

DRAFT

ORDINANCE NO. _____

An ordinance relating to adult retail establishments; amending SMC sections 17A.020.010 and 17C.305.020; and adopting a new section 17C.210.100 to chapter 17C.210 of the Spokane Municipal Code.

The City of Spokane does ordain:

Section 1. That SMC section 17A.020.010 is amended to read as follows:

17A.020.010 “A” Definitions

- A. **Abandoned Sign Structure.**
A sign structure where no sign has been in place for a continuous period of at least six months.
- B. **Aboveground Storage Tank or AST.**
Any one or connected combination of tanks that is used to contain an accumulation of liquid critical materials and the aggregate volume of which (including the volume of piping connected thereto) is more than sixty gallons and the entire exterior surface area of the tank is above the ground and is able to be fully visually inspected. Tanks located in vaults or buildings that are to be visually inspected are considered to be aboveground tanks.
- C. **Accepted.**
A project for which the required plans have been found to be technically adequate.
- D. **Accessory Dwelling Unit (ADU).**
An accessory dwelling unit is a separate additional living unit, including separate kitchen, sleeping, and bathroom facilities, attached or detached from the primary residential unit, on a single-family lot. ADUs are known variously as:
 - 1. “mother-in-law apartments,”
 - 2. “accessory apartments,” or
 - 3. “second units.”
- E. **Accessory Structure.**
A structure of secondary importance or function on a site. In general, the primary use of the site is not carried on in an accessory structure.

1. Accessory structures may be attached or detached from the primary structure.
2. Examples of accessory structures include:
 - a. garages,
 - b. decks,
 - c. fences,
 - d. trellises,
 - e. flag poles,
 - f. stairways,
 - g. heat pumps,
 - h. awnings, and
 - i. other structures.
3. See also [SMC 17A.020.160](#) (“Primary Structure”).

F. Accessory Use.

A use or activity which is a subordinate part of a primary use and which is clearly incidental to a primary use on a site.

G. Activity.

See Regulated Activity.

H. Administrative Decision.

A permit decision by an officer authorized by the local government. The decision may be for approval, denial, or approval with conditions and is subject to the applicable development standards of the land use codes or development codes.

I. Adult Entertainment Establishment.

1. An “adult entertainment establishment” is an enclosed building, or any portion thereof, used for presenting performances, activities, or material relating to “specified sexual activities” as defined in [SMC 17A.020.190](#) or “specified anatomical areas” as defined in [SMC 17A.020.190](#) for observation by patrons therein.

2. A motion picture theater is considered an adult entertainment establishment if the preponderance of the films presented is distinguished or characterized by an emphasis on the depicting or describing of "specified sexual activities" or "specified anatomical areas."
 3. A hotel or motel providing overnight accommodations is not considered an adult entertainment establishment merely because it provides adult closed circuit television programming in its rooms for its registered overnight guests.
- J. Adult Family Home.
A residential use as defined and licensed by the State of Washington in a dwelling unit.
- K. Adult-oriented Merchandise.
Any goods, products, commodities, or other ware, including, but not limited to, videos, CD ROMs, DVDs, computer disks, or other storage devices, magazines, books, pamphlets, posters, cards, periodicals, or non-clothing novelties which depict, describe, or simulate "specified anatomical area," as defined in [SMC 17A.020.190](#), or "specified sexual activities," as defined in [SMC 17A.020.190](#).
- L. Adult Retail Use Establishment
An "adult retail use establishment" is an enclosed building, or any portion thereof which, for money or any other form of consideration, devotes a significant or substantial portion of stock in trade to the sale, exchange, rental, loan, trade, transfer or viewing of "adult-oriented merchandise". For purposes of this definition, a retail establishment devotes a significant or substantial portion of its stock in trade to adult-oriented merchandise if the sale, exchange, rental, loan, trade, or transfer of such adult-oriented merchandise is clearly material to the economic viability of the business. It is rebuttably presumed that such adult-oriented merchandise is clearly material to the viability of the business if adult-oriented merchandise accounts for:
1. thirty percent or more of the retail dollar value of gross sales over any quarterly period;
 2. thirty percent or more of the floor area of the store open to the public;
 3. thirty percent or more of the retail dollar value of all merchandise displayed in the store;
 4. thirty percent or more of the store's inventory (whether measured by retail dollar value or number of items); or
 5. thirty percent or more of the store's stock in trade.

