Jefferson County

ZONING AND SANITATION DEPARTMENT
COURTHOUSE, 320 S. MAIN ST., JEFFERSON, WI 53549
ROOM 201 PHONE 920-674-7130 FAX 920-674-7525

May 11, 2005

To: All Jefferson County Board of Supervisors
All Jefferson County Town Clerks

Re: Upcoming Text Amendment-Jefferson County Zoning Ordinance
First Amendment Protected Adult-Oriented Establishment

The Zoning Department has obtained information for you to read and review regarding the secondary effects of First Amendment protected Adult-Oriented Establishments. This is a series of studies, reports, and court cases from many cities and counties around the United States.

Because of the size (1000 pages) and reproduction cost of $80.00 per report and case study, the report has been scanned and placed on the County web page. The scanning procedure distorts some of the graphs and fonts from the report and case study text. The Jefferson County Planning and Zoning Department has three hard copies available in the office for review of those sections that have been negatively affected by the scanning process.

Sincerely,

Bruce Haukom
Director Planning & Zoning

BH/sce

Supreme Court of the United States

CITY OF RENTON, et al., Appellants
v.
PLAYTLME THEATRES, INC., et al.

No. 84-1360.

Argued Nov. 12, 1985.
Decided Feb. 25, 1986.
Rehearing Denied April 21, 1986.
See 475 U.S. 1132, 106 S.Ct. 1663.

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 United States District Court for the Western District of Washington ruled in favor of the city. The Court of Appeals for the Ninth Circuit, 748 F.2d.527, reversed and remanded for reconsideration, and the city appealed. The Supreme Court, Justice Rehnquist, 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.

Reversed.

Justice' Blackmun concurred in the result,

Justice Brennan filed a dissenting opinion in which Justice Marshall joined.

West Headnotes

[1] Constitutional Law X90.4(4)
92k90.4(4)

City ordinance that prohibited adult motion picture theaters from locating from within 1,000 feet of any residential zone, single or multiple-family dwelling, church, park or school was properly analyzed as a form of time, place and manner regulation of speech. U.S.C-A. Const.Amend. 1.

[2] Constitutional Law ~90.4(4)
92k90.4(4)

A 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 was a valid-governmental response to the serious problems created by adult theaters and satisfied the dictates of the First Amendment. U.S.C.A. Const.Amend. 1.

[3] Constitutional Law (°-90.4(4)
92k90.4(4)
(Formerly 92k90.1(4))

The First Amendment does not require a city, before enacting an adult theater zoning ordinance, to conduct new studies or produce evidence independent of that already generated by other cities, so long as whatever the evidence the city relies upon is reasonably believed to be relevant to the problem that the city addresses. U.S.C.A_ Const.Amend. 1.

[4] Zoning and Planning (~:7-76
414k76

Cities may regulate adult theaters by dispersing them or by effectively concentrating them.

41 Syllabus [FN]

FN* The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Lumber Co., 200 U.S. 321, 337, 26* S.Ct. *282, 287, 50* L.Ed. 499.

Respondents purchased two theaters in Renton, Washington, with the intention of exhibiting adult films and, at about the same time, filed suit in Federal District Court, seeking injunctive relief and a declaratory judgment that the First and Fourteenth Amendments were violated by a city ordinance that prohibits adult motion picture theaters from locating within 1,000 feet of any residential zone, single- or multiple-family dwelling, church, park, or school. The District Court ultimately entered summary judgment in the city's favor, holding that the ordinance did not violate the First Amendment. The Court of Appeals reversed, holding that the ordinance constituted a substantial restriction on First Amendment interests, and remanded the case for reconsideration as to whether the city had substantial governmental interests to support the ordinance.

He?d. The ordinance is a valid governmental

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response to the serious problems created by adult theaters and satisfies the dictates of the First Amendment. Cf. *"925 *Young v. American Mini Theatres, Inc.,* 427 U.S. 50, 96 S.Ct. 2440, 49 L.Ed2d 310. Pp. 928-933.

(a) Since the ordinance does not ban adult theaters altogether, it is properly analyzed as a form of time, place, and manner regulation. " Content-neutral" time, place, and manner regulations are acceptable so long as they are designed to serve a substantial governmental interest and do not unreasonably limit alternative avenues of communication. Pp-928-929.

(b) The District Court found that the Renton City Council's "predominate" concerns were with the secondary effects of adult theaters on the surrounding community, not with the content of adult films themselves. This finding is more than adequate to establish that the city's pursuit of its zoning interests was unrelated to the suppression of free expression, and thus the ordinance is a "content-neutral "_ speech regulation. Pp. 928-930.

(c) The Renton ordinance is designed to serve a substantial governmental interest while allowing for reasonable alternative avenues of communication. A city's interest in attempting to preserve the quality of urban life, as here, must be accorded high respect. Although the-ordinance was enacted without the benefit of studies specifically relating to *42 Renton's particular problems, Renton was entitled to rely on the experiences of, and studies produced by, the nearby city of Seattle and other cities. Nor was there any constitutional defect in the method chosen by Renton to further its substantial interests. Cities may regulate adult theaters by dispersing them, or by effectively concentrating them, as in Renton. Moreover, the ordinance is not "underinclusive" for failing to regulate other kinds of adult businesses, since there was no evidence that, at the time the ordinance was enacted, any other adult business was located in, or was contemplating moving into, Renton. Pp. 930=932.

(d) As required by the First Amendment, the ordinance allows for reasonable alternative avenues of communication. Although respondents argue that in general there are no "commercially viable" adult theater sites within the limited area of land left open for such theaters by the ordinance, the fact that respondents must fend for themselves in the real estate market, on an equal footing with other prospective purchasers and lessees, does not give rise to a violation of the First Amendment, which does not compel the Government to ensure that adult theaters, or any other kinds of speech-related, businesses, will be able to obtain sites at bargain prices. P.932.

748 F.2d 527 (CA9 1984), reversed.

REHNQUIST, J., delivered the opinion of the Court, in which BURGER, C.J.; and WHITE, POWELL, STEVENS, and O'CONNOR, JJ., joined. BLACKMUN, J., concurred in the result. BRENNAN, J., filed a dissenting opinion, in which MARSHALL, J., joined, *post, p. ---.*

**926 *E. Barrett Prettyman, Jr.,* arguedthe cause for appellants. With him on the briefs were *David W Burgett, Lawrence J. Warren, Daniel Kellogg, Mark E. Barber,* and *Zanetta L. Fontes.*

Jack R. Burns argued the cause for appellees. With him on the briefs was *Robert E. Smith.*

* Briefs of *amici curiae* urging reversal were filed for Jackson County, Missouri, by *Russell D. Jacobson;* for the Freedom Council Foundation by *Wendell R. Bird* and *Robert K. Skolrood,* for the National Institute of Municipal Law Officers by *George Agnost, Roy D. Bates, Benjamin L. Brown, J. Lamar Shelley, John W. Witt, Roger F. Cutler, Robert J. Ay~on, James K. Baker, Barbara Mather, James D. Montgomery, Clifford D. Pierce, Jr_, William H. Taube, William I. Thornton, Jr.,* and *Charles S. Rhyne;* and for the National League of Cities et at by *Benna Ruth Solomon, Joyce Holmes Benjamin, Beate Bloch,* and *Lawrence R. Velvel.*

Briefs of *amici curiae* urging affumance were filed for the American Civil Liberties Union et al by *David Utevsky, Jack D. Novik,* and *Burt Neuborne;* and for the American Booksellers Association, Inc., et al by *Michael A. Bamberger.*

Eric M. Rubin and *Walter E. Diercks* filed a brief for the Outdoor Advertising Association of America, Inc., et al as *amici curiae.*-

*43 Justice REHNQUIST delivered the opinion of the Court.

This case involves a constitutional challenge to a zoning ordinance, enacted by appellant city of

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Renton, Washington, that prohibits adult motion picture theaters from locating within 1,000 feet of any residential zone, single- or multiple-family dwelling, church, park, or school. Appellees, Playtime Theatres, Inc., and Sea-First Properties, Inc., filed an action in the United States District Court for the Western District of Washington seeking a declaratory judgment that the Renton ordinance violated the First and Fourteenth Amendments and a permanent injunction against its enforcement. The District Court ruled in favor of Renton and denied the permanent injunction, but the Court of Appeals for the Ninth Circuit reversed and remanded for reconsideration_ 748 F.2d 527 (1984)

We noted probable jurisdiction, 471 **927 U.S. 1013, 105 S.Ct. 2015, 85 L.Ed.2d 297 (1985), and now reverse the judgment of the Ninth Circuit. [FN1]

FNl. This appeal was taken under 28 U.S.C. § 1254(2), which provides this Court with appellate jurisdiction at the behest of a party relying on a state statute or local ordinance held unconstitutional by a court of appeals. As we have previously noted, there is some question whether jurisdiction under § 1254(2) is available to review a nonfinal judgment. See *South Carolina Electric & Gas Co. v. Flemming,* 351 U.S. 901, 76 S.Ct. 692, 100 L.Ed. 1439 (1956); *Slaker v. O'Connor,* 278 U.S. 188, 49 S.Ct. 158, 73 L.Ed. 258 (1929). But see *Chicago v. Atchison, T. & S.F. R. Co.,* 357 U.S_77, 82-83, 78 S.Ct. 1063, 1066-1067, 2 L.Ed.2d 1174 (1958).

The present appeal seeks review of a judgment remanding the case to the District Court. We need not resolve whether this appeal is proper under § 1254(2), however, because in any event we have certiorari jurisdiction under 28 U.S. C. § 2103

As we have previously done in equivalent situations, see *El Paso v. Simmons,* 379 U.S. 497, 502-503, 85 S.Ct. 577, 580-581, 13 L.Ed.2d 446 (1965); *Doran v. Salem Inn, Inc.,* 422 U.S. 922, 927, 95 S.Ct. 2561, 2565, 45 L.Ed.2d 648 (1975), we dismiss the appeal and, treating the papers as a petition for certiorari, grant the writ of certiorari. Henceforth, we shall refer to the parties as "petitioners" and "respondents."

*44 In May 1980, the Mayor of Renton, a city of approximately 32,000 people located just south of Seattle, suggested to the Renton City Council that it consider the advisability of enacting zoning legislation dealing with adult entertainment uses. No such uses existed in the city at that time. Upon the Mayor's suggestion, the City Council referred the matter to the city's Planning and Development Committee. The Committee held public hearings, reviewed the experiences of Seattle and other cities, and received a report from the City Attorney's Office advising as to developments in other cities. The City Council, meanwhile, adopted Resolution No. 2368, which imposed a moratorium on the licensing of "any business ... which ... has as its primary purpose the selling, renting or showing of sexually explicit materials." App. 43. The resolution contained a clause explaining that such businesses "would have a severe impact upon surrounding businesses and residences. " Id., at 42.

In April 1981, acting on the basis of the Planning and Development Committee's recommendation, the City Council enacted Ordinance No. 3526. The ordinance prohibited any "adult motion picture theater" from locating within 1,000 feet of any residential zone, single- or multiple-family dwelling, church, or park, and within one mile of any school. App to Juris. Statement 79a. The term "adult motion picture theater" was defmed as "[a]n enclosed building used for presenting motion picture films, video cassettes, cable television, or any other such visual media, distinguished or characteri[zed] by an emphasis on matter depicting, describing or relating to 'specified sexual activities' or 'specified anatomical areas' ... for observation by patrons therein. " Id., at 78a.

*45 In early 1982, respondents acquired two existing theaters in downtown Renton, with the intention of using them to exhibit feature-length adult films. The theaters were located within the area proscribed by Ordinance No. 3526. At about the same time, respondents filed the previously mentioned lawsuit challenging the ordinance on First and Fourteenth Amendment grounds, and seeking declaratory and injunctive relief. While the federal action was pending, the City Council amended the ordinance in several respects, adding a statement of reasons for its enactment and reducing the minimum distance from any school to 1,000 feet.

In November 1982, the Federal Magistrate to whom respondents' action had been referred recommended the entry of a preliminary injunction against enforcement of the Renton ordinance and the denial of Renton's motions to dismiss and for summary judgment. The District Court adopted the Magistrate's recommendations and entered the preliminary injunction, and respondents began showing adult films at their two theaters in Renton. Shortly thereafter, the parties agreed to submit the'

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case for a final decision on whether a permanent **928 injunction should issue on the basis of the record as already developed.

The District Court then vacated the preliminary injunction, denied respondents' requested permanent injunction, and entered summary judgment in favor of Renton. The court found that the Renton ordinance did not substantially restrict First Amendment interests, that Renton was not required to show specific adverse impact on Renton from the operation of adult theaters but could rely on the experiences of other cities, that the purposes of the ordinance were unrelated to the suppression of speech, and that the restrictions on speech imposed by the ordinance were no greater than necessary to further the governmental interests involved. Relying on *Young v. American Nlini Theatres, Inc.*, 427 U.S. 50, 96 S.Ct. 2440, 49 L.Ed.2d 310 (1976), and *United States v. O'Brien,* 391 U.S. 367, 88 S.Ct. 1673, 20 L.Ed.2d 672 (1968), the court held that the Renton ordinance did not violate the First Amendment.

*46 The Court of Appeals for the Ninth Circuit reversed. The Court of Appeals first concluded, contrary to the finding of the District Court, that the Renton ordinance constituted a substantial restriction on First Amendment interests. Then, using the standards set forth in *United States v. O'Brien, supra,* the Court of Appeals held that Renton had improperly relied on the experiences of other dities in lieu of evidence about the effects of adult theaters on Renton, that Renton had thus failed to establish adequately the existence of a substantial governmental interest in support of its ordinance, and that in any event Renton's asserted interests had not been shown to be unrelated to the suppression of expression. The Court of Appeals remanded the case to the District Court for reconsideration of Renton's asserted interests.

In our view, the resolution of this case is largely dictated by our decision in *Young v. American Mini Theatres, Inc., - supra.* There, although five Members of the Court did not agree on a single rationale for the decision, we held that the city of Detroit's zoning ordinance, which prohibited locating an adult theater within 1,000 feet of any two other "regulated uses" or within 500 feet of any residential zone, did not violate the First and Fourteenth Amendments. Id., 427 U.S., at 72-73, 96 S.Ct., at 2453 (plurality opinion of STEVENS, J., joined by BURGER, C.J., and WHITE and REHNQUIST, JJ.); , *id.,* at 84, 96 S.Ct., at 2459 (POWELL, J., concurring). The Renton ordinance, like the one in *American Mini Theatres,* does not ban adult theaters altogether, but merely provides that such theaters may not be located within 1,000 feet of any residential zone, single- or multiple-family dwelling, church, park, or school. The ordinance is therefore properly analyzed as a form of time, place, and manner regulation. Id., at 63, and n. 18, 96 S.Ct., at 2448 and n. 18; *id.,* at 78-79, 96 S.Ct., at 2=156 (POWELL, J., concurring).

[1] Describing the ordinance as a time, place, and manner regulation is, of course, only the first step in our inquiry. This Court has long held that regulations enacted for the *47 purpose of restraining speech on the basis of its content presumptively violate the First Amendment. See *Carey v. Brown,* 447 U.S. 455, 462-463, and n. 7, 100 S.Ct. 2286, 2291, and n. 7, 65 L.Ed.2d 263 (1980); *Police Dept. of Chicago v. Nlosley,* 408 U.S. 92, 95, 98- 99, 92 S.Ct. 2286, 2289, 2291-2292, 33 L.Ed.2d 212 (1972). On the other hand, so-called "content-neutral" time, place, and manner regulations are acceptable so long .as they are designed to serve a substantial governmental interest and do not unreasonably limit alternative avenues of communication. See *Clark v. Community for Creative Non-Violence,* 468 U.S. 288, 293, 104 S.Ct. 3065, 3069, 82 L.Ed.2d 221 (1984); *City Council of Los Angeles v. Taxpayers for Vincent,* 466 U.S. 789, 807, 104 S.Ct. 2118, 2130, 80 L.Ed.2d 772 (1984); *Heffron v. International Society for Krishna Consciousness, Inc.,* 452 U.S. 640, 647-648, 101 S.Ct. 2559, 2563-2564, 69 L.Ed.2d 298 (1981).

**929 At first glance, the Renton ordinance, like the ordinance in *American Mini Theatres,* does not appear to fit neatly into either the "content-based" or the "content-neutral" category. To be sure, the ordinance treats theaters that specialize in adult films differently from other kinds of theaters. Nevertheless, as the District Court concluded, the Renton ordinance is aimed not at the *content* of the films shown at "adult motion picture theatres, " but rather at the *secondary effects* of such theaters on the surrounding community. The District Court found that the City Council's *"predominate* concerns" were with the secondary effects of adult theaters, and not with the content of adult films themselves. App. to Juris. Statement 31a (emphasis added). But the Court of Appeals,

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relying on its decision in Tovar v. *Billmeyer,* 721 F.2d 1260, 1266 (CA9 1983), held that this was not enough to sustain the ordinance. According to the Court of Appeals, if *"a motivating factor"* in enacting the ordinance was to restrict respondents' exercise of First Amendment rights the ordinance would be invalid, apparently no matter how small a part this motivating factor may have played in the City Council's decision. 748 F.2d, at 537 (emphasis in original). This view of the law was rejected in *United States v. O'Brien,* 391 U.S., at 382- 386, 88 S.Ct., at 1681-1684, the very case that the Court of Appeals said it was applying:

*48 "It is a familiar principle of constitutional law that this Court will not strike down an otherwise constitutional statute on the basis of an alleged illicit legislative motive....

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"... What motivates one legislator to make a speech about a statute is not necessarily what motivates scores of others to enact it, and the stakes are sufficiently high for us to eschew guesswork." Id., at 383-384, 88 S.Ct., at 1683.'

The District Court's finding as to "predominate" intent, left undisturbed by the Court of Appeals, is more than adequate to establish that the city's pursuit of its zoning interests here was unrelated to the suppression of free expression_ The ordinance by its terms is designed to prevent crime, protect the city's retail trade, maintain property values, and generally "protec[t] and preserv[e] the quality of [the city's] neighborhoods, commercial districts, and the quality of urban life," not to suppress the expression of unpopular views. See App to Juris. Statement 90a. As Justice POWELL observed in *American Mini Theatres, "[i]f* [the city] had been concerned with restricting the message purveyed by adult theaters, it would have tried to close them or restrict their number rather than circumscribe their choice as to location." 427 U.S., at 82, n. 4, 96 S.Ct., at 2458, n. 4.

In short, the Renton ordinance is completely consistent with our definition of "content-neutral" speech regulations as those that "are *justified* without reference to the content of the regulated speech." *Virginia Pharmacy Board v. Virginia Citizens Consumer Council, Inc.,* 425 U.S. 748, 771, 96 S.C1. 1817, 1830, 48 L.Ed.2d 346 (1976) (emphasis added); *Communizy for Creative Non-Violence, supra,* 468 U.S., at 293, 104 S.Ct., at 3069; *International Society for Krishna Consciousness, supra,* 452 U.S., at 648, 101 S.Ct., at 2564. The ordinance does not contravene the fundamental principle that underlies our concern about "content-based" speech regulations: that "government may not grant the use of a forum to people whose views it finds acceptable, but deny use to those wishing to express *49 less favored or more controversial views." *Nlosley, supra,* 408 U.S., at 95-96, 92 S. Ct., at 2289-2290.

It was with this understanding in mind that, in *American Nlini Theatres,* a majority of this Court decided that, at least with respect to businesses that purvey sexually explicit materials, [FN2] zoning ordinances designed**930 to combat the undesirable secondary effects of such businesses are to be reviewed under the standards applicable to "content-neutral" time, place, and manner regulations. Justice STEVENS, writing for the plurality, concluded that the city of Detroit was entitled to draw a distinction between adult theaters and other kinds of theaters "without violating the government's paramount obligation of neutrality in its regulation of protected communication," 427 U.S., at 70, 96 S.Ct., at 2452, noting that "[i]t is th [e] secondary effect which these zoning ordinances attempt to avoid, not the dissemination of 'offensive' speech," id., at 71, n. 34, 96 S.Ct., at 2453, n. 34. Justice POWELL, in concurrence, elaborated:

FN2. See *American Mini Theatres,* 427 U.S., at 70, 96 S.Ct., at 2452 (plurality opinion) ("[I]t is manifest that society's interest in protecting this type of expression is of a wholly different, and lesser, magnitude than the interest in untrammeled political debate ...")_

"[The] dissent misconceives the issue in this case by insisting that ii involves an impermissible time, place, and manner restriction based on the content of expression. It involves nothing of the kind. We have here merely a decision by the city to treat certain movie theaters differently because they have markedly different effects upon their surroundings.... Moreover, even if this were a case involving a special governmental response to the content of one type of movie, it is possible that the result would be supported by a line of cases recognizing that the government can tailor its. reaction to different types of speech according to the degree to which its special and overriding interests are implicated. *50 See, e.g., *Tinker v. Des 1Woines School Dist.,* 393 U.S. 503, 509-511 [89 S.Ct. 733, 737-739, 21 L.Ed.2d 731] (1969);

Procunier v. Martinet, 416 U.S. 396, 413-414 [94 S.Ct. 1800, 1811, 40 L.Ed.2d 2241 (1974); *Greer v. Spock,* 424 U.S. 828, 842-844 [96 S.Ct. 1211, 1219-1220, 47 L.Ed.2d 5051 (1976) (POWELL, J., concurring); cf. CSC v. *Letter Carriers,* 413 U.S. 548 [93 S.Ct. 2880, 37 L.Ed.2d 796] (1973)." Id., at 82, n. 6, 96 S.Ct., at 2458, n. 6.

[2] The appropriate inquiry in this case, then, is whether the Renton ordinance is designed to serve a substantial governmental interest and allows for reasonable alternative avenues of communication. See *Community for Creative Non-Violence,* 468 U.S., at 293, 104 S_Ct., at 3069; *International Society for Krishna Consciousness,* 452 U.S., at 649, 654, 101 S.Ct., at 2564, 2567. It is clear that the ordinance meets such a standard. As a majority of this Court recognized in *American Mini Theatres,* a city's "interest in attempting to preserve the quality of urban life is one that must be accorded high respect." 427 U.S., at 71, 96 S.Ct., at 2453 (plurality opinion); see *id.,* at 80, 96 S.Ct., at 2457 (POWELL, J., concurring) ("Nor is there doubt that the interests furthered by this ordinance are both important and substantial"). Exactly the same vital governmental interests are at stake here.

The Court of Appeals ruled, however, that because the Renton ordinance was enacted without the benefit of studies specifically relating to "the particular problems or needs of Renton," the city's justifications for the ordinance were "conclusory and speculative." 748 F.2d, at 537. We think the Court of Appeals imposed on the city an unnecessarily rigid burden of proof. The record in this case reveals that Renton relied heavily on the experience of, and studies produced by, the city of Seattle. In Seattle, as in Renton, the adult theater zoning ordinance was aimed at preventing the secondary effects caused by the presence of even one such theater in a given neighborhood. See *Northend Cinema, Inc. v. Seattle,* 90 Wash.2d 709, 585 P.2d 1153 (1978). The opinion of the Supreme Court of Washington in *Northend Cinema,* which *51 was before the Renton City Council when it enacted the ordinance in question here, described Seattle's experience as follows:

"The amendments to the City's zoning code which are at issue here are the **931 culmination of a long period of study and discussion of the problems of adult movie theaters in residential areas of the City.... [T]he City's Department of Community Development made a study of the need for zoning controls of adult theaters.... The study analyzed the City's zoning scheme, comprehensive plan, and land uses around existing adult motion picture theaters...." Id., at 711, 585 P.2d, at 1155.

"[T]he [trial] court heard extensive testimony regarding the history and purpose of these ordinances. It heard expert testimony on the adverse effects of the presence of adult motion picture theaters on neighborhood children and community improvement efforts. The court's detailed findings, which include a finding that the location of adult theaters has a harmful effect on the area and contribute to neighborhood blight, are supported by substantial evidence in the record." Id., at 713, 585 P.2d, at 1156.

"The record is replete with testimony regarding the effects of adult movie theater locations on residential neighborhoods." Id., at 719, 585 P.2d, at 1159.

[3] We hold that Renton was entitled to rely on the experiences of Seattle and other cities, and in particular on the "detailed findings" summarized in the Washington Supreme Court's *Northend Cinema* opinion, in enacting its adult theater zoning ordinance. The First Amendment does not require a city, before enacting such an ordinance, to conduct new studies or produce evidence independent of that already generated by other cities, so long as whatever evidence the city relies upon is reasonably believed to be relevant to the *52 problem that the city addresses. That was the case here. Nor is our holding affected by the fact that Seattle ultimately chose a different method of adult theater zoning than that chosen by Renton, since Seattle's choice of a different remedy to combat the secondary effects of adult theaters does not call into question either Seattle's identification of those secondary effects or the relevance of Seattle's experience to Renton.

[4] We also find no constitutional defect in the method chosen by Renton to further its substantial interests. Cities may regulate adult theaters by dispersing them, as in Detroit, or by effectively concentrating them, as in Renton. "It is not our function to appraise the wisdom of [the city's] decision to require adult theaters to be separated rather than concentrated in the same areas.... [T]he city must be allowed a reasonable opportunity to experiment with solutions to admittedly serious problems." *American Mini Theatres,* 427 U.S., at 71, 96 S.Ct., at 2453 (plurality opinion).

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Moreover, the Renton ordinance is "narrowly tailored" to affect only that category of theaters shown to produce the unwanted secondary effects, thus avoiding the flaw that proved fatal to the regulations in *Schad v. Mount Ephraim,* 452 U.S. 61, 101 S.Ct. 2176, 68 L.Ed.2d 671 (1981), and *Erznoznik v. City of Jacksonville,* 422 U.S. 205, 95 S.Ct. 2268, 45 L.Ed.2d 125 (1975).

Respondents contend that the Renton ordinance is "under-inclusive, " in that it fails to regulate other kinds of adult businesses that are likely to produce secondary effects similar to those produced by adult theaters. On this record the contention must fail. There is no evidence that, at the time the Renton ordinance was enacted, any other adult business was located in, or was contemplating moving into, Renton. In fact, Resolution No. 2368, enacted in October 1980, states that "the City of Renton does not, at the present time, have any business whose primary purpose is the sale, rental, or showing of sexually explicit materials." App. 42. That Renton chose first to address the potential problems created *53 by one particular kind of adult business in no way suggests that the city has "singled out" adult theaters for discriminatory treatment. We simply have no basis on *"932 this record for assuming that Renton will not, in the future, amend its ordinance to include other kinds of adult businesses that have been shown to produce the same kinds of secondary-effects as adult theaters. See *Williamson v. Lee Optical Co.,* 348 U.S. 483, 488-489, 75 S.Ct. 461, 464-465, 99 L.Ed. 563 (1955).

Finally, turning to the question whether the Renton ordinance allows for reasonable alternative avenues of communication, we note that the ordinance leaves some 520 acres, or more than five percent of the entire land area of Renton, open to use as adult theater sites. The District Court found, and the Court of Appeals did not dispute the finding, that the 520 acres of land consists of "[a]mple, accessible real estate," including "acreage in all stages of development from raw land to developed, industrial, warehouse, office, and shopping space that is criss-crossed by freeways; highways, and roads." App_ to Juris. Statement 28a.

Respondents argue, however, that some of the land in question is already occupied by . existing businesses, that "practically none" of the undeveloped land is currently for sale or lease, and that in general there are no "commercially viable" adult theater sites within the 520 acres left open by the Renton ordinance. Brief for Appellees 34-37. The Court of Appeals accepted these arguments, [FN3] concluded that *54 the 520 acres was not truly "available" land, and therefore held that the Renton ordinance "would result in a substantial restriction" on speech. 748 F.2d, at 534.

FN3. The Court of Appeals' rejection of the District Court's findings on this issue may have stemmed in part from the belief, expressed elsewhere in the Court of Appeals' opinion, that, under *Bose Corp. v. Consumers Union of United States, Inc., 466 U.S. 485, 104* S.Ct. *1949, 80* L.Ed.2d *502 (1984),* appellate courts have a duty to review *de novo* all mixed findings of law and fact relevant to the application of First Amendment principles. See *748* F.2d *527, 535 (1984).* We need not review the correctness of the Court of Appeals' interpretation *of Bose Corp.,* since we determine that, under any standard *of* review, the District Court's findings should not have been disturbed.

We disagree with both the reasoning and the conclusion of the Court of Appeals. That respondents must fend for themselves in the real estate market, on an equal footing with other prospective purchasers and lessees, does not give rise to a First Amendment violation. And although we have cautioned against the enactment of zoning regulations that have "the effect of suppressing, or greatly restricting access to, lawful speech," *American Mini Theatres,* 427 U.S., at 71, n. 35, 96 S.Ct., at 2453, n. 35 (plurality opinion), we have never suggested that the First Amendment compels the Government to ensure that adult theaters, or any other kinds of speech-related businesses for that matter, will be able to obtain sites at bargain prices. See id., at 78, 96: S.Ct., at 2456 (POWELL, J., concurring) ("The inquiry for First Amendment purposes is not concerned with economic impact"). In our view, the First Amendment requires only that Renton refrain from effectively denying respondents a reasonable opportunity to open and operate an adult theater within the city, and the ordinance before us easily meets this requirement.

In sum, we find that the Renton ordinance represents a valid governmental response to the "admittedly serious problems" created by adult theaters. See *id.,* at 71, 96 S.Ct., at 2453 (plurality opinion). Renton has not used "the power to zone as a pretext for suppressing expression," *id.,* at 84, 96 S.Ct., at 2459

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(POWELL, J., concurring), but rather has sought to make some areas available for adult theaters and their patrons, while at the same time preserving the quality *of* life in the community at large by preventing those theaters from locating in other areas. This, after all, is the essence *of* zoning. Here, as in *American Mini Theatres,* the city has enacted a zoning ordinance that meets these goals while also satisfying the dictates *of* the *55 **933 First Amendment. [FN4] The judgment *of* the Court *of* Appeals is therefore

FN4. Respondents argue, as an "alternative basis" for affirming the decision of the Court of Appeals, that the Renton ordinance violates their rights under the Equal Protection Clause of the Fourteenth Amendment. As should be apparent from our preceding discussion, respondents can fare no better under the Equal Protection Clause than under the First Amendment itself. See *Young v. American Mini Theatres, Inc.,* 427 U.S., at 63-73, 96 S.Ct., at 2448-2454.

Respondents also argue that the Renton ordinance is unconstitutionally vague. More particularly, respondents challenge the ordinance's application to buildings "used" for presenting sexually explicit films, where the term "used" describes "a continuing course of conduct of exhibiting [sexually explicit films] in a manner which appeals to a prurient interest." App to Juris. Statement 96a. We reject respondents' "vagueness" argument for the same reasons that led us to reject a similar challenge *in-American Mini Theatres, supra.* There, the Detroit ordinance applied to theaters "used to present material distinguished or characterized by an emphasis on [sexually explicit matter]." Id., at 53, 96 S.Ct., at 2444. We held that "even if there may be some uncertainty about the effect of the ordinances on other litigants, they are unquestionably applicable to these respondents." Id., at 58-59, 96 S.Ct., at 2446. We also held that the Detroit ordinance created no "significant deterrent effect" that might justify invocation of the First Amendment "overbreadth" doctrine. Id., at 59- 61, 96 S.Ct., at 2446-2448.

Reversed.

Justice BLACKiNIUN concurs in the result.

Justice BRENNAN, with whom Justice MARSHALL joins, dissenting.

Renton's zoning ordinance selectively imposes limitations on the location *of* a movie theater based exclusively on the content *of* the dims shown there. The constitutionality *of* the ordinance is therefore not correctly analyzed under standards applied to content-neutral time, place, and manner restrictions. But even assuming that the ordinance may fairly be characterized as content neutral, it is plainly unconstitutional' under the standards established by the decisions *of* this Court. Although the Court's analysis is limited to *56 cases involving "businesses that purvey sexually explicit materials, " *ante,* at 929, and n. 2, and thus does not affect our holdings in cases involving state regulation *of* other kinds *of* speech, I dissent.

"[A] constitutionally permissible time, place, or manner restriction may not be based upon either the content or subject matter *of* speech. " *Consolidated Edison Co. v. Public Service Comm'n of N.Y,* 447 U.S. 530, 536, 100 S.Ct. 2326, 2332; 65 L.Ed.2d 319 (1980). The Court asserts that the ordinance is "aimed not at the *content of* the films shown at 'adult motion picture theatres,' but rather at the *secondary effects of* such theaters on the surrounding community, " *ante,* at 929 (emphasis in original), and thus is simply a time, place, and manner regulation. [FNI] This analysis is misguided.

FNl. The Court apparently finds comfort in the fact that the ordinance does not "deny use to those wishing to express less favored or more controversial views." *Ante,* at 929. However, content-based discrimination is not rendered "any less odious" because it distinguishes "among entire classes of ideas, rather than among points of view within a particular class." *Lehman v. City of Shaker Heights,* 418 U.S. 298, 316, 94 S.Ct. 2714, 2724, 41 L.Ed.2d 770 (1974) (BRENNAN, J., dissenting); see also *Consolidated Edison Co. v. Public Service Comm'n of X.Y.,* 447 U.S. 530, 537, 100 S.Ct_ 2326, 2333, 65 L_Ed.2d 319 (1980) ("The First Amendment's hostility to content-based regulation extends not only to restrictions on particular viewpoints, - but also to prohibition of public discussion of an~entire topic"). Moreover, the Court's conclusion that the restrictions imposed here were viewpoint neutral is patently flawed. "As a practical matter, the speech suppressed by restrictions such as those involved [here] will almost invariably carry an implicit, if not explicit, message in favor of more relaxed sexual mores. Such restrictions, in other words, have a potent viewpoint-differential impact.... To treat such restrictions as viewpoint-neutral seems simply to ignore reality." Stone, Restrictions of Speech Because of its Content: The Peculiar Case of Subject_Matter Restrictions, 46 U.Chi.L.Rev. 81,

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111-112 (1978).

The fact that adult movie theaters may cause harmful "secondary" land-use effects may arguably give Renton a compelling **934 reason to regulate such establishments; it does not mean, however, that such regulations are content neutral. *57 Because the ordinance imposes special restrictions on certain kinds of speech on the basis of *content, I* cannot simply accept, as the Court does, Renton's claim that the ordinance was not designed to suppress the content of adult movies. "[W]hen regulation is based on the content of speech, governmental action must be scrutinized more carefully to ensure that communication has not been prohibited 'merely because public officials disapprove the speaker's views.' " *Consolidated Edison Co., supra,* at 536, 100 S.Ct., at 2332 (quoting *Memotko v. Maryland,* 340 U.S. 268, 282, 71 S.Ct. 325, 333, 95 L.Ed. 267 (1951) (Frankfurter, J., concurring in result)). "[B]efore deferring to [Renton's] judgment, [we] must be convinced that the city is seriously and comprehensively addressing" secondary-land use effects associated with adult movie theaters. *Metromedia, Inc. v. San Diego,* 453 U.S. 490, 531, 101 S.Ct. 2882, 2904, 69 L.Ed.2d 800 (1981) (BRENNAN, J., concurring in judgment). In this case, both the language of the ordinance and its dubious legislative history belie the Court's conclusion that "the city's pursuit of its zoning interests-here was unrelated to the suppression of free expression. " *Ante,* at 929.

A

The ordinance discriminates on its face against certain forms of speech based on content. Movie theaters specializing in "adult motion pictures" may not be located within 1,000 feet of any residential zone, single- or multiple-family dwelling, church, park, or school. Other motion picture theaters, and other forms of "adult entertainment, " such as bars, massage parlors, and adult bookstores, are not subject to the same restrictions. This selective treatment strongly suggests that Renton was interested not in controlling the "secondary effects" associated with adult businesses, but in discriminating against adult theaters based on the content of the films they exhibit. The Court ignores this discriminatory treatment, declaring that Renton is free "to address the potential problems created by one particular kind of adult business," *ante,* at 931, and to amend the ordinance in the *58 - future to include other adult enterprises: *Ante,* at 932 (citing *Williamson v. Lee Optical Co.,* 348 U.S. 483, 488-489, 75 S.Ct. 461, 464-465, 99 L.Ed. 563 (1955)). [FN2] However, because of the First Amendment interests at stake here, this one-step-at-a-time analysis is wholly inappropriate.

FN2. The Court also explains that "[t]here is no evidence that, at the time the Renton ordinance was enacted, any other adult business was located in, or was contemplating moving into, Renton." *Ante,* at 931. However, at the time the ordinance was enacted, there was no evidence that any *adult movie theaters* were located in, or considering moving to, Renton. Thus, there was no legitimate reason for the city to treat adult movie theaters differently from other adult businesses.

"This Court frequently has upheld underinclusive classifications on the sound theory that a legislature may deal with one part of a problem without addressing all of it. See *e. g., ylIilliamson v. Lee Optical Co.,* 348 U.S. 483, 488-489, 75 S.Ct. 461, 464-465, 99 L.Ed. 563 (1955). This presumption of statutory validity, however, has less force when a classification turns on the subject matter of expression. '[A]bove all else, the First Amendment means that government has no power to restrict expression because of its message, its ideas, its subject matter, or its content.' *Police Dept. of Chicago v. Mosley,* 408 U.S., at 95 [92 S.Ct., at 2290]." *Erznoznik v. City of Jacksonville,* 422 U.S. 205, 215, 95 S.Ct. 2268, 2275, 45 L.Ed.2d 125 (1975).

In this case, the city has not justified treating adult movie theaters differently from other adult entertainment businesses. The ordinance's underinclusiveness is cogent evidence that it was aimed at the *content* of the films shown in adult movie theaters.

**935 B

Shortly *after* this lawsuit commenced, the Renton City Council amended the ordinance, adding a provision explaining that its intention in adopting the ordinance had been "to promote the City of Renton's great interest in protecting and preserving the quality of its neighborhoods, commercial districts, and the quality of urban life through effective land *59 use planning. " App to Juris. Statement 81a. The amended ordinance also lists certain conclusory "findings" concerning adult entertainment land uses that the Council purportedly

relied upon in adopting the ordinance. Id., at 81a-86 a. The city points to these provisions as evidence that the ordinance was designed to control the secondary effects associated with adult movie theaters, rather than to suppress the content of the films they exhibit. However, the "legislative history" of the ordinance strongly suggests otherwise_

Prior to the amendment, there was no indication that the ordinance was designed to address any "secondary effects" a single adult theater might create. In addition to the suspiciously coincidental timing of the amendment, many of the City Council's "findings" do not relate to legitimate land use concerns. As the Court of Appeals observed, "[b]oth the magistrate and the district court recognized that many of the stated reasons for the ordinance were no more than expressions of dislike for the subject matter." 748 F.2d 527, 537 (CA9 1984). [FN3] That some residents may be offended by the *content* of the films shown at adult movie theaters cannot form the basis for state regulation of speech. See *TerminielZo v. Chicago,* 337 U.S. 1, 69 S.Ct. 894, 93 L.Ed. 1131 (1949).

FN3. For example, "finding" number 2 states that "[location of adult entertainment land uses on the main commercial thoroughfares of the City gives an impression of legitimacy to, and causes a loss of sensitivity to the adverse effect of pornography upon children, established family relations, respect for marital relationship and for the sanctity of marriage relations of others, and the concept of non- aggressive, consensual sexual relations. " App to Juris. Statement 86a.

"Finding" number 6 states that "[1]ocation of adult land uses in close proximity to residential uses, churches, parks, and other public facilities, and schools, will cause a degradation of the community standard of morality. Pornographic material has a degrading effect upon the relationship between spouses. " *Ibid.*

Some of the "findings" added by the City Council do relate to supposed "secondary effects" associated with adult movie '160 theaters. [FN4] However, the Court cannot, as it does, merely accept these *post hoc* statements at face value. "[T]he presumption of validity that traditionally attends a local government's exercise of its zoning powers carries little, if any, weight where the zoning regulation trenches on rights of expression protected under the First Amendment." *Schad v. Mount Ephraim,* 452 U.S. 61, 77, 101 S.Ct. 2176, 2187, 68 L.Ed.2d 671 (1981) (BLACKIMUN, J., concurring). As the Court of Appeals concluded, "[t]he record presented by Renton to support its asserted interest in enacting the zoning ordinance is very thin. " 748 F.2d, at 536.

