



TOWN COUNCIL

WORKSHOP AGENDA DOCUMENTATION

PREPARATION DATE: November 15, 2016
MEETING DATE: November 21, 2016

SUBMITTING DEPARTMENT: Legal
DEPARTMENT DIRECTOR: Audrey Cohen-Davis
PRESENTER: Lea Colasuonno

SUBJECT: Adult Entertainment Businesses

PURPOSE OF WORKSHOP ITEM

The purpose of this item is for the Town Council determine what regulations are necessary in order to protect the Town from the secondary effects of adult entertainment business operations and to provide guidance to Staff about developing the regulations.

DESIRED OUTCOME

The desired outcome of this item is for Council to provide Staff direction with regard to regulations on adult entertainment businesses.

BACKGROUND/ALTERNATIVES

The Town of Jackson first regulated adult entertainment in 1926 and refined that ordinance in 1982. Since then the legal landscape surrounding these businesses has shifted significantly. The United States Supreme Court upholds regulations on the adult entertainment business as legal if they are justified with regard to the secondary effects of the adult businesses. Such regulations are struck down when courts find a municipality targeting the sexual expression – e.g. the First Amendment activity – taking place in the businesses because of disapproval of that activity.

As a result, in December 2015, the Town enacted Ordinance 1102, a 180-day emergency moratorium to allow Town staff: 1) time to identify the effects of the adult entertainment business on communities; 2) provide Council cases, studies, and expert opinions in order for it to determine whether a regulatory response to those effects is necessary; and, 3) provide Council suggested changes to the Land Development Regulations and Municipal Code for Council's consideration, should it find a regulatory response is warranted.

At the April 18, 2016 Workshop the Town Council made a clear public record of specific constitutional and legislative findings based upon an actual review of the cases, studies, and expert opinions in order to provide a nexus that will justify a regulation restricting SOB's to certain locations within specific zones and possible operating parameters. The Town Council also considered a regulation with a location for such businesses as presented by Staff and passed an ordinance on first reading. At second reading on May 2, 2016, the Town Council continued the ordinance reading process in order to re-evaluate locations for such businesses. At the same time Council asked staff to come back with further information about potential locations for these businesses.

Staff has continued to work on this item since the continuance and moratorium extension. In accordance with Council's request Staff has attached to this staff report a zoning map of the Town for consideration of alternative locations and retained on the map the highlighted portion specified by Staff as a potential location.

Previously at the April 18, 2016 Workshop:

1. The Council was presented with and reviewed cases, studies and expert opinions regarding the secondary effects of adult entertainment businesses. These studies in and by other communities included, but are not limited to, all those in the National Law Center for Children and Families 2005 Summaries of SOB Land Use Studies; Richard McCleary, Rural Hot Spots: The Case for Adult Businesses, Criminal Justice Policy Review 19(2), 153-163 (2008); Eric Domain Kelly, et. al., Survey of Florida Appraisers: Effects of Land Uses on Market Values, (2008); Alan C. Weinstein et. al., The Association of Adult Businesses with Secondary effects: Legal Doctrine, Social Theory, and Empirical Evidence, 29 Cardozo Arts and Entertainment Law Journal 565 (2011); Richard McCleary, Do “Off-Site: Adult Businesses Have Secondary Effects? Legal Doctrine, Social Theory, and Empirical Evidence, Law & Policy Vol. 31, No.2 218-35 (2009).
2. Based on these cases, studies and expert opinions the Council made the findings that secondary effects exist in connection with adult entertainment businesses and that such secondary effects would exist in Jackson.
3. Based on the existence of these secondary effects in Jackson, the Council made the finding that a regulatory response is necessary.

Therefore, Council’s next steps are to:

1. Provide guidance to Staff on what location restrictions Council seeks for these businesses.
 - a. A Town of Jackson Zoning map attached hereto includes Staff’s recommendation for a location from the April meeting, and the setbacks associated with it. This may serve as a starting point for Council discussion about other potential locations.
2. Provide guidance to Staff on the use standards Council seeks for these businesses. Staff has provided a Municipal Code example and an LDR example as starting points for Council discussion and Staff direction.
 - a. The Municipal Code example attached has the primary goal of addressing secondary effects and can be enforced through the criminal system, e.g. the police department and prosecutor. It has been drafted for Council’s review as a conservative approach to addressing secondary effects. For example the draft uses Wyoming State Statute and existing Municipal Code sections to prohibit public indecency. It also has minimal requirements for live dance performance that only prohibit contact between a stage performer and patron (but do not prohibit lap dancing by other employees). Furthermore, it does not regulate the live dance performers (except to ensure they are not minors). These minimum suggested regulations presented by Staff address secondary effects, including requiring a designated station from which an employee can see every area of the business (to mitigate the likelihood of assault), prohibiting contact between patrons and performers, and prohibiting sexual acts between anyone on the premises (to mitigate disease transmission).
 - b. As for the example LDR attached, since LDRs deal with land use issues, it includes suggested regulations for interior and exterior lighting for adult businesses (to mitigate the increased rates of personal and property crime in and around these businesses).
 - c. After reviewing the initial LDR draft, the Planning Commission suggested adding “CPTED” standards to help mitigate the secondary effects of adult businesses. “CPTED” is an acronym for “Crime Prevention Through Environmental Design” and comprise using land use design tools to mitigate ambient crime risk. An example that could be used to mitigate the known increased rates of sexual assault and robbery that take place around adult businesses would be prohibiting thick shrubs or bushes around buildings, thus limiting the opportunity for perpetrators to hide and attack victims.
 - d. Council may employ more stringent regulations than these examples – for both the interior and exterior of adult businesses – to moderate the secondary effects specified in the studies provided to Council, including things such as:
 - i. Limiting alcohol service on the premises,

- ii. Limiting hours of operation,
- iii. Regulating clothing and attire of performers.

