

Article 36 Separation of Regulated Uses (City-wide)

Sections:

- 3601 Statement of Purpose
- 3602 Regulated Uses
- 3603 Definitions
- 3604 Locational Requirements
- 3605 Waiver of Locational Requirements
- 3606 Applicability of Other regulations
- 3607 Severance Clause

3601 Statement of Purpose

In the development and execution of this ordinance, it is recognized that there are certain land uses including adult oriented businesses and tattoo establishments which create conditions harmful to the public health, welfare, and safety when such uses are allowed to become numerous or concentrated within a limited geographical area, or when such uses exist near residential neighborhoods, family-oriented uses or sites commonly used by minors. Special regulations separating such uses from each other and from nearby residential areas, family-oriented uses, or sites commonly used by minors, are therefore necessary to protect the community from consequent blight, depreciated property values, law enforcement problems, and interference with residential neighborhoods as well as interference with activities oriented toward families or minors.

3601.1 Findings – Adult Oriented Businesses

- A. The City of Oceanside has certain provisions found in its Zoning Ordinance relating to locational criteria including zoning and buffer requirements for adult-oriented businesses that are in need of refinement. The City Council finds that it is necessary and appropriate to amend various provisions of the Zoning Ordinance to add, refine and update the provisions relating to planning and zoning standards for adult-oriented businesses operating within Oceanside. The public health, safety and welfare of the City and its residents require the enactment of this Ordinance in order to: (1) mitigate and reduce the judicially recognized potential adverse secondary effects of adult-oriented businesses, including but not limited to crime, the prevention of blight in neighborhoods and the increased threat of the spread of sexually transmitted diseases; (2) protect the quality of life and neighborhoods in the City, the City’s retail and commercial trade, and local property values, and minimize the potential for nuisances related to the operation of sexually oriented businesses; and (3) protect the peace, welfare and privacy of persons who own, operate and/or patronize sexually oriented businesses.
- B. The City Council finds that the revisions to the City’s Zoning Ordinance implemented by this Ordinance are necessary in order to respond to recent developments within the regulation of adult uses and case law and in order to protect the City from the potential

adverse secondary effects of adult-oriented businesses, including crime, the protection of the City's retail trade, maintenance of property values, protecting and preserving the quality of the City's neighborhoods and the City's commercial districts, and the protection of the City's quality of life, based on the referenced studies and the findings set forth herein. Specifically, the revisions and amendments to the City's Zoning Ordinance included in this Ordinance are essential and necessary to ensure the orderly land use regulation as to adult-oriented business uses within the City and thereby protect the public peace, safety and general welfare in the City of Oceanside.

- C. The City Council, in adopting this Ordinance, takes legislative notice of the existence and content of the following studies concerning the adverse secondary side effects of adult-oriented businesses in other cities: Austin, Texas (1986); Indianapolis, Indiana (1984); Garden Grove, California (1991); Seattle, Washington (1989); Houston, Texas (1997); Phoenix, Arizona (1979); Tucson, Arizona (1990); Chattanooga, Tennessee (2003); Los Angeles, California (1977); Whittier, California (1978); Spokane, Washington (2001); St. Cloud, Minnesota (1994); Littleton, Colorado (2004); Oklahoma City, Oklahoma (1986); Dallas, Texas (1997 and 2007); Ft. Worth, Texas (2004); Kennedale, Texas (2005); Greensboro, North Carolina (2003); Amarillo, Texas (1977); Cleveland, Ohio (1977); Newport News, Virginia (1996); Jackson County, Missouri (2008); Louisville, Kentucky (2004); New York, New York (1994); New York Times Square (1994); Beaumont, Texas (1982); the Report of the Attorney General's Working Group On The Regulation Of Sexually Oriented Businesses (June 6, 1989, State of Minnesota); A Methodological Critique of the Linz-Paul Report: A Report to the San Diego City Attorney's Office (2003); Summaries of Key Reports Concerning the Negative Secondary Effects of Sexually Oriented Businesses, by Louis Comus III (2001). The City Council finds that these studies are relevant to the problems addressed by the City in enacting this Ordinance to regulate the adverse secondary side effects of adult-oriented businesses, and more specifically finds that these studies provide convincing evidence that:
1. Adult-oriented businesses, as a category of uses, are associated with a wide variety of adverse secondary effects including, but not limited to, personal and property crimes, prostitution, potential spread of disease, lewdness, public indecency, obscenity, illicit drug use and drug trafficking, negative impacts on surrounding properties, urban blight, liner, traffic, noise, and sexual assault and exploitation.
 2. The studies from other cities establish by convincing evidence that adult-oriented businesses often have a deleterious effect on nearby businesses and residential areas, causing, among other adverse secondary effects, an increase in crime and a decrease in property values. Buffering and locational regulations for adult-oriented businesses should be developed to prevent deterioration and/or degradation of the vitality of the community before the problem exists, rather than waiting for problems to be created.
- D. In developing this Ordinance, the City Council is mindful of legal principles relating to regulation of adult-oriented businesses, and the City Council does not intend to suppress

