City of Bloomington Common Council

Legislative Packet

Wednesday, 18 October 2017

Regular Session

For legislation regarding
Ordinance 17-39 and Resolution 17-38, please consult the
04 October 2017 Legislative Packet.

All other legislation and material contained herein.

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City of Bloomington Indiana

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Office of the Common Council
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To: **Council Members**
From: **Council Office**
Re: **Weekly Packet Memo**
Date: **October 13, 2017**

Packet Related Material

Memo
Agenda
Calendar
Notices and Agendas:
None

Legislation for Second Reading and Resolutions at the Regular Session on Wednesday, October 18th

- ***(To be introduced and discussed this evening – with material to be found in this packet)***
  Res 17-18 To Approve the Interlocal Agreement Between Monroe County, Town of Ellettsville and the City of Bloomington for Animal Shelter Operation for the Year 2018
  - Interlocal Agreement;
  - Memo from Philippa Guthrie, Corporation Counsel;
  - Computation and Statistics Sheets.

Contact: Philippa Guthrie at 812-349-3426 or guthriep@bloomington.in.gov
Virgil Sauder at 812-349-3870 or sauderv@bloomington.in.gov

- ***(Introduced and discussed on October 4th – with material to be found in the packet prepared for that evening)***
  Ord 17-39 Ordinance Authorizing and Approving an *Agreement in Lieu of Annexation* Between the City of Bloomington and Cook Group, Incorporated and Affiliates
  - Exhibit A: Agreement in Lieu of Annexation

Contacts:
Corporation Counsel Guthrie at 812-349-3547, guthriep@bloomington.in.gov
Controller Underwood at 812-349-3416, underwoj@bloomington.in.gov

- ***(Introduced and discussed on October 4th - with material to be found in the packet prepared for that evening)***
  Res 17-38 Resolution Supporting the Passage of a Food and Beverage Tax to Fund Expansion of the Monroe County Convention Center

Contacts:

Deputy Mayor Renneisen at 812-349-3406, renneism@bloomington.in.gov
Corporation Counsel Guthrie at 812-349-3547, guthriep@bloomington.in.gov

Legislation and Background Material for First Reading

- **Ord 17-35** – To Amend Title 20 (Unified Development Ordinance) of the Bloomington Municipal Code – Re: Amending Section 20.02.300 to allow Sexually Oriented Businesses as a Permitted Use in Commercial General (CG) Districts and Deleting and Replacing Section 20.05.078 "Sexually Oriented Businesses – General"
  - Certification from the Plan Commission
  - Memo from James Roach, Development Services Manager, Planning and Transportation
  - Map of Available SOB space, pre- and post-Ord 17-35 revision
  - Code strikeout

Contacts: James Roach at (812) 349-3423, roachja@bloomington.in.gov
Anahit Behjou, Assistant City Attorney at (812) 349-3555, behjou@bloomington.in.gov

Minutes from Regular and Special Sessions:

None

Memo

Three Items under Second Readings and Resolutions and One Item under First Reading at the Regular Session on Wednesday, October 18th

There are three items under Second Readings and Resolutions and one item under First Readings at the Regular Session next week. One resolution joins two items discussed at the Committee of the Whole and one ordinance will be introduced under First Reading. The new items can be found in this packet and the previously discussed legislation and associated material can be found as indicated above.

Second Readings and Resolutions – One New Resolution Joining Previously Discussed Items

Res 17-39 Approving the Animal Control Interlocal Agreement Between the County, Town of Ellettsville and City for 2018
(First Item on the Agenda)

Res 17-39 authorizes the signing of an *Interlocal Agreement* between Monroe County, the Town of Ellettsville, and the City regarding the funding for Animal Shelter operations in 2018. The total of those payments to the City will be $ 319,495.

Under the terms of the *Agreement*, the County will pay a total of $298,195.33 and the Town of Ellettsville will pay a total of $21,299.67 to the City for work we do on their behalf. This work includes the services done by the City in sheltering animals coming from the County and otherwise assisting in County operations (i.e., dispatching runs and giving information to callers), but is distinct from the City's animal control field operations, education program and volunteer program. The amount of payment is based upon a long-standing formula that takes into account the cost of shelter operations (which is about half the City's Animal Care and Control budget), offsetting revenues and the percentage of shelter operations attributable to animals coming from these jurisdictions during the previous calendar year. Prior to the 2015 agreement, this formula was applied as a way of *projecting costs* into the next full year. Since that time, the agreement uses that last full-year of expenditures as a *basis for reimbursement* to be paid in the following year. Agreeing on the amount this year allows the parties to include the amount in their budgets for next year. Please note that total payments will go up by about $37,196 in 2018.

The formula works as follows:

Actual Expenditures for Animal Shelter Operations in 2016 (which is about half of the ACC total budget). This number [$810,982.63] is further offset by adoption revenues [$100,993.70 – *which are down $9,234 from last year's figure]*.)	$709,988.93 *(up $53,480 from 2015 to 2016)*
Percentage of Shelter Operations Attributable to County (This is based upon the percentage of animals taken in 2016 by the Shelter that arrive from the County (including the Town of Ellettsville). Here is the breakdown by Jurisdiction:	x 45 % *(up 2% from 2015 to 2016)*

Jurisdiction	Animals Received by the Shelter[1]	Percentage
City	1,484	41%
Out-of-County	507	14%
Town of Ellettsville	122	3%
Rest of County	1,501	42%
Total	3,614	100%

TOTAL **$ 319,495** [2]

County – 42%	$298,195.33
Town of Ellettsville – 3%	$21,299.67

First Readings

Ord 17-35 (Revisions to Title 20 [the UDO] regarding Sexually-Oriented Businesses)

Ord 17-35 makes changes Title 20 (the UDO) to bring the existing code provisions governing sexually-oriented businesses (SOBs) up to constitutional standards.

According to local code, a "sexually-oriented business" is defined as:

> any establishment, whether conducted permanently or intermittently, that primarily engages in the business of offering a service or product, for sale, display, exhibition, or viewing, which is distinguished or characterized by an emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas. This includes but is not limited to adult bookstores, adult cabarets, adult motion picture theaters, adult

[1] These animals are characterized by how they arrive at the Shelter: 1) ACO-P/U (i.e. those picked up by animal control officers; 2) Surrender (i.e. those animals surrendered by their owners); and 3) Stray (i.e. those animals brought in by citizens.

