing sometime in September. The next meeting will be on July 8 at 7 p.m. in this same room, to select an approach to be submitted to the City Council on July 27.

Written comments should be addressed to Rob Beem, Planning Department, P.O. Box 90012, Bellevue 98102.

## MEMORANDUM

Date: September 22, 1987  
To: Planning Commission Members  
From: Rob Odle, Planning  
Subject: Adult Entertainment Regulations  
Requested Information

Enclosed, as requested, are the draft minutes of last week's public meeting on regulating the location of adult entertainment uses. These draft minutes should be particularly useful to those members who could not attend the public meeting.

We have also enclosed a response to the obscenity statute concerns raised by Andrea Vangor. However, it is important at this point, to not focus on the issue of obscenity as that issue is handled on the state and federal level. Our reason for discussing it in the study was only to briefly describe what is regulated elsewhere (and out of the local purview) and then focus the study on the issue that can potentially be regulated locally - the location of adult entertainment uses.

This evening, we have planned a discussion in which staff (Stephanie Brod, Steve Bourgette and myself) will focus on questions and issues that you have from reading the study and listening to the public comments. Following this discussion, at your direction, staff will either conduct further research on issues you raise or will begin to prepare a recommendation to bring back for your action. Should you have any questions before tonight's meeting, please contact me at 455-6880.

RO:jb

## Attachments

cc: Bruce Freeland, Planning Director  
Adult Entertainment Task Force Members  
Adult Entertainment File

Date: September 21, 1987

To: Planning Commission

From: *Stephanie D. Brod Jim Turner*  
Stephanie D. Brod and Jim Turner,  
Adult Entertainment Task Force

Subject: Clarifications to Adult Entertainment Study

The purpose of this memo is to clarify certain points of the Adult Entertainment Study presented by the City of Bellevue staff last week. At the public meeting on September 16, 1987, the Adult Entertainment Study was criticized for (1) misstating the United States Supreme Court's definition of obscenity, (2) incorrectly citing Washington's Moral Nuisance Statute and (3) misleading the Commission and public with regard to the effectiveness of present regulations concerning pornography. Each is addressed in turn below.

A. The definition of obscenity presently used by the United States Supreme Court was originally set forth in the case of Miller v. California, 413 US 15, 37 L.Ed.2d 419, 93 S.Ct. 2607 (1973). The questions before the court in determining whether a work is considered obscene and not worthy of constitutional protection is

(a) whether the average person, applying contemporary community standards would find that the work, taken as a whole, appeals to the prurient interest; (b) whether the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law; and (c) whether the work, taken as a whole, lacks serious literary, artistic, political, or scientific value.

Miller, 413 US at 24 (citations omitted). Consistent with that constitutional definition, RCW Chapter 7.46A, entitled Moral Nuisance, identifies the following:

"Lewd matter" is synonymous with "obscene matter" and means any matter:

(a) Which the average person, applying contemporary community standards, would find, when considered as a whole, appeals to the prurient interest; and

(b) Which explicitly depicts or describes patently offensive representations or descriptions of:

(i) Ultimate sexual acts, normal or perverted, actual or simulated; or

(ii) Masturbation, fellatio, cunnilingus, bestiality, excretory functions, or lewd exhibition of the genitals or genital area; or

(iii) Violent or destructive sexual acts, including but not limited to human or animal mutilation, dismemberment, rape or torture; and

(c) Which, when considered as a whole, and in the context in which it is used, lacks serious literary, artistic, political, or scientific value.

RCW 7.48A.010(2).

In the general attempt to keep the background material in the study brief and readily understandable, the definitions above were summarized. In doing so, the language specifically describing sexual conduct was omitted, as well as the language in the third clause of the definitions, "when considered as a whole," "and in the context in which it is used." The Definitions above are set forth in their complete individual forms.

B. With regard to the possible incorrect citation of RCW 7.48A, a review of the study and the statutes indicates that the statutory cite was correct. Washington's moral nuisance statute, which provides for a civil action for the dissemination of lewd or obscene matter is Chapter 7.48A of the Revised Code of Washington.

C. The Adult Entertainment Study attempted to identify each of the statutes and city code provisions relevant to control of sexually oriented enterprises in the City of Bellevue. In identifying each of the statutes and code provisions a description was provided summarizing the purported application of each of the regulations. At the public meeting, the Planning Commission was informed that RCW 9.68, Obscenity and Pornography, has never been enforced. It was pointed out that without communicating the failure of officials to enforce the statute, the Planning Commission and the public are susceptible to a false impression as to the statute's efficacy. The point is well taken. Likewise, to avoid any further misconception, it should be noted that the summary of regulation provided in the Adult Entertainment Study as it presently exists identifies only the purported effect of the individual regulations as written.

I hope the above successfully addresses the points raised at the public meeting. If you have any further questions, please direct them to Rob Odle, who heads the task force, at 455-6630.

CITY OF BELLEVUE  
BELLEVUE PLANNING COMMISSION  
MINUTES OF STUDY SESSION

September 16, 1987  
7:00 p.m.

Bellevue City Hall  
City Council Conference Room

COMMISSIONERS PRESENT: Chairman Lukens, Commissioners Blacker, Conger, Ferris

COMMISSIONERS ABSENT: Commissioners Gilkinson, Chandler, Hague

STAFF PRESENT: Jim Williams, Robert Odle, Planning; Jim Turner, DDD; Richard Kirkby, Legal; Lt. Steve Bourgetta, Police

GUEST SPEAKERS: None

RECORDING SECRETARY: Gerry Lindsay

1. CALL TO ORDER

The meeting was called to order at 7:03 p.m. by Chairman Lukens who presided.

2. ROLL CALL

Upon the call of the roll, all Commissioners were present except Commissioner Gilkinson and Commissioner Hague, who were excused, and Commissioner Chandler, who was expected (but did not arrive).

3. STAFF REPORTS

Jim Williams distributed several items to the Commission, including: a copy of the Daily Journal of Commerce issue on Downtown Bellevue; a 1987-88 calendar for planning of meetings; the most recent Planning Commission Schedule; and the agenda for the Storm and Surface Water Advisory Commission Meeting for September 17. Mr. Williams also confirmed the walking tour of downtown for the 24th of this month and explained that it would be preceded by a briefing on the FAR Transfer issue for new Commissioners.

4. PETITIONS AND COMMUNICATIONS

Mr. Tom Delery, 16230 N.E. 28th, Bellevue, Vice president of the Sherwood Forest Community Club, thanked the Commission for the extension of time to allow the polling of their residents concerning the proposed Land Use Code amendment. Mr. Delery presented to the Commission a list of signatures and read a letter representing the residents of Sherwood Forest, Sherwood Gardens, and the Peachtree Communities. The letter stated that members of these communities are opposed to the proposed amendment to allow for medium

density multifamily dwellings in Evergreen Highlands Area D. The club has voted unanimously to oppose the change. They do not feel that the proposed amendment meets any of the seven decision criteria outlined on page seven of the Staff Report. There was no technical error in the Comprehensive Plan, nor has the applicant carried the burden of proof that shows that multifamily is warranted. There are no changing needs of the City that warrant this request. They also feel that the amendment is not in keeping with the guidelines that were outlined several years ago when Performance Area D was adopted.

Additional reasons expressed for opposing the amendment were:

Increased traffic on a daily basis, including weekends.

Adverse impact on services such as police, fire, and especially schools.

The site is one of the few remaining tracts left that could be attractive to a large national company for its headquarters.

The area is currently designated and the use should remain the same.

The letter concluded with a plea to reject any change in the Comprehensive Plan.

Commissioner Blacker asked Mr. Delery if his Community Club residents were aware that the proposed change would still allow Office to exist. Mr. Delery replied that they do not feel that multifamily is a proper designation for that area.

Mr. Jim Bergman, 15911 N.E. 27th Place, Bellevue, Washington, and a member of the Sherwood Gardens area, stated that when he purchased the property he researched the zoning and felt that it favored his family. If the Land Use Code amendment is adopted he will be living on the edge of an apartment complex, which he feels will not be in line with what his goals for his family are. He feels that this will affect at least 40 households in a similar way and appealed to the Commission to reject the amendment on the basis of fairness to those who live in the area.

Mr. Harold Dagner of 15807 N.E. 27th Place stated that before purchasing his property he queried the City on the proposed land use of the area. He said that he attempts to structure things around his seven children and raised concerns about noise and crime (from minor kid-pranks on up). He also appealed to the Commission on the basis of fairness to those who thought they knew what the zoning was in the area.

Mr. Brian Woller, 15938 N.E. 28th, Bellevue, Washington, a Peachtree resident, also purchased his home on the basis that an office complex would be across the road from him and not apartments. His concern was the impact to school facilities in the area, Highland, Overlake, and Ardmore.

Mr. Roger Hill, 15929 N.E. 27th Place, Bellevue, stated his objection to the proposed amendment on the basis that an apartment complex with possibly 500 units would increase noise, crime, and traffic in the area.

Mr. Curt Helner of 16243 N.E. 30th, Bellevue, Washington, a resident of this address for 21 years, stated that he has seen much change in the area over the years. In the formation of the Comprehensive Plan for that area there was much time and effort and study involved, including hearing from the residents that would be affected. He feels that the Land Use Code for that area was proper and that no changes need to be made to it. He said he agrees with all of the individuals who spoke before him.

##### 5. PUBLIC MEETING -- Adult Entertainment

Mr. Rob Odle was introduced to give a brief introduction to the subject. Mr. Odle referred to Part One of the study on the potential need to regulate locations of adult entertainment within the City which had been distributed to the Commission. He stressed that the discussion was on the potential need for regulation of the location of adult entertainment and not the content of any materials offered by such establishments.

Mr. Odle discussed the decision rendered in the 1986 Renton vs. Playtime case, which said that adult entertainment uses cannot be banned. The decision also stated that regulations to mitigate secondary effects are permitted, and a city can rely on the experiences of other cities in formulating regulations for adult entertainment. The bottom line is that cities can regulate the locations of adult entertainment if there is need to mitigate the secondary effects.

Currently, adult entertainment uses are not regulated in the City of Bellevue as to location; anywhere a similar non-adult use is permitted there may be an adult use. Certain uses are currently regulated through either City or State regulations. These include massage parlors, bath houses, panorams, public dances, dance halls and cabarets. In reviewing these regulations, Staff found that they are sufficient to mitigate the secondary effects of those uses. For those reasons, Staff recommended that the Commission only consider potential regulations for adult theater and adult retail. By definition, adult theaters are enclosed buildings or drive-in facilities used for the commercial presentation of motion picture films, video cassettes, cable television or any other visual material whose matter is characterized by depicting, describing, or relating to specified sexual activities or specified anatomical areas. Adult retail is defined as an establishment engaged in the sale of goods in which ten percent or more of the stock in trade is characterized by an emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas.

The three tests that any regulation has to meet are:

The regulation chosen can be no greater than necessary, i.e. the minimum regulation necessary to regulate the secondary impacts.

It must be the least intrusive regulation into the activity that is occurring.

It cannot be an outright ban on the use.

Secondary effects relating to adult entertainment uses include:

The incidence of crime.

Impacts to property values in the area.

- Land incompatibility between adult uses and other non-adult uses in the area.

Types of regulations that other municipalities have chosen include:

Dispersion Ordinances. This is where adult entertainment uses are dispersed throughout the community with minimum dimensions separating adult entertainment uses from other adult entertainment uses as well as minimum distances from sensitive uses such as public parks, churches, day care centers, areas frequented by children.

Concentration Ordinances. This is the opposite of dispersion with the classic example being the Combat Zone in Boston. Seattle uses a similar approach.

Modified dispersion/concentration approach. Here aspects are chosen from both dispersion and concentration. The best example of this is Renton where there are dispersion requirements of at least a thousand feet between adult entertainment facilities and churches, parks and residences. However, Renton does not have any limitations on how far adult entertainment uses must be from other adult entertainment uses.

Special Ordinances include Conditional Use Permits or other types of administrative review required for adult entertainment uses. The licensing of such establishments brings up First Amendment issues. Certain adult entertainment uses are now licensed in Bellevue, including panorams and bath houses.