or infringe upon any expressive activities protected by the First Amendment of the United States and California Constitutions but instead desires to enact reasonable time, place, and manner regulations that address the adverse secondary effects of adult-oriented businesses. The City Council takes legislative notice of the:

1. Decisions of the United States Supreme Court regarding local regulation of adult-oriented businesses including, but not limited to: *City of Littleton v. Z.J. Gifts D-4, L.L.C.*, 541 U.S. 774 (2004); *City of Los Angeles v. Alameda Books, Inc.*, 535 U.S. 425 (2002); *City of Erie v. Pap's A.M. ("Kandyland")*, 529 U.S. 277 (2000); *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986); *Young v. American Mini Theatres*, 427 U.S. 50 (1976); *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560 (1991); *California v. LaRue*, 409 U.S. 109 (1972); *N.Y. State Liquor Authority v. Bellanca*, 452 U.S. 714 (1981); *Sewell v. Georgia*, 435 U.S. 982 (1978); *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215 (1990); *City of Dallas v. Stanglin*, 490 U.S. 19 (1989).
2. Decisions of the Ninth Circuit Court of Appeals addressing adult-oriented businesses including but not limited to: *Alameda Books, Inc. v. City of Los Angeles*, 631 F.3d 1031 (9th Cir. 2011); *Fantasyland Video, Inc. v. County of San Diego*, 505 F.3d 996 (9th Cir. 2007); *Tollis, Inc. v. County of San Diego*, 505 F.3d 935 (9th Cir. 2007); *Gammoh v. City of La Habra*, 395 F.3d 1114 (9th Cir. 2005), amended 402 F.3d 875; *World Wide Video of Washington, Inc. v. City of Spokane*, 368 F.3d 1186 (9th Cir. 2004); *Dream Palace v. County of Maricopa*, 384 F.3d 990 (9th Cir. 2004); *Talk of The Town v. Department of Finance and Business Services*, 343 F.3d 1063 (9th Cir. 2003); *Deja Vu-Everett-Federal Way, Inc. v. City of Federal Way*, 46 Fed.Appx. 409 (9th Cir. 2002); *Clark v. City of Lakewood*, 259 F.3d 996 (9th Cir. 2001); *Isbell v. City of San Diego*, 258 F.3d 1108 (9th Cir. 2001); *Isbell v. City of San Diego*, 450 F.Supp.2d 1143 (S.D. Cal. 2006); *Diamond v. City of Taft*, 215 F.3d 1052 (9th Cir. 2000); *L.J. Concepts, Inc. v. City of Phoenix*, 215 F.3d 1333 (9th Cir. 2000); *Lim v. City of Long Beach*, 217 F.3d 1050 (9th Cir. 2000); *Young v. City of Simi Valley*, 216 F.3d 807 (9th Cir. 2000); *4805 Convoy, Inc. v. City of San Diego*, 183 F.3d 1108 (9th Cir. 1999); *North v. City of Gilroy*, 78 F.3d 594 (9th Cir. 1996); *Spokane Arcade, Inc. v. City of Spokane*, 75 F.3d 663 (9th Cir. 1996); *Topanga Press, Inc. v. City of Los Angeles*, 989 F.2d 1524 (9th Cir. 1993); *Kev, Inc. v. Kitsap County*, 793 F.2d 1053 (9th Cir. 1986); and *Lydo Entertainment v. Las Vegas*, 745 F.2d 1211 (9th Cir. 1984).
3. Decisions of the State of California addressing adult-oriented businesses including: *Madain v. City of Stanton*, 185 Cal.App.4th 1277 (2010); *Krontz v. City of San Diego*, 136 Cal.App.4th 1126 (2006); *Lacy Street Hospitality Service, Inc. v. City of Los Angeles*, 125 Cal.App.4th 526 (2004); *Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Board and Renee Vicary*, 99 Cal.App.4th 880 (2002); *Tily B., Inc. v. City of Newport Beach*, 69 Cal.App.4th 1 (1998); *Sundance Saloon, Inc. v. City of San Diego*, 213 Cal.App.3d 807 (1989); *7978 Corporation v. Pitchess*, 41 Cal.App.3d 42 (1974); *Deluxe Theater & Bookstore, Inc. v. City of San Diego*, 175 Cal.App.3d 980 (1985); *E.W.A.P., Inc. v. City of Los Angeles*, 56 Cal.App.4th 310 (1997); *City of Vallejo v. Adult Books*,