[2] This figure is up $37,197 from 2015 to 2016.

novelty stores, adult video arcades, bathhouses, and lingerie modeling studios. BMC 20.11.020

Sexually-oriented businesses (SOBs) involve expression that is protected speech under the First Amendment. While the City cannot regulate the content of that speech, it can regulate SOBs based on the "secondary effects" associated with such content. Such secondary effects might include crime, negative effects on retail, and negative effects on property values, among others.[3] Any such content-neutral regulation for secondary effects must be reasonable in its time, place, and manner. Importantly, any such regulation for secondary effects cannot operate so as to effectively ban SOBs, nor may it operate to "unreasonably limit alternative avenues of communication."[4]

Current Code, Current Context

The regulation of SOBs is relatively new. Until 2006, the City did not regulate SOBs at all. However, with the 2006 UDO changes, the City began to regulate *where* SOBs could be located (in Commercial Arterial [CA] and Industrial General [IG] zones) and *how close* SOBs could be sited to key uses, such as churches, schools, day care facilities, malls, etc. At the time the SOB measure was passed, these restrictions afforded sufficient land area in which an SOB could be sited. However, over the last decade, the landscape has changed. More construction has occurred, resulting in more churches, malls and other key sites from which SOBs must be distanced and areas have been rezoned from CA and IG to other designations. The result is that where there was once sufficient land for SOBs, now there is little. Indeed, approximately 0.045% of land within the city is available for SOBs to locate. According to the memo from Development Services Manager, James Roach, this translates into 4.13 acres or 2 properties available in the city limits. The two properties are a portion of a concrete manufacturing company on South Rogers and Upland Brewery's westside production brewery. *See* map attached as *Exhibit A.*

Constitutional Concerns

That SOBs have little of the City's total area to locate triggers constitutional concerns. The 0.045% land available to SOBs effectively constrains speech.

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[3] In 2006 the City of Bloomington Plan Commission made findings documenting the harmful secondary effects of SOBs and these finding were ratified, accepted, and adopted as their own by the Common Council *via* Ordinance 06-24, the measure adopting the UDO. Some of the secondary effects enumerated in those findings include: "unlawful unhealthy activities;" crime; negative effect on property values; negative effects on neighboring retail; disease; prostitution; among other findings.

[4] *City of Renton v. Playtime Theaters*, 475 U.S. 41 (1986).

While there is no magic number indicating the exact quantum of space that would satisfy constitutional requirements, the U.S. Supreme Court has provided useful guidance. The controlling U.S. Supreme Court case on this matter is *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986). In *Renton*, a local adult entertainment business challenged the City of Renton's zoning ordinance prohibiting adult movie theaters from locating within 1,000 feet from key locations, such as residential zones, churches, schools, and parks. The effect of Renton's ordinance was that approximately 5% of the available land in the city was available for such adult theaters. Noting that communities can regulate the secondary effects of SOBs by either concentrating them or dispersing them, the Court found that the 5% allowed for in the Renton ordinance "represents a valid governmental response to the 'admittedly serious problems' created by adult theaters" and satisfied First Amendment requirements. 475 U.S. at 54-55. Importantly, the Court also held that while communities must guarantee that SOBs have reasonable channels to open and operate within a community, that does not mean that communities are under an obligation to make sure that there are actually "commercially viable" locations available within these limited areas/channels. 475 U.S. at 54.

Proposal for Remedying Constitutional Concerns

In the interest of making land available to SOBs approaching the *Renton* 5% figure, planners and legal staff have worked for almost a year on ways to responsibly do so. They've devised three methods for opening up more spaces to SOBs: 1) by adding Commercial General (CG) to the zoning districts in which SOBs are allowed; 2) by removing cemeteries and multi-tenant, non-residential centers (malls) from the list of uses from which a SOB must be distanced 500 feet; and, 3) by redefining the 500-feet separation calculations. The result of these changes is a shift in land available from 0.045% (4.13 acres) to 4% (602.87 acres). Under the changes of Ord 17-35, some of the properties that would become eligible include College Mall, Whitehall Crossing and Whitehall Plaza, commercial properties along West Third Street, and some industrial properties along South Rogers or Tapp Road. *See* map attached as *Exhibit B.*

The Proposed Changes

1) Adding Commercial General (CG): With the addition of CG, SOBs would now be allowed to be sited in Commercial Arterial (CA); Industrial General (IG); and, Commercial General (CG). The district intent of CG is to:

- [p]rovide areas within the city where medium scale commercial services can be located without creating detrimental impacts to surrounding uses.

- Promote the development of medium-scaled urban projects with a mix of storefront retail, professional office, and/or residential dwelling units creating a synergy between uses where stand-alone uses have traditionally dominated." BMC 20.02.290. The list of permitted uses in this area is extensive but includes uses such as bars/dance clubs and tattoo parlors.

2) List of Uses from Which SOBs must be distances at least 500 feet: Under current code, SOBs cannot be located any closer than 500 feet to churches, schools, day care centers, parks, libraries, residential districts, large-scale multi-tenant, nonresidential centers (malls, for example), cemeteries, or another SOB.

Ord 17-35 removes cemeteries and large-scale multi-tenant nonresidential centers from the list. According to the deliberations from the Plan Commission meeting, removal of cemeteries was key because of the location of Valhalla Memory Gardens impacted property available on W. Third. The removal of the large-scale multi-tenant nonresidential centers frees up more space in large malls for SOBs; malls are common sites for SOBs in other communities and tend to be isolated from residential areas.

Ord 17-35 also refines the term "residential district" by breaking the use into two parts. The language currently reads that a SOB cannot be located any closer from a "Residential district, including any portion of a planned unit development designated for residential use." Under Ord 17-35, residential use is broken up in the interest of clarity into "single family" (including portions of PUDs so designated) and "multi family" (including portions of PUDs so designated) uses from which a SOB must be located at least 500 feet.

3) Calculating the 500 foot separation calculation: Under the current code, the 500 foot separation is measured the nearest property line from which separation is required to the nearest property line of the SOB, using a straight line. Ord 17-35 revises this by making the measurement one from the property line of the protected use to the *wall* of the SOB.

In addition, Ord 17-35 adds a subsection making clear that SOBs will be considered permitted uses in any PUD created before February 12, 2007 (the effective date of the 2006 UDO) where the underlying zoning is CA, CG, or IG. This means that SOBs would be permitted where the *uses* listed in the PUD are the same as in the aforementioned zones.

The Plan Commission voted on 14 August 2017 in favor of these changes, 7-0-0.

Council Standard of Review

The Council is required to vote on an amendment to a zoning ordinance within ninety days of certification from the Plan Commission. The matter was certified to the Council on 22 August 2017 making the deadline for Council action 21 November 2017. In instances in which the Plan Commission gives a proposal a favorable recommendation, but the Council fails to act within the ninety-day window, the ordinance takes effect within ninety days after certification.

Indiana Code § 36-7-4-603 directs that, in amending a zoning ordinance, the legislative body "shall pay reasonable regard" to the following:

- the comprehensive plan (the Growth Policies Plan);
- current conditions and the character of current structures and uses in each district;
- the most desirable use for which the land in each district is adapted;
- the conservation of property values throughout the jurisdiction; *and*
- responsible development and growth. (I.C. § 36-7-4-603)

Importantly, these are factors that a legislative body must *consider* when making a zone map change decisions. Nothing in statute requires that the Council find absolute conformity with each of the factors outlined above. Instead, the Council is to take into consideration the entire constellation of the criteria, balancing the statutory factors.