- 3. Provide guidance to staff on an extension of the moratorium for an additional period of time (a minimum of 60 days) to allow staff to finalize an ordinance for consideration by the Council. A draft ordinance has been prepared for approval at the Town Council evening meeting, if directed.

ALIGNMENT WITH COUNCIL'S STRATEGIC INTENT

This item aligns with Council's goal of providing an economic environment in which businesses are successful and wherein the economy generates sufficient revenues to support the Town and its goal of providing efficient and effective government services by ensuring a safe economic climate and a safe community for all business patrons, employees, and businesses.

STAKEHOLDER ANALYSIS

The stakeholders involved in this issue are the general public and, specifically, business owners interested in opening an adult entertainment business within the Town. As directed by the Mayor, Staff has spoken with business park property owners that made public comment in April and has followed up with them about tonight's agenda item.

FISCAL IMPACT

The fiscal impact of passage of this ordinance varies between \$250 and \$700 depending on the length of the ordinance. (Shorter ordinances average around \$350 and short franchise ordinances can reach \$700.)

STAFF IMPACT

The impact on Staff of creating this ordinance has been substantial, as the Legal Department spent considerable time since December (the moratorium was passed December 12, 2015) researching the constitutional issues surrounding the secondary effects associated with Adult Entertainment Businesses, the potential for those effects to develop in the Town, and the appropriate scale of regulatory response to recommend (should Council determine secondary effects accompany this Business). Constitutional research has continued during the moratorium, as has Staff discussion about potential further locations for these businesses. The Planning Department has also contributed a substantial amount of time in assisting the Legal Department with the text amendment to the Land Development Regulations and location discussions.

LEGAL ISSUES

The Supreme Court of the United States clearly established that sexual expression is protected under the First Amendment in a string of decisions starting in the 1970s. These decisions inspired growth in the adult entertainment business throughout the 1970s and 1980s. As municipalities noticed decreased health and safety around these businesses, they responded by studying these issues in and around these businesses. In particular, municipalities found that these businesses had accompanying "secondary effects" that included increased rates of personal and property crimes, sexually transmitted diseases, illicit drug use, prostitution, and a decrease in neighborhood quality and property values. Municipalities responded by regulating the businesses in a variety of ways to varying degrees and the United States Supreme Court upholds these regulations as long as they are justified with regard to the secondary effects of the adult businesses. Such regulations are struck down when courts find a municipality targeting the sexual activities and expression – e.g. the First Amendment activity – taking place in the businesses because of disapproval of that activity.

The Town's former ordinance, originally enacted in 1926, unconstitutionally banned this type of protected activity wholesale, requiring the moratorium and a rewrite of the Town's laws. To ensure the Town's laws meet constitutional muster and that the public's First Amendment rights are protected, Staff spent the moratorium studying the federal and state laws, the secondary effects of adult businesses, and developing changes to the Town's Code and LDRs for Council consideration.

ATTACHMENTS

- Ordinance V (LDR text amendment)
- Ordinance U (Municipal Code)
- Ordinance T (emergency moratorium extension)
- Town of Jackson Zoning Map

RECOMMENDATION

Staff has no recommendation.

SUGGESTED MOTIONS

- 1) I move to direct Staff to draft a Municipal Code ordinance and a Land Development Regulation consistent with Council discussion and direction provided at this Workshop.

And;

- 2) I move to direct staff to present an ordinance continuing the moratorium on adult entertainment business for an additional _____ days to allow staff time to finalize ordinances regulating such businesses.

Synopsis for PowerPoint (120 words max):

The Town enacted a moratorium in December 2015 to understand the secondary effects of the adult entertainment business on the Town and determine whether regulations were necessary to address those effects. Council having found secondary effects do exist with these business, determined regulations were necessary to address them, and Staff developed draft regulations for Council consideration.

Purpose:

The purpose of this item is for the Town Council to discuss potential regulatory responses to the secondary effects it identified and direct Staff to draft ordinances to curb those effects.

Background:

The Town of Jackson first regulated the adult entertainment business in 1926. Since then the legal landscape surrounding these businesses has shifted significantly, resulting in the Town enacting an emergency moratorium and extension to give Staff and Council time to consider how to re-draft the Town laws.

A moratorium was passed to allow time for Staff to study the constitutional issues surrounding the adult entertainment business and provide Planning Commission and Council with recommendations to update the outdated Municipal Code. On April 6, 2016 changes to the Land Development Regulations were presented to the Planning Commission and on April 18, 2016 before Town Council at which time the Town Council determined that adult entertainment businesses do have secondary effects in Jackson and that regulation is necessary to curb those secondary effects. Town Council's next steps are to direct Staff to draft a Municipal Code ordinance and a Land Development Regulation that will address these effects in the community, and to extend the moratorium for a minimum of 60 days to allow staff time to finalize the ordinances required.

Fiscal Impact:

The fiscal impact of passage of this ordinance varies between \$250 and \$700 depending on the length of the ordinance. (Shorter ordinances average around \$350 and short franchise ordinances can reach \$700.)

ORDINANCE V

AN ORDINANCE AMENDING AND REENACTING SECTION 2 OF TOWN OF JACKSON ORDINANCE NO. 1074 (PART) AND SECTIONS 2.3.10, 6.1.1, 6.1.7, 6.2.2 AND 6.4.1 OF THE TOWN OF JACKSON LAND DEVELOPMENT REGULATIONS TO ADD DEFINITIONS AND ALLOWED USES FOR ADULT ENTERTAINMENT BUSINESS; AND PROVIDING FOR AN EFFECTIVE DATE.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF JACKSON, WYOMING, IN REGULAR SESSION DULY ASSEMBLED THAT:

SECTION I.

