

RESOLUTION NO. 07-25

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF HERMOSA BEACH, CALIFORNIA, TO DENY THE CONDITIONAL USE PERMIT APPLICATION FOR A RETAIL BUSINESS IN WHICH SOME, BUT NO GREATER THAN 20%, OF ITS STOCK-IN-TRADE MATERIALS ARE DEFINED AS "X-RATED" AND/OR "ADULT PARAPHERNALIA" IN AN EXISTING COMMERCIAL BUILDING LOCATED AT 727 PACIFIC COAST HIGHWAY, LEGALLY DESCRIBED AS A PORTION OF LOT 1 AND ALL OF LOTS 2, 3, AND 4, BLOCK A, REDONDO HERMOSA TRACT

The Planning Commission does hereby resolve and order as follows:

Section 1. Recitals.

- A. An application was filed by Charles Jewell on behalf of Peekay, Incorporated, requesting a Conditional Use Permit for a retail business in which some, but no greater than 20%, of its stock-in-trade materials are defined as "X-rated" and/or "adult paraphernalia" in an existing commercial building located at 727 Pacific Coast Highway.
- B. Hermosa Beach Municipal Code (HBMC) Section 17.40.060 states that the Planning Commission shall approve an application for a Conditional Use Permit for a retail business in which some, but no greater than 20% of its stock in trade material meets the definition for X-rated and/or adult paraphernalia if the applicant presents evidence that the business will adequately screen the adult material from view, accessible only to persons over 18 years of age and implement other listed protective measures aimed at preventing minors from accessing the adult materials.
- C. Under HBMC Section 17.04.060, "adult paraphernalia means any instruments or devices that are designed for use in connection with specified sexual activities, including but not limited to the following:
 1. Any lotions, ointments, oils or similar preparations primarily intended to induce or enhance sexual arousal through external application;
 2. Any product for internal consumption that is primarily intended to induce or enhance sexual arousal;
 3. Any apparatus depicting the human body and/or specified anatomical areas intended to induce or enhance sexual arousal; and
 4. Any apparel primarily intended to accentuate specified anatomical areas in order to induce or enhance sexual arousal.
- D. Under HBMC Section 17.04.060, "X-rated" refers to any materials or services which include the depiction or description of specified sexual activities.
- E. Under HBMC Section 17.04.060, "adult business" means a business establishment in which a regular or substantial portion of its stock-in-trade material is specifically

1 intended for the exclusive patronage of adults and/or is precluded from selling such
2 material to minors and/or admitting minors into the premises of the business by
3 Section 313 et seq. of the California Penal Code. "Regular or substantial portion" is
4 defined as greater than twenty (20) percent of an establishment's stock-in-trade
5 materials and/or services offered to patrons, for compensation or some form of
6 gratuity.

7 Section 2. The Planning Commission conducted a duly noticed public hearing to consider the
8 application for the Conditional Use Permit on June 19, 2007. During the course of the public hearing, the
9 following testimony was presented to and considered by the Planning Commission:

- 10 A. The applicant, Charles Jewell, stated that the general retail area of the store would sell
11 lingerie, oils, shoes, condoms, romantic games, novelties, and women's and men's
12 clothing. This area of the store would also sell apparel, lingerie and other adult goods
13 made of leather. In order to comply with the requirements of HBMC Section 17.40.060,
14 any item with packaging depicting nudity or sexual acts or anatomically correct
15 apparatuses would be displayed in the screened portion of the store.
- 16 B. The applicant stated that the entire store will be restricted to adults 18 years of age or
17 older and that children will not be allowed in the store. The applicant indicated that the
18 store was to be characterized as a boutique that caters to the adult customer only.

19 Section 3. Based on the evidence received at the public hearing, the Planning Commission makes
20 the following findings:

- 21 A. The lotions, oils, lingerie, and leather apparel and goods to be sold in the general retail
22 portion of the store are intended to induce or enhance sexual arousal and therefore, fall
23 within the definition of "adult paraphernalia" under HBMC Section 17.04.060.
- 24 B. The above mentioned adult paraphernalia, together with the X-rated videos and adult
25 materials with packaging depicting nudity or sexual acts and anatomically correct
26 apparatuses to be sold in the store constitute a regular and substantial portion of the
27 business' stock-in-trade material.
- 28 C. The regular and substantial portion of the business' stock-in-trade material will be
29 specifically intended for the exclusive patronage of adults because minors will be
excluded entirely from the premises based on the adult nature of the goods sold.
- 30 D. Submission of the application for a Conditional Use Permit under HBMC Section
31 17.40.060 for a retail business not meeting the definition of adult business was
improper because the applicant failed to demonstrate that 20% or less of the stock in
trade will be considered X-rated and/or adult paraphernalia as defined in the HBMC.
- 32 E. Because the proposed business will sell a regular and substantial portion (more than
33 20%) of adult paraphernalia and other materials specifically intended for adult
34 patrons, the business qualifies as an "adult business" under HBMC 17.04.060 and
35 must meet the Conditional Use Permit requirements set forth in HBMC Section
36 17.40.050 (Adult Businesses).
- 37 F. The proposed business does not meet the Conditional Use Permit requirements for an
38 adult business in HBMC Section 17.40.050.A because the location at 727 Pacific Coast
39 Highway is located within 200 feet of residential property.

1 G. The proposed business does not meet the Conditional Use Permit requirements for an
2 adult business in HBMC Section 17.40.050.C because the location at 727 Pacific Coast
3 Highway is located with 1000 feet of another adult business establishment.

4 Section 4. Based on the foregoing, the Planning Commission hereby denies the requested
5 Conditional Use Permit.

6 VOTE: AYES: K. Allen, P. Hoffman, L. Kersenboom, S. Perotti, R. Pizer
7 NOES: None
8 ABSTAIN: None
9 ABSENT: None

10 CERTIFICATION

11 I hereby certify that the foregoing Resolution P.C. 07-25 is a true and complete record of the action
12 taken by the Planning Commission of the City of Hermosa Beach, California, at their regular meeting
13 of June 19, 2007.

14 _____
Kent Allen, Chairman

_____ .
Ken Robertson, Secretary

15 July 17, 2007

16 Date