NOTICE AND AGENDA
BLOOMINGTON COMMON COUNCIL REGULAR SESSION
6:30 P.M., WEDNESDAY, OCTOBER 18, 2017
COUNCIL CHAMBERS
SHOWERS BUILDING, 401 N. MORTON ST.

I. ROLL CALL

II. AGENDA SUMMATION

III. APPROVAL OF MINUTES

IV. REPORTS (A maximum of twenty minutes is set aside for each part of this section.)

1. **Councilmembers**
2. **The Mayor and City Offices**
3. **Council Committees**
4. **Public***

V. APPOINTMENTS TO BOARDS AND COMMISSIONS

VI. LEGISLATION FOR SECOND READINGS AND RESOLUTIONS

1. Resolution 17-39 – To Approve the Interlocal Agreement Between Monroe County, the Town of Ellettsville and the City of Bloomington for Animal Shelter Operation for the Year 2018

Committee Recommendation None

2. Ordinance 17-39 – To Authorize and Approve an Agreement in Lieu of Annexation Between the City of Bloomington and Cook Group, Incorporated and Affiliates

Committee Recommendation 9-0-0

3. Resolution 17-38 – Supporting Passage of a Food and Beverage Tax to Fund Expansion of the Monroe County Convention Center

Committee Recommendation 8-0-1

VII. LEGISLATION FOR FIRST READING

1. Ordinance 17-35 – To Amend Title 20 (Unified Development Ordinance) of the Bloomington Municipal Code – Re: Amending Section 20.02.300 to allow Sexually Oriented Businesses as a Permitted Use in Commercial General (CG) Districts and Deleting and Replacing Section 20.05.078 "Sexually Oriented Businesses – General"

VIII. ADDITIONAL PUBLIC COMMENT* (A maximum of twenty-five minutes is set aside for this section.)

IX. COUNCIL SCHEDULE

X. ADJOURNMENT

**Members of the public may speak on matters of community concern not listed on the agenda at one of the two Reports from the Public opportunities. Citizens may speak at one of these periods, but not both. Speakers are allowed five minutes; this time allotment may be reduced by the presiding officer if numerous people wish to speak.*

***Auxiliary aids for people with disabilities are available upon request with adequate notice. Please call (812)349-3409 or e-mail council@bloomington.in.gov.*

Posted & Distributed: October 13, 2017

City of Bloomington
Office of the Common Council

To Council Members
From Council Office
Re Weekly Calendar – 16 -21 October 2017

Monday, 16 October

12:00	pm	Board of Public Works – Work Session, McCloskey
12:00	pm	Bloomington Entertainment and Art District Committee, Hooker Conference Room
12:00	pm	Affordable Living Committee – Housing and Transportation Subcommittee, Kelly
12:00	pm	Affordable Living Committee – Childcare and Employment, Dunlap
5:00	pm	Redevelopment Commission, McCloskey
5:00	pm	Utilities Service Board, 600 E. Miller Dr.
5:30	pm	Farmers' Market Advisory Council, Parks

Tuesday, 17 October

4:00	pm	Board of Public Safety, McCloskey
5:30	pm	Animal Control Commission, Kelly
5:30	pm	Commission on the Status of Children and Youth, Hooker Conference Room
5:30	pm	Board of Public Works, Chambers
5:30	pm	Bloomington Public Transportation Corporation, 130 W. Grimes Ln.

Wednesday, 18 October

9:30	am	Tree Commission, 930 W. 4th St.
9:30	am	Emergency Management Advisory Council, Chambers
2:00	pm	Hearing Officer, Kelly
2:30	pm	Affordable Care Act Commission, McCloskey
4:00	pm	Board of Housing Quality Appeals, McCloskey
4:15	pm	Economic Development Commission, Hooker Conference Room
6:00	pm	Council for Neighborhood Associations, Hooker Conference Room
6:30	pm	Common Council Regular Session, Chambers

Thursday, 19 October

8:00	am	Bloomington Housing Authority Board of Commissioners, 1007 N. Summit
5:15	pm	Solid Waste Management District – Citizens' Advisory Council, McCloskey
5:30	pm	Board of Zoning Appeals, Chambers
7:00	pm	Environmental Commission, McCloskey

Friday, 20 October

12:00	pm	Common Council – Internal Work Session, Council Library
12:00	pm	Domestic Violence Task Force, McCloskey

Saturday, 21 October

9:00	am	Bloomington Community Farmers' Market, 401 N. Morton St.

*Auxiliary aids for people with disabilities are available upon request with adequate notice. Please contact the applicable board or commission or call (812) 349-3400.

Posted and Distributed: Friday, 13 October 2017

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RESOLUTION 17-39

TO APPROVE THE INTERLOCAL AGREEMENT BETWEEN MONROE COUNTY, THE TOWN OF ELLETTSVILLE AND THE CITY OF BLOOMINGTON FOR ANIMAL SHELTER OPERATION FOR THE YEAR 2018

WHEREAS, the Common Council of the City of Bloomington desires to contract with Monroe County and the Town of Ellettsville, through the authority of I.C. § 36-1-7-2, to provide services and facilities to Monroe County and the Town of Ellettsville for animal care and control in consideration of payment therefore; and,

WHEREAS, an agreement has been reached between the City of Bloomington, Monroe County and the Town of Ellettsville to provide said services and facilities for 2018;

NOW, THEREFORE, BE IT HEREBY RESOLVED BY THE COMMON COUNCIL OF THE CITY OF BLOOMINGTON, MONROE COUNTY, INDIANA, THAT:

Section 1. The Common Council hereby approves the Animal Shelter Interlocal Agreement attached hereto and incorporated herein for Fiscal Year 2018 and authorizes the Mayor and the Director of the Animal Shelter to execute the Agreement as attested to by the Clerk of the City of Bloomington.

PASSED AND ADOPTED by the Common Council of the City of Bloomington, Monroe County, Indiana, upon this _____ day of _____, 2017.

_____
SUSAN SANDBERG, President
Bloomington Common Council

ATTEST:

_____
NICOLE BOLDEN, Clerk
City of Bloomington

PRESENTED by me to the Mayor of the City of Bloomington, Monroe County, Indiana, upon this _____ day of _____, 2017.

_____
NICOLE BOLDEN, Clerk
City of Bloomington

SIGNED and APPROVED by me upon this _____ day of _____, 2017.

_____
JOHN HAMILTON, Mayor
City of Bloomington

SYNOPSIS

This resolution authorizes execution, by the Mayor and Director of Animal Care and Control, of the Animal Shelter Interlocal Agreement for Fiscal Year 2018 between the City of Bloomington, Monroe County and Town of Ellettsville. The agreement provides that Monroe County shall pay the City of Bloomington the sum of $298,195.33 for 2018 in return for the space the City provides to the County and services it renders on the County's behalf. The agreement further provides that the Town of Ellettsville shall provide the City of Bloomington the sum of $21,299.67 for 2018 in return for the space the City provides the Town of Ellettsville and services it renders on the Town of Ellettsville's behalf.