FN4. For example, "finding" number 12 states that "[1]ocation of adult entertainment land uses in proximity to residential uses, churches, parks and other public facilities, and schools, may lead to increased levels of criminal activities, including prostitution, rape, incest and assaults in the vicinity of such adult entertainment land uses." Id., at 83 a.

The amended ordinance states that its " findings" summarize testimony received by the City Council at certain public hearings. While none of this testimony was ever recorded or preserved, a city official reported that residents had objected to having adult movie theaters located in their community. However, the official was unable to recount any testimony as to how adult movie theaters would specifically affect the schools, churches, parks, or residences "protected" by the ordinance. See App. 190-192. The City Council conducted no studies, and heard no expert testimony, on how the protected uses would be affected by the presence of an adult movie theater, and never considered whether residents' concerns could be met by "restrictions *936 that are less intrusive on protected forms of expression. " *Schad,* supra, 452 U.S., at 74, 101 S.Ct., at 2186. As a result, any "findings" regarding "secondary effects" caused by adult movie theaters, or the need to adopt specific locational requirements to combat such effects, were not "findings" at all, but purely speculative conclusions. Such "findings" were not such as are required to justify the burdens *61 the ordinance imposed upon constitutionally protected expression.

The Court holds that Renton was entitled to rely on the experiences of cities like Detroit and Seattle, which had enacted special zoning regulations for adult entertainment businesses after studying the adverse effects caused by such establishments. However, even assuming that Renton was concerned with the same problems as Seattle and Detroit, it never actually reviewed any of the studies conducted by those cities. Renton had no basis for determining if any of the "findings" made by these cities were relevant to *Renton's* problems or needs. [FN5] Moreover, since Renton ultimately adopted zoning regulations different from either Detroit or

Seattle, these "studies" provide no basis for assessing the effectiveness of the particular restrictions adopted under the ordinance. [FN6] Renton cannot merely rely on the general experiencesof *62 Seattle or Detroit, for it must "justify its ordinance in the context of *Renton's* problems--not Seattle's or Detroit's problems." 748 F.2d, at 536 (emphasis in original).

FN5. As pan of the amendment passed after this lawsuit commenced, the City Council added a statement that it had intended to rely on· the Washington Supreme Court's opinion in *Northend Cinema, Inc. v. Seattle,* 90 Wash.2d 709, 585 P.2d 1153 (1978), cert. denied sub *nom. Apple Theatre, Inc. v. Seattle,* 441 U.S. 946, 99 S.Ct. 2166, 60 L.Ed.2d 1048 (1979), which upheld Seattle's zoning regulations against constitutional attack. Again, despite the suspicious coincidental timing of the amendment, the Court holds that "Renton was entitled to rely ... on the 'detailed findings' summarized in the ... *Northend Cinema* opinion-" *Ante,* at 931. In *Northend Cinema,* the court noted that "[t]he record is replete with testimony regarding the effects of adult movie theater locations on residential neighborhoods." 90 Wash.2d, at 719, 585 P.2d, at 1159. The opinion however, does not explain the evidence it purports to summarize, and provides no basis for determining whether Seattle's experience is relevant to Renton's.

FN6. As the Court of Appeals observed:

:' Although the Renton ordinance purports to copy Detroit's and Seattle's, it does not solve the same problem in the same manner. The Detroit ordinance was intended to disperse adult theaters throughout the city so that no one district would deteriorate due to a concentration of such theaters. The Seattle ordinance, by contrast, was intended to *concentrate* the theaters in one place so that the whole city would not bear the effects of them. The Renton Ordinance is allegedly aimed at protecting certain uses--schools, parks, churches and residential areas-from the perceived unfavorable effects of an adult theater." 748 F.2d, at 536 (emphasis in original).

In sum, the circumstances here strongly suggest that the ordinance was designed to suppress expression, even that constitutionally protected, and thus was not to be analyzed as a content-neutral time, place, and manner restriction. The Court allows Renton to conceal its illicit motives, however, by reliance on the fact that other communities adopted similar restrictions. The Court's approach largely immunizes such measures from judicial scrutiny, since a municipality can readily find other municipal ordinances to rely upon, thus always retrospectively justifying special zoning regulations for adult theaters. [FN7] Rather - than speculate about Renton's motives for adopting. such measures, our cases require the conclusion that the ordinance, like any other content-based restriction on speech, is constitutional "only if the [city] can show **937 that [it] is a .precisely drawn means of serving a compelling [governmental] interest. " *Consolidated Edison Co. v. Public Service Comm'n of N.Y.,* 447 U.S., at 540, 100 S.Ct., at 2334; see also *Carey v. Brown,* 447 U.S. 455, 461-462, 100 S.Ct. 2286, 2290-2291, 65 L.Ed.2d 263 (1980); *Police Department of Chicago v. t1dosley,* 408 U.S. 92, 99, 92 S.Ct_ 2286, 2292, 33 L.Ed.2d 212 (1972)_ Only this strict approach can insure that cities will not use their zoning powers as a pretext for suppressing constitutionally protected expression.

FN7. As one commentator has noted:

"[A]nyone with any knowledge of human nature should naturally assume that the decision to adopt almost any content-based restriction might have been affected by an antipathy on the part of at least some legislators to the ideas or information being suppressed. The logical assumption, in other words, is not that there is not improper motivation but, rather, because legislators are only human, that there is a substantial risk that an impermissible consideration has in fact colored the deliberative process." Stone, *supra* n. 1, at 106.

*63 Applying this standard to the facts of this case, the ordinance is patently unconstitutional. Renton has not shown that locating adult movie theaters in proximity to its churches, schools, parks, and residences will necessarily result in undesirable "secondary effects;" or that these problems could not be effectively addressed by less intrusive restrictions.

II

Even assuming that the ordinance should be treated like a content-neutral time, place, and manner restriction, I would still find it unconstitutional. "[R]estrictions of this kind are valid provided ... that they are narrowly tailored to serve a significant governmental interest, and that they leave open ample alternative channels for communication of the information." *Clark v. Community for Creative Non-Violence,* 468 U.S. 288, 293, 104 S.Ct. 3065, 3069, 82 L.Ed.2d 221 (1984); *Heffron v. International Society for Krishna Consciousness,*

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Inc., 452 U.S. 640, 648, 101 S.Ct. 2559, 2564, 69 L.Ed.2d 298 (1981). In applying this standard, the Court "fails to subject the alleged interests of the [city] to the degree of scrutiny required to ensure that expressive activity protected by the First Amendment remains free of unnecessary limitations." Community for Creative Mon-Violence, 468 U.S., at 301, 104 S.Ct., at 3073 (MARSHALL, J., dissenting). The Court "evidently [and wrongly] assumes that the balance struck by [Renton] officials is deserving of deference so long as it does not appear to be tainted by content discrimination." Id., at 315, 104 S.Ct., at 3080. Under a proper application of the relevant standards, the ordinance is clearly unconstitutional.

The Court finds that the ordinance was designed to further Renton's substantial interest in "preserv[ing] the quality of urban life." Ante, at 930. As explained above, the record here is simply insufficient to support this assertion. The city made no showing as to how uses "protected" by the ordinance would be affected by the presence of an adult movie theater. Thus, the Renton ordinance is clearly distinguishable from *64 the Detroit zoning ordinance upheld in Young v. American *Mini* Theatres, Inc., 427 U.S. 50, 96 S.Ct. 2440, 49 L_Ed.2d 310 (1976). The Detroit ordinance, which was designed to disperse adult theaters throughout the city; was supported by the testimony of urban planner's and real estate experts regarding the adverse effects of locating several such businesses in the same neighborhood. Id., at 55, 96 S.Ct., at 2445; see also Northend Cinema, Inc. v. Seattle, 90 Wash.2d 709, 711, 585 P.2d 1153, 1154-1155 (1978), cert. denied sub nom_ Apple Theatre, Inc. v. Seattle, 441 U.S. 946, 99 S.Ct. 2166, 60 L.Ed.2d 1048 (1979) (Seattle zoning ordinance was the "culmination of a long period of study and discussion"). Here, the Renton Council was aware only that some residents had complained about adult movie theaters, and that other localities had adopted special zoning restrictions for such establishments. These are not "facts", sufficient to justify the burdens the ordinance imposed upon constitutionally protected expression.

B

Finally, the ordinance is invalid because it does not provide for reasonable alternative avenues of communication. The District Court found that the ordinance left 520 acres in Renton available for adult theater sites, an area comprising about five **938 percent of the city. However, the Court of Appeals found that because much of this land was already occupied, "[1]imiting adult theater uses to these areas is a substantial restriction on speech." 748 F.2d, at 534. Many "available" sites are also largely unsuited for use by movie theaters. See App. 231, 241. Again, these facts serve to distinguish this case from American Mini Theaters, where there was no indication that the Detroit zoning ordinance seriously limited the locations available for adult businesses. See American *Mini* Theaters, supra, 427 U.S., at 71, n. 35, 96 S.Ct., at 2453 n. 35 (plurality opinion) ("The situation would be quite different if the ordinance had the effect of ... greatly restricting access to ... lawful speech"); see also Basiardanes v. City of Galveston, 682 F.2d 1203, 1214 (CA5 1982) (ordinance effectively banned adult theaters *65 by restricting them to " 'the most unattractive, inaccessible, and inconvenient areas of a city' "); Purple Onion, Inc. v. Jackson, 511 F.Supp. 1207, 1217 (ND Ga.1981) (proposed sites for adult entertainment uses were either "unavailable, unusable, or so inaccessible to the public that ... they amount to no locations").

Despite the evidence in the record, the Court reasons that the fact "[t]hat respondents must fend for themselves in the real estate market, on an equal footing with other prospective purchasers and lessees, does not give rise to a First Amendment violation." Ante, at 932. However, respondents are not on equal footing with other prospective purchasers and lessees, but must conduct business under severe restrictions not imposed upon other establishments. The Court also argues that the First Amendment does not compel "the government to ensure that adult theaters, or any other kinds of speech-related businesses for that matter, will be able to obtain sites at bargain prices." *Ibid.* However, respondents do not ask Renton to guarantee low-price sites for their businesses, but seek only a reasonable opportunity to operate adult theaters in the city. By denying them this opportunity, Renton can effectively ban a form of protected speech from its borders. The ordinance "greatly restrict[s] access to ... lawful speech," American Mini Theatres, supra, 427 U.S., at 71, n. 3 5,,.96 S.Ct., at 2453, n. 35 (plurality opinion), and is plainly unconstitutional.

106 S.Ct. 925, 475 U.S. 41, 89 L.Ed.2d 29, 54 USLW 4160, 12 Yledia L. Rep. 1721

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Supreme Court of the United States

Coleman A. YOUNG, Mayor the City of Detroit, et al., Petitioners,
v.
AIV1ERICAiv MINI TBEATRES, INC., et al.

No. 75-312.

Argued March 24, 1976.
Decided June 24, 1976.
Rehearing Denied Oct. 4, 1976.

See 429 U.S. 873, 97 S.Ct. 191.

The operator of an "adult" movie theater appealed from a ruling of the United States District Court for the Eastern District of Michigan, Southern Division, 373 F.Supp. 363, upholding the validity of Detroit ordinances prohibiting operation of any "adult" movie theater, bookstore and similar establishments within 1000 feet of any other such establishment, or within 500 feet of a residential area. The Court of Appeals, Sixth Circuit, reversed, 518 F2d 1014. Following grant of certiorari, the Supreme Court, Mr. Justice Stevens, held that where theaters proposed to offer adult fare on regular basis and alleged that they admitted only adult patrons, and neither indicated any plan--to exhibit pictures even arguably, outside coverage of the ordinances, so that theaters were not affected by alleged vagueness, their challenge to ordinances on ground of alleged vagueness resulting in inadequate notice of what was prohibited would not be considered though ordinances affected communication protected by First Amendment. The ordinances were not violative of First Amendment rights or of the equal protection clause of the Fourteenth Amendment.

Judgment of Court of Appeals reversed.

Mr. Justice Powell filed an opinion concurring in part.

Mr. Justice Stewart dissented and filed opinion in which Mr. Justice Brennan, Mr. Justice Marshall, and Mr. Justice Blackmun joined.

Mr. Justice Blackmun dissented and filed opinion in which Mr. Justice Brennan, Mr. Justice Stewart and Mr. Justice Marshall joined.

West Headnotes

[1] Municipal Corporations ;&-121
268k121

Where theaters proposed to offer adult fare on regular basis and alleged that they admitted only adult patrons, and neither indicated any plan to exhibit pictures even arguably outside coverage of municipal ordinances, so that theaters were not affected by alleged vagueness, their challenge to ordinances on ground of alleged vagueness resulting in inadequate notice of what was prohibited would not be considered though ordinances affected communication protected by First Amendment. U.S.C.A.Const. Amends. 1, 14.

[2] Constitutional Law 042(1)
92k42(1)

Where very existence of statute may cause persons not before court to refrain from engaging in constitutionally protected speech or expression, exception, in allowing litigant to assert rights of third parties, is justified by overriding importance of maintaining free and open market for interchange of ideas, but if deterrent effect of statute on legitimate expression is not both real and substantial and if statute is readily subject to narrowing construction by state courts, litigant is not permitted to assert rights of third parties. U.S.C_A.Const. Amends. 1, 14.

[3] Constitutional Law X46(1)
92k46(1)

There being less_ vital interest in uninhibited exhibition of material on borderline between pornography and artistic expression than in free dissemination of ideas of social and political significance, and where limited amount of uncertainty in ordinances was easily susceptible of narrowing construction, case was inappropriate one in which to adjudicate hypothetical claims of persons not before the court. U.S.C.A.Const. Amends. 1, 14.

[4] Zoning and Planning «76
414k76

Municipality may control location of theaters as well as location of other commercial establishments,

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either by confining _them to certain specified commercial zones or by requiring that they be dispersed throughout the city. U.S.C.A.Const. Amend. 1.

[5] Constitutional Law (~~z-90.1(4)
92k90.l(4)

Mere fact that commercial exploitation of material protected by First Amendment was subjected to zoning and other licensing requirements was not sufficient reason for invalidating city ordinances as prior restraints on free speech. U.S.C.A.Const. Amend. 1.

[6] Constitutional Law 090(3)
92k90(3)
(Formerly 92k90.1(1))

Reasonable regulations of time, place and manner of protected speech, where those regulations are necessary to further significant governmental interests, are permitted by First Amendment. U.S.C.A.Const. Amend. 1.

[7] Constitutional Law G-90(3)
92k90(3)

Question whether speech is, or is not, protected by First Amendment often depends on content of speech. (Per Mr. Justice Stevens with three Justices concurring.) U.S.C.A.Const. Amend. 1.

[8] Constitutional Law 0,9-?90(3)
92k90(3)

Even within area of protected speech, difference in content may require a different governmental response. (Per Mr. Justice Stevens with three Justices concurring.) U.S.C.A.Const. Amends. 1, 14.

[9] Constitutional Law C~:-90(3)
92k90(3)

General rule prohibits regulation based on content of protected communication, and essence of rule is need for absolute neutrality by government; its regulation of communication may not be affected by sympathy or hostility for point of view being expressed by communicator. (Per Mr. Justice Stevens with three Justices concurring.) U.S.C.A.Const. Amends. 1, 14.

[10] Constitutional Law (&-90.2
92k90.2
(Formerly 92k90.1(1))

Measure of constitutional protection to be afforded commercial speech will surely be governed largely by content of communication; difference between commercial price and product advertising and ideological communication permits regulation of former that First Amendment would not tolerate with respect to latter. (Per Mr. Justice Stevens with three Justices concurring.) U.S.C.A.Const. Amends. 1, 14.

[11] Constitutional Law (&-90.4(4)
92k90.4(4)
(Formerly 92k90.1(6))

First Amendment protects communication; in area of motion picture films of sexual activities, from total suppression, but state may legitimately use contents of these materials as basis for placing them in different classification from other motion pictures. (Per Mr. Justice Stevens with three Justices concurring.) U.S.C.A.Const. Amends. 1, 14.

[12] Municipal Corporations G>589
268k589

City must be allowed reasonable opportunity to experiment with solutions to admittedly serious problems. (Per Mr. Justice Stevens with three Justices concurring.) U.S.C.A.Const. Amends. 1, 14.

[13] Constitutional Law X228.2
92k228.2

In view of serious problems to which city's ordinances were addressed, in view of district, court's finding that burden on First Amendment rights from enforcement of ordinances would be slight, and in view of factual basis, disclosed by record, for common council's conclusion that restriction imposed would have desired effect, city's interest in present and future character of its neighborhoods supported its classification of motion pictures, and, accordingly, zoning ordinances providing that adult motion picture theaters not be located within 1000 feet of two other regulated uses or within 500 feet of a residential area did not violate equal protection clause of Fourteenth Amendment. (Per Mr. Justice Stevens with three

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either by confining them to certain specified commercial zones or by requiring that they be dispersed throughout the city. U.S.C.A.Const. Amend. 1.

[5] Constitutional Law C~ 90.1(4)
92k90.l(4)

Mere fact that commercial exploitation of material protected by First Amendment was subjected to zoning and other licensing requirements was not sufficient reason for invalidating city ordinances as prior restraints on free speech. U.S.C.A.Const. Amend. 1.

[6] Constitutional Law 090(3)
92k90(3)
(Formerly 92k90.1(1))

Reasonable regulations of time, place and manner of protected speech, where those regulations are necessary to further significant governmental interests, are permitted by First Amendment. U.S.C.A.Const. Amend. 1.

[7] Constitutional Law cgz-90(3)
92k90(3)

Question whether speech is, or is not, protected by First Amendment often depends on content of speech. (Per Mr. Justice Stevens with three Justices concurring.) U.S.C.A.Const. Amend. 1.

[8] Constitutional Law 090(3)
92k90(3)

Even within area of protected speech, difference in content may require a different governmental response. (Per Mr. Justice Stevens with three Justices concurring.) U.S.C.A.Const. Amends. 1, 14.

[9] Constitutional Law X90(3)
92k90(3)

General rule prohibits regulation based on content of protected communication, and essence of rule is need for absolute neutrality by government; its regulation of communication may not be affected by sympathy or hostility for point of view being expressed by communicator. (Per Mr. Justice Stevens with three Justices concurring.) U.S.C.A.Const. Amends. 1, 14.

[10] Constitutional Law cg~-90.2
92k90.2
(Formerly 92k90.1(1))

Measure of constitutional protection to be afforded commercial speech will surely be governed largely by content of communication; difference between commercial price and product advertising and ideological communication permits regulation of former that First Amendment would not tolerate with respect to latter. (Per Mr. Justice Stevens with three Justices concurring.) U.S.C.A.Const. Amends. 1, 14.

[11] Constitutional Law ~90.4(4)
92k90.4(4)
(Formerly 92-k-90-l(6))

First Amendment protects communication, in area of motion picture films of sexual activities, from total suppression, but state may legitimately use contents of these materials as basis for placing them in different classification from other motion pictures. (Per Mr. Justice Stevens with three Justices concurring.) U.S.C.A.Const. Amends. 1, 14.

[12] Municipal Corporations 0589
268k589

City must be allowed reasonable opportunity to experiment with solutions to admittedly serious problems. (Per Mr. Justice Stevens with three Justices concurring.) U.S.C.A.Const. Amends. 1, 14.

[13] Constitutional Law X228.2
92k228.2

In view of serious problems to which city's ordinances were addressed, in view of district, court's finding that burden on First Amendment rights from enforcement of ordinances would be slight, and in view of factual basis, disclosed by record, for common council's conclusion that restriction imposed would have desired effect, city's interest in present and future character of its neighborhoods supported its classification of motion pictures, and, accordingly, zoning ordinances providing that adult motion picture theaters not be located within 1000 feet of two other regulated uses or within 500 feet of a residential area did not violate equal protection clause of Fourteenth Amendment. (Per Mr. Justice Stevens with three

Justices concurring.) U.S.C.A.Const. Amends. 1, la.

'`2442 Syllabus [FN]

FN* The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See United States v. Detroit Timber & Lumber Co., 200 U.S. 321, 337, 26 S.Ct. 282, 287, 50 L.Ed. 499.

*50 Respondent operators of two adult motion picture theaters brought this action against petitioner city officials for injunctive relief and a declaratory judgment of unconstitutionality regarding two 1972 Detroit zoning ordinances that amended an "Anti-Skid Row Ordinance" adopted 10 years earlier. The 1972 ordinances provide that an adult theater may not (apart from a special waiver) be located within 1,000 feet of any two other "regulated uses" or within 500 feet of a residential area. The term "regulated uses" applies to 10 different kinds of establishments in addition to adult theaters, including adult book stores, cabarets, bars, taxi dance halls, and hotels. If the theater is used to present "material distinguished or characterized by an emphasis on matter depicting . . . 'Specified Sexual Activities' or 'Specified Anatomical Areas' " it is an "adult" establishment. The District Court upheld the ordinances, and granted petitioners' motion for summary judgment. The Court of Appeals **2443 reversed, holding that the ordinances constituted a prior restraint on constitutionally protected communication and violated equal protection. Respondents, in addition to asserting the correctness of that court's ruling with respect to those constitutional issues, contend that the ordinances are void for vagueness. While not attacking the specificity of the definitions of sexual activities or anatomical areas, respondents maintain (1) that they cannot determine how much of the described activity may be permissible before an exhibition is "characterized by an emphasis" on such matter, and (2) that the ordinances do not specify adequate procedures or standards for obtaining a waiver of the 1,000-foot restriction. Held:

1. The ordinances as applied to these respondents do not violate the Due Process Clause of the Fourteenth Amendment on the ground of vagueness. Pp. 2446-2448.

(a) Neither of the asserted elements of vagueness has affected these respondents, both of which propose to offer adult fare on a regular basis and allege no ground for claiming or anticipating any waiver of the 1,000-foot restriction. P. 2446.

*51 (b) T ordinances will have no demonstrably significant effect on the exhibition of films protected by the First Amendment. To the extent that any area of doubt exists as to the amount of sexually explicit activity that may be portrayed before material can be said to be "characterized by an emphasis" on such matter, there is no reason why the ordinances are not "readily subject to a narrowing construction by the state courts. " This would therefore be an inappropriate case to apply the principle urged by respondents that they be permitted to challenge the ordinances, not because their own rights of free expression are violated, but because of the assumption that the ordinances' very existence may cause others not before the court to refrain from constitutionally protected speech or expression. Pp. 2446-2448.

2. The ordinances are not invalid under the First Amendment as prior restraints on protected communication because of the licensing or zoning requirements. Though adult films may be exhibited commercially only in licensed theaters, that is also true of all films. That the place where films may be exhibited is regulated does not violate free expression, the city's interest in planning and regulating the use of property for commercial purposes being clearly adequate to support the locational restriction. P. 2448.

518 F.2d 1014, reversed.

Maureen P. Reilly, Detroit, Mich., for petitioners.

Stephen M. Taylor, Detroit, Mich., and John H. Weston for respondents.

52 Mr. Justice STEVENS delivered the opinion of the Court. [FN]

FN** Part III of this opinion is joined by only THE CHIEF JUSTICE, Mr. Justice WHITE, and Mr. Justice REHNQUIST.

Zoning ordinances adopted by the city of Detroit differentiate between motion picture theaters which exhibit sexually explicit "adult" movies and those which do not. The principal question presented by this case is whether that statutory classification is

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unconstitutional because it is based on the content of communication protected by the First Amendment. [FN1]

FNl. " Congress shall make no law . . . abridging the freedom of speech, or of the press . . . ." This Amendment is made applicable to the States by the Due Process Clause of the Fourteenth Amendment. Edwards v. South Carolina, 372 U.S. 229, 83 S. Ct. 680, 9 L.Ed.2d 697.

Effective November 2, 1972, Detroit adopted the ordinances challenged in this litigation. Instead of concentrating "adult" theaters in limited zones, these ordinances require that such theaters be dispersed. Specifically, an adult theater may not be located within 1,000 feet of any two other **2444 "regulated uses" or within 500 feet of a residential area. [FN2] The term "regulated uses" includes 10 different kinds of establishments in addition to adult theaters. [FN3]

FN2. The District Court held that the original form of the 500-foot restriction was invalid because-it was measured from "any building containing a residential, dwelling or rooming unit. " The city did not appeal from that ruling, but adopted an amendment prohibiting the operation of an adult theater within 500 feet of any area zoned for residential use. The amended restriction is not directly challenged in this litigation.

FN3. In addition to adult motion picture theaters and "mini" theaters, which contain less than 50 seats, the regulated uses include adult bookstores; cabarets (group "D"); establishments. for the sale of beer or intoxicating liquor for consumption on the premises; hotels or motels; pawnshops; pool or billiard halls; public lodging houses; secondhand stores; shoeshine parlors; and taxi dance halls.

*53 The classification of a theater as "adult" is expressly predicated on the character of the motion pictures which it exhibits. If the theater is used to present "material distinguished or characterized by an emphasis on matter depicting, describing or relating to 'Specified Sexual Activities' or 'Specified Anatomical Areas,' " [FN4] it is an adult establishment. [FN5]

FN4. These terms are defined as follows:

"For the purpose of this Section, 'Specified Sexual Activities' is defined as:

"1. Human Genitals in a state of sexual stimulation or arousal;

"2.- Acts of human masturbation, sexual intercourse or sodomy;

"3. Fondling or other erotic touching of human genitals, pubic region, buttock or female breast.

"And 'Specified Anatomical Areas' is defined as:

"1. Less than completely and opaquely covered: (a) human genitals, pubic region, (b) buttock, and (c) female breast below a point immediately above the top of the areola; and

"2. Human male genitals in a discernibly turgid state, even if completely and opaquely covered. "

FN5. There are three types of adult establishments bookstores, motion picture theaters, and mini motion picture theaters defined respectively as follows:

"Adult Book Store

"An establishment having as a substantial or significant portion of its stock in trade, books, magazines, and other periodicals which are distinguished or characterized by their emphasis on matter depicting, describing or relating to 'Specified Sexual Activities' or 'Specified Anatomical Areas,' (as defined below), or an establishment with a segment or section devoted to the sale or display of such material.

"Adult Motion Picture Theater

"An enclosed building with a capacity of 50 or more persons used for presenting material distinguished or characterized by an emphasis on matter depicting, describing or relating to 'Specified Sexual Activities' or 'Specified Anatomical Areas,' (as defined . . below) for observation by patrons therein.

"Adult Mini Motion Picture Theater

"An enclosed building with a capacity for less than 50 persons used for presenting material distinguished or characterized by an emphasis on matter depicting, describing or relating to 'Specified Sexual Activities' or 'Specified Anatomical Areas,' (as defined below), for observation by patrons therein. "

*54 The 1972 ordinances were amendments to an "Anti-Skid Row Ordinance" which had been adopted 10 years earlier. At that time the Detroit Common Council made a finding that some uses of property are especially injurious to a neighborhood when they are concentrated in limited areas. [FN6] The decision to add adult motion picture theaters and adult book stores to the list of businesses which, apart from a special waiver, [FN7] **2445 could not be located within 1,000 feet of two other "regulated uses," was, in part, a response to the significant growth in the number *55 of such establishments. [FN8] In the opinion of urban planners and real estate experts who supported the ordinances, the location of several such businesses

in the same neighborhood tends to attract an undesirable quantity and quality of transients, adversely affects property values, causes an increase in crime, especially prostitution, and encourages residents and businesses to move elsewhere.

FN6. Section 66.000 of the Official Zoning Ordinance (1972) recited:
"In the development and execution of this Ordinance, it is recognized that there are some uses which, because of their very nature, are recognized as having serious objectionable operational characteristics, particularly when several of them are concentrated under certain circumstances thereby having a deleterious effect upon the adjacent areas. Special regulation of these uses is necessary to insure that these adverse effects will not contribute to the blighting or downgrading of the surrounding neighborhood. These special regulations are itemized in this section. The primary control or regulation is for the purpose of preventing a concentration of these uses in any one area (i. e. not more than two such uses within one thousand feet of each other which would create such adverse effects). "

FN7. The ordinance authorizes the Zoning Commission to waive the 1,000-foot restriction if it finds:
"a) That the proposed use will not be contrary to the public interest or injurious to nearby properties, and that the spirit and intent of this Ordinance will be observed.
"b) That the proposed use will not enlarge or encourage the development of a 'skid row' area.
"c) That the establishment of an additional regulated use in the area will not be contrary to any program of neigh(bor)hood conservation nor will it interfere with any program of urban renewal.
"d) That all applicable regulations of this Ordinance will be observed."

FN8. A police department memorandum addressed to the assistant corporation counsel stated that since 1967 there had been an increase in the number of adult theaters in Detroit from 2 to 25, and a comparable increase in the number of adult book stores and other "adult-type businesses. "

Respondents are the operators of two adult motion picture theaters. One, the Nortown, was an established theater which began to exhibit adult elms in March 1973. The other, the Pussy Cat, was a corner gas station which was converted into a "mini theater," but denied a certificate of occupancy because . of its plan to exhibit adult films. Both theaters were located within 1,000 feet of two other regulated uses and the Pussy Cat was less than 500 feet from a residential area. The respondents brought two separate actions against appropriate city officials, seeking a declaratory judgment that the ordinances were unconstitutional and an injunction against their enforcement. Federal jurisdiction was properly invoked [FN9] and the two cases were consolidated for decision. [FN10]

FN9. Respondents alleged a claim for relief under 42 U.S.C. s 1983, invoking the jurisdiction of the federal court under 28 U.S.C. s 1343(3).

FN10. Both cases were decided in a single opinion filed jointly by Judge Kennedy and Judge Gubow. Nortown Theatre v. Gribbs, 373 F.Supp. 363 (ED Mich.1974).

The District Court granted defendants' motion for summary judgment. 373 F.Supp. 363. On the basis of the reasons stated *56 by the city for adopting the ordinances, the court concluded that they represented a rational attempt to preserve the city's neighborhoods. [FNII) The court analyzed and rejected respondents' argument that the definition and waiver provisions in the ordinances were impermissibly vague; it held that the disparate treatment of adult theaters and other theaters was justified by a compelling state interest and therefore did not violate the Equal Protection Clause; [FN12] and finally it concluded that the **2446 regulation of the places where adult films could be shown *did* not violate the First Amendment. [FN13]

FNII. 'When, as here, the City has stated a reason for adopting an ordinance which is a subject of legitimate concern, that statement of purpose is not subject to attack.
"Nor may the Court substitute its judgment for that of the Common Council of the City of Detroit as to the methods adopted to deal with the City's legitimate concern to preserve neighborhoods, so long as there is some rational relationship between the objective of the Ordinance and the methods adopted." Id., at 367.

FN12. "Because the Ordinances distinguish adult theatres and bookstores from ordinary theatres and bookstores on the basis of the content of their respective wares, the classification is one which restrains conduct protected by the First Amendment. See Interstate Circuit, Inc. v. Dallas. 390 U.S. 676, 88 S.Ct. 1298, 20 L.Ed.2d 225 (1968). The appropriate standard for reviewing the classification, therefore, is a test of close scrutiny.

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Harper v. Virginia Board of Elections, 383 U.S. 663, 670, 86 S.CL. 1079, 16 L.Ed.2d 169 (1966); NAACP v. Button, 371 U.S. 415, 438, 83 S.Ct. 328, 9 L.Ed.2d 405 (1963). Under this test; the validity of the classification depends on whether it is necessary to further a compelling State interest. "The compelling State interest which the Defendants point to as justifying the restrictions on locations of adult theatres and bookstores is the preservation of neighborhoods, upon which adult establishments have been found to have a destructive impact. The affidavit of Dr. Mel Ravitz clearly establishes that the prohibition of more.than one regulated use. within 1000 feet is necessary to promote that interest. This provision therefore does not offend the equal protection clause. " Id, at 369.

FN13. "Applying those standards to the instant case, the power to license and zone businesses and prohibit their location in certain areas is clearly within the constitutional power of the City. The government interest, i_ e. the preservation and stabilization of neighborhoods in the City of Detroit, is unrelated to the suppression of free expression. First Amendment rights are indirectly related, but only in the sense that they cannot be freely exercised in specific locations. Plaintiffs would not contend that they are entitled to operate a theatre or bookstore, which are commercial businesses, in a residentially zoned area; nor could they claim the right to put on a performance for profit in a public street. Admittedly the regulation here is more restrictive, but it is of the same character." Id., at 371.

*57 The Court of Appeals reversed. American Mini Theatres, Inc- v. Gribbs, 518 F.2d 1014 (CA6 1975). The majority opinion concluded that the ordinances imposed a prior restraint on, constitutionally protected communication and therefore "merely establishing that they were designed to serve a compelling public interest" provided an insufficient justification for a classification of motion picture theaters on the basis of the content of the materials they purvey to the public. [FN141 Relying primarily on Police Department of Chicago v. Mosley, 408 U.S. 92, 92 S.Ct_ 2286, 33 L.Ed.2d 212, the court held the ordinance invalid under the Equal Protection Clause. Judge Celebrezze, in dissent, expressed *58 the opinion that the ordinance was a valid " 'time, place and manner' regulation," rather than a regulation of speech on the basis of its content. [FN151

FN14. "The City did not discharge its heavy burden of justifying the prior restraint which these ordinances undoubtedly impose by merely establishing that they were designed to serve a compelling public interest. Since fundamental rights are involved, the City had the further burden of showing that the method which it chose to deal with the problem at hand was necessary and that its effect on protected rights was only incidental. The City could legally regulate movie theatres and bookstores under its police powers by providing that such establishments be operated only in particular areas. . . . However, this ordinance selects for special treatment particular business enterprises which fall within the general business classifications permissible under zoning laws and classifies them as regulated uses solely by reference to the content of the constitutionally protected materials which they purvey to the public." 518 F.2d, at 1019- 1020.

FN15. He stated in part:
"I do not view the 1000-foot provision as a regulation of speech on the basis of its content. Rather, it is a regulation of the right to locate a business based on the side-effects of its location. The interest in preserving neighborhoods is not a subterfuge for censorship." Id_, at 1023.

Because of the importance of the decision, we granted certiorari, 423 U.S. 911, 96 S.Ct. 214, 46 L.Ed.2d 139.

As they did in the District Court, respondents contend (1) that the ordinances are so vague that they violate the Due Process Clause of the Fourteenth Amendment; (2) that they are invalid under the First Amendment as prior restraints on protected communication; and (3) that the classification of theaters on the basis of the content of their exhibitions violates the Equal Protection Clause of the Fourteenth Amendment. We consider their arguments in that order.

There are two parts to respondents' claim that the ordinances are too vague. They do not attack the specificity of the definition of "Specified Sexual Activities" or "Specified Anatomical Areas." They argue, however, that they cannot determine how much of the described activity may be permissible before the exhibition is "characterized by an emphasis" on such matter. In addition, they argue that the ordinances are vague because they do not specify adequate procedures or standards for obtaining a waiver of the 1,000-foot restriction.

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[1] We find it unnecessary to consider the validity of either of these arguments in the abstract.. For even if there may be some uncertainty about the effect of the *59 ordinances on other litigants, they are unquestionably applicable to these respondents. The record indicates that both theaters **2447 propose to offer adult fare on a regular basis. [FN16] Neither respondent has alleged any basis for claiming or anticipating any waiver of the restriction as applied to its theater. It is clear, therefore, that any element of vagueness in these-- ordinances has not affected these respondents: To the extent that their challenge is predicated on inadequate notice resulting in a denial of procedural due process under the Fourteenth Amendment, it must be rejected. Cf. Parker v. Levy, 417 U.S. 733, 754-757, 94 S.Ct. 2547, 2560-2562, 41 L.Ed.2d 439.

FN16. Both complaints allege that only adults are admitted to these theaters. Nortown expressly alleges that it "desires to continue exhibiting adult-type motion picture films at said theater. " Neither respondent has indicated any plan to exhibit pictures even arguably outside the coverage of the ordinances.

[2] Because the ordinances affect communication protected by the First Amendment, respondents argue that they may raise the vagueness issue even though there is no uncertainty about the impact of the ordinances on their own rights. On several occasion's we have determined that a defendant whose own speech was unprotected had standing to challenge the constitutionality of a statute which purported to prohibit protected speech, or even speech arguably protected. [FN17] This exception *60 from traditional rules of standing to raise constitutional issues has reflected the Court's judgment that the very existence of some statutes may cause persons not before the Court to refrain from engaging in constitutionally protected speech or expression. See Broadrick v. Oklahoma, 413 U.S. 601, 611-614, 93 S.Ct. 2908, 2915-2917, 37 L.Ed.2d 830. The exception is justified by the overriding importance of maintaining a free and open market for the interchange of ideas. Nevertheless, if the statute's deterrent effect on legitimate expression is not "both real and substantial," and if the statute is "readily subject to a narrowing construction by the state courts, " see Erznoznik v. City of Jacksonville, 422 U.S. 205, 216, 95 S.Ct. 2268, 2276, 45 L.Ed.2d 125, the litigant is not permitted to assert the rights of third parties.

FN17. "Such claims of facial overbreadth have been entertained in cases involving statutes which, by their terms, seek to regulate 'only spoken words.' Gooding v. Wilson, 405 U.S. 518, 520, 92 S.Ct. 1103, 1105, 31 L.Ed.2d 408 (1972). See Cohen v. California, 403 U.S. 15, 91 S.Ct. 1780, 29 L.Ed.2d 284 (1971); Street v. New York, 394 U.S. 576, 89 S.Ct. 1354, 22 L.Ed.2d 572 (1969); Brandenburg v. Ohio, 395 U.S. 444, 89 S.Ct. 1827, 23 L.Ed.2d 430 (1969), Chaplinsky v. New Hampshire, 315 U.S. 568, 62 S.Ct. 766, 86 L.Ed. 1031 (1942). In such cases, it has been the judgment of this Court that the possible harm to society in permitting some unprotected speech to go unpunished is outweighed by the possibility that protected speech of others may be muted and perceived grievances left to fester because of the possible inhibitory effects of overly broad statutes. Overbreadth attacks have also been allowed where the Court thought rights of association were ensnared in statutes which, by their broad sweep, might result in burdening innocent associations. See Keyishian v. Board of Regents, 385 U.S. 589, 87 S.Ct. 675, 17 L.Ed_2d 629 (1967); United States v. Robel, 389 U.S. 258, 88 S.Ct. 419, 19 L.Ed.2d 508 (1967); Aptheker v. Secretary of State, 378 U.S. 500, 84 S.Ct. 1659, 12 L.Ed.2d 992 (1964); Shelton v. Tucker (364 U.S. 479, 81 S.Ct. 247, 5 L.Ed.2d 231 (1960)). Facial overbreadth claims have also been entertained where statutes, by their terms, purport to regulate the time, place, and manner of expressive or communicative conduct, see Grayned v. City of Rockford, supra, 408 U.S., at 114-121, 92 S.Ct., at 2302-2306; Cameron v. Johnson, 390 U.S., at 617-619, 88 S.Ct., at 1338, 1339; Zwickler v. Koota, 389 U.S. 241, 249-250, 88 S.Ct. 391, 396-397, 19 L.Ed.2d 444 (1967); Thornhill v. Alabama, 310 U.S. 88, 60 S.Ct. 736, 84 L.Ed. 1093 (1940), and where such conduct has required official approval under laws that delegated standardless discretionary power to local functionaries, resulting in virtually unreviewable prior restraints on First Amendment rights. See Shuttlesworth v. Birmingham, 394 U.S. 147, 89 S.Ct. 935, 22 L.Ed.2d 162 (1969); Cox v. Louisiana, 379 U.S. 536, 553-558, 85 S.Ct. 453, 463-466, 13 L.Ed.2d 471 (1965); Kunz v. New York, 340 U.S. 290, 71 S.Ct. 312, 95 L.Ed. 280 (1951); Lovell v_ Griffin, 303 U.S- 444, 58 S.C". 666, 82 L.Ed. 949 (1938)." Broadrick v. Oklahoma. 413 U.S. 601, 612-613, 93 S.Ct. 2908, 2916, 37 L.Ed_2d 830.

[31. We are not persuaded that the Detroit zoning ordinances will have a significant deterrent effect on the exhibition of films protected by the First Amendment. *61 As already noted, the only vagueness in the **2448 ordinances relates to the

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amount of sexually explicit activity that may be portrayed before the material can be said to "characterized by an emphasis" on such,matter. For most films the question will be readily answerable; to the extent that an area of doubt exists, we see no reason why the ordinances are not "readily subject to a narrowing construction by the state courts. " Since there is surely a less vital interest in the uninhibited exhibition of material that is on the borderline between pornography and artistic expression than in the free dissemination of ideas of social and political significance, and since the limited amount of uncertainty in the ordinances is easily susceptible of a narrowing construction, we think this is an inappropriate case in which to adjudicate the hypothetical claims of persons not before the Court.