167 Cal.App.3d 1169 (1985); City of National City v. Wiener, 3 Cal.4th 832 (1992); and People v. Superior Court (Lucero), 49 Cal.3d 14 (1989).

- E. The negative secondary effects from adult-oriented businesses constitutes a harm which the City has a substantial government interest in preventing and/or abating. This substantial government interest in preventing secondary effects, which is the City's rationale for this Ordinance, exists independent of any comparative analysis between adult-oriented and non-adult-oriented businesses. Additionally, the City's interest in regulating adult-oriented businesses extends to preventing future secondary effects of either current or future adult-oriented businesses that may locate in the City. The City finds that the cases and documentation relied on in this Ordinance are reasonably believed to be relevant to said secondary effects. The City refers to and incorporates by reference, the record of cases and documentation relating to secondary effects associated with adult-oriented businesses which will remain on file with the City Clerk.
- F. Locational criteria are a legitimate and reasonable means of ensuring that adult businesses are conducted in a manner so as to minimize their adverse secondary effects and thereby protect the health, safety, and welfare of the City's residents, protect citizens from increased crime, preserve the quality of life, preserve property values and the character of surrounding neighborhoods and businesses, and deter the spread of urban blight. The locational requirements contained in this Ordinance do not unreasonably restrict the establishment or operation of constitutionally protected adult businesses in Oceanside and a sufficient and reasonable number of alternative locations for adult-oriented businesses are provided by this Ordinance. The City Council takes legislative notice of the United States Supreme Court decision in Renton that requires that adult businesses be provided a reasonable opportunity to open and operate. The City Council also takes legislative notice of the Ninth Circuit's decisions in Topanga Press, Lim and Isbell with respect to availability of sites for adult businesses and finds that under the distance and locational restrictions imposed by this Ordinance there are sufficient sites available for adult-oriented businesses within Oceanside.
- G. Relying on the following, the City finds that adult-oriented businesses in its community may lead to detrimental secondary effects including prostitution and engagement in unlawful sexual activity. The City bases this conclusion on the experiences of Oceanside, as well as that of other California communities, such as La Habra and Arcadia, which the City has a reasonable basis to believe reflect the experiences of its own community, including numerous police reports and affidavits from those communities, and judicial decisions in the public record:
1. Evidence indicates that some dancers, models, entertainers, performers, and other persons who publicly perform specified sexual activities or publicly display specified anatomical areas in adult-oriented businesses (collectively referred to as "performers") have been found to engage in sexual activities with patrons of adult-oriented businesses on the site of the adult-oriented business.

2. Evidence has demonstrated that performers employed by adult-oriented businesses have been found to offer and provide private shows to patrons who, for a price, are permitted to observe and participate with the performers in live sex shows.
 3. Evidence indicates that performers at adult-oriented businesses have been found to engage in acts of prostitution with patrons of the establishment.
 4. Evidence indicates that fully enclosed booths, individual viewing areas, and other small rooms whose interiors cannot be seen from public areas of the establishment regularly have been found to be used as locations for engaging in unlawful sexual activity.
 5. As a result of the above, and the increase in incidents of HIV, AIDS, and hepatitis B, which are sexually transmitted or blood borne diseases, the City has a substantial interest in adopting regulations that will reduce the possibility for the occurrence of prostitution and unlawful sex acts at adult-oriented businesses in order to protect the health, safety, and well-being of its citizens. The City finds this is relevant to Oceanside and the need to regulate the secondary effects of adult-oriented businesses within the community.
- H. The City Council recognizes and relies on the findings set forth in the 1986 Attorney General's Report on Pornography. A copy of the Attorney General's Report on Pornography is available for public review at the City Clerk's office.
- I. The City Council recognizes the possible harmful effects on children and minors exposed to the effects of adult-oriented businesses and recognizes the need to enact regulations which will minimize and/or eliminate such exposure. The City Council takes legislative notice of the Penal Code provisions authorizing local governments to regulate matter that is harmful to minors (i.e., Penal Code § 313 et seq.). The City Council further takes legislative notice of the cases that recognize that protection of minors from sexually explicit materials is a compelling government interest, including *Crawford v. Lungren*, 96 F.3d 380 (9th Cir. 1996) and *Berry v. City of Santa Barbara*, 40 Cal.App.4th 1075 (1995).
- J. While the City Council is obligated to protect the rights conferred by the United States Constitution to adult-oriented businesses, it does so in a manner that ensures the continued and orderly use and development of property within the City and diminishes, to the greatest extent feasible, those undesirable adverse secondary effects which the above mentioned studies have shown to be associated with the operation of adult-oriented businesses.
- K. Zoning and locational restrictions are a legitimate and reasonable means of helping to reduce the secondary effects from adult-oriented businesses and thereby protect the health, safety, and welfare of Oceanside residents, protect citizens from increased crime, preserve the quality of life, and preserve the character of surrounding neighborhoods