In no event shall a retailer whose transactions only incidentally or marginally relate to adult-oriented merchandise be considered an adult retail use establishment.

~~((Adult Retail Use Establishment.~~

~~1. An "adult retail use establishment" is an enclosed building, or any portion thereof which, for money or any other form of consideration, devotes a significant or substantial portion of stock in trade to the sale, exchange, rental, loan, trade, transfer, or viewing of "adult-oriented merchandise."~~

~~2. For purposes of this definition, a retail establishment devotes a significant or substantial portion of its stock-in-trade to adult-oriented merchandise if the sale, exchange, rental, loan, trade, transfer, or viewing of such adult-oriented merchandise is clearly material to the economic viability of the business.~~

~~3. It is rebuttably presumed that such adult-oriented merchandise is clearly material to the viability of the business if adult-oriented merchandise accounts for thirty percent or more of the:~~

~~a. retail dollar value of gross sales over any quarterly period,~~

~~b. floor area of the store open to the public,~~

~~c. retail dollar value of all merchandise displayed in the store,~~

~~d. store's inventory (whether measured by retail dollar value or number of items), or~~

~~e. store's stock in trade.~~

~~4. In no event shall a retailer whose transactions only incidentally or marginally relate to adult-oriented merchandise be considered an adult retail use establishment.))~~

M. Agency or Agencies.

The adopting jurisdiction(s), depending on the context.

N. Agricultural Activities

1. Pursuant to WAC 173-26-020(3)(a), agricultural uses and practices including, but not limited to:

a. producing, breeding, or increasing agricultural products;

- b. rotating and changing agricultural crops;
 - c. allowing land used for agricultural activities to lie fallow in which it is plowed and tilled but left unseeded;
 - d. allowing land used for agricultural activities to lie dormant as a result of adverse agricultural market conditions;
 - e. allowing land used for agricultural activities to lie dormant because the land is enrolled in a local, state, or federal conservation program, or the land is subject to a conservation easement;
 - f. conducting agricultural operations; maintaining, repairing, and replacing agricultural equipment;
 - g. maintaining, repairing, and replacing agricultural facilities, provided that the replacement facility is not closer to the shoreline than the original facility; and
 - h. maintaining agricultural lands under production or cultivation.
2. The City of Spokane shoreline master program defines agriculture activities as:
- a. low-intensity agricultural use is defined as passive grazing and plant cultivation; or
 - b. high-intensity agricultural use includes such activities as feed lots, feed mills, packing plants, agricultural processing plants or warehouse for the purpose of processing, packing, and storage of agricultural products.
- O. Agricultural Land.
Areas on which agricultural activities are conducted as of the date of adoption of the updated shoreline master program pursuant to the State shoreline guidelines as evidenced by aerial photography or other documentation. After the effective date of the SMP, land converted to agricultural use is subject to compliance with the requirements herein.
- P. AKART.
An acronym for “all known, available, and reasonable methods to control toxicants” as used in the sense of the state Water Pollution Control Act and RCW 90.48.520 thereof. AKART shall represent the most current methodology that can be reasonably required for preventing, controlling, or abating the pollutants associated with a discharge. The concept of AKART applies to both point and nonpoint sources of pollution.

- Q. Alkali Wetlands.
Alkali wetlands means wetlands characterized by the occurrence of shallow saline water. In eastern Washington these wetlands contain surface water with specific conductance that exceeds three thousand micromhos/cm. They have unique plants and animals that are not found anywhere else in eastern Washington such as the alkali bee. Conditions within these wetlands cannot be easily reproduced through compensatory mitigation.
- R. Alley.
See “Public Way” ([SMC 17A.020.160](#)).
- S. Alteration.
A physical change to a structure or site.
1. Alteration does not include normal maintenance and repair or total demolition.
 2. Alteration does include the following:
 - a. Changes to the facade of a building.
 - b. Changes to the interior of a building.
 - c. Increases or decreases in floor area of a building; or
 - d. Changes to other structures on the site, or the development of new structures.
- T. Alteration of Plat, Short Plat, or Binding Site Plan.
The alteration of a previously recorded plat, short plat, binding site plan, or any portion thereof, that results in a change to conditions of approval or the deletion of existing lots or the change of plat or lot restrictions or dedications that are shown on the recorded plat. An alteration does not include a boundary line adjustment subject to [SMC 17G.080.030](#).
- U. Alternative or Post-incarceration Facility.
A group living use where the residents are on probation or parole.
- V. Alternative Tower Structure (“Stealth” Technology).
Manmade trees, clock towers, bell steeples, light poles, flag poles, and similar alternative-design mounting structures that camouflage or conceal the presence of antennas or towers (see also “Low Visual Impact Facility” – [SMC 17A.020.120](#)).
- W. Antenna Array (Wireless Communication Antenna Array).

