

## BOARD OF YAKIMA COUNTY COMMISSIONERS

ORDINANCE 8-2010

IN THE MATTER OF AMENDING ORDINANCE 1-2000 AND YAKIMA COUNTY CODE TITLE 15, LAST AMENDED BY ORDINANCE 13-2010, PERTAINING TO YAKIMA COUNTY ZONING, AND IN THE MATTER OF AMENDING ORDINANCE 10-1985 AND YAKIMA COUNTY CODE TITLE 15A, LAST AMENDED BY ORDINANCE 5-2011, PERTAINING TO YAKIMA URBAN AREA ZONING.

WHEREAS, after providing public notice of a special agenda meeting, the Board of Yakima County Commissioners adopted Resolution 276-2010 on June 24, 2010 declaring a six-month zoning moratorium on the establishment and operation of adult businesses within the unincorporated areas of Yakima County; and

WHEREAS, Resolution 276A-2010, adopted by the Board at a duly advertised public hearing on July 13, 2010, adopted findings in support of the six-month zoning moratorium declared on June 24, 2010; and

WHEREAS, said findings in support of the six-month zoning moratorium, adopted by Resolution 276A-2010, identified that no adopted ordinance exists regulating establishment and operation of adult businesses as distinct from other businesses within the unincorporated areas of Yakima County, and that time was needed to consider the regulation of adult businesses within the county; and

WHEREAS, Resolution 516-2010, adopted by the Board at a duly advertised public hearing on December 21, 2010, extended the moratorium an additional six months, to June 24, 2011; and

WHEREAS, the Board requested the Yakima County Planning Commission and staff to prepare proposed official controls, in the form of text amendments to development regulations in the Yakima County Zoning Ordinance (YCC Title 15) and Yakima Urban Area Zoning Ordinance (YCC Title 15A), to guide and regulate the physical development of land uses which feature or emphasize adult entertainment; and

WHEREAS, the Yakima County SEPA Responsible Official reviewed the potential environmental impacts of the proposed text amendments, issued a Determination of Non-Significance on March 2, 2011 for comment, and after considering all comments received, retained said DNS on March 31, 2011; and

WHEREAS, the Planning Commission considered the draft text amendments in light of Planning Division staff recommendations and public and agency comments

received in writing concerning the proposed zoning regulations at a duly advertised public hearing held on March 16, 2011; and

WHEREAS, after deliberating on the proposed amendments, the Planning Commission issued its Findings of Fact and Recommendation dated April 13, 2011 for consideration by the Board; and

WHEREAS, the Board held a duly advertised public hearing on May 24, 2011, for the purpose of considering the amendments to Yakima County Code Titles 15 and 15A on May 24, 2011, pursuant to Resolution No. 199-2011, dated May 3, 2011, wherein testimony was heard from all persons present who wished to be heard; and

WHEREAS, the Board deliberated on the proposed text amendments on June 21, 2011, after considering all written comments received, the testimony at its public hearing, the Planning Commission's findings and recommendations, and Planning Division staff recommendations; and

WHEREAS, after considering the testimony and materials presented, the Board believes it is in the best public interest to amend Yakima County Code Titles 15 and 15A in a manner consistent with the Planning Commission's Findings and Recommendation, attached hereto as Exhibit A, and the Board's deliberations on June 21, 2011; now, therefore,

**BE IT HEREBY ORDAINED BY THE BOARD OF YAKIMA COUNTY COMMISSIONERS:**

**Section 1. Findings of fact.** The Board deems that changes to text recommended by the Yakima County Planning Commission are necessary. The changes are enumerated in the staff memorandum dated June 17, 2011 in the record. The Board hereby adopts its own findings of fact and statement setting forth the factors considered at the hearing and its own analysis of findings considered to be controlling.

**Factors Considered at and after the May 24, 2011 Public Hearing**

- A. Substantive oral testimony at the public hearing on May 24, 2011 was limited to matters pertaining to application fees, which were not addressed in the text recommended by the Yakima County Planning Commission, but were rather addressed in the text recommended by staff in Ordinance 8A-2010, a separate ordinance.
- B. Following proper procedures, the Board has carefully considered the Planning Commission's Findings and Recommendation on this matter, attached hereto as Exhibit A, and accepts the recommendations as substantiated by the findings, subject to some modifications which are described in the following analysis of findings considered to be controlling.

### **Analysis of Findings Considered to Be Controlling**

- C. The Board has carefully reviewed the Planning Commission's Findings and Recommendation and the intent of the moratorium declared June 24, 2010, and finds that enacting the legislation herein, along with licensing and operational controls in Ordinance 8A-2010, a separate ordinance, addresses the public interest and the issues for which the Board declared the moratorium. Together these changes and actions are necessary to meet the original intent and scope and purpose of the moratorium declared June 2010.
- D. It is necessary to modify the language recommended by the Planning Commission regarding separation distances and measurement between adult entertainment facilities and listed incompatible uses for the sake of abbreviation and easier interpretation by specifying a single separation distance of 800 feet.
- E. It is necessary to eliminate the administrative adjustment provisions in the language recommended by the Planning Commission and to specify that existing criteria for a zoning variance in the code are adequate to address requests to reduce the required separation distances.
- F. It is necessary to eliminate the nonconforming use provisions in the language recommended by the Planning Commission in favor of requiring that the incompatible uses listed in the text amendments to YCC Titles 15 and 15A maintain a respective required separation distance from adult entertainment facilities.
- G. Adult entertainment facilities are not appropriately permitted in General Commercial (formerly Arterial Commercial) designated areas in the Yakima Urban Area Comprehensive Plan and has made changes to this effect in the text amendments to YCC Title 15A.
- H. Adult entertainment facilities are not appropriately permitted in Commercial (C) zoning district, or in the Central Business District Support (CBDS) zoning district, and has made changes to these effects in the text amendments to YCC Titles 15 and 15A.
- I. The changes and legislation enacted herein further the purpose and objectives of the Yakima County and Yakima Urban Area Comprehensive Plans.

