



City of Grover Beach

PRESS RELEASE
FOR IMMEDIATE RELEASE

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Diamond v. City of Grover Beach – City Council Decides Not to Seek Review Appeal by the Supreme Court

On Friday, September 14, 2007, the City was informed of the U.S. Court of Appeals for the Ninth Circuit's denial of the City's petition to rehear the *Diamond v. City of Grover Beach* case. The City continues to be disappointed by the decisions of the Ninth Circuit. This evening, the Council deliberated on the option to have this case reviewed by the U.S. Supreme Court and, as a result of that deliberation, has decided not to file the appeal. The Council based its decision on the advice of the City Attorney that since there is no constitutional issue associated with this case, it is unlikely that review would be granted by the Court.

The Council remains disappointed with the Court's decision, reflecting on the fact that this case is about the City's ability to make good land use decisions and to enforce those decisions for the benefit of the entire community. Local land use planning is one of the very reasons that the City exists.

The case resulted from the City Council's direction that the adult-business ordinance be amended to place adult-use businesses in specified areas of the City. That request was a response to a vocal community determined that adult businesses should not be located in the downtown commercial zone. After completing its due diligence, the Council enacted an ordinance to designate the zoning districts for location of adult businesses. Mr. Diamond filed an action against the City, contending that the ordinance and the implementation of the ordinance was unconstitutional. During the trial court hearing, the constitutionality of the ordinance was upheld and was not further questioned during the *Diamond* appeal heard by the Ninth Circuit.

The decision of the Ninth Circuit turned on the fact that the City and Mr. Diamond had an agreement which allowed the adult business to operate during the early period of the litigation. This agreement was put in place to ensure that neither the City nor Mr. Diamond would be adversely impacted until a court decision was reached. It was never the City's intent to grant any entitlement to Mr. Diamond for the operation of his adult business. Unfortunately, the Ninth Circuit panel, on a 2-1 decision, saw the agreement differently.

In light of the decision, the *City's position remains that the enacted ordinance was found to be constitutional and the City will continue to enforce this ordinance whenever it is possible to do so, but no review would be sought by the City in the Diamond case.*

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