1. One or more rods, panels, discs, or similar devices used for the transmission or reception of radio frequency (RF) signals, which may include omni-directional antenna (whip), directional antenna (panel), and parabolic antenna (dish).
 2. Wireless communication antenna array shall be considered an accessory use provided they are located upon an existing structure.
- X. Antenna Height.
The vertical distance measured from the base of the antenna support structure at grade to the highest point of the structure including the antenna.
- Y. Antenna Support Structure.
Any pole, telescoping mast, tower tripod, or any other structure that supports a device used in the transmitting and/or receiving of electromagnetic waves.
- Z. API 653.
The American Petroleum Institute's standards for tank inspection, repair, alteration, and reconstruction.
- AA. Appeal.
A request for review of the interpretation of any provision of [Title 17 SMC](#).
- AB. Appeal – Standing For.
As provided under RCW 36.70C.060, persons who have standing are limited to the following:
1. The applicant and the owner of property to which the land use decision is directed; and
 2. Another person aggrieved or adversely affected by the land use decision, or who would be aggrieved or adversely affected by a reversal or modification of the land use decision. A person is aggrieved or adversely affected within the meaning of this section only when all of the following conditions are present:
 - a. The land use decision has prejudiced or is likely to prejudice that person.
 - b. That person's asserted interests are among those that the local jurisdiction was required to consider when it made the land use decision.
 - c. A judgment in favor of that person would substantially eliminate or redress the prejudice to that person caused or likely to be caused by the land use decision; and

- d. The petitioner has exhausted his or her administrative remedies to the extent required by law (RCW 36.70C.060).

AC. Applicant.

An application for a permit, certificate, or approval under the land use codes must be made by or on behalf of all owners of the land and improvements. "Owners" are all persons having a real property interest. Owners include:

1. holder of fee title or a life estate;
2. holder of purchaser's interest in a sale contract in good standing;
3. holder of seller's interest in a sale contract in breach or in default;
4. grantor of deed of trust;
5. presumptively, a legal owner and a taxpayer of record;
6. fiduciary representative of an owner;
7. person having a right of possession or control; or
8. any one of a number of co-owners, including joint, in common, by entireties and spouses as to community property.

AD. Application – Complete.

An application that is both counter-complete and determined to be substantially complete as set forth in [SMC 17G.060.090](#).

AE. Aquaculture.

The farming or culture of food fish, shellfish, or other aquatic plants or animals in freshwater or saltwater areas, and may require development such as fish hatcheries, rearing pens and structures, and shellfish rafts, as well as use of natural spawning and rearing areas. Aquaculture does not include the harvest of free swimming fish or the harvest of shellfish not artificially planted or maintained, including the harvest of wild stock geoducks on DNR-managed lands.

AF. Aquatic Life.

Shall mean all living organisms, whether flora or fauna, in or on water.

AG. Aquifer or Spokane Aquifer.

A subterranean body of flowing water, also known as the Spokane-Rathdrum Aquifer, that runs from Pend Oreille Lake to the Little Spokane River.

AH. Aquifer Sensitive Area (ASA).

That area or overlay zone from which runoff directly recharges the aquifer, including the surface over the aquifer itself and the hillside areas immediately adjacent to the aquifer. The area is shown in the map adopted as part of [SMC 17E.050.260](#).

AI. Aquifer Water Quality Indicators.

Common chemicals used for aquifer water quality screening. These are:

1. calcium,
2. magnesium,
3. sodium,
4. total hardness,
5. chloride,
6. nitrate-nitrogen, and
7. phosphorus.

AJ. Archaeological Areas and Historical Sites.

Sites containing material evidence of past human life, such as structures and tools and/or cultural sites with past significant historical events. These sites are a nonrenewable resource and provided a critical educational link with the past.