The only area of protected communication that may be deterred by these ordinances comprises films containing material falling within the specific definitions of "Specified Sexual Activities" or "Specified Anatomical Areas_" The fact that the First Amendment protects some, though not necessarily all, of that material from total suppression does not warrant the further conclusion that an exhibitor's doubts as to whether a borderline film may be shown in his theater, as well as in theaters licensed for adult presentations, involves the kind of threat to the free market in ideas and expression that justifies the-exceptional approach to constitutional adjudication recognized in cases like Dombrowski v. Pfister, 380 U.S. 479, 85 S.Ct. 1116, 14 L.Ed.2d 22.

The application of the ordinances to respondents is plain; even if there is some area of uncertainty about their application in other situations, we agree with the District Court that respondents' due process argument must be rejected.

*62 II

Petitioners acknowledge that the ordinances prohibit theaters which are not licensed as "adult motion picture theaters" from exhibiting films which are protected by the First Amendment. Respondents argue that the ordinances are therefore invalid as prior restraints on free speech.

The ordinances are not challenged on the ground that they impose a limit on the total number of adult theaters which may operate in the city of Detroit. There is no claim that distributors or exhibitors of adult films are denied access to the market or, conversely, that the viewing public is unable to satisfy its appetite for sexually explicit fare. Viewed as an entity, the market for this commodity is essentially unrestrained.

[4][5] It is true, however, that adult films may only be exhibited commercially in licensed theaters. But that is also true of all motion pictures. The city's general zoning laws require all motion picture theaters to satisfy certain locational as well as other requirements; we have no doubt that the municipality may control the location of theaters as well as the location of other commercial establishments, either by confining them to certain specified commercial zones or by requiring that they be dispersed throughout the city. The mere fact that the commercial exploitation of material protected by the First Amendment is subject to zoning and other licensing requirements is not a sufficient reason for invalidating these ordinances.

[6] Putting to one side for the moment the fact that adult motion picture theaters must satisfy a locational restriction not applicable to other theaters, we are also persuaded that the 1,000-foot restriction does not, in itself, create an impermissible restraint on protected communication. The city's interest in planning and regulating the use of property for commercial purposes *63 is clearly adequate to support that kind of restriction applicable to all theaters within the city limits. In short, apart from the fact that the ordinances treat adult theaters differently from other theaters and the fact that the classification is predicated on the content of material shown in the respective theaters, the regulation of the place where such films may be exhibited does not **2449 offend the First Amendment. [FN18] We turn, therefore, to the question whether the classification is consistent with the Equal Protection Clause.

FN18. Reasonable regulations of the time, place, and manner of protected speech, where those regulations are necessary to further significant governmental interests, are permitted by the First Amendment. See, E. g., Kovacs v. Cooper, 336 U.S. 77, 69 S.Ct. 448, 93 L.Ed. 513 (limitation on use of sound trucks); Cox v: Louisiana, 379 U.S. 559, 85 S.Ct. 476, 13 L.Ed2d 487 (ban on demonstrations in or near a courthouse with the intent to obstruct justice); Grayned v. City of Rockford, 408 U.S. 104, 92 S.Ct. 2294, 33 L.Ed.2d 222 (ban on willful making, on grounds adjacent to a school, of any noise which disturbs

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the good order of the school session).

A remark attributed to Voltaire characterizes our zealous adherence to the principle that the government may not tell the citizen what he may or may not say. Referring to a suggestion that the violent overthrow of tyranny might be legitimate, he said: "I disapprove of what you say, but I will defend to the death your right to say it." [FN19] The essence of that comment has been repeated time after time in our decisions invalidating attempts by the government to impose selective controls upon the dissemination of ideas.

FN19. S. Tallentrye, The Friends of Voltaire 199 (1907).

Thus, the use of streets and parks for the free expression of views on national affairs may not be conditioned upon the sovereign's agreement with what a speaker may intend to say. [FN20] Nor may speech be curtailed because it '164 invites dispute, creates dissatisfaction with conditions the way they are, or even stirs people to anger. [FN21] The sovereign's agreement or disagreement with the content of what a speaker has to say may not affect the regulation of the time, place, or manner of presenting the speech.

FN20. See Hague v. CIO, 307 U.S. 496, 516, 59 S.Ct. 954, 964, 83 L.Ed. 1423 (opinion of Roberts, J.).

FN21. Terminiello v. Chicago, 337 U.S. 1, 4, 69 S. Ct. 894, 895, 93 L.Ed_ 1131.

If picketing in the vicinity of a school is to be allowed to express the point of view of labor, that means of expression in that place must be allowed for other points of view as well. As we said in Mosley

"The central problem with Chicago's ordinance is that it describes permissible picketing in terms of its subject matter. Peaceful picketing on the subject of a school's labor-management dispute is permitted, but all other peaceful picketing is prohibited. The operative distinction is the message on a picket sign. But, above all else, the First Amendment means that government has no power to restrict expression because of its message, its ideas, its subject matter, or its content. Cohen v. California; 403 U.S. 15, 24, 91 S.Ct. 1780, 1787, 29 L.Ed.2d 284 (1971); Street v. New York, 394 U.S. 576, 89 S.Ct. 1354; 22 L.Ed.2d 572 (1969); New York Times Co. v. Sullivan, 376 U.S. 254,269-270, 84 S.Ct. 710, 720-721, 11 L.Ed.2d 686 (1964), and cases cited, NAACP v. Button, 371 U.S. 415, 445, 83 S.Ct. 328, 344, 9 L.Ed.2d 405 (1963); Wood v. Georgia, 370 U.S. 375, 388-389, 82 S.Ct. 1364, 1371-1372, 8 L.Ed.2d 569 (1962); Terminiello v. Chicago, 337 U.S. 1, 4, 69 S.Ct. 894, 895, 93 L.Ed. 1131 (1949); De Jonge v. Oregon, 299 U.S. 353, 365, 57 S.Ct. 255, 260, 81 L.Ed. 278 (1937). To permit the continued building of our politics and culture, and to assure self-fulfillment for each individual, our people are guaranteed the right to express any thought, free from government censorship. The essence of this forbidden censorship is content control. Any restriction on expressive activity because of its content *65 would completely undercut the 'profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open.' *New York Times Co. v. Sullivan, supra,* 376 U.S., at 270, 84 S.Ct., at 721.

**2450 "Necessarily, then, under the Equal Protection Clause, not to mention the First Amendment itself, government may not grant the use of a forum to people whose views it finds acceptable, but deny use to those wishing to express less favored or more controversial views. And it may not select which issues are worth discussing or debating in public facilities. There is an 'equality of status in the field of ideas,' and government must afford all points of view an equal opportunity to be heard. Once a forum is opened up to assembly or speaking by some groups, government may not prohibit others from assembling or speaking on the basis of what they intend to say. Selective exclusions from a public forum may not be based on content alone, and may not be justified by reference to content alone." 408 U.S., at 95-96, 92 S.Ct., at 2290. (Footnote omitted.)

This statement, and others to the same effect, read literally and without regard for the facts of the case in which it was made, would absolutely preclude any regulation of expressive activity predicated in whole or in part on the content of the communication. But we learned long ago that broad statements of principle, no matter how correct in the context in which they are made, are sometimes qualified by contrary decisions before the absolute

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Emit of the stated principle is reached. [FN22] When we review this Court's actual adjudications in the First Amendment area, we find this to have been the case *66 with the stated principle that there may be no restriction whatever on expressive activity because of its content.

FN22. See E. g., Kastigar v. United States, 406 U. S. 441, 454-455, 92 S.Ct. 1653, 1661-1662, 32 L.Ed.2d 212; United Gas Imp. Co. v. Continental Oil Co., 381 U.S. 392, 404, 85 S.Ct. 1517, 1524, 14 L.Ed.2d 466.

[7] The question whether speech is, or is not, protected by the First Amendment often depends on the content of the speech. Thus, the line between permissible advocacy and impermissible incitation to crime or violence depends, not merely on the setting in which the speech occurs, but also on exactly what the speaker had to say. [FN23] Similarly, it is the content of the utterance that determines whether it is a protected epithet or an unprotected "fighting comment. " [FN24] And in time of war "the publication of the sailing dates of transports or the number and location of troops" may unquestionably be restrained, see Near v. Minnesota ex rel. Olson, 283 U.S. 697, 716, 51 S. Ct. 625, 631, 75 L.Ed_ 1357, although publication of news stories with a different content would be protected.

FN23. See Bond v. Floyd, 385 U.S. 116, 133-134, 97 S_Ct. 339, 348, 17 L.Ed.2d 235; Harisiades v. Shaughnessy, 342 U.S. 580, 592, 72 S.Ct. 512, 520, 96 L.Ed. 586; Musser v. Utah, 333 U.S. 95, 99-101, 68 S.Ct. 397, 398-399, 92 L.Ed. 562.

FN24. In Chaplinsky v. New Hampshire, 315 U.S. 568, 574, 62 S.Ct. 766, 770, 86 L.Ed_ 1031, we held that a statute punishing the use of "damned racketeer(s)" and "damned Fascist(s)" did not unduly impair liberty of expression.

[8] Even within the area of protected speech, a difference in content may require a different governmental response. In New York Times Co. v. Sullivan, 376 U.S. 254, 84 S.Ct. 710, 11 L.Ed.2d 686, we recognized that the First Amendment places limitations on the States' power to enforce their libel laws. We held that a public official may not recover damages from a critic of his official conduct without proof of "malice" as specially defined in that opinion. [FN25] Implicit in the opinion is the assumption that if the content of the newspaper article had been different that is, if its subject matter had not been a public official a lesser standard of proof would have been adequate.

FN25. "Actual malice" is shown by proof that a statement was made "with knowledge that it was false or with reckless disregard of whether it was false or not." 376 U.S., at 280, 84 S.Ct., at 726.

[9] *67 In a series of later cases, in which separate individual views were frequently stated, the Court addressed the broad problem of when the New York Times standard **2451 of malice was required by the First Amendment. Despite a diversity of opinion on whether it was required only in cases involving public figures, or also in cases involving public issues, and on whether the character of the damages claim mattered, a common thread which ran through all the opinions was the assumption that the rule to be applied depended on the content of the communication. [FN26] But that assumption did not contradict the underlying reason for the rule which is generally described as a prohibition of regulation based on the content of protected communication. The essence of that rule is the need for absolute neutrality by the government; its regulation of communication may not be affected by sympathy or hostility for the point of view being expressed by the communicator. [FN27] Thus, although *68 the content of story must be examined to decide whether it involves a public figure or a public issue, the Court's application of the relevant rule may not depend on its favorable or unfavorable appraisal of that figure or that issue.

FN26. See, for example, the discussion of the " 'public or general interest' test" for determining the applicability of the New York Times standard in Gertz v. Robert Welch, Inc., 418 U.S. 323, 346, 94 S.Ct..2997, 3010, 41 L.Ed.2d 789, and the reference, Id., at 348, 94 S.Ct., at 3011, to a factual misstatement "whose content did not warn a reasonably prudent editor or broadcaster of its defamatory potential_" The mere fact that an alleged defamatory statement is false does not, of course, place it completely beyond the protection of the First Amendment. "The First Amendment requires that we protect some falsehood in order to protect speech that matters." Id., at 341, 94 S.Ct. at 3007.

FN27. Thus, Professor Kalven wrote in The Concept of the Public Forum: Cox v. Louisiana, 1965 Sup.Ct.Rev. 1, 29:
"(The Equal Protection Clause) is likely to provide a second line of defense for vigorous users of the public forum. If some groups are exempted from a

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prohibition on parades and pickets, the rationale for regulation is fatally impeached. The objection can then no longer be keyed to interferences with other uses of the public places, but would appear to implicate the kind of message that the groups were transmitting. The regulation would thus slip from the neutrality of time, place, and circumstance into a concern about content. The result is that equal-protection analysis in the area of speech issues would merge with considerations of censorship. And this is precisely what Mr. Justice Black argued in Cox

" 'But by specifically permitting picketing for the publication of labor union views, Louisiana is attempting to pick and choose among the views it is willing to have discussed on its streets. It is thus trying to prescribe by law what matters of public interest people it allows to assemble on its streets may and may not discuss. This seems to me to be censorship in a most odious form . . . ' (379 U.S., at 581, 85 S.Ct., at 453)."

[10] We have recently held that the First Amendment affords some protection to commercial speech. [FN28] We have also made it clear, however, that the content of a particular advertisement may determine the extent of its protection. A public rapid transit system may accept some advertisements and reject others. [FN29] A state statute may permit highway billboards to advertise businesses located in the neighborhood but not elsewhere, [FN30] and regulatory commissions may prohibit businessmen from making statements which, though literally true, are potentially deceptive. [FN31] The measure of **2452 constitutional protection *69 to be afforded commercial speech will surely be governed largely by the content of the communication. [FN32]

FN28. Virginia Pharmacy Board v. Virginia Consumer Council, 425 U.S. 748, 96 S.Ct. 1817, 48 L.Ed.2d 346.

FN29. Lehman v. City of Shaker Heights, 418 U.S. 298, 94 S.Ct. 2714, 41 L.Ed.2d 770 (product advertising accepted, while political cards rejected).

FN30. Markham Advertising Co. v. State, 73 Wash.2d 405, 439 P.2d 248 (1968), appeal dismissed for want of a substantial federal question, 393 U.S. 316, 89 S.Ct. 553, 21 L.Ed.2d 512.

FN31. In NLRB v. Gissel Packing Co., 395 U.S. 575, 617, 89 S.Ct. 1918, 1941, 23 L.Ed.2d 547, the Court upheld a federal statute which balanced an employer's free speech right to communicate with his employees against the employees' rights to associate freely by providing that the expression of " any views, argument, or opinion' " should not be " 'evidence of an unfair labor practice;' " So long as such expression contains " 'no threat of reprisal or force or promise of benefit' " which would involve interference, restraint, or coercion of employees in the exercise of their right to self-organization.

The power of the Federal Trade Commission to restrain misleading, as well as false, statements in labels and advertisements has long been recognized. See, E. g., Jacob Siegel Co. v. FTC, 327 U.S. 608, 66 S.Ct. 758, 90 L.Ed. 888; FTC v. National Comm'n on Egg Nutrition, 517 F2d 485 (CA7 1975); E. F. Drew & Co. v. FTC, 235 F.2d 735, 740 (CA2 1956).

FN32. As Mr. Justice Stewart pointed out in Virginia Pharmacy Board v. Virginia Consumer Council, supra, 425 U.S.; at 779, 96 S.Ct., at 1834 (concurring opinion), the "differences between commercial price and product advertising and ideological communication" permits regulation of the former that the First Amendment would not tolerate with respect to the latter.

Nlore directly in point are opinions dealing with the question whether the First Amendment prohibits the State and Federal Governments from wholly suppressing sexually oriented materials on the basis of their "obscene character. " In Ginsberg v. New York, 390 U.S. 629, 88 S.Ct. 1274, 20 L.Ed.2d 195, the Court upheld a conviction for selling to a minor magazines which were concededly not "obscene" if shown to adults. Indeed, the Members of the Court who would accord the greatest protection to such materials have repeatedly indicated that the State could prohibit the distribution or exhibition of such materials to juveniles and unconsenting adults. [FN33] Surely the First Amendment does *70 not foreclose such a prohibition;yet it is equally clear that any such prohibition must rest squarely on an appraisal of the content of material otherwise within a constitutionally protected area.

FN33. In Paris Adult Theatre I v. Slaton, 413 U.S. 49, 73, 93 S.Ct. 2628, 2665, 37 L.Ed.2d 446, Mr. Justice Brennan, in a dissent. joined by Mr. Justice Stewart and Mr. Justice Marshall, explained his approach to the difficult problem of obscenity under the First Amendment:

"I would hold, therefore, that at least in the absence of distribution to juveniles or obtrusive exposure to unconsenting adults, the First and

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Fourteenth Amendments prohibit the State and Federal Governments from attempting wholly to suppress sexually oriented materials on the basis of their allegedly 'obscene' contents. Nothing in this approach precludes those governments from taking action to serve what may be strong and legitimate interests through regulation of the manner of distribution of sexually oriented material." Id., at 113, 93 S.Ct., at 2662.

Such a line may be drawn on the basis of content without violating the government's paramount obligation of neutrality in its regulation of protected communication. For the regulation of the places where sexually explicit films may be exhibited is unaffected by whatever social, political, or philosophical message a film may be intended to communicate; whether a motion picture ridicules or characterizes one point of view or another, the effect of the ordinances is exactly the same.

[11]. Moreover, even though we recognize that the First Amendment will not tolerate the total suppression of erotic materials that have some arguably artistic value, it is manifest that society's interest in protecting this type of expression is of a wholly different, and lesser, magnitude than the interest in untrammeled political debate that inspired Voltaire's immortal comment_ Whether political oratory or philosophical discussion moves us to applaud or to despise what is said, every schoolchild can understand-why our duty to defend the right to speak remains the same. But few of us would march our sons and daughters off to war to preserve the citizen's right to see "Specified Sexual Activities" exhibited in the theaters of our choice. Even though the First Amendment protects communication in this area from total suppression, we hold that the State may legitimately use the content of these materials as the basis *71 for placing them in a different classification from other motion pictures.

[12][13] The remaining question is whether the line drawn by these ordinances is-justified by the city's interest in preserving the character of its neighborhoods. On this question we agree with the views expressed by District Judges Kennedy and Gubow. The record disclosed a factual basis for the Common Council's conclusion that this kind of restriction will have the **2453 desired effect. [FN34] It is not our function to appraise the wisdom of its decision to require adult theaters to be separated rather than concentrated in the same areas. In either event, the city's interest in attempting to preserve the quality of urban life is one that must be accorded high respect. Moreover, the city must be allowed a reasonable opportunity to experiment with solutions to admittedly serious problems.

FN34. The Common Council's determination was that a concentration of "adult" movie theaters causes the area to deteriorate and become a focus of crime, effects which are not attributable to theaters showing other types of films. It is this secondary effect which these zoning ordinances attempt to avoid, not the dissemination of "offensive" speech. In contrast, in Erznoznik v_ City of Jacksonville, 422 U.S. 205, 95 S.Ct. 2268, 45 L.Ed.2d 125, the justifications offered by the city rested primarily on the city's interest in protecting its citizens from exposure to unwanted, "offensive" speech. The only secondary effect relied on to support that ordinance was the impact on traffic an effect which might be caused by a distracting open-air movie even if it did not exhibit nudity.

Since what is ultimately at stake is nothing more than a limitation on the place where adult films may be exhibited, [FN35] even though the determination of whether a *72 particular film fits that characterization turns on the nature of its content, we conclude that the city's interest in the present and future character of its neighborhoods adequately supports its classification of motion pictures. We hold that the zoning ordinances requiring that adult *73 motion picture theaters not be located within 1,000 feet of two other regulated uses does not violate the Equal Protection Clause of the Fourteenth Amendment.

FN35. The situation would be quite different if the ordinance had the effect of suppressing, or greatly restricting access to, lawful speech. Here, however, the District Court specifically found that "(t)he Ordinances do not affect the operation of existing establishments but only the location of new ones. There are myriad locations in the City of Detroit which must be over 1000 feet from existing regulated establishments. This burden on First Amendment rights is slight." 373 F.Supp., at 370.

It should also be noted that the definitions of "Specified Sexual Activities" and "Specified Anatomical Areas" in the zoning ordinances, which require an emphasis on such matter and primarily concern conduct, are much more limited than the terms of the public nuisance ordinance involved in Erznoznik, supra, which broadly prohibited scenes which could not be deemed inappropriate even for juveniles.

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"The ordinance is not directed against sexually explicit nudity, nor is it otherwise limited. Rather, it sweepingly forbids display of all films containing Any uncovered buttocks or breasts, irrespective of context or pervasiveness. Thus it would bar a film containing a picture of a baby's buttocks, the nude body of a war victim, or scenes from a culture in which nudity is indigenous. The ordinance also might prohibit newsreel scenes of the opening of an an exhibit as well as shots of bathers on a beach. Clearly all nudity cannot be deemed obscene even as to minors. See Ginsberg v. New York, supra. Nor can such a broad restriction be justified by any other governmental interest pertaining to minors. Speech that is neither obscene as to youths nor subject to some other legitimate proscription cannot be suppressed solely to protect the young from ideas or images that a legislative body thinks unsuitable for them." 422 U.S., at 213-214, 95 S.Ct., at 2274.

Moreover, unlike the ordinances in this case, the Erznoznik ordinance singled out movies "containing even the most fleeting and innocent glimpses of nudity . . . ." Id., at 214, 95 S.Ct., at 2275.

The Court's opinion in Erznoznik presaged our holding today by noting that the presumption of statutory validity "has less force when a classification turns on the subject matter of expression." Id., at 215, 95 S.Ct., at 2275. Respondents' position is that the presumption has no force, or more precisely, that any classification based on subject matter is absolutely prohibited.

The judgment of the Court of Appeals is

Reversed.

Mr. Justice POWELL, concurring in the judgment and portions of the opinion.

Although I agree with much of what is said in the Court's opinion, and concur in Parts I and 11, my approach to the resolution of this case is sufficiently different to prompt me to write separately. [FNI] I view the **2454 case as presenting an example of innovative land-use regulation, implicating First Amendment concerns only incidentally and to a limited extent.

FN1. I do not think we need reach, nor am I inclined to agree with, the holding in Part III (and supporting discussion) that nonobscene, erotic materials may be treated differently under First Amendment principles from other forms of protected expression. I do not consider the conclusions in Part I of the opinion to depend on distinctions between protected speech.

I

One-half century ago this Court broadly sustained the power of local municipalities to utilize the then relatively novel concept of land-use regulation in order to meet effectively the increasing encroachments of urbanization upon the quality of life of their citizens. Euclid v. Ambler Realty Co., 272 U.S. 365, 47 S_Ct. 114, 71 L.Ed. 303 (1926). The Court there noted the very practical consideration underlying the necessity for such power: "(W)ith the great increase and concentration of population, problems have developed, and constantly are developing, which require, and will continue to require, additional restrictions in respect of the use and occupation of private lands in urban communities." Id., at 386-387, 47 S.Ct., at 118. The Court also *74 laid out the general boundaries within which the zoning power may operate: Restrictions upon the free use of private land must find their justifications in "some aspect of the police power, asserted for the public welfare"; the legitimacy of any particular restriction must be judged with reference to all of the surrounding circumstances and conditions; and the legislative judgment is to control in cases in which the validity of a particular zoning regulation is "fairly debatable." Id., at 387, 388, 47 S.Ct., at l I8.

In the intervening years zoning has become an accepted necessity in our increasingly urbanized society, and the types of zoning restrictions have taken on forms far more complex and innovative than the ordinance involved in Euclid. In Village of Belle Terre v. Boraas, 416 U.S. 1, 94 S.Ct. 1536, 39 L.Ed.2d 797 (1974), we considered an unusual regulation enacted by a small Long Island community in an apparent effort to avoid some of the unpleasantness of urban living. It restricted land use within the village to single-family dwellings and defined "family" in such a way that no more than two unrelated persons could inhabit the same house. We upheld this ordinance, noting that desires to avoid congestion and noise from both people and vehicles were "legitimate guidelines in a land-use project addressed to family needs" and that it was quite within the village's power to "make the area a sanctuary for people." Id., at 9, 94 S.Ct., at 1541.

Against this background of precedent, it is clear beyond question that the Detroit Common Council had broad regulatory power to deal with the

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problem that prompted enactment of the Anti-Skid Row Ordinance. As the Court notes, Ante, at 2444, and n. 6, the Council was motivated by its perception that the "regulated uses," when concentrated, worked a "deleterious effect upon the *75 adjacent areas" and could "contribute to the blighting or downgrading of the surrounding neighborhood." The purpose of preventing the deteriorationf commercial neighborhoods was certainly within the concept of the public welfare that defines the limits of the police power. See Berman v. Parker, 348 U.S. 26, 32-33, 75 S'. Ct. 98, 102, 99 L.Ed. 27 (1954). Respondents apparently concede the legitimacy of the ordinance as passed in 1962, but challenge the amendments 10 years later that brought within its provisions adult theaters as well as adult bookstores and "topless" cabarets. Those amendments resulted directly from the Common Council's determination that the recent proliferation of these establishments and their tendency to cluster in certain parts of the city would have the adverse effect upon the surrounding areas that the ordinance was aimed at preventing.

Respondents' attack on the amended ordinance, insofar as it affects them, can be stated simply. Contending that it is the "character of the right, not of the limitation," which governs the standard of judicial review, see Thomas v. Collins, 323 U.S. 516, 530, 65 S.Ct. 315, 322, 89 L.Ed. 430 (1945), and that zoning regulations therefore have no talismapic immunity from constitutional **2455 challenge, cf. New York Times Co. v. Sullivan, 376 U.S. 254, 269, 84 S.Ct. 710, 720, 11 L.Ed.2d 686 (1964), they argue that the 1972 amendments abridge First Amendment rights by restricting the places at which an adult theater may locate on the basis of nothing more substantial than unproved fears and apprehensions about the effects of such a business upon the surrounding area. Cf., E. g. , Terminiello v. Chicago, 337 U.S. 1, 69 S.Ct. 894, 93 L.Ed. 1131 (1949); Cox v. Louisiana, 379 U.S. 536, 85 S.Ct_ 453, 13 L.Ed.2d 471 (1965). And, even if Detroit's interest in preventing the deterioration of business areas is sufficient to justify the impact upon freedom of expression, the ordinance is nevertheless invalid because it impermissibly *76 discriminates between types of theaters solely on the basis of their content. See *Police Dept. of Chicago* v. *Mosley*, 408 U.S. 92, 92 S.Ct. 2286, 33, L.Ed.2d 212 (1972).

I reject respondents' argument for the following reasons.

This is the first case in this Court in which the interests in free expression protected by the First and Fourteenth Amendments have been implicated by a municipality's commercial zoning ordinances. Respondents would have us mechanically apply the doctrines developed in other contexts. But this situation is not analogous to cases involving expression in public forums or to those involving individual expression or, indeed, to any other prior case. The unique situation presented by this ordinance calls, as cases in this area so often do, for a careful inquiry into the competing concerns of the State and the interests protected by the guarantee of free expression.

Because a substantial burden rests upon the State when it would limit in any way First Amendment rights, it is necessary to identify with specificity the nature of the infringement in each case. The primary concern of the free speech guarantee is that there be full opportunity for expression in all of its varied forms to convey a desired message. Vital to this concern is the corollary that there be full opportunity for everyone to receive the message. See, E. g., Whitney v_ California, 274 U.S. 357, 377, 47 S.Ct. 641, 648, 71 L.Ed. 1095 (1927) (Brandeis, J., concurring); Cohen v. California, 403 U.S. 15, 24, 91 S.Ct. 1780, 1787, 29 L.Ed.2d 284 (1971); Procunier v. Martinez, 416 U.S. 396, 408-409, 94 S_Ct. 1800, 1808-1809, 40 L.Ed.2d 224 (1974); Kleindienst v. Mandel, 408 U.S. 753, 762-765, 92 S.Ct. 2576, 2581-2582, 33 L.Ed2d 683 (1972); Virginia Pharmacy Board v. Virginia Consumer Council, 425 U.S. 748, 763-765, 96 S.Ct. 1817, 1826-1827, 48 L.Ed.2d 346 (1976). Motion pictures, the medium of expression involved here, are fully within the protection of the First *77 Amendment. *Joseph Bursryn, Inc. v. Wilson,* 343 U.S. 495, 501- 503, 72 S.Ct. 777, 96 L.Ed. 1098 (1952). In the quarter century since *Burstyn* motion pictures and an analous medium,. printed books, have been before this Court on many occasions, and the person asserting a First Amendment claim often has been a theater owner or a bookseller. Our cases reveal, however, that the central concern of the First Amendment in this area is that there be a free flow from creator to audience of whatever message a film or a book might convey. Mr. Justice Douglas stated the core idea succinctly: "In this Nation every writer, actor, or producer, no matter what medium of expression he may use, should be freed from the

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censor." Superior Films v. Department of Education, 346 U.S. 587, 589, 74 S_Ct. 286, 287, 98 L.Ed. 329 (1954) (concurring opinion). In many instances, for example with respect to certain criminal statutes or censorship or licensing schemes, it is only the theater owner or the bookseller who can protect, this interest. But the central First Amendment concern remains the need to maintain free access of the public to the expression. See, E. g., Kingsley Books, Inc. v. Brown, 354 U.S. 436, 442, 77 S.Ct. 1325, 1 L.Ed.2d 1469 (1957); Smith V. California, 361 U.S. 147, 150, 153-154, 80 S.Ct. 215, 218-219, 4 L.Ed.2d 205 (1959); Interstate Circuit v. Dallas, 390 U.S. 676, 683-684, 88 S.Ct. 1298, 1302-1303, 20 **2456 L.Ed.2d 225 (1968); compare Marcus v. Search Warrant, 367 U.S. 717, 736, 81 S.Ct. 1708, 1718, 6 L.Ed.2d 1127 (1961), and A Quantity of Books v. Kansas, 378 U.S. 205, 213, 84 S.Ct. 1723, 1727, 12 L.Ed.2d 809 (1964), with Heller v. New York, 413 U.S. 483, 491-492, 93 S.Ct. 2789, 2794, 37 L.Ed.2d 745 (1973); and cf. Bantam Books, Inc. v. Sullivan, 372 U.S. 58, 70-71, 83 S.Ct. 631, 639, 9 L.Ed.2d 584 (1963).

In this case, there is no indication that the application of the Anti-Skid Row Ordinance to adult theaters has the effect of suppressing production of or, to any significant degree, restricting access to adult movies. The Nortown concededly will not be able to exhibit adult movies at its present location, and the ordinance limits the potential *78 location of the proposed Pussy Cat. The constraints of the ordinance with respect to location may indeed create economic loss for some who are engaged in this business. But in this respect they are affected no differently from any other commercial enterprise that suffers economic detriment as a result of land-use regulation. The cas are legion that sustained zoning against claims of serious economic damage. See, E. g., Zahn v. Board of Public Works, 274 U.S. 325, 47 S.Ct. 594, 71 L.Ed. 1074 (1927).

The inquiry for First Amendment purposes is not concerned with economic impact; rather, it looks only to the effect of this ordinance upon freedom of expression. This prompts essentially two inquiries: (i) Does the ordinance impose any content limitation on the creators of adult movies or their ability to make them available to whom they desire, and (ii) does it restrict in any significant way the viewing of these movies by those who desire to see them? On the record in this case, these inquiries must be answered in the negative. At most the impact of the ordinance on these interests is incidental and minimal. [FN2] Detroit has silenced no message, has invoked no censorship, and has imposed no limitation upon those who wish to view them. The ordinance is addressed only to the places at which this type of *79 expression may be presented, a restriction that does not interfere with content. Nor is there any significant overall curtailment of adult movie presentations, or the opportunity for a message reach an audience. On the basis of the District Court's finding, Ante, at 2453, n. 35, it appears that if a sufficient market exists to support them the number of adult movie theaters in Detroit will remain approximately the same, free to purvey the same message. To be sure some prospective patrons may be inconvenienced by this dispersal. [FN3] But other patrons, depending upon where they live or work, may find it more convenient to view an adult movie when adult theaters are not concentrated in a particular section of the city.

FN2_ The communication involved here is not a kind in which the content or effectiveness of the message depends in some measure upon where or how it is conveyed. Cf. Cox v. Louisiana, 379 U.S. 536, 85 S.Ct. 453, 13 L.Ed.2d 471 (1965); Brown v. Louisiana, 383 U.S. 131, 86 S.Ct. 719, 15 L.Ed.2d 637 (1966); Police Dept. of Chicago v. Mosley, supra, 408 U.S. 92, 93, 92 S.Ct. 2286, 2288, 33 L.Ed.2d 212 (1972).
There is no suggestion that the Nortown is, or that the Pussy Cat would be, anything more than a commercial purveyor. They do not profess to convey their own personal messages through the movies they show, so that the only communication involved is that contained in the movies themselves. Cf. United States v. O'Brien, 391 U.S. 367, 376, 88 S.Ct. 1673, 1678, 20 L.Ed.2d 672 (1968); Spence v. Washington, 418 U.S. 405, 409-411, 94 S.Ct. 2727, 2729-2730, 41 L_Ed.2d 842 (1974).

FN3. The burden, it should be noted, is no different from that imposed by more common ordinances that restrict to commercial zones of a city movie theaters generally as well as other types of businesses presenting similar traffic, parking, safety, or noise problems. After a half century of sustaining traditional zoning of this kind, there is no reason to believe this Court would invalidate such an ordinance as violative of the First Amendment_ The only difference between such an ordinance and the Detroit ordinance lies in the reasons for regulating the location of adult theaters. The special public interest that supports this ordinance is certainly as substantial as the interests that support the normal area zoning to which all movie theaters, like other commercial

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establishments, long have been subject.

*x2457 In these circumstances, it is appropriate to analyze the permissibility of Detroit's action under the four-part test of United States v. O'Brien, 391 U.S. 367, 377, 88 S.Ct. 1673, 1679, 20 L.Ed.2d 672 (1968). Under that test, a governmental regulation is sufficiently justified, despite its incidental impact upon First Amendment interests, "if it is within the constitutional power of the Government; if it furthers an important or substantial governmental interest; if the governmental interest is unrelated to the suppression of free *80 expression; and if the incidental restriction on . . . First Amendment freedoms is no greater than is essential to the furtherance of that interest." Ibid. The factual distinctions between a prosecution for destruction of a Selective Service registration certificate, as in *O'Brien,* and this case are substantial, but the essential weighing and balancing of competing interestare the same. Cf. Procunier v. Martinez, 416 U.S., at 409-412, 94 S.Ct., at 1809-1810.

There is, as noted earlier, no question that the ordinance was within the power of the Detroit Common Council to enact. See Berman v. Parker, 348 U.S., at 32, 75 S.Ct., at 102. Nor is there doubt that the interests furthered by this ordinance are both important and substantial. Without stable neighborhoods, both residential and commercial, large sections of a modem city quickly can deteriorate into an urban jungle with tragic consequences to social, environmental, and economic values. While I agree with respondents that no aspect of the police power enjoys immunity from searching constitutional scrutiny, it also is undeniable that zoning, when used to preserve the character of specific areas of a city, is perhaps "the most essential function performed by local government, for it is one of the primary means by which we protect that sometimes difficult to define concept of quality of life. " Village of Belle Terre v. Boraas, 416 U.S., at 13, 94 S.Ct., at 1543 (Marshall, J., dissenting).

The third and fourth tests of O'Brien also are met on this record. It is clear both from the chronology and from the facts that Detroit has not embarked on an effort to suppress free expression. The ordinance was already in existence, and its purposes clearly set out, for a full decade before adult establishments were brought under it. When this occurred, it is clear indeed it is not seriously challenged that the governmental interest prompting the inclusion in the ordinance 'of adult establishments was wholly unrelated to any suppression of *81 free expression. [FN4] Nor is there reason to question**2458 that the degree of incidental encroachment upon such expression was the minimum necessary to further the purpose *82 of the ordinance. The evidence presented to the Common Council indicated that the urban deterioration was threatened, not by the concentration of all movie theaters with other "regulated uses, " but only by a concentration of those that elected to specialize in adult movies. [FN5] The case. would present a different situation had Detroit brought within the ordinance types of theaters that had not been shown to contribute to the deterioration of surrounding areas. [FN6]

FN4. Respondents attack the nature of the evidence upon which the Common Council acted in bringing adult entertainment establishments under the ordinance, and which petitioners submitted to the District Court in support of it. That evidence consisted of reports and affidavits from sociologists and urban *planning* experts, as well as some laymen, on the cycle of decay that had been started in areas of other cities, and that could be expected in Detroit, from the influx and concentration of such establishments. Respondents insist that a major part of that cycle is a kind of "self-fulfilling prophecy" in which a business establishment neighboring on several of the "regulated uses" perceives that the area is going downhill economically, and moves out, with the result that a less desirable establishment takes its place thus fulfilling the prophecy made by the more reputable business. As noted earlier, Supra, at 2454, respondents have tried to analogize these types of fears to the apprehension found insufficient in previous cases to justify stifling free expression. But cases like Cox and Terminiello, upon which respondents rely, involved individuals desiring to express Their own messages rather than commercial exhibitors of films or vendors of books. When an individual or a group of individuals is silenced, the message itself is silenced and free speech is stifled_ In the context of movies and books, the more apt analogy to Cox or Terminiello would be the censorship cases, in which a State or a municipality attempted to suppress copies of particular works, or the licensing cases in which that danger was presented. But a zoning ordinance that merely specifies where a theater may locate, and that does not reduce significantly the number or accessibility of theaters presenting particular films, stifles no expression. Moreover, the Common Council did not inversely zone adult theaters in an effort to protect citizens against the Content of adult movies. If that had

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been its purpose, or the effect of the amendment to the ordinance, the case might be analogous to those cited by Mr. Justice STEWART's dissent, Post, at 2459. Moreover, an intent or purpose to restrict the communication itself because of its nature would make the O'Brien test inapplicable. See O'Brien, 391 U.S., at 382, 88 S.Ct., at 1681; Spence v. Washington, 418 U.S., at 414 n. 8, 94 S.Ct., at 2732; cf. Stromberg v. California, 283 U.S. 359, 51 S.Ct. 532, 75 L.Ed. 1117 (1931). But the Common Council simply acted to protect the economic integrity of large areas of its city against the effects of a predictable interaction between a concentration of certain businesses and the responses of people in the area. If it had been concerned with restricting the message purveyed by adult theaters, it would have tried to close them or restrict their number rather than circumscribe their choice as to location.

FN5. Respondents have argued that the Common Council should have restricted adult theaters' hours of operation or their exterior advertising instead of refusing to allow their clustering with other "regulated uses." Most of the ill effects, however, appear to result from the clustering itself rather than the operational characteristics of individual theaters. Moreover, the ordinance permits an exception to its 1,000-foot restriction in appropriate cases. See Ante, at 2444 n. 7.

FN6. In my view Mr. Justice STEWART's dissent misconceives the issue in this case by insisting that it involves an imper-missible time, place, and manner restriction based on the content of expression. It involves nothing of the kind. We have here merely a decision by the city to treat certain movie theaters differently because they have markedly different effects upon their surroundings. See n. 3, Supra. Moreover, even if this were a case involving a special governmental response to the content of one type of movie, it is possible that the result would be supported by a line of cases recognizing that the government can tailor its reaction to different types of speech according to the degree to which its special and overriding interests are implicated. See, E_ g., Tinker v. Des Moines School Dist., 393 U.S. 503, 509-511, 89 S.Ct. 733, 737-739, 21 L.Ed.2d 731 (1969); Procunier v. Martinez, 416 U.S. 396, 413-414, 94 S.Ct. 1800, 1811, 40 L.Ed.2d 224 (1974); Greer v. Spock, 424 U.S. 828, 842-844, 96 S.Ct. 1211, 1219-1220, 47 L.Ed2d 505 (1976) (Powell, J., concurring); cf. CSC v. Letter Carriers, 413 U.S. 548, 93 S.Ct. 2880, 37 L.Ed.2d 796 (1973). It is not analogous to Police Dept. of Chicago v. Mosley, 408 U.S. 92, 92 S.Ct. 2286, 33 L.Ed2d 212 (1972), in which no clovernmental interest justified a distinction between the types of messages permitted in the public forum there involved.