ANIMAL SHELTER INTERLOCAL AGREEMENT FOR FISCAL YEAR 2018

WHEREAS, the City of Bloomington Animal Care & Control Department operates the Animal Shelter for the care and control of animals; and,

WHEREAS, the City of Bloomington Animal Care & Control Department enforces licensing, animal care and animal control ordinances within the corporate boundaries of the municipality, including impoundment, adoptions and euthanizing of animals of the Animal Shelter; and,

WHEREAS, the County Animal Management Officers exercise similar functions within the County but utilize the Shelter premises and staff for impoundment, adoptions and euthanasia; and,

WHEREAS, the County Animal Management Officers exercise similar functions within the town limits of the Town of Ellettsville but utilize the Shelter premises and staff for impoundment, adoptions and euthanasia; and,

WHEREAS, the Town of Ellettsville finds it in the best interest of its citizens to contract with Monroe County for the animal management services and the City of Bloomington, Indiana, for Animal Shelter use; and,

WHEREAS, Monroe County finds it in the best interest of its citizens to contract with the City of Bloomington, Indiana, for Animal Shelter use and to provide the Town of Ellettsville animal management services; and,

WHEREAS, the City of Bloomington, Town of Ellettsville, and Monroe County are empowered pursuant to Indiana Code § 36-1-7 to contract together on the basis of mutual advantage to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population and other factors influencing the needs and development of local government;

NOW, THEREFORE, in consideration of the mutual terms, covenants, and conditions herein agreed, the parties agree as follows:

1. The duration of the Agreement shall be for one (1) year, commencing January 1, 2018, and ending on December 31, 2018.
2. The City of Bloomington ("City") agrees to provide the Town of Ellettsville ("Town") and Monroe County ("County") the following:
    a. The impoundment, general animal care, adoption and euthanasia for the Town and County.
    b. Use of supplies and equipment in the City Animal Shelter by the County personnel;

c. Assistance to the Town and County in answering phone calls, dispatching service calls and explaining the County animal management laws to callers; and
d. Accept and record payments for County license fees, and to remit these funds to the County monthly.

3. County shall administer and enforce County Animal Management Laws, including relevant kennel regulations, within the corporate limits of the Town.
4. The County agrees to pay the City the sum of $298,195.33.
5. The Town agrees to pay the City the sum of $21,299.67.
6. The level of cooperation recited in this Agreement is intended to exist for the purpose of efficient and effective delivery of governmental services to the citizens of the City, Town, and County; however, the parties recognize that modifications may be required, either to the Agreement itself, or to the practices and procedures that bring the recitals contained within this document to fruition.
7. The City, Town, and County departments affected by the terms of this Agreement will continue to communicate and cooperate together to assure that the purposes of this Agreement are achieved on behalf of and to the benefit of the citizens of the respective political subdivisions.
8. Payments shall be made semi-annually to the Controller of the City of Bloomington, upon the timely submission by the City of a claim. Such claims should be submitted to the Monroe County Board of Commissioners, Room 322, Courthouse, Bloomington, Indiana 47404 and to the Town Council of Ellettsville, 211 N. Sale Street, Ellettsville, Indiana, 47429.

THE PARTIES, intending to be bound, have executed this *ANIMAL SHELTER INTERLOCAL AGREEMENT FOR FISCAL YEAR 2018* on this _____ day of _____, 2017.

TOWN OF ELLETTSVILLE, INDIANA

_____
SCOTT OLDHAM, PRESIDENT
ELLETTSVILLE TOWN COUNCIL

DATE: _____

ATTEST:

_____
SANDRA HASH, Clerk/Treasurer

DATE: _____

CITY OF BLOOMINGTON

_____
JOHN HAMILTON, MAYOR

DATE: _____

MONROE COUNTY COMMISSIONERS

_____
JULIE THOMAS, PRESIDENT

DATE: _____

_____
AMANDA BARGE, VICE PRESIDENT

DATE: _____

_____
PATRICK STOFFERS, COMMISSIONER

DATE: _____

ATTEST:

_____
NICOLE BOLDEN, CLERK

DATE: _____

ATTEST:

_____
CATHERINE SMITH, COUNTY AUDITOR

DATE: _____

MEMO

To: **City of Bloomington Common Council**
From: **Philippa M. Guthrie**
Date: **October 18, 2017**
Re: **2018 Animal Interlocal**

The City of Bloomington, Monroe County, and the Town of Ellettsville have agreed to renew the annual Animal Interlocal Agreement. This Agreement provides that the City of Bloomington will house, care for and euthanize animals from Monroe County and Ellettsville at the City's shelter, and provide related services such as adoptions, responding to inquiries from the public, and receiving and recording license fees. In exchange, the County and Ellettsville agree to pay the City a specific dollar amount as reimbursement for those services.

The amounts to be paid to the City under the 2018 Animal Interlocal were calculated using the total for 2016 animal shelter expenditures and multiplying that figure by the percentage of animals taken in by the shelter from both the County and the Town of Ellettsville. For 2018, Monroe County will pay the City $298,195.33, and the Town of Ellettsville will pay the City $21,299.67.

CITY OF BLOOMINGTON/MONROE COUNTY
INTERLOCAL AGREEMENT FOR ANIMAL CONTROL
FY 2018 PROJECTED COSTS

There are four components to the Animal Control Department budget:

- Animal Shelter Operations
- Animal Control Field Operations
- Education Program
- Volunteer Program

Monroe County pays the City of Bloomington a percentage of the **Animal Shelter Operations** program. The percentage is calculated as the percentage of animals Monroe County generated of the total number of animals handled the previous year.

ANIMAL SHELTER OPERATIONS PROGRAM ACTUAL 2016 EXPENDITURES = $709,988.93
(2016 Actual Expenditure amount of $810,982.63 is reduced by 2016 Actual Adoption Revenue amount of $100,993.70.)