AK. Area of Shallow Flooding.

A designated AO or AH Zone on the Flood Insurance Rate Map (FIRM).

1. The base flood depths range from one to three feet.
2. A clearly defined channel does not exist.
3. The path of flooding is unpredictable and indeterminate.
4. Velocity flow may be evident.

AO is characterized as sheet flow and AH indicates ponding.

AL. Area of Special Flood Hazard.

The land in the floodplain within a community subject to a one percent or greater chance of flooding in any given year. Designation on maps always includes the letters A or V.

AM. Arterial.

See:

1. "Principal Arterials" – [SMC 17A.020.160](#),
2. "Minor Arterials" – [SMC 17A.020.130](#),
3. "Collector Arterial" – [SMC 17A.020.030](#), or
4. "Parkway" – [SMC 17A.020.160](#).

AN. Assisted Living Facility.

A multi-family residential use licensed by the State of Washington as a boarding home pursuant to chapter 18.20 RCW, for people who have either a need for assistance with activities of daily living (which are defined as eating, toileting, ambulation, transfer [e.g., moving from bed to chair or chair to bath], and bathing) or some form of cognitive impairment but who do not need the skilled critical care provided by nursing homes.

1. An "assisted living facility" contains multiple assisted living units.
2. An assisted living unit is a dwelling unit permitted only in an assisted living facility.

AO. Attached Housing.

Two or more dwelling units attached by a common wall at a shared property line. These include:

1. townhouses,
2. row houses, and
3. other similar structures

that are single-family residences on individual lots, sharing a common wall at a shared property line.

AP. Attached Structure.

Any structure that is attached by a common wall to a dwelling unit.

1. The common wall must be shared for at least fifty percent of the length of the side of the principal dwelling.
2. A breezeway is not considered a common wall.

3. Structures including garages, carports, and house additions attached to the principal dwelling unit with a breezeway are still detached structures for purposes of this chapter and its administration.

AQ. Available Capacity.

Capacity for a concurrency facility that currently exists for use without requiring facility construction, expansion, or modification (RCW 76.70A.020).

AR. Average Grade Level.

Means the average of the natural or existing topography of the portion of the lot, parcel, or tract of real property on that part of the lot to be occupied by the building or structure as measured by averaging the elevations at the center of all exterior walls of the proposed structure.

Section 2. That SMC section 17C.305.020 is amended to read as follows:

17C.305.020 Use Standards

An adult retail use establishment or adult entertainment establishment must be located on property of sufficient size and frontage to contain the establishment together with off-street parking, driveways, building setbacks and landscaping as required by this chapter and, further, the location must meet the following requirements.

- A. An adult retail use establishment or an adult entertainment establishment may not be located or maintained within seven hundred fifty feet, measured from the nearest property line of the adult retail use establishment or of the adult entertainment establishment to the nearest property line of any of the following preexisting uses located inside or outside of the City of Spokane:
 1. Public library.
 2. Public playgrounds or park.
 3. Public or private school and its grounds, from kindergarten to twelfth grade.
 4. Nursery school, mini-daycare center or daycare center.
 5. Church, convent, monastery, synagogue, or other place of religious worship.
 6. Another adult retail use establishment or an adult entertainment establishment, subject to the provisions of this section.

- B. An adult retail use establishment or an adult entertainment establishment may not be located within seven hundred fifty feet of any of the following zones located within the City of Spokane:
 - 1. RA – Residential Agriculture.
 - 2. RSF – Residential Single Family.
 - 3. RTF – Residential Two Family.
 - 4. RMF – Residential Multifamily.
 - 5. RHD – Residential High Density.
 - 6. O – Office Zone.
 - 7. OR – Office Retail.

- C. An adult retail use establishment or an adult entertainment establishment may not be located within seven hundred fifty feet of any zone in any other jurisdiction abutting the City of Spokane that has listed in their zoning ordinance a residential zone separation standard similar to subsection (B) of this section. Currently, adult retail use establishments or adult entertainment establishments must locate at least seven hundred fifty feet from the following Spokane County zones:
 - 1. Rural Residential-10 – RR-10.
 - 2. Semi-rural Residential-5 – SRR-5.
 - 3. Semi-rural Residential-2 – SRR-2.
 - 4. Suburban Residential-1 – SR-1.
 - 5. Suburban Residential-1/2 – SR-1/2.
 - 6. Urban Residential-3.5 – UR-3.5.
 - 7. Urban Residential-7 – UR-7.
 - 8. Urban Residential-12 – UR-12.
 - 9. Urban Residential-22 – UR-22.
 - 10. Rural Settlement – RS.