*33 IV

The dissenting opinions perceive support for their position in Erznoznik v. City of Jacksonville, 422 U.S. 205, 95 S.Ct. 2268, 45 L.Ed.2d 125 (1975). 1 believe this perception is a clouded one. The Jacksonville and Detroit ordinances are quite dissimilar, and our analysis of the infirmities of the former is inapplicable to the latter. In Erznoznik, an ordinance purporting to prevent a nuisance, not a comprehensive zoning ordinance, prohibited the showing of films containing nudity by drive-in theaters when the screens were visible from a public street or place. The governmental interests advanced as justifying the ordinance were three: (i) to protect citizens from unwilling exposure to possibly offensive material; (ii) to protect children from such materials; and (iii) to prevent the slowing of passing traffic and the likelihood of resulting accidents. We found the Jacksonville ordinance on its face either overbroad or underinclusive with respect to each of these asserted purposes. As to the first purpose, the ordinance was overbroad because it proscribed the showing of any nudity, however innocent or educational. Moreover, potential viewers who deemed particular nudity to be offensive were not captives; they had only to look elsewhere. Id., at 210-212, 95 S.Ct., at 2273-2274; see Cohen v. California, 403 U.S., at 21, 91 S.Ct., at 1786. As to minors the Jacksonville ordinance was overbroad because it "might prohibit newsreel scenes of the opening of an art exhibit as well as shots of bathers on a beach." 422 U.S., at 213, 95 S.Ct., at 2275. Finally, the **2459 ordinance was not rationally tailored to support its asserted purpose as a traffic regulation. By proscribing "even the most fleeting and innocent glimpses of nudity," it was strikingly underinclusive omitting "a wide variety *84 of other scenes in the customary screen diet . . . (that) would be (no) less distracting to the passing motorist. " Id. , at 214-215, 95 S.Ct., at 2275.

In sum, the ordinance in Erznoznik was a misconceived attempt directly to regulate content of expression. The Detroit zoning ordinance, in contrast, affects expression only, incidentally and in furtherance of governmental interests wholly unrelated to the regulation of expression. At least as applied to respondents, it does not offend the First Amendment. Although courts must be alert to the possibility of direct rather than incidental effect of zoning on expression, and especially to the

possibility of using the power to zone as a pretext for suppressing expression, it is clear that this is not such a case.

Mr. Justice STEWART, with whom Mr. Justice BRENNAN, Mr. Justice MARSHALL, and Mr. Justice BLACKMUN join, dissenting.

The Court today holds that the First and Fourteenth Amendments do not prevent the city of Detroit from using a system of prior restraints and criminal sanctions to enforce content-based restrictions on the geographic location of motion picture theaters that exhibit nonobscene but sexually oriented films. I dissent from this drastic departure from established principles of First Amendment law.

This case does not involve a simple zoning ordinance, [FN1] or a content- neutral time, place, and manner restriction, [FN2]*85 or a regulation of obscene expression or other speech that is entitled to less than the full protection of the First Amendment. [FN3] The kind of expression at issue here is no doubt objectionable to some, but that fact does not diminish its protected status any more than did the particular content of the "offensive" expression in Erznoznik v. City of Jacksonville, 422 U.S. 205, 95 S.Ct. 2268, 45 L.Ed.2d 125 (display of nudity on a drive-in movie screen); Lewis v. City of New Orleans, 415 U.S. 130, 94 S.Ct. 970, 39 L.Ed.2d 214 (utterance of-vulgar epithet); Hess v. Indiana, 414 U.S. 105, 94 S.Ct. 326, 38 L.Ed.2d 303 (utterance of vulgar remark); Papish v. University of Missouri Curators, 410 U.S. 667, 93 S.Ct_ 1197, 35 L.Ed_2d 618 (indecent remarks in campus newspaper); Cohen v. California, 403 U.S. 15, 91 S.Ct. 1780, 29 L.Ed.2d 284 (wearing of clothing inscribed with a vulgar, remark); Brandenburg v. Ohio, 395 U.S. 444, 89 S.Ct. 1827, 23 L.Ed.2d 430 (utterance of racial slurs); or Kingsley Pictures Corp. v. Regents, 360 U.S. 684, 79 S.Ct. 1362, 3 L.Ed.2d 1512 (alluring portrayal of adultery as proper behavior).

FNl. Contrast Village of Belle Terre v. Boraas, 416 U.S. 1, 94 S.Ct. 1536, 39 L.Ed.2d 797, which upheld a zoning ordinance that restricted no substantive right guaranteed by the Constitution.

FN2. Here, as in Police Dept_ of Chicago v. Mosley, 408 U.S. 92, 92 S.Ct. 2286, 33 L.Ed.2d 212, and Erznoznik v. City of Jacksonville, 422 U.S. 205, 95 S.Ct. 2268, 45 L.Ed.2d 125, the State seeks to impose a selective restraint on speech with a particular content. It is not all movie theaters which must comply with Ordinances No. 742-G and No. 743-G, but only those "used for presenting material distinguished or characterized by an emphasis on matter depicting, describing or relating to 'Specified Sexual Activities' or 'Specified Anatomical Areas' . . . ." The ordinances thus " 'sli(p) from the neutrality of time, place, and circumstance into a concern about content.' This is never permitted." Police Dept_ of Chicago v. Mosley, supra, 408 U.S., at 99, 92 S.Ct., at 2292 (citation omitted). See, E. g., Hudgens v. NLRB, 424 U.S. 507, 520, 96 S.Ct. 1029, 1037, 47 L.Ed.2d 196, Grayned v. City of Rockford, 408 U.S. 104, 115, 92 S.Ct. 2294, 2302, 33 L.Ed.2d 222.

FN3 . The regulatory scheme contains no provision for a judicial determination of obscenity. As the Court of Appeals correctly held, the material displayed must therefore, be presumed to be fully protected by the First Amendment. 518 F.2d 1014, 1019.

What this case does involve is the constitutional permissibility of selective interference with protected speech whose content is thought to produce distasteful effects. It is *`12460 elementary that a prime function of the First Amendment is to guard against just such interference. [FN4] By refusing to invalidate Detroit's ordinance the Court rides roughshod over cardinal principles of First Amendment *86 law, which require that time, place, and manner regulations that affect protected expression be content neutral except in the limited context of a captive or juvenile audience_ [FN5] In place of these principles the Court invokes a concept wholly alien to the First Amendment. Since "few of us would march our sons and daughters off to war to preserve the citizen's right to see 'Specified Sexual Activities' exhibited in the theaters of our choice, " Ante, at 2452, the Court implies that these films are not entitled to the full protection of the Constitution. This stands "Voltaire's immortal comment," Ibid., on its head. For if the guarantees of the First Amendment were reserved for expression that more than a "few of us" would take up arms to defend, then the right of free expression would be defmed and circumscribed by current popular opinion. The guarantees of the Bill of Rights were designed, to protect against precisely such majoritarian limitations on individual liberty. [FN6]

FN4. See, E. g., Terminiello v. Chicago, 337 U.S. 1, 4-5, 69 S.Ct. 894, 895-896, 93 L.Ed. 1131.

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FN5. See, E. g., Hudgens v. NLRB, supra; Erznoznik v. City of Jacksonville, supra; Police Dept. of Chicago v. Mosley, supra. This case does not involve state regulation narrowly aimed at preventing objectionable communication from being thrust upon an unwilling audience. See Erznoznik v. City of Jacksonville, supra, 422 U.S., at 209, 95 S.Ct., at 2272. Contrast Lehman v. City of Shaker Heights, 418 U.S. 298, 94 S.Ct. 2714, 41 L.Ed.2d 770; Rowan v. Post Office Dept., 397 U.S. 728, 90 S.Ct. 1484, 25 L.Ed2d 736. Nor is the Detroit ordinance narrowly aimed at protecting children from exposure to sexually oriented displays that would not be judged obscene by adult standards. Contrast Ginsberg v. New York, 390 U.S. 629, 88 S.Ct. 1274, 20 L.Ed.2d 195.

FN6. See, E. g., Terminiello v. Chicago, supra, 337 U.S., at 4-5, 69 S_Ct., at 895-896. The Court stresses that Detroit's content-based regulatory system does not preclude altogether the display of sexually oriented films_ But, as the Court noted in a similar context in Southeastern Promotions, Ltd. v. Conrad, 420 U.S. 546, 95 S.Ct. 1239, 43 L.Ed.2d 448, this is constitutionally irrelevant, for " one is not to have the exercise of his liberty of expression in appropriate places abridged on the plea that it may be exercised in some other place.' " Id., at 556, 95 S.Ct., at 1245, quoting Schneider v. State, 308 U.S. 147, 163, 60 S.Ct. 146, 151, 84 L.Ed. 155. See also Interstate Circuit v. Dallas, 390 U.S. 676, 88 S_Ct. 1298, 20 L.Ed.2d 225; Bantam Books, Inc. v-Sullivan, 372 U.S. 58, 83 S.Ct. 631, 9 L.Ed.2d 584.

*87 The fact that the "offensive" speech here may not address "important" topics "ideas of social and political significance," in the Court's terminology, Ante, at 2447 does not mean that it is less worthy of constitutional protection. "Wholly neutral futilities . . . come under the protection of free speech as fully as do Keats' poems or Donne's sermons. " Winters v. New York, 333 U.S. 507, 528, 68 S.Ct. 665, 676, 92 L.Ed. 840 (Frankfurter, J., dissenting); accord, Cohen v. California, supra, 403 U.S., at 25, 91 S.Ct., at 1788. Moreover, in the absence of a judicial determination of obscenity, it is by no means clear that the speech is not "important" even on the Court's terms. "(S)ex and obscenity are not synonymous. . . . The portrayal of sex, E. g., in art, literature and scientific works, is not itself sufficient reason to deny material the constitutional protection of freedom of speech and press. Sex, a great and mysterious motive force in human life, has indisputably been a subject of absorbing interest to mankind through the ages; it is one of the vital problems of human interest and public concern. " Roth v. United States, 354 U.S. 476, 487, 77 S.Ct. 1304, 1310, 1 L.Ed.2d 1498 (footnotes omitted). See also Kingsley Pictures Corp. v. Regents, supra, 360 U.S., at 688-689, 79 S.Ct., at 1365.

I can only interpret today's decision as an aberration. The Court is undoubtedly sympathetic, as am I, to the well-intentioned efforts of Detroit to "clean up" its streets and prevent the proliferation of "skid rows." But' it is in those instances where protected speech grates most unpleasantly against the sensibilities that judicial vigilance must be at its height_

**2461 Heretofore, the Court has not shied from its responsibility to protect "offensive" speech from governmental interference. Just last Term in Erznoznik v. City of Jacksonville, supra, the Court held that a city could not, consistently with the First and Fourteenth Amendments, make it a public nuisance for a drive-in movie theater to show films containing nudity if the screen were visible *88 from a public street or place. The factual parallels between that case and this one are striking. There, as here, the ordinance did not forbid altogether the "distasteful" expression but merely required alteration in the physical setting of the forum. There, as here, the city's principal asserted interest was in minimizing the "undesirable" effects of speech having a particular content. And, most significantly, the particular content of the restricted speech at issue in Erznoznik precisely parallels the content restriction embodied in s 1 of Detroit's definition of "Specified Anatomical Areas. " Compare Jacksonville Municipal Code s 330.313 with Detroit Ordinance No. 742-G, s 32.0007. In short, Erznoznik is almost on "all fours" with this case.

The Court must never forget that the consequences of rigorously enforcing the guarantees of the First Amendment are frequently unpleasant. Much speech that seems to be of little or no value will enter the market place of ideas, threatening the quality of our social discourse and, more generally, the serenity of our lives. But that is the price to be paid for constitutional freedom.

Mr. Justice BLACKMUN, with whom Mr. Justice BRENNAN, Mr. Justice STEWART, and Mr. Justice MARSHALL join, dissenting.

I join Mr. Justice STEWART's dissent, and write

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separately to identify an independent ground on which, for me, the challenged ordinance is unconstitutional. That ground is vagueness.

We should put ourselves for a moment in the shoes of the motion picture exhibitor. Let us suppose that, having previously offered only a more innocuous fare, he *89 decides to vary it by exhibiting on certain days films from a series which occasionally deals explicitly with sex. The exhibitor must determine whether this places h theater into the "adult" class prescribed by the challenged ordinance. If the theater is within that class, it must be licensed, and it may be entirely prohibited, depending on its location.

"Adult" status Vel non depends on whether the theater is "used for presenting" films that are "distinguished or characterized by an emphasis on" certain specified activities, including sexual intercourse, or specified anatomical areas. [FNI] It will be simple enough, as the operator screeiis films, to tell when one of these areas or activities is being depicted, but if the depiction represents only a part of the films' subject matter, I am at a loss to know how he will tell whether they are "distinguished or characterized by an emphasis" on those areas and activities. The ordinance gives him no guidance. Neither does-it instruct him on how to tell whether, assuming the films in question are thus "distinguished or characterized," his theater is being "used for presenting" such films. That phrase could mean Ever used, Often used, or Predominantly used, to name a few possibilities.

FN1. See Ante, 2443-2445, and an. 3-7. I reproduce, or cite specifically to, only those sections of the challenged ordinance that are not set out in the Court's opinion.

Let us assume the exhibitor concludes that the film series will render his showhouse an "adult" theater. He still must determine whether the operation of the theater is prohibited by virtue of there being two other "regulated uses" within 1,000 feet. His task of determining whether his own theater is "adult" is suddenly multiplied by however many neighbors he may have that arguably are within that same class. He must, in other *90 words, know and **2462 evaluate not only his own films, but those of any competitor within 1,000 feet. And neighboring theaters are not his only worry, since the list of regulated uses also includes "adult" bookstores, "Group 'D' Cabaret(s)," sellers of alcoholic beverages for consumption on the premises, hotels, motels, pawnshops, pool halls, public lodging houses, "secondhand stores," shoeshine parlors, and "taxi dance halls." The exhitor must master all these definitions. Some he will find very clear, of course; others less so. A neighboring bookstore is "adult," for example, if a "substantial or significant portion of its stock in trade" is "distinguished or characterized" in the same way as the films shown in an "adult" theater.

The exhibitor's compounded task of applying the statutory definitions to himself and his neighbors, furthermore, is an ongoing one. At any moment he could become a violator of the ordinance because some neighbor has slipped into a "regulated use" classification. He must know, for example, if the adjacent hotel has opened a bar or shoeshine "parlor" on the premises, though he may still be uncertain whether the hotel as a whole constitutes more than one "regulated use." He must also know the moment when the stock in trade of neighboring bookstores and theaters comes to be of such a character, and predominance, as to render them "adult." Lest he let down his guard, he should remember that if he miscalculates on any of these issues, he may pay a fine or go to jail. [FN2]

FN2. Official Zoning Ordinance of Detroit s 69.000.

It would not be surprising if, under the circumstances, the exhibitor chose to forgo showing the film series altogether. Such deterrence of protected First Amendment activity in the "gray area" of a statute's possible *91 coverage is, of course, one of the vices of vagueness. A second is the tendency of vague statutory standards to grant excessive and effectively unreviewable discretion to the officials who enforce those standards. That vice is also present here. It is present because the vague standards already described are left to the interpretation and application of law enforcement authorities. [FN3] It is introduced even more dangerously by the indefinite standards under which city officials are empowered to grant or deny licenses for "adult" theaters, and also waivers of the 1,000-foot rule. [FN4]

FN3. A special opportunity for arbitrary or discriminatory application of the ordinance is apparently supplied by the operation of the

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1,000-foot rule. Presumably, only one of three "regulated uses" within a 1,000-foot area must be eliminated in order for the remaining two to become legal. For all that appears from the ordinance, the choice of which use to eliminate is left entirely to the enforcement authorities.

FN4. These two features of the ordinance constitute prior restraints and are challengeable on that ground alone. Cf. Southeastern Promotions, Ltd. v. Conrad, 420 U.S. 546, 95 S.Ct. 1239, 43 L.Ed.2d =148 (1975). Since, for me, the most glaring defect in the operation of these restraints is the vagueness of the standards governing their applications, however, only the vagueness point is pursued here.

All "adult" theaters must be licensed, and licenses are dispensed by the mayor. The ordinance does not specify the criteria for licensing, except in one respect. The mayor is empowered to refuse an "adult" theater license, or revoke it at any time,

"upon proof submitted to him. of the violation . . . within the preceding two years, of any criminal statute . . . or (zoning) ordinance . . . which evidences a flagrant disregard for the safety or welfare of either the patrons, employees, or persons residing or doing business nearby. " Code of Detroit s 5- 2-3.

*92 If the operation of an "adult" theater would violate the 1,000-foot rule, the exhibitor must obtain the approval not only of the mayor but of the City Planning Commission, which is empowered to waive the rule. It may grant a waiver if it finds that the operation of an "adult" theater, in addition to satisfying several more definite criteria, "will not be contrary to the public interest or injurious to nearby properties," or violative of "the spirit and intent" of the ordinance.

**2463 11

Just the other day, in Hynes v. Ylayor of Oradell, 425 U.S. 610, 96 S.Ct. 1755, 48 L.Ed.2d 243 (1976), we reaffirmed the principle that in the First Amendment area " 'government may regulate . . . only with narrow specificity,' " NAACP v. Button, 371 U.S. 415, 433, 83 S.Ct. 328, 338, 9 L.Ed_2d 405 (1963), avoiding the use of language that is so vague that "men of common intelligence must necessarily guess at its meaning." Connally v. General Constr. Co., 269 U.S. 385, 391, 46 S.Ct. 126, 127, 70 L.Ed. 322 (1926). In Hynes we invalidated for its vagueness an ordinance that required. "Civic Groups and Organizations," and also anyone seeking to "call from house to house . . . for a recognized charitable . . . or . . . political campaign or cause, " to register with the local police "for identification only. " We found it intolerably unclear what "Groups and Organizations" were encompassed, what was meant by a "cause, " and what was required by way of "identification. " I fail to see how a statutory prohibition as difficult to understand and apply as the 1,000-foot rule for "adult" theaters can survive if the ordinance in Hynes could not.

The vagueness in the licensing and waiver standards of this ordinance is more pernicious still. The mayor's power to deny a license because of "flagrant disregard" for the "safety or welfare" of others is apparently exercisable only over those who have committed some *93 infraction within the previous two years, [FN5] but I do not see why even those persons should be subject to standardless licensing discretion of precisely the kind that this Court so many times has condemned. See *Shuttlesworth v. Birmingham,* 394 U.S. 147, 89 S.Ct. 935, 22.Ed.2d 162 (1969); Staub v. City of Baxley, 355 U.S. 313, 78 S.Ct. 277, 2 L.Ed.2d 302 (1958); Kunz v. New York, 340 U.S. 290, 71 S.Ct. 312, 95 L.Ed. 280 (1951); Niemotko v. Maryland, 340 U.S. 268, 71 S.Ct. 325, 95 L_Ed. 267 (1951); Saia v. New York, 334 U.S. 558, 68 S.Ct. 1148, 92 L.Ed. 1574 (1948); Schneider v. State, 308 U.S. 147, 163-164, 60 S.Ct. 146, 151-152, 84 L.Ed. 155 (1939); Hague v. CIO, 307 U.S. 496, 59 S.Ct. 954, 83 L.Ed. 1423 (1939); Lovell v. Griffin, 303 U.S. 444, 58 S.Ct. 666, 82 L.Ed. 949 (1938). For the exhibitor who must obtain a waiver of the 1,000-foot rule, the City Planning Commission likewise functions effectively as a censor, constrained only by its perception of the "public interest" and the "spirit and intent" of the ordinance. This Court repeatedly has invalidated such vague standards for prior approval of film exhibitions. See Interstate Circuit v. Dallas, 390 U.S. 676, 683, 88 S.Ct. 1298, 1302, 20 L.Ed.2d 225 (1968), and cases cited. [FN6] Indeed, a standard much like the waiver standard*94 in this case was the one found wanting in Gelling v. Texas, 343 U.S. 960, 72 S.Ct. 1002, 96 L.Ed. 1359 (1952) (censor could ban films "of such character as to be prejudicial to the best interests of the people of said City").

FN5. The ordinance empowers the mayor to act "upon proof submitted to him of (a) violation." It is possible that he may entertain evidence not only

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of convictions but also of violations themselves, even though these have not been otherwise adjudicated. Whether legal infractions must be otherwise adjudicated or not, the mayor clearly retains the power to revoke a license for "flagrant disregard, " should infractions occur at any time after the license's issuance.

FN6. Interstate Circuit disposes of any argument that excessively vague standards may be permitted here because the film exhibitions are not banned entirely, but merely prohibited in a particular place. The ordinance invalidated in Interstate Circuit required exhibitors to submit films for official determination whether persons under 16 should be excluded from the film exhibitions. It thus threatened the exhibitor with a loss of only part of his audience. The effect of the present ordinance is more severe, since if the exhibitor has only one theater, he is completely foreclosed. See also Southeastern Promotions, Ltd. v. Conrad, 420 U.S., at 556 n. 8, 95 S.Ct., at 1245.

It is true that the mayor and the Planning Commission review the applications of theaters, rather than individual films. It might also be argued that at least if they adhere to the "spirit and intent" of the ordinance, their principal concern will be *'12464 with the blighting of the cityscape, rather than that of the minds of their constituents. But neither of these aspects of the. case alters its. basic and dispositive facts: persons seeking to exhibit "adult," but protected, films must secure, in many cases, the prior approval of the mayor and City Planning Commission; they inevitably will make their decisions by reference to the content of the proposed exhibitions; they are not constrained in doing so by "narrowly drawn, reasonable and definite standards." Niemotko v. Maryland, 340 U.S., at 271, 71 S.Ct., at 327. This may be a permissible way to control pawnshops, pool halls, and the other "regulated uses" for which the ordinance was originally designed. It is not an acceptable way, in the light of the First Amendment's presence, to decide who will be permitted to exhibit what films in what places.

The Court today does not really question these settled principles, or raise any doubt that if they were applied in this case, the challenged ordinance would not survive. The Court reasons, instead, that these principles need not be applied in this case because the plaintiffs themselves are clearly within the ordinance's proscriptions, and thus not affected by its vagueness. Our usual practice, as the Court notes, is to entertain facial challenges based on vagueness and overbreadth by anyone subject to a statute's proscription. The reasons given for departing *95 from this practice are (1) that the ordinance will have no "significant deterrent effect on the exhibition of films protected by the First Amendment"; (2) that the ordinance is easily susceptible of "a narrowing construction"; and (3) that "there is surely a less vital interest in the uninhibited exhibition of material that is on the borderline between pornography and artistic expression than in the free dissemination of ideas of social and political significance." Ante, at 2447.

As to the first reason, I disagree on the facts, as is clear from the initial section of this opinion. [FN7] As to the second, no easy "narrowing construction" is proposed, and I doubt that one exists, particularly since (due to the operation of the 1,000-foot rule) not only the "used for presenting" and "characterized by an emphasis" language relating to "adult" theaters, and the "flagrant disregard" and "public interest" language of the licensing and waiver provisions, but also the definitions of Other regulated uses must all be reduced to specificity. See also Hynes v. Mayor of Oradell, 425 U.S., at 622, 96 S.Ct., at 1761. ("we are without power to remedy the (vagueness) defects by giving the ordinance constitutionally precise content").

FN7. In Erznoznik v. City of Jacksonville, 422 U.S. 205, 95 S.Ct. 2268, 45 L.Ed_2d 125 (1975), the case on which the Court relies for the proposition that only statutes having a "significant deterrent effect" may be facially challenged, such an effect in fact was found to exist. The ordinance there at issue prohibited drive-in theaters from exhibiting films in which nude parts of the human body would be "visible from any public street or public place." We perceived a "real and substantial" deterrent effect in the "unwelcome choice" to which the ordinance put exhibitors: "either (to) restrict their movie offerings or construct adequate protective fencing which may be extremely expensive or even physically impracticable." Id., at 217, 95 S.Ct., at 2277. In the present case the second horn of the dilemma is even sharper: the construction (or acquisition) of an entirely new theater.

*96 As the third reason, that "adult" material is simply entitled to less protection, it certainly explains the lapse in applying settled vagueness principles, as indeed it explains this whole case. In joining Mr. Justice STEWART I have joined his

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forthright rejection of the notion that First Amendment protection is diminished for "erotic materials" that only a "few of us" see the need to protect.

We should not be swayed in this case by the characterization of the challenged ordinance as merely a "zoning" regulation, or by the "adult" nature of the affected material. By whatever name, this ordinance prohibits the showing of certain films in certain places, imposing criminal sanctions **2465 for violation of the ban. And however distasteful we may suspect the films to be, we cannot approve their suppression without any judicial finding that they are obscene under this Court's carefully delineated and considered standards.

96 S.Ct. 2440, 427 U.S. 50, 49 L.Ed.2d 310, 1 Nledia L. Rep. 1151

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Supreme Court of the United States

FW/PBS, INC., dba Paris Adult Bookstore II, et al., Petitioners
v.
CITY OF DALLAS et al.
M.J.R., INC., et al., Petitioners
v.
CITY OF DALLAS.
Calvin BERRY, III, et al., Petitioners
v.
CITY OF DALLAS et al.

Nos. 87-2012, 87-2051 and 88-49.

Argued Oct. 4, 1989.
Decided Jan. 9, 1990.

Petitioners involved with adult entertainment industry adversely affected by zoning and licensing ordinance, sued for declaratory and injunctive relief. The United States District Court for the Northern District of Texas, Jerry Buchmeyer, J., 648 F.Supp. 1061, held ordinance was not violative of First or Fourth Amendments, and petitioners appealed. The Court of Appeals for the Fifth Circuit, 837 F.2d 1298, affirmed, and certiorari was granted. The Supreme Court, Justice O'Connor, held that: .__ (1) petitioners could challenge facial validity of ordinance, on First Amendment prior restraint grounds; (2) ordinance's failure to provide reasonable period during which decision whether to issue license must be made, and to provide avenue for prompt judicial review of adverse decision, rendered licensing requirements unconstitutional as enforced against petitioners engaged in First Amendment activity; (3) petitioners lacked standing to challenge ordinance provisions barring persons residing with individuals whose licenses to conduct sexually oriented businesses had been denied or revoked, or prohibiting applicants for such licenses who were convicted of specified offenses or whose spouses were so convicted, from obtaining such licenses; (4) petitioners lacked standing to challenge ordinance denying licenses to applicants who were convicted of enumerated crimes; (5) city council did not violate due process rights of motel owners by declaring that motels renting rooms for less than ten hours were "sexually oriented businesses" subject to ordinance; and (6) determination that such motels were "sexually oriented businesses" did not impinge upon the freedom of association rights of occupants of rooms.

Affirmed in part, reversed in part, vacated in part, and remanded.

Justice Brennan concurred in judgment and filed opinion, in which Justices Marshall and Blackmun joined.

Justice White concurred in part and dissented in part and filed opinion, in which the Chief Justice joined.

Justice Stevens concurred in part and dissented in part and filed opinion.

Justice Scalia concurred in part and dissented in part and filed opinion.

Opinion on remand, 896 F.2d 864.

West Headnotes

[1] Constitutional Law 042.2(1)
92k42.2(1)

Petitioners associated with sexually oriented businesses could raise facial constitutional challenge to city licensing . ordinance applicable to such businesses, on First Amendment prior restraint grounds; ordinance vested "unbridled discretion" in licensor, as required for facial challenge, as there was no time limit during which licensing authority was required to act. (Per Justice O' Connor, with two Justices concurring and three Justices concurring in judgment). U.S.C.A. Const.Amend. 1.

[2] Constitutional Law 042.2(1)
92k42.2(l)

Petitioners associated with sexually oriented businesses had valid First Amendment interest in challenging ordinance requiring licensing of such businesses, even though ordinance applied to some businesses that apparently were not protected by First Amendment, such as escort agencies and sexual encounter centers; ordinance largely targeted businesses purveying sexual explicit speech, which were conceded to be protected by First Amendment. (Per Justice O' Connor, with two

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Justices concurring and three Justices concurring in judgment). U.S.C.A. Const.Amend. 1.

[3] Constitutional Law (° 90.4(1)
92k90.4(1)

Ordinance requiring license in connection with the operation of sexually oriented businesses, as enforced, was unconstitutional prior restraint on licensees.' First Amendment rights; ordinance lacked necessary limitation on period of time during which licensor must make decision whether to issue license, during which status quo was maintained, and ordinance did not provide possibility for prompt judicial review in the event license was erroneously denied. (Per Justice O'Connor, with two Justices concurring and three Justices concurring in judgment). U.S.C.A. Const.Amend. 1.

[4] Federal Courts G-461
170Bk461

Although neither party had raised issue of standing, and courts below had not passed on it, Supreme Court was required to consider whether owners of sexually oriented businesses had standing to challenge city ordinance regulating their activities; federal courts are under an independent obligation to examine their own jurisdiction.

[5] Federal Civil Procedurq_~z-103.5
170Ak103.5

Standing to sue cannot be inferred argumentatively from averments in pleadings but must affirmatively appear in record.

[6] Federal Civil Procedure ~ 103.5
170Ak103.5

Party seeking exercise of jurisdiction in its favor has burden to allege facts demonstrating it is proper party to invoke judicial resolution of dispute.

[7] Municipal Corporations (&-121
268k121

Petitioners involved with sexual oriented businesses lacked standing to challenge municipal ordinance prohibiting issuance of license to conduct such businesses to applicant who has resided with individual whose license application has been denied or revoked within preceding 12 months; record did not reveal any petitioner who was living with individual whose license was denied or revoked during applicable period.

[8] Municipal Corporations (&-121
268k121

Petitioners involved with sexually oriented businesses lacked standing to challenge city ordinance which barred applicants who had been convicted of certain enumerated crimes as well as those whose spouses had been convicted of same crimes from obtaining license to operate such businesses, as no petitioner was member of affected class; although one petitioner alleged he had been convicted for enumerated crime and also that his wife was interested in opening sexually oriented business, city council had deleted by amendment crime of which husband was convicted from those enumerated under ordinance.

[9] Municipal Corporations (&-121
268k121

Petitioners involved with sexually oriented businesses lacked standing to challenge provision of city ordinance prohibiting person convicted of any of certain enumerated crimes from obtaining license to conduct such business; record showed only one party with potentially disabling criminal record, and record failed to indicate that five-year period following last conviction or release from confmement, whichever was later, during which prohibition was in effect, had not elapsed.

[10] Municipal Corporations (&-121
268k121

Requirement that evidence of standing to sue be contained in record was not satisfied when attorney for city in suit challenging ordinance denying persons convicted of crime license to operate sexually oriented businesses stated in oral argument that there were one or two petitioners that had their license denied based on criminal conviction.

[11] Municipal Corporations (°-121
268k121

Standing to challenge city ordinance prohibiting persons convicted of certain crimes from obtaining license to conduct sexually oriented businesses could not be established by city's affidavit stating that two licenses were revoked on-grounds of prior conviction; affidavit could not be relied on because

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it was first introduced in Supreme Court proceedings and was not part of record of proceedings below.

[12] Constitutional Law X296(1)
92k296(1)

The due process rights of motel owners were not violated when city adopted ordinance declaring that motels renting rooms for less than ten hours were sexually oriented businesses subject to regulation under ordinance covering such businesses, based only upon 1977 study by another city which allegedly considered only cursorily the effect of "adult" motels on surrounding neighborhoods; reasonableness of legislative. judgment that motels offering short room rental periods fostered prostitution and that such type of criminal activity was what ordinance sought to suppress, combined with the study, was adequate to support determination that motels in question should be included in licensing scheme. U. S. C. A. Const.Amend. 14.

[13] Constitutional Law (&-91
92k91

Assuming that motel owners had standing to claim that ordinance deeming motels permitting rental of rooms for less than ten hours as sexually oriented businesses and imposing-ordinance regulations on such motels on grounds that ordinance violated their customers' constitutional right to freedom of association, such rights were limited to "traditional personal bonds" which have "played a critical role in the culture and traditions of the Nation by cultivating and transmitting shared ideals and beliefs," and ordinance would not have discernible effect on such rights. U.S.C.A. Const_Amend. l.

**598 *215 Syllabus [FN*j

FN* The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Lumber Co., 200 U.S. 321, 337, 26* S.Ct. *282, 287, 50* L.Ed_ 499.

Respondent city of Dallas adopted a comprehensive ordinance regulating "sexually oriented businesses," which are defined to include "adult" arcades, bookstores, video stores, cabarets, motels, and theaters, as well as escort agencies, nude model studios, and sexual encounter centers. Among other things, the ordinance requires that such businesses be licensed and includes civil disability provisions prohibiting certain individuals from obtaining licenses. Three groups of individuals and businesses involved in the adult entertainment industry filed separate suits challenging the ordinance on numerous grounds and seeking injunctive and declaratory relief. The District Court upheld the bulk of the ordinance but struck down several subsections, and the city subsequently amended the ordinance in conformity with the court's judgment. The Court of Appeals affirmed, holding, *inter alia,* that the ordinance's licensing scheme did not violate the First Amendment despite its failure to provide the procedural safeguards set forth in *Freedman v. tlLlaryland,* 380 U.S. 51, 85 S.Ct. 734, 13 L.Ed.2d 649 (1965), and that its civil disability provisions and its provision requiring **599 licensing for "adult motel owners" renting rooms for fewer than 10 hours were constitutional.

Held: The judgment is affirmed in part, reversed in part, and vacated in part, and the cases are remanded.

837 F.2d 1298, (CA 5 1988), affirmed in part, reversed in part, vacated in part, and remanded.

Justice O'CONNOR delivered the opinion of the Court with respect to Parts III and IV, concluding that:

1. No petitioner has shown standing to challenge (1) the ordinance's provision which prohibits the licensing of an applicant who has resided with an individual whose license application has been denied or revoked, or (2) the civil disability provisions, which disable for specified periods those who have been convicted of certain enumerated crimes, as well as those whose spouses have been so convicted. The record does not reveal *216 that any petitioner was living with an individual whose application was denied or whose license was revoked. Moreover, although the record reveals one individual who potentially could be disabled under the spousal conviction provision, that person is not herself a license applicant or a party to this action. Even if she did have standing, however, her claim would now be moot, since the city council deleted from the statutory list the crimes of which her husband was convicted after the District Court ruled that the inclusion of such convictions was unconstitutional. Furthermore, although one party stated in an affidavit that he had been convicted of three enumerated misdemeanors, he lacked

standing, since he failed to state when he had been convicted of the last misdemeanor or the date of his release from confinement and, therefore, has not shown that he is still within the ordinance's disability period. This Court cannot rely on the city's representations at oral argument that one or two of the petitioners had been denied licenses based on convictions, since the necessary factual predicate must be gleaned from the record below. Similarly, the city's affidavit indicating that two licenses were revoked for convictions is unavailing, since the affidavit was first introduced in this Court and is not part of the record, and, in any event, fails to identify the individuals whose licenses were revoked. Because the courts below lacked jurisdiction to adjudicate petitioners' claims, the Court of Appeals' judgment with respect to the disability provisions is vacated, and the court is directed to dismiss that portion of the suit. Pp. 607-610.

2. The ordinance's provision requiring licensing for motels that rent rooms for fewer than 10 hours is not unconstitutional. The motel owner petitioners' contention that the city has violated the Due Process Clause by failing to produce adequate support for its supposition that renting rooms for fewer than 10 hours results in increased crime or other secondary effects is rejected. As the Court of Appeals recognized, it was reasonable to believe that shorter rental time periods indicate that the motels foster prostitution, and that this type of criminal' activity is what the ordinance seeks to suppress. The reasonableness of the legislative judgment, along with the Los Angeles study of the effect of adult motels on surrounding neighborhoods that was before the city council when it passed the ordinance, provided sufficient support for the limitation. Also rejected is the assertion that the 10-hour limitation places an unconstitutional burden on the right to freedom of association recognized in *Roberts v. United States Jaycees,* 468 U.S. 609, 618, 104 S.Ct. 3244, 3249, 82 L.Ed.2d 462. Even assuming that the motel owners have standing to assert the associational rights of motel patrons, limiting rentals to 10 hours will not have any discernible effect on the sorts of traditional personal bonds considered in *Roberts:* those that play a critical role in the Nation's culture and traditions by cultivating and transmitting shared ideals and beliefs. This Court *217 will not consider the motel owners' privacy and commercial speech challenges, since those issues were **600 not pressed or passed upon below. Pp. 610-611.

Justice O'CONNOR, joined by Justice STEVENS and Justice KENNEDY, concluded in Part 11 that the ordinance's licensing scheme violates the First Amendment, since it constitutes a prior restraint upon protected expression that fails to provide adequate procedural safeguards as required by *Freedman, supra. Pp.* 603-607.

(a) Petitioners may raise a facial challenge to the licensing scheme. Such challenges are permitted in the First Amendment context where the scheme vests unbridled discretion in the decisionmaker and where the regulation is challenged as overbroad. Petitioners argue that the licensing scheme fails to set a time limit within which the licensing authority must act. Since *Freedman, supra,* 380 U.S. at 56-57, 85 S.Ct., at 737-38, held that such a failure is a species of unbridled discretion, every application of the ordinance creates an impermissible risk of suppression of ideas. Moreover, the businesses challenging the licensing scheme have a valid First Amendment interest. Although the ordinance applies to some businesses that apparently are not protected by the First Amendment--e.g., escort agencies and sexual encounter centers--it largely targets businesses purveying sexually explicit speech which the city concedes for purposes of this litigation are protected by the First Amendment. While the city has asserted that it requires every business--regardless of whether it engages in First Amendment-protected speech--to obtain a certificate of occupancy when it moves into a new location or the use of the structure changes, the challenged ordinance nevertheless is more onerous with respect to sexually oriented businesses, which are required to submit to inspections--for example, when their ownership changes or when they apply for the annual renewal of their permits--whether or not they have moved or the use of their structures has changed. Pp. 603-604.

(b) *Freedman, supra,* at 58-60, 85 S.Ct., at 738-40, determined that the following procedural safeguards were necessary to ensure expeditious decisionmaking by a motion picture censorship board: (1) any restraint prior to judicial review can be imposed only for a specified brief period during which the status quo must be maintained; (2) expeditious judicial review of that decision must be available; and (3) the censor must bear the burden of going to court to suppress the speech and must bear the burden of proof once in court_ Like a

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censorship system, a licensing scheme creates the possibility that constitutionally protected speech will be suppressed where there are inadequate procedural safeguards to ensure prompt issuance of the license. Thus, the license for a First Amendment-protected business must be issued in a reasonable period of time, and, accordingly, the first two *Freedman* safeguards are essential. Here, although *218 the Dallas ordinance requires the chief of police to approve the issuance of a license within 30 days after receipt of an application, it also conditions such issuance upon approval by other municipal inspection agencies without setting forth time limits within which those inspections must occur. Since the ordinance therefore fails to provide an effective time limitation on the licensing decision, and since it also fails to provide an avenue for prompt judicial review so as to minimize suppression of speech in the event of a license denial, its licensing requirement is unconstitutional insofar as it is enforced against those businesses engaged in First Amendment activity, as determined by the court on remand. However, since the licensing scheme at issue is significantly different from the censorship system examined in *Freedman*, it does not present the grave dangers of such a system, and the First Amendment does not require that it contain the third *Freedman* safeguard. Unlike the *Freedman* censor, Dallas does not engage in presumptively invalid direct censorship of particular expressive material, but simply performs the ministerial action of reviewing the general qualifications of each license applicant. It therefore need not be required to carry the burden of going **601 to court or of there justifying a decision to suppress speech. Moreover, unlike the motion picture distributors considered in *Freedman* --who were likely to be deterred from challenging the decision to suppress a particular movie if the burdens of going to court and of proof were not placed on the censor--the license applicants under the Dallas scheme have every incentive to pursue a license denial through court, since the license is the key to their obtaining and maintaining a business. *Riley v. National Federation of Blind of N. C., Inc.*, 487 U.S. 781, 108 S.Ct. 2667, 101 L.Ed.2d 669 (1988), is not dispositive of this litigation, since, although it struck down a licensing scheme for failing to provide adequate procedural safeguards, it did not address the proper scope of procedural safeguards with respect to such a scheme. Since the Dallas ordinance summarily states that its terms and provisions are severable, the Court of Appeals must, on remand, determine to what extent the licensing requirement is severable. Pp. 604-607.

Justice BRENNAN, joined by Justice MARSHALL and Justice BLACKTMUN, although agreeing that the ordinance's licensing scheme is invalid as to any First Amendment-protected business under the *Freedman* doctrine, concluded that *Riley* mandates application of all three of the *Freedman* procedural safeguards, not just two of them. *Riley v. National Federation of Blind of N.C., Inc.*, 487 U.S. 781, 802, 108 S.Ct., at 2680, applied *Freedman* to invalidate a professional licensing scheme with respect to charity fundraisers who were engaged in First Amendment-protected activity, ruling that the scheme must require that the licensor--i e., the State, not the would-be fundraiser-- either issue a license within a specified brief period *or go to court.* The principal opinion's grounds for declining *219 to require the third *Freedman* safeguard--that the Dallas scheme does not require an administrator to engage in the presumptively invalid task of passing judgment on whether the content of particular speech is protected, and that it licenses entire businesses, not just individual films, so that applicants will not be inclined to abandon their interests--do not distinguish the present litigation from *Riley*, where the licensor was not required to distinguish between protected and unprotected speech, and where the fundraisers had their entire livelihoods at stake. Moreover, the danger posed by a license that prevents a speaker from speaking at all is not derived from the basis on which the license was purportedly denied, but is the unlawful stifling of speech that results. Thus, there are no relevant differences between the fundraisers in *Riley* and the petitioners here, and, in the interest of protecting speech, the burdens of initiating judicial proceedings and of proof must be borne by the city. Pp. 611-613.

