



## Legislation Text

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**File #:** 090643., **Version:** 1

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### AMENDMENTS TO LAND DEVELOPMENT CODE RELATING TO SEXUALLY ORIENTED BUSINESSES (B)

Ordinance No. 0-10-02, Petition PB-09-124-TCH

An ordinance of the City of Gainesville, Florida, amending the Land Development Code related to sexually oriented businesses; by revising the definitions for sexually oriented businesses; by allowing certain types of sexually oriented businesses as uses by right in the Tourist-Oriented Business District (BT), General Business District (BUS) and General Industrial District (I-2); by stating the intent, purpose and findings for the regulation of sexually oriented businesses; by imposing spacing requirements and design restrictions; by allowing for limited retail sales as an accessory use to retail trade establishments; by providing for permitted nonconforming uses; providing directions to the codifier; providing a severability clause; providing a repealing clause; and providing an immediate effective date.

The City Commission adopt the proposed ordinance.

### PLANNING AND DEVELOPMENT SERVICES DEPARTMENT STAFF REPORT

The purpose of this ordinance is to address potential legal issues related to how the City allows adult and sexually oriented businesses. The City's current zoning regulations only allow such businesses in the Tourist-Oriented Business District (BT) and there are only a few sites available within the BT zoning district. The City Commission authorized staff to hire a consultant to review the City's land development regulations related to this issue. In 2008, the City retained Duncan Associates to assist in updating the portions of its zoning ordinance that deal with sexually oriented businesses, or adult entertainment.

The consultant advised that local governments can legitimately regulate sexually oriented businesses differently from businesses that are otherwise similar if the purpose of the regulations is to reduce "negative secondary effects" of such businesses. Measurable secondary effects frequently associated with sexually oriented businesses are reductions in market values of residential and, in some cases, commercial property, as well as increases in certain types of crime. Both types of secondary effects diminish with distance. To minimize these secondary effects, local governments typically limit sexually oriented businesses to specific industrial or commercial zoning districts and then impose additional separation or setback distances between any sexually oriented business and such sensitive uses as residential neighborhoods, places of religious assembly and schools.

One of the challenges that local governments face in developing such regulations is that the desire to separate sexually oriented businesses from these other uses must be balanced with what the courts have held to be a "reasonable opportunity" for such businesses to locate in a community. The courts have made it clear that such a "reasonable opportunity" must be based on zoning by right or something very similar and not through a process that requires issuance of a special use permit, rezoning or other discretionary decision. One of the most difficult parts of the "reasonable opportunity" principle is to determine how much land area or how many sites a community must provide for a "reasonable opportunity" to locate. In First Amendment terms, the issue is typically addressed as one of providing adequate "alternate avenues" for the communication of the lawful speech that is restricted through the zoning or other ordinances.

The consultant has made specific recommendations for amending the provisions of City's Land Development Code to provide "adequate alternative avenues" for businesses protected by the First Amendment as uses by right and including design standards, separation requirements and other provisions to limit the potential negative secondary effects of such businesses on the community.

Compatibility was the major factor considered when determining where to allow sexually oriented businesses to locate. The focus of the compatibility analysis was to restrict the use in areas where the "negative secondary effects" of such businesses would have the most impacts. Those areas include residential areas, places of religious assembly, public and private school, youth associations and parks and recreational areas. Given that a majority of the land area in Gainesville is designated for residential and educational uses, and the overall distribution of other land uses, the City is limited in where sexually oriented business uses would be compatible. Areas designated with mixed use type land use designations were eliminated because those areas would allow residential development and are more pedestrian oriented. Business Automotive and Limited Industrial areas were also eliminated due to the close proximity of these areas to residential development and their location along major roadways such as 13th Street and Main Street. Tourist-Oriented Business District (BT), General Business District (BUS) and General Industrial District (I-2) were chosen because they provided a reasonable opportunity to locate with the least amount of negative impact on the overall community.

On October 28, 2009, the City Plan Board heard the petition and, by a vote of 7-0, recommended the City Commission approve the petition with several modifications and recommendations from the Plan Board. On January 21, 2010, the City Commission heard the petition, and by a vote of 7-0, approved the petition as modified by staff recommendation.

**CITY ATTORNEY MEMORANDUM**

Should this ordinance pass on first reading, second and final reading will be held on Thursday, April 15, 2010.