and businesses, and deter the spread of urban blight. The zoning and locational requirements contained in this Ordinance do not unreasonably restrict the establishment or operation of constitutionally protected adult-oriented businesses in Oceanside.

- L. The City Council in recognizing that these standards do not preclude reasonable alternative avenues of communication and notes that the proliferation of adult-oriented material on the Internet, satellite television, direct television, CDs, DVDs, all provide alternative avenues of communication. Additionally, the City Council takes note that numerous web-based services, such as www.sugardvd.com and www.wantedlist.com, deliver adult videos and DVDs directly to customers' homes via the mail. The City Council recognizes the following review of one of these web-based services: "SugarDVD has made it so easy to rent and view adult movies, you may never leave your house again ... SugarDVD is discreet with quick turnaround times and a massive selection ... SugarDVD offers six rental plans, catering to the casual porn viewer and diehards who can never get enough hard-core fare." (Hustler Magazine, January 2006.) The City Council also considers and relies on published decisions examining the proliferation of communications on the Internet. *Reno v. American Civil Liberties Union*, 521 U.S. 844 (1997) [the principle channel through which many Americans now transmit and receive sexually explicit communication is the Internet]; *Anheuser-Busch v. Schmoke*, 101 F.3d 325 (4th Cir. 1996) [the Fourth Circuit rejected a First Amendment challenge to a Baltimore ordinance restricting alcohol advertisements on billboards acknowledging that the Internet is one available channel of communication]; *U.S. v. Hockings*, 129 F.3d 1069 (9th Cir. 1997); see also *U.S. v. Thomas*, 74 F.3d 701 (6th Cir. 1996) [recognizing the Internet as a medium for transmission of sexually explicit material in the context of obscenity prosecutions]. The Internet brings with it a virtually unlimited additional source of adult-oriented sexual materials available to interested persons in every community with a mere keystroke. An adult-oriented business no longer has to be "actually" physically located in a city to be available in the community.
- M. The City Council recognizes that adult devices (i.e. adult novelties and/or adult related products) such as dildos, fur-lined handcuffs, leather whips, anal beads, and devices that are physical representations of human genital organs, are not speech and enjoy no First Amendment protections. (See *Ford v. State of Texas*, 753 S.W.2d 451, 452-453 (1988); *Sewell v. State of Georgia*, 233 S.E.2d 187, 188-189 (1977); *Chamblee Visuals, LLC v. City of Chamblee*, 506 S.E.2d 113, 115 (1998); and *Red Bluff Drive-In, Inc. v. Vance*, 648 F.2d 1020 (5th Cir. 1981).)
- N. It is not the intent of the City Council in enacting this Ordinance, or any provision thereof, to condone or legitimize the distribution of obscene material, and the City and its Council recognize that state law prohibits the distribution of obscene materials and expect and encourage law enforcement officials to enforce state obscenity statutes against such illegal activities in Oceanside.
- O. The City Council does not intend to regulate in any area preempted by California law including, but not limited to, regulation of obscene speech, nor is it the intent of the City

Council to preempt regulations of the state Alcoholic Beverage Control Department (“ABC”).