Section 2 of Town of Jackson Ordinance No. 1074 (part) and Section 2.3.10 of the Town of Jackson Land Development Regulations are hereby amended and reenacted to read as follows:

(See next page)

C. Allowed Uses and Use Standards

Standards applicable to uses in the BP-ToJ zone are provided or referenced below. Allowed uses are listed in Subsection 1. Uses that are not listed are prohibited, unless a similar use determination is made pursuant to 6.1.2.D. Where a cross reference is provided, please see the referenced division or section for additional standards applicable in the BP-ToJ zone. This Subsection is intended to indicate all of the use standards applicable in the BP-ToJ zone, however, all standards in Article 6. are applicable in the BP-ToJ zone, unless stated otherwise.

1. Allowed Uses				2. Use Requirements	
Use	Permit	BSA (min)	Density (max)	Parking (min) (Div. 6.2.) (E.1.)	Employee Housing Floor Area (min) (Div. 6.3.)
Residential					
Live/Work Unit (<u>6.1.4.H.</u>)	C	0 sf	n/a	1.5/DU or 1.5/1,500 sf	n/a
Commercial					
Heavy Retail/Service (<u>6.1.6.F.</u>)	B	0 sf	n/a	2/1,000 sf + 3/repair bay + 1/wash bay	16 sf/1,000 sf
Mini-Storage Warehouse (<u>6.1.6.G.</u>)	B	0 sf	n/a	1/10 storage units + 1/employee	independent calculation
Nursery (<u>6.1.6.H.</u>)	C	0 sf	n/a	2/1,000 sf + 1/4,000 sf outdoor display area + 1/company vehicle + 1/employee	independent calculation
Amusement/Recreation					
Outdoor Recreation (<u>6.1.7.C.</u>)	C	0 sf	n/a	independent calculation	independent calculation
Developed Recreation (<u>6.1.7.D.</u>)	C	0 sf	n/a	4.5/1,000 sf	independent calculation
Outfitter/Tour Operator (<u>6.1.7.E.</u>)	C	0 sf	n/a	independent calculation	independent calculation
<u>Adult Entertainment Business (6.1.7.F.)</u>	<u>C</u>	<u>0 sf</u>	<u>n/a</u>	<u>1/30 sf seating area</u>	<u>independent calculation</u>
Institutional					
Assembly (<u>6.1.8.B.</u>)	C	0 sf	n/a	independent calculation	exempt
Daycare/Education (<u>E.3.</u>) (<u>6.1.8.C.</u>)	C	0 sf	n/a	independent calculation	exempt
Industrial					
Light Industry (<u>6.1.9.B.</u>)	B	0 sf	n/a	1/1,000 sf + 1/company vehicle	8 sf/1,000 sf
Heavy Industry (<u>6.1.9.C.</u>)	C	0 sf	n/a	2/1,000 sf + 1/company vehicle	8 sf/1,000 sf
Disposal (<u>6.1.9.D.</u>)	C	0 sf	n/a	1/employee	8 sf/1,000 sf
Transportation/Infrastructure					
Utility Facility (<u>6.1.10.C.</u>)	C	0 sf	n/a	1/employee + 1/stored vehicle	independent calculation
Wireless Communication Facilities (<u>6.1.10.D.</u>)	C	0 sf	n/a	1/employee + 1/stored vehicle	independent calculation
Heliport (<u>6.1.10.E.</u>)	C	0 sf	n/a	7/daily aircraft movement	independent calculation

Y=Use allowed, no permit required, B=Basic Use Permit (Sec. 8.4.1.), C=Conditional Use Permit (Sec. 8.4.2.)

SECTION II.

Section 2 of Town of Jackson Ordinance No. 1074 (part) and Sections 6.1.1, 6.1.7, 6.2.2 and 6.4.1 of the Town of Jackson Land Development Regulations are hereby amended and reenacted to read as follows:

(See next page)

USE CATEGORY		Town Legacy Zones																Def/ Stds			
		Complete Neighborhood Zones																			
Specific Use	TS	UC	UC-2	UR	AC- ToJ	AR- ToJ	OP- ToJ	OP-2 ToJ	BP-R ToJ	BP- ToJ	BC- ToJ	RB ToJ	MHP- ToJ	NC- ToJ	NC-2 ToJ	S- ToJ	Rural Area Zones	Civic Zones			
																		R- ToJ	P/SP- ToJ	P- ToJ	
Commercial																				6.1.6.	
Office	B	B	B	--	B	B(O)	B	B	C	--	C	B	--	--	--	--	--	C	--	6.1.6.B.	
Retail	B	B	B	--	B	--	C	C	C	--	C	--	--	--	--	--	--	--	--	6.1.6.C.	
Service	B	B	B	--	B	--	--	C	C	--	C	C	--	--	--	--	--	C	--	6.1.6.D.	
Restaurant/Bar	B	B	B	--	B	--	--	C	C	--	C	--	--	--	--	--	--	--	--	6.1.6.E.	
Heavy Retail/Service	--	--	C	--	C	--	--	--	B	B	C	C	--	--	--	--	--	C	--	6.1.6.F.	
Mini-Storage Ware-house	--	--	C	--	C	--	--	--	B	B	C	C	--	--	--	--	--	C	--	6.1.6.G.	
Nursery	--	--	--	--	B	--	--	--	C	C	C	--	--	--	--	--	C	--	--	6.1.6.H.	
Amusement/Recreation																				6.1.7.	
Amusement	C	C	C	--	B	--	--	--	--	--	--	--	--	--	--	--	--	--	--	6.1.7.B.	
Outdoor Recreation	--	--	--	--	C	C	--	C	C	C	C	--	--	--	--	C	C	C	C	6.1.7.C.	
Developed Recreation	--	B	B	--	B	--	--	C	C	C	C	--	--	--	--	--	--	--	--	6.1.7.D.	
Outfitter/Tour Operator	--	C	C	--	C	--	--	--	C	C	C	--	--	--	--	--	--	--	--	6.1.7.E.	
<u>Adult Entertainment Business</u>	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	6.1.7.F.	
Institutional																				6.1.8.	
Assembly	--	C	C	C	C	C	C	C	C	C	C	C	--	--	--	C	C	C	--	6.1.8.B.	
Daycare/Education	--	B	B	--	B	--	C	--	C	C	--	--	--	--	--	--	--	C	--	6.1.8.C.	
Industrial																				6.1.9.	
Light Industry	--	--	--	--	C	--	--	--	B	B	C	C	--	--	--	--	--	--	C	--	6.1.9.B.
Heavy Industry	--	--	--	--	--	--	--	--	C	C	--	--	--	--	--	--	--	--	C	--	6.1.9.C.
Disposal	--	--	--	--	--	--	--	--	C	C	--	--	--	--	--	--	--	--	C	--	6.1.9.D.

