

ZONING INTERPRETATION RECORD

Subject of Interpretation:

Request for quantification of the terms "substantial" and "significant" in relation to an "adult novelty store" use.

Zoning Ordinance Section Number:

Article III, Section 3.100

Title of Section:

Definitions; General

Cause for Interpretation:

On March 25, 2009, a request was made by Sender & Associates Law Offices for an interpretation of the terms "substantial" and "significant" as they are used in the definition of "adult novelty store" under Article III, Section 3.100 of the Scottsdale Zoning Ordinance.

In pertinent part, the Scottsdale Zoning Ordinance defines "adult novelty store" as "...any commercial establishment having as a substantial or significant portion of its stock and trade instruments, devices, or paraphernalia which are designed for use in connection with specified sexual activities, excluding condoms and other birth control and disease prevention products." The ordinance does not include a separate definition of the terms "substantial" or "significant" because these are commonly understood words used in everyday language.

The request for interpretation asserts that use of the term(s) "substantial or significant" should be interpreted to mean "a commercial establishment would become an adult novelty store only if at least fifty percent (50%) or more of its stock and trade includes instruments, devices or paraphernalia for use in connection with specified sexual activities". 50% or more would commonly be referred to as at least half or a majority of its stock in trade.

Interpretation:

Generally, the City ordinances are interpreted to give full effect to their intent. In determining the intent of the ordinance, one must consider the ordinance as a whole and give harmonious effect to all its sections; however, where the language is susceptible to more than one interpretation, a reasonable interpretation must result. By reading the word in the context of this ordinance, rather than trying to analyze each word in its isolated form, a reasonable interpretation serving the purpose of the ordinance can easily be accomplished.

In the area of the regulation of adult businesses, the City's intent is to regulate the location of adult uses, such as adult novelty stores, to prevent the spread of adverse, if unintended effects associated with adult businesses, which include crime, nuisance, the deterioration of residential and commercial neighborhoods, as well as the corruption of community morals. (*Scottsdale Revised Code, Section 1.403*)

The intent of this ordinance is, in part, to create a buffer zone between stores that are selling significant amounts of sexually explicit adult items, and children of impressionable ages and

family communities. Qualifying "substantial and significant" as half or more not only conflicts with the common meaning and understanding of the words "substantial" and "significant", but it also conflicts with the intent of the Zoning Ordinance. If the Zoning Ordinance were interpreted to mean a City only regulated stores that had at least half or more of its stock in trade designed for use in connection with specified sexual activities, the intent and purpose of the location and distance criteria of the adult use zoning regulations would be defeated.

For instance, the interpretation the requestor proposes (that a business must have at least half or more of its stock and trade be designed for use in connection with specified sexual activities in order to be considered an adult novelty store) would allow a store to have up to forty-nine percent (49%) of its stock and trade be designed for use in connection with specified sexual activities and still locate adjacent to a school without having to comply with the adult use regulations of the Scottsdale Zoning Ordinance and its location and distance criteria. This would defeat the intent and purpose of the ordinance in question. "Substantial" and "significant" are general terms and are interpreted to mean considerable, meaningful, or noteworthy.

The requestor also argues in favor of a dictionary interpretation of the terms "substantial and significant"; however, the common dictionary definitions do not offer the mathematical quantification the requestor desires, nor do they imply a 50% minimum. Rather, these words and their common definitions would include amounts *as great* as half, but they would also include considerable or noteworthy amounts that are *less* than half, but more than an insignificant or insubstantial portion.

With the original, regulatory intent in mind, and considering the context of these words along with their commonly understood meaning, the term "substantial and significant portion of its stock and trade" is reasonably interpreted to mean "carrying instruments, devices, or paraphernalia for use in connection with specified sexual activities, which constitutes at least twenty-five percent (25%) or more of the floor area of the establishment". Defining "substantial and significant" in this manner is reasonable, it serves the intent and purpose of the ordinance, and it provides the requestor with the mathematical quantification desired.

 Lusia Galav

Interpretation By

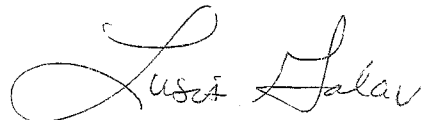
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6-8-2009

Date

June 8,
2009

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Approved By

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