- D. Hours of Operation.

An adult retail use establishment or an adult entertainment establishment may not be operated or otherwise open to the public between the hours of two a.m. and ten a.m.

E. An adult retail establishment that was lawfully conducting business prior to January 1, 2003 at its current location may be entitled to recognition as a non-conforming use and a certificate of occupancy for such nonconforming use, subject to the provisions of chapter 17C.210 SMC. On application, an owner of such an establishment shall be issued a certificate of occupancy if the business meets all generalized criteria for a nonconforming use as set forth in chapter 17C.210 SMC, agrees to be bound by the terms of the consent decree entered in *City of Spokane v. CAWA*, Eastern District of Washington Cause No. CV-10-314-RHW, and in addition meets the following criteria:

1. The applicant shall observe closing hours from two a.m. to ten a.m.
2. No more than thirty percent of the floor space of each applicant business shall be devoted to the sale of adult oriented merchandise.
3. Adult oriented merchandise shall constitute no more than thirty percent of the inventory currently available for sale. This figure shall be determined by counting items on the shelves and there will be no dollar value test for determination of inventory.
 - a. The definition of “adult oriented merchandise” shall be the same as that set forth in SMC 17A.020.010(L).
 - b. Bulk items, defined as “multiple items contained in a single package,” shall be counted as one item.
 - c. There shall be no condition involving so called “sham items” and the applicant shall not be limited in the types, location, or physical condition of non-adult inventory as it shall choose.
4. The applicant shall make reasonable efforts to avoid the presence of pornographic litter on the property. “Reasonable efforts” shall consist of maintaining locked outside trash containers and having employees patrol the property on a regular basis to pick up litter.
5. The applicant shall maintain no exterior signage advertising adult oriented merchandise other than a single exterior sign with 12 inch block letters, which may state “XXX merchandise”, “adult oriented merchandise” or words to that effect.
6. There shall be no limitation on profits attributable to the sale or rental of adult oriented merchandise.

7. If the Court in Eastern District of Washington Cause No. CV-10-314-RHW declines to enter a consent decree or injunction, the certificate of occupancy referenced herein shall still be available, if and to the extent that (a) a court of competent jurisdiction agrees to enter a stipulated injunction between the applicant and the City of Spokane, or (b) the applicant agrees that the certificate of occupancy will be enforceable, after notice and an opportunity to cure, in the same manner and to the same degree that any non-conforming user is subject to enforcement for failing to meet or maintain the property in conformity with the requirements of law.
- F. Once the certificate of occupancy is issued, and the non-conforming use recognized, it shall become irrevocable while the business is owned by the then-current owner, on the same terms and conditions as any other non-conforming use is irrevocable. Any successor owner will be required to re-apply for the certificate of occupancy within ninety days of purchase of the business or its assets. Any applicant shall agree to the terms hereof, and agree that the same are enforceable by injunction. Any applicant must stipulate to such enforcement as a condition of obtaining the permit referenced by this section. Thereafter, this section and the terms of the agreed injunction will be enforceable by a contempt motion, which shall not be sought until the adult business operator is given such notice and opportunity to cure as would be required of all injunctions. Notice shall be sent to the applicant's registered agent.
- G. For purposes of this provision, "owner" means principal shareholder or natural person owning a controlling interest in the business. A change of corporate entity not involving a change in the identity of the principal shareholder shall not constitute a change of ownership.

Section 3. That there is adopted a new SMC section 17C.210.100 to read as follows:

17C.210.100 Nonconforming Adult Retail Businesses

An adult retail business that does not meet the standards set forth in SMC 17C.305.020(A) through SMC 17C.305.020(C) is a nonconforming use. Such use shall be unlawful unless the applicant seeks and receives a certificate of occupancy in conformity with the requirements of SMC 17C.305.020(E) through SMC 17C.305.020(G).

PASSED BY THE CITY COUNCIL ON _____, 2012.

Council President

Attest:

Approved as to form:

City Clerk

Assistant City Attorney

Mayor

Date

Effective Date