2016 PERCENTAGE OF ANIMALS FROM MONROE COUNTY SOURCES

• Picked up by AMO's	177
• Strays brought in by county residents	649
• Animals relinquished by Monroe County residents	797
Total number of Monroe County Animals	**1,623**
Total number of animals handled by Shelter in 2016	3,614
Percentage of animals from Monroe County sources	45%

ANIMAL SHELTER OPERATIONS PROGRAM ACTUAL 2016 EXPENDITURES X 45% = 2018 INTERLOCAL AMOUNT

$709,988.93 x 45% = $319,495

2018 MONROE COUNTY ANIMAL INTERLOCAL AMOUNT $319,495

2016 BREAKDOWN OF INCOMING ANIMALS BY JURISDICTION AND SOURCE

Animals included in City of Bloomington Total

Jurisdiction	ACO P/U	Surrender	Stray	Total	
City	286	639	559	1,484	41%
Owen County		88	37	125	
Greene County		67	26	93	
Lawrence County		87	88	175	
Brown County		4	4	8	
Morgan County		45	5	50	
Other Counties		27	29	56	
Subtotal Out of County	0	318	189	507	14%

Animals included in Monroe County Total

Jurisdiction	ACO P/U	Surrender	Stray	Total	
Monroe County	167	731	603	1,501	42%
Ellettsville	10	66	46	122	3%
Subtotal	177	797	649	1,623	45%
TOTAL INCOMING ANIMALS	**463**	**1,754**	**1,397**	**3,614**	

ACO P/U - These are animals picked up in the field by city and county animal control officers.
Surrender - These are owned animals surrended at the shelter.
Stray - These are stray animals brought to the shelter by citizens.

ORDINANCE 17-35
TO AMEND TITLE 20 (UNIFIED DEVELOPMENT ORDINANCE)
OF THE BLOOMINGTON MUNICIPAL CODE

Re: Amending Section 20.02.300 to allow Sexually Oriented Businesses as a Permitted Use in Commercial General (CG) Zoning Districts and Deleting and Replacing Section 20.05.078 "Sexually Oriented Businesses -- General"

WHEREAS, the City of Bloomington began regulating sexually-oriented businesses ("SOB") in 2006 with the adoption of the Unified Development Ordinance ("UDO"); and

WHEREAS, in 2006 the City of Bloomington Plan Commission made findings documenting the harmful secondary effects of SOBs and these finding were ratified, accepted, and adopted as their own by the Common Council *via* Ordinance 06-24, the measure adopting the UDO; and

WHEREAS, under the current UDO, a SOB shall not be located on a property within five hundred (500) feet of (1) Place of worship; (2) School (preschool, K-12); (3) Day care center, child or adult; (4) Park; (5) Library; (6) Residential district, including any portion of a Planned Unit Development designated for residential use; (7) Large-scale Multi-tenant nonresidential center; (8) Cemetery; and (9) Another sexually oriented business; and

WHEREAS, under the current UDO, the distance between a SOB and established uses outlined above shall be measured from the nearest property line of the property from which spacing is required to the nearest property line on which the sexually oriented business use will be located, using a straight line, without regard to intervening structures or public rights-of-way; and

WHEREAS, in 1986, in the case of *City of Renton vs. Playtime Theatres Inc*., the U.S. Supreme Court held that a zoning ordinance that provided approximately five percent (5%) of the entire land area of the City for sexually-oriented businesses was constitutional and provided adequate land area for First Amendment free speech and expression; and

WHEREAS, under the current UDO, only 4.13 Acres or 0.045% of Bloomington land area is available for SOB; and

WHEREAS, the City of Bloomington wishes to change the UDO to align with the Supreme Court holding; and

WHEREAS**,** On August 14, 2017, the Plan Commission considered ZO-20-17, and made a positive recommendation in favor of the amendments to the UDO, as described herein;

NOW THEREFORE, BE IT HEREBY ORDAINED BY THE COMMON COUNCIL OF THE CITY OF BLOOMINGTON, MONROE COUNTY, INDIANA, THAT:

SECTION 1. Section 20.02.300, entitled Commercial General (CG); Permitted Uses, shall be amended by adding "Sexually Oriented Businesses" as a permitted use.

SECTION 2. Section 20.05.078, entitled SX-01 (Sexually Oriented Businesses – General), shall be deleted and replaced with the following:

20.05.078 SX-01 (Sexually oriented businesses -- General).

Purpose. Within the city it is acknowledged that there are some uses, often referred to as sexually oriented businesses, which because of their nature can have a negative impact on nearby property, particularly when these sexually oriented businesses are concentrated together or located in direct proximity to residential uses, child care centers, churches, cemeteries, schools, libraries, playgrounds, and/or parks. Special regulations for these sexually oriented businesses are necessary to insure that these adverse impacts will not contribute to the blighting of

surrounding areas. The primary goal of these regulations is to prevent the concentration or location of these uses in a manner that would exacerbate their adverse effects.

This sexually oriented business standards section applies to the following zoning districts:

CA IG CG

(a) Location. A sexually oriented business shall not be located on a property within five hundred (500) feet of any of the following:
   (1) Place of worship;
   (2) School (preschool, K-12);
   (3) Day care center, child or adult;
   (4) Park (for purposes of this section, publicly owned multiuse trails shall be deemed to be a park);
   (5) Library;
   (6) Single Family district, including any portion of a planned unit development designated for single family use;
   (7) Multi-Family district, including any portion of a planned unit development designated for multi-family use; and
   (8) Another sexually oriented business.

(b) PUDs. For the purposes of this section, sexually oriented businesses shall be considered permitted uses in any Planned Unit Development created before February 12, 2007 where the underlying zoning is CA, CG or IG.

(c) Distance Measurements. The distance between a sexually oriented business and established uses outlined in 20.05.078(a) shall be measured from the nearest property line of the property from which spacing is required to the nearest wall of the building or tenant space that houses the sexually oriented business use using a straight line, without regard to intervening structures or public rights-of-way.

(d) Exterior Display. No sexually oriented business shall be conducted in any manner that permits the observation from any right-of-way of material depicting specified sexual activities or specified anatomical areas by display, decoration, sign, show window or other opening.

SECTION 3. If any section, sentence or provision of this ordinance, or the application thereof to any person or circumstances shall be declared invalid, such invalidity shall not affect any of the other sections, sentences, provisions, or applications of this ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared to be severable.

SECTION 4. This ordinance shall be in full force and effect from and after its passage by the Common Council of the City of Bloomington and approval of the Mayor, and after any required waiting and/or notice periods under Indiana law.

PASSED by the Common Council of the City of Bloomington, Monroe County, Indiana, upon this _____ day of _____, 2017.

_____
SUSAN SANDBERG, President
Bloomington Common Council

ATTEST:

_____
NICOLE BOLDEN, Clerk
City of Bloomington

PRESENTED by me to the Mayor of the City of Bloomington, Monroe County, Indiana, upon this _____ day of _____, 2017.

_____
NICOLE BOLDEN, Clerk
City of Bloomington

SIGNED and APPROVED by me upon this _____ day of _____, 2017.

_____
JOHN HAMILTON, Mayor
City of Bloomington

SYNOPSIS

This ordinance amends Title 20 (the Unified Development Ordinance) of the Bloomington Municipal Code. The ordinance modifies Section 20.02.300, Commercial General (CG) by adding Sexually Oriented Businesses as a permitted use. The ordinance also modifies the locations from which Sexually Oriented Businesses must be sited a minimum of 500 feet by removing large scale multi-tenant nonresidential centers and cemeteries from the list and by breaking out the residential components into "Single Family district" and "Multi-Family district." The ordinance also makes clear that Sexually Oriented Businesses are permitted in Planned Unit Developments created before the 2007 effective date of the UDO where the underlying zoning district is CA, CG, or IG. Lastly, by the ordinance changes existing code by modifying the way that distance is measured such that the 500-foot distance requirement is measured from the line of the property of the protected use to the wall of the Sexually Oriented Business.