O'CONNOR, J., announced the judgment of the Court and delivered the opinion of the Court with respect to Parts I and IV, in which REHNQUIST, C_J., and WHITE, STEVENS, SCALIA, and KENNEDY, JJ., joined, the opinion of the Court with respect to Part III, in which REHNQUIST, C.J., and WHITE, SCALIA, and KENNEDY, JJ., joined, and an opinion with respect to Part II, in which STEVENS and KENNEDY, JJ., joined. BRENNAN, J., filed an opinion concurring in the judgment, in which MARSHALL and BLACKMUN, JJ., joined, *post, p.* 611. WHITE, J., riled an opinion concurring in part and dissenting in part, in which REHNQUIST, C.J.,

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joined, post, p. 614. STEVENS, J., *post, p.* 617, and SCALIA, J., *post, p.* 617, filed opinions concurring in part and dissenting in part.

John H. Weston argued the cause for petitioners in all cases. With him on the briefs for petitioners in No. 87-2051 were G. *Randall Garrou, Cathy E. Crosson,* and *Richard L. Wilson. Arthur Nl. Schwartz* filed briefs for petitioners in No. 87-2012. *Frank P. Hernandez* filed a brief for petitioners in No. 88-49.

Analeslie Muncy argued the cause for respondents in all cases. With her on the brief were *Kenneth C. Dippel* and *Thomas P. Brandt.* < < dagger > >

< < dagger > > Briefs of *amici curiae* urging reversal were filed for the American Booksellers Association, Inc., et al. by *Michael A. Bamberger,*- and for PHE, Inc., by *Bruce J. Ennis, Jr.,* and *Mark D. Schneider.*

Briefs of *amici curiae* urging affirmance were filed for the American Family Association, Inc., by *Peggy Ad. Coleman;* for the Children's Legal Foundation by *Alan E. Sears;* for the National Institute of Municipal Law Officers by *William I. Thornton, Jr., Frank B. Gummey III,* and *William H. Taube;* and for the U. S. Conference of Mayors et al by *Benna Ruth Solomon* and *Peter Buscemi.*

Bruce A. Taylor filed a- brief for Citizens for Decency Through Law, Inc., as *amicus curiae.*

*220 Justice O'CONNOR announced the judgment of the Court and delivered the opinion of the Court with respect to Parts 1, III, and IV, and an opinion with respect to Part II, in which Justice STEVENS and Justice KENNEDY join.

These cases call upon us to decide whether a licensing scheme in a comprehensive city **602 ordinance regulating sexually oriented businesses is a prior restraint that fails to provide adequate procedural safeguards as required by *Freedman v. Maryland,* 380 U.S. 51, 85 S.Ct. 734, 13 L.Ed.2d 649 (1965). We must also decide whether any petitioner has standing to address the ordinance's civil disability provisions, whether the city has sufficiently justified its requirement that motels renting rooms for fewer than 10 hours be covered by the ordinance, and whether the ordinance impermissibly infringes on the right to freedom of association. As this litigation comes to us, no issue is presented with respect to whether the books; videos, materials, or entertainment available through sexually oriented businesses are obscene pornographic materials.

On June 18, 1986, the city council of the city of Dallas unanimously adopted Ordinance No. 19196 regulating sexually oriented businesses, which was aimed at eradicating the secondary effects of crime and urban blight. The ordinance, as amended, defines a "sexually oriented business" as "an adult arcade, adult bookstore or adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, escort agency, nude model studio, or sexual encounter center." Dallas City Code, ch. 41A, Sexually Oriented Businesses § 41A-2(19) (1986). The ordinance regulates sexually oriented businesses through a scheme incorporating zoning, licensing, *221 and inspections. The ordinance also includes a civil disability provision, which prohibits individuals convicted of certain crimes from obtaining a license to operate a sexually oriented business for a specified period of years.

Three separate suits were filed challenging the ordinance on numerous grounds and seeking preliminary and permanent injunctive relief as well as declaratory relief. Suits were brought by the following groups of individuals and businesses: those involved in selling, exhibiting, or distributing publications or video or motion picture films; adult cabarets or establishments providing live nude dancing or films, motion pictures, videocassettes, slides, or other photographic reproductions depicting sexual activities and anatomy specified in the ordinance; and adult motel owners. Following expedited discovery, petitioners' constitutional claims were resolved through cross-motions for summary judgment. After a hearing, the District Court upheld the bulk of the ordinance, striking only four subsections. See *Dumas v. Dallas,* 648 F.Supp. 1061 (ND Tex.1986). The District Court struck two subsections, §§ 41A-5(a)(8) and 41A-5(c), on the ground that they vested overbroad discretion in the chief of police, contrary to our holding in *ShuttZesworth v. Birmingham,* 394 U.S. 147, 150-151, 89 S.Ct. 935, 938-93,9, 22 L.Ed.2d 162 (1969). See 648 F.Supp., at 1072-1073. The District Court also struck the provision that imposed a civil disability merely on the basis of an indictment or information, reasoning that there were less restrictive alternatives to achieve the ciry's

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goals. See id., at 1075 (citing *United States v. O'Brien,* 391 U.S. 367, 88 S.Ct. 1673, 20 L.Ed.2d 672 (1968)). Finally, the District Court held that five enumerated crimes from the list of those creating civil disability were unconstitutional because they were not sufficiently related to the purpose of the ordinance. See 648 F.Supp., at 1074 (striking bribery, robbery, kidnaping, organized criminal activity, and violations of controlled substances Acts). The city of Dallas subsequently *222 amended the ordinance in conformity with the District Court's judgment.

The Court of Appeals for the Fifth Circuit affirmed. 837 F.2d 1298 (1988). Viewing the ordinance as a content-neutral time, place, and manner regulation under *Renton v. Playtime Theatres, Inc.,* 475 U.S. 41, 106 S.Ct. 925, 89 L.Ed.2d 29 (1986), the Court of Appeals upheld the ordinance against petitioners' facial attack on the ground that it is " 'designed to serve a substantial government interest' " and allowed for " 'reasonable alternative avenues of communication.' " 837 **603 F.2d, at 1303 (quoting *Renton, saipra,* at 47, 106 S.Ct., at 928). The Court of Appeals further concluded that the licensing scheme's failure to provide the procedural safeguards set forth in *Freedman v. Alaryland, supra,* withstood constitutional challenge, because such procedures are less important when regulating "the conduct of an ongoing commercial enterprise." 837 F.2d, at 1303.

Additionally, the Court of Appeals upheld the provision of the ordinance providing that motel owners renting rooms for fewer than 10 hours were "adult motel owners" and, as such, were required to obtain a license under the ordinance. See §§ 41A-2(4), 41A-18. The motel owners attacked the provision on the ground that the city had made no fmding that adult motels engendered the evils the city was attempting to redress. The Court of Appeals concluded that the 10-hour limitation was based on the reasonable supposition that short rental periods facilitate prostitution, one of the secondary effects the city was attempting to remedy. See 837 F.2d, at 1304.

Finally, the Court of Appeals upheld the civil disability provisions, as modified by the District Court, on the ground that the relationship between "the offense and the evil to be regulated is direct and substantial." Id., at 1305.

We granted petitioners' application for a stay of the mandate except for the holding that the provisions of the ordinance regulating the location of sexually oriented businesses do not violate the Federal Constitution, 485 U.S. *223 1042, 108 S.Ct. 1605, 99 L.Ed.2d 919 (1988), and granted certiorari, 489 U.S. 1051, 109 S.Ct. 1309, 103 L.Ed.2d 578 (1989). We now reverse in part and affirm in part.

We granted certiorari on the issue whether the licensing scheme is an unconstitutional prior restraint that fails to provide adequate procedural safeguards as required by *Freedman v. rl'laryland,* 380 U.S. 51, 85 S.Ct. 734, 13 L.Ed.2d 649 (1965). Petitioners involved in the adult entertainment industry and adult cabarets argue that the licensing scheme fails to set a time limit within which the licensing authority must issue a license and, therefore, creates the likelihood of arbitrary denials and the concomitant suppression of speech. Because we conclude that the city's licensing scheme lacks adequate procedural safeguards, we do not reach the issue decided by the Court of Appeals whether the ordinance is properly viewed as a content-neutral time, place, and manner restriction aimed at secondary effects arising out of the sexually oriented businesses. Cf. *Southeastern Promotions, Ltd. v. Conrad,-420* U.S. 546, 562, 95 S.Ct. 1239, 1248, 43 L.Ed.2d 448 (1970.

A

[1][2] We note at the outset that petitioners raise a facial challenge to the licensing scheme. Although facial challenges to legislation are generally disfavored, they have been permitted in the First Amendment context where the licensing scheme vests unbridled discretion in the decisionmaker and where the regulation is challenged as overbroad. See *City Council of Los Angeles v. Taxpayers for Vincent,* 466 U.S. 789, 798, and n. 15, 104 S.Ct. 2118, 2125 n. 15, 80 L.Ed.2d 772 (1984). In *Freedman,* we held that the failure to place limitations on the time within which a censorship board decisionmaker must make a determination of obscenity is a species of unbridled discretion. See *Freedman, supra,* 380 U.S., at 56-57, 85 S.Ct., at 737-738 (failure to confme time within which censor must make decision "contains the same vice as a statute delegating excessive administrative discretion"). Thus, where a scheme creates a "[rjisk of delay," 380 U.S., at 55, 85 S.Ct., at 737,

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*224 such that "every application of the statute create[s] an impermissible risk of suppression of ideas," *Taxpayers for Vincent, supra,* 466 U.S., at 798, a. 15, 104 S.Ct. at 2125 n. **604 15, we have permitted parties to bring facial challenges.

The businesses regulated by the city's licensing scheme include adult arcades (defined as places in which motion pictures are shown to five or fewer individuals at a time, see § 41A-2(1)), adult bookstores or adult video stores, adult cabarets, adult motels, adult motion picture theaters, adult theaters, escort agencies, nude model studios, and sexual encounter centers, §§ 41A-2(19) and 41A-3. Although the ordinance applies to some businesses that apparently are not protected by the First Amendment, e.g., escort agencies and sexual encounter centers, it largely targets businesses purveying sexually explicit speech which the city concedes for purposes of these cases are protected by the First Amendment. Cf. *Smith v. California,* 361 U.S. 147, 150, 80 S.Ct. 215, 217, 4 L.Ed.2d 205 (1959) (bookstores); *Southeastern Promotions, Ltd. v. Conrad, supra* (live theater performances); *Young v. American Alini Theatres, Inc.,* 427 U.S. 50, 96 S.Ct. 2440, 49 L.Ed.2d 310 (1976) (motion picture theaters); *Schad v. Mount Ephraim,* 452 U.S. 61, 101 S.Ct. 2176, 68 L.Ed.2d 671 (1981) (nude dancing). As Justice SCALIA acknowledges, *post,* at 624, the city does not argue that the businesses targeted are engaged in purveying obscenity which is unprotected by the First Amendment. See Brief for Respondents 19, 20, and n. 8 ("[T]he city is not arguing that the ordinance does not raise First Amendment concerns.... [T]he right to sell this material is a constitutionally protected right ... "). See also *Miller v. California,* 413 U.S. 15, 23-24, 93 S.Ct. 2607, 37 L.Ed.2d 419 (1973). Nor does the city rely upon *Ginzburg v. United States,* 383 U.S. 463, 86 S.Ct. 942, 16 L.Ed.2d 31 (1966), or contend that those businesses governed by the ordinance are engaged in pandering. It is this Court's practice to decline to review those issues neither pressed nor passed upon below. See *Youakim v. Miller,* 425 U.S. 231, 234, 96 S.Ct. 1399, 1401-02, 47 L.Ed.2d 701 (1976) *(per curiam).*

*225 The city asserted at oral argument that it requires every business-- without regard to whether it engages in First Amendment-protected speech--to obtain a ceni_cate of occupancy when it moves into a new location or the use of the structure changes. Tr. of Oral Arg. 49; see also App. 42, Dallas City Code § 51-1-104 (1988) (certificate of occupancy required where there is new construction or before occupancy if there is a change in use). Under the challenged ordinance, however, inspections are required for sexually oriented businesses whether or not the business has moved into a new structure and whether or not the use of the structure has changed. Therefore, even assuming the correctness of the city's representation of its "general" inspection scheme, the scheme involved here is more onerous with respect to sexually oriented businesses than with respect to the vast majority of other businesses. For example, inspections are required whenever ownership of a sexually oriented business changes, and when the business applies for the annual renewal of its permit. We, therefore, hold, as a threshold matter, that petitioners may raise a facial challenge to the licensing scheme, and that as the suit comes to us, the businesses challenging the scheme have a valid First Amendment interest.

B

[3] While "[p]rior restraints are not unconstitutional *per se* ... [a]ny system of prior restraint ... comes to this Court bearing a heavy presumption against its constitutional validity." *Southeastern Promotions, Ltd. v. Conrad, supra,* 420 U.S., at 558, 95 S.Ct., at 1246. See, e.g., *Lovell v. Griffin,* 303 U.S. 444, 451-452, 58 S.Ct. 666, 668-669, 82 L.Ed. 949 (1938); *Cantwell v. Connecticut;* 310 U.S. 296, 306-307, 60 S.Ct. 900, 904-905, 84 L.Ed. 1213 (1940); Cox v. *New Hampshire,* 312 U.S. 569, 574-575, 61 S.Ct. 762, 765, 85 L.Ed_ 1049 (1941); *Shuttlesworth v. Birmingham,* 394 U.S., at 150-151, 89 S.Ct., at 938-939. Our cases addressing prior restraints have identified two evils that will not be tolerated **605 in such schemes. First, a scheme that places "unbridled discretion in the hands of a government official or agency constitutes a prior restraint '1226 and may result in censorship." *Lakewood v. Plain Dealer Publishing Co.,* 486 U.S. 750, 757, 108 S.Ct. 2138, 2143, 100 L.Ed.2d 771 (1988). See *Saia v. New York,* 334 U.S. 558, 68 S.Ct. 1148, 92 L.Ed. 1574 (1948); *Niemotko v. Maryland,* 340 U.S. 268, 71 S.Ct. 328, 95 L.Ed. 280 (1951); *Kunz v. New York,* 340 U.S. 290, 71 S.Ct. 312, 95 L.Ed. 280 (1951); *Staub v. Cinj of Bailey,* 355 U.S. 313, 78 S.Ct. 277, 2 L.Ed_2d 302 (1958); *Freedman v. Maryland,* 380 U.S. 51, 85 S.Ct. 734, 13 L.Ed.2d 649 (1965); Cox v. *Louisiana,* 379 U.S. 536, 85 S.Ct. ^453, 13 L.Ed.2d 471 (1965); *Shuttlesworth v. Birmingham, supra; Secretary of*

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State of lylaryland v. Joseph H. Munson Co., 467 U.S. 947, 104 S.Ct. 2839, 81 L.Ed.2d 786 (1984). " 'It is settled by a long line of recent decisions of this Court that an ordinance which ... makes the peaceful enjoyment of freedoms which the Constitution guarantees contingent upon the uncontrolled will of an official--as by requiring a permit or license which may be granted or withheld in the discretion of such official--is an unconstitutional censorship or prior restraint upon the enjoyment of those freedoms.' " *Shuttlesworth, supra,* 394 U.S., at 151, 89 S.Ct., at 938-39 (quoting *Staub, supra,* 355 U.S., at 322, 78 S.Ct. at 282).

Second, a prior restraint that fails to place limits on the time within which the decisionmaker must issue the license is impermissible. *Freedman, supra,* 380 U.S., at 59, 85 S.Ct., at 739; *Vance v. Universal Amusement Co.,* 445 U_S. 308, 316, 100 S.Ct. 1156, 1161-62, 63 L.Ed.2d 413 (1980) (striking statute on ground that it restrained speech for an "indefinite duration"). In *Freedman,* we addressed a motion picture censorship system that failed to provide for adequate procedural safeguards to ensure against unlimited suppression of constitutionally protected speech. 380 U.S., at 57, 85 S.Ct., at 738. Like a censorship system, a licensing scheme creates the possibility that constitutionally protected speech will be suppressed where there are inadequate procedural safeguards to ensure prompt issuance of the license. In *Riley v. Naiiondl Federation of Blind* of *N. C., Inc.,* 487 U.S. 781, 108 S.Ct. 2667, 101 L_Ed_2d 669 (1988), this Court held that a licensing scheme failing to provide for definite limitations on the time within which the licensor must issue the license was constitutionally unsound, because the "delay compel[led] the speaker's silence." Id., at 802, 108 S.Ct., at 2680. The failure to confme the time within which the licensor must make a decision "contains the same vice as a statute delegating *227 excessive administrative discretion," *Freedman,* supra, 380 U.S., at 56-57, 85 S.Ct., at 737-738. Where the licensor has unlimited time within which to issue a license, the risk of arbitrary suppression is as great as the provision of unbridled discretion. A scheme that fails to set reasonable time limits on the decisionmaker creates the risk of indefinitely suppressing permissible speech.

Although the ordinance states that the "chief of police shall approve the issuance of a license by the assessor and collector of taxes to an applicant within 30 days after receipt of an application, " the license may not issue if the "premises to be used for the sexually oriented business have not been approved by the health department, fire department, and the building official as being in compliance with applicable laws and ordinances." § 41A- 5(a)(6). Moreover, the ordinance does not set a dine limit within which the inspections must occur. The ordinance provides no means by which an applicant may ensure that the business is inspected within the 30-day time period within which the license is purportedly to be issued if approved. The city asserted at oral argument that when applicants apply for licenses, they are given the telephone numbers of the various inspection agencies so that they may contact them. Tr. of Oral Arg. 48. That measure, obviously, does not place any limits **606 on the time within which the city will inspect the business and thereby make the business eligible for the sexually oriented business license. Thus, the city's regulatory scheme allows indefinite postponement of the issuance of a license.

In *Freedman,* we determined that the following three procedural safeguards were necessary to ensure expeditious decisionmaking by the motion picture censorship board: (1) any restraint prior to judicial review can be imposed only for a specified brief period during which the status quo must be maintained; (2) expeditious judicial review of that decision must be available; and (3) the censor must bear the burden of going to court to suppress the speech and must bear the burden of proof once in court. *Freedman, supra;* at 58-60, 85 S.Ct., at 738-740. *228 Although we struck the licensing provision in *Riley v. National Federation of Blind of N. C., Inc., supra,* on the ground_ that it did not provide adequate procedural safeguards, we did not address the proper scope of procedural safeguards with respect to a licensing scheme. Because the licensing scheme at issue in these cases does not present the grave "dangers of a censorship system," *Freedman, supra,* at 58, 85 S.Ct., at 738-39, we conclude that the full procedural protections set forth in *Freedman* are not required.

The core policy underlying *Freedman is* that the license for a First Amendment-protected business must be issued within a reasonable period of time, because undue delay results in the unconstitutional suppression of protected speech. Thus, the first two safeguards are essential: the licensor must make the decision whether to issue the license within a specified and reasonable time period during

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which the status quo is maintained, and there must be the possibility of prompt judicial review in the event that the license is erroneously denied. See *Freedman, supra,* at 51, 85 S.Ct., at 734. See also *Shuttlesworth,* 394 U.S., at 155, n. 4, 89 S.Ct., at 941, n. 4 (content- neutral time, place, and manner regulation must provide for "expeditious judicial review"); *National Socialist Parry of America v. Skokie,* 432 U.S. 43, 97 S.Ct_ 2205, 53 L.Ed.2d 96 (1977).

The Court in *Freedman* also required the censor to go to court and to bear the burden in court of justifying the denial.

"Without these safeguards, it may prove too burdensome to seek review of the censor's determination. Particularly in the case of motion pictures, it may take very little to deter exhibition in a given locality. The exhibitor's stake in any one picture may be insufficient to warrant a protracted and onerous course of litigation. The distributor, on the other hand, may be equally unwilling to accept the burdens and delays of litigation in a particular area when, without such difficulties, he can freely exhibit his film in most of the rest of the country...." 380 U.S., at 59, 85 S.Ct., at 739_

*229 Moreover, a censorship system creates special concerns for the protection of speech, because "the risks of freewheeling censorship are formidable." *Southeastern Promotions,* 420 U.S., at 559, 95 S.Ct., at 1246- 47.

As discussed supra, the Dallas scheme does not provide for an effective limitation on the time within which the licensor's decision must be made. It also fails to provide an avenue for prompt judicial review so as to minimize suppression of the speech in the event of a license denial. We therefore hold that the failure to provide these essential safeguards renders the ordinance's licensing requirement unconstitutional insofar as it is enforced against those businesses engaged in First Amendment activity, as determined by the court on remand.

The Court also required in *Freedman* that the censor bear the burden of going to court in order to suppress the speech and the burden of proof once in court. The licensing scheme we examine today is significantly different from the censorship scheme examined in *Freedman.* In *Freedman,* the censor engaged in direct censorship of particular expressive **607 material. Under our First Amendment jurisprudence, such regulation of speech is presumptively invalid and, therefore, the censor in *Freedman* was required to carry the burden of going to court if the speech was to be suppressed and of justifying its decision once in court. Under the Dallas ordinance, the city does not exercise discretion by passing judgment on the content of any protected speech. Rather, the city reviews the general qualifications of each license applicant, a ministerial action that is not presumptively invalid. The Court in *Freedman* also placed the burdens on the censor, because otherwise the motion picture distributor was likely to be deterred from challenging the decision to suppress the speech and, therefore, the censor's decision to suppress was tantamount to complete suppression of the speech. The license applicants under the Dallas scheme have much more at stake than did the motion picture distributor considered in *Freedman,* where only one film was censored. Because the *230 license is the key to the applicant's obtaining and maintaining a business, there is every incentive for the applicant to pursue a license denial through court. Because of these differences, we conclude that the First Amendment does not require that the city bear the burden of going to court to effect the denial of a license application or that it bear the burden of proof once in court. Limitation on the time within which the licensor must issue the license as well as the availability of prompt judicial review satisfy the "principle that the freedoms of expression must be ringed about with adequate bulwarks. " *Bantam Books, Inc. v. Sullivan,* 372 U.S. 58, 66, 83 S.Ct. 631, 637, 9 L.Ed.2d 584 (1963).

Finally, we note that § 5 of Ordinance No. 19196 summarily states that "[t]he terms and provisions of this ordinance are severable, and are governed by Section 1-4 of CHAPTER 1 of the Dallas City Code, as amended.-" We therefore remand to the Court of Appeals for further determination whether and to what extent the licensing scheme is severable. Cf. *Lakewood v. Plain Dealer Publishing Co.,* 486 U.S., at 772, 108 S.Ct., at 2152 (remanding for determination of severability).

[4] We do not reach the merits of the adult entertainment and adult cabaret petitioners' challenges to the civil disability provision, § 41A-5(a)(10), and the provision disabling individuals residing with those whose licenses have been denied or revoked, § 41A-5(a)(5), because petitioners have failed to show they have standing to

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challenge them. See Brief for Petitioners in No. 87- 2051, pp. 22-40, 44; Brief for Petitioners in No. 87-2012, pp. 12-20. Neither the District Court nor the Court of Appeals determined whether petitioners had standing to challenge any particular provision of the ordinance. Although neither side raises the issue here, we are required to address the issue even if the courts below have not passed on it, see *Jenkins v. N1cXeithen,* 395 U.S. 411, 421, 89 S.Ct. 1843, 1848-49, 23 L.Ed.2d 404 (1969), and even if the parties fail to raise the issue before *231 us. The federal courts are under an independent obligation to examine their own jurisdiction, and standing "is perhaps the most important of [the jurisdictional] doctrines." *Allen v. Wright,* 468 U.S. 737, 750, 104 S.Ct. 3315, 3324, 82 L.Ed.2d 556 (1984).

"[E]very federal appellate court has a special obligation to 'satisfy itself not only of its own jurisdiction, but also that of the lower courts in a cause under review,' even though the parties are prepared to concede it. *Mitchell v. Maurer,* 293 U.S. 237, 244 [55 S.Ct. 162, 165, 79 L.Ed. 338] (1934). See *Juidice v. Vail,* 430 U.S. 327, 331-332 [97 S.Ct. 1211, 1215-1216, 51 L.Ed.2d 376] (1977) (standing). 'And if the record discloses that the lower court was without jurisdiction this court will notice the defect, although the parties make no contention concerning it.' " *Bender v. Williamsport Area School Dist.,* 475 U.S. 534, 541, **608 106 S.Ct. 1326, 1331, 89 L.Ed.2d 501 (1986).

[5][6] It is a long-settled principle that standing cannot be "inferred argumentatively from averments in the pleadings, " *Grace v. American Central Ins.* Co., 109 U.S. 278, 284, 3 S.Ct. 207, 210, 27 L.Ed. 932 (1883), but rather "must affirmatively appear in the record." *Mansfield C. & L.M.R. Co. v. Swan, 111 U.S.* 379, 382, 4 S.Ct. 510, 511, 28 L.Ed. 462 (1884). See *King Bridge Co. v. Otoe County,* 120 U.S. 225, 226, 7 S.Ct. 552, 552, 30 L.Ed. 623 (1887) (facts supporting Article III jurisdiction must "appea[r] affirmatively from the record"). And it is the burden of the "party who seeks the exercise of jurisdiction in his favor," *McNutt v. General Motors Acceptance Corp.,* 298 U.S. 178, 189, 56 S.Ct. 780, 785, 80 L.Ed. 1135 (1936), "clearly to allege facts demonstrating that he is a proper party to invoke judicial resolution of the dispute." *Warrh v. Seldin,* 422 U.S. 490, 518, 95 S.Ct. 2197, 2215, 45 L.Ed.2d 343 (1975). Thus, petitioners in this case must "allege ... facts essential to show jurisdiction. If [they] fai[1] to make the necessary allegations, [they have] no standing." *McNutt, supra,* 298 U.S., at 189, 56 S.Ct., at 785.

The ordinance challenged here prohibits the issuance of a license to an applicant who has resided with an individual whose license application has been denied or revoked within *232 the preceding 12 months. [FN1] The ordinance also has a civil disability provision, which disables those who have been convicted of certain enumerated crimes as well as those whose spouses have been convicted of the same enumerated crimes. This civil disability lasts for two years in the case of misdemeanor convictions and five years in the case of conviction of a felony or of more than two misdemeanors within a 24-month period. [FN2] Thus, under the amended ordinance, **609 once the disability *233 period has elapsed, the applicant may not be denied a license on the ground of a former conviction.

FNl. Section 41A-5(a)(5) provides as follows: "The chief of police shall approve the issuance of a license ... unless he finds [that] ... [a]n applicant is residing with a person who has been denied a license by the city to operate a sexually oriented business within the preceding 12 months, or residing with a person whose license to operate a sexually oriented business has been revoked within the preceding 12 months. "

FN2. Sections 41A-5(a)(10), (b), and (c), as amended, provide as follows:

"The chief of police shall approve the issuance of a license ... unless he finds [that] ...

"(10) An applicant or an applicant's spouse has been convicted of a crime:

"(A) involving:

"(i) any of the following offenses as described in Chapter 43 of .the Texas Penal Code:

"(aa) prostitution;

"(bb) promotion of prostitution;

"(cc) aggravated promotion of prostitution;

"(dd) compelling prostitution; "(ee) obscenity;

"(ff) sale, distribution, or display of harmful material to minor;

"(gg) sexual performance by a child;

"(hh) possession of child pornography;

"(ii) any of the following offenses as described in Chapter 21 of the Texas Penal Code:

"(aa) public lewdness;

"(bb) indecent exposure;

"(cc) indecency with a child;

"(iii) sexual assault or aggravated sexual assault as described in Chapter 22 of the Texas Penal Code;

"(iv) incest, solicitation of a child, or harboring a

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runaway child as described in Chapter 25 of the Texas Penal Code; or

"(v) criminal attempt, conspiracy, or solicitation to commit any of the foregoing offenses;

"(B) for which:

"(i) less than two years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, if the conviction is of a misdemeanor offense;

"(ii) less than five years have elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date, if the conviction is of a felony offense; or

"(iii) less than five years have elapsed since the date of the last conviction or the date of release from confinement for the last conviction. whichever is the later date, if the convictions are of two or more misdemeanor offenses or combination of misdemeanor offenses occurring within any 24-month period.

"(b) The fact that a conviction is being appealed shall have no effect on the disqualification of the applicant or applicant's spouse.

"(c) An applicant who has been convicted or whose spouse has been convicted of an offense listed in Subsection (a)(10) may qualify for a sexually oriented business license only when the time period required by Section 41A-5(a)(10)(B) has elapsed."

[7][8] Examination of the record here reveals that no party has standing to challenge the provision involving those residing with individuals whose licenses were denied or revoked. Nor does any party have standing to challenge the civil disability provision disabling applicants who were either convicted of the specified offenses or whose spouses were convicted.

First, the record does not reveal that any party before us was living with an individual whose license application was denied or whose license was revoked. Therefore, no party has standing with respect to § 41A-5(a)(5). Second, § 41A-5(a)(10) applies to applicants whose spouses have been convicted of any of the enumerated crimes, but the record reveals only one individual who could be disabled under this provision. An individual, who had been convicted under the Texas Controlled Substances Act, asserts that his wife was interested in opening a sexually oriented business. But the wife, although an officer of petitioner Bi-Ti Enterprises, Inc., *234 is not an applicant for a license or a party to this action. See 12 Record, Evert Affidavit 3-6. Cf. *Bender,* 475 U.S., at 548, and n. 9, 106 S.Ct., at 1335, and n. 9.

Even if the wife did have standing, her claim would now be moot. Her husband's convictions under the Texas Controlled Substances Act would not now disable her from obtaining a license to operate a sexually oriented business, because the city council, following the District Court's decision, deleted the provision disabling those with convictions under the Texas Controlled Substances Act or Dangerous Drugs Act. App.H. to Pet. for Cert. in No. 87- 2012, p. 107. See Hall v. *Beals,* 396 U.S. 45, 48, 90 S.Ct. 200, 201-02, 24 L.Ed.2d 214 (1969).

[9] Finally, the record does not reveal any party who has standing to challenge the provision disabling an applicant who was convicted of any of the enumerated crimes. To establish standing to challenge that provision the individual must show both (1) a conviction of one or more of the enumerated crimes, and (2) that the conviction or release from confinement occurred recently enough to disable the applicant under the ordinance. See § § 41A- 5(a)(10)(A), (B). If the disability period has elapsed, the applicant is not deprived of the possibility of obtaining a license and, therefore, cannot be injured by the provision.

The only party who could plausibly claim to have standing to challenge this provision is Bill Staten, who stated in an affidavit that he had been "convicted of three misdemeanor obscenity violations within a twenty-four month period." 7 Record, Staten Affidavit 2. That clearly satisfies the first requirement. Under the ordinance, any person convicted of two or more misdemeanors "within any 24-month period," must wait five years following the last conviction or release from confinement, whichever is later, before a license may be issued. See § 41A-5(a)(10)(B)(iii). But Staten failed to state when he had been convicted of the last misdemeanor or the date of release from confinement and, thus, has failed "clearly to allege facts demonstrating that he is a proper *235 party" to challenge the civil disability provisions. No other petitioner has alleged facts to establish standing, and the District Court made no factual findings that could support standing. Accordingly, we conclude that the petitioners lack standing to challenge the provisions. See *Warth,* 422 U.S., at 518, 95 S.Ct., at 2215.

[10][11] At oral argument, the city's attorney

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responded as follows when asked whether there was standing to challenge the civil disability provisions: "I believe that there are one or two of the Petitioners that have had their licenses denied based on criminal conviction. " Tr. of Oral Arg. 32. See also Foster Affidavit 1 (affidavit filed by the city in its Response to Petitioner's Application for Recall and Stay of the Mandate stating that two licenses were *revoked* on the **610 grounds of a prior conviction since the ordinance went into effect but failing to identify the licensees). We do not rely on the city's representations at argument as "'the necessary factual predicate may not be gleaned from the briefs and arguments themselves, " *Bender,* supra, 475 U.S., at 547, 106 S.Ct., at 1334. And we may not rely on the city's affidavit, because it is evidence first introduced to this Court and "is not in the record of the proceedings below, " *Adickes v. S.H. Kress & Co.,* 398 U.S. 144, 157, n. 16, 90 S_Ct. 1598, 1608, n. 16, 26 L.Ed.2d 142 (1970). Even if we could take into account the facts as alleged in the city's affidavit, it fails to identify the individuals whose licenses were revoked and, therefore, falls short of establishing that any petitioner before this Court has had a license revoked under the civil disability provisions.

Because we conclude that no petitioner has shown standing to challenge either the civil disability provisions or the provisions involving those who live with individuals whose licenses have been denied or revoked, we conclude that the courts below lacked jurisdiction to adjudicate petitioners' claims with respect to those provisions. We accordingly vacate the judgment of the Court of Appeals with respect to those provisions with directions to dismiss that portion of the action. See *Bender, supra,* 475 U.S. at 549, 106 S.Ct., at 1335 (vacating judgment below on *236 ground of lack of standing); 1IcNutt, 298 U.S., at 190, 56 S.Ct., at 785 (same). [FN3]

FN3. Petitioners also raise a variety of other First Amendment challenges to the ordinance's licensing scheme. In light of our conclusion that the licensing requirement is unconstitutional because it lacks essential procedural safeguards and that- no petitioner has standing to challenge the residency or civil disability provisions, we do not reach those questions.

IV

The motel owner petitioners challenge two aspects of the ordinance's requirement that motels that rent rooms for fewer than 10 hours are sexually oriented businesses and are, therefore, regulated under the ordinance. See § 41A-18(a). First, they contend that the city had an insufficient factual basis on which to conclude that rental of motel rooms for fewer than 10 hours produced adverse impacts. Second, they contend that the ordinance violates privacy rights, especially the right to intimate association.

[12] With respect to the first contention, the motel owners assert that the city has violated the Due Process Clause by failing to produce adequate support for its supposition that renting rooms for less than 10 hours results in increased crime or other secondary effects. They contend that the council had before it only a 1977 study by the city of Los Angeles that considered cursorily the effect of adult motels on surrounding neighborhoods. See Defendant's Motion for Summary Judgment, Vol. 2, Etch. 11. The Court of Appeals thought it reasonable to believe that shorter rental time periods indicate that the motels foster prostitution and that this type of criminal activity is what the ordinance seeks to suppress. See 837 F.2d, at 1304. Therefore, no more extensive studies were required than those already available. We agree with the Court of Appeals that the reasonableness of the legislative judgment, combined with the Los Angeles study, is adequate to support the city's determination that motels permitting room rentals for fewer than 10 hours should be included within the licensing scheme.

*237 [13] The motel owners also assert that the 10-hour limitation on the rental of motel rooms places an unconstitutional burden on the right to freedom of association recognized in *Roberts v. United States Jaycees,* 468 U.S. 609, 618, 104 S.Ct. 3244, 3250, 82 L.Ed.2d 462 (1984) ("Bill of Rights . - must afford the formation and preservation of certain kinds of highly personal relationships"). The city does not challenge the motel owners' standing to raise the issue whether the associational rights of their motel patrons have been violated. There can be little question that the motel owners have "a live controversy **611 against enforcement of the statute" and, therefore, that they have Art. III standing. *Craig v. Boren,* 429 U.S. 190, 192, 97 S.Ct. 451, 454, 50 L.Ed.2d 397 (1976). It is not clear, however, whether they have prudential, jus *tertii* standing to challenge the ordinance on the ground that the ordinance infringes the associational rights of their motel patrons. Id.,

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at 193, 97 S.Ct., at 454-55. But even if the motel owners have such standing, we do not believe that limiting motel room rentals to 10 hours will have any discernible effect on the sorts of traditional personal bonds to which we referred in *Roberts.* Any "personal bonds" that are formed from the use of a motel room for fewer than 10 hours are not those that have "played a critical role in the culture and traditions of the Nation by cultivating and transmitting shared ideals and beliefs." 468 U.S., at 618-619, 104 S.Ct., at 3249-3250. We therefore reject the motel owners' challenge to the ordinance.

Finally, the motel owners challenge the regulations on the ground that they violate the constitutional right "to be let alone," *Olmstead v. United States,* 277 U.S. 438, 478, 48 S.Ct. 564, 572, 72 L.Ed. 944 (1928) (Brandeis, J., dissenting), and that the ordinance infringes the motel owners' commercial speech rights. Because these issues were not pressed or passed upon below, we decline to consider them. See, e.g., *Rogers v. Lodge,* 458 U.S- 613, 628, n. 10, 102 S.Ct. 3272, 3281, 11. 10, 73 L.Ed.2d 1012 (1982); FTC v. *Grolier Inc.,* 462 U.S. 19, 23, n. 6, 103 S.Ct. 2209, 2212, n. 6, 76 L.Ed.2d 387 (1983).

*238 Accordingly, the judgment below is affirmed in part, reversed in part, and vacated in part, and the cases are remanded-for further proceedings consistent with this opinion.

It is so ordered.

Justice BRENNAN, with whom Justice MARSHALL and Justice BLACKNIUN join, concurring in the judgment.

I concur in the judgment invalidating the Dallas licensing provisions, as applied to any First Amendment-protected business, because I agree that the licensing scheme does not provide the procedural safeguards required under our previous cases. [FN1] I also concur in the judgment upholding the provisions applicable to adult motels, because I agree that the motel owners' claims are meritless. I agree further that it is not necessary to reach petitioners' other First Amendment challenges. I write separately, however, because I believe that our decision two Terms ago in *Riley v. National Federation *239 of Blind of N. C., Inc.,* 487 U.S. 781, 108 S.Ct. 2667, 101 L.Ed.2d 669 (1988), mandates application of all three of the procedural safeguards specified in *Freedman v. Maryland,* 380 U.S. 51, 85 S.Ct. 734, 13 L.Ed.2d 649 (1965), not just two of them, and also to point out that Part III of Justice O'CONNOR's opinion reaches a question not necessary to the decision.

FNl. Justice SCALLA,'s opinion concurring in part and dissenting in part, purportedly grounded in my opinion in ***Ginzbur; v. United States,*** 383 U.S. 463, 86 S.Ct. 942, 16 L.Ed.2d 31 (1966), does not persuade me otherwise. In ***Glnzburg,*** this Court held merely that, in determining whether a given publication was obscene, a court could consider as relevant evidence not only the material itself but also evidence showing the circumstances of its production, sale, and advertising. Id., at 465- 466, 86 S.Ct., at 944-945. The opinion concluded: "It is important to stress that this analysis simply elaborates the test by which the obscenity vel non of the material must be judged." Id., at 475, 86 S.Ct., at 950. As Justice O'CONNOR's opinion makes clear, ***ante*** at 603-604, there is no "obscenity vel non" question in this case.
What ***Ginzbairg*** did not do, and what this Court has never done, despite Justice SCALIA's claims, is to abrogate First Amendment protection for an entire category of speech-related businesses. We said in ***Ginzbairg*** that we perceived "no threat to First Amendment guarantees in thus holding that in close cases evidence of pandering may be probative with respect to the nature of the material in question." 383 U.S., at 474, 86 S.Ct., at 949. History has proved us right, I think, that the decision itself left First Amendment guarantees secure. Justice SCALIA's transmogrification of ***Gimburg,*** however, is far from innocuous.

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In *Freedman v. Maryland, supra,* as Justice O'CONNOR notes, we held that three procedural safeguards are needed to "obviate the dangers of a censorship system":`, (1) any prior restraint in advance of a final judicial determination on the merits must be no longer than that necessary to preserve the status quo pending judicial resolution; (2) a prompt judicial determination must be available; and (3) the would-be censor must bear both the burden of going to court and the burden of proof in court. 380 U.S., at 58-59, 85 S.Ct., at 738-739. *Freedman* struck down a statute that required motion picture houses to submit films for prior approval, without providing any of these protections. Similar cases followed, e.g., *Teitel Film Corp. v. Cusack,* 390 U.S. 139, 88 S.Ct. 754, 19 L.Ed.2d 966 (1968) (invalidating another motion picture censorship ordinance for failure to provide

adequate *Freedman* procedures); *Blount v. Riz?i,* 400 U.S. 410, 91 S.Ct. 423, 27 L.Ed.2d 498 (1971) (invalidating postal rules permitting restrictions on the use of the mails for allegedly obscene materials because the rules lacked *Freedman* safeguards); *Southeastern Promotions, Ltd. v. Conrad,* 420 U.S. 546, 95 S.Ct. 1239, 43 L.Ed.2d 448 (1975) (finding unconstitutional a city's refusal to rent municipal facilities for a musical because of its content, absent *Freedman* procedures).