**Section 2. Yakima County zoning definitions.** Four new sections are added to Chapter 15.08 of the Yakima County Code to read:

15.08.027 Adult entertainment facility. "Adult entertainment facility" means an adult cabaret, adult motion picture theater, adult retail store, or a commercial establishment that includes an adult sales practice as those terms are defined in the adult entertainment

licensing provisions in YCC Chapter 5.06. Adult arcades as defined in YCC Chapter 5.06 are expressly prohibited by this title.

15.08.178 Community youth center. "Community youth center" means a structure open to the general public that is owned or operated by Yakima County or another public agency or a charitable nonprofit agency and that is used predominantly by children for cultural, educational, recreational, or social purposes.

15.08.209 Drive-through food and beverage vender. "Drive-through food and beverage vender" means an establishment where food or other retail items are sold from a drive-up window to a person driving a vehicle. Such establishments may include espresso stands, juice bars, and mobile food vendors, but do not include establishments where an adult sales practice as defined in YCC Chapter 5.06 occurs.

15.08.492 Park. "Park" means a public or privately owned area with facilities for active or passive recreation by the public.

**Section 3. Adult entertainment facilities and separated uses regulatory note.** A new subsection is added to Section 15.18.030 of the Yakima County Code to read:

(ff) Adult Entertainment Facilities, as defined in Section 15.08.027, and uses listed in subsection (1)(b) of this subsection shall comply with the requirements of this subsection. The purpose and intent of requiring standards for adult entertainment facilities and listed uses is to mitigate the adverse secondary effects caused by such facilities and to maintain compatibility with other land uses and services permitted within the County. The standards established in this section shall not be construed to restrict or prohibit the following activities or products: (i) plays, operas, musicals, or other dramatic works that are not obscene; (ii) classes, seminars, or lectures which are held for a serious scientific or educational purpose that are not obscene; and (iii) exhibitions, performances, expressions, or dances that are not obscene.

(1) Separation Requirements. Adult entertainment facilities shall be permitted as indicated in Table 15.18 "Allowable Land Uses" set forth in Chapter 15.18 only if the following separation requirements are met:

- (a) No adult entertainment facility shall be located closer than eight hundred feet to any residential zoning district including, but not limited to, the R1, R2, R3, RT, VR, and RS zoning districts designated in this title, and the R1, R2, R3 and SR zoning districts designated in YCC Title 15A (Yakima Urban Area Zoning). This separation requirement applies whether such residential zoning district is located within or outside the boundaries of any adjacent city, town, or other zoning jurisdiction.
- (b) No adult entertainment facility shall be located closer than eight hundred feet to any of the following uses or community entranceways, and no use listed in this subsection (b) shall be located closer than eight hundred feet to any adult entertainment facility, whether or not such use or entranceway is located within or outside the corporate boundaries of any adjacent city or town:
  - i. Any public park;
  - ii. Any public library;
  - iii. Any public or private nursery school or preschool;
  - iv. Any public or private primary or secondary school;
  - v. Any licensed day care;
  - vi. Any community youth center;
  - vii. Any church or other house of worship;
  - viii. Any multifamily residential use located in the B1, B2, or C zoning districts;
  - ix. Any other adult entertainment facility;
  - x. Any existing establishment selling alcoholic beverages for consumption on premises.
  - xi. Any entranceway to the community, including rights-of-way of State highways (SR 12, SR 22, SR 24, SR 223, SR 241, SR 97, SR 821, SR 823, I-82), Yakima Valley Highway, and the intersection of two streets nearest any entranceway or gateway to the community identified in any adopted neighborhood plan, whether such entranceway is located within or

outside the corporate boundaries of any adjacent city or town.

- (2) Measurement. The eight-hundred-foot buffer required by subsection (1) of this subsection shall be measured by extending a straight line from the nearest point on the property line of the lot containing the proposed adult entertainment facility to the nearest point on the boundary lines of the zoning districts, parcels containing uses, and the right-of-way of entranceways listed in subsection (1) of this subsection.
- (3) The separation requirements of subsection (1) of this subsection may only be reduced through the provisions of Section 15.70.040, Variances.
- (4) Signage. Signage of adult entertainment facilities shall comply with the provisions of YCC Chapter 15.66, Signs, together with the following specific conditions. Each adult business use shall be allowed one on-premise sign, in addition to the entrance sign required by YCC Subsection 5.06.200(10), if applicable, which shall be limited to displaying the name of the establishment, the street address, the days and hours of operation, restrictions on the age of persons that may be admitted to the building and the nonspecific identification of the nature of the stock-in-trade or entertainment offered therein (e.g., "adult entertainment," "adult films"). Nowhere on the signage or on the building visible to outside passersby shall appear any verbiage, insignias, pictures, drawings or other descriptions suggestive of sexual acts or actions, or which represent the sexually oriented material and/or performances of the adult entertainment use.