****ORDINANCE CERTIFICATION****

In accordance with IC 36-7-4-605 I hereby certify that the attached Ordinance Number 17-35 is a true and complete copy of Plan Commission Case Number ZO-20-17 which was given a recommendation of approval by a vote of 6 Ayes, 0 Nays, and 0 Abstentions by the Bloomington City Plan Commission at a public hearing held on August 14, 2017.

Date: August 22, 2017

Terri Porter, Secretary
Plan Commission

Received by the Common Council Office this 22nd day of August, 2017.

Nicole Bolden, City Clerk

Appropriation Ordinance # _____

Fiscal Impact Statement Ordinance # _____

Resolution # _____

Type of Legislation:

Appropriation	End of Program	Penal Ordinance
Budget Transfer	New Program	Grant Approval
Salary Change	Bonding	Administrative Change
Zoning Change	Investments	Short-Term Borrowing
New Fees	Annexation	Other_____

If the legislation directly affects City funds, the following must be completed by the City Controller:

Cause of Request:

Planned Expenditure___ ____ Emergency

Unforeseen Need _____ Other _____

Funds Affected by Request:

Fund(s) Affected_		
Fund Balance as of January 1_	$	$
Revenue to Date_	$	$
Revenue Expected for Rest of year_	$	$
Appropriations to Date_	$	$
Unappropriated Balance_	$	$
Effect of Proposed Legislation (+/-)_	$	$
Projected Balance_	$	$

Signature of Controller

Will the legislation have a major impact on existing City appropriations, fiscal liability or revenues?

Yes _____ No _____

If the legislation will not have a major fiscal impact, explain briefly the reason for your conclusion.

If the legislation will have a major fiscal impact, explain briefly what the effect on City costs and revenues will be and include factors which could lead to significant additional expenditures in the future. Be as specific as possible. (Continue on second sheet if necessary.)

MEMO:

To: **City of Bloomington Common Council**
From: **James Roach Development Services Manager**
Anahit Behjou, Assistant City Attorney
Date: **August 24, 2017**
Re: **Request to Amend Title 20 (Unified Development Ordinance) of the Bloomington Municipal Code**

The City of Bloomington is proposing a technical amendment to Title 20 of the Bloomington Municipal Code to modify the development standards for Sexually Oriented Businesses ("SOBs"). This proposed amendment would bring the Code into closer compliance with prevailing US Supreme Court case law on the issue of zoning for SOBs.

Existing Code

In 2006, the City of Bloomington began regulating SOBs when it adopted the Unified Development Ordinance ("UDO"). Under the UDO, there are only two zoning districts in which sexually oriented businesses are permitted to locate (absent those already in existence when the UDO was adopted - those businesses are lawful non-conforming uses and legally permitted to remain in their current locations). The two zoning districts are the Commercial Arterial (20.02.340) and the Industrial General (20.02.420) zoning districts.

In addition to limiting SOBs to two zoning districts, the UDO further limits where they can be located within those districts. Section 20.05.078 provides that an SOB shall not be located on a property within 500 feet of any of the following:

- Place of worship
- School (preschool, K-12)
- Day care center, child or adult
- Park (including trails)
- Library
- Residential district (including PUDs with residential components)
- Cemeteries
- Large-scale multi-tenant nonresidential centers (e.g. strip malls or the mall)
- Another sexually oriented business

The 500 foot distance is measured from "the nearest property line of the property from which spacing is required to the nearest property line on which the sexually oriented business use will be located, using a straight line, without regard to intervening structures or public rights-of-way."

At the time this regulation was adopted, staff analyzed the available land and found that there were sufficient opportunities for locating an SOB. Since that time, properties have been rezoned and developed to different uses so that today there is only 0.045% of Bloomington land area

available for SOB location. That percentage equates to approximately 2 qualifying properties in the entire City or 4.13 Acres. See Exhibit A for a map of available areas for SOBs under the current regulation.

US Supreme Court Case Law on Zoning for SOBs

Having so few areas where an SOB might locate is problematic under federal constitutional law. US Supreme Court case law is fairly clear on the point that governments cannot completely ban SOBs because they are a form of free expression. *Young v. Am. Mini Theatres, Inc.*, 427 U.S. 50 (1976). However, in an effort to prevent or minimize secondary effects on the surrounding community, cities may regulate such businesses so long as the regulation is content-neutral. In other words, it is the secondary effects being regulated, not the content or nature of the speech that is taking place at the business. Possible secondary effects have been held to include increased crime, negative effects on the city's retail trade, decline in property values, and generally promoting neighborhood and urban blight. *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41, 48, 51 (1986).

There is a major caveat--any regulation undertaken by the city may not have the effect of reducing areas an SOB might locate to the point that there are unreasonably few options, thereby effectively banning them. *Young*, 427 U.S. at 71. A municipality does not need to assure that possible locations are actually available for rent or purchase; it simply needs to provide sufficient opportunities where an SOB might locate, should the properties become available. *Playtime Theatres*, 475 U.S. at 54.

While there is little guidance on how much land area a city must make available to SOBs under its zoning laws, the U.S. Supreme Court in fact ruled on this specific issue in the *Playtime Theatres* case. In *Playtime Theatres*, the plaintiff challenged as unconstitutional a city zoning ordinance that prohibited adult motion picture theaters from locating within 1,000 feet of any residential zone, single or multiple-family dwelling, church, park or school. Under the City of Renton's ordinance, approximately 5% of the land area of the city was available for SOBs to locate. The Supreme Court held that the ordinance was a valid governmental response to serious problems created by adult theaters and that 5% satisfied the dictates of the First Amendment.

Proposed Amendment to the BMC

The amendment to the Bloomington UDO that staff proposes would increase the land area available for SOB location from 0.045% to 4%, or 602.87 acres, bringing the City more in line with the Supreme Court's rulings. See Exhibit B for a map of available areas for SOBs under the proposed amendment. The amendment would make the following changes:

- Add Commercial General (CG) as a permitted zoning district
- Remove Cemeteries and Large Scale Multi-tenant Nonresidential Centers from the list of protected uses
- Change the way that the 500 foot separation is calculated

The change to the calculation of the 500-foot separation would consist of measuring the distance from the property line of the protected use to the wall of the SOB, rather than from property line to property line. Within this 500 foot area there could still be landscaping, parking lots or other uses, just not the SOB itself.