We have never suggested that our insistence on *Freedman* procedures might vary with the particular facts of the prior restraint before us. To the contrary, this Court has continued to require *Freedman* procedures in a wide variety of contexts. In *National Socialist Party of America v. Skokie,* 432 U.S. 43, 97 S.Ct. 2205, 53 L.Ed.2d 96 (1977), we held that even a court-ordered injunction must be stayed if appellate review is not expedited. *240 Id., at 44, 97 S.Ct., at 2206. And in *Vance v. Universal Amusement Co.,* 445 U.S. 308, 100 S.Ct. 1156, 63 L.Ed.2d 413 (1980), we held that a general public nuisance statute could not be applied to enjoin a motion picture theater's future exhibition of films for a year, based on a presumption that such films would be obscene merely because prior films had been, when such a determination could be constitutionally made only in accordance with *Freedman* procedures. :445 U.S., at 317, 100 S.Ct., ~t 1162.

Two Terms ago, in *Riley,* this Court applied *Freedman* to a professional licensing scheme because the professionals involved, charity fundraisers, were engaged in First Amendment-protected activity. We held that, even if North Carolina's interest in licensing fundraisers was sufficient to justify such a regulation, it "must provide that the licensor 'will, within a specified brief period, either issue a license or go to court.' " 487 U.S., at 802, 108 S.Ct., at 2680, quoting and applying *Freedman, supra,* 380 U.S., at 59, 85 S.Ct., at 739_ The North Carolina statute did not so provide, and we struck it down. 487 U.S., at 802, 108 S.Ct., at 2681.

In *Riley,* this Court, to be sure, discussed the failure of the North Carolina statute to set a time limit for actions on license applications, but it also held that the *licensor* must be required to go to court, not the would- be fundraiser. Because I see no relevant difference between the fundraisers in *Riley* and the bookstores and motion picture theaters in these cases, I would hold that the city of Dallas must bear the burden of going to court and proving its case before it may permissibly deny licenses to First Amendment- protected businesses.

Justice O'CONNOR bases her disinclination to require the third *Freedman* procedure on two grounds: the Dallas licensing scheme does not involve an administrator's passing judgment on whether the content of particular speech is protected or not; and the Dallas scheme licenses entire businesses, not just individual films. Justice O'CONNOR finds the first distinction significant on the theory that our jurisprudence holds only that suppression of speech on the ostensible ground of *241 content is presumptively invalid. She finds the second significant because it anticipates that applicants with an entire **613 business at stake will pursue their interests in court rather than abandon them.

While Justice O'CONNOR is certainly correct that these aspects distinguish the facts before us from those in *Freedman,* neither ground distinguishes these cases from *Riley.* The licensor in *Riley* was not required to distinguish between protected and unprotected speech. He was reviewing applications to practice a particular profession, just as the city of Dallas is acting on applications to operate particular businesses. Similarly, the fundraisers in *Riley* had their entire livelihoods at stake, just as the bookstores and others subject to the Dallas ordinance. . Nonetheless, this Court placed the burden of going to court on the State, not the applicant. [FN2] 487 U.S., at 802, 108 S.Ct. at 2680.

FN2. Vance v. Universal Amusement Co., 445 U.S. 308, 100 S.Ct. 1156, 63 L.Ed.2d 413 (1980), also involved censorship that threatened proprietors' entire businesses, rather than single films. This Court, notwithstanding, armed the Court of Appeals which had held that the statute was unconstitutional because it lacked the procedural safeguards required under *Freedman.* 445 U.S., at 314, 317, 100 S.Ct., at 1162.

Moreover, I believe *Riley* was.rightly decided for the same reasons that the limitation set forth in Justice O' CONNOR's opinion is wrong. The danger posed by a license that prevents a speaker from speaking at all is not derived from the basis on which that license was purportedly denied. The danger posed is the unlawful stifling of speech that

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results. As we said in ***Freedman,*** it is "the transcendent value of speech" that places the burden of persuasion on the State. 380 U.S., at 58, 85 S.Ct., at 738-739. The heavy presumption against prior restraints requires no less. Justice O'CONNOR does not, nor could she, contend that those administering this ordinance will always act according to their own law. Mistakes are inevitable; abuse is possible. In distributing the burdens of initiating judicial proceedings and proof, we are obliged *242 to place them such that we err, if we must, on the side of speech, not on the side of silence.

In Part III of the opinion, Justice O'CONNOR considers at some length whether petitioners have made an adequate showing of standing to bring their claims against the cohabitation and civil disability provisions of the licensing scheme. Were it of some precedential value, I would question this Court's reversal of the findings of both the District Court and the Court of Appeals [FN3] that petitioners had standing to bring their claims, where the basis for reversal is an affidavit that is at worst merely ambiguous. But because the discussion is wholly extraneous to the actual holding in this case, I write only to clarify that Part III is unnecessary to the decision and is pure dictum.

FN3. Both the District Court and the Fifth Circuit, after finding that plaintiffs had standing to challenge the ordinance, reached the civil disability question. See 837 F.2d 1298, 1301, 1304-1305 (1988); ***Dumas v. Dallas,*** 648 F.Supp. 1061 (ND Tex.1986).

The first claim for which the Court fails to find a petitioner with standing--an unspecified objection to the provision denying a license to any applicant residing with someone whose own application has been denied or revoked within the past year--is not directly presented by the parties, was not reached by the court below, and is not among the questions on which certiorari was granted. The second claim for which the Court fails to find a petitioner with standing--petitioners' objection to the ordinance's civil disability provisions--is clearly before this Court, but consideration of this claim is rendered redundant by Justice O'CONNOR's holding in Part II.

The civil disability claim is an objection to that part of the licensing scheme which provides for denial or revocation of a license because of prior criminal convictions, on the **614 ground *243 that these provisions "impose an impermissible prior restraint upon protected expression. " Brief for Petitioners FW/PBS, Inc., et al. 12. [FN4] Because the challenge is based solely on the First Amendment, a victory on the merits would benefit only those otherwise regulated businesses which are protected by the First Amendment.

FN4. Petitioners M.J.R., Inc., et al. phrase the same objection slightly differently. They characterize license denial or revocation based on certain listed prior speech offenses as a "classic prior restraint of the type prohibited as facially unconstitutional under the rule *of* ***Near v. Minnesota [ex rel. Olson],*** 283 U.S. 697, 51 S.Ct_ 625, 75 L.Ed. 1357 (1931)," and they characterize license denial or revocation based on other listed prior offenses as "prior restraints which cannot withstand strict scrutiny and are therefore invalid under the first amendment." See Brief for Petitioners M.J.R., Inc., et al. 22, 33.

But since the Court invalidates the application of the entire Dallas licensing scheme to any First Amendment-protected business under the ***Freedman*** doctrine, it is unnecessary to decide whether some or all of the same provisions are also invalid, as to First Amendment-protected businesses, on other grounds. Justice O'CONNOR recognizes this and wisely declines to reach petitioners' challenge to various requirements under the licensing scheme, other than the civil disability and cohabitation provisions, on the First Amendment ground that the ordinance impermissibly singles out persons and businesses engaged in First Amendment-protected activities for regulation. [FN5]

FN5. See Brief for Petitioners FW/PBS, Inc., et al. 21-24.

For reasons unexplained and inexplicable, the opinion separates the prior restraint and singling out claims and accords them different treatment. Perhaps, if the inquiry had reached the merits of the prior restraint claim, one could infer a motive to take the opportunity to offer guidance in an area of the law badly in need of it. ' But because the inquiry proceeds no further than jurisdiction, no such explanation is available. Whatever the reason for including Part III, it is superfluous.

*244 Justice WHITE, with whom the Chief Justice

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joins, concurring in part and dissenting in part.

I join Parts I, III, and IV of the Court's opinion but do not agree with the conclusion in Part II that the Dallas ordinance must include two of the procedural safeguards set forth in *Freedman v. Nlaryland,* 380 U.S. 51; 85 S.Ct. 734, 13 L.Ed.2d 649 (1965), in order to defeat a facial challenge. I would affirm the Fifth Circuit's holding that *Freedman is* inapplicable to the Dallas scheme.

The Court has often held that when speech and nonspeech elements "are combined in the same course of conduct, a sufficiently important governmental interest in regulating the nonspeech element can justify incidental limitations on First Amendment freedoms." *United States v. O'Brien,* 391 U.S. 367, 376, 88 S.Ct. 1673, 1678-79, 20 L.Ed.2d 672 (1968). See also *Clark v. Community for Creative Non-Violence,* 468 U.S. 288, 298-299, 104 S.Ct_ 3065, 3071-3072, 82 L.Ed.2d 221 (1984) *Cox v. LOLIisiana,* 379 U.S. 559, 562-564, 85 S.Ct. 476, 419-481, 13 L.Ed.2d 487 (1965); *Adderley v. Florida,* 385 U.S. 39, 48, n. 7, 87 S.Ct. 242, 247, n. 7, 17 L.Ed.2d 149 (1966). Our cases upholding time, place, and manner restrictions on sexually oriented expressive activity are to the same effect. See *Renton v. Playtime Theatres, Inc.,* 475 U.S. 41, 106 S.Ct. 925, 89 L.Ed.2d 29 (1986); *Youn v. American Nlini Theatres, Inc.,* 427 U.S. 50,' 96 S.Ct__2440, 49 L.Ed.2d 310 (1976). Time, place, and manner restrictions are not subject to strict scrutiny and are sustainable if they are content neutral, are designed to serve a substantial governmental interest, and do not unreasonably limit alternative means of communication. *Renton, supra,* 475 U.S., at 47, 106 S.Ct., at 928. See also *Heffron v. International Society for Krishna Consciousness, Inc.,* 452 U_S. 640, 647-648, **615 101 S.Ct. 2559, 2563-2564, 69 L.Ed.2d 298 (1981); *Virginia Pharmacy Board v. Virginia Citizens Consumer Council, Inc.,* 425 U.S. 748, 771, 96 S.Ct. 1817, 1830, 48 L.Ed.2d 346 (1976). *Renton* and *Young* also make clear that there is a substantial governmental interest in regulating sexually oriented businesses because of their likely deleterious effect on the areas surrounding them and that such regulation, although focusing on a limited class of businesses involved in expressive activity, is to be treated as content neutral.

*245 Justice O'CONNOR does not suggest that the businesses involved here are immune from the kind of regulation sustained in *Young* and *Renton.* Neither is it suggested that the prerequisites for obtaining a license, such as certificates of occupancy and inspections, do not serve the same kind of a substantial governmental interest dealt with in those cases nor that the licensing system fails the test of content neutrality. The ordinance in no way is aimed at regulating what may be sold or offered in the covered businesses. With a license, operators can sell anything but obscene publications. Without one--without satisfying the licensing requirements-- they can sell nothing because the city is justified in enforcing the ordinance to avoid the likely unfavorable consequences attending unregulated sexually oriented businesses.

Justice O'CONNOR nevertheless invalidates the licensing provisions for failure to provide some of the procedural requirements that *Freedman v. Maryland, supra,* imposed in connection with a Maryland law forbidding the exhibition of any film without the approval of a board of censors. There, the board was approving or disapproving every film based on its view of the film's content and its suitability for public viewing. Absent procedural safeguards, the law imposed an unconstitutional prior restraint on exhibitors. As I have said, however, nothing like that is involved here; the predicate identified in *Freedman* for imposing its procedural requirements is absent in these cases.

Nor is there any other good reason for invoking *Freedman.* The Dallas ordinance is in many respects analogous to regulations requiring parade or demonstration permits and imposing conditions on such permits. Such regulations have generally been treated as time, place, and manner restrictions and have been upheld if they are content neutral, serve a substantial governmental interest, and leave open alternative avenues of communication. Cox v. *New Hampshire,* 312 U.S. 569, 574-576, 61 S.Ct. 762, 765-766, 85 L.Ed. 1049 (1941); *Clark v. Community for Creative Non-Violence, supra,* 468 U.S., at 293-298, 104 S.Ct., at 3068-3071. The Dallas scheme regulates *246 who may operate sexually oriented businesses, including those who sell materials entitled to First Amendment protection; but the ordinance does not regulate content and thus it is unlike the content-based prior restraints that this Court has typically scrutinized very closely. See, e.g., *Near v. Minnesota ex rel.* Olson, 283 U.S. 697, 51 S.Ct. 625, 75 L.Ed. 1357 (1931); *National Socialist Party of America v.*

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Skokie, 432 U.S. 43, 97 S.Ct. 2205, 53 L.Ed.2d 96 (1977); *Trance v. Universal Amusement Co.,* 445 U.S. 308, 100 S.Ct. 1156, 63 L.Ed.2d 413 (1980); *Freedman v. JYlaryland, supra.*

Licensing schemes subject to First Amendment scrutiny, however, even though purporting to be time, place, and manner restrictions, have been invalidated when undue discretion has been vested in the licensor. Unbridled discretion with respect to the criteria used in deciding whether or not to grant a license is deemed to convert an otherwise valid law into an unconstitutional prior restraint_ *Shuttlesworth v. Birmingham,* 394 U.S. 147, 150-152, 89 S.Ct_ 935, 938-939, 22 L.Ed.2d 162 (1969); *Lakewood v. Plain Dealer Publishing Co.,* 486 U.S. 750, 757, 108 S.Ct. 2138, 2143, 100 L.Ed.2d 771 (1988); *Staub v. City of Baxley,* 355 U.S. 313, 78 S.Ct. 277, 2 L.Ed.2d 302 (1958); *Niemotko v. lYlaryland,* 340 U.S. 268, 71 S.Ct. 328, 95 L.Ed. 280 (1951); *Kunz v. New York,* 340 U.S. 290, 71 S.Ct. 312, 95 L.Ed. 280 (1951); ***616 Saia v. New York,* 334 U.S. 558, 68 S.Ct. 1148, 92 L.Ed. 1574 (1948). That rule reflects settled law with respect to licensing in the First Ameadmentj~ontext. But here there is no basis for invoking *Freedman* procedures to protect against arbitrary use of the discretion conferred by the ordinance before us. Here, the Court of Appeals specifically held that the ordinance did not vest undue discretion in the licensor because the ordinance provides sufficiently objective standards for the chief of police to apply. 837 F.2d 1298, 1305-1306 (CA5 1988). Justice O'CONNOR's opinion does not disturb this aspect of the Court of Appeals' decision, and because it does not, one arguably tenable reason for invoking *Freedman* disappears.

Additionally, petitioners' reliance on *Riley v_ National Federation of Blind of N.C., Inc.,* 487 U.S. 781, 108 S.Ct. 2667, 101 L.Ed.2d 669 (1988) is misplaced. *Riley* invalidated a licensing requirement for professional fundraisers which prevented them from soliciting *247 prior to obtaining a license, but which permitted nonprofessionals to solicit while their license applications were pending. We there held that a professional fundraiser was a speaker entitled to First Amendment protection and that because "the State's asserted power to license professional fundraisers carries with it (unless properly constrained) the power directly and substantially to affect the speech they utter," *id.,* at 801, 108 S.Ct_, at 2670, the requirement was subject to First Amendment scrutiny to make sure that the licensor's discretion was suitably confined. *Riley* thus appears to be a straightforward application of the "undue-discretion" line of cases. The Court went on to say, however, that even assuming, as North Carolina urged, that the licensing requirement was a time, place, and manner restriction, *Freedman v. ildaryland,* 380 U.S. 51, 85 S.Ct. 734, 13 L.Ed.2d 649 (1965), required that there be provision for either acting on the license application or going to court within a specified brief period of time.

Contrary to the ordinance in these cases, the *Riley* licensing requirement was aimed directly at speech. The discretion given the licensors in *Riley* empowered them to affect the content of the fundraiser's speech, unless that discretion was suitably restrained. In that context, the Court' invoked *Freedman.* That basis for applying *Freedman is* not present here, for, as I have said, the licensor is not vested with undue discretion.

Neither is there any basis for holding that businesses dealing in expressive materials have been singled out; all sexually oriented businesses--including those not involved in expressive activity such as escort agencies--are covered, and all other businesses must live up to the building codes, as well as fire and health regulations. Furthermore, the Court should not assume that the licensing process will be unduly prolonged or that inspections will be arbitrarily delayed. There is no evidence that this has been the case, or that inspections in other contexts have been delayed or neglected. Between the time of the District Court's judgment and that of the *248 Fifth Circuit, Dallas granted some 147 out of 165 license requests, and none of the petitioners in making this facial challenge to the ordinance asserts that its license application was not promptly dealt with, that it was unable to obtain the required inspections promptly, or that it was unable to secure reasonably prompt review of a denial. Clearly the licensing scheme neither imposes nor results in a ban of any type of adult business.

I see no basis for invalidating this ordinance because it fails to include some prophylactic measures that will guard against highly speculative injuiies. As Justice O'CONNOR notes in the course of refusing to apply one of the *Freedman* procedural mandates, the licensing in these cases is required of sexually oriented businesses, enterprises

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that will have every incentive to pursue the license applications vigorously. *Ante,* at 606-607. The ordinance requires that an application be acted on within 30 **617 days. Licensing decisions suspending or revoking a license are immediately appealable to a permit and license appeal board and are stayed pending that appeal. In addition, no one suggests that licensing decisions are not subject to immediate appeal to the courts. As I see it, there is no realistic prospect that the requirement of a license will have anything more than an incidental effect on the sale of protected materials.

Perhaps Justice O'CONNOR is saying that those who deal in expressive materials are entitled to special procedures in the course of complying with otherwise valid, neutral regulations generally applicable to all businesses. I doubt, however, that bookstores or radio or television stations must be given special breaks in the enforcement of general health, building, and fire regulations_ If they must, why would not a variety of other kinds of businesses, like supermarkets and convenience stores that sell books and magazines, also be so entitled? I question that there is authority to be found in our cases for such a special privilege.

' 249 For the foregoing reasons, I respectfully dissent from Part II of Justice O'CONNOR's opinion.

Justice STEVENS, concurring in part and dissenting in part.

As the Court explains in Part III of its opinion, it is not certain that any petitioner has standing to challenge the provisions of the licensing scheme that disqualify applicants who are themselves unqualified or who reside with, or are married to, unqualified persons. Given the breadth of those provisions, the assertions in the Staten and Foster affidavits, and the District Court's understanding of the relevant facts, however, I cannot join the decision to direct dismissal of this portion of the litigation. See *ante,* at 609-610. 1 would remand for an evidentiary hearing on the standing issues_

I join Parts 1, II, and IV of Justice O'CONNOR's opinion. With respect to Justice SCALIA's proposed resurrection of *Ginzburg v. United States,* 383 U.S. ,163, 86 S.Ct. 942, 16 L.Ed.2d 31 (1966), I have this comment. As I explained in my dissenting opinion in *Splawn v. California,* 431 U.S. 595, 602, 97 S.Ct. 1987, 1991-92, 52 L.Ed.2d 606 (1977), *Ginzburg* was decided before the Court extended First Amendment protection to commercial speech and cannot withstand our decision in *Virginia Pharmacy Bd. v. Virginia Citizens Consumer Council, Inc.,* 425 U.S. 748, 96 S.Ct. 1817, 48 L.Ed.2d 346 (1976). If conduct or communication is protected by the First Amendment, it cannot lose its protected status by being advertised in a truthful and inoffensive manner. Any other result would be perverse,

> "Signs which identify the 'adult' character of a motion picture theater or of a bookstore convey the message that sexually provocative entertainment is to be found within.... Such signs ... provide a warning to those who find erotic materials offensive that they should shop elsewhere for other kinds of books, magazines, or entertainment. Under any sensible regulatory scheme, truthful description of subject matter that is pleasing to *250 some and offensive to others. ought to be encouraged, not punished." 431 U.S., at 604, 97 S.Ct., at 1992.

Justice SCALIA, concurring in part and dissenting in part.

I join Part I of the Court's opinion, Part III, holding that there is no standing to challenge certain portions of the Dallas ordinance, and Part IV, sustaining on the merits certain other portions. I dissent from the judgment, however, because I would affirm the Fifth Circuit's holding that the ordinance is constitutional in all respects before us.

Since this Court first had occasion to apply the First Amendment to materials treating of sex, some three decades ago; we have been guided by the principle that "sex and obscenity are not synonymous, " *Roth v. United* **618 *States,* 354 U.S. 476, 487, 77 S.Ct. 1304, 1310, 1 L.Ed.2d 1498 (1957). The former, we have said, the Constitution permits to be described and discussed. The latter is entirely unprotected, 'and may be allowed or disallowed by States or communities, as the democratic majority desires..

Distinguishing the one from the other has been the problem. Obscenity, in common understanding, is material that "treat[s] sex in a manner appealing to prurient interest," *id.,* at ^488, 77 S.Ct., at 1311. But for constitutional purposes we have added other conditions to that definition, out of an abundance of

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concern that "the standards for judging obscenity safeguard the protection of freedom of speech and press for material which does not treat sex in a manner appealing to prurient interest." *Ibid. To* begin with, we rejected the approach previously adopted by some courts, which would permit the banning of an entire literary work on the basis of one or several passages that in isolation could be considered obscene. Instead, we said, "the dominant theme of the material *taken as a whole "* must appeal to prurient interest. Id., at 489, 77 S.Ct., at 1311 (emphasis added). We have gone on to add other conditions, which are reflected in the three-part test pronounced in *Miller v. California,* 413 U.S. 15, 24, 93 S.Ct. 2607, 2615, 37 L.Ed.2d 419 (1973):

**251* "The basic guidelines for the trier of fact must be: (a) whether 'the average person, applying contemporary community standards' would find that the work, taken as a whole, appeals to the prurient interest .. - (b) whether the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law; and (c) whether the work, taken as a whole, lacks serious literary, artistic, political, or scientific value. "

These standards' immediate purpose and effect--which, it is fair to say, have met with general public acceptance--have been to guarantee the access of all adults to such works of literature, once banned or sought to be banned, as_Dreiser's An American Tragedy, [FN1] Lawrence's Lady Chatterley's Lover, [FN2] Miller's Tropic of Cancer and Tropic of Capricorn, [FN3] and Joyce's Ulysses, [FN4] and to many stage and motion picture productions of genuine dramatic or entertainment value that contain some sexually explicit or even erotic material.

FNl. Held obscene in *Commonwealth v. Friede,* 271 Mass. 318, 171 N.E. 472 (1930).

FN2_ Held obscene in *People v. Dial Press, Inc.,* 182 Misc. 416, 48 N.Y.S.2d 480 (N.Y.Magis.Ct.1944).

FN3. Held obscene in *United States v. Two Obscene Books,* 99 F.Supp. 760 (ND Ca1.1951), aff'd sub *nom. Besig v. United States,* 208 F.2d 142 (CA9 1953).

FN4. Unsuccessfully challenged as obscene in *United States v. One Book Called "Ulysses, "* 5 F.Supp. 182 (SDI-- 1933), afi'd, 72 F.2d 705 (CA2 1934).

Application of these standards (or, I should say, misapplication of them) has had another effect as well--unintended and most certainly not generally approved. The Dallas ordinance at issue in these cases is not an isolated phenomenon. It is one example of an increasing number of attempts throughout the country, by various means, not to withhold from the public any particular book or performance, but to prevent the erosion of public morality by the increasingly general appearance of what the Dallas ordinance delicately calls "sexually **252* oriented businesses." Such businesses flourish throughout the country as they never did before, not only in New York's Times Square, but in much smaller communities from coast to coast. Indeed, as a case we heard last Term demonstrates, they reach even the smallest of communities via telephonic "dial-a-pom." *Sable Communications of California, Inc. v. FCC,* 492 U.S. 115, 109 S.Ct. 2829, 106 L.Ed.2d 93 (1989).

While many communities do not object to such businesses, others do, and have sought to eliminate them. Attempts to do so by focusing upon the individual books, motion pictures, or performances that these businesses ***619* market are doomed to failure by reason of the very stringency of our obscenity test, designed to avoid any risk of suppressing socially valuable expression. Communities cannot close down "porn-shops" by banning pornography (which, so long as it does not cross the distant line of obscenity, is protected), just as Congress cannot eliminate specialized "dial-a-porn" telephone services by prohibiting individual messages that are "indecent" but not quite obscene. Id., at 131, 109 S.Ct., at 2839. Consequently, communities have resorted to a number of other means, including stringent zoning laws, see e.g., *Young v. American Mini Theatres, Inc.,* 427 U.S. 50, 96 S.Ct. 2440, 49 L.Ed.2d 310 (1976) (ordinance adopting unusual zoning technique of requiring sexually oriented businesses to be dispersed rather than concentrated); *Renton v. Playtime Theatres, Inc.,* 475 U.S. 41, 106 S.Ct. 925, 89 L.Ed.2d 29 (1986) (ordinance restricting theaters that show "adult" films to locations comprising about 5 % of the community's land area, where the Court of Appeals had found no "commercially viable" sites were available), Draconian sanctions for obscenity which make it unwise to flirt with the sale of pornography, see *Fort Wayne Books, Inc. v. Indiana,* 489 U.S. 46, 109 S.Ct. 916, 103 L.Ed.2d 34 (1989) (state

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Racketeer Influenced and Corrupt Organizations (RICO) statute), and the ordinance we have before us today, a licensing scheme purportedly designed to assure that porn-shops are run by a better class of person. Not only are these oblique methods less than entirely effective in eliminating the *253 perceived evil at which they are directed (viz., the very existence of sexually oriented businesses anywhere in the community that does not want them), but they perversely render less effective our efforts, through a restrictive definition of obscenity, to prevent the "chilling" of socially valuable speech. State RICO penalties for obscenity, for example, intimidate not just the pom-shop owner, but also the general bookseller who has been the traditional seller of new books such as Ulysses.

It does not seem to me desirable to perpetuate such a regime of prohibition by indirection. I think the means of rendering it unnecessary is available under our precedents and should be applied in the present cases. That means consists of recognizing that a business devoted to the sale of highly explicit sexual material can be found to be engaged in the marketing of obscenity, even though each book or film it sells might, in isolation, be considered merely pornographic and not obscene. It is necessary, to be sure of protecting valuable speech, that we compel all communities to tolerate individual works that have only marginal communicative content beyond raw sexual appeal; it is not necessary that we compel them to tolerate businesses that hold themselves forth as specializing in such- material_ Because I think that Dallas could constitutionally have proscribed the commercial activities that it chose instead to license, I do not think the details of its licensing scheme had to comply with First Amendment standards.

The Dallas ordinance applies to any sexually oriented business, which is defined as "an adult arcade, adult bookstore or adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, escort agency, nude model studio, or sexual encounter center." Dallas City Code § 41A-2(19) (1986). Operators of escort agencies and sexual encounter centers are not before us.

*254 "Adult bookstore or adult video store" is defined, inter alia, as a "commercial establishment which as one of its principal business purposes offers for sale or rental" books or other printed matter, or films or other visual representations, "which depict or describe 'specified sexual activities' or 'specified anatomical areas.' " § 41A-2(2)(A) (emphasis added). [FN5] "Adult motion picture theater" **620 is defined as a commercial establishment where films "are regularly shown" that depict specified sexual activities or specified anatomical areas. § 41A-2(5) (emphasis added). [FN6] Other sexually oriented businesses are similarly defined as establishments that "regularly" depict or describe specified sexual activities or specified anatomical areas. [FN7] "Specified sexual activities" means

FN5. "Adult Bookstore or Adult Video Store means a commercial establishment which as one of its principal business purposes offers for sale or rental for any form of consideration any one or more of the following:
"(A) books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes or video reproductions, slides, or other visual representations which depict or describe 'specified sexual activities' or 'specified anatomical areas'; or
"(B) instruments, devices, or paraphernalia which are designed for use in connection with 'specified sexual activities.' " Dallas City Code §§ 41A-2(2)(A), (B) (1986).
The regulation of businesses that sell the items described in subsection (B) raises no First Amendment question.

FN6. "Adult Motion Picture Theater means a commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, slides, or similar photographic reproductions are regularly shown which are characterized by the depiction or description of 'specified sexual activities' or 'specified anatomical areas.' 41A-2(5).

FN7. "(3) Adult Cabaret means a nightclub, bar, restaurant, or similar commercial establishment which regularly features:
"(A) persons who appear in a state of nudity; or
"(B) live performances which are characterized by the exposure of 'specified anatomical areas' or by 'specified sexual activities'; or
"(C) films, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by the depiction or description of 'specified sexual activities' or 'specified anatomical areas.' "

"(6) Adult Theater means a theater, concert hall,

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auditorium, or similar commercial establishment which regularly features persons who appear in a state of nudity or live performances which are characterized by the exposure of 'specified anatomical areas' or by 'specified sexual activities.'

"(12) Nude Model Studio means any place where a person who appears in a state of nudity or displays 'specified anatomical areas' is provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons who pay money or any form of consideration.

"(13) Nudity or a State of Nudity means:

"(A) the appearance of a human bare buttock, anus, male genitals, female genitals, or female breast; or

"(B) a state of dress which fails to opaquely cover a human buttock, anus, male genitals, female genitals, or areola of the female breast. " § 41A-2.

As to nude model studios, the ordinance further provides as a defense to prosecution that

"a person appearing in a state of nudity did so in 'a modeling class operated:

"(1) by a proprietary school licensed by the state of Texas; a college, junior college, or university supported entirely or partly by taxation;

"(2) by a private college or university which maintains and operates educational programs in which credits are transferrable to a college, junior college, or university supported entirely or partly by taxation; or

"(3) in a structure:

"(A) which has no sign visible from the exterior of the structure and no other advertising that indicates a nude person is available for viewing; and

"(B) where in order to participate in a class a student must enroll at least three days in advance of the class; and

"(C) where no more than one nude model is on the premises at any one time." § 41A-21(d).

*255 "(A) the fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breasts;

"(B) sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, or sodomy;

"(C) masturbation, actual or simulated; or

"(D) excretory functions as part of or in connection with any of the activities set forth in (A) through (C) above." § 41A-2(21).

Finally, "specified anatomical areas" means "human genitals in a state of sexual arousal. " § 41A-2(20).

*256 As I shall discuss in greater detail presently, this ordinance is unusual in that it does not apply "work by work." It can reasonably be interpreted to restrict not sales of (or businesses that sell) any particular book, film, or entertainment, but only businesses **621 that *specialize* in books, films, or entertainment of a particular type. That places the obscenity inquiry in a different, and broader, context. Our jurisprudence supports the proposition that even though a particular work of pornography is not obscene under *Miller*, a merchant who concentrates upon the sale of such works is engaged in the business of obscenity, which may be entirely prohibited and hence (a fortiori) licensed as required here.

The dispositive case is *Ginzburg v. United States*, 383 U.S. 463, 86 S.Ct. 942, 16 L.Ed.2d 31 (1966). There the defendant was convicted of violating the federal obscenity statute, 18 U.S.C. § 1461, by mailing three publications which our opinion assumed, see 383 U.S., at 465-466, 86 S.Ct., at 944-945, were in and of themselves not obscene_ We nonetheless upheld the conviction, because the evidence showed "that each of the accused publications was originated or sold as stock in trade of the sordid business of pandering-- 'the business of purveying textual or graphic matter openly advertised to appeal to the erotic interest of their customers.' " Id., at 467, 86 S.Ct., at 945 (quoting *Roth v. United States*, 354 U.S., at 495-496, 77 S.Ct., at 1314-1315 (Warren, C.J., concurring)). Justice BRENNAN's opinion for the Court concluded that the advertising for the publications, which "stressed the [ir] sexual candor," 383 U.S., at 468, 86 S.Ct., at 946, "resolve(d] all ambiguity and doubt" as to the unprotected status of the defendants' activities. Id., at 470, 86 S.Ct., at 947.

" The deliberate representation of petitioners' publications as erotically arousing, for example, stimulated the reader to accept them as prurient; he looks for titillation, not for saving intellectual content.... And the circumstances of presentation and dissemination of material are equally relevant to determining whether social importance claimed for material in the courtroom was, in the *257 circumstances, pretense or reality--whether it was the basis upon which it was traded in the marketplace or a spurious claim for litigation purposes. Where the purveyor's sole emphasis is on the sexually provocative aspects of his publications, that fact may be decisive in the

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determination of obscenity. Certainly in a prosecution which, as here, does not necessarily imply suppression of the materials involved, the fact that they originate or are used as a subject of pandering is relevant to the application of the *Roth* test." Id., at 470-471, 86 S.Ct., at 947.

We held one of the three publications in question to be, in the circumstances of its sale, obscene, despite the trial court's finding that only 4 of the 15 articles it contained "predominantly appealed to prurient interest and substantially exceeded community standards of candor," *id.,* at 471, 86 S.Ct., at 947; and another to be obscene despite the fact that it previously had been sold by its author to numerous psychiatrists, some of whom testified that they found it useful in their professional practice. We upheld the convictions because the petitioners had "deliberately emphasized the sexually provocative aspects of the work, in order'to catch the salaciously disposed." Id., at 472, 86 S_Ct., at 948.

In *Memoirs v, Attorney General of Massachusetts,* 383 U.S. 413, 86 S.Ct. 975, 16 L.Ed.2d 1 (1966), decided the same day as *Ginzburg,* we overturned the judgment that a particular book was obscene, but, citing *Ginzburg,* made clear that this did not mean that all circumstances of its distribution would be constitutionally protected. We said:

"On the premise, which we have no occasion to assess, that *Memoirs has* the requisite prurient appeal and is patently offensive, but has only a minimum of social value, the circumstances of production, sale, and publicity are relevant in determining whether or not the publication or distribution of the book is constitutionally protected.... In this proceeding, however, the courts were asked to judge the obscenity of *Memoirs* in the abstract, and *258 the declaration of obscenity was neither **622 aided nor limited by a specific set of circumstances of production, sale, and publicity. All possible uses of the book must therefore be considered, and the mere risk that the book might be exploited by panderers because it so pervasively treats sexual matters cannot alter the fact ... that the book will have redeeming social importance in the hands of those who publish or distribute it on the basis of that value." 383 U.S., at 420-421, 86 S.Ct., at 978-979 (footnote omitted).

Ginzburg was decided before our landmark *Miller* decision, but we have consistently applied its holding post-Aliller. See *Hamling v. United States,* 418 U.S. 87, 130, 94 S.Ct. 2887, 2914, 41 L.Ed2d 590 (1974); *Splawn v. California,* 431 U.S. 595, 597-599, 97 S.Ct. 1987, 1989-1990, 52 L.Ed2d 606 (1977); *Pinkus v. United States,* 436 U.S. 293, 303-304, 98 S.Ct. 1808, 1814-1815, 56 L_Ed2d 293 (1978). Although *Ginzburg* narrowly involved the question whether particular publications were obscene, the foundation for its holding is that "the sordid business of pandering," *Ginzburg, supra,* 383 U.S., at 467, 86 S.Ct., at 945, is constitutionally unprotected--that the sale of material "solely to produce sexual arousal ... does not escape regulation because [the material] has been dressed up as speech, or in other contexts might be recognized as speech." 383 U.S., at 474, n. 17, 86 S.Ct., at 949, n. 17. But just as *Miller* established some objective criteria concerning what_ particular publications can be regarded as "appealing to the prurient interest," it impliedly established some objective criteria as to what stock-in-trade can be the raw material (so to speak) of pandering. Giving this limitation full scope, it seems to me that *Ginzburg,* read together with *Miller,* establishes at least the following: The Constitution does not require a State or municipality to permit a business that intentionally specializes in, and holds itself forth to the public as specializing in, performance or portrayal of sex acts, sexual organs in a state of arousal, or live human nudity. In my view that suffices to sustain the Dallas ordinance.

'e259 III

In evaluating the Dallas ordinance under the principles I have described, we must of course give it the benefit of any "limiting construction [that] has been or could be placed" on its text. *Broadrick v. Oklahoma,* 413 U.S. 601, 613, 93 S.Ct. 2908, 2916, 37 L.Ed.2d 830 (1973). Moreover, we cannot sustain the present facial attack unless the ordinance is *"substantially* overbroad," *id.,* at 615, 93 S.Ct., at 2918 (emphasis added), that is, "unless it reaches a substantial number of impermissible applications," *New York v. Ferber,* 458 U.S. 747, 771, 102 S.Ct. 3348, 3362, 73 L.Ed.2d 1113 (1982), "judged in relation to the statute's plainly legitimate sweep," *Broadrick,* supra, 413 U.S., at 615, 93 S.Ct., at 2918.

Favorably construed, the Dallas ordinance regulates only the business of pandering, as I have defined it above. It should be noted, to begin with, that the depictions, descriptions, and displays that cause any of the businesses before us to qualify as a "sexually oriented business" must be sexually

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explicit in more than a minor degree. What is at issue here is not the sort of nude photograph that might commonly appear on a so-called "pin-up calendar" or "men's magazine." The mere portrayal of the naked human body does not qualify unless (in the definition of adult cabaret, adult theater, and nude model studio) it is featured live. Qualifying depictions and descriptions do not include human genitals, but only human genitals in a state of sexual arousal, the fondling of erogenous zones, and normal or perverted sexual acts.

l:n addition, in order to qualify for regulation under the ordinance the business that provides such live nudity or such sexually explicit depictions br descriptions must do so "as one of its principal business purposes" (in the case of adult bookstores and adult video stores) or "regularly" (in the case of adult **623 motion picture theaters, adult cabarets, and adult theaters). The adverb "regularly" can mean "constantly, continually, steadily, sustainedly," Roget's International Thesaurus 135.7, p. 77 (4th ed. 1977), and also "in a ... methodical way," Webster's Third New International Dictionary 1913 (1981). 1 think it can reasonably be interpreted *260 in the present context to mean a continuous presentation of the sexual material as one of the very objectives of the commercial enterprise. Similarly, the phrase "as one of its principal business purposes" can connote that the material containing-the specified depictions and descriptions does not merely account for a substantial proportion of sales volume but is also intentionally marketed *as material of that character.*

All of the establishments at issue, therefore, share the characteristics that they offer (1) live nudity or hardcore sexual material, (2) as a constant, intentional objective of their business. But there is still more. With the single exception of "adult motion picture theater," the descriptions of all the establishments at issue contain some language that suggests a requirement that the business hold itself forth to the public precisely as a place where sexual stimulation of the described sort can be obtained. Surely it would be permissible to interpret the phrase "as one of its principal business purposes" in the definition of "adult bookstore or adult video store" to require such holding forth. A business can hardly have as a principal purpose a line of commerce it does not even promote. Likewise, the portion of the definitions of "adult cabaret" and "adult theater" which requires that they regularly "feature" the described sexual material suggests that it must not merely be there but must be promoted or marketed as such. The definition of nude model studio, while containing no such requirement, is subject to a defense which contains as one of its elements that the structure where the studio is located "has no sign visible from the exterior of the structure and no other advertising that indicates a nude person is available for viewing. " Dallas City Code § 41A-21(d)(3)(A) (1986). Even the definitions of the two categories of enterprises not at issue in this case, "escort agencies" and "sexual encounter centers," contain language that arguably requires a "holding forth" (a "primary business purpose" requirement). Given these indications of the importance of "holding forth" contained *261 in all except one of the definitions, it seems to me very likely--especially if that should be thought necessary , to sustain the constitutionality of the measure--that the Dallas ordinance in all its challenged applications would be interpreted to apply only to businesses that not only (1) offer live nudity or hardcore sexual material, (2) as a constant and intentional objective of their business, but also (3) seek to promote it as such. It seems to me that any business that meets these requirements can properly be described as engaged in "the sordid business of pandering, " and is not protected by the First Amendment. Indeed, even the first two requirements alone would suffice to sustain the ordinance, since it is most implausible that any enterprise which has as its constant intentional objective the sale of such material does not advertise or promote it as such; if a few such enterprises bent upon commercial failure should exist, they would certainly not be numerous enough to render the ordinance *substantially* overbroad.