Other cities in the area use varying approaches. Seattle uses the concentration approach, Redmond uses dispersal. Kirkland uses a combination special use and combination dispersion/concentration approach in that there must be an adult activities overlay zone created, then there must be a Conditional Use Permit to locate within that zone, and finally they cannot locate closer than 1500 feet from churches, parks, schools, et cetera. Mercer Island and Issaquah use a dispersal approach, Bothell uses a dispersion approach but requires that all such businesses be located on Bothell Way N.E. King County requires that adult entertainment uses must be located no closer than 2000 feet from a school.

Currently there are three adult entertainment uses located in Bellevue, one in the Overlake area, one in Bel-Red/Wilburton, and one in the CBD; all are primarily retail establishments. To date, it has not been established that any of the secondary effects are occurring in Bellevue. These three uses are all actually located in commercial areas. However, there are not regulations to prevent them or others from locating near sensitive areas (houses, churches, schools, parks).

Staff recommends that this issue of the need for further regulations be studied by the Planning Commission.

Mr. Odle then introduced Lt. Steve Bourgette of the Bellevue Police Department, who serves on the Task Force on Adult Entertainment. Acting on the request of the Planning Commission, Lt. Bourgette invited representatives from surrounding cities to relate how adult entertainment uses have been regulated and received in their cities.

Bellevue Chief of Police Joe Smith was introduced first. Chief Smith explained that he has been with the City of Bellevue for a year and a half having previously served with the police force in Kansas City, Missouri for a period of 29 years. This included the time during the early 1970s when adult entertainment uses as we know them came to the fore.

Chief Smith explained that when adult entertainment uses first began appearing, several cities hastily passed ordinances to regulate these uses. Many of these ordinances were ill advised and were in many cases struck down for being unconstitutional.

Chairman Lukens asked Chief Smith what some of the secondary effects of adult entertainment uses he had encountered. Chief Smith cited the congregating of individuals he termed undesirable around these businesses. As a case in point, Chief Smith described an area of Kansas City that had been a run-down section of town and was revitalized and specialized in family-oriented businesses. Adult entertainment uses began to come into that area and over the course of time the family-oriented businesses began to close down and the area was eventually abandoned altogether.

Commissioner Conger wanted to know if uses of this type would draw mainly from the residents of Bellevue or would it pull patrons from other areas as well. Chief Smith shared that his experience had shown people drawn to these businesses from as far away as 40 or 50 miles. He felt that it would be fair to characterize it as a regional type market.

Commissioner Ferris wanted to know if Chief Smith had had experience with the dispersion type of regulations. Chief Smith said that Kansas City had areas of concentration as well as dispersal throughout the city with regulations as to how far they could be located to sensitive areas.

Introduced next was the Deputy Chief of the Bothell Police Department, Rudy J. Plancich. He provided for the Commission a copy of the ordinances covering adult entertainment in Bothell. In 1982, prior to Bothell adopting any controls over adult entertainment uses within the city, a business applied for a license to operate an 18 and over non-alcoholic entertainment and amusement games establishment. Shortly after opening it was found that topless dancing was occurring there. An emergency ordinance was passed; the ordinance was modeled after a Seattle ordinance which controlled activities inside the establishment. In court, this ordinance was overturned and the business began operating in the same fashion again. The regulations were rewritten and were eventually upheld.

During the time that the business was in operation, the Police Department conducted a six-week investigation of it. Among the results were arrests on drug charges, illegal sale of alcoholic beverages, offering and agreeing to acts of prostitution, and entertaining illegally in a public place.

Deputy Chief Plancich agreed with Chief Smith about the attraction of a certain crowd to the area by the establishment of these types of businesses. Monitoring these places reveals that the same customers are there on a steady basis.

Commissioner Conger questioned whether criminal activities extended beyond the immediate facility. Deputy Chief Plancich said that there were hit and runs in the parking lots, disturbances, disputes between the male and female patrons which occur on and around the premises. Commissioner Conger wanted to know also if the State and Federal statutes were sufficient to regulate these uses from the standpoint of the Bothell experience. The reply was yes, but that they need to work in conjunction with local laws.

Lt. Lee Bartley, Vice Unit, Seattle Police Department, was introduced next. Lt. Bartley said that adult entertainment exists in Seattle in many different forms and it has been found to be quite lucrative for the business owner. Many times these businesses are corporations that are controlled by people behind the scenes. Their experience has been that many times these establishments will operate for a while, run up a considerable number of bills, including tax bills, and then will fold up and leave. Often they reappear as a different corporation.

Currently, Seattle has about three of the soft drink topless establishments and a number of pan rooms located mostly downtown. In addition, Seattle has several adult bookstores, often combined with pan rooms in the back, and several adult theaters.

Lt. Bartley said that there are also sexual paraphernalia stores in Seattle and there have been no problems associated with them.

Problems that have arisen with the other establishments include offering and agreeing to acts of prostitution, drug possession, "tease-and-rip" charges stemming from patrons being enticed to pay for certain privileges and not receiving them, and strong-arm robbery.

When these businesses are in residential areas, problems include parking problems, drug deals in the parking lots, and minors either working in or patronizing the establishments.

Seattle's ordinances covering the pan room establishments are new and at best shaky. Basically they cover the heights of the pan room doors to allow inspection from a public area or hall to be sure there is only one person in the booth. Seattle's Lewd Activities ordinance which governed activities inside these places was found to be unconstitutional. Currently, their Lewd ordinance covers activities outside of these establishments. They also have an ordinance which forbids the displaying of erotic material in the windows of adult bookstores.

In the past when the city would attempt to regulate these businesses, the owner would simply call it something else and go on operating.

Many of the adult entertainment businesses in Seattle were operating prior to any zoning regulations being enacted. With many of them being located in the First Avenue area of Seattle, which is an area that Seattle would like to upgrade through Urban Renewal, and since they Constitutionally protected businesses, the problem of where to relocate them arises; placing them in an area having well-established family-oriented businesses could have a deleterious effect on those places. The same would be true in residential areas.

Lt. Bartley suggested that the City of Bellevue consider adopting regulations that would limit the distance that live dancers could get from the patrons and the stage height in such establishments.

Commissioner Conger asked if the soft drink establishments tended to attract juveniles and become points of congregation for juveniles. Lt. Bartley felt that they do, both with males using fake I.D. and female runaways working as dancers in them, also with fake I.D.

Chairman Lukens said that he had received a letter from the Chief of Police in Renton and that copies would be made available to the Commissioners.

Chairman Lukens then opened the meeting to receive public comment. He made it clear that the Commission is not seeking to regulate content but rather location of adult entertainment uses. He said that the Commission would be looking at only three issues in regards to this issue:

1. The secondary impacts to the community which may result from these adult entertainment businesses.
2. Whether location of adult entertainment businesses should be regulated.
3. If regulation of location is necessary, the approach the regulation should take.

It was asked that speakers limit themselves if possible to five minutes to allow others time as well.

Mr. Jack Burns of 500 108th Avenue N.E., Bellevue, Washington, informed the Commission that he is an attorney who lives and practices in Bellevue and represents several adult entertainment businesses in the State and throughout the nation.

Mr. Burns noted that most of what the law enforcement officers had talked about were activities that went on inside the establishments and which are clearly out of the jurisdiction of the Planning Commission.

He stressed that the Staff report states that Bellevue currently is not experiencing any secondary effects from adult entertainment uses. This is true also of the panoram location in Bellevue. He suggested that the

Commission go slowly in deciding just what the secondary effects that they will have to deal with will be. He said that parking as a secondary effect will probably not be a problem.

Mr. Burns questioned what the adverse secondary effect would be on a church from a zoning standpoint resulting from and adult entertainment usage in the area. He has never heard of anyone refusing to attend a church because there was an adult entertainment establishment in the vicinity. He felt that any impact to the church would probably be visual resulting from signs or window displays. This is covered pretty well by Bellevue's sign ordinances now, which are very stringent.

If restrictions such as requiring two thousand feet between sensitive uses and adult entertainment uses are adopted, there may in fact be no place in the City of Bellevue that these businesses could operate.

The Planning Commission should be concerned with zones, not with uses. Adult business should be separated from residential zone rather than from residential uses.

He also questioned what the impact is on school children who must walk past these businesses on their way to school. If the concern is visual then regulations are probably appropriate. If the concern is of kids going into these places, there are already laws that deal with that. If the concern of availability of materials to minors, the fault might lie with those adults who are buying the material and making it available to children. Isolating adult entertainment uses from schools will probably not solve all these problems.

Mr. Burns said he is not opposed to the dispersion approach to safeguard the quality of residential areas but that this approach must be tempered with the distances available in Bellevue so that a zone-out effect is not created. A zone-out would be unconstitutional.

It has been his experience that the problems associated with adult entertainment have come when they are concentrated into a particular area. This affects property values in those areas as well and in general is deleterious. Here is also where the law enforcement problems arise from ... all the people congregating in one area.

Since the businesses which are now operating within the City of Bellevue are not causing any secondary effects, his recommendation to the Commission was to grandfather those businesses in should there be any zoning ordinances passed that made the uses non-conforming.

In conclusion, Mr. Burns reiterated that the Commission should study just what the secondary effects might be and target very narrowly a response to them to have a minimum impact on the business and the maximum effect to solve the problem.

Mr. Peter Ruthenford of 14522 S.E. Street, Bellevue, Washington, stated that he would not want any of his nine children to have to walk past an adult entertainment business to get to or from school. He feels the

location of such a business near a school would be deleterious to quality of life in the area. He also pointed out that the Study shows that there appear to be no major secondary effects here in Bellevue, not that there are no secondary effects at all. He urged the Commission to study the effects on the economic environment, the social environment, and the effects on the city-and the region.

He does not like the thought that a single adult entertainment business can and does attract customers from as far away as fifty miles. He is also concerned with the number of so-called undesirables that frequent such places.

He pointed out that the Staff report says the regulations can be preventative and not just corrective and urged the Commission to consider regulations that would be preventative in nature.

His personal recommendation would be to follow the Kirkland guidelines of a dispersal approach along with a conditional use approach.

Referring to page 28 of the Study, he stated that the fourth option of conditional use, which is stated to be more burdensome than the dispersal approach, is perhaps a burden that the City should carry.

Andrea Vangor, 148 Boren Avenue, Seattle, Washington, informed the Commission that she is the Executive Director of Washington Together Against Pornography. She pointed out what she considered to be inaccurate citations of law in the Staff report and stated that the Commission should be aware of the current tools of law in order to make correct decisions.

Since the 1979 ruling by the State Supreme Court, all cases regulating matter of adult entertainment have been assigned to the State Legislature. This applies to all three legally definable areas of pornography: obscene matter; harmful to minors matter; and child pornography. The city may not regulate content, only activities that take place on premises.

RCW 7.48 along with RCW 9.68 constitute the State obscenity law, which has a civil and a criminal portion. The criminal portion is enforceable by an officer of the state, and the civil portion may be enforced by the City Attorney's Office. This latter would probably not happen because of the great costs that go along with it. A city could look to a cooperative effort with the Attorney General's office in line with racketeering legislation. Currently, the State obscenity laws are in the hands of the State Supreme Court awaiting a ruling on the constitutionality of the law.

Without proper zoning laws, a city will not be able to deal effectively with the operating of adult businesses.

Ms. Vangor encouraged the Commission to check with Christine Gregoire who is the state's expert on obscenity and pornography, and is also an Assistant Attorney General for the State of Washington.

Commissioner Blacker asked for Ms. Vangor's opinion concerning Staff's recommendation that the state's regulations of dance halls, bath parlors,

et cetera are sufficiently regulated as to not require any further locational regulations. Ms. Vangor said that she did not think the current regulations were enough and that the city of Seattle should not be the model for Bellevue

The next person was Beth Woodward of 14624 S.E. 42nd Street in Bellevue, Washington, representing the East King County Chapter of the American Civil Liberties Union. Her primary concern with the regulation of adult entertainment uses is that it will impact freedom of expression in Bellevue, both for the owners of the businesses and those who may wish to begin them. She stated that each small loss of freedom of free citizens diminishes society.