Plan Commission Review

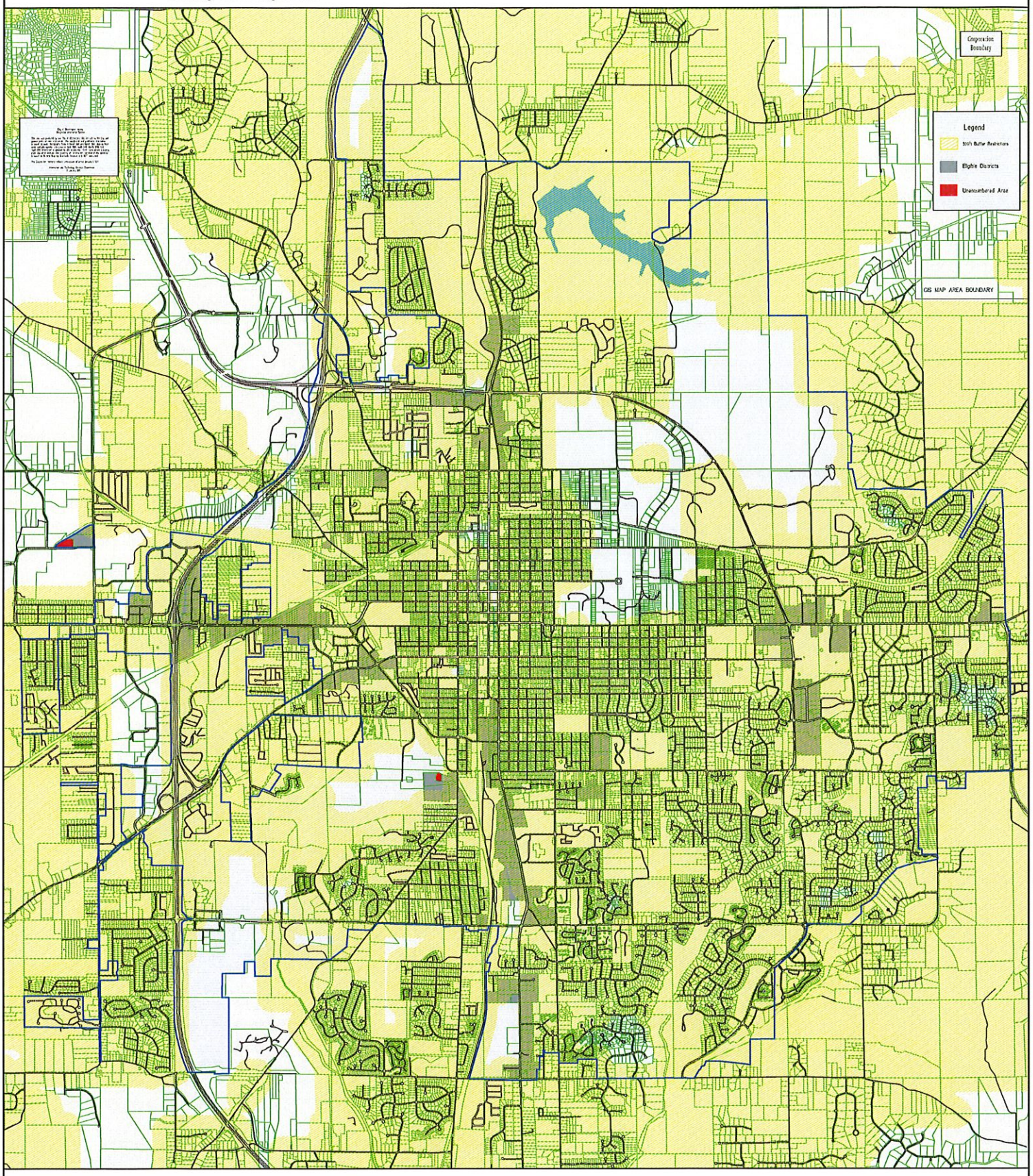
On August 14, 2017, the Plan Commission considered this proposed amendment and voted 7-0-0 in favor of it. Staff requests that the Common Council likewise approve this amendment.

EXHIBIT A

City of Bloomington, Indiana

Planning and Transportation

SOB Current Regulations - 2 Parcels - 4.13 Acres



Bloomington Geographic Information System

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SCALE 1" = 1000'