Key: Y = Use allowed without a permit B = Basic Use Permit required C = Conditional Use Permit required S = Special Use Permit required
 LO = Only allowed in Lodging Overlay Only OF = Only allowed in Office Overlay -- = Use not allowed

viii. veterinary and other pet and livestock services

ix. landscaping services

x. the boarding of horses

G. Mini-Storage Warehouses

1. **Definition.** Mini-warehouse means a building or group of buildings in a compound that contains varying sizes of individual, compartmentalized, and controlled access stalls or lockers for the dead storage of a customer’s goods or wares.

2. **Standards**

- a. no sales, service, repair, or other activities shall be conducted from a storage area
- b. storage of junk, explosives, flammable materials, or other noxious or dangerous materials is specifically prohibited
- c. maximum leasable space per stall shall be 1,000 square feet
- d. pick-up or delivery by semi-tractor trailers shall be prohibited
- e. outdoor storage shall be screened

H. Nursery

1. **Definition.** Nursery means an establishment primarily engaged in the retail or wholesale sale of horticultural specialties such as flowers, shrubs and trees, intended for ornamental or landscaping purposes.

6.1.7. Amusement and Recreation Uses *(effective date)*

A. All Amusement and Recreation Uses

1. **Definition.** An amusement and recreation use is the provision of entertainment.

B. Amusement

1. **Definition.** Amusement is the provision of non-recreation entertainment.

a. **Includes:**

- i. bowling alleys
- ii. movie theaters
- iii. music halls
- iv. video arcades
- v. miniature or putt-putt golf course
- vi. pool and billiard halls

vii. shooting arcades

b. Does Not Include:

i. Adult Entertainment Business (see 6.1.7.F)

C. Outdoor Recreation

1. **Definition.** Outdoor recreation is the use of land for passive or active recreational or athletic purposes that requires minimal permanent physical development relative to the open space.

a. **Includes:**

i. parks

ii. arboretums

iii. athletic fields not in stadiums

iv. equestrian centers

v. nordic ski trails

b. **Does Not Include:**

i. Golf course

ii. Downhill Ski Slopes

2. **Standards**

a. **All Zones.** In all zones, outdoor recreation uses shall only be permitted subject to a use management plan. The use management plan shall ensure that outdoor recreational uses are designed to minimize any glare from night lighting into residential areas, and that the hours of operation of potentially noisy uses which might disrupt a residential area are limited.

b. **NRO.** For land within the Natural Resources Overlay, the use management plan shall comply with the following:

i. **Limitation of Access During Eagle Nesting.** Access to the protective radius around a bald eagle nest shall be limited to times of the year when eagles are not nesting.

ii. **River and Stream Bank Buffers for Trumpeter Swans.** River and stream bank buffers for trumpeter swans shall be 2 times that required in Sec. 5.1.1. and Sec. 5.2.1.

D. Developed Recreation

1. **Definition.** Developed recreation is the use of a physical development for active recreation or athletic purposes.

a. **Includes:**

- i. gymnasiums
- ii. swimming pools
- iii. tennis
- iv. skateboarding
- v. rodeos
- vi. skating rinks
- vii. racquetball
- viii. handball courts
- ix. rock climbing practice facilities
- x. health and exercise clubs

E. Outfitter/Tour Operator

- 1. **Definition.** The base of operations for providing guides, materials, supplies, and equipment for outdoor activities.
 - a. **Includes:**
 - i. rafting/boat trips
 - ii. fishing or hunting guide operations
 - iii. raft and boat rental
 - iv. snowmobile tours
 - v. mountain bike tours
 - vi. horseback trail rides and pack trips

F. Adult Entertainment Business

- 1. **Definition.** Adult Entertainment Business means a business that generates a substantial or significant portion of its revenues, or devotes a substantial or significant portion of its interior business, advertising, sale floor, or display space for the exhibition, display, sale, or performance, whether presented as printed materials, live entertainment, recorded entertainment, or devices emphasizing or focusing on whole or partial exposure to view of “Intimate Parts” or the depiction, simulation or facilitation of “Sexual Contact”.
 - a. **Includes:**
 - i. “Intimate Parts” as defined by W.S. § 6-2-301.