- P. Nothing in this Ordinance is intended to authorize, legalize, or permit the establishment, operation, or maintenance of any business, building, or use which violates any other City ordinance in any respect, or any statute of the State of California regarding public nuisances, unlawful or indecent exposure, sexual conduct, lewdness, obscene or harmful matter, or the exhibition or public display thereof.
- Q. On September 12, 2016, the Planning Commission Council held a duly noticed public hearing during which it allowed for public input and testimony concerning this proposed Ordinance. At the conclusion of the public hearing the Planning Commission recommended this Ordinance to the City Council for approval.
- R. On September 21, 2016, the City Council held a duly noticed public hearing during which it received input and testimony and considered the adoption of this Ordinance.

3601.2 Findings – Tattoo Establishments

- A. The City Council has a reasonable basis to believe that there are land use compatibility issues relating the siting of tattoo facilities and their customers when located adjacent to residential uses. Through its zoning code provisions, the City of Oceanside seeks to maintain property values, protect tax revenues, provide neighborhood social and economic stability, attract business and industry, and encourage conditions that make the City of Oceanside a pleasant place to live and work.
- B. The City Council has a reasonable basis to believe that it is important from a land use compatibility perspective to buffer tattoo facilities from sensitive land uses such as residential zones, schools, parks, and day care facilities while allowing a wide range of potential alternative sites and, as well, to have a buffer between regulated uses to prevent their concentration within one part of the City. These buffer provisions will serve to: (1) protect the quality of life and neighborhoods in the City; (2) protect the City’s retail and commercial trade; (3) minimize the potential for nuisances related to the operation of tattoo establishments; (4) protect the well-being, tranquility and privacy of the home with the residential buffer; and (5) protect the peace, welfare, and privacy of persons who own, operate and/or patronize tattoo establishments.
- C. The City Council also desires to avoid the clustering of tattoo establishments so that the City does not experience a significant change in the character of the community. Tattoo establishments have the potential to have a detrimental impact individually or when located in close proximity to each other, can create a “skid row” atmosphere, and have a deleterious effect upon adjacent areas. For example, Oceanside’s downtown area has been the subject of substantial redevelopment and the addition of new businesses that are attractive to families and tourists. It is important that the character of the downtown area remain family and tourist-oriented. The buffer restrictions applicable to tattoo establishments serves to preserve this interest. Furthermore, the area of south Oceanside

has seen a revitalization in the past several years and it is important that this residential zoned areas be preserved, and that adjacent neighborhood serving commercial and visitor serving establishments be preserved and maintained. The City recognizes that the tattoo establishments serve as a specialty destination service and accordingly, is not compatible to place such facilities within 500 feet of a residential zone because it would contribute to neighborhood blight and is not consistent with and would not serve to protect the commercial zones that are designed to offer the neighborhood needed commercial services.

- D. The City's certified Local Coastal Program ("LCP") provides that, "[i]n granting approvals for new development within the Coastal Zone, the City shall give priority to visitor serving commercial recreation facilities over private residential, general industrial or general commercial uses". According to the City's Land Use Plan (LUP), a component of the LCP, the visitor serving commercial land use category "encompasses specialized commercial uses which are directly dependent supportive or related to the coast. Such uses provide services or goods for coastal industries or recreationalists, and include boat sales, supplies, and services; diving, commercial fishing, and sport-fishing establishments; restaurants, snack bars, and convenience markets; gift, sundries, and novelty shops; tourist-cottages, campgrounds, and recreational vehicle parks; and recreational equipment rentals (such as bicycles, roller skates, surfboards)." A tattoo establishment is not a visitor serving use. This Ordinance advances the City's interest in implementing its LCP.
- E. The City has a reasonable basis to believe, based on its own experience, along with those of other communities including Vista, Signal Hill, Santa Clara, Torrance, Hermosa Beach, and Ventura as to the secondary effects of tattoo establishments in its community may lead to detrimental effects including noise, light, traffic, and parking compatibility issues with neighboring residential zones. The City is aware of other communities experience and based on its own experience is concerned for the potential for criminal activity from tattoo parlors and their potential to attract the criminal element, especially gangs.
- F. Specifically, the City takes note of the Oceanside's Police Crime Analysis report dated July 27, 2016 that documents increased criminal activity from tattoo facilities in Oceanside. Such criminal activity is not compatible with adjacent residential uses. The City takes note that within Oceanside, since January 2013, Oceanside PD has received 34 Calls for Police Service (CFS) at Oceanside's 3 tattoo parlors; About Face, Frontline and Body Temple. The About Face Tattoo shop is located downtown at 423 S. Coast Hwy and has generated the most CFS, with 17 calls between 2013 and July 2016. In addition, since January 2005, Oceanside PD has received 73 CFS at About Face Tattoo shop which accounts for 92% more CFS than the neighboring barbershop; and 564% more CFS than the neighboring day spa. CFS at all 3 tattoo shops include calls related to fights, public disturbances, property crimes, calls for violent activity; none of which are compatible with adjacent schools, daycares or residential zones. In one case, a known drug user was displaying a weapon which required police officers to deploy a taser in order to arrest the suspect.