**Section 4. Drive-through food and beverage vender regulatory note.** A new subsection is added to Section 15.18.030 of the Yakima County Code to read:

- (gg) Drive-through food and beverage venders that include an adult sales practice as defined in YCC Chapter 5.06 shall be reviewed as adult entertainment facilities under the provisions of this title.

**Section 5. Yakima County land use table.** A new use, "Adult entertainment facility," is added to Table 15.18 of the Yakima County Code, an asterisk is added to the existing use "Drive-thru food and beverage vender," and regulatory notes are added to 19 existing uses as follows. Much of the existing text within the table is unchanged, therefore the remainder of the table is omitted here for clarity:

| Table 15.18<br>Allowable Land Uses  | Agricultural | Forest Watershed | Mountain Rural | Valley Rural | Remote/ELDP | Rural Transitional | One-Family Residential | Two-Family Residential | Multi-Family Residential | Rural Settlement | Professional Business | Local Business | Commercial | Highway/Tourist Commercial | Industrial | Mining |
|---|--------------|------------------|----------------|--------------|-------------|--------------------|------------------------|------------------------|--------------------------|------------------|-----------------------|----------------|------------|----------------------------|------------|--------|
|   | AG           | FW               | MR             | VR           | R/EL        | RT                 | R1                     | R2                     | R3                       | RS               | B1                    | B2             | C          | HC                         | I          | MIN    |
| <b>AGRICULTURE</b>  |              |                  |                |              |             |                    |                        |                        |                          |                  |                       |                |            |                            |            |        |
| Basic Winery* (ff)  | I            |                  |                | II           | III         |                    |                        |                        |                          | II               |                       |                | I          |                            | I          |        |
| Brewery-Domestic* (ff)  | I            |                  |                | II           | III         |                    |                        |                        |                          | II               |                       |                | II         |                            | I          |        |
| Brewery - Micro* (ff)   | I            |                  |                | II           | III         |                    |                        |                        |                          | II               |                       |                | I          |                            | I          |        |
| Distillery - Craft* (ff)  | I            |                  |                | II           | III         |                    |                        |                        |                          | II               |                       |                | I          |                            | I          |        |
| Distillery* (ff)  | I            |                  |                | II           | III         |                    |                        |                        |                          | II               |                       |                | II         |                            | I          |        |
| Destination AG Tourist Operation* (dd) (ff)   | III          |                  |                | III          | III         |                    |                        |                        |                          |                  |                       |                | II         |                            |            |        |
| Resort AG Tourist Operation* (dd) (ff)  | IV           | IV               | IV             | IV           | IV          | IV                 | IV                     | IV                     | IV                       | IV               | IV                    | IV             | IV         | IV                         | IV         | IV     |
| Winery* (ff)  | I            |                  |                | II           | III         |                    |                        |                        |                          | II               |                       |                | II         |                            | I          |        |
| <b>AMUSEMENT AND RECREATION</b>   |              |                  |                |              |             |                    |                        |                        |                          |                  |                       |                |            |                            |            |        |
| Adult entertainment facility* (ff)  |              |                  |                |              |             |                    |                        |                        |                          |                  |                       |                |            |                            | II         |        |
| Parks* (ff), playgrounds, greenways and other public or private outdoor recreational facilities | III          | III              | II             | II           | II          | II                 | II                     | II                     | II                       | II               | II                    | II             | II         | II                         | II         | II     |
| <b>COMMUNITY SERVICES</b>   |              |                  |                |              |             |                    |                        |                        |                          |                  |                       |                |            |                            |            |        |
| Churches, synagogues, temples (ff)  | II           | II               | II             | II           | II          | II                 | II                     | II                     | II                       | II               | II                    | I              | I          |                            |            |        |
| Community centers (ff), meeting/reception halls   |              |                  | III            |              |             |                    | II                     | II                     | II                       | II               |                       | II             | I          |                            | III        |        |
| Day care center, child* (ff)  | III          |                  | II             | II           |             | II                 | III                    | II                     | II                       | II               | II                    | II             | II         |                            | III        |        |
| Family home services* (ff), other than safe/shelter home  | I            |                  | I              | I            | I           | I                  | I                      | I                      | I                        | I                | I                     | I              | I          |                            |            |        |
| Libraries (ff)  |              |                  | II             | II           |             | II                 | III                    | III                    | III                      | II               | II                    | I              | I          | II                         |            |        |
| Schools, public or private (ff)   | III          | III              | II             | II           | III         | II                 | II                     | II                     | II                       | II               | II                    | II             | II         |                            | II         |        |
| <b>RESIDENTIAL</b>  |              |                  |                |              |             |                    |                        |                        |                          |                  |                       |                |            |                            |            |        |
| Dwellings in mixed-use multi-family residential/commercial development (p) (ff)                 |              |                  |                |              |             |                    |                        |                        |                          | II               | I                     | I              | I          |                            |            |        |
| <b>RETAIL TRADE AND SERVICE</b>   |              |                  |                |              |             |                    |                        |                        |                          |                  |                       |                |            |                            |            |        |
| Drive-thru food and beverage vender,* e.g.: espresso stand, juice bar, mobile food vender (gg)  |              | III              | III            |              |             |                    |                        |                        |                          | II               |                       | II             | I          | I                          | II         |        |
| Restaurant or café serving alcoholic beverages (ff)   |              | III              | III            |              |             |                    |                        |                        |                          | II               |                       | II             | II         | II                         | III        |        |
| Taverns, bars (r) (ff)  |              |                  |                |              |             |                    |                        |                        |                          | II               |                       | II             | II         |                            |            |        |