- ii. “Sexual Contact” means touching, with the intention of sexual arousal, gratification or abuse, of the patron’s intimate parts by performers, or of the performer’s intimate parts by patrons, or of the clothing covering the immediate area of the patron’s or performer’s intimate parts.
 - b. **Does Not Include:**
 - i. This definition shall not be construed to apply to or otherwise allow any form of activity prohibited or punished by law such as exhibitions, displays, or performances deemed by law to be obscene.
 - ii. This definition shall not be construed to apply to the presentation, showing, or performance of any play, drama, ballet, or other artistic work in any theater, concert hall, museum, school, institution of higher education, or similar establishment as a form of expression of opinion or communication of ideas or information, as differentiated from the promotion or exploitation of nudity for the purpose of advancing the economic welfare of a commercial or business enterprise.
- 2. **Legislative Findings.** This Land Development Regulation is based on findings concerning the adverse secondary effects of the Adult Entertainment Business on the community presented in studies, case law, and expert papers reviewed by the Town Council, and on findings incorporated in the cases of City of Renton v. Playtime Theatres, Inc., 475 U.S. 41 (1986), Young v. American Mini Theatres, 426 U.S. 50 (1976), FW/PBS, Inc. v. City of Dallas, 493 U.S. 215 (1990); Barnes v. Glen Theatre, Inc., 501 U.S. 560 (1991), City of Erie v. Pap’s A.M., 120 S. Ct. 1382 (2000); City of Los Angeles v. Alameda Books, Inc., 535 U.S. 425 (2002), and on studies in and by other communities including, but not limited to, all those in the National Law Center for Children and Families 2005 Summaries of SOB Land Use Studies; Richard McCleary, Rural Hot Spots: The Case for Adult Businesses, Criminal Justice Policy Review 19(2), 153-163 (2008); Eric Domain Kelly, et. al., Survey of Florida Appraisers: Effects of Land Uses on Market Values, (2008); Alan C. Weinstein et. al., The Association of Adult Businesses with Secondary effects: Legal Doctrine, Social Theory, and Empirical Evidence, 29 Cardozo Arts and Entertainment Law Journal 565 (2011); Richard McCleary, Do “Off-Site: Adult Businesses Have Secondary Effects? Legal Doctrine, Social Theory, and Empirical Evidence, Law & Policy Vol. 31, No.2 218-35 (2009).
- 3. **Purpose.** It is the purpose of this section to regulate the location and placement of Adult Entertainment Businesses to promote the health, safety, and general welfare of the citizens of Jackson, Wyoming, and to establish reasonable and uniform regulations to address the adverse secondary effects of Adult Entertainment Businesses within the Town. The provisions of this ordinance have neither the purpose nor effect of imposing a limitation or restriction of the content of any communication material, including sexually-explicit materials. Similarly, it is not the intent or effect of this ordinance to restrict or deny access by adults to sexually-explicit materials protected by the First Amendment to the United States Constitution, or Articles 1 & 20 of the Wyoming Constitution, or to deny

access by the distributors and exhibitors of sexually-explicit entertainment to their intended market. It is not the intent or effect of this ordinance to condone or legitimize the distribution of obscene material as defined by W.S. § 6-4-301(iii).

4. Location Standards

- a. No Adult Entertainment Business shall be operated or located outside the Business Park (BP-ToJ) zone.
- b. The property line of an Adult Entertainment Business closest to the following shall be at least:
 - i. 300 feet from the closest property line of any school, public or private; and
 - ii. 300 feet from the closest property line of any residential zone; and
 - iii. 200 feet from the closest boundary of the South Park Loop Road right-of-way; and
 - iv. 200 feet from the closest boundary of the High School Road right-of-way; and
 - v. 200 feet from the closest boundary of any public pathway easement.
- c. For the purposes of this ordinance these distances shall be measured in a straight line, without regard to intervening structures, streets, or political boundaries.

5. Operation Standards

- a. Configuration. The Adult Entertainment Business shall be configured in such a manner that there is an unobstructed, direct line of sight view from a designated Manager's Station of every area of the premises to which any patron is permitted access for any purpose, excluding restrooms.
- b. Public View. Adult Entertainment Business, as defined in this section, shall be obscured from public view such that the Business is not readily apparent to a reasonable observer.
- c. Illumination
 - i. Interior. All Adult Entertainment Businesses shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than five foot-candles as measured at the floor level. This level of illumination shall be maintained at all times that any patron is present in the Adult Entertainment Business.

6.1.8. Institutional Uses (1/1/15)

- ii. Exterior. All off-street parking areas and building entries and exits shall be illuminated from dusk to closing with a lighting system which provides an average range of maintained horizontal illumination of not less than 1.5 and not more than 2 foot-candles of light on the parking surface and walkways.

6.1.8. Institutional Uses (1/1/15)

A. All Institutional Uses

- 1. **Definition.** An institutional use is the provision of a public or semi-public service by a public or private entity.

B. Assembly

- 1. **Definition.** An assembly use is an institutional use typically characterized by a public or semi-public gathering area.

- a. **Includes:**

- i. cemeteries
- ii. churches
- iii. community centers
- iv. libraries
- v. museums
- vi. hospitals

C. Daycare/Education

- 1. **Definition.** A daycare or education use is the provision of educational instruction and/or care for part of the day.

- a. **Includes:**

- i. schools
- ii. childcare centers

- 2. **Standards**

- a. **Wyoming Statutes.** Each daycare or education use shall comply with the relevant provisions of the Wyoming Statutes and with local health, safety and fire codes.

6.1.9. Industrial Uses (1/1/15)

A. All Industrial Uses

- 1. **Definition.** An industrial use is the manufacturing, assembly, processing, or distribution of material.

Required Parking		
Use	Parking Spaces	Queuing Spaces
Nursery	2 per 1,000 sf + 1 per 4,000 sf outdoor display area + 1 per employee	
Amusement/Recreation Uses		
Amusement	1 per 30 sf seating area or independent calculation	
Outdoor recreation	independent calculation	
Developed recreation	4.5 per 1,000 sf	
Outfitter/Tour operator	independent calculation	
<u>Adult Entertainment Business</u>	<u>1 per 30 sf seating area or independent calculation</u>	
Institutional Uses		
Assembly	independent calculation	
Daycare/Education	independent calculation	
Industrial Uses		
Light industry	1 per 1,000 sf + 1 per company vehicle	
Heavy industry	2 per 1,000 sf + 1 per company vehicle	
Disposal	1 per employee	
Infrastructure Uses		
Parking	n/a	
Utility facility	1 per employee + 1 per stored vehicle	
Wireless communication facility	1 per employee + 1 per stored vehicle	
Heliport	7 per daily aircraft movement	
Accessory Uses		
Accessory residential unit	1.25 per DU	
Bed and breakfast	0.75 per LU	
Home occupation	n/a	
Home business	1 per employee	
Family home daycare	1 per employee	1 off-street for pick-up
Home daycare center	1 per employee	2 off-street for pick-up
Drive-in facility	n/a	3 per service lane
Temporary Uses		
Christmas tree sales	1 per 1,000 sf outdoor display area + 1 per employee	
Real estate sales office	3.3 per 1,000 sf	
Temporary shelter	2 per DU	
Farm stand	5 per 1,000 sf display area	
Temporary gravel extraction	1 per employee	

Div. 6.4. Operational Standards

6.4.1. Outside Storage (effective date)

A. Use of Front Yards

The use of the front yard (street yard) of a residential use for the storage of boats, snowmobiles, trailers, RVs, and similar motor vehicles and equipment is prohibited.

