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Agenda Date: 10/7/2009

Agenda Placement: 8A

Airport Land Use Commission Board Agenda Letter

TO: Airport Land Use Commission

FROM: John McDowell for Hillary Gitelman - Director
Conservation, Development & Planning

REPORT BY: RONALD GEE, PLANNER III - 707.253.4417

SUBJECT: CITY OF AMERICAN CANYON ADULT ENTERTAINMENT BUSINESS ORDINANCE - AIRPORT
LAND USE CONSISTENCY DETERMINATION # P09-00416-ALUC

RECOMMENDATION

CITY OF AMERICAN CANYON ADULT ENTERTAINMENT BUSINESS ORDINANCE - AIRPORT LAND USE CONSISTENCY DETERMINATION # P09-00416-ALUC

REQUEST: Airport land use consistency determination for the City of American Canyon adoption of the Adult Entertainment Business Ordinance as part of its Municipal Code. The project is located in the City of American Canyon within Airport Land Use Compatibility Zones D and E.

Staff Recommendation: That the Commission find the project consistent with the Airport Land Use Compatibility Plan (ALUCP).

Staff Contact: Ronald Gee, 299-1351, rgee@co.napa.ca.us

EXECUTIVE SUMMARY

Proposed Action:

1. That the Airport Land Use Commission find the City of American Canyon Adult Entertainment Business Ordinance (#P09-00416-ALUC) consistent with the Napa County Airport Land Use Compatibility Plan.

Discussion:

As set forth in State Aeronautics Law (Public Utilities Code 21676), the Airport Land Use Commission (ALUC) must review the proposed City of American Canyon Adult Entertainment Business Ordinance prior to its adoption by the City of American Canyon City Council since the proposal involves changes to policies within airport

influence areas. In its independent capacity, the ALUC is only reviewing the proposal for airport compatibility. As supported in the Background and Discussion Section of this report, ALUC Staff has reviewed the Ordinance proposal for consistency with Airport Land Use Compatibility Plan (ALUCP) policies and recommend that the ALUC find the project consistent with the ALUCP.

The ordinance, adopted on May 5, 2009, includes permanent regulations that establish zoning districts that provide opportunities for Adult Business locations. The ordinance also establishes operational requirements including a new requirement for these businesses to acquire a City Adult Business license. To protect public health from certain adult-oriented businesses, business operators, adult performers and figure models must obtain permits which require a criminal background check and to ensure that performers are of legal age. A 500-foot separation between adult uses and the nearest residential use, residential zoning, religious institutions and a 1,000-foot separation from parks and schools is included.

Adult businesses are protected by the U.S. Constitution under First Amendment rights. According to the City, due to these First Amendment rights, protections enjoyed by the Adult Business industry, do not allow cities and counties to Adult Businesses to undergo a discretionary approval process such as a Conditional Use Permit. The ordinance includes the General Industrial area as a potential location where such businesses could located, subject to all defined standards and requirements. Within existing city limits, most of these areas are located in Airport Compatibility Zone D - Common Traffic Pattern and Zone E - Other Airport Environs. These uses would take place at existing or proposed buildings that would otherwise comply with ALUCP requirements with no likely significant increase in allowable densities either within or outside these structures. These existing and proposed structures and uses would not significantly affect airport operations, therefore, the new ordinance would be consistent with the ALUCP.

FISCAL IMPACT

Is there a Fiscal Impact? No

ENVIRONMENTAL IMPACT

The City of American Canyon prepared a Mitigated Negative Declaration (MND) for the project. The MND discussed the project's potential to impact airport compatibility and concludes that the project will not result in significant impacts to airport compatibility; applicable sections of the MND are attached. The MND public review period ended on February 23, 2009 and was adopted on May 5, 2009. .

BACKGROUND AND DISCUSSION

Airport Land Use Consistency Factors:

1. Location - The City of American Canyon General Industrial District areas affected by the new ordinance are located in Zone D - Common Traffic Pattern and in Zone E - Other Airport Environs. These Adult Entertainment Business uses would take place within existing or proposed industrial/warehouse buildings, away from residential areas, schools, parks and religious institutions.

2. Land Use – The project involves City of American Canyon Adult Entertainment Business Ordinance, adopted on

May 5, 2009, which includes permanent regulations that establish zoning districts that provide opportunities for Adult Business locations. The ordinance also establishes operational requirements including a new requirement for these businesses to acquire a City Adult Business license. To protect public health from certain adult-oriented businesses, business operators, adult performers and figure models must obtain permits which require a criminal background check and to ensure that performers are of legal age. A 500-foot separation between adult uses and the nearest residential use, residential zoning, religious institutions and a 1,000-foot separation from parks and schools is included.

Adult businesses are protected by the U.S. Constitution under First Amendment rights. According to the City, due to these First Amendment rights, protections enjoyed by the Adult Business industry do not allow cities and counties to Adult Businesses to undergo a discretionary approval process such as a Conditional Use Permit. The ordinance includes the General Industrial area as a potential location where such businesses could be located, subject to all defined standards and requirements. Within existing city limits, most of these areas are located in Airport Compatibility Zone D - Common Traffic Pattern and Zone E - Other Airport Environs.

These uses would take place at existing or proposed buildings that would otherwise comply with ALUCP requirements with no likely significant increase in allowable densities either within or outside these structures. These existing and proposed structures and uses would not significantly affect airport operations, therefore, the new ordinance would be consistent with the ALUCP.

ALUC Staff view this ordinance as consistent with the ALUCP and finds the City has provided sufficient assurance to ensure that adult entertainment businesses would be compatible with airport operations.

3. Concentration of People – No changes to possible density would likely occur and no increases are being enabled as result of the new ordinance. The new ordinance codifies that there would be a limited number of these types of businesses due to minimum 500-foot separation requirements. These new uses would not affect airport operations and can be considered compatible uses.

4. Building Height – No changes to City regulations related to building height limits are proposed. The City's building height remains 35 ft. for occupied structures, fully consistent with ALUCP standards.

5. Lighting and Glare – No changes to City regulations concerning light and glare are proposed. The City's zoning remains consistent with the ALUCP.

6. Communications – The new ordinance will not change any City regulations concerning communication facilities, and the City's regulations will continue to be consistent with ALUCP standards.

7. Building Materials – No changes to City regulations concerning building materials are proposed. The City's zoning remains consistent with the ALUCP.

8. Overflight Easement – The County requires overflight easements for all projects located within airport influence areas. No changes to this long established requirement will occur as part of this ordinance and City regulations remain consistent with the ALUCP.

9. Caltrans Aeronautics – Caltrans Division of Aeronautics staff has been sent copies of attached background information. Caltrans Aeronautics also received a referral of the MND when it was circulated. No comments have been received regarding the project.

10. Processing – ALUCP Policy 1.3.2 (b) requires referral of a project to the ALUC prior to City of American Canyon City Council final action to allow the local decision maker to consider the ALUC's finding prior to final action. In this case, the ordinance has already been adopted by American Canyon's City Council. Therefore, in the event that

the ALUC were to find the ordinance inconsistent with the compatibility plan, the ordinance would need to be reconsidered by American Canyon's City Council as either rescinded or the Council would need to override the ALUC determination by two-thirds vote.

SUPPORTING DOCUMENTS

- A . Adult Entertainment Ordinance - Part I
- B . Adult Entertainment Ordinance - Part II
- C . Environmental Document (MND Portion)

Airport Land Use Commission: Approve

Reviewed By: John McDowell