**Section 6. Yakima urban area zoning definitions.** The following definitions are inserted to Yakima County Code Section 15A.02.020, adopted by Ordinance 10-1985, and last amended by Ordinance 11-2009, to read:

**15A.02.020 Definitions.**

(4.2) “Adult entertainment facility” means an adult cabaret, adult motion picture theater, adult retail store, or a commercial establishment that includes an adult sales practice as those terms are defined in the adult entertainment licensing provisions in YCC Chapter 5.06. Adult arcades as defined in YCC Chapter 5.06 are expressly prohibited by this title.

(47.1) “Community youth center” means a structure open to the general public that is owned or operated by Yakima County or another public agency or a charitable nonprofit agency and that is used predominantly by children for cultural, educational, recreational, or social purposes.

(73.5) “Espresso/coffee drive-through facility” means a place used to sell coffee and associated items from a drive-up window to a person driving a vehicle, but does not include establishments where an adult sales practice as defined in YCC Chapter 5.06 occurs.

**Section 7. Procedures for review of drive-through facilities.** The existing text of Section 15A.04.055 of the Yakima County Code, adopted by Ordinance 3-1993, is amended to read:

**15A.04.055 Drive-Thru Facilities.**

(a) Review Required - Any commercial use having a drive-thru service window or booth is subject to the additional elements of review required in Subsection (c) of this section for impacts on adjoining residential uses and arterial systems. Such “drive-thru” facilities means a window or station for providing service to customers who remain in their vehicle to conduct a business transaction, excluding gas stations and car washes. Such uses shall also require one higher level of review than shown in Table 4-1, except:

- (1) Those noted as Class (3) review which will remain Class (3) review, and
- (2) Financial institutions or properties that do not abut residential zones—, and
- (3) Espresso/coffee drive-through facilities as defined in Section 15A.02.020. Such “drive thru” facilities mean a window or station for providing service to customers who remain in their vehicle to conduct a business transaction, excluding gas stations and car washes.

~~Such “drive-through” facilities mean a window or station for providing service to customers who remain in their vehicle to conduct a business transaction, excluding gas stations and car washes.~~



(b) Purpose - Such review is required in recognition of the potential impacts of drive-thru uses on adjoining residential uses and arterial systems.

(c) Elements of Review - Review is intended to modify or mitigate negative impacts upon adjoining residential uses and arterial systems. It shall include consideration of impacts of noise and fumes to residential uses; of impacts to traffic flow and carrying capacity to arterial systems.

(d) Any commercial use that includes an adult sales practice as defined in YCC Chapter 5.06 shall be reviewed as an adult entertainment facility under the provisions of Section 15A.09.200.

**Section 8. Special development standards for adult entertainment facilities and separated uses.** A new section is added to Chapter 15A.09 of the Yakima County Code to read:

**15A.09.200 Adult Entertainment Facilities and Separated Uses.**

(1) Scope of Restrictions. All adult entertainment facilities and uses listed in subsection (2)(b) of this section shall comply with the requirements of this section. The purpose and intent of requiring standards for adult entertainment facilities and listed uses is to mitigate the adverse secondary effects caused by such facilities and to maintain compatibility with other land uses and services permitted within the County. The standards established in this section shall not be construed to restrict or prohibit the following activities or products: (i) plays, operas, musicals, or other dramatic works that are not obscene; (ii) classes, seminars, or lectures which are held for a serious scientific or educational purpose that are not obscene; and (iii) exhibitions, performances, expressions, or dances that are not obscene.

(2) Separation Requirements. Adult entertainment facilities shall be permitted as indicated in Table 4-1 "Permitted Land Uses" set forth in Chapter 15A.04 only if the following separation requirements are met:

(a) No adult entertainment facility shall be located closer than eight hundred feet to any residential zoning district including, but not limited to, the SR, R1, R2 and R3 zoning districts designated in this title, and the R1, R2, R3, RT, VR, and RS zoning districts designated by YCC Title 15 (Zoning). This separation requirement applies whether such residential zoning district is located within or outside the city limits of any adjacent city or zoning jurisdiction.