The use of the conditional use approach to zoning would provide an opportunity for discrimination each time a use was considered.

Laws and regulations should only be imposed by government when compromise cannot be achieved through other peaceful means. Most businesses are regulated by the market place and adult businesses should be treated the same.

It is important to allow for diversity within the community and not allow the views of one group to restrict the expression of other groups.

The formation of regulations of certain types of businesses may be based on incorrect assumptions and may lead to effects other than those anticipated.

Chris Lyndon, 2011 76th in Bellevue, Washington, expressed her concern for what she termed the weak in a community -- women and children -- and sexual abuse that results from emotions that result from using the products or viewing the products sold by these businesses. This is viewed by her to be the most serious secondary effect of adult entertainment.

These establishments should not be treated as just another business because they are not just another business. Where they are congregated together, serious crime results. The same does not take place with stationery stores or computer software outlets.

There should be as much regulation as possible.

Mr. Colin Radford of 3663 Fairweather Lane, Medina, Washington, explained that he manages a property occupied by an adult toy store in downtown Bellevue. As a property manager, he has certainly kept up on the opinions of the building owner, the surrounding tenants, and the community at large as they regard the adult entertainment business that is in the building. He said that opinions about any store vary in relation to who is running the store. He doesn't feel that there has been anything happen in with the store he oversees that would warrant zoning changes for the city as a whole. Probably visual control, which for the most part is undertaken by the tenants themselves, would be enough keep the businesses in favor with local residents. He felt it would be helpful for the City to have a checklist so that these businesses would take into consideration some of the concerns that other people may have.

Commissioner Conger asked Mr. Radford to put himself in a hypothetical position and asked how he would feel if he were the owner of a retail establishment which caters to children or families, which has been profitable to him, and have a topless place open next to him. Mr. Radford states that he would appreciate having as much space between them as possible. He felt that guidelines of this sort should be developed by the Commission but in cooperation with those business owners who would be directly affected.

Mr. Ullery, owner of R&R Adult Toys, 210 - 106th Place N.E. Bellevue, Washington, pointed out that adult entertainment establishments have been operating in Bellevue for the past fifteen years. During this time, there has been no increase in prostitution, child pornography, or other crimes usually associated with adult entertainment. These businesses have generated tax revenue for the City and judging from the sales, there is a need for the product. Mr. Ullery feels that most of his customers live within ten miles of his store.

Mr. Hal Woosley, PO Box 3325, Bellevue, Washington stated that he is the owner of the building housing the Love Works store. As a property owner, he is very careful in choosing the businesses which will occupy his spaces. Mr. Woosley said that he as an individual is strongly against what he called hard-core pornography, calling it a cancer in our society. If he felt that there were anything wrong with the Love Works store and the merchandise they carry, he would not have allowed them into his building. They do not sell any hard-core equipment or magazines. Shops of this type do not pose any hazard. From his office window, Mr. Woosley can see the people who shop there and they include people from all walks of life. He urged the Commission to be cautious in formulating regulations in the area of adult entertainment.

Commissioner Conger asked what the reaction of the other tenants had been when the Love Works store set up. Mr. Woosley said that there had never been any problems with the other shop owners.

With no further speakers, the public meeting was closed at 9:06 by Chairman Lukens who then left to attend another meeting. Commissioner Blacker chaired the remainder of the meeting.

#### 7. STUDY SESSION -- Adult Entertainment

Commissioner Conger felt that there seems to be many differing opinions as to what comprises adult entertainment uses and that perhaps Staff should spend a little time in focusing on what the different uses may be.

Rob Odle informed Commission that he is scheduled to come back next week to discuss further the public input and address any inquiries that the Commissioners may have regarding adult entertainment uses. He asked if the Commission had any further research tasks for Staff to focus on during the intervening week. Staff will be working on Part 2 of their recommendation to the Planning Commission and will include those concerns that were raised by public input. He pointed out that the Staff study is a joint effort of

the Planning Department, the Police Department, and the City Attorney's Office

Commissioner Ferris wanted to know whether neighboring communities have found the existing regulations to be adequate and wondered if Bellevue's should be broadened.

Mr. Jim Turner, legal counsel for DDD, explained somewhat further the legal considerations set forth in the Study. He agreed with Ms. Vangor who spoke to the issue of keeping minors out of these establishments. He feels that these places have a history of being self-regulating. He agreed that the laws aimed at keeping minors out have never been enforced. He also reminded the Commission that they are not to attempt to regulate content but location and secondary effects only. Placing flat restrictions on such places as massage parlors will place undo strain on such places as fitness gyms and health clubs.

Mr. Turner clarified the report which states that any new development is subject to sign review. A new tenant moving into an existing development may put up a sign which would not be subject to sign review.

Commissioner Conger asked how the sign regulations would apply to adult entertainment establishments. Mr. Turner said the regulations would involve the size and location of the signs. The regulations do not relate to content and he sees potential constitutional problems in attempting any sort of regulation of content.

The Commission delayed a general discussion on adult entertainment uses until next week after having time to digest the public's comments and the Staff report.

Commissioner Blacker wanted the Commission members who were absent at tonight's meeting to have a copy of the public's comments as soon as possible. These will be provided to Staff by 9-21-87.

#### 8. OLD BUSINESS

Approval of Minutes of August 12, 1987 and August 26, 1987.

Because of a lack of quorum, approval of the minutes was delayed to the next meeting.

#### 9. NEW BUSINESS

Commissioner Blacker handed out reprints and articles concerning the recent Supreme Court decisions regarding Land Use Codes.

#### 10. PETITIONS AND COMMUNICATIONS - None

11. ADJOURNMENT

Motion to adjourn was made by Commissioner Conger and seconded by Commissioner Ferris. The meeting adjourned at 9:24 p.m.

Bruce Fairland  
Secretary to the Planning Commission

10/11/87  
Date

Thomas P. Ferris  
Chairman of the Planning Commission

10/17/87  
Date

PART II

ANALYSIS AND RECOMMENDATIONS

## ALTERNATIVE ANALYSIS

The following chart reviews the advantages and disadvantages of the various regulatory approaches described earlier and applies them to Bellevue. This range of alternatives varies from the No-Action Alternative (#1), which would not specifically regulate the location of adult entertainment uses, to that of an outright prohibition (Alternative 5). Alternative 2 looks at the impact and applicability of the widely used dispersal/modified dispersal approach. At this time, in the analysis of Alternative 2, no distance standard was utilized. Alternative 3 reviews the concentration approach. In this case, LI (Light Industrial) zoning was selected as it is the one zone that was least likely to contain or be adjacent to sensitive uses. Alternative 4 analyzes the applicability of a Conditional Use Permit (CUP) for adult entertainment uses.

### EVALUATION OF ADULT USE ZONING ALTERNATIVES

ZONING ALTERNATIVES	NATURE OF REGULATIONS	EVALUATION: ADVANTAGES/DISADVANTAGES
1. NO ACTION	The "No Action" alternative would maintain the existing zoning policy of allowing adult uses in designated commercial zones throughout the city. Accordingly, adult businesses could locate in all or some of the following zones; LI, GC, NB, CB, OLB and CSD zones, depending on the nature of the specific use. This zoning policy does not distinguish between business activities based on the "adult" characteristic of certain uses.	<p><u>Advantages:</u> Maintaining existing regulations represents the least cost option in that no resources would be required to draft and implement new regulations.</p> <p><u>Disadvantages:</u> Present zoning policy does not specifically seek to protect residential, educational, religious, and recreational uses from the land use incompatibilities of adult businesses. Some schools, churches, and residential areas are currently located near commercial zones which may allow adult businesses under existing zoning regulations. As a result, the "No Action" alternative does not appear to mitigate the adverse secondary land use impacts commonly associated with adult businesses.</p>

## ZONING ALTERNATIVES

## NATURE OF REGULATIONS

## EVALUATION: ADVANTAGES/DISADVANTAGES

## 2. MODIFIED DISPERSION IN COMMERCIAL ZONES

Under this alternative, certain adult businesses would be permitted in designated commercial zones which are not located within a specified distance of any school, public park, church, or residential area. Depending on the dimensions selected, this would restrict locations to portions of the CBD, Bel-Red Crossroads, Eastgate and North Bellevue areas. A dispersal requirement which would require a specified minimum distance between adult uses could be included as part of this alternative to avoid clustering of such uses in one area of the city.

Advantages: This alternative would seek to maintain the integrity of the city's residential, educational, religious, and recreational environments by ensuring separation from incompatible adult uses. A dispersal requirement may also help to mitigate against any negative economic influences which adult uses may have on the business environment.

Disadvantages: The specific dimension selected will determine whether an adequate amount of land is available for adult uses to locate. Some administrative time will need to be spent administering any distance requirement.

## 3. CONCENTRATION APPROACH

This approach would allow adult businesses in a specific zone such as LI. Amendments to present zoning policy to allow commercial uses in Industrial zones would have to be implemented. This alternative could be modified by requiring a minimum distance between adult uses in industrial zones, in effect promoting dispersal of such uses but only within that zone.

Advantages: This approach specifically defines a specific area of the city as suitable for adult uses.

Disadvantages: To allow adult businesses in industrial zones would probably require a significant change in zoning policy. Allowing adult businesses may also involve allowing other general business activities; hence, a significant change in policy. A traditional concentration policy would not afford any protection to sensitive uses such as residences or schools should they be located in or near the zone selected. Higher incidence of crime is also associated with the concentration of adult uses

## 4. CONDITIONAL USE PERMIT

Under this alternative, certain adult uses would be permitted in specified commercial zones by conditional use permit (CUP) only. Therefore, approval would be made by the H. Ex. & City Council. Special criteria or guidelines relating to operational and/or locational characteristics could be included in the CUP approval process in order to make the proposed use compatible with its surrounding environment. (The CUP process could also be combined with either alternative #2 or #3, above.)

Advantages: Depending on the particular guidelines or criteria developed, this alternative represents a flexible zoning device which is able to respond to varying circumstances. Through the adopted guidelines, protection of residential, educational, religious, and recreational uses could be pursued.

Disadvantages: This alternative would likely involve higher administrative costs since each application would have to be specifically processed by the Hearing Examiner and City Council. New CUP criteria specific to adult uses would need to be added to the Land Use Code. Because there is no assurance that any adult uses would be approved, such a regulation may be unconstitutional (prior restraint).

EVALUATION OF ADULT USE ZONING ALTERNATIVES

ZONING ALTERNATIVES	NATURE OF REGULATIONS	EVALUATION: ADVANTAGES/DISADVANTAGES
5. PROHIBITION	This alternative would prohibit certain adult uses altogether. As anticipated, specific adult uses would be defined and regulations would be developed which prohibited them from locating within the city.	<p><u>Advantages:</u> Under this alternative, the total community would be protected from any adverse impacts of adult uses.</p> <p><u>Disadvantages:</u> Outright prohibition of all or certain adult uses, especially those which may be protected under the First Amendment would be unconstitutional.</p>

The above analysis shows strongly that should the Planning Commission conclude that regulation of the location of adult entertainment uses is necessary, that the modified dispersal approach was the type of regulation most likely to mitigate the secondary effects with the least intrusive regulation. As a major issue regarding the modified dispersal approach is appropriateness of a selected radius, the following chart was developed. This chart displays the land available for locating adult entertainment uses using various radii and utilizing the following assumptions:

1. Sensitive uses (those areas that adult uses are to be dispersed from) include: all non-C80 residential zones, all single and multi-family uses, daycares and preschools, primary/middle/secondary schools, religious institutions and public parks.
2. Uses and zones include all areas within the City as well as adjacent to the City.
3. Adult uses potentially could locate in all C80, C3 and OLB zones. The total of these zones equals 855.67 acres.
4. Radius is measured from the perimeter of the property and not a central point.
5. Only that portion of a parcel which is within the radius area is subtracted from the available acres; and,
6. Radii selected were in 500 foot increments except for 600 which corresponds to an average block length in Bellevue.