B. Storage of Structures

The storing of structures of any kind is not permitted in any residential zone.

C. Vehicle and Equipment Storage - Vacant Property

The storage of any vehicle on vacant property in a residential zone for more than 3 consecutive days is prohibited. This includes boats, rafts, trailers, snowmobiles, campers, RVs and similar vehicles, and equipment. This also includes heavy equipment, construction equipment, and construction materials. Nothing herein shall be construed to prohibit the storage of vehicles and equipment for temporary construction, provided the storage area is fenced, well marked, and posted. For purposes of this provision, lots which are normally kept and maintained as yard area for an adjacent residence shall not be considered vacant property, provided the vehicles, equipment, and materials stored thereon are owned, supervised, and controlled by an occupant of the adjacent residence.

D. Outdoor Display

The organized outdoor display of goods for sale in association with a nonresidential use, except an Adult Entertainment Business (see 6.1.7.F), is allowed, provided it is contained on private property.

6.4.2. Refuse and Recycling (1/1/15)

A. Town Trash and Recycling Enclosures

Trash and recycling enclosures shall be provided for all nonresidential uses and multi-family developments of 4 or more units. Enclosures shall be of similar material and color to the building. Enclosures shall be entirely enclosed with the side facing the street or alley to be a gate whenever feasible. Enclosures shall provide adequate space for recycling as determined by the Planning Director. Enclosures shall be consolidated wherever possible.

6.4.3. Noise (1/1/15)

All uses shall conform with the following standards.

A. Maximum Noise

Noises shall not exceed the maximum sound levels prescribed in the table below, beyond the site boundary lines, except that when a nonresidential activity in contiguous to a residential zone, the residential zone standard shall govern.

SECTION III.

All ordinances and parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

SECTION IV.

If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed as a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions of the ordinance.

SECTION V.

This Ordinance shall become effective after its passage, approval and publication.

PASSED 1ST READING THE ____ DAY OF _____, 2016.

PASSED 2ND READING THE ____ DAY OF _____, 2016.

PASSED AND APPROVED THE ____ DAY OF _____, 2016.

TOWN OF JACKSON

BY: _____
Sara Flitner, Mayor

ATTEST:

BY: _____
Town Clerk

ATTESTATION OF TOWN CLERK

STATE OF WYOMING)
) ss.
COUNTY OF TETON)

I hereby certify that the foregoing Ordinance No. _____ was duly published in the Jackson Hole News and Guide, a newspaper of general circulation published in the Town of Jackson, Wyoming, on the ____ day of _____, 2016.

I further certify that the foregoing Ordinance was duly recorded on page _____ of Book _____ of Ordinances of the Town of Jackson, Wyoming.

Town Clerk

ORDINANCE U

AN ORDINANCE ADDING SECTION 5.70 TO THE MUNICIPAL CODE OF THE TOWN OF JACKSON REGARDING ADULT ENTERTAINMENT BUSINESS; AND PROVIDING FOR AN EFFECTIVE DATE.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF JACKSON, WYOMING, IN REGULAR SESSION DULY ASSEMBLED THAT:

SECTION I.

Section 5.70 of the Municipal Code of the Town of Jackson is hereby added as follows:

5.70 Adult Entertainment Business

5.70.010 Preamble: Intent and purpose.

It is the purpose of this section to regulate the standards of Adult Entertainment Businesses to promote the health, safety, and general welfare of the citizens of Jackson, Wyoming, and to establish reasonable and uniform regulations to address the adverse secondary effects of Adult Entertainment Businesses within the Town. The provisions of this ordinance have neither the purpose nor effect of imposing a limitation or restriction of the content of any communication material, including sexually-explicit materials. Similarly, it is not the intent or effect of this ordinance to restrict or deny access by adults to sexually-explicit materials protected by the First Amendment to the United States Constitution, or Articles 1 & 20 of the Wyoming Constitution, or to deny access by the distributors and exhibitors of sexually-explicit entertainment to their intended market. It is not the intent or effect of this ordinance to condone or legitimize the distribution of obscene material as defined by Wyoming Statute 6.4.301(iii).

5.70.020 Legislative Findings.

This Municipal Code Chapter is based on findings concerning the adverse secondary effects of the Adult Entertainment Business on the community presented in studies, case law, and expert papers reviewed by the Town Council, and on findings incorporated in the cases of *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986), *Young v. American Mini Theatres*, 426 U.S. 50 (1976), *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215 (1990); *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560 (1991), *City of Erie v. Pap's A.M.*, 120 S. Ct. 1382 (2000); *City of Los Angeles v. Alameda Books, Inc.*, 535 U.S. 425 (2002), and on studies in and by other communities including, but not limited to, all those in the National Law Center for Children and Families 2005 Summaries of SOB Land Use Studies; Richard McCleary, Rural Hot Spots: The Case for Adult Businesses, Criminal Justice Policy Review 19(2), 153-163 (2008); Eric Domain Kelly, et. al., Survey of Florida Appraisers: Effects of Land Uses on Market Values, (2008); Alan C. Weinstein et. al., The Association of Adult Businesses with Secondary effects: Legal Doctrine, Social Theory, and Empirical Evidence, 29 Cardozo Arts and Entertainment Law Journal 565 (2011); Richard McCleary, Do "Off-Site: Adult Businesses Have Secondary Effects? Legal Doctrine, Social Theory, and Empirical Evidence, Law & Policy Vol. 31, No.2 218-35 (2009).