(b) No adult entertainment facility shall be located closer than eight hundred feet to any of the following uses or community entranceways, and no use listed in this subsection (b) shall be located closer than eight hundred feet to any adult entertainment facility, whether or not such use or entranceway is located within or outside the city limits of any adjacent city:

- (i) Any public park;
- (ii) Any public library;
- (iii) Any public or private nursery school or preschool;
- (iv) Any public or private primary or secondary school;

- (v) Any licensed day care;
- (vi) Any community youth center;
- (vii) Any church or other house of worship;
- (viii) Any multifamily residential use located in the B1, B2, SCC, LCC, GC, or CBDS zoning districts;
- (ix) Any other adult entertainment facility;
- (x) Any existing establishment selling alcoholic beverages for consumption on premises.
- (xi) Any entranceway to the community, including rights-of-way of State highways (SR 12, SR 24, SR 97, I-82), and the intersection of two streets nearest any entranceway or gateway to the community identified in any adopted neighborhood plan, whether such entranceway is located within or outside the city limits of any adjacent city or zoning jurisdiction.

(3) **Measurement.** The eight-hundred-foot buffer required by this section shall be measured by extending a straight line from the nearest point on the property line of the lot containing the proposed adult entertainment facility to the nearest point on the boundary lines of the zoning districts, parcels containing uses, and the right-of-way of entranceways listed in subsection (2) of this subsection.

(4) The separation requirements of subsection (2) of this section may only be reduced through the provisions of Chapter 15A.21, Variances.

(5) **Signage.** Signage of adult entertainment facilities shall comply with the provisions of YCC Chapter 15A.08, Signs, together with the following specific conditions. Each adult business use shall be allowed one on-premise sign, in addition to the entrance sign required by YCC Subsection 5.06.200(10), if applicable, which shall be limited to displaying the name of the establishment, the street address, the days and hours of operation, restrictions on the age of persons that may be admitted to the building and the nonspecific identification of the nature of the stock-in-trade or entertainment offered therein (e.g., "adult entertainment," "adult films"). Nowhere on the signage or on the building visible to outside passersby shall appear any verbiage, insignias, pictures, drawings or other descriptions suggestive of sexual acts or actions, or which represent the sexually oriented material and/or performances of the adult entertainment use.

**Section 9. Yakima urban area land use table.** Two new uses, "Adult entertainment facility" and "Espresso / Coffee Drive-Through," are added to the "Permitted Land Uses" Table 4-1 in Chapter 15A.04 of the Yakima County Code, and a double dagger symbol is added to eleven existing uses to correspond with a new footnote inserted as follows. Much of the existing text within the table is unchanged; therefore, the remainder of the table is omitted here for clarity:

|   | SR                   | R1                        | R2                     | R3                       | B1                    | B2             | HB                | SCC                      | LCC                      | CBD                       | CBDS                              | MI               | M2               |
|---|----------------------|---------------------------|------------------------|--------------------------|-----------------------|----------------|-------------------|--------------------------|--------------------------|---------------------------|-----------------------------------|------------------|------------------|
|   | Suburban Residential | Single Family Residential | Two Family Residential | Multi-Family Residential | Professional Business | Local Business | Historic Business | Small Convenience Center | Large Convenience Center | Central Business District | Central Business District Support | Light Industrial | Heavy Industrial |
|   | SR                   | R1                        | R2                     | R3                       | B1                    | B2             | HB                | SCC                      | LCC                      | CBD                       | CBDS                              | MI               | M2               |
| <b>Table 4-1, Permitted Land Uses</b>                                       |                      |                           |                        |                          |                       |                |                   |                          |                          |                           |                                   |                  |                  |
| <b>AMUSEMENT AND RECREATION</b>   |                      |                           |                        |                          |                       |                |                   |                          |                          |                           |                                   |                  |                  |
| Adult entertainment facility (*) <sup>††</sup>                              |                      |                           |                        |                          |                       |                |                   |                          |                          |                           |                                   | 2                |                  |
| Parks (*) <sup>††</sup>   | 2                    | 3                         | 2                      | 2                        | 2                     | 2              | 2                 | 2                        | 2                        | 2                         | 2                                 | 2                | 2                |
| <b>COMMUNITY SERVICES</b>   |                      |                           |                        |                          |                       |                |                   |                          |                          |                           |                                   |                  |                  |
| Churches, synagogues, temples (*) <sup>††</sup>                             | 2                    | 3                         | 2                      | 2                        | 2                     | 2              | 2                 | 2                        | 2                        | 1                         | 1                                 | 2                |                  |
| Community Center (*) <sup>††</sup> meeting halls, fraternal organizations   | 2                    | 3                         | 2                      | 2                        | 2                     | 2              | 2                 | 2                        | 2                        | 1                         | 1                                 | 1                | 1                |
| Day Care Facilities (not home occupation): Family in-Home (*) <sup>††</sup> | 1                    | 2                         | 1                      | 1                        | 2                     | 2              | 2                 | 2                        | 1                        | 1                         | 1                                 |                  |                  |
| Day Care Center (*) <sup>††</sup>   | 3                    | 3                         | 3                      | 2                        | 2                     | 1              | 2                 | 1                        | 1                        | 1                         | 1                                 | 1                |                  |
| Libraries <sup>††</sup>   | 3                    | 3                         | 3                      | 2                        | 1                     | 2              | 1                 | 1                        | 1                        | 1                         | 1                                 | 1                |                  |
| Schools, Elementary & Middle (*) <sup>††</sup>                              | 3                    | 3                         | 3                      | 3                        | 3                     | 3              |                   |                          |                          | 1                         | 3                                 | 3                |                  |