- G. The City Council also takes note of the August 2014 investigation of a felony battery at Power Tattoo located in the neighboring city of Vista where an individual was assaulted by 20-30 people at a tattoo facility event. In addition, the City of Santa Clara Police Department conducted a study on secondary effects of crime from regulated businesses, which include tattoo shops, and concluded that these shops can be a magnet for organized crime, gang activity, loitering, and increased police calls. And, the City also takes note that in May 2011, the Los Angeles Police Department and federal agents with the Bureau of Alcohol, Tobacco, Firearms and Explosives, arrested nineteen alleged members of the gang Venice 13 at a tattoo parlor called ‘Villainz Ink’ that attracted a number of suspected criminal street gang members and associates who, in the course of a four-month investigation, sold illegal narcotics, committed numerous firearms violations, and sold a firearm to an ATF undercover agent.
- H. The City Council has a reasonable basis to be concerned over the criminal activity associated at tattoo facilities affiliated with the outlaw gang known as the Hells Angels based on the City’s own experience and those of neighboring jurisdictions. The Hells Angels are involved in the production, transportation, and distribution of marijuana and methamphetamine. Additionally, the Hells Angels are involved in the transportation and distribution of cocaine, hashish, heroin, LSD (lysergic-acid diethylamide), ecstasy, PCP (phencyclidine), and diverted pharmaceuticals. The Hells Angels are involved in other criminal activity including assault, extortion, homicide, money laundering, and motorcycle theft.” <https://www.justice.gov/criminal-ocgs/gallery/outlaw-motorcycle-gangs-omgs>. Moreover, according to a 2015 report by the National Gang Intelligence Center (“FBI Report”), the most common criminal activities committed by outlaw motorcycle gangs over the past two years have included weapons possession, threats and intimidation, assault, and drug trafficking. The FBI Report documents a March 2014 incident in which two Hells Angels members sought medical treatment for stab wounds sustained during an altercation with rival gang members on a freeway near Temecula, California. The injured Hells Angels members were not willing to cooperate with law enforcement or say who was responsible for their injuries. According to the report, outlaw motorcycle gang members are increasingly involved in self-owned businesses (in particular tattoo parlors) and that some of these businesses are used to facilitate criminal activity. <https://www.fbi.gov/image-repository/pub3 .jpg/view>.
- I. Zoning and locational regulations for tattoo establishments are necessary to prevent deterioration and/or degradation of the vitality of the community before the problem exists, rather than waiting for problems to be created. Buffer requirements are a legitimate and reasonable means of ensuring against the negative secondary effects of tattoo facilities and to balance the various land uses in order to minimize and control problems associated with such businesses and thereby protect the health, safety and welfare of Oceanside residents, preserve the quality of life, and preserve the character of surrounding neighborhoods. The buffer requirements of the City do not unreasonably restrict the establishment or operation of constitutionally protected adult businesses in Oceanside. The City Council recognizes that these buffer requirements do not preclude reasonable alternative avenues of communication and that there are several hundred potentially available sites for tattoo establishments. And, Oceanside is already home to

three (3) existing tattoo establishments, a fourth is undergoing tenant improvements, and there is a wide menu of potential sites for other prospective users to select from in this seaside community.