The Dallas ordinance's narrow focus distinguishes these cases from *Schad v.* Mount *Ephraim,* 452 U.S. 61, 101 S.Ct. 2176, 68 L.Ed.2d 671 (1981), in which we held unconstitutional a municipal ordinance that prohibited all businesses offering live entertainment, including but not limited to nude dancing. That ordinance was substantially overbroad because, on its face, it prohibited "a wide range of expression that has long been held to be within the protections of the First and Fourteenth Amendments." Id., at 65, 101 S.Ct., at 2181. The Dallas ordinance, however, targets only businesses engaged in unprotected activity.

**624 Even if it were possible to conceive of a business that could meet the above-described qualifications and yet be engaged in First

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Amendment activities rather than pandering, we do not invalidate statutes as overbroad on the basis of imagination alone. We have always held that we will not apply that "strong medicine" unless the overbreadth is both "real" ' and "substantial." *Broadrick v. Oklahoma,* 413 U.S., at 613, 615, 93 S.Ct., at 2916-17, 2917- 18. 1 think we must sustain the current ordinance just as we sustained the statute at issue in *New York v. Ferber, supra,* *262 which forbade the distribution of materials depicting minors in a "sexual performance." The state court had applied overbreadth analysis because of its "understandabl[e] concer[n] that some protected expression, ranging from medical textbooks to pictorials in the National Geographic would fall prey to the statute." Id., at 773, 102 S.Ct., at 3363. We said:

"[W]e seriously doubt, and it has not been suggested, that these arguably impermissible applications of the statute amount to more than a tiny fraction of the materials within the statute's reach. Nor will we assume that the New York courts will widen the possibly invalid reach of the statute by giving an expansive construction to the proscription on 'lewd exhibition[s] of the genitals.' Under these circumstances, § 263.15 is 'not substantially overbroad and ... whatever overbreadth may exist should be cured through a case-by-case analysis of the fact situations to which its sanctions, assertedly, may not be applied.' *Broadrick v. Oklahoma,* 413 U.S., at 615- 61.6 [93 S.Ct., at 2917-2918]." Id., 458 U.S.,-at 773-774, 102 S.Ct., at 3363.

The legitimate reach of the Dallas ordinance "dwarfs its arguably impermissible applications. " Id., at 773, 102 S.Ct., at 3363.

To reject the present facial attack upon the ordinance is not, of course, to deprive someone who is not engaged in pandering and who is somehow caught within its provisions (if that could possibly occur) from asserting his First Amendment rights. But that eventuality is so improbable, it seems to me, that no substantial quantity of First Amendment activity is anticipatorily "chilled." The Constitution is adequately safeguarded by conducting further review of this reasonable ordinance as it is applied_

Justice O'CONNOR's opinion correctly notes that respondents conceded that the *materials* sold are protected by the First Amendment. *Ante,* at 603. But they did not concede that the activity of pandering at which the Dallas ordinance is directed is constitutionally protected. They did not, to be *263 sure, specifically argue *Ginzburg,* or suggest the complete proscribability of these businesses as a basis for sustaining their manner of licensing them. But we have often sustained judgments on grounds not argued-- particularly in the area of obscenity law, where our jurisprudence has been, let us say, not entirely predictable. In *Ginzburg* itself, for example, the United States did not argue that the convictions could be upheld on the pandering theory the Court adopted, but only that the materials sold were obscene under *Roth-* Brief for United States in *Ginzburg v. United States,* O.T.1965, No. 42, p. 18_ In *Alishkin v. New York,* 383 U.S. 502, 86 S.Ct. 958, 16 L.Ed2d 56 (1966), one of the companion cases to *Ginzburg,* the State of New York defended the convictions under *Roth* and explicitly disagreed with those commentators who would determine obscenity by looking to the "intent of the disseminator, " rather than "character of the material. " Brief for Appellee in *Mishkin v. New York,* O.T.1965, No. 49, p. 45, and n. See also Brief for Appellee in *Memoirs v. Attorney General of Massachusetts,* O.T.1965, No. 368, p. 17 (defending convictions under *Roth* and *Manual Enterprises, Inc. v. Day,* 370 U.S. 478, 82 S.Ct. 1432, 8 L.Ed.2d 639 (1962)). Likewise in *Roth,* where we held that the test for obscenity was appeal to prurient interest, 354 U.S., at 489, 77 S.Ct., at 1311, the United States had argued that **625 obscenity was established if the material "constitutes a present threat to the morals of the average person in the community. " Brief for United States in *Roth v. United States,* O.T.1956, No. 582, p. 100. And no one argued that the *Miller* Court should abandon the "utterly without redeeming social value" test of the *Memoirs* plurality, but the Court did so nevertheless. Compare 413 U.S., at 24-25, 93 S.Ct., at 2614-16, with Brief for Appellee in *Miller v. California,* O.T.1972, No. 70-73, pp. 26-27.

The mode of analysis I have suggested is different from the rigid test for obscenity that. we apply to the determination whether a particular book, film, or performance can be banned. The regulation here is not directed to particular . *264 works or performance, but to their concentration, and the constitutional analysis should be adjusted accordingly. What Justice STEVENS wrote for the plurality in *American Mini Theatres is* applicable here as well: "[Me learned long ago that broad statements of principle, no matter how correct in the

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context in which they are made, are. sometimes qualified by contrary decisions before the absolute limit of the stated principle is reached." 427 U.S., at 65, 96 S.Ct., at 2450. The prohibition of concentrated pornography here is analogous to the prohibition we sustained in *American 11dini Theatres.* There we upheld ordinances that prohibited the concentration of sexually oriented businesses, each of which (we assumed) purveyed material that was not constitutionally proscribable. Here I would uphold an ordinance that regulates the concentration of sexually oriented material in a single business.

The basis of decision I have described seems to me the proper means, in Chief Justice Warren's words, "to reconcile the right of the Nation and of the States to maintain a decent society and, on the other hand, the right of individuals to express themselves freely in accordance with the guarantees of the First and Fourteenth Amendments. " *Jacobellis v. Ohio,* 378 U.S. 184, 199, 84 S.Ct. 1676, 1684, 12 L.Ed.2d 793 (1964) (dissenting opinion). It entails no risk of suppressing even a single work of science, literature, or art--or, for that matter, even a single work of pornography. Indeed, I fully believe that in the long run it will expand rather than constrict the scope of permitted expression, because it will eliminate the incentive to use, as a means of preventing commercial activity patently objectionable to large segments of our society, methods that constrict unobjectionable activity as well.

For the reasons stated, I respectfully dissent.

110 S.Ct. 596, 493 U.S. 215, 107 L.Ed.2d 603, 58 USLW 4079

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Supreme Court of the United States

Michael BARNES, Prosecuting Attorney of St. Joseph County, Indiana, et al.
v.
GLEN THEATRE, INC., et al.

No. 90-26.

Argued Jan. 8, 1991.
Decided June 21, 1991.

Establishments wishing to provide totally nude dancing as entertainment and individual dancers employed at establishments brought suit to enjoin enforcement of Indiana public indecency statute which required dancers to wear pasties and a G-string, asserting that statute violated the First Amendment. The United States District Court for the Northern District of Indiana, 726 F.Supp. 728, permanently enjoined enforcement. The Court of Appeals for the Seventh Circuit, 802 F.2d 287, reversed and remanded. On remand, the District Court, 695 F.Supp. 414, found that nude dancing in question was not protected by the First Amendment. On appeal, the Court of Appeals, 887 F.2d 826, reversed and remanded. Opinion was vacated and rehearing en banc granted. The Court of Appeals, 904 F.2d 1081, reversed. After granting certiorari, the Supreme Court, Chief Justice Rehnquist, held that enforcement of public indecency statute to require that dancers at adult entertainment establishments wear pasties and a G-string did not violate the First Amendment.

Reversed.

Justices Scalia and Souter filed opinions concurring in the judgment.

Justice White filed dissenting opinion, in which Justices Marshall, Blackmun, and Stevens joined.

West Headnotes

[1] Constitutional Law 090.4(3)
92k90.4(3)

[1] Constitutional Law C°~:-90.4(5)
92k90.4(5)

Totally nude dancing as sought to be performed in lounge presenting "go-go dancing," and in adult "bookstore," was expressive conduct within the outer perimeters of the First Amendment, although only marginally so. (Per Chief Justice Rehnquist, with two Justices concurring, and two Justices concurring in the judgment.) U.S.C.A. Const.Amend. 1.

[2] Constitutional Law c~~z-90(3)
92k90(3)

Government regulation of expressive conduct is sufficiently justified if it is within the constitutional power of the government, if it furthers an important or substantial governmental interest, if the governmental interest is unrelated to suppression of free expression, and if the incidental restriction on alleged First Amendment freedoms is not greater than is essential to furtherance of that interest. (Per Chief Justice Rehnquist, with two Justices concurring, and two Justices concurring in the judgment.) U.S.C.A. Const.Amend. 1.

[3] Constitutional Law 090.4(3)
92k90.4(3)

[3] Obscenity C-2.5
281k2.5

Enforcement of Indiana's public indecency law to require nude dancers in adult entertainment establishments to wear pasties and any G-string did not violate the First Amendment's guarantee of freedom of expression; statute was clearly within state's constitutional power, it furthered substantial governmental interest in protecting societal order and morality, governmental interest was unrelated to suppression of free expression, and incidental restriction on First Amendment freedom was no greater than was essential to furtherance of the governmental interest. (Per Chief Justice Rehnquist, with two Justices concurring, and two Justices concurring in the judgment.) West's A.I.C. 35-45-4-1; U.S. C.A. Const.Amend. 1.

**2457 *560 *Syllabus [FN*]*

FN* The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Lumber Co., 200 U.S. 321, 337, 26 S.Ct. 282, 287, 50* L.Ed. 499.

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Respondents, two Indiana establishments wishing to provide totally nude dancing as entertainment and individual dancers employed at those establishments, brought suit in the District Court to enjoin, enforcement of the state public indecency law--which requires respondent dancers to wear pasties and G-strings--asserting that the law's prohibition against total nudity in public places violates the First Amendment. The court held that the nude dancing involved here was not expressive conduct. The Court of Appeals reversed, ruling that nonobscene nude dancing performed ' for entertainment is protected expression, and that the statute was an improper infringement of that activity because its purpose was to prevent the message of eroticism and sexuality conveyed by the dancers.

Held: The judgment is reversed.

904 F.2d 1081 (CA9 1990), reversed.

The Chief Justice, joined by Justice O'CONNOR and Justice KENNEDY, concluded that the enforcement of Indiana's public indecency law to prevent totally nude dancing does not violate the First Amendment's guarantee of freedom of expression. Pp. 2460-2463.

(a) Nude dancing of the kind sought to be performed here is expressive conduct within the outer perimeters of the First Amendment, although only marginally so. See, e.g., *Doran v. Salem Inn, Inc.,* 422 U.S. 922, 932, 95 S.Ct. 2561, 2568, 45 L.Ed.2d 648. P. 2460.

(b) Applying the four-part test of *United States v. O'Brien,* 391 U.S. 367, 376-377, 88 S.Ct. 1673, 1678-1679, 20 L.Ed.2d 672--which rejected the contention that symbolic speech is entitled to full First Amendment protection--the statute is justified despite its incidental limitations on some expressive activity. The law is clearly within the State's constitutional power. And it furthers a substantial governmental interest in protecting societal order and morality. Public indecency statutes reflect moral disapproval of people appearing in the nude among strangers in public places, and this particular law follows a line of state laws, dating back to 1831, banning public nudity. The States' traditional police power is defined as the authority to provide for the public health, safety, and morals, and such a basis for legislation *561 has been upheld. See, e.g., *Paris Adult Theatre I v. Slaton,* 413 U.S. 49, 61, 93 S.Ct. 2628, 2637, 37 L.Ed.2d 446. This governmental interest is unrelated to the suppression of free expression, since public nudity is the evil the State seeks to prevent, whether or not it is combined with expressive activity. The law does not proscribe nudity in these establishments because the dancers are conveying an erotic message. To the contrary,. an erotic performance may be presented without **2458 any state interference, so long as the performers wear a scant amount of clothing. Finally, the incidental restriction on First Amendment freedom is no greater than is essential to the furtherance of the governmental interest. Since -the statutory prohibition is not a means to some greater end, but an end itself, it is without cavil that the statute is narrowly tailored. Pp. 2460-2463.

Justice SCALIA concluded that the statute--as a general law regulating conduct and not specifically directed at expression, either in practice or on its face--is not subject to normal First Amendment scrutiny and should be upheld on the ground that moral opposition to nudity supplies a rational basis for its prohibition. Cf. *Employment Div., Dept. of Human Resources of Ore. v. Smith,* 494 U.S. 872, 110 S.Ct. 1595, 108 L.Ed.2d 876. There is no intermediate level of scrutiny requiring that an incidental restriction on expression, such as that involved here, be justified by an important or substantial governmental interest. Pp. 2463-2467.

Justice SOUTER, agreeing that the nude dancing at issue here is subject to a degree of First Amendment protection, and that the test of *United States v. O'Brien,* 391 U.S. 367, 88 S.Ct. 1673, is the appropriate analysis to determine the actual protection required, concluded that the State's interest in preventing the secondary effects of adult entertainment establishments-- prostitution, sexual assaults, and other criminal activity-=is sufficient under *O'Brien* to justify the law's enforcement against nude dancing. The prevention of such effects clearly falls within the State's constitutional power. In addition, the asserted interest is plainly substantial, and the State could have concluded that it is furthered by a prohibition on nude dancing, even without localized proof of the harmful effects. See *Renton v. Playtime Tneatres, Inc.,* 475 U.S. 41, 50, 51, 106 S.Ct. 925, 930, 930, 89 L.Ed.2d 29. Moreover, the interest is unrelated to the suppression of free expression, since the pernicious effects are merely associated with nude dancing establishments and are not the result of the expression inherent in nude dancing. Id., at 48,

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106 S.Ct., at 929. Finally, the restriction is no greater than is essential to further the governmental interest, since pasties and a G-string moderate expression to a minor degree when measured against the dancer's remaining capacity and opportunity to express an erotic message. Pp. 2468-2471.

*562 REHNQUIST, C.J., announced the judgment of the Court and delivered an opinion, in which O'CONNOR and KENNEDY, JJ., joined. SCALIA, J., *post, p.* 2463, and SOUTER, J., *post,* p. 2468, filed opinions concurring in the judgment_ WHITE, J., filed a dissenting opinion, in which MARSHALL, BLACKMUN, and STEVENS, JJ., joined, *post, p.* 2471.

Wayne E. Uhl, Deputy Attorney General of Indiana, argued the cause for petitioners. With him on the briefs was *Linley E. Pearson,* Attorney General.

Bruce J. Ennis, Jr., argued the cause for respondents. *Lee J. Klein* and *Bradley J_ Shafer* filed a brief for respondents Glen Theatre, Inc., et al. *Patrick Louis Baude* and *Charles A. Asher* filed a brief for respondents Darlene Miller et al.*

'4Briefs of *amici curiae* urging reversal were filed for the State of Arizona et al. by *Robert K. Corbin,* Attorney General of Arizona, and *Steven J. Twist,* Chief Assistant Attorney General, *Clarine Nardi Riddle,* 'Attorney General of Connecticut, and *John J. Kelly,* Chief State's Attorney, *William L. Webster,* Attorney General of Missouri, *Lacy H. Thornburg,* Attorney General of North Carolina, and *Rosalie Simmonds Ballentine,* Acting Attorney General of the Virgin Islands; for the American Family Association, Inc., et al. by *Alan E. Sears, James Mueller,* and *Peggy ill. Coleman,* and for the National Governors' Association et al. by *Benna Ruth Solomon* and *Peter Buscemi.*

Briefs of *amici curiae* urging affirmance were filed for the American Civil Liberties Union et al. by *Spencer Neth, Thomas D. Buckley, Jr., Steven R. Sha,Diro,* and *John A. Powell,* for the Georgia on Premise & Lounge Association, Inc-, by *James A. Walrath,* for People for the American Way et al. by *Timothy B. Dyk, Robert H. Klonoff, Patricia A. Dunn, Elliot M. illincberg, Stephen F. Rohde,* and *Mary D. Dorman.*

James J. Clancy filed a brief *pro se* as *amicus curiae.*

Chief Justice REHNQUIST delivered the opinion of the Court.

Respondents are two establishments in South Bend, Indiana, that wish to provide totally nude dancing as entertainment, and individual dancers who are employed at these *563 establishments. They claim that the First Amendment's guarantee of freedom of expression prevents the State of Indiana from enforcing its public indecency law to prevent this form of dancing. We reject their claim.

The facts appear from the pleadings and fmdings of the District Court and are uncontested here. The Kitty Kat Lounge, Inc. (Kitty Kat), is located in the city of South Bend. It sells alcoholic beverages and presents "go-go dancing." Its proprietor desires to present "totally nude dancing," but an applicable Indiana statute regulating public nudity requires that the dancers wear "pasties" **2459 and "G-strings" when they dance. The dancers are not paid an hourly wage, but work on commission. They receive a 100 percent commission on the first $60 in drink sales during their performances. Darlene Miller, one of the _respondents in the action, had worked at the Kitty Kat for about two years at the time this action was brought. Miller wishes to dance nude because she believes she would make more money doing so.

Respondent Glen Theatre, Inc., is an Indiana corporation with a place of business in South Bend. Its primary business is supplying so-called adult entertainment through written and printed materials, movie showings, and live entertainment at an enclosed "bookstore." The live entertainment at the "bookstore" consists of nude and seminude performances and showings of the female body through glass panels. Customers sit in a booth and insert coins into a timing mechanism that permits them to observe the live nude and seminude dancers for a period of time. One of Glen Theatre's dancers, Gayle Ann Marie Sutro, has danced, modeled, and acted professionally for more than 15 years, and in addition to her performances at the Glen Theatre, can be seen in a pornographic movie at a nearby theater. App. to Pet. for Cert_ 131-133.

Respondents sued in the United States District Court for the Northern District of Indiana to enjoin the enforcement of the Indiana public indecency

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statute, Ind. Code § 35-45-4-1 *564 (1988), asserting that its prohibition against complete nudity in public places violated the First Amendment. The District Court originally granted respondents' prayer for an injunction, finding that the statute was facially overbroad. The Court of Appeals for the Seventh Circuit reversed, deciding that previous litigation with respect to the statute in the Supreme Court of Indiana and this Court precluded the possibility of such a challenge, [FNI] and remanded to the District Court in order for the plaintiffs to pursue their claim that the statute violated the First Amendment as applied to their dancing. *Glen Theatre, Inc. v. Pearson,* 802 F.2d 287, 288-290 (1986). On remand, the District Court concluded that *565 "the type of dancing these plaintiffs wish to perform is not expressive activity protected by the Constitution of the United States," and rendered judgment in favor of the defendants. *Glen Theatre, Inc. v. Civil City of South Bend,* 695 F.Supp. 414, 419 (1988). The case was again appealed to the Seventh Circuit, and a panel of that court reversed the District Court, holding that the nude dancing involved here was expressive conduct protected by the First Amendment. **2460 *Miller v. Civil City of South Bend,* 887 F.2d 826 (1989). The Court of Appeals then heard the case en banc, and the court rendered a series of comprehensive and thoughtful opinions. The majority concluded that nonobscene nude dancing performed for entertainment is expression protected by the First Amendment, and that the.,public indecency statute was an improper infringement of that expressive activity because its purpose was to prevent the message of eroticism and sexuality conveyed by the dancers. *Miller v. Civil City of South Bend,* 904 F.2d 1081 (1990). We granted certiorari, 498 U.S. 807, 111 S.Ct. 38, 112 L.Ed.2d 15 (1990), and now hold that the Indiana statutory requirement that the dancers in the establishments involved in this case must wear pasties and G-strings does not violate the First Amendment.

FNI. The Indiana Supreme Court appeared to give the public indecency statute a limiting construction to save it from a facial overbreadth attack:

"There is no right to appear nude in public. Rather, it *may* be constitutionally required to tolerate or to allow some nudity as a part of some larger form of expression meriting protection, when the communication of ideas is involved." *State v. Baysinger,* 272 Ind. 236, 247, 397 N.E.2d 580, 587 (1979) (emphasis added), appeals dism'd *sub nom. Clark v. Indiana,* 446 U.S. 931, 100 S.Ct. 2146, 64 L.Ed.2d 783, and *Dove v. Indiana,* 449 U.S. 806, 101 S.Ct. 52, 66 L.Ed.2d 10 (1980)

Five years after *Baysinger,* however, the Indiana Supreme Court reversed a decision of the Indiana Court of Appeals holding that the statute did "not apply to activity such as the theatrical appearances involved herein, which may not be prohibited absent a fmding of obscenity," in a case involving a partially nude dance in the "bliss Erotica of Fort Wayne" contest. *Erhardt v. State,* 468 N.E.2d 224 (Ind.1984). The Indiana Supreme Court did not discuss the constitutional issues beyond a cursory comment that the statute had been upheld against constitutional attack in *Baysinger,* and Erhardt's conduct fell within the statutory prohibition. Justice Hunter dissented, arguing that "a public indecency statute which prohibits nudity in any public place is unconstitutionally overbroad. My reasons for so concluding have already been articulated in *State v. Baysinger,* (1979) 272 Ind. 236, 397 N.E.2d 580 (Hunter and DeBruler, JJ., dissenting)." 468 N_E.2d at 225-226. Justice DeBruler expressed similar views in his dissent in *Erhardt. Id.,* at 226. Therefore, the Indiana Supreme Court did not affirmatively limit the reach of the statute in *Baysinger,* but merely said that to the extent the First Amendment would require it, the statute might be unconstitutional as applied to some activities.

[1] Several of our cases contain language suggesting that nude dancing of the kind involved here is expressive conduct protected by the First Amendment_ In *Doran v. Salem Inn, Inc.,* 422 U.S. 922, 932, 95 S.Ct. 2561, 2568, 45 L.Ed.2d 648 (1975), we said: "[A]lthough the customary 'barroom' type of nude dancing may involve only the barest minimum of protected expression, we recognized in *California v. LaRue,* 409 U.S. 109, 118, 93 S.Ct. 390, 397, 34 L.Ed.2d 342 (1972), that this form of entertainment might be entitled to First and Fourteenth Amendment protection under some circumstances." In *Schad v. Mount Ephraim,* 452 U.S. 61, 66, 101 S.Ct. 2176, 2181, 68 L.Ed.2d 671 (1981), we said that "[f]urthermore, as the state courts in this case recognized, nude dancing is not without its First Amendment protections from official regulation" (citations omitted). These statements support the conclusion of the Court of Appeals *566 that nude dancing of the kind sought to be performed here is expressive conduct within the outer perimeters of the First Amendment, though we view it as only marginally so. This, of course, does not end our inquiry. We must determine the level of protection to be afforded to the expressive conduct at issue, and must determine whether the Indiana statute is an

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impermissible infringement of that protected activity.

Indiana, of course, has not banned nude dancing as such, but has proscribed public nudity across the board. The Supreme Court of Indiana has construed the Indiana statute to preclude nudity in what are essentially places of.public accommodation such as the Glen Theatre and the Kitty Kat Lounge. In such places, respondents point out, minors are excluded and there are no nonconsenting viewers. Respondents contend that while the State may license establishments such as the ones involved here, and limit the geographical area in which they do business, it may not in any way limit the performance of the dances within them without violating the First Amendment. The petitioners contend, on the other hand, that Indiana's restriction on nude dancing is a valid "time, place, or manner" restriction under cases such as *Clark v. Community for Creative Mon-Violence,* 468 U.S. 288, 104 S.Ct. 3065, 82 L.Ed.2d 221 (1984).

The "time, place, or manner" test was developed for evaluating restrictions on expression taking place on public property which had been dedicated as a "public forum," *Ward v. Rock Against Racism,* 491 U.S. 781, 791, 109 S.Ct. 2746, 2753, 105 L.Ed.2d 661 (1989), although we have on at least one occasion applied it to conduct occurring on private property. See *Renton v. Playtime Theatres, Inc.,* 475 U.S. 41, 106 S.Ct. 925, 89 L_Ed2d 29 (1986).' In *Clark* we observed that this test has been interpreted to embody much the same standards as those set forth in *United States v. O'Brien,* 391 U_S. 367, 88 S.Ct. 1673, 20 L.Ed.2d 672 (1968), and we turn, therefore, to the rule enunciated in *O'Brien.*

[2] O'Brien burned his draft card on the steps of the South Boston Courthouse in the presence of a sizable crowd, and '1567 was convicted **2461 of violating, a statute that prohibited the knowing destruction or mutilation of such a card. He claimed that his conviction was contrary to the First Amendment because his act was "symbolic speech"-- expressive conduct. The Court rejected his contention that symbolic speech is entitled to full First Amendment protection, saying:

"[E]ven on the assumption that the alleged communicative element in O'Brien's conduct is sufcient to bring into play the First Amendment, it does not necessarily follow that the destruction of a registration certificate is constitutionally protected activity. This Court has held that when 'speech' and 'nonspeech' elements are combined in the same course of conduct, a sufficiently important governmental interest in regulating the nonspeech element can justify incidental limitations on First Amendment freedoms. To characterize the quality of the governmental interest which must appear, the Court has employed a variety of descriptive terms: compelling; substantial; subordinating; paramount; cogent; strong. Whatever imprecision inheres in these terms, we think it clear that a government regulation is sufficiently justified if it is within the constitutional power of the Government; if it furthers an important or substantial governmental interest; if the governmental interest is unrelated to the suppression of free expression; and if the incidental restriction on alleged First Amendment freedoms is no greater than is essential to the furtherance of that interest." Id., at 376-377, 88 S.Ct., at 1678-1679 (footnotes omitted).

[3] Applying the four-part *O'Brien* test enunciated above, we find that Indiana's public indecency statute is justified despite its incidental limitations on some expressive activity. The public indecency statute is clearly within the constitutional power of the State and furthers substantial governmental interests. It is impossible to discern, other than from the text of the statute, exactly what governmental interest the Indiana legislators had in mind when they enacted *568 this statute, for Indiana does not record legislative history, and the State's highest court has not shed additional light on the statute's purpose. Nonetheless, the statute's purpose of protecting societal order and morality is clear from its text and history. Public indecency statutes of this sort are of ancient origin and presently exist in at least 47 States. Public indecency, including nudity, was a criminal offense at common law, and this Court recognized the common-law roots of the offense of "gross and open indecency" in *Winters v. New York,* 333 U.S. 507, 515, 68 S.Ct. 665, 670, 92 L.Ed. 840 (1948). Public nudity was considered an act *malum in se. Le Roy v. Sidley, 1* Sid. 168, 82 Eng.Rep. 1036 (K.B.1664). Public indecency statutes such as the one before us reflect moral disapproval of people appearing in the nude among strangers in public places.

This public indecency statute follows a long line of earlier Indiana statutes banning all public nudity.

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The history of Indiana's public indecency statute shows that it predates barroom nude dancing and was enacted as a general prohibition. At least as early as 1831, Indiana had a statute punishing "open and notorious lewdness, or ... any grossly scandalous and public indecency." Rev.Laws of Ind., ch. 26, § 60 (1831); 1nd.Rev.Stat., ch. 53, § 81 (1834). A gap during which no statute was in effect was filled by the Indiana Supreme Court in *Ardery v. State,* 56 Ind. 328 (1877), which held that the court could sustain a conviction for exhibition of "privates" in the presence of others. The court traced the offense to the Bible story of Adam and Eve. Id., at 329-330. In 1881, a statute was enacted that would remain essentially unchanged for nearly a century:

"Whoever, being over fourteen. years of age, makes an indecent exposure of his person in a public place, or in any place where there are other persons to be offended or annoyed thereby, ... is guilty of **2462 public indecency...." 1881 Ind.Acts, ch. 37, § 90.

*569 The language quoted above remained unchanged until it was simultaneously repealed and replaced with the present statute in 1976. 1976 Ind.Acts, Pub.L_ 148, Art. 45, ch. 4, § 1. [FN2]

FN2. Indiana Code § ***35-45-4-1 (1988)*** provides:
'***Public*** indecency; indecent exposure
"Sec_ 1. (a) A person who knowingly or iptentionally, in a ***public*** place: "(1) engages in sexual intercourse;
"(2) engages in deviate sexual conduct;
"(3) appears in a state of nudity; or
"(4) fondles the genitals of himself or another person;
commits public indecency, a Class A misdemeanor.
"(b) 'Nudity' means the showing of the human male or female genitals, pubic area, or ***buttocks*** with less than a fully opaque covering, the showing of the female breast with less than a fully opaque covering of any part of the nipple, or the showing of the covered male genitals in a discernibly turgid state. "

This and other public indecency statutes were designed to protect morals and public order. The traditional police power of the States is defined as the authority to provide for the public health, safety, and morals, and we have upheld such a basis for legislation. In Paris *Adult T'neatre I v. Slaton,* 413 U.S. 49, 61, 93 S.Ct. 2628, 2637, 37 L.Ed.2d 4^-.6 (1973), we said:

"In deciding *Roth [v. United States,* 354 U.S. 476 [77 S.Ct. 1304, 1 L.Ed.2d 1498] (1957)], this Court implicitly accepted that a legislature could legitimately act on such a conclusion to protect 'the social interest in order and morality.' [Id.], at 485 [77 S.Ct., at 1309]." (Emphasis omitted.)

And in *Bowers v. Hardtivick,* 478 U.S. 186, 196, 106 S.Ct. 2841, 2846, 92 L.Ed.2d 140 (1986), we said:

"The law, however, is constantly based on notions of morality, and if all laws representing essentially moral choices are to be invalidated under the Due Process Clause, the courts will be very busy indeed."

Thus, the public indecency statute furthers a substantial government interest in protecting order and morality.

*570 This interest is unrelated to the suppression of free expression. Some may view restricting nudityy on moral grounds as necessarily related to expression. We disagree. It can be argued, of course, that almost limitless types of conduct--including appearing in the nude in public--are "expressive," and in one sense of the word this is true. People who go about in the nude in public may be expressing something about themselves by so doing. But the court rejected this expansive notion of "expressive conduct" in *O'Brien,* saying:

"We cannot accept the view that an apparently limitless variety of conduct can be labeled 'speech' whenever the person engaging in the conduct intends thereby to express an idea." 391 U.S., at 376, 88 S.Ct_, at 1678.

And in *Dallas v. Stanglin,* 490 U.S. 19, 109 S.Ct. 1591, 104 L.Ed.2d 18 (1989), we further observed:

"It is possible to find some kernel of expression in almost every activity a person undertakes--for example, walking down the street or meeting one's friends at a shopping mall--but such a kernel is not sufficient to bring the activity within the protection of the First Amendment. We think the activity of these dance-hall patrons coming together to engage in recreational dancing-- is not protected by the First Amendment." Id., at 25, 109 S.Ct., at 1595.

Respondents contend that even though prohibiting nudity in public generally may not be related to suppressing expression, prohibiting the performance

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of nude dancing is related to expression because the State seeks to prevent its erotic message. Therefore, they reason that the application of the Indiana statute to the nude dancing in this case violates the First Amendment, because it fails the third part of the *O'Brien* test, viz: **2463 the governmental interest must be unrelated to the suppression of free expression.

But we do not think that when Indiana applies its statute to the nude dancing in these nightclubs it is proscribing nudity because of the erotic message conveyed by the dancers. *571 Presumably numerous other erotic performances are presented at these establishments and similar clubs without any interference from the State, so long as the performers wear a scant amount of clothing. Likewise, the requirement that the dancers don pasties and G- strings does not deprive the dance of whatever erotic message it conveys; it simply makes the message slightly less graphic. The perceived evil that Indiana seeks to address is not erotic dancing, but public nudity. The appearance of people of all shapes, sizes and ages in the nude at a beach, for example, would convey little if any erotic message, yet the State still seeks to prevent it. Public nudity is the evil the State seeks to prevent, whether or not it is combined with expressive activity.

This conclusion is buttressed by a reference to the facts of . *O'Brien.* An Act of Congress provided that anyone who knowingly destroyed a Selective Service registration certificate committed an offense. O'Brien burned his certificate on the steps of the South Boston Courthouse to influence others to adopt his antiwar beliefs. This Court upheld his conviction, reasoning that the continued availability of issued certificates served a legitimate and substantial purpose in the administration of the Selective Service System. O'Brien's deliberate destruction of his certificate frustrated this purpose and "[f]or this noncommunicative impact of his conduct, and for nothing else, he was convicted." 391 U.S., at 382, 88 S.Ct., at 1682. It was assumed that O'Brien's act in burning the certificate had a communicative element in it sufficient to bring into play the First Amendment, *id.,* at 376, 88 S.Ct., at 1682, but it was for the noncommunicative element that he was prosecuted. So here with the Indiana statute; while the dancing to which it was applied had a communicative element, it was not the dancing that was prohibited, but simply its being done in the nude.

The fourth part of the *O'Brien* test requires that the incidental restriction on First Amendment freedom be no greater than is essential to the furtherance of the governmental interest. As indicated in the discussion above, the *572 governmental interest served by the text of the prohibition is societal disapproval of nudity in public places and among strangers. The statutory prohibition is not a means to some greater end, but an end in itself. It is without cavil that the public indecency statute is "narrowly tailored"; Indiana's requirement that the dancers wear at least pasties and G- strings is modest, and the bare minimum necessary to achieve the State's purpose.

The judgment of the Court of Appeals accordingly is

Reversed.

Justice SCALIA, concurring in the judgment.

I agree that the judgment of the Court of Appeals must be reversed. In my view, however, the challenged regulation must be upheld, not because it survives some lower level of First Amendment scrutiny, but because, as a general law regulating conduct and not specifically directed at expression, it is not subject to First Amendment scrutiny at all.

Indiana's public indecency statute provides:
"(a) A person who knowingly or intentionally, in a public place: "(1) engages in sexual intercourse;
"(2) engages in deviate sexual conduct;
"(3) appears in a state of nudity; or
"(4) fondles the 'genitals of himself or another person;
commits public indecency, a Class A misdemeanor.
**2464 "(b) 'Nudity' means the showing of the human male or female genitals, pubic area, or buttocks with less than a fully opaque covering, the showing of the female breast with less than a fully opaque covering of any part of the nipple, or the showing of covered male genitals in a discernibly turgid state." Ind.Code § 35-45-4-1 (1988).

On its face, this law is not directed at expression in particular. As Judge Easterbrook put it in his dissent below: "Indiana *573 does not regulate

dancing. It regulates public nudity.... Almost the entire domain of Indiana's statute is unrelated to expression; unless we view nude beaches and topless hot dog vendors as speech. " *Miller v. Civil City of South Bend,* 904 F.2d 1081, 1120 (CA7 1990). The intent to convey a "message of eroticism" (or any other message) is not a necessary element of the statutory offense of public indecency; nor does one commit that statutory offense by conveying the most explicit "message of eroticism," so long as he does not commit any of the four specified acts in the process. [FN1]

FN1. Respondents assert that the statute cannot be characterized as a general regulation of conduct, unrelated to suppression of expression, because one defense put forward in oral argument below by the attorney general referred to the "message of eroticism" conveyed by respondents. But that argument seemed to go to whether the statute could constitutionally be applied to the present performances, rather than to what was the purpose of the legislation. Moreover, the State's argument below was in the alternative: (1) that the statute does not implicate the First Amendment because it is a neutral rule not directed at expression, and (2) that the statute in any event survives First Amendment scrutiny because of the State's interest in suppressing nude barroom dancing. The second argument can be claimed to contradict the first (though I think it does not); but it certainly does not waive or abandon it. In any case, the clear purpose shown by both_ the text and historical use of the statute cannot be refuted by a litigating "statement in a single case.

Indiana's statute is in the line of a long tradition of laws against public nudity, which have never been thought to run afoul of traditional understanding of "the freedom of speech." Public indecency--including public nudity--has long been an offense at common law. See 50 Am.Jur.2d, Lewdness, Indecency, and Obscenity 449, 472-474 (1970); Annot., Criminal offense predicated on indecent exposure, 93 A.L.R. 996, 997-998 (1934); *Winters v. New York,* 333 U.S. 507, 515, 68 S.Ct. 665, 670, 92 L.Ed. 840 (1948). Indiana's first public nudity statute, Rev. Laws of Ind., ch. 26, § 60 (1831), predated by many years the appearance of nude barroom dancing. It was general in scope, directed at all public nudity, and not just at public nude expression; and all succeeding statutes, down to *574 the present one, have been the same. Were it the case that Indiana *in practice* targeted only expressive nudity, while turning a blind eye to nude beaches and unclothed purveyors of hot dogs and machine tools, see *Miller,* 904 F.2d, at 1120, 1121, it might be said that what posed as a regulation of conduct in general was in reality a regulation of only communicative conduct. Respondents have adduced no evidence of that. Indiana officials have brought many public indecency prosecutions for activities having no communicative element. See *Bond v. State,* 515 N.E.2d 856, 857 (Ind. 1987); *In re Levinson,* 444 N.E.2d 1175, 1176 (Ind.1983); *Preston v. State,* 259 Ind. 353, 354-355, 287 N.E.2d 347, 348 (1972); *Thomas v. State,* 238 Ind. 658, 659-660, 154 1N.E.2d 503, 504- 505 (1958); *Blanton v. State,* 533 N.E2d 190, 191 (Ind.App.1989); *Sweeney v. State,* 486 N.E.2d 651, 652 (Ind.App.1985); *Thompson v. State,* 482 N.E.2d 1372, 1373-1374 (Ind.App.1985); Adims v. *State,* 461 N.E.2d 740, 741-742 (Ind.App.1984); *State v. Elliott,* 435 N.E.2d 302, 304 (Ind.App.1982); *Lasko v. State,* 409 N.E.2d 112=1, 1126 (Ind.App.1980). [FN2]

FN2. Respondents also contend that the statute, as interpreted, is not content neutral in the expressive conduct to which it applies, since it allegedly does not apply to nudity in theatrical productions. See *State v. Baysinger,* 272 Ind. 236, 247, 397 N.E.2d 580, 587 (1979). 1 am not sure that theater versus nontheater represents a distinction based on content rather than format, but assuming that it does, the argument nonetheless fails for the reason the plurality describes, *ante,* at 2459, n. 1.

**2465 The dissent confidently asserts, *post,* at 2473, that the purpose of restricting nudity in public places in general is to protect nonconsenting parties from offense; and argues that since only consenting, admission-paying . patrons see respondents dance, that purpose cannot apply and the only remaining purpose must relate to the communicative elements of the performance. Perhaps the dissenters believe that "offense to others" *ought* to be the only reason for restricting nudity in public places generally, but there is no *575 basis for thinking that our society has ever shared that Thoreauvian "you - may - do - what - you - like - so - long - as - it - does - not - injure - someone -else" beau ideal--much less for thinking that it was written into the Constitution. The purpose of Indiana's nudity law would be violated, I think, if 60,000 fully consenting adults crowded into the Hoosier Dome to display their genitals to one another, even if there were not an offended innocent in the crowd. Our society prohibits, and all human societies have prohibited, certain activities not because they harm others but because

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they are considered, in the traditional phrase. *"contra bonos mores, " i.e.,* immoral. In American society, such prohibitions have included, for example, sadomasochism, cockfighting, bestiality, suicide, drug use, prostitution, and sodomy. While there may be great diversity of view on whether various of these prohibitions should exist (though I have found few ready to abandon, in principle, all of them), there is no doubt that, absent specific constitutional protection for the conduct involved, the Constitution does not prohibit them simply because they regulate "morality." See *Bowers v. Hardwick,* 478 U.S. 186; 196, 106 S.Ct. 2841, 2846, 92 L.Ed.2d 140 (1986) (upholding prohibition of private homosexual sodomy enacted solely on "the presumed belief of a majority of the electorate in [the jurisdiction] that homosexual sodomy is immoral and unacceptable"). See also *Pans Adult Theatre I v. SZaton,* 413 U.S. 49, 68, n. 15, 93 S.Ct. 2628, 2641, n. 15, 37 L.Ed.2d 446 (1973); *Dronenburg v. Zech,* 239 U.S.App.D.C. 229, 238, and n. 6, 741 F.2d 1388, 1397, and n. 6 (1984) (opinion of Bork, J.). The purpose of the Indiana statute, as both its text and the manner of its enforcement demonstrate, is to enforce the traditional moral belief that people should not expose their private parts indiscriminately, regardless of whether those who see them are disedified. Since that is so, the dissent has no basis for positing that, where only thoroughly edified adults are present, the purpose must be repression of communication. [FN3]

FN3. The dissent, post, at 2472-2473, 2475-2476, also misunderstands what is meant by the term "general law." I do not mean that the law restricts the targeted conduct in all places at all times. A law is "general" for the present purposes if it regulates conduct without regard to whether that conduct is expressive. Concededly, Indiana bans nudity in public places, but not within the privacy of the home. (That is not surprising, since the common-law offense, and the traditional moral prohibition, runs against public nudity, not against all nudity. E.g., 50 Am.Jur.2d, Lewdness, Indecency, and Obscenity, § 17, pp. 472-474 (1970).) . But that confirms, rather than refutes, the general nature of the law: One may not go nude in public, whether or not one intends thereby to convey a message, and similarly one may go nude in private, again whether or not that nudity is expressive.