|   | SR | R1 | R2 | R3 | B1 | B2 | HB | SCC | LCC | CBD | CBDS | MI | M2 |
|---|----|----|----|----|----|----|----|-----|-----|-----|------|----|----|
| Senior High (±)   | 3  | 3  | 3  | 3  | 3  | 3  |    |     |     | 3   | 3    | 3  |    |
| RESIDENTIAL   |    |    |    |    |    |    |    |     |     |     |      |    |    |
| (Accessory uses, see 15A.040.050)                       |    |    |    |    |    |    |    |     |     |     |      |    |    |
| Multi-family dwelling (*) (±): 0-7 DU/NRA               | 3  | 2  | 1  | 1  | 1  | 1  | 2  | 2   | 2   | 1   | 1    |    |    |
| RETAIL TRADE, AND SERVICE                               |    |    |    |    |    |    |    |     |     |     |      |    |    |
| Espresso / Coffee Drive-Through (*)                     |    |    |    |    | 2  | 2  |    | 2   | 2   |     | 2    | 2  |    |
| Restaurant, Café and Drive-in Eating Facilities (*) (±) |    |    |    |    | 3  | 1  |    | 1   | 1   | 1   | 1    | 1  |    |
| Taverns (*), Bars, Dance Establishments (±)             |    |    |    |    |    | 3  | 3  | 2   | 1   | 1   | 1    | 1  |    |

1. See section 15A.04.020.1(a-d) since Class (1) uses may require Class (2) review under certain conditions.
2. A higher level of review will be required if the use or development is in an overlay district, see section 15A.09.020.
3. (\*) refers to a definition in section 15A.02.
4. Mobile home parks shall not exceed the maximum number of dwelling units per net residential acre established in Table 5-2.
5. Offsite hazardous waste treatment and storage facilities shall be subject to the State siting criteria adopted in Chapter 70.105 RCW.
6. (±) refers to uses listed in subsection 15A.09.200(2)(b) which are subject to a required separation distance from adult entertainment facilities.

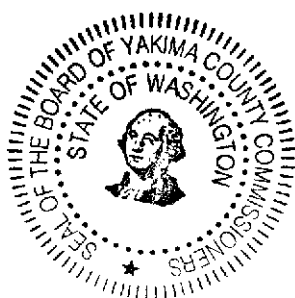
1 = Class (1) Permitted  
2 = Class (2) Review and Approval by Administrative Official  
3 = Class (3) Requires Public Hearing and Approval by Examiner  
= Not permitted

**Section 10.** Sections not modified by this ordinance remain as originally adopted in Ordinance 1-2000 and codified in Yakima County Code Title 15, or as originally adopted in Ordinance 10-1985 and codified in Yakima County Code Title 15A, together with all amendments to date.

**Section 11. Severability.** The provisions of this ordinance are declared separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, sections, or portion of this ordinance, or the invalidity of the application thereof to any person or circumstance, shall not affect the validity of the remainder of the ordinance, or the validity of its application to any other persons or circumstances.

**Section 12. Effective date.** This ordinance shall be effective at 12:00 PM on June 24, 2011.

Dated this 24<sup>th</sup> day of June 2011.



Attest:

Mandy Burkett  
Tiera Girard, Clerk of the Board

Mandy Burkett  
Deputy Clerk of the Board

Ordinance 8A-2010

BOARD OF YAKIMA COUNTY  
COMMISSIONERS

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L. Rand Elliott  
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Constituting the Board of County Commissioners  
for Yakima County, Washington

**EXHIBIT A**

**Yakima County Planning Commission  
Findings of Fact and Recommendation**

**In the Matter of Recommending Official )  
Controls Related to Zoning Regulation of )  
Adult Entertainment Businesses )**

**File No.: TXT10-10, SEP11-11**

Pursuant to RCW 36.70.550, RCW 36.70.600, and RCW 36.70.610, the Planning Commission makes the following statements and recommendations:

**Reasons for Action**

1. At least six municipalities within Yakima County have adopted either zoning or licensing regulations, or both, specific to adult entertainment businesses. Similar regulations applicable to areas outside of the boundaries of cities and towns are necessary in order to correlate physical development of adult entertainment establishments in the county and to assure an environment which preserves the highest standards of public health, safety, welfare and property values for the county's residents and for the general operation of commerce.
2. On June 24, 2010, the Board of Yakima County Commissioners adopted a moratorium on proposed adult businesses in the unincorporated county to allow time to develop draft regulations for its consideration. A public hearing was held on July 13, 2010 in accordance with RCW 36.70.795 and RCW 36.70A.390. The moratorium was extended to June 24, 2011 by the Board's adoption of its renewal on December 24, 2010 following a public hearing on December 21, 2010. The proposed amendments to Yakima County Code Titles 15 and 15A are recommended to achieve the purpose of the moratorium.
3. The Board requested the Planning Commission and staff to prepare proposed official controls to guide and regulate the physical development of land uses which feature or emphasize adult entertainment.

**Findings of Fact**

4. The Planning Commission held meetings on January 26 and February 23, 2011 to consider issues, text alternatives from other jurisdictions, separation distance alternatives on maps, and to formulate direction for the zoning regulations.
5. On March 2, 2011, a Determination of Non-Significance was issued and mailed with a notice of public hearing, copy of the March 1, 2011 draft amendments to Yakima County Code Titles 15 and 15A, SEPA environmental checklist and map of proposed allowed zones to interested agencies and parties with environmental expertise.
6. On March 2, 2011, notification for 60-day review of development regulation amendment was provided to the Washington State Department of Commerce in accordance with RCW 36.70A.106.
7. On March 4, 2011, notice of the Determination of Non-Significance and public hearing was published on page 4D of the Yakima Herald-Republic.