- J. The City is concerned as to the health and well-being of adolescents within the community and is aware of prior studies conducted which have shown an association between adolescents who obtain tattoos and their involvement in high-risk behaviors that are detrimental to their health and welfare. The City Council has a reasonable basis to conclude that businesses offering tattoo services may result in negative impacts on sensitive uses, such as residential and educational institutions serving persons under 21 years of age. The City Council reasonably believes that in its community, a buffer from schools decreases the accessibility of such shops to high school aged persons. Similarly, in the south Oceanside area, minors are located in these adjacent residential zones and this buffer will serve to decrease the accessibility to minors as well. The prior study titled “Tattooing and High-Risk Behavior in Adolescents,” shows that this type of use (tattoo establishments) demonstrates a link between the tattooing of high school aged persons and a propensity to engage in other high-risk behaviors including gang affiliation, substance abuse, and violence. The Council takes legislative note of *Sable Commission of California, Inc. v. FCC* (1989) 492 U.S. 115 wherein the Court found that there is a compelling interest in protecting the physical and psychological well-being of minors.
- K. The City of Oceanside has a reasonable basis to believe that there are serious health issues at play in the provision of tattoos. The City is aware that the practice of providing tattoos, through the use of implements which pierce the skin, create an increased risk of the transfer of blood borne diseases. Tattoo inks, dyes, and pigments have not been approved by the FDA and the health consequences of using these products are unknown. This applies to all tattoo pigments, including those used for ultraviolet (UV) and glow-in-the dark tattoos. Many pigments used in tattoo inks are industrial-grade colors suitable for printers’ ink or automobile paint. And, the use of henna in temporary tattoos has not been approved by FDA. Henna is currently approved only for use as a hair dye.
- L. Tattooing carries the risk of infection and transmission of disease if unsanitary conditions are present or unsterile equipment is used. The Centers for Disease Control and Prevention (“CDC”) and the United States Food and Drug Administration (“FDA”) confirm the significant health risks of tattooing. CDC, *Body Art: Tattoos and Piercings* (Jan. 21, 2008) (noting risks of infection, tuberculosis, Hepatitis B and C, and HIV). FDA, *Tattoos and Permanent Makeup* (Nov. 29, 2000) (discussing the risks of infection, removal problems, potential allergic reactions, and MRI complications). Research has also shown that some pigment migrates from the tattoo site to the body’s lymph nodes. Lymph nodes are part of the lymphatic system, a collection of fluid-carrying vessels in the body that filter out disease-causing organisms. Whether the migration of tattoo ink has health consequences or not is still unknown. The National Center for Toxicological Research (NCTR) is doing further research to answer this and other questions about the safety of tattoo inks.

M. The City Council is mindful of legal principles relating to regulation of tattoo establishments, and the City Council does not intend to suppress or infringe upon any expressive activities protected by the First Amendment of the United States and California Constitutions but instead desires to enact reasonable time, place, and manner regulations that address the adverse effects of tattoo establishments. The City Council has considered the following decisions: *Anderson v. Hermosa Beach* (9th Cir. 2010) 621 F.3d 1051; *Buehrle v. Key West* (11th Cir. 2015) 813 F.3d 973; *Ward v. Rock Against Racism* (1989) 491 U.S. 78; and *City of Renton v Playtime Theaters* (1986) 475 U.S. 41. As well, the City Council is mindful of the district court decision rendered this past June 2016 by USDC Stephen Wilson in the federal lower court matter of *Tiffany Garcia v. City of Torrance*.

3602 Regulated Uses

The uses subject to compliance with this Article are as follows:

- A. Adult Bookstores/ Novelty Stores/ Video Stores
- B. Adult Cabaret
- C. Adult Entertainment Business
- D. Adult Motel
- E. Adult Motion Picture Theaters
- F. Adult Theaters
- G. Arcades and game Centers
- H. Bars and Cocktail Lounges
- I. Bath Houses
- J. Body Piercing Establishments
- K. Dance Establishments
- L. Escort Services
- M. Figure Studios
- N. Liquor Stores
- O. Massage Establishments
- P. Payday Loans/ Paycheck Advance Establishments
- Q. Peep-Show Establishments
- R. Pool Rooms, Billiard Rooms, and Shooting Galleries
- S. Tattooing Establishments
- T. Tobacco and Drug Paraphernalia Establishments

Regulated Uses that have First Amendment protections shall require an Administrative Regulated Use Permit (ARUP) as called out in Section 3606. The balance of the Regulated Uses listed in this Section, shall require a use permit issued in accord with Article 41, however, the City Council shall have final authority to approve or disapprove the use permit.

3603 Definitions

The definitions appearing in Article 3 and the land use classifications appearing in Article 4

and 4a of this ordinance shall apply to any terms used in Article 36.

3604 Locational Requirements

- A. It shall be unlawful for any Regulated Use to be located closer than one thousand (1,000) feet to any other Regulated Use. This distance shall be measured in a straight line, without regard to intervening structures from the closest point on the exterior structure walls of each business.
- B. It shall be unlawful for any Regulated Use listed as Items A, B, C, D, E, F, M or Q of Section 3602 to be located closer than one thousand (1,000) feet from any residential district or any parcel of land which contains any one or more of the following specific land uses:
 - 1. Public or Private School;
 - 2. Park, playground or public beach;
 - 3. Church or other similar religious facility, and
 - 4. Child care or pre-school facility.