RADIUS	ACREAGE AVAILABLE 10/8/87)	PERCENT AVAILABLE TO TOTAL ACREAGE IN THE ZONES
500	413.7	49.7
600	325.9	40.6
1000	114.5	16.2
1500	0	0

In reviewing the available acreage it should also be noted that uses could be dispersed within the available areas which would limit the potential number of sites once an adult entertainment use was located in the zone. It should also be noted, that two of the current uses (R & R Adult Toys and Love Pantry) could become non-conforming with any of the radii analyzed. Love Works is already a legally non-conforming use, as it currently is not a permitted use in the GC zone.

Having analyzed the available options, the next section will describe the conclusion to be drawn from this study and present the staff recommendations.

## CONCLUSIONS AND RECOMMENDATIONS

### CONCLUSIONS

The previous sections of this study have presented basic information and analysis on the question of the need for the City of Bellevue to regulate the location of adult entertainment uses. This section will present the conclusions that can be drawn from the previous sections and present the staff recommendation.

Based on the information contained in this study and the public meeting of June 18, June 25 and September 16, and the study session (and its concomitant research) of September 23, 1987, staff concludes the following:

1. Cities have the ability to regulate the location of adult entertainment uses in order to mitigate the secondary impacts associated with such uses. This ability rests on a series of constitutional tests to ensure that free speech is not restricted and that the regulation does not create an outright ban on adult entertainment uses.
2. The City of Bellevue can rely on the experiences of other cities in assessing the need for and the type of regulation selected.
3. There is evidence of a linkage between the incidence of criminal activities near and in association with some adult uses (especially if they are concentrated). There is no clear consensus that exposure to pornography causes people to develop criminal behaviors.
4. Evidence suggest adjacency of residential uses to adult entertainment uses reduces the value of the residential property. Concentration of adult entertainment uses in commercial areas may also adversely effect property values.
5. Adult entertainment uses are perceived to negatively impact the character of established neighborhoods and potentially be disruptive influences (depending on the type of use).
6. Adult entertainment uses do not always create negative secondary effects but many cities have experienced negative secondary impacts from adult entertainment uses.
7. Presently, there are no known negative secondary effects associated with the three adult entertainment uses located in Bellevue. This situation could change in the future should new uses be created or the nature of the establishments change.
8. Each municipality in the area has chosen to regulate the location of various adult entertainment uses.
9. Adult entertainment uses can be incompatible with certain sensitive uses such as; residences, schools, daycares, religious institutions and public parks.
10. The City of Bellevue Comprehensive Plan strongly supports that adjacent land uses be compatible.

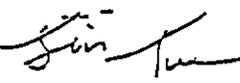
11. Given the current system of land use regulation in the City of Bellevue; the modified dispersal/concentration approach would be the most effective type of regulation to mitigate and prevent the negative secondary impacts of adult entertainment uses from occurring. This type of regulation would also be the least intrusive form of regulation.
12. Adult entertainment uses should be confined to those zones in which all the adult entertainment uses are currently permitted in. These zones would be CB, OLB and all the CBO zones.
13. Utilizing a distance of 600 feet between adult entertainment uses and sensitive uses would correspond to the length of a normal city block. Such a radius would also permit a reasonable amount of land to be available for adult entertainment uses to locate within.
14. Utilizing a distance of 600 feet between adult uses would provide an adequate separation in order to avoid a concentration of such uses.
15. As the current adult entertainment uses are not known to be creating any negative secondary impacts, these uses should be allowed to continue in their present location even if the selected regulation should make them non-conforming.

#### RECOMMENDATIONS

Based on the facts and conclusions contained within this study, as well as those sources listed in the bibliography, and on all communications received by staff during public meetings; staff recommends to the Planning Commission the following for the regulation of the location of adult entertainment uses:

1. Adult entertainment uses shall be restricted to CB, OLB and all CBO zones.
2. Adult entertainment uses shall include adult retail, adult theatre and massage services.
3. Adult entertainment uses cannot locate within 600 feet from the following whether within the City or not: all residential zones (R-1 through R-30); all single and multi-family uses; all daycare and preschool uses; all primary, middle and high schools; all public parks; and religious institutions.
4. Adult entertainment uses shall not locate within 600 feet from any other adult entertainment use.
5. All existing adult entertainment uses made non-conforming by this regulation would continue as legally non-conforming uses.

## MEMORANDUM

DATE: October 6, 1987  
TO: Rob Odle  
FROM: Jim Turner   
RE: Feasibility of Adult Material Display Regulation

The Planning Commission expressed an interest in regulating the display of "adult materials" so as to prevent view by minors. For the reasons stated below, it is almost certain that the City is precluded from enacting any such regulation.

- A. Pre-Emption: RCW 9.68, discussed in earlier memoranda, addresses dissemination of adult materials to minors. As we have seen, it provides a framework for labeling such materials, and once labeled, such materials may not be sold or exhibited to minors or displayed in public. RCW 9.68.050-120. Also found within that statute is the statement, "the provisions of RCW 9.68.050 through 9.68.120 shall be exclusive." RCW 9.68.120. Construing that language, the Washington Appellate Court has struck down a city ordinance addressing dissemination of erotic materials to minors, concluding the city preempted by the state legislation. Tacoma v. Naubert, 5 Wn.App. 856, 491 P.2d 652 (1971); see also, State v. Smith, 14 Wn.App. 9, 538 P.2d 1235 (1975). The court in Tacoma v. Naubert stated:

"We can only conclude that in using the words 'shall be exclusive' the legislature intended to occupy the legislative field in the distribution of indecent materials to minors, to the exclusion of counties or cities."

Tacoma v. Naubert, 5 Wn.App. at 862

In a more recent case, the Washington Supreme Court struck down a Spokane ordinance making it unlawful to sell or distribute obscene (non-constitutionally-protected) material. Spokane v. Portch, 92 Wn.2d 342, 596 P.2d 1044 (1979). At the time the ordinance was enforced, RCW Chapter 9.68 contained a similar, though less restrictive, criminal prohibition of the dissemination of obscene material. RCW 9.68.010 (repealed by 1982 c 184 section 11). Although RCW 9.68.120, the "exclusive" provision relied on by the court in Tacoma v. Naubert, did not apply to RCW 9.68.010, the court in Spokane v. Portch nevertheless determined Spokane preempted by the statute. The court discussed the doctrine of preemption, considered the scope of RCW 9.68, and concluded:

"We believe that the comprehensive major of this chapter indicates an intent on the part of the legislature to pre-empt that area of obscenity control included within the statute."

Spokane v. Portch, 92 Wn.2d at 348.

Integral to the decisions reached by the courts in both Tacoma v. Naubert and Spokane v. Portch, is the constitutional sensitivity of regulating adult materials. Noting the chilling effect on the exercise of free speech of such regulation, the confusion and practical problems attendant to a "legal thicket" of varying local regulations and the fact that the proper "community" for judging whether a material was obscene or harmful to minors is the state as a whole, the courts considered regulation properly centralized at the state level.

Importantly, in Spokane v. Portch, the court cited cases involving zoning regulating the location of adult uses and stated that the pre-emption doctrine did not restrict such regulation. Spokane v. Portch, 92 Wn.2d at 349. Implicit in the court's statement was the conclusion that such regulation did not fall within the purview of RCW 9.68. However, with respect to the display regulation presently under consideration by the City of Bellevue, it should be kept in mind that the court characterized "the sale, distribution and exhibition of erotic materials to minors" and "public display of 'sexually explicit material'" as within the purview of RCW 9.68. Spokane v. Portch, 92 Wn.2d at 348. Although the argument might be made that the regulation of interior display of materials which are harmful to minors is not squarely addressed by RCW 9.68 and thus within Bellevue's regulatory purview, successfully forwarding such an argument in court would be highly unlikely. RCW 9.68 does deal with interior display in that it requires the 48 point type "adults only" label, and it prohibits public display of such materials. That fact coupled with the court's characterization of RCW 9.68 as "comprehensive" in its control of obscenity leads to the conclusion that the court would consider Bellevue pre-empted with regard to regulating interior display of adult materials.

- B. Constitutionality: Disregarding for a moment the fact that Bellevue is probably preempted by the state legislature, any attempt at display regulation would face certain constitutional challenge. The Federal Circuit courts that have dealt with the issue squarely are split with regard to the constitutional permissibility of such regulation. American Booksellers Association v. Commonwealth of Virginia, 792 F.2d 1261 (4th Cir. 1986) (struck down); Upper Midwest Booksellers v. City of Minneapolis, 780 F.2d 1389 (8th Cir. 1985) (upheld); M.S. News Company v. Casado, 721 F.2d 1281 (10th Cir. 1983) (upheld). The issue is whether such regulation is "overbroad" in its attempt to shield minors from adult materials and thus unduly restricts adults' access to materials protected as to them. To this date, neither the United States Supreme Court nor the 9th Circuit Court of Appeals has addressed the issue, and for our jurisdiction, the permissibility of such regulation remains unresolved.

Date: October 9, 1987  
To: Planning Commission Members  
From: *RGO* Robert G. Odle, Planning  
Subject: Regulation of the Location of Adult Entertainment Uses

Attached are the materials for your study session regulating the location of adult entertainment uses. The first attachment is the staff response to the research requests made at the last study session. The second attachment is Part II of the adult entertainment study and contains the Analysis and Staff Recommendations.

At your meeting Wednesday evening (October 14th) Stephanie Brod and I will start by reviewing the first attachment and respond to any questions you may have on it. We will then review Part II of the study and present the staff recommendations. Following that discussion, staff requests that you provide precise direction on the drafting of an ordinance to regulate the location of adult entertainment uses (should you be prepared to give direction).

I look forward to our discussion on the fourteenth and should you have any questions in the interim please contact me at 455-6880.

RGO:jb

Attachments

cc: Bruce Freeland, Planning Director  
Rob Beem, Principal Planner  
✓ Adult Entertainment File  
Adult Entertainment Task Force



Date: October 7, 1987  
 To: Planning Commission Members  
 From: RGO Robert G. Odle, Planning  
 Subject: Adult Entertainment Study - Further Research

At your direction, staff has researched various topics which relate to the regulation of the location of adult entertainment uses. In this memo, I will respond to inquiries which relate to the planning aspects of such a regulation. Attached are memos from Stephanie Brod and Jim Turner which relate to the legal aspects of such regulations.

CRITERIA FOR DIMENSIONAL STANDARDS

Various cities in the area using the dispersal or modified dispersal approach have utilized different dimensional standards for the separation between adult uses and sensitive uses (residences, parks, etc.) as well as between adult uses and other adult uses. The following chart describes the standard and the reason for the dimensions selected.

<u>Municipality</u>	<u>Dimension</u>	<u>Reason</u>
Bothell	300'	Corresponds to public hearing notification radius which has been determined to be the area of interest.
Issaquah	500' for most except Issaquah Creek	Selected by the amount of land made available for the location of adult uses.
Kirkland	1500'	Determined to be appropriate to protect sensitive uses.
Mercer Island	800'	Corresponds to average block size in the Central Business District.
Redmond	1000'	Based on block size and prevents uses from being closer than the opposite ends of two adjacent blocks

Renton

1000' (Only  
from sensitive  
uses)

Determined to be appropriate to protect sensitive uses and had been previously upheld as a reasonable dimension (Young vs. American Mini Theatres)

### MULTI-TENANT STRUCTURES

The Planning Commission wanted staff to review the issue of requiring adult uses to locate only in multi-tenant commercial structures. While currently all three adult uses are in multi-tenant structures, staff believes this would be an unnecessary level of regulation. Such a requirement could be considered an undue restraint on locating adult uses. Further, the mitigation of secondary effects would seem to be no greater in a multi-tenant versus a single tenant structure. The argument put forth was that multi-tenant structures are surrounded by parking lots (hence de-facto dispersion). While some of these structures do have larger parking areas surrounding them, others do not. Therefore, dispersal from and buffering to sensitive uses is not inherent with multi-tenant structures. Staff believes such a requirement would be cumbersome, unnecessary and not achieve any greater level of mitigation.