8. On March 16, 2011, the Planning Commission held a duly advertised public hearing at the Yakima Convention Center on the March 1, 2011 draft zoning regulations and provided an opportunity for all attendees to be heard.
9. The Planning Commission accepted oral comments at the public hearing and accepted additional written comments after the public hearing until March 19, 2011.
10. Written comments were received from the City of Yakima and three members of the public.
11. On March 31, 2011, a Final Determination of Non-Significance was issued and mailed to interested agencies and parties with environmental expertise.
12. The Planning Commission held a deliberation meeting on March 30, 2011, carefully reviewing each page and making revisions to the March 1, 2011 draft zoning regulations as deemed appropriate.

#### **Factors Considered at and after the Public Hearing**

The following comments were provided at and after the public hearing on March 16, 2011 and considered by the Planning Commission:

13. Oral testimony favored an increase in distance from 800 feet to a minimum of 1,000 feet for the required separation distance from new adult entertainment facilities to residential districts and listed land uses.
14. Oral testimony favored maintaining the distance of 500 feet for the required separation distance from new adult entertainment facilities to community entranceways.
15. Oral testimony favored listing "compatibility criteria" to address issues of compatibility in review of proposed adult entertainment facilities and including, as one criterion for analysis of compatibility or non-compatibility of a proposed business, the ability and response time of law enforcement officials to respond to incidents.
16. Oral testimony and one e-mail from the public favored requiring the owner or operator to provide on-site security at adult entertainment facilities.
17. Oral testimony expressed a concern with increased crime as an adverse secondary effect associated with adult entertainment facilities.
18. Oral testimony favored qualifying the term "allowed use" by replacing it with "potentially allowed use."
19. The City of Yakima Department of Community and Economic Development submitted a letter suggesting a change to refer to all adult entertainment uses as "adult business" to avoid confusion because products and services of adult retail stores and commercial establishments including an adult sales practice do not constitute "entertainment."
20. The City of Yakima's letter recommended including the full definitions specified in the ordinance in the proposed new sections in YCC Titles 15 and 15A rather than referencing YCC Chapter 5.06.

21. The City of Yakima's letter expressed disagreement with allowing the adult entertainment facilities landuse as a Class (2) Use in the M-1 zone in YCC Title 15A, and as a Class (3) Use in the CBDS zone in YCC Title 15A, because the City of Yakima has allowed adult businesses as a Class (3) Use in the M-1 zone and as a Class (2) use in the General Commercial (GC) zone in its zoning ordinance. Prior to adoption of its regulations the City considered not allowing adult businesses in the M-1 zone at all, but the category was allowed as a Class (3) Use only to provide more developable locations. The letter recommended changing the draft amendments to YCC Title 15A to classify adult entertainment facilities as a Class (3) Use in the M-1 zone and as a Class (2) Use in the CBDS zone.
22. Two e-mails from the public were opposed to allowing adult entertainment facilities of any kind.
23. One e-mail from the public favored the following:
  - a. Require a minimum application fee of \$5,000.00 for review of a proposed adult entertainment facility.
  - b. Require a minimum separation distance of one-half mile between an adult entertainment facility and any commercial use where children are present.
  - c. Prohibit serving alcohol at adult entertainment facilities.
  - d. Require screening of patrons for drugs and alcohol prior to allowing entrance to an adult entertainment facility.
  - e. Require bright lighting standards for parking lots.
  - f. Limit hours of operation to hours of daylight.
  - g. Determine what number of police calls would require a fine, revocation or suspension of permit, or limitation of hours of operation to hours of daylight.
24. Staff favored consideration of "compatibility criteria" for adult entertainment facilities that involve live entertainment and/or live nudity.

#### **Analysis of Findings Considered to Be Controlling**

25. Case law has interpreted that the featured content and message of some types of adult entertainment facilities are protected by the Constitution and cannot be prohibited from all unincorporated areas within Yakima County. The proposed amendments to YCC Titles 15 and 15A are intended to ensure that adult entertainment facilities are located only in appropriate locations where secondary effects can be minimized.
26. The proposed amendments to YCC Titles 15 and 15A further the purpose and objectives of the Yakima County Comprehensive Plan 2015 and parts thereof by limiting adult entertainment facilities to urban areas where they are most appropriately located as commercial uses which require urban level services, including public safety response, and do not require locations in rural areas or on economic resource lands.
27. The proposed amendments to YCC Title 15A further the purpose and objectives of the Yakima Urban Area Comprehensive Plan and its West Valley Neighborhood and Terrace Heights Neighborhood subarea plans by limiting adult entertainment facilities to Industrial and General Commercial (formerly Arterial Commercial) designated areas where they are most appropriately located. The Industrial designation provides for a range of activities including some retail uses, while the General/Arterial Commercial designation accommodates a wide variety of commercial uses that are heavily dependent on convenient vehicle access. The proposed amendments do not allow adult entertainment



facilities in areas designated for residential and other types of commercial development, where adult entertainment facilities would not appropriately be located.