(Items 1-4 shall collectively be referred to as “the Sensitive Land Uses”)

It shall be unlawful for any Regulated Use not enumerated in this Section B to be located any closer than five hundred (500) feet from any residential district or any Sensitive Land Uses.

- C. The Regulated Use enumerated as S (Tattooing Establishment) in Section 3602 above, shall not be located closer than five hundred (500) feet to any other tattooing establishment, or be located within five hundred (500) feet of any residential district or to any of the Sensitive Land Uses enumerated in Section 3604.B. 1, 2, or 4. No other locational requirements shall apply to tattooing establishments.
- D. The distance between any Regulated Use and any residential district shall be measured in a straight line, without regard to intervening structures, from the closest point on the exterior structure wall of the use to the closest district line of any residential district. The distance between any Regulated Use and any Sensitive Land Uses enumerated in Subdivisions (1) or (2) of Section 3604.B shall be measured in a straight line, without regard to intervening structures, from the closest point of the exterior structure wall of the regulated use to the closest point of the parcel line of such enumerated land use. The distance between any Regulated Use and any Sensitive Land Uses enumerated in Subdivisions (3) or (4) of Section 3604.B shall be measured in a straight line, without regard to intervening structures, from the closest point on the exterior structure wall of the Regulated Use to the closest point on the exterior structure wall of such enumerated land use.

3605 Waiver of Locational Requirements

Any person proposing a permitted Regulated Use as listed in Section 3602 may apply for a

waiver of the locational requirements provided in Section 3604, except that no waiver shall be available where the proposed Regulated Use is subject to Section 3606 or is otherwise afforded First Amendment Protections. Such waiver application shall be filed and processed concurrently with the conditional use permit entitlement request, if applicable, for the proposed use. The City Planner shall set the use permit application, and/or the waiver application, for public hearing before the Planning Commission or Community Development Commission as the case may be, provided that at least ten (10) days written notice of such hearing is given to owners and occupants of all property lying within all applicable distances set forth in the locational requirements.

The Planning Commission shall make recommendations to the City Council for the approval or disapproval of such waiver. No waiver shall be approved unless all of the following findings are made regarding the proposed use:

1. It will not be contrary to the public interest.
2. It will not be contrary to the spirit or intent of this Article.
3. It will not impair nearby property or the integrity of the underlying district.
4. It will not encourage the development of an adult entertainment area or otherwise promote community blight.
5. It will not negatively impact any governmental programs of redevelopment, revitalization, or neighborhood preservation.

3606 First Amendment Application – Administrative Regulated Use Permit

A. Approval of a Regulated Use protected by the First Amendment of the United States Constitution or Article 1, Section 2 of the California Constitution shall require approval of an Administrative Regulated Use Permit (ARUP) by the City Planner and shall not require approval of a Conditional Use Permit (CUP). The ARUP shall be approved by the City Planner provided:

1. The proposed use is allowed by Articles 11, 12 and/or 13 of the Zoning Ordinance;
2. The proposed use meets the locational requirements in Section 3604; and
3. The proposed use meets the operational requirements, if any, set forth for such proposed use in the Oceanside City Code or any other provision of law. No waiver of the locational requirements shall be permitted.

B. The City Planner shall determine within ten (10) business days whether the ARUP application is complete. The City Planner's decision to approve or deny the ARUP application shall be made within sixty (60) days after the application is complete. The City Planner's decision shall be deemed final for purposes of this section upon the date it is mailed by first-class mail, postage prepaid, including a copy of the affidavit or certificate of mailing, to the applicant and all adjacent property owners within five hundred (500) feet of the proposed Regulated Use, as measured in accordance with Section 3604.D. The final City Planner's decision shall not be subject to any administrative appeal. Judicial review of the City Planner's decision shall be in

accordance with the procedures set forth in the California Code of Civil Procedure section 1094.8.

3607 Applicability of Other Regulations

The provisions of this article are not intended to provide exclusive regulation of the regulated uses. Such uses must comply with any and all applicable regulations imposed in other articles of this zoning ordinance, other city ordinances, and state and federal law.

3608 Severance Clause

If any section, sentence, clause, or phrase of this ordinance is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, or phrases of this ordinance, or the ordinance in its entirety, it being the legislative intent that this ordinance shall stand notwithstanding the invalidity of such section, sentence, clause or phrase.