5.70.030 Definitions.

- A. Adult Entertainment Business means a business that generates a substantial or significant portion of its revenues, or devotes a substantial or significant portion of its interior business, advertising, sale floor, or display space for the exhibition, display, sale, or performance, whether presented as printed materials, live entertainment, recorded entertainment, or devices emphasizing or focusing on whole or partial exposure to view of Intimate Parts or the depiction, simulation or facilitation of Sexual Contact.
1. Includes:
 - i. "Intimate Parts" as defined by W.S. § 6-2-301, as amended.
 - ii. "Sexual Contact" means touching, with the intention of sexual arousal, gratification or abuse, of the patron's intimate parts by performers, or of the performer's intimate parts by patrons, or of the clothing covering the immediate area of the patron's or performer's intimate parts;
 2. Does Not Include:
 - i. This definition shall not be construed to apply to or otherwise allow any form of activity prohibited or punished by law such as exhibitions, displays, or performances deemed by law to be obscene.
 - ii. This definition shall not be construed to apply to the presentation, showing, or performance of any play, drama, ballet, or other artistic work in any theater, concert hall, museum, school, institution of higher education, or similar establishment as a form of expression of opinion or communication of ideas or information, as differentiated from the promotion or exploitation of nudity for the purpose of advancing the economic welfare of a commercial or business enterprise.

5.70.040 Operation Standards.

- A. Duty to Comply. It shall be the legal duty of the owner and his/her agents to ensure that all Operation Standards are enforced.
1. The Adult Entertainment Business shall be configured in such a manner that there is an unobstructed view from a designated Manager's Station of every area of the premises to which any patron is permitted access for any purpose, excluding restrooms. The view required in this subsection must be by direct line of sight from the Manager's Station.
- B. Minors. No person under the age of 18 shall be permitted:
1. In any Adult Entertainment Business;
 2. To purchase goods or services at an Adult Entertainment Business; or
 3. To work at an Adult Entertainment Business.
- C. Public View. Adult Entertainment Business, as defined in this section, shall be obscured from public view such that the Business is not readily apparent to a reasonable observer.
- D. Public Indecency. No owner or agent of any Adult Entertainment Business shall knowingly, or with reasonable cause to know, allow a patron to commit on the Business premises an act of public indecency as set forth in Wyoming Statute § 6-4-201 or Jackson Municipal Code § 9.28.030.
- E. Sexual Acts. No sexual acts, normal or perverted, actual or simulated, including, but not limited to, intercourse, oral copulation, sodomy, and masturbation shall take place on the

premises of any Adult Entertainment Business by or between performers, owners, agents, and patrons.

F. Live Performance. Live performance within an Adult Entertainment Business shall only be permitted pursuant to the following standards:

1. Patrons shall be seated no closer than 6 horizontal feet from the stage.
2. Patrons shall not be permitted on stage at any time.
3. All performers shall remain on the stage during the performance.
4. Physical contact between a performer and patron shall not be permitted.

G. Viewing Booths. All Adult Entertainment Businesses which contain one or more viewing booths, whether for live or recorded performance, shall comply with the following standards:

1. All viewing booths shall remain unobstructed by any doors, curtains, partitions, walls, merchandise, display racks or other materials.
2. Physical contact between a performer and patron shall not be permitted.
3. No video viewing booth may be occupied by more than one person at any time.
4. No openings of any kind shall exist between video viewing booths.

5.70.050 Penalty.

Any person or business in violation of this section or any subsection hereof, upon conviction, shall be punished as provided in Section 1.12.010 of this Code. Each day during which a person or business shall operate an Adult Entertainment Business in violation of any provision of this Chapter constitutes a separate violation hereof.

SECTION II.

All ordinances and parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

SECTION III.

If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed as a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions of the ordinance.

SECTION IV.

This Ordinance shall become effective after its passage, approval and publication.

PASSED 1ST READING THE ____ DAY OF _____, 2016.

PASSED 2ND READING THE ____ DAY OF _____, 2016.

PASSED AND APPROVED THE ____ DAY OF _____, 2016.

TOWN OF JACKSON

BY: _____
Sara Flitner, Mayor

ATTEST:

BY: _____
Town Clerk

ATTESTATION OF TOWN CLERK

STATE OF WYOMING)
) ss.
COUNTY OF TETON)

I hereby certify that the foregoing Ordinance No. _____ was duly published in the Jackson Hole News and Guide, a newspaper of general circulation published in the Town of Jackson, Wyoming, on the ____ day of _____, 2016.

I further certify that the foregoing Ordinance was duly recorded on page _____ of Book _____ of Ordinances of the Town of Jackson, Wyoming.

Town Clerk

ORDINANCE T

AN ORDINANCE EXTENDING THE 180 DAY TEMPORARY MORATORIUM ON THE ACCEPTANCE OR CONSIDERATION OF AN ADULT ENTERTAINMENT BUSINESS OR SEXUALLY ORIENTED BUSINESS OPERATION; DECLARING AN EMERGENCY, PROVIDING FOR AN EFFECTIVE DATE AND A TIME FOR TERMINATION.

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF JACKSON, WYOMING, IN REGULAR SESSION DULY ASSEMBLED, THAT:

SECTION I.

A. The Town of Jackson does hereby extend the one-hundred eighty (180) day temporary moratorium on the submission, acceptance or consideration of adult entertainment business or sexually oriented business applications or licenses for operations within the Town of Jackson as set forth in Ordinance 1116-A, for an additional period of one-hundred and eighty (180) days after the expiration of Ordinance 1116-A on November 30, 2016.