28. Adult entertainment facilities are appropriately classified as a Type II Administrative Use in Industrial (I) Zoning District in the proposed amendments to YCC Title 15, where the zoning district's purpose is to preserve areas for industrial uses, compatible related uses, and certain kinds of commercial uses which are most appropriately located as neighbors of industrial uses. YCC Title 15 states that "Type II Administrative Uses are generally allowed in the zoning district," with application review by the Administrative Official "to ensure compatibility and compliance with the provisions of the zoning district and the goals, objectives and policies of the comprehensive plan." YCC 15.12.015(2)
29. Adult entertainment facilities are appropriately classified as a Type III Conditional Use in the Commercial (C) Zoning District in the proposed amendments to YCC Title 15, where the zoning district's purpose is to provide sites for diversified business types primarily related to automotive traffic. YCC Title 15 states that Type III Conditional Uses, whose applications are decided by the Yakima County Hearing Examiner after public hearing review, "are not appropriate generally throughout the zoning district but may be permitted at a particular location where [they] can be conditioned in such a way to ensure compatibility and compliance with the provisions of the zoning district and the goals, objectives and policies of the comprehensive plan." YCC 15.12.015(3)
30. Adult entertainment facilities are appropriately classified as a Class (2) Use in the Light Industrial (M-1) Zoning District in the proposed amendments to YCC Title 15A, where the zoning district's purpose is to provide areas for light manufacturing, processing, research and wholesale trade, storage and distribution facilities, and to minimize conflicts between uses in the Light Industrial District and surrounding land uses. YCC Title 15A states that Class (2) Uses "... are generally permitted throughout the district ... however site plan review by the Administrative Official is required in order to promote compatibility with the intent and character of the district and the objectives of the Yakima Urban Area Comprehensive Plan." YCC 15A.02.020
31. Adult entertainment facilities are appropriately classified as a Class (3) Use in the Central Business District Support (CBDS) Zoning District in the proposed amendments to YCC Title 15A, where the zoning district's purpose is to accommodate wholesale and retail activities with some high-density residential uses. YCC Title 15A states:

"Class (3) Uses ... are generally incompatible with their neighbors because of their size, emissions, traffic generation or for other reasons. However, they may be compatible with other uses in the district if they are properly sited and designed. Class (3) uses may be permitted by the hearings examiner when he determines, after holding a public hearing, that difficulties related to compatibility, the provisions of public services, and the Yakima Urban Area Comprehensive Plan objectives have been adequately resolved." YCC 15A.02.020
32. Required separation distances of 800 feet from residential districts and listed land uses, and 500 feet from community entranceways, provide additional measures in the proposed amendments to YCC Titles 15 and 15A for assuring that adult entertainment facilities are sited in locations which minimize adverse secondary effects. The distance of 800 feet from residential districts and listed land uses is adequate to mitigate adverse impacts based on crime studies, but is not so great as to take too much property out of consideration as available sites for the purposes of complying with case law.

- 33. The list of uses from which adult entertainment facilities must be separated by 800 feet in the proposed amendments to YCC Titles 15 and 15A should be modified to specify that only those day cares that are licensed would benefit from protection. The number and types of uses listed are adequate as modified to provide the adequate benefits of separation from adult entertainment facilities.
- 34. An adequate inventory of land and developable sites exists to comply with the requirement to allow adult entertainment facilities featuring content that has Constitutional protection.
- 35. Adult retail stores are appropriately included as regulated types of adult entertainment facilities in the proposed amendments to YCC 15 and 15A.
- 36. Commercial establishments that include an adult sales practice are appropriately included as regulated types of adult entertainment facilities in the proposed amendments to YCC 15 and 15A.

**Recommendation**

- 37. Review under the State Environmental Policy Act was conducted adequately.
- 38. In the Planning Commission's judgment, the proposed amendments to YCC Titles 15 and 15A are required to preserve the integrity of the Yakima County and Yakima Urban Area comprehensive plans and assure their systematic execution.
- 39. The proposed amendments to YCC Titles 15 and 15A are specific regulations and controls that effectively define the type and degree of permissible land uses in each of the identified zones.


**Motion**

- 40. The Yakima County Planning Commission recommends the proposed amendments to YCC Titles 15 and 15A to the Board of County Commissioners for Yakima County for adoption.

By: Michael Aquilino  
 Seconded: Al Schweppe  
 In Favor: 6  
 Opposed: 0  
 Action taken this 30 day of March , 2011

  
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 Ed Burns, Chair  
 Yakima County Planning Commission

4-7-11  
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 Date

  
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 Michael Aquilino, Vice Chair  
 Yakima County Planning Commission

4.12.2011  
 \_\_\_\_\_  
 Date

[Absent]

Zella West, Planning Commissioner

*Nancy Charron*

Nancy Charron, Planning Commissioner

*4/11/11*

Date

*Patrick Rawn*

Patrick Rawn, Planning Commissioner

*4/13/11*

Date

*Alfred J. Schweppe*

Al Schweppe, Planning Commissioner

*4/6/2011*

Date

*John Crawford*

John Crawford, Planning Commissioner

Date

ATTEST:

*Steve Erickson*

Steve Erickson, Planning Commission Secretary

*April 13, 2011*

Date