### MASSAGE SERVICES

Staff has reviewed the occupational location of the twenty-eight licensed masseuses in the City. The type of establishment and the number of masseuses working at each type are described below:

<u>Establishment (Number of)</u>	<u>Masseuses</u>
Athletic Club (1)	5
Health Clubs (4)	7
Beauty Salon (4)	4
Independents (10) (No establishment)	10

Essentially, there are no "massage parlors" currently located in Bellevue but massage is associated with other uses such as: athletic clubs or beauty salons. Because of the secondary effects that may be associated with "adult massage parlors" and because of the inability to readily differentiate between an "adult" and a "non-adult" establishment without defeating the purpose differentiating adult uses; staff recommends that an establishment whose sole use is massage be treated as an "adult" use and be required to follow any regulations determined to be appropriate for adult uses. However, any massage service associated with an athletic club, medical facility, health club, beauty salon, approved home occupations or which solely provides massage off premise, should be excluded from such a requirement. While such a requirement restricts non-adult massage parlors, this regulation would not effect any current uses and the regulation would provide the necessary level of protection from the possible secondary effects of "adult massage parlors".

## LIVE ENTERTAINMENT

While the Bellevue Lewd Conduct Code prohibits public lewdness and nudity, artistic dance is permitted. In order to prevent the possibility that topless dance establishments could be permitted and yet not be subject to regulation of location, staff proposes the following revised definition in lieu of the definition for Adult Motion Picture Theatre:

### Adult Theatre

An enclosed building or drive-in facility used for live entertainment, dancing, or the commercial presentation of motion picture films, video cassettes, cable television, or any other such visual material, performance or activity, whose content is characterized by an emphasis on matter depicting, describing, or relating to "specified sexual activities" or "specified anatomical areas" for observation by patrons therein. Panorams, picture arcades, peep shows and "topless" establishments are included in this definition.

### SCHOOL DISTRICT - WALKING BOUNDARIES

Currently, the Bellevue School District provides bus service to elementary school children who live farther than one mile "walking distance" from the school. "Walking distance" is defined as the actual distance that a student would need to realistically walk to reach the school. Middle and high school students receive bus service if they are greater than two miles walking distance from their school. In reviewing the various dimensional standards with you that an adult regulation may utilize, staff will highlight the location of schools and their relationship to the nearby commercial areas. However, it should be noted that using a dimensional standard of one mile (elementary school standard) would preclude all land in the City and would be found to be unconstitutional.

I hope the preceeding responses and the attached memo answer your questions regarding the location of adult entertainment uses. At your October 14th meeting, staff will review each of these responses with you. Should you have any questions in the interim please contact me at 455-6880.

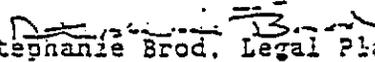
RGO:jb

cc: Karli Jorgensen, Legal  
Rick Kirkby, Legal  
Stephanie Brod, Design & Development  
Jim Turner, Design & Development  
Steve Bourgette, Police  
Adult Entertainment File



DATE: October 6, 1987

TO: Rob Odle, Senior Planner

FROM:   
Stephanie Brod, Legal Planner

SUBJECT: Adult Entertainment Issues

#### AMORTIZATION OF EXISTING ADULT USES

Although zoning regulations cannot be applied retroactively, the Courts have upheld amortization provisions for uses or structures which become non-conforming. These provisions permit the property owner to amortize for Federal income tax purposes the non-conforming use or structure for a specific period of time. At the end of that period, conformance with current codes or removal is required. The City of Bellevue initiated a nine year sign amortization program for signs over 14 years ago.

Some local jurisdictions have developed amortization programs for existing adult uses. These ordinances have been upheld by State and Federal Courts so long as the time requirements for conformance with new regulations are reasonable. See City of Vallejo vs. Adult Books 213 Cal. Rptr. 143 (1985) (Ordinance requiring compliance with distance requirements within one year upheld) People Tags, Inc. vs. Jackson County Legislature, 636 F. Supp. 1345 (W.D. Mo. 1936) (Court held that 120 day compliance period for meeting distance requirements is not reasonable regulation.)

Although an amortization program is a viable option, staff does not recommend initiating such a program. The existing adult uses in Bellevue are not located such that they create adverse impacts to surrounding uses. It is important to note that an amortization program would not eliminate these uses but merely require them to relocate to a location which meets the zoning and distance and other land use requirements. In addition, the City staff have had difficulty in administering the sign amortization program. Although an amortization program for adult uses would not be as administratively burdensome as the sign program, the Planning Commission needs to determine whether such a program will accomplish the desired results.

#### CONDITIONAL USE REQUIREMENTS FOR ADULT USES

An alternative approach to outright permitting adult uses with specific distance and other dimensional requirements could involve conditional use approval. This approval requires a public hearing before the Hearing Examiner and City Council Action. However, the current standards and decision criteria for conditional use approval (harmonious in character; not detrimental to neighboring uses or property, etc.) may be unconstitutionally vague when applied to Adult uses which have certain First Amendment protections.

A recent decision by the Maryland State Supreme Court upheld an ordinance which

Rob Odle

October 6, 1987

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required a conditional use permit for adult bookstores and establishments 5297 Pulaski Highway, Inc. vs. Town of Perryville, 519 A.2d 206 (1987). The specific decision criteria in the ordinance at issue included the following: nature of site, traffic, impairment of surrounding development, proximity of sensitive uses and possible deterioration of areas and neighborhoods. Other courts have rejected conditional use approval where the standards are too vague. See, Zebulon Enterprises, Inc. vs. County of DuPage, 496 NE 2nd 1236 (1986).

Staff does not recommend a conditional use approach which would involve the creation of new decision criteria. Distance and other dimensional requirements can be imposed without a cumbersome discretionary process. Design & Development Dept. currently reviews all business registration applications, tenant improvements, and building permits for compliance with land use regulations. Specific distance requirements could be imposed through various channels if adult uses are permitted outright.

SB:lab



## MEMORANDUM

PHONE: 2751  
DATE: October 6, 1987  
TO: Rob Odle, Planning  
FROM: Jim Turner, DDD *Jim Turner*  
SUBJECT: Regulations of Adult Entertainment Signs

The Planning Commission expressed interest in specific regulation of signs associated with adult entertainment uses. The following is a discussion of the constitutionality of regulation exceeding present regulation of Bellevue applicable to all uses.

At present, City of Bellevue does regulate to a certain extent the information which businesses may place on their signs. Building mounted signs in commercial districts are "limited in content and message to identifying the building and the name of the firm, or the major enterprise, and the principal product and/or service information." E.g., BCC 22D.10.030.E.2.b. Freestanding signs are somewhat more restricted, "A freestanding sign located between the property line and the building line shall be limited in content and message to identification information only." E.g., BCC 22D.10.030.E.1.d. Even under these regulations, and under design review when applicable, an adult entertainment use could theoretically display text, symbols or pictures considered lurid. The code sections identified above would only limit the type of information provided to a certain extent, while design review would only limit to an extent the colors used in the sign or the materials used for the sign.

A few of our neighboring jurisdictions, Mercer Island, Bothell and Kirkland, specifically regulate signs for adult entertainment uses to "words only." For the reasons stated below, however, such regulation raises serious constitutional issues and are subject to invalidation.

A. Commercial Speech

All the signs of the type we are concerned with here are commercial in nature. Nevertheless, they are still protected by the same First Amendment guarantees as any other speech. Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council, 425 US 748, 48 L.Ed.2d 346, 96 S.Ct. 1817. (Commercial speech only loses its constitutional protection if it is misleading, false, or proposes an illegal transaction.) Consequently, the fact that Bellevue is contemplating the regulation of advertisement for adult entertainment does not exempt the City from constitutional limitation on such regulation.

## B. Regulation of Speech

The general constitutional restriction applicable to "content-neutral" regulation of speech is stated as follows:

[A] government regulation is sufficiently justified if it is within the constitutional power of the government; it furthers an important or substantial governmental interest; if a governmental interest is unrelated to the suppression of free expression; and if the incidental restriction on alleged First Amendment freedoms is no greater than is essential to the furtherance of that interest.

United States v. O'Brien, 391 US 367, 377, 20 L.Ed.2d 672, 88 S.Ct. 1673 (1968). Thus, even if Bellevue desired to restrict all signs within the city to words only, the City would have to exhibit: (1) a substantial government interest in doing so, (2) that its reason for doing so was not to suppress free expression, and (3) that restriction of signs to words only was no greater regulation than necessary to further the substantial interest sought to be obtained.

That same limitation applies to Bellevue's Sign Code as it exists presently, and although our present sign code has yet to be tested, it would probably withstand constitutional scrutiny. The real issue here is one of degree: How important is the governmental interest, and how restrictive is the regulation? Or, stated another way: Are there adequate alternative modes of communication? See e.g., City Council v. Taxpayers For Vincent, 466 US 789, 80 L.Ed.2d 772, 104 S.Ct. 2118 (1984). The Supreme Court has answered the latter question in the affirmative when it upheld the prohibition of certain types of billboards, Metro Media, Inc. v. San Diego, 453 US 490, 69 L.Ed.2d 800, 101 S.Ct. 2882 (1981), and a prohibition of a posting of signs on public property, City Council v. Taxpayers For Vincent, supra. My sense is that in our case, a general restriction of signs to words only could go either way.

## C. Equal Protection

Unfortunately, constitutional protection of free speech is not the only hurdle facing the regulation of adult entertainment signage. If, as some of our neighboring jurisdictions have done, Bellevue applied a words only regulation to adult entertainment enterprises alone, the regulation could be effectively challenged under the doctrine of equal protection. The courts have always recognized that governments must necessarily involve themselves with line drawing when enacting regulations. Consequently, the Fourteenth Amendment Equal Protection Clause generally requires only that governments have a rational reason for differentiating some of the public different from the rest. However, when "fundamental rights" are subject to dissimilar regulation, the courts subject such regulation to "strict scrutiny." Under that strict scrutiny, the Court requires that (1) the government have a compelling interest in discriminating in its regulation,

(2) that compelling interest must be directly advanced by the regulation, and (3) that regulation must be the least restrictive means available for accomplishing that compelling interest. See e.g., Dunn v. Blumstein, 405 US 330, 31 L.Ed.2d 274, 92 S.Ct. 995.

In the present situation, the fundamental right impinged upon by the proposed regulation is freedom of speech. Consequently, by singling out adult entertainment enterprises for special treatment with regard to signage, the City of Bellevue subjects itself to strict scrutiny. Thus, the City will be required to exhibit a compelling government interest for limiting adult entertainment signs to words only. Similarly, the City will be required to justify how restricting signs to words will directly advance that compelling interest in the least restrictive means possible.

Although the courts have been reasonably tolerant in their attitude towards restrictions of the time, manner or place of speech when generally applied, restrictions discriminating between types of speech are viewed with suspicion. According to the Court, in the case of Erznoznik v. City of Jacksonville, 422 US 205, 45 L.Ed.2d 125, 95 S.Ct. 2268 (1975), "Such selective restrictions have been upheld only when the speaker intrudes on the privacy of the home, or the degree of captivity makes it impractical for the unwilling viewer or auditor to avoid exposure." Id., 422 US at 209 (citations omitted). At issue in Erznoznik, was an ordinance prohibiting exhibition of movies displaying nudity within public view (i.e., drive-ins). The Court struck down the ordinance. Likewise, in the case of Police Department of Chicago v. Mosley, 408 US 92, 33 L.Ed.2d 212 92 S.Ct. 2286 (1972), the Court struck down an ordinance which prohibited picketing for any purpose other than for a labor dispute. The Court held the ordinance to be an impermissible discriminatory restriction of free speech.

Contrastingly, in a case involving adult entertainment sign regulation, the Fifth Circuit Appellate Court implied that a Bellevue ordinance more restrictively regulating adult entertainment signage might receive favorable treatment in the courts. In the case of Baslardanes v. City of Galveston, 682 F.2d 1203 (Fifth Circuit 1982), the Court considered an ordinance totally banning any signage for adult entertainment uses. As could be expected, the Courts struck down that portion of the ordinance. However, in its discussion the Court indicated that the city's interest in restricting such signage was "both strong and legitimate," but that the regulation failed to serve that interest narrowly. Id. at 219. It should be noted, however, that in its reference to the city's legitimate interest, the Court cited two cases which stand for the proposition that materials which are unprotected as to minors may be regulated. In my opinion, although the City of Bellevue (were it not for Washington's preemption doctrine) could easily prohibit signage considered harmful to minors under a test similar to that found in RCW 9.68.050, there have been no cases which establish legitimacy of a general restriction on adult entertainment signage which does not sink to the level of "harmful to

minors." Consequently, I do not feel that the cases cited in the Basiardanes case justify the Court's conclusion therein that the city had a legitimate interest in broadly regulating the signage of adult entertainment facilities.