B. The purpose of this ordinance is for the immediate preservation of the public peace, health, safety or welfare to: 1) allow Town staff time to identify additional potential or possible locations within the Town of Jackson for adult entertainment businesses/sexually oriented businesses; 2) allow the Town Council time to consider these additional potential locations in light of the secondary effects of adult entertainment businesses/sexually oriented businesses; 3) hold public meetings and/or forums for the public on all potential or possible locations for such businesses within the Town of Jackson; 4) provide Town staff time to draft new regulations resulting from the additional public and Town Council deliberations; and 5) present such at a public meeting for consideration.

SECTION II.

The provisions of this ordinance are effective through May 28, 2017, unless sooner repealed, after which time they shall become null and void.

SECTION III.

This ordinance shall apply to any adult entertainment business or sexually oriented business applications or licenses already submitted, pending at the time of ordinance adoption or submitted prior to a repeal of this ordinance.

SECTION IV.

If any section, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate distinct and independent provision and such holding shall not affect the validity of the remaining portions of the ordinance.

SECTION V.

Adoption of this ordinance shall be by emergency ordinance provisions under suspension of rules and approved by not less than three quarters (3/4) of the qualified members of the governing body as required and set forth in Section § 15-1-115 of the Wyoming Statutes. This ordinance shall take effect immediately upon proclamation by the Mayor.

PASSED the ____ day of _____, 2016.

TOWN OF JACKSON

BY: _____
Sara Flitner, Mayor

Town Clerk

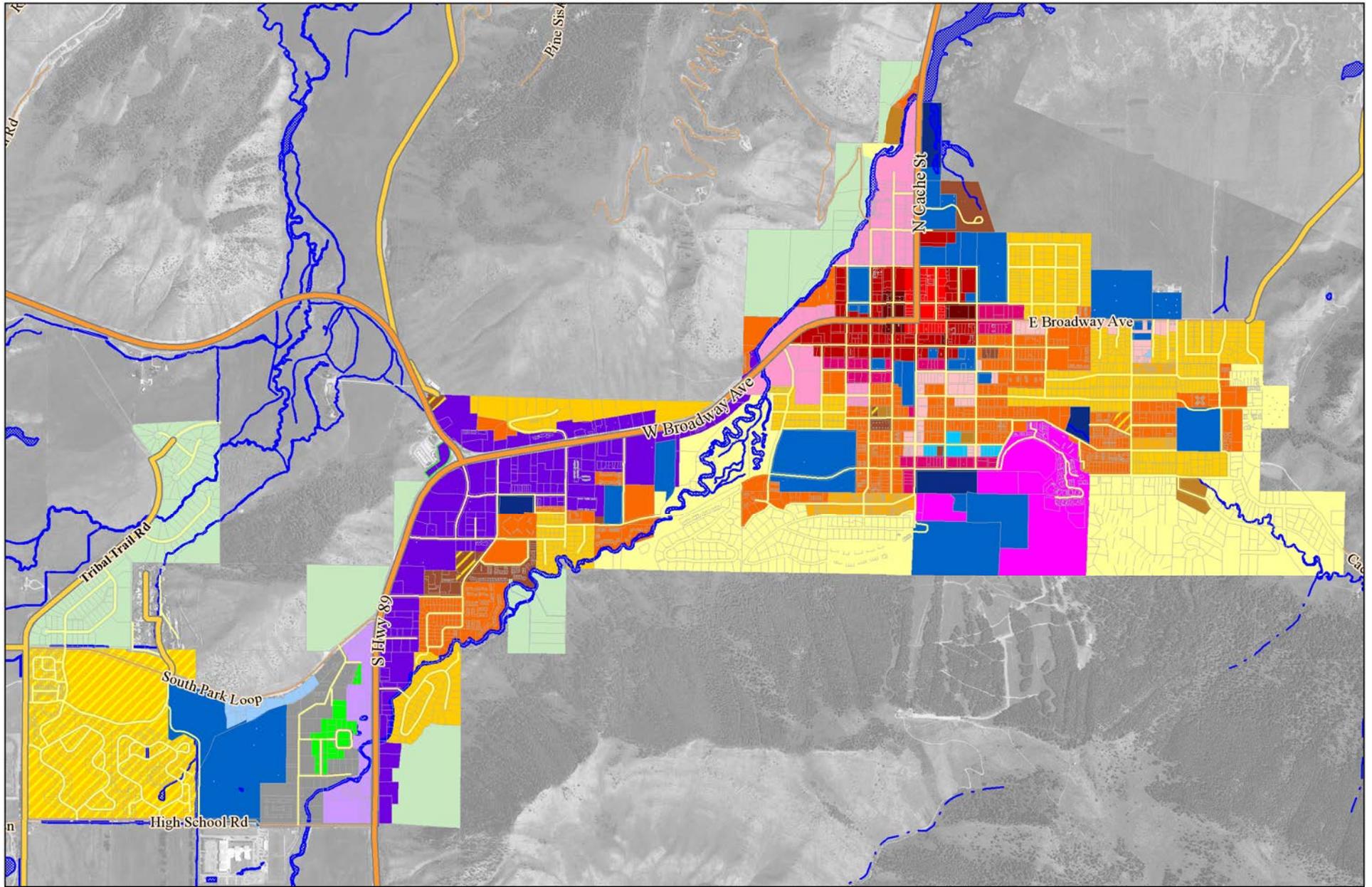
ATTESTATION OF TOWN CLERK

STATE OF WYOMING)
) ss.
COUNTY OF TETON)

I hereby certify that the foregoing Ordinance No. _____ was duly published in the Jackson Hole News and Guide, a newspaper of general circulation published in the Town of Jackson, Wyoming on the _____ day of _____, 2016.

I further certify that the foregoing ordinance was duly recorded on Page ____ of Book ____ of the Ordinances of the Town of Jackson, Wyoming.

Town Clerk



■ Parcels that meet the buffers for a Adult Oriented Business