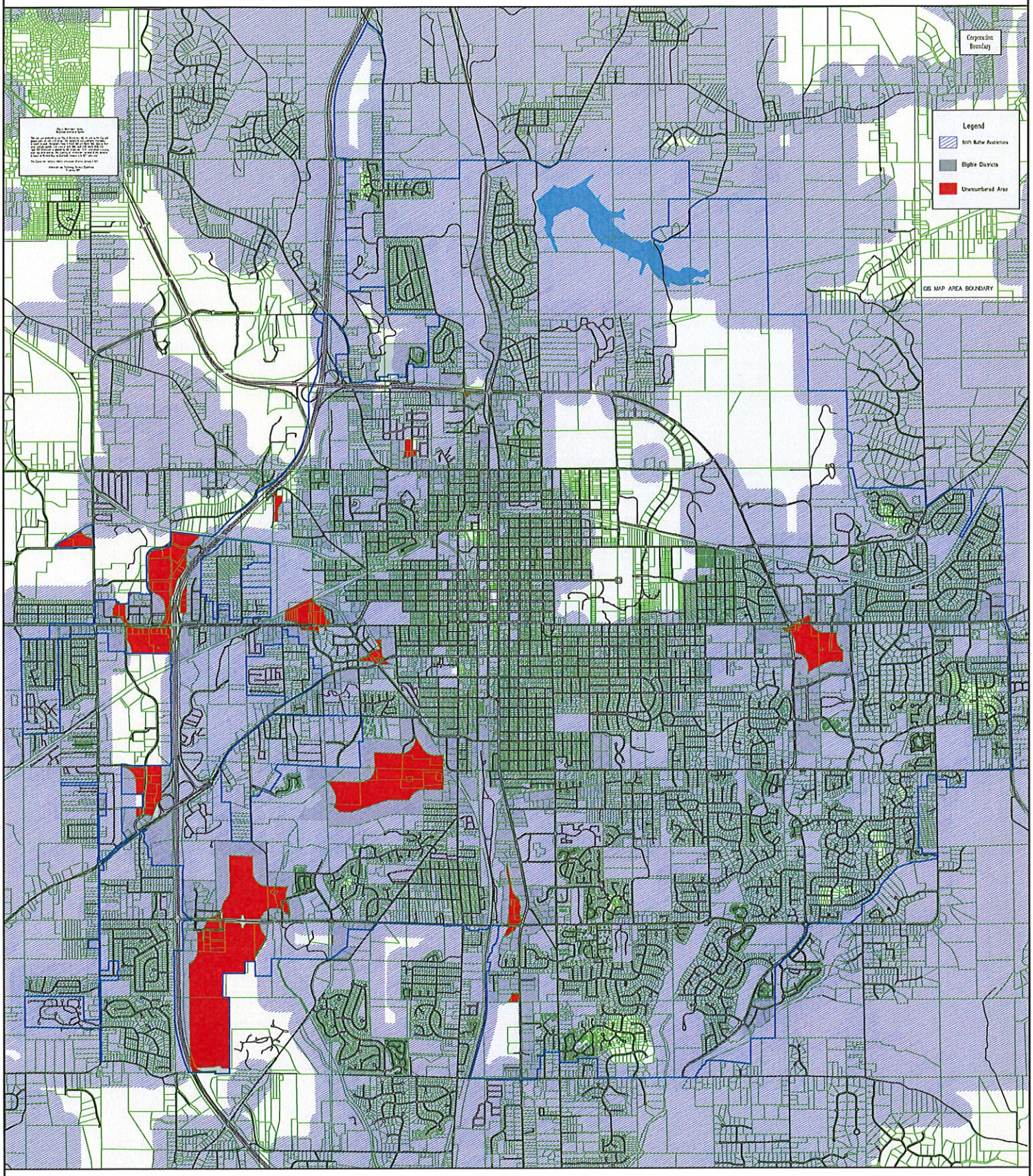
Apr 7, 2017 Indraj07

EXHIBIT B

City of Bloomington, Indiana

Planning and Transportation

Proposed SOB Regulation Acreage (500ft) - 602.87 Acres



Bloomington Geographic Information System

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SCALE 1" = 1500'

1500 500 0 1000 2000 3000 4000 5000 6000 7000 8000 9000 10000

Jul 8, 2017 Tuesday

ZO-20-17 MEMO:

To: **City of Bloomington Plan Commission**

From: **James C. Roach, AICP, Development Services Manager**

Date: **August 7, 2017**

Re: **Amendments to the City's Unified Development Ordinance to change the development standards for Sexually Oriented Businesses.**

The City of Bloomington began regulating sexually oriented businesses (SOBs) in 2006 with the adoption of the UDO. SOBs were permitted in the IG and GA districts but only if the lot they are located on is more than 500 feet from one of these things:

(1) Place of worship;
(2) School (preschool, K-12);
(3) Day care center, child or adult;
(4) Park (for purposes of this section, publicly owned multiuse trails shall be deemed to be a park);
(5) Library;
(6) Residential district, including any portion of a planned unit development designated for residential use;
(7) Large Scale multi-tenant non-residential center.;
(8) Cemeteries; and
(9) Another sexually oriented business.

At the time, staff analyzed the available land and found that there was sufficient opportunities to develop a sexually oriented business. Since that time, properties have been rezoned and new uses have been developed limiting opportunities for these uses. Today only 0.045 of Bloomington land area is available for sexually oriented businesses.

In 1986 in the case of City of Renton vs. Playtime Theatres Inc., where suit was brought challenging the constitutionality of a zoning ordinance which prohibited adult motion picture theaters from locating within 1,000 feet of any residential zone, single or multiple-family dwelling, church, park or school, the US Supreme Court held that the ordinance was a valid governmental response to the serious problems created by adult theaters and satisfied the dictates of the First Amendment. City of Renton v. Playtime Theatres, Inc., 475 U.S. 47 (1986).

The Court stated that the zoning ordinance that provided approximately 5% of the entire land area of the City for sexually oriented businesses was constitutional and provided adequate land area for first amendment free speech and expression.

Therefore, this UDO amendment is proposed to increase the available land area from 0.04% to 4% bringing the City more in line with the ruling of the Supreme Court in City of Renton v. Playtime Theatres, Inc..

The Department proposes to make the following changes:

- Add Commercial General (CG) as a permitted zoning district
- Remove the following uses from the list of protected uses
    - Cemeteries
    - Large Scale Multi-tenant nonresidential centers
- Change the way that the 500 foot separation is calculated

Currently, the UDO measures the district from a SOBs to a protected use as property line to property line. The Department found that this did not create adequate land area. The proposed change is to measure the 500 foot distance form the property line of the protected use to the wall of the SOBs. Within this 500 feet there could still be landscaping, parking lots or other uses, but just not the actual SOB.

The Department finds that these changes are necessary to provide a sufficient amount of the City Limits for these constitutionally protected uses. The changes proposes will still adequately protect neighborhoods and other uses from potential negative impacts of SOBs.

Included in the packet is the full ruling of Renton vs. Playtime and maps of the currently available land for SOBs and the land that would be available with this amendment. Please note, this is not a zoning map or an overlay. This map will change over time as land is rezoned or uses developed.

RECOMMENDATION: The Planning and Transportation Department recommends that the Plan Commission forward a positive recommendation for ZO-20-17 to the City Council.

20.02.300 Commercial General (CG); Permitted Uses

Add "Sexually Oriented Businesses"

20.05.078 SX-01 (Sexually oriented businesses—General).

Purpose. Within the city it is acknowledged that there are some uses, often referred to as sexually oriented businesses, which because of their nature can have a negative impact on nearby property, particularly when these sexually oriented businesses are concentrated together or located in direct proximity to residential uses, child care centers, churches, cemeteries, schools, libraries, playgrounds, and/or parks. Special regulations for these sexually oriented businesses

are necessary to insure that these adverse impacts will not contribute to the blighting of surrounding areas. The primary goal of these regulations is to prevent the concentration or location of these uses in a manner that would exacerbate their adverse effects.

This sexually oriented business standards section applies to the following zoning districts:

CA IG CG

(b) Location. A sexually oriented business shall not be located on a property within five hundred (500) feet of any of the following:
(1) Place of worship;
(2) School (preschool, K-12);
(3) Day care center, child or adult;
(4) Park (for purposes of this section, publicly owned multiuse trails shall be deemed to be a park);
(5) Library;
(6) Single Family ~~Residential~~ district, including any portion of a planned unit development designated for single family ~~residential~~ use;
~~(6)~~(7) Multi-Family district, including any portion of a planned unit development designated for multi-family use; and
~~(7) Large-scale multi-tenant nonresidential center;~~
~~(8) Cemetery; and~~
(8) Another sexually oriented business.

(c) PUDs. For the purposes of this section, sexually oriented businesses shall be considered permitted uses in any Planned Unit Development created before February 12, 2007 where the underlying zoning is CA, CG or IG.

(d) Distance Measurements. The distance between a sexually oriented business and established uses outlined in ~~subsection (a), Location, of this section~~20.05.078(a) shall be measured from the nearest property line of the property from which spacing is required to the nearest wall of the building or tenant space that houses the ~~property line on which the~~ sexually oriented business use ~~will be located,~~ using a straight line, without regard to intervening structures or public rights-of-way.

(e) Exterior Display. No sexually oriented business shall be conducted in any manner that permits the observation from any right-of-way of material depicting specified sexual activities or specified anatomical areas by display, decoration, sign, show window or other opening.