D. Conclusion

Despite adult entertainment signs commercial nature, as long as such signs are neither false, misleading nor proposing an illegal transaction, they are privy to the same constitutional protection as any other speech. Under that protection, any regulation of such signage would have to directly advance a substantial legitimate interest of the City of Bellevue. More importantly, in singling out adult entertainment uses for more restrictive signage regulations, the City would have to show a compelling legitimate governmental interest for doing so that is directly advanced by the most least restrictive means available. Given the Courts' very strict view of such discriminatory regulations of speech, it is my opinion that such regulation would be struck down as inviolative of the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution.

Date: October 29, 1987  
To: Planning Commission Members  
From: RGO Robert G. Odle, Senior Planner  
Subject: Regulations for the Location of Adult Entertainment Uses

In preparing the draft ordinance for the Adult Entertainment Location regulations, staff became concerned over two primary issues which we felt warranted further discussion by the Planning Commission before completing the draft ordinance. While this discussion will cause a delay to the hearing schedule, we felt that a further discussion would produce a significantly better ordinance for the public hearing.

The first concern involves the Conditional Use Permit provision. The decisional criteria for a Conditional Use Permit are as follows:

20.30B.140 Decision Criteria: The City may approve or approve with modification an application for a Conditional Use Permit if...

- A. The conditional use is harmonious and appropriate in design, character and appearance with the existing or intended character and quality of development in the immediate vicinity of the subject property and with the physical characteristics of the subject property; and
- B. The conditional use will be served by adequate public facilities including streets, fire protection, water, storm water control and sanitary sewer; and
- C. The conditional use will not be materially detrimental to uses or property in the immediate vicinity of the subject property; and
- D. The conditional use has merit and value for the community as a whole; and
- E. The conditional use is in accord with the Comprehensive Plan; and
- F. The conditional use complies with the Land Use Code requirements of the underlying use district; and
- G. The conditional use complies with all other applicable criteria and standards of the Bellevue City Code.

REVISED  
BIBLIOGRAPHY  
ON  
REGULATING THE  
LOCATION OF  
ADULT ENTERTAINMENT USES

CITY OF BELLEVUE  
NOVEMBER 1987

Staff is concerned that these criteria could not specifically address the secondary effects that you wish to mitigate. Two solutions to this situation exist: 1) to write a new set of specific decisional criteria just for adult entertainment uses, or 2) incorporate the specific criteria standards into specific requirements for all adult uses and dispense with the Conditional Use Permit process. Staff seeks directions from you as to specific secondary effects and the types of specific regulations that you wish to include (i.e., to mitigate crime, hours of operation may be limited or parking lots lighted).

The second issue concerns the provisions that would classify any video store as adult retail if the tapes were not segregated. The questions that we need answers to are:

- o What is considered segregation?
- o Are just video stores to be regulated or any store that rents videos, (i.e., Safeway or 7-11)?
- o Are video tapes the only article to be regulated in this manner (i.e., periodicals or books)?
- o What are the secondary effects that would be mitigated by such a regulation?

As you review each of the above questions, I believe you will see the complexity that such a regulation creates.

At next Wednesday's meeting (November 4th) Stephanie Brod, Rick Kirkby and I will be present to review these issues as well as the overall regulations with you. Should you have any concerns or questions in the interim please contact me at 455-6880.

RG0:jb

cc: Karlie Jorgensen, Legal  
Rick Kirkby, Legal  
Stephanie Brod, Design & Development  
Jim Turner, Design & Development  
Steve Bourgette, Police  
Adult Entertainment File

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- RCW 9.68 - Obscenity and Pornography
- RCW 9.68A - Sexual Exploitation Of Children
- RCW 67.12 - Dancing And Dance Halls - Billiards, Pool and Bowling
- BCC 5.06 - Public Dances And Dance Halls
- BCC 5.08 - Cabarets
- BCC 5.28 - Massage Parlors And Public Bath Houses
- BCC 5.44 - Panaram Devices

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- Everett - Recommendations on regulating mechanisms available to deal with the issue of Adult Uses, Planning Commission minutes, November 13, 1984.
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- Kent - Adult Use Zoning Study, November 1982.
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Also, there are copies of Adult Entertainment Use Regulations from the following cities: Detroit, Michigan; Duluth, Minn.; Inkster, Michigan; Melvindale, Michigan; Oak Park, Michigan; Peoria, Ill.; San Bernardino, CA.; Tucson, Arizona; Wayne, Michigan and Wyoming, Michigan.

Correspondence

- Monique Roggenkamp to the Bellevue City Council - April 14, 1987
- Monique Roggenkamp to the Bellevue City Council - May 13, 1987
- Gerald John Sheehan to Sandra Korbek (Planning) - June 9, 1987
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- Chief Harris to Terence P. Lukens - Spetember 10, 1987
- Chief Wallis to Terence P. Lukens - September 9, 1987
- Andrea K. Vangor to Robert G. Odle (Planning) - October 14, 1987
- David Schooler to Terry Lukens - October 23, 1987

Other References

The current file also contains numerous newspaper articles on Adult Entertainment regulations in the region. There are also many summaries of recent court decisions as concerns adult entertainment.

3716g

CITY OF BELLEVUE  
CITY COUNCIL

Summary Minutes of Study Session

February 8, 1988  
6:00 p.m.

Council Conference Room  
Bellevue, Washington

PRESENT: Mayor Campbell, Mayor pro tem MacKenzie,  
Councilmembers Carpenter, Davidson, Lukens,  
and Van Blaricom

ABSENT: Mr. Bozeman

The meeting was called to order at 6:07 p.m. by Mayor Campbell, who presided.

1. Study Session Items

(a) Easy Ride Program

Bruce Freeland, Planning Director, noted this is one element of the City's efforts to deal with transportation and traffic problems. He introduced Kay Kenyon, Planning Department, who provided an overview of the Easy Ride Program, a two-year ride-sharing and transit marketing project targetted at suburban office buildings. It focuses on the Bellefield/City Hall area and the I-90 corridor area.

Ms. Kenyon described the program features that have been added to METRO's basic program, including the hiring of transportation coordinators, provision of incentives and Guaranteed Ride Home program (which has only been used once to date), marketing efforts, and evaluation procedures. The evaluation component will be handled by an outside consultant. Continuing, she outlined the goals of the program, including a 5% improvement in commuter use of carpools, vanpools and transit and described the activity that has occurred to date.

Responding to Mrs. Carpenter, Ms. Kenyon said the two-year budget for the program is \$220,000.

Responding to Mr. Lukens, Ms. Kenyon described the events of the Transportation Fair, with 500 people attending over a three-day period.

Responding again to Mr. Lukens, Ms. Kenyon explained that the vanpool discounts have not been offered in the Bellefield area, which seems to make a difference in the success of the programs, although it is too early to draw firm conclusions.

Ms. Kenyon explained why the performance objectives at City Hall were set quite high and why implementation of the incentive program has taken longer than expected.

Mr. MacKenzie commented he will want to see figures on the cost-effectiveness of the program at its conclusion. He also raised the issue of the flextime approach, which Ms. Kenyon said has not been marketed extensively at this point but will be an area of emphasis in the next quarter.

Mr. Freeland concluded the discussion by noting the Planning Commission had asked staff to investigate the possibility of an ordinance requiring transportation management programs at existing firms. He said staff has done some research, but it appears there is probably not a legal way to put requirements on existing businesses to mandate such programs. He responded to Mayor pro tem MacKenzie by noting that staff is also interested in the cost-effectiveness of this experimental program, and this will be analyzed carefully when the program is completed.

Mayor Campbell commented that METRO is working on the same issues, and Mr. Freeland stated the City is using materials from all sources, and Bellevue should be on the forefront of research on ride-sharing.

- (b) Proposal A: Ordinance relating to the zoning of adult entertainment land uses; amending sections 20.10.440, 20.50.010, 20.50.044 and 20.50.046 of the Bellevue City Code (Land Use Code); and adding a new section 20.20.127 to chapter 20.20 of the Bellevue City Code (Land Use Code).

Proposal B: Ordinance relating to the zoning of adult entertainment land uses; amending sections 20.10.440, 20.50.010, 20.50.044 and 20.50.046 of the Bellevue City Code (Land Use Code); and adding a new section 20.20.127 to chapter 20.20 of the Bellevue City Code (Land Use Code).

Proposal C: Ordinance relating to the zoning of adult entertainment land uses; amending sections 20.10.440, 20.50.010, 20.50.034, 20.50.044 and 20.50.046 of the Bellevue City Code (Land Use Code); and adding a new section 20.20.127 to chapter 20.20 of the Bellevue City Code (Land Use Code).

Mr. Freeland explained that staff believes that Proposal C addresses the concerns raised earlier by the Council. It creates a distance requirement between massage parlors and adult uses rather than treating massage parlors as if they were adult uses. He said the Planning Commission feels this is a good compromise, but wishes to drop the word "motel" from the list of exceptions. Staff recommends that motels be retained in the ordinance.

Mr. Freeland explained the distinction between the three proposals, noting that Proposal "C" would not restrict the location of massage parlors, except that a new massage parlor could not locate within 600 feet of an adult use, thereby preventing the clustering of massage parlors in association with an adult use.

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Mr. Van Blaricom commented this is a good compromise and moved Proposal "C" be brought forward for Council action next week. Mrs. Carpenter seconded the motion, which carried 6 - 0.

(c) Civic Center Discussion

Pam Bissonnette, Assistant City Manager, introduced Ken Johnson, the project manager, who explained that staff needs Council direction on what should be in the project, what the phasing should be, and what public process should be implemented. He briefly recapped the evolution of the project, noting the technical work done to date was structured so that if the arena component was dropped the information would still be valid.

Continuing, Mr. Johnson emphasized that the site under consideration was identified in the Comprehensive Plan in 1979, as an area of opportunity for a civic center. He explained how the performing arts center was added to the concept of a convention center and parking. He described the studies done to identify the market for a convention center, including a survey of meeting planners. He reviewed the projections for 1990 and 1995 for four main types of markets for a convention center: 1) typical conventions; 2) trade shows; 3) consumer shows; and 4) local community (and School District) activities.

Mr. Johnson noted that without the arena, the question of management options for the convention center remains to be discussed, but staff feels it is appropriate to move forward on a preliminary design. He added the parking garage would not operate in the black for quite some time. In addition, there are still questions about the financing of a performing arts center. He commented the idea of a City Hall at the civic center came up at the end of last year. However, the City has an approved space plan so this would have to be reworked to consider this option.

Continuing, Mr. Johnson described a potential first phase: convention center, parking and a small theatre. Later phases would need more technical work, municipal garage, full performing arts center, city hall or library. Mr. Johnson used overlays to demonstrate how the elements might fit together and how the phasing might occur. He emphasized the importance of a capability for growth and noted this is only a generic layout, depending on property availability.

Mr. Johnson then outlined the three options in public process, which can address either the first phase project proposal and/or future elements. He said staff recommends the following:

- 1) reaffirm the site on the east end of 6th St;
- 2) approve a phased approach;
- 3) preliminary approval of Phase 1 (convention center, parking and small theatre) with EIS to start in April;
- 4) public input on future phases before final action on Phase 1;
- 5) schedule public hearing in March;
- 6) approve budget to carry out work through April.

He said the staff would define the project in more detail; prepare public information materials; hold community meetings; arrange for a public hearing; appoint a technical advisory committee reporting to the City Manager; prepare a refined budget; and continue property negotiations.

Ms. Bissonnette reviewed the budget as outlined in the materials, noting that in August, 1987 the Council approved a budget of \$500,000. She said this budget is a reorientation of the previous budget. She outlined the figures as follows:

Public Process	\$ 8,000
Project Management	26,000
Financial Studies	15,000
Architectural	10,000
Prop. negotiations	26,000
Travel	5,000
Perf. Arts Consulting	10,000
Parking	7,000
Env. Review	150,000
Outst. Encumbrances	19,000
Expended 1/4/88	164,000
Contingency	<u>60,000</u>
TOTAL	\$500,000

Ms. Bissonnette noted that \$60,000 had been approved in 1986 to fund the majority of the Eastside Performing Arts Center Study. She said the Environmental Review would wait until after the public hearing and Council approval to proceed, but other information is needed to prepare for the public hearing, necessitating certain expenditures now.

After Mrs. Carpenter emphasized that this money comes from the hotel/motel tax, not general funds, Mr. Kushlan explained the two sources of funding, the 2% tax which comes from the State sales tax and can be spent for convention centers, promotion of tourism, performing arts center, stadiums, etc., and the authorization under the State Trade and Convention Center funding which has a maximum levy of 3%. This must be spent solely for construction of trade and convention facilities. A performing arts center cannot be funded through this source. Council levied 2.8% of this 3% authority as of January 1, 1988.

Responding to Mayor Campbell, Mr. Kushlan said these sources cannot "go away over night, but they can go away". The 2% authority would disappear upon paying off the current outstanding bonds for the purchase of the convention center site north of City Hall. The State could also legislate away the other funding source.

Mr. Van Blaricom commented the 2.8% tax was enacted at the request of the hotel/motel industry. Furthermore, the people who pay these taxes are not Bellevue residents but visitors to the City.

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Mayor pro tem MacKenzie observed that he opposed the taxation of others as much as the taxation of local citizens. He felt "we should always be guilty about taxing the public".

Mrs. Carpenter thanked the Ad Hoc Committee for its emphasis on the public process and noted her concern that the public needs to be heard from on this issue.

Responding to Mrs. Carpenter, Mr. Kushlan explained the land currently an asset to the convention center fund is not appropriate for a convention center because it is lacking in proximity to hotels and freeways and is significantly impacted by wetlands. Therefore, it is not suitable for the construction of a facility with a large, flat floor space. This property was purchased in 1977 and in 1979 the Comprehensive Plan identified the current site as an appropriate location for a civic center.

Mr. Van Blaricom noted the property was not purchased as a convention site but in order to encumber the 2% tax before the Legislature took it away.

Responding to Mrs. Carpenter's question about how the City Hall was foisted into the proposal, Ms. Bissonnette noted the Facilities Study projected the need for City Hall space. Buying the Whirlpool Building acknowledged the necessity for a new City Hall, or additional space for City offices. He pointed out that this is a special opportunity area set aside for government offices, among other things.

Mrs. Carpenter said adding the City Hall "muddies the waters" and adds another dimension to an already controversial topic.

Mayor pro tem MacKenzie commented that the Municipal Facilities Study had never been accepted by the Council and there is no formal financial plan for Municipal Facilities. He felt this would be necessary before a decision about a City Hall could be made.

Mr. Van Blaricom added that the current City Hall was built as a "spec building" which the City was going to sell. He noted he had commented on the possibility of a City Hall at the civic center site to a reporter and the information was reported the next day in the newspaper.

Mrs. Carpenter recommended that the City Manager's advisory group have some citizens on it, to bring a different perspective to the project, and the City Manager agreed, noting the School District could also be represented on such a committee.

Mrs. Carpenter expressed the general concern that this project will generate new jobs, but the increase in this industry will include many minimum wage jobs, which can increase human service needs in the long run.

Mayor pro tem MacKenzie said the State of Washington does need jobs, but Bellevue is a net importer of workers and does not need more jobs.

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Mayor Campbell shared the concern about jobs and wages, but noted part of the revenues will be brought in by attendees and the money generated by the sales tax supports the Capital Improvement Program.

Mr. Lukens asked how the projections on convention center usage were obtained and how realistic they are.

Mr. Johnson explained how the market was surveyed and growth projections were made based on the consultants' professional judgment. The figures came out that about 15% of the market share per year in Washington would go to a Bellevue convention center. He said this is a conservative estimate in his view, but Mr. Lukens stated that the figures should be refined as the process proceeds.

Responding to Mr. Lukens, Ms. Bissonnette said about \$100,000 would have to be spent before April. Mr. Johnson added this is a potential figure which provides staff with the flexibility to get the necessary information.

Mr. Lukens recommended that only as much money be spent as needed to give the public a good idea about the proposal and so the Council can make a meaningful decision. He added that he had heard comments that a 500-seat theatre would be too small. He felt this should be analyzed further.

Ms. Bissonnette said the performing arts consultant would provide information on what size of theatre would be usable, and Mr. Kushlan said this size was chosen as what could be built with convention center fund resources. A bigger theatre would require additional funding sources.

Mr. Lukens commented that he felt it was the Council's intent to "carry out a public process to review all phases of the Civic Center", rather than "additional" phases as stated on page 47 of the packet.

Mayor Campbell stated that the public and the advisory committee input will help Council determine a viable size for the theatre. She added that perhaps the City can work with the School District to serve the public's needs in terms of a community theatre.

Responding to Mayor pro tem MacKenzie, Mr. Kushlan said this budget is developed to provide the public and the Council with the necessary baseline information. He listed the following elements as necessary: public information, project management, financial studies, architectural work to develop a design, property negotiations, and performing arts information.

Ms. Bissonnette noted that \$100,000 would not be spent in the few weeks before the public information is sent out, but many allocations would be encumbered through contracts.

Mayor pro tem MacKenzie felt the only things needed for the hearing would be items that could be finished prior to the hearing.

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Mrs. Carpenter emphasized that staff time should not be involved, and she was pleased at the use of Mr. Johnson as the outside project manager.

Mayor pro tem MacKenzie noted that last year it was put forward that the arena was necessary to the project, but Mr. Johnson responded the earlier proposal contained a municipal parking garage. This new one is scaled down to accommodate the loss of the arena. The financial study is needed to verify the viability of the new project.

Mrs. Carpenter also emphasized the importance of the financial study, because she opposed funding this project from operating budget funds.

Mr. Johnson said he would also like the preliminary cost estimates to be rechecked, but Mayor pro tem MacKenzie felt this proposal shows the "de-economy of de-scaling". He said the capital costs were not included in the original proposal, and the project will ultimately be a drain on the general funding. He opposed any option other than Option C.

Continuing, Mayor pro tem MacKenzie expressed his view that decisions are being made incrementally and the City is moving forward beyond what the process indicates. He commented on discussions in Executive Session and Council comments on these discussions as reported in the Journal American. He said he would vote against taking an option on the property because the City is guilty of "incrementalism". He hoped that logic and the public interest prevails, as it did with the arena proposal.

Mr. Van Blaricom shared a concern about the appropriate size of the theatre. He felt the public process will show enthusiasm or lack of enthusiasm for various components of the project. He mentioned a dual-use facility in Pasadena and hoped this option would be examined. He favored Option B in order to be ready for a regional entertainment bond, and emphasized the \$500,000 has already been collected and set aside and cannot be used for any other purpose.

Mr. Van Blaricom moved staff recommendation of Option B that "allows Phase 1 reviews to be completed in 1988. In addition, the review of potential future phases is set in time to facilitate coordination and adjustment to Phase 1 actions as appropriate". Dr. Davidson seconded the motion.

Mayor Campbell noted a lack of enthusiasm for this project in 1982, when there was no support by the hotel/motel industry. She felt now the time may be right, but more information is necessary to make a decision. Therefore, she supported the motion.

Mayor pro tem MacKenzie said in his view the hotel/motel industry representatives support the project because they know it won't make a profit or break-even. Otherwise, they would work together and do it themselves.

Mayor pro tem MacKenzie made a substitute motion to adopt Option C, which would put all elements on the table, including initial phasing and future phasing. Mrs. Carpenter seconded the motion.

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Mayor pro tem MacKenzie said they would only have to wait two months to hear from the public. He agreed some money could be spent to do what is necessary to bring the public up to speed.

Mr. Johnson clarified both options have the same process, but the difference is with the full menu of options under discussion, the issue may be too broad. He felt there is enough technical work completed to propose Phase 1, so the public can be focused.

Mr. Kushlan added the Phase 1 recommendation focuses on the elements which can be paid for through the convention center funds. Other phases have no resources at this point for funding.

Mrs. Carpenter said she is uncomfortable with giving the perception Council is "on a path". She clarified that public hearing input could convince the Council not to proceed on this project. She reiterated that she wants to hear from the public.

Mr. Lukens agreed it is important to proceed quickly with the public process. He said Option B brings forward a tangible proposal for discussion, but he felt the less money spent, the better. He questioned the timing of the public hearing and felt perhaps it should be moved back to allow staff time to provide meaningful information.

Mayor Campbell supported Option B because these components have the most possible chance of success.

There was Council concurrence that staff should evaluate the timeline for the public hearing.

A vote was taken on the substitute motion to support Option C. It failed by a vote of 1 - 5, with Mayor pro tem MacKenzie voting in the affirmative.

A vote was taken on the original motion to support Option B, which carried 5 - 1, with Mayor pro tem MacKenzie dissenting.

Mr. Van Blaricom moved to approve staff's recommended budget with the caveat that no more be spent unnecessarily up front than that which is necessary to allow the public to be well-informed on the options. Mr. Lukens seconded the motion, which carried 6 - 0. Mayor pro tem MacKenzie noted he always votes to implement Council policies once decided.

## 2. Discussion of Upcoming Items

- (a) Ordinance approving and confirming the final assessment roll of Local Improvement District No. 269 which has been created and established for the purpose of widening 116th Avenue N.E. from four to five lanes from N.E. 8th Street to N.E. 12th Street; PW-R-15.

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- (b) Ordinance approving and confirming the final assessment roll of Local Improvement District No. 279 which has been created and established for the purpose of widening N.E. 33rd Place from two to three lanes from Northup Way to N.E. 33rd Street; PW-R-42.

Clark Douglas, Assistant Director of Public Works, noted communications from five property owners on LID 269. The objections of three of them require additional research. If the property owners are right, the hearing will need to be continued, he reported.

ADJOURNMENT

At 8:00 p.m. Mayor Campbell declared the Study Session adjourned.

*Sharon Mattioli*

Sharon Mattioli  
Deputy City Clerk

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CITY OF BELLEVUE  
CITY COUNCIL

Summary Minutes of Regular Session

Tuesday, February 16, 1988  
8:00 p.m.

Council Chambers  
Bellevue, Washington

PRESENT: Mayor Campbell, Mayor pro tem MacKenzie,  
Councilmembers Bozeman, Carpenter, Davidson,  
and Lukens

ABSENT: Councilman  
Van Blaricom

1. Call to Order

Mayor Campbell opened the meeting and called it to order at 8:00 p.m.

2. Roll Call and Flag Salute

Upon roll call by the City Clerk, all Councilmembers were present except for Councilman Van Blaricom.

Dr. Davidson led the flag salute.

Mayor Campbell presented awards to citizens who were the primary organizers of the annexations in their respective neighborhoods:

Stephen Critchlow - Horizon Heights Neighborhood  
Joseph Brown - Collingwood Neighborhood  
Carole Ann Milton - The Heights Neighborhood  
Judith Louisell - Whispering Heights Neighborhood

Mayor Campbell expressed the Council's appreciation of citizens' support.

3. Communications: Written and Oral

(a) Bonnie Buzell, 4479 - 141st Avenue SE, Bellevue, stated her position against Bellevue's proposed begging laws. Ms. Buzell said, in her opinion, the law is aggressive and could invite harassment of or by police officers. Councilman MacKenzie asked for a staff report on the City of Seattle's recent ordinance addressing begging laws.

(b) Ted Youngs, 10014 SE 16th Street, Bellevue, also stated his opposition to the proposed begging laws. He proposed that the City pursue more positive solutions to the begging problem, e.g., more social services or shelters.

(c) Lowell Erickson, 112 - 111th SE, Bellevue, supported the acquisition of sports facilities for the 13 - 17 year old age group. Mr. Erickson presented a report to the Council outlining a facilities study. He thought quality programs for teens could prevent community problems and are a critical need.

(d) Joe Velikonja, 9713 NE 13th Street, Bellevue, inquired about the location of a power box near the elm trees at the Downtown Park. He also requested the City to respond in writing regarding the status of the Downtown Park financing.

#### 4. Reports of Community Councils, Boards and Commissions

(a) Bill Halgren, Chairman of the East Bellevue Community Council, thanked the Council for their support to the Community Council on issues of concern.

#### 5. Report of City Manager

Pam Bissonette, Assistant City Manager, requested the Council amend its rules in order to consider the Forest Park Estate project at the February 22, 1988 Council meeting with action to be taken at the February 29 meeting, because of a hardship to the applicant.

Mr. MacKenzie requested a response to Mr. Velikonja's request.

#### 6. Approval of the Agenda

Dr. Davidson moved for the approval of the agenda. Mrs. Carpenter seconded the motion.

Mayor Campbell requested the addition under "New Business" of "Appointments to Planning Commission and Park Board" as Agenda Item 14(a), and "Council Liaison Assignments" as 14(b).

Dr. Davidson moved to approve the agenda and Mrs. Carpenter seconded the motion.

At the City Manager's request, there was a Council consensus to add the following items, in addition to Mayor Campbell's request: a) closure of 153rd Avenue NE under "Unfinished Business"; and b) natural determinants regulations under "New Business". A vote was taken on the motion, as amended, which carried 6 - 0.

#### 7. Consent Calendar

Dr. Davidson moved approval of the Consent Calendar. Mr. Lukens seconded the motion. Mr. Lukens requested that Agenda Item 7(b) be postponed. A vote was taken to adopt the Consent Calendar, as amended, which carried 6 - 0. The following Consent Calendar items were approved:

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Minutes of February 5 and 6 Council Retreat  
 Minutes of February 8, 1988, Study Session  
 Minutes of February 8, 1988, Regular Session

Resolution No. 4973, authorizing execution of a Service Contract between the City of Bellevue and Youth Eastside Services for counseling and other services at Crossroads Center.

Resolution No. 4974, authorizing the acquisition of Parcel No. PW-S 1929 in fee simple from C. Allen Benedict as part of the N.E. 4th Street project.

Resolution No. 4975, authorizing the execution of a Real Estate Contract between the City of Bellevue and Basil and Ruth Denaxas for the sale of a portion of City property known as Parcel No. PW-S 1946 on the N.E. 4th Street project.

Resolution No. 4976, authorizing approval and acceptance of a Deed of Dedication for Right-of-Way from Bannerwood Investors to the City of Bellevue for the development of Bannerwood Office Park.

#### 8. Public Hearing

- (a) C.I.P. No. PW-R-15: Public hearing on ordinance approving and confirming the final assessment roll of Local Improvement District No. 269 which has been created and established for street improvements to 116th Avenue N.E. from N.E. 8th Street to N.E. 12th Street.

Ordinance No. 3882, approving and confirming the final assessment roll for street improvements to 116th Avenue N.E. from N.E. 8th Street to N.E. 12th Street for L.I.D. 269.

Dr. Davidson disqualified himself from participating in discussion of this issue due to his previous position on the Board of Trustees at Overlake Memorial Hospital. At this point Dr. Davidson left the Council table.

Clark Douglas, Assistant Public Works Director, explained the background and summarized the content of the assessment roll. He said changes to the assessment roll would be made at another hearing, tentatively scheduled for March 21, 1988.

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Mr. Douglas then outlined the six written protests received and gave the staff recommendations for each:

(1) Best Products Co., Inc. took issue with the City's traffic counts, stating that their counts were lower than the City's. They also stated they have a secondary access onto NE 8th Street which does not show on the map and should receive recognition. Mr. Douglas agreed that their issue needs further exploration by the staff.

(2) In response to the question of parcel size for the Dana Martin parcels, #9 and #11, Mr. Douglas stated that the building size and land size were entered incorrectly and an appropriate correction would be made to the assessment roll.

(3) Referring to the handout, Mr. Douglas pointed to the Family Medical Center parcel and explained it is assessed at the general medical rate of approximately 54 trips per 1,000 square feet. The Family Medical Center asserted that the calculation should be reassessed and Mr. Douglas agreed to review the issue.

(4) Referring to the Robert Hall parcel, Mr. Douglas agreed there is need for adjustment of the assessment, though the building is located in a medical community.

(5) In response to the Overlake Hospital Medical Center parcel, Mr. Douglas explained that the triangle being assessed is actually a parking lot rather than a vacant lot as originally assessed. Trips coming off a parking lot should not be assessed, he continued, and therefore a correction would be made.

(6) Regarding parcel #39, Mr. Douglas said the trip count would be reassessed due to the building size being smaller than originally calculated.

Mr. Douglas recommended that the money be redistributed, as all the uses on the site are benefited by the work being done.

In answer to a question from Mr. MacKenzie regarding trip generation rates, Mr. Douglas said the average trip rate for the existing use of the property was used. He continued that the rates assessed for 116th Avenue NE were different than those that would be used for the downtown area. In response to another question from Mr. MacKenzie regarding assessments to undeveloped property, Mr. Douglas said the zoning code lot coverage would be applied to determine what kind of uses were in the area.

Upon motion by Mr. MacKenzie, seconded by Mr. Lukens, and carried 6 - 0, Mayor Campbell opened the public hearing.

(1) Ken Smith, District Operations Manager of Best Products Co., Inc., Bellevue, thanked the City for acknowledging the secondary access onto NE 8th Street. He requested reconsideration of the trip count and the amount

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of assessment. He urged the re-review of the documentation provided by Transportation, Planning and Engineering and requested that their reassessment of the trip generation be stated in the public record.

(2) Lynn Hall, 1406 - 116th Avenue NE, Bellevue, spoke regarding parcel #24. She said that parcel #24 owns no property on 116th Avenue NE, yet the property is being assessed as if the access is solely from 116th. Parcel #24 fronts NE 12th Street, its main entrance is on NE 12th, and the building is situated to face NE 12th.

Mrs. Hall also gave background on the reciprocal agreement with the Bellevue Clinic to share access onto NE 12th. She further stated that her property is being assessed at a rate close to that of the Bellevue Clinic, though they maintain primary access. She has requested a reassessment from the Public Works Department and has not received it to date.

In follow-up correspondence, the City claimed their primary access is onto 116th, which is false, she stated. Mrs. Hall said the building and its usage were incorrectly assessed due to its low occupancy and type of usage.

In conclusion, Mrs. Hall stated that the parcel's property value has decreased because of limited access to Overlake Hospital.

(3) Victor Albino, representing Overlake Hospital, concurred with remarks made earlier by Mr. Douglas. He reemphasized that parcel #27 is a parking lot and needs to be maintained as such. He further stated that a 48,000 square foot building would not be constructed on the lot, because of the critical need for parking space.

Clark Douglas commented on Mrs. Hall's parcel assessment and clarified that it was a difficult one to evaluate.

Mrs. Hall commented on the access to NE 12th Street and the granting of an easement with the Bellevue Clinic, for the purpose of a parking garage addition and access to NE 12th from their property.

Mayor Campbell reaffirmed Mr. Douglas' recommendation to recalculate the assessment figures and notify the property owners. Mr. Douglas stated that there would be a second hearing on March 21, 1988 and notices would be sent.

Mr. Lukens moved to continue the hearing to the March 21, 1988 City Council meeting. Mr. Bozeman seconded the motion, which carried 5 - 0. Dr. Davidson returned to the Council table.

- (b) C.I.P. No. PW-R-42: Public hearing on ordinance approving and confirming the final assessment roll of Local Improvement District No. 279 which has been created and established for street improvements to N.E. 33rd Place from Northup Way to N.E. 33rd Street.

Ordinance No. 3883, approving and confirming the final assessment roll for street improvements to N.E. 33rd Place from Northup Way to N.E. 33rd Street for L.I.D. 279.

Mr. Douglas requested the hearing be continued for two weeks due to a request from the largest developer being assessed. Mr. Douglas had advised the developer to recalculate their assessments, thus the need for continuing the hearing.

Mr. Bozeman moved to open the public hearing. Mrs. Carpenter seconded the motion, which carried 6 - 0.

Mr. Bozeman moved to continue the hearing for two weeks. Dr. Davidson seconded the motion, which carried 6 - 0.

9. Other Land Use Reports: None.

10. Other Ordinances, Resolutions and Motions

- (a) Ordinance No. 3884, relating to the zoning of adult entertainment land uses; amending Sections 20.10.440, 20.50.010, 20.50.034, 20.50.044 and 20.50.046 of the Bellevue City Code (Land Use Code); and adding a new section 20.20.127 to Chapter 20.20 of the Bellevue City Code (Land Use Code).

Mrs. Carpenter moved for the adoption of Ordinance No. 3884 and Mr. Lukens seconded the motion, which carried 6 - 0 and Ordinance No. 3884 was adopted.

11. Reports of Councilmembers: Mayor Campbell reported a recommendation of the Metro Transit Committee for chairman and committee appointments.

12. Unfinished Business

- (a) 1988 Council Priorities

Dr. Davidson moved for the adoption of 1988 Council priorities established at the Council retreat as outlined in the packet. Mrs. Carpenter seconded the motion, which carried 6 - 0.

- (b) Closure of 153rd Avenue NE

Mr. MacKenzie moved in support of the closure and Mr. Bozeman seconded the motion, which carried 6 - 0.

13. Continued Oral Communications: None.

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14. New Business

(a) Planning Commission Appointment

Dr. Davidson moved to appoint Harry Andresen to the Planning Commission. Mr. Lukens seconded the motion, which carried 6 - 0. Mayor Campbell confirmed Mr. Andresen's appointment.

(b) Park Board Appointment

Mr. Bozeman moved to appoint Lee Somerstein to fill the vacancy on the Park Board. The motion was seconded by Dr. Davidson, which carried 6 - 0. Mayor Campbell confirmed Mr. Somerstein's appointment.

(c) Council Liaison Appointments

Upon motion by Mrs. Carpenter, seconded by Dr. Davidson, and carried 6 - 0, the following Council Committee Liaison Appointments were confirmed by the Mayor:

Regional Issues Committee: Chair Don Davidson, Jean Carpenter, Nan Campbell.

Solid Waste Committee: Chair Don MacKenzie, Cary Bozeman, Jean Carpenter.

Civic Center Committee: Chair Don Van Blaricom, Terry Lukens, Nan Campbell.

Library Board: Jean Carpenter.

Planning Department, Planning Commission, and Human Services Commission: Terry Lukens.

Parks Department, Park Board, and Arts Commission: Cary Bozeman.

Finance Department: Don MacKenzie.

Design and Development Department: Don Van Blaricom.

Public Works and Utilities Department, Drainage Department, and SSWAC: Jean Carpenter.

Public Safety (Fire and Police): Don Davidson.

(d) Natural Determinants Regulations

Mr. MacKenzie moved to refer this issue to the Planning Commission to review the issues raised by the East Bellevue Community Council regarding the density allowed in some open use zones. He further requested changes to the code and a report back to the City Council as to whether or not the code as it is now drafted is appropriate. Mrs. Carpenter seconded the motion.

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Dr. Davidson requested a review of the minutes and moved to table the discussion for one week. Mr. Bozeman seconded the motion, which failed 3 - 3, with Mayor Campbell, Mrs. Carpenter, and Mr. Lukens dissenting.

Mr. Lukens then moved a substitute motion to refer the matter to the Planning Commission to review the history of the change to the code, consult with the Community Council, and report back to the Council on whether the Planning Commission thinks the code as it is now drafted is appropriate. Mr. Bozeman seconded the motion, which carried 5 - 1, with Dr. Davidson dissenting.

#### 15. Executive Session

At 9:12 p.m. Mayor Campbell announced that the Council would recess into Executive Session to discuss two matters of litigation and of property acquisition for 40 minutes. At 9:44 p.m. the Executive Session concluded and the regular session reconvened.

#### 16. Adjournment

At 9:45 p.m. Mayor Campbell declared the meeting adjourned.



Marie K. O'Connell, CMC  
City Clerk