*576 II

Since the Indiana regulation is a general law not specifically targeted at expressive conduct, its application to such conduct does not in my view implicate the First Amendment.

The First Amendment explicitly protects "the freedom of speech [and] of the press"--oral and written speech--not "expressive conduct. " When any law restricts speech, even for a purpose that has nothing to do with the suppression of communication (for instance, to reduce noise, see *Saia v. New York,* 334 U.S. 558, 561, 68 S.Ct. 1148, 1150, 92 L.Ed. 1574 (1948), to regulate election campaigns, see *Buckley v. Valeo,* 424 U.S. 1, 16, 96 S.Ct. 612, 633, 46 L.Ed.2d 659 (1976), or to prevent littering, see *Schneider v. State (Town of Irvington),* 308 U.S. 147, 163, 60 S.Ct. 146, 84 L.Ed. 155 (1939)), we insist that **2466 it meet the high, First-Amendment standard of justification. But virtually *every* law restricts conduct, and virtually *any* prohibited conduct can be performed for an expressive purpose--if only expressive of the fact that the actor disagrees with the prohibition. See, *e. g., Florida Free Beaches, Inc. v. t1Lliami,* 734 F.2d 608, 609 (CAll 1984) (nude sunbathers challenging public indecency law claimed their "message" was that nudity is not indecent). It cannot reasonably be demanded, therefore, that every restriction of expression incidentally produced by a general law regulating conduct pass normal First Amendment scrutiny, or even--as some of our cases have suggested, see, e.g., *United States v. O'Brien,* 391 U.S. 367, 377, 88 S.Ct. 1673, 1679, 20 L.Ed.2d 672 (1968)--that it be justified by an "important or substantial" *577 government interest. Nor do our holdings require such justification: We have never invalidated the application of a general law simply because the conduct that it reached was being engaged in for expressive purposes and the government could not demonstrate a sufficiently important state interest.

This is not to say that the First Amendment affords no protection to expressive conduct. Where the government prohibits conduct *precisely because of its communicative attributes,* we hold the regulation unconstitutional. See, e.g., *United States v. Eichman,* 496 U.S. 310, 110 S.Ct. 2404, 110 L.Ed2d 287 (1990) (burning flag); *Texas v. Johnson,* 491 U.S. 397, 109 S.Ct. 2533, 105 L.Ed.2d 342 (1989) (same); *Silence v. Washington,* 418'. U.S. 405, 94 S.Ct_ 2727, 41 L.Ed.2d 842 (1974) (defacing flag); *Tinker v. Des Moines Independent Community School Dist.,* 393 U.S. 503, 89 S.Ct. 733, 21 L.Ed.2d 731 (1969) (wearing

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black arm bands); *Brown v. Louisiana,* 383 U.S. 131, 86 S.Ct. 719, 15 L.Ed.2d 637 (1966) (participating in silent sit-in); *Stromberg v. California,* 283 U.S. 359, 51 S.Ct. 532, 75 L.Ed. 1117 (1931) (flying a red flag). [F_V4] In each of the foregoing cases, we explicitly found that suppressing communication was the object of the regulation of conduct. Where that has not been the case, however--where suppression of communicative use of the conduct was merely the incidental effect of forbidding the conduct for other reasons--we have allowed the regulation to stand. *O'Brien, supra,* 391 U.S., at 377, 88 S.Ct., at 1679 (law banning destruction of draft card upheld in application against card burning to protest *578 war); FTC v. *Superior Court Trial Lawyers Assn.,* 493 U.S. 411, 110 S.Ct. 768, 107 L.Ed.2d 851 (1990) (Sherman Act upheld in application against restraint of trade to protest low pay); cf. *United States v. Albertini,* 472 U.S. 675, 687-688, 105 S.Ct. 2897, 2905-2906, 86 L.Ed.2d 536 (1985) (rule barring respondent from military base upheld in application against entrance on base to protest war); *Clark v. Community for Creative Noii-Violence,* 468 U.S. 288, 104 S.Ct. 3065, 82 L.Ed.2d 221 (1984) (rule barring sleeping in parks upheld in application against persons engaging in such conduct to dramatize plight of homeless). As we clearly expressed the point in *Johnson.*

FN4. It is easy to conclude that conduct has been forbidden because of its communicative attributes when the conduct in question is what the Court has called "inherently expressive," and what I would prefer to call "conventionally expressive"-such as flying a red flag. I mean by that phrase (as I assume the Court means by "inherently expressive") conduct that is normally engaged in for the purpose of communicating an idea, or perhaps an emotion, to someone else. I am not sure whether dancing fits that description; see *Dallas v. Stanglin, 490 U.S. 19,* 24, *109* S.Ct. *1591, 1595,* 104 L.Ed.2d *18 (1989)* (social dance group "do[es] not involve the sort of expressive association that the First Amendment has been held to protect"). But even if it does, this law is directed against nudity, not dancing. Nudity is *not* normally engaged in for the purpose of communicating an idea or an emotion.

"The government generally has a freer hand in restricting expressive conduct than it has in restricting the written or spoken word. It may not, however, proscribe particular conduct *because* it has expressive elements. What might be termed the more generalized guarantee of freedom of expression makes the communicative nature of conduct an inadequate *basis* for **2467 siliglmg out that conduct for proscription. " 491 U.S., at 406, 109 S.Ct., at 2540-2541 (internal quotation marks and citations omitted; emphasis in original).

All our holdings (though admittedly not some of our discussion) support the conclusion that "the only First Amendment analysis applicable to laws that do not directly or indirectly impede speech is the threshold inquiry of whether the purpose of the law is to suppress communication. If not, that is the end of the matter so far as First Amendment guarantees are concerned; if so, the court then proceeds to determine whether there is substantial justification for the proscription." *Community for Creative Non-Violence v. Watt,* 227 U.S.App.D.C. 19, 55-56, 703 F2d 586, 622-623 (1983) (en banc) (Scalia, J., dissenting), (footnote omitted; emphasis omitted), rev'd sub nom. *Clark v. Community for Creative Non-Violence,* 468 U.S. 288, 104 S.Ct. 3065, 82 L.Ed.2d 221 (1984). Such a regime ensures that the government does not act to suppress communication, without requiring that all conduct-restricting regulation *579 which means in effect all regulation) survive an enhanced level of scrutiny.

We have explicitly adopted such a regime in another First Amendment context: that of free exercise. In *Employment Div., Dept. of Human Resources of Ore. v. Smith,* 494 U.S. 872, 110 S.Ct. 1595, 108 L.Ed.2d 876 (1990), we held that general laws not specifically targeted at religious practices did not require heightened First Amendment scrutiny even though they diminished some people's ability to practice their religion. "The government's ability to enforce generally applicable prohibitions of socially harmful conduct, like its ability to carry out other aspects of public policy, 'cannot depend on measuring the effects of a governmental action on a religious objector's spiritual development.' " Id., at 885 [110 S.Ct., at 1603], quoting *Lyng v. Northwest Indian Cemetery Protective Assn.,* 485 U.S. 439, 451, 108 S.Ct. 1319, 1326, 99 L.Ed.2d 534 (1988); see also *Minersvdle School District v_ Gobitis,* 310 U.S. 586, 594-595, 60 S.Ct. 1010, 1012-1013, 84 L.Ed. 1375 (1940) (Frankfurter, J.) .("Conscientious scruples have not, in the course of the long struggle for teligious toleration, relieved the individual from obedience to a general law not aimed at the promotion or restriction of religious beliefs"). There is even greater reason to apply this approach

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to the regulation of expressive conduct. Relatively few can plausibly assert that their illegal conduct is being engaged in for religious reasons: but almost anyone can violate almost any law as a means of expression. In the one case, as in the other, if the law is not directed against the protected value (religion or expression) the law must be obeyed.

III

While I do not think the plurality's conclusions differ greatly from my own, I cannot entirely endorse its reasoning. The plurality purports to apply to this general law, insofar as it regulates this allegedly expressive conduct, an intermediate level of First Amendment scrutiny: The government interest in the regulation must be " 'important or substantial,' " *ante,* at 2461, quoting *O'Brien, supra,* 391 U.S., at 377, 88 S.Ct., at 1679. As I have indicated, *580 I do not believe such a heightened standard exists. I think we should avoid wherever possible, moreover, a method of analysis that requires judicial assessment of the "importance" of government interests--and especially of government interests in various aspects of morality.

Neither of the cases that the plurality cites to support the "importance" of the State's interest here, see *ante,* at 2462, is in point. *Paris Adult Theatre I v. Slaton,* 413 U.S., at 61, 93 S.Ct., at 2637 and *Bowers v. Hardwick,* 478 U.S., at 196, 106 S,Ct., at 2846, did uphold laws prohibiting private conduct based on concerns of decency and morality; but neither opinion held that those concerns were particularly "important" or substantial," or amounted to anything more than a *rational basis* for regulation. *Slaton* involved an exhibition which, since it was obscene **2468 and at least to some extent public, was unprotected by the First Amendment, see *Roth v. United States,* 354 U.S. 476, 77 S.Ct. 1304, 1 L.Ed.2d 1498 (1957); the State's prohibition could therefore be invalidated only if it had no rational basis. We found that the State's "right ... to maintain a decent society" provided a "legitimate" basis for regulation--even as to obscene material viewed by consenting adults. 413 U.S., at 59-60, 93 S.Ct., at 2636-2637. In *Bowers,* we held that since homosexual behavior is not a fundamental right, a Georgia law prohibiting private homosexual intercourse needed only a rational basis in order to comply with the Due Process Clause. Moral opposition to homosexuality, we said, provided that rational basis. 478 U.S., at 196, 106 S.Ct., at 2846. I would uphold the Indiana statute on precisely the same ground: Moral opposition to nudity supplies a rational basis for its prohibition, and since the First Amendment has no application to this case no more than that is needed.

Indiana may constitutionally enforce its prohibition of public nudity even against those who choose to use public nudity as a means of communication. The State is regulating conduct, not expression, and those who choose to employ conduct *581 as a means of expression must make sure that the conduct they select is not generally forbidden. For these reasons, I agree that the judgment should be reversed.

Justice SOUTER, concurring in the judgment.

Not all dancing is entitled to First Amendment protection as expressive activity. This Court has previously categorized ballroom dancing as beyond the Amendment's protection, *Dallas v. Stanglin,* 490 U_S. 19, 24-25, 109 S.Ct. 1591, 1594-1595, 104 L.Ed.2d 18 (1989), and dancing as aerobic exercise would likewise be outside the First Amendment's concern. But dancing as a performance directed to an actual or hypothetical audience gives expression at least to generalized emotion or feeling, and where the dancer is nude or nearly so the feeling expressed, in the absence of some contrary clue, is eroticism, carrying an endorsement of erotic experience. Such is the expressive content of the dances described in the record.

Although such performance dancing is inherently expressive, nudity *per se is* not. It is a condition, not an activity, and the voluntary assumption of that condition, without more, apparently expresses nothing beyond the view that the condition is somehow appropriate to the circumstances. But every voluntary act implies some such idea, and the implication is thus so common and minimal that calling all voluntary activity expressive would reduce the concept of expression to the point of the meaningless. A search for some expression beyond the minimal in the choice to go nude will often yield nothing: a person may choose nudity, for example, for maximum sunbathing. But when nudity is combined with expressive activity, its stimulative and attractive value certainly can enhance the force of expression, and a dancer's acts in going from

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clothed to nude, as-in a striptease, are integrated into the dance and its expressive function. Thus I agree with the plurality and the dissent that an interest in freely engaging in the nude dancing at issue here is subject to a degree of First Amendment protection.

*582 1 also agree with the plurality that the appropriate analysis to determine the actual protection required by the First Amendment is the four- part enquiry described in *United States v. O'Brien,* 391 U.S. 367, 88 S.Ct. 1673, 20 L.Ed.2d 672 (1968), for judging the limits of appropriate state action burdening expressive acts as distinct from pure speech or representation. I nonetheless write separately to rest my concurrence in the judgment, not on the possible sufficiency of society's moral views to justify the limitations at issue, but on the State's substantial interest in combating the secondary effects of adult **2469 entertainment establishments of the sort typified by respondents' establishments.

It is, of course, true that this justification has n6t been articulated by Indiana's Legislature or by its courts. As the plurality observes, "Indiana does not record legislative history, and the State's highest court has not shed additional light on the statute's purpose, " *ante,* at 2461. While it is certainly sound in such circumstances to infer general purposes "of protecting societal order and morality ... from, [the statute's] text and history," *ibid., I* think that we need not so limit ourselves in identifying the justification for the legislation at issue here, and may legitimately consider petitioners' assertion that the statute is applied to nude dancing because such dancing "encourag[es] prostitution, increas[es] sexual assaults, and attract[s] other criminal activity. " Brief for Petitioners 37.

This asserted justification for the statute may not be ignored merely because it is unclear to what extent this purpose motivated the Indiana Legislature in enacting the statute. Our appropriate focus is not an empirical enquiry into the actual intent of the enacting legislature, but rather the existence or not of a current governmental interest in the service of which the challenged application of the statute may be constitutional. Cf. *McGowan v. Maryland,* 366 U.S. 420, 81 S.Ct. 1101, 6 L.Ed.2d 393 *583 1961). At least as to the regulation of expressive conduct, [FN1] "[w]e decline to void [a statute] essentially on the ground that it is unwise legislation which [the legislature] had the undoubted power to enact and which could be reenacted in its exact form if the same or another legislator made a 'wiser' speech about it." *O'Brien, supra,* 391 U.S., at 384, 88 S. Ct., at 1683. In my view, the interest asserted by petitioners in preventing prostitution, sexual assault, and other criminal activity, although presumably not a justification for all applications of the statute, is sufficient under *O'Brien to* justify the State's enforcement of the statute against the type of adult entertainment at issue here.

FNl. Cf., e.g., *Edwards v. Aguillard, 482 U_S.* 578, 107 S.Ct. 2573, 96 L.Ed.2d 510 (1987) (striking down state statute on Establishment Clause grounds due to impermissible legislative intent).

At the outset, it is clear that the prevention of such evils falls within the constitutional power of the State, which satisfies the first *O'Brien* criterion. See 391 U.S., at 377, 88 S.Ct., at 1679. The second *O'Brien* prong asks whether the regulation "furthers an important or substantial governmental interest. " Ibid. The asserted state interest is plainly a substantial one; the only question is whether prohibiting nude dancing of the sort at issue here "furthers" that interest. I believe that our cases have addressed this question sufficiently to establish that it does.

In *Renton v. Playtime Theatres, Inc.,* 475 U.S. 41, 106 S.Ct. 925, 89 L.Ed.2d 29 (1986), we upheld a city's zoning ordinance designed to prevent the occurrence of harmful secondary effects, including the crime associated with adult entertainment, by protecting approximately 95% of the city's area from the placement of motion picture theaters emphasizing " 'matter depicting, describing or relating to "specified sexual activities" or "specified anatomical areas" ... for observation by patrons therein.' " Id., at 44, 106 S.Ct., at 927. Of particular importance to the present enquiry, we held that the city of Renton was not compelled to justify its restrictions by studies specifically relating to the problems *584 that would be caused by adult theaters in that city. Rather, "Renton was entitled to rely on the experiences of Seattle and other cities," id., at 5.1, 106 S. Ct., at 931, which demonstrated the harmful secondary effects correlated with the presence "of even one [adult] theater in a given neighborhood-" Id., at 50, 106 S.Ct., at 930; cf. *Young v. American Mini Theatres, Inc.,* 427 U.S. 50, 71, n. 34, 96 S.Ct.

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2440, 2453, n. 34, 49 L.Ed.2d 310 (1976) (legislative finding that "a concentration of 'adult' movie theaters causes the area to deteriorate and become a focus of crime"); *California v. LaRue,* 409 U.S. 109, 111, 93 S.Ct. 390, 393, 34 L.Ed.2d 342 (1972) **2470 (administrative findings of criminal activity associated with adult entertainment).

The type of entertainment respondents seek to provide is plainly of the same character as that at issue in *Renton, American iYlini Theatres,* and *LaRue.* It therefore is no leap to say that live nude dancing of the sort at issue here is likely to produce the same pernicious secondary effects as the adult films displaying "specified anatomical areas" at issue in *Renton.* Other reported cases from the Circuit in which this litigation arose confirm the conclusion. See, *e. a., United States v. ·Marren,* 890 F.2d 924, 926 (CA7 1989) (prostitution associated with nude dancing establishment); *United States v. Doerr,* 886 F.2d 944, 949 (CA7 1989) (same). In light of *Renton's* recognition that legislation seeking to combat the secondary effects of adult entertainment need not await localized proof of those effects, the State of Indiana could reasonably conclude that forbidding nude entertainment of the type offered at the Kitty Kat Lounge and the Glen Theatre's "bookstore" furthers its interest in preventing prostitution, sexual assault, and associated crimes. Given our recognition that "society's interest in protecting this type of expression is of a wholly different, and lesser, magnitude than the interest in untrammeled political debate," *American Mini Theatres, supra,* 427 U.S., at 70, 96 S.Ct., at 2452, I do not believe that a State is required affirmatively to undertake to litigate this issue repeatedly in every *585 case. The statute as applied to nudity of the sort at issue - here therefore satisfies the second prong of *O'Brien.* [FN2]

FN2. Because there is no overbreadth challenge before us, we are not called upon to decide whether the application of the statute would be valid in other contexts. It is enough, then, to say that the secondary effects rationale on which I rely here would be open to question if the State were to seek to enforce the statute by barring expressive nudity in classes of productions that could not readily be analogized to the adult films at issue in *Renton v. Playtime Theatres, Inc.,* 475 U.S. 41, 106 S.Ct. 925, 89 L.Ed2d 29 (1986). It is difficult to see, for example, how the enforcement of Indiana's statute against nudity in a production of "Hair" or "Equus" somewhere other than an "adult" theater would further the State's interest in avoiding harmful secondary effects, in the absence of evidence that expressive nudity outside the context of *Renton-type* adult entertainment was correlated with such secondary effects.

The third *O'Brien* condition is that the governmental interest be "unrelated to the suppression of free expression," 391 U.S., at 377, 88 S.Ct., at 1679, and, on its face, the governmental interest in combating prostitution and other criminal activity is not at all inherently related to expression. The dissent contends, however, that Indiana seeks to regulate nude dancing as its means of combating such secondary effects "because ... creating or emphasizing [the] thoughts and ideas [expressed by nude dancing] in the minds of the spectators may lead to increased prostitution, " *post,* at 2474, and that regulation of expressive conduct because of the fear that the expression will prove persuasive is inherently related to the suppression of free expression. *Ibid.*

The major premise of the dissent's reasoning may be correct, but its minor premise describing the causal theory of Indiana's regulatory justification is not_ To say that pernicious secondary effects are associated with nude dancing establishments is not necessarily to say that such effects result from the persuasive effect of the expression inherent in nude dancing. It is to say, rather, only that the effects are correlated with the existence of establishments offering such dancing, without deciding what the precise causes of the correlation *586 actually are. It is possible, for example, that the higher incidence of prostitution and sexual assault in the vicinity of adult entertainment locations results from the concentration of crowds of men predisposed to such activities, or from the simple viewing of nude bodies regardless of whether those bodies are engaged in expression or not. In neither case would the chain of causation run through the persuasive effect of the expressive component of nude dancing.

**2471 Because the State's interest in banning nude dancing results from a simple correlation of such dancing with other evils, rather than from a relationship between the other evils and the expressive component of the dancing, the interest is unrelated to the suppression of free expression. *Renton is* again persuasive in support of this conclusion. In *Renton,* we held that an ordinance that regulated adult theaters because the presence of

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such theaters was correlated with secondary effects that the local government had an interest in regulating was content neutral (a determination similar to the "unrelated to the suppression of free expression" determination here, see *Clark v. Community for Creative Non-Violence,* 468 U.S. 288, 298, and n. 8, 104 S.Ct. 3065, 3071, and n. 8, 82 L.Ed.2d 221 (1984)) because it was '*justified* without reference to the content of the regulated speech." 475 U.S., at 48, 106 S.Ct., at 929 (emphasis in original). We reached this conclusion without need to decide whether the. cause of, the correlation might have been the persuasive effect of the adult films that were being regulated. Similarly here, the "secondary effects" justification means that enforcement of the Indiana statute against nude dancing is "justified without reference to the content of the regulated [expression]," *ibid.* (emphasis omitted), which is sufficient, at least in the context of sexually explicit expression, [FN3] to satisfy the third prong of the *O'Brien* test.

FN3. I reach this conclusion again mindful, as was the Court in *Renton,* that the protection of sexually explicit expression may be of lesser societal importance than the protection of other forms of expression. See *Renton, supra,* at 49, and n. 2, 106 S.Ct., at 929, and n. 2, citing *Young v. American Mini Theatres, Inc.,* 427 U.S. 50, 70, 96 S.Ct. 2440, 2452, 49 L.Ed.2d 310 (1976).

*587 The fourth *O'Brien* condition, that the restriction be no greater than essential to further the governmental interest, requires little discussion. Pasties and a G-string moderate the expression to some degree, to be sure, but only to a degree. Dropping the final stitch is prohibited, but the limitation is minor when measured against the dancer's remaining capacity and opportunity to express the erotic message. Nor, so far as we are told, is the dancer or her employer limited by anything short of obscenity laws from expressing an erotic message by articulate speech or representational means; a pornographic movie featuring one of respondents, for example, was playing nearby without any interference from the authorities at the time these cases arose.

Accordingly, I find *O'Brien* satisfied and concur in the judgment.

Justice WHITE, with whom Justice MARSHALL, Justice BLACKIMUN, and Justice STEVENS join, dissenting.

The first question presented to us in this case is whether nonobscene nude dancing performed as entertainment is expressive conduct protected by the First Amendment. The Court of Appeals held that it is, observing that our prior decisions permit no other conclusion. Not surprisingly, then, the plurality now concedes that "nude dancing of the kind sought to be performed here is expressive conduct within the outer perimeters of the First Amendment..... *Ante,* at 2460. This is no more than recognizing, as the Seventh Circuit observed, that dancing is an ancient art form and "inherently embodies the expression and communication of ideas and emotions." *rldiller v. Civil City of South Bend,* 904 F.2d 1081, 1087 (1990) (en banc). [FN1]

FNl. Justice SCALIA suggests that performance dancing is not inherently expressive activity, see *ante,* at 2466, n. 4, but the Court of Appeals has the better view: "Dance has been defined as 'the art of moving the body in a rhythmical way, usually to music, to express an emotion or idea, to narrate a story, or simply to take delight in the movement itself.' 16 The New Encyclopedia Britannica 935 (1989). Inherently, it is the communication of emotion or ideas. At the root of all '[fhe varied manifestations of dancing ... lies the common impulse to resort to movement to externalise states which we cannot externalise by rational means. This is basic dance.' Martin, J. *Introduction to the Dance* (1939). Aristotle recognized in *Poetics* that the purpose of dance is 'to represent men's character as well as what they do and suffer.' The raw communicative power of dance was noted by the French poet Stephane Mallarme who declared that the dancer 'writing with her body ... *suggests* things which the written work could *express* only in several paragraphs of dialogue or descriptive prose.' " 904 F.2d, at 1085-1086. Justice SCALIA cites *Dallas v. Stanglin,* 490 U.S. 19, 109 S.Ct. 1591, 104 L.Ed.2d 18 (1989), but that decision dealt with social dancing, not performance dancing; and the submission in that case, which we rejected, was not that social dancing was an expressive activity but that plaintiff's *associational* rights were violated by restricting admission to dance halls on the basis of age. The Justice also asserts that even if dancing is inherently expressive, nudity is not. The statement may be true, but it tells us nothing about dancing in the nude.

**2472 *588 Having arrived at the conclusion that nude dancing performed as entertainment enjoys First Amendment protection, the plurality states that it must "determine the level of protection to be afforded to the expressive conduct at issue, and

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must determine whether the Indiana statute is an impermissible infringement of that protected activity." *Ante,* at 2460. For guidance, the plurality turns to *Unified States v. O'Brien,* 391 U.S. 367, 88 S.Ct. 1673, 20 L.Ed.2d 672 (1968), which held that expressive conduct could be narrowly regulated or forbidden in pursuit of an important or substantial governmental interest that is unrelated to the content of the expression. The plurality finds that the Indiana statute satisfies the *O'Brien* test in all respects.

The plurality acknowledges that it is impossible to discern the exact state interests which the Indiana Legislature had in mind when it enacted the Indiana statute, but the plurality nonetheless concludes that it is clear from the statute's text and history that the law's purpose is to protect "societal order and morality." *Ante,* at 2461. The plurality goes on to *589 conclude that Indiana's statute "was enacted as *a general prohibition,"* *ante,* at 2461 (emphasis added), on people appearing in the nude among strangers in public places. The plurality then points to cases in which we upheld legislation based on the State's police power, and ultimately concludes that the Indiana statute "furthers a substantial government interest in protecting order and morality." *Ante,* at 2462. The Court also holds that the basis for banning nude dancing is unrelated to free expression and that it is narrowly drawn to serve the State's-interest.

The plurality's analysis is erroneous in several respects. Both the plurality and Justice SCALIA in his opinion concurring in the judgment overlook a fundamental and critical aspect of our cases upholding the States' exercise of their police powers. None of the cases they rely upon, including *O'Brien* and *Bowers v.* Hardwick, 478 U.S. 186, 106 S.Ct. 2841, 92 L.Ed.2d 140 (1986), involved anything less than truly *general* proscriptions on individual conduct- In *O'Brien,* for example, individuals were prohibited from destroying their draft cards at any time and in any place, even in completely private places such as the home. Likewise, in *Bowers,* the State prohibited sodomy, regardless of where the conduct might occur, including the home as was true in that case. The same is true of cases like *Employment Div., Dept. of Human Resources of Ore. v. Smith,* 494 U.S. 872, 110 S.Ct. 1595, 108 L.Ed.2d 876 (1990) which, though not applicable here because it did not involve any claim that the peyote users were engaged in expressive activity, recognized that the State's interest in preventing the use of illegal drugs extends even into the home. By contrast, in this case Indiana does not suggest that its statute applies to, or could be applied to, nudity wherever it occurs, including the home. We do not understand the plurality or Justice SCALIA to be suggesting that Indiana could constitutionally enact such an intrusive prohibition, nor do we think such a suggestion would be tenable in light of our decision in *Stanley v. Georgia,* 394 U.S. 557, 89 S.Ct. 1243, 22 L.Ed.2d 542 (1969), in which we held that States could not punish the *590 mere possession of obscenity in the privacy of one's own home.

**2473 We are told by the attorney general of Indiana that, in *State v. Baysinger,* 272 Ind. 236, 397 N.E.2d 580 (1979), the Indiana Supreme Court held that the statute at issue here cannot and does not prohibit nudity as a part of some larger form of expression meriting protection when the communication of ideas is involved. Brief for Petitioners 25, 30-31; Reply Brief for Petitioners 9-11. Petitioners also state that the evils sought to be avoided by applying the statute in this case would not obtain in the case of theatrical productions, such as "Salome" or "Hair." Id., at 11-12. Neither is there any evidence that the State has attempted to apply the statute to nudity in performances such as plays, ballets, or operas. "No arrests have ever been made for nudity as part of a play or ballet." App. 19 (affidavit of Sgt. Timothy Corbett).

Thus, the Indiana statute is not a *general* prohibition of the type we have upheld in prior cases. As a result, the plurality and Justice SCALIA's simple references to the State's general interest in promoting societal order and morality are not sufficient justification for a statute which concededly reaches a significant amount of protected expressive activity. Instead, in applying the *O'Brien* test, we are obligated to carefully examine the reasons the State has chosen to regulate this expressive conduct in a less than general statute. In other words, when the State enacts a law which draws a line between expressive conduct which is regulated and nonexpressive conduct of the same type which is not regulated, *O'Brien* places the burden on the State to justify the distinctions it has made. Closer inquiry as to the purpose of the statute is surely appropriate.

Legislators do not just randomly select certain

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conduct for proscription; they have reasons for doing so and those reasons illuminate the purpose of the law that is passed. Indeed, a law may have multiple purposes. The purpose of *591 forbidding people to appear nude in parks, beaches, hot dog stands, and like public places is to protect others from offense. But that could not possibly be the purpose of preventing nude dancing in theaters and barrooms since the viewers are exclusively consenting adults who pay money to see these dances. The purpose of the proscription in these contexts is to protect the viewers from what the State believes is the harmful message that nude dancing communicates. This is why Clark v. *Community for Creative Non-Violence*, 468 U.S. 288, 104 S.Ct. 3065, 82 L.Ed.2d 221 (1984), is of no help to the State: "In Clark ... the damage to the parks was the same whether the sleepers were camping out for fun, were in fact homeless, or wished by sleeping in the park to make a symbolic statement on behalf of the homeless." 904 F.2d, at 1103 (Posner, J., concurring). That cannot be said in this case: The perceived damage to the public interest caused by appearing nude on the streets or in the parks, as I have said, is not what the State seeks to avoid in preventing nude dancing in theaters and taverns. There the perceived harm is the communicative aspect of the erotic dance. As the State now tells us, and as Justice SOUTER agrees, the State's goal in applying what it describes as its "content neutral" statute to the nude dancing in this case is "deterrence of prostitution, sexual assaults', , criminal activity, degradation of women, and other activities which break down family structure." Reply Brief for Petitioners 11- The attainment of these goals, however, depends on preventing an expressive activity.

The plurality nevertheless holds that the third requirement of the *O'Brien* test, that the governmental interest be unrelated to the suppression of free expression, is satisfied because in applying the statute to nude dancing, the State is not "proscribing nudity because of the erotic message conveyed by the dancers." *Ante*, at 2463. The plurality suggests that this is so because the State does not ban dancing that sends an erotic message; it is only nude erotic dancing that is forbidden. The perceived evil is not erotic dancing but public *592 nudity, which may be prohibited despite any incidental impact on **2474 expressive activity. This analysis is transparently erroneous.

In arriving at its conclusion, the plurality concedes that nude dancing conveys an erotic message and concedes that the message would be muted if the dancers wore pasties and G-strings. Indeed, the emotional or erotic impact of the dance is intensified by the nudity of the performers. As Judge Posner. argued- in his thoughtful concurring opinion in the Court of Appeals, the nudity of the dancer is an integral part of the emotions and thoughts that a nude dancing performance evokes. 904 F.2d at 1090-1098. The sight of a fully clothed, or even a partially clothed, dancer generally will have a far different impact on a spectator than that of a nude dancer, even if the same dance is performed. The nudity is itself an expressive component of the dance, not merely incidental "conduct." We have previously pointed out that " ' [nuudity alone' does not place otherwise protected material outside the mantle of the First Amendment." *Schad v. 11t. Ephraim*, 452 U.S. 61, 66, 101 S.Ct. 2176, 2181, 68 L.Ed.2d 671 (1981).

This being the case, it cannot be that the statutory prohibition is unrelated to expressive conduct. Since the State permits the dancers to perform if they wear pasties and G-strings but forbids nude dancing, it is precisely because of the distinctive, expressive content of the nude dancing performances at issue in this case that the State seeks to apply the statutory prohibition. It is only because nude dancing performances may generate emotions and feelings of eroticism and sensuality among the spectators that the State seeks to regulate such expressive activity, apparently on the assumption that creating or emphasizing such thoughts and ideas in the minds of the spectators may lead to increased prostitution and the degradation of women. But generating thoughts, ideas, and emotions is the essence of communication. The nudity element of nude dancing performances cannot *593 be neatly pigeonholed as mere "conduct" independent of any expressive component of the dance. [FN2]

FN2. Justice SOUTER agrees with the plurality that the third requirement of the ***O'Brien*** test is satisfied, but only because he is not certain that there is a causal connection between the message conveyed by nude dancing and the evils which the State is seeking to prevent.- See ***ante,*** at 2470. Justice SOUTER's analysis is at least as flawed as that of the plurality. If Justice. SOUTER is correct that there is no causal connection between the message conveyed by the nude dancing at issue here and the negative secondary effects that the State desires to regulate, the State does not have

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even a rational basis for its absolute prohibition on nude dancing that is admittedly expressive. Furthermore, if the real problem is the "concentration of crowds of men predisposed" to the designated evils, *ante,* at 2470, then the First Amendment requires that the State address that problem in a fashion that does not include banning an entire category of expressive activity. See *Renton v. Playtime Theatres, Inc.,* 475 U.S. 41, 106 S.Ct. 925, 89 L.Ed.2d 29 (1986).

That fact dictates the level of First Amendment protection to be accorded the performances at issue here. In *Texas v. Johnson,* 491 U.S. 397, 411-412, 109 S.Ct. 2533, 2543-2544, 105 L.Ed2d 342 (1989), the Court observed: "Whether Johnson's treatment of the flag violated Texas law thus depended on the likely communicative impact of his expressive conduct.... We must therefore subject the State's asserted interest in preserving the special symbolic character of the flag to 'the most exacting scrutiny.' Boos v. *Barry,* 485 U.S. [312], 321 [108 S.Ct. 1157, 1164, 99 L_Ed.2d 333] [(1988)]." Content based restrictions "will be upheld only if narrowly drawn to accomplish a compelling governmental interest. " *United States v. Grace,* 461 U.S. 171, 177, 103 S.Ct. 1702, 1707, 75 L.Ed2d 736 (1983); *Sable Communications of Cal., Inc. v. FCC,* 492 U_S. 115, 126, 109 S.Ct. 2829, 2836, 106 L.Ed.2d 93 (1989). Nothing could be clearer from our cases.

That the performances in the Kitty Kat Lounge may not be high art, to say the least, and may not appeal to the Court, is hardly an excuse for distorting and ignoring settled doctrine. The Court's assessment of the artistic merits of nude dancing performances **2475 should not be the determining factor in deciding this case. In the words of Justice Harlan: "[I]t is largely because governmental officials cannot make principled decisions *594 in this area that the Constitution leaves matters of taste and style so largely to the individual. " *Cohen v. California,* 403 U.S. 15, 25, 91 S.Ct. 1780, 1788, 29 L.Ed.2d 284 (1971). "[Wlhile the entertainment afforded by a nude ballet at Lincoln Center to those who can pay the price may differ vastly in content (as viewed by judges) or in quality (as viewed by critics), it may not differ in substance from the dance viewed by the person who ... wants some 'entertainment' with his beer or shot of rye." *Salem Inn, Inc. v. Frank,* 501 F.2d 18, 21, n. 3 (CA2 1974), aff'd in part *sub nom., Doran v. Salem Inn, Inc.,* 422 U.S. 922, 95 S.Ct. 2561, 45 L.Ed.2d 648 (1975).

The plurality and Justice SOUTER do not go beyond saying that the state interests asserted here are important and substantial. But even if there were compelling interests, the Indiana statute is not narrowly drawn. If the State is genuinely concerned with prostitution and associated evils, as Justice SOUTER seems to think, or the type of conduct that was occurring in *California v. LaRue,* 409 U.S. 109, 93 S.Ct. 390, 34 L.Ed.2d 342 (1972), it can adopt restrictions that do not interfere with the expressiveness of nonobscene nude dancing performances_ For instance, the State could perhaps require that, while performing, nude performers remain at all times a certain minimum distance from spectators, that nude entertainment be limited to certain hours, or even that establishments providing such entertainment be dispersed throughout the city. Cf. *Renton v. Playtime Theatres, Inc.,* 475 U.S. 41, 106 S_Ct. 925, 89 L.Ed.2d 29 (1986). Likewise, the State clearly has the authority to criminalize prostitution and obscene behavior. Banning an entire category of expressive activity, however, generally does not satisfy the narrow tailoring requirement of strict First Amendment scrutiny. See *Frisby v. Schultz,* 487 U.S. 474, 485, 108 S.Ct. 2495, 2503, 101 L.Ed.2d 420 (1988). Furthermore, if nude dancing in barrooms, as compared with other establishments, is the most worrisome problem, the State could invoke its Twenty-first Amendment powers and impose appropriate regulation. *New York State Liquor Authority v. BelZanca,* 452 U.S. 714, 101 S.Ct. 2599, 69 L.Ed.2d 357 (1981) *(per curiam); California v. LaRue, supra.*

.k595 As I see it, our cases require us to affirm absent a compelling state interest supporting the statute. Neither the plurality nor the State suggest that the statute could withstand scrutiny under that standard.

Justice SCALIA's views are similar to those of the plurality and suffer from the same defects. The Justice asserts that a general law barring specified conduct does not implicate the First Amendment unless the purpose of the law is to suppress the expressive quality of the forbidden conduct, and that, absent such purpose, First Amendment protections are not triggered simply because the incidental effect of the law is to proscribe conduct that is unquestionably expressive. Cf. *Community for Creative Non-Violence v. Wait,* 227 U.S.App.D.C. 19, 703 F.2d 586, 622-623 (1983) (Scalia, J., dissenting). The application of the

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Justice's proposition to this case is simple to state: The statute at issue is a general law banning nude appearances in public places, including barrooms and theaters. There is no showing that the purpose of this general law was to regulate expressive conduct; hence; the First Amendment is irrelevant and nude dancing in theaters and barrooms may be forbidden, irrespective of the expressiveness of the dancing.

As I have pointed out, however, the premise for the Justice's position--that the statute is a *general* law of the type our cases contemplate-- is nonexistent in this case. Reference to Justice SCALIA's own hypothetical makes this clear. We agree with Justice SCALIA that the Indiana statute would not permit 60,000 consenting Hoosiers to expose themselves to each other in the Hoosier Dome. No one can doubt, however, that those same 60,000 Hoosiers would be perfectly **2476 free to drive to their respective homes all across Indiana and, once there, to parade around, cavort, and revel in the nude for hours in front of relatives and friends. It is difficult to see why the State's interest in morality is any less in that situation, especially if, as Justice SCALIA seems to suggest, nudity is inherently evil, but clearly the statute does *596 not reach such activity. As we pointed out earlier, the State's failure to enact a truly general proscription requires closer scrutiny of the reasons for the distinctions the State `has drawn. See supra, at 2473:

As explained previously, the purpose of applying the law to the nude dancing performances in respondents' establishments is to prevent their customers from being exposed to the distinctive communicative aspects of nude dancing. That being the case, Justice SCALIA's observation is fully applicable here: "Where the government prohibits conduct *precisely because of its communicative attributes,* we hold the regulation unconstitutional." *Ante,* at 2466.

The *O'Brien* decision does not help Justice SCALIA. Indeed, his position, like the plurality's, would eviscerate the *O'Brien* test. *Employment Div., Dept.* of *Human Resources of Ore. v. Smith,* 494 U.S. 872, 110 S.Ct. 1595, 108 L_Ed.2d 876 (1990), is likewise not on point. The Indiana law, as applied to nude dancing, targets the expressive activity itself; in Indiana nudity in a dancing performance is a crime because of the message such dancing communicates. In Smith, the use of drugs was not criminal because the use was part of or occurred within the course of an otherwise protected religious ceremony, but because a general law made it so and was supported by the same interests in the religious context as in others.

Accordingly, I would affirm the judgment of the Court of Appeals, and dissent from this Court's judgment.

111 S.Ct. 2456, 501 U.S. 560, 115 L.Ed.2d 504, 59 USLW 4745

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Supreme Court of the United States

CITY OF ERIE, et al., Petitioners,
v.
PAP'S A.M. tdba "Kandyland".

No. 98-1161.

Argued Nov. 10, 1999.
Decided March 29, 2000.

Operator of establishment featuring nude erotic dancing brought action challenging constitutionality of city's public indecency ordinance proscribing nudity in public places. The Court of Common Pleas, Erie County, Civil Division, No. 1994-60059, Shad Connelly, A.J., declared ordinance unconstitutional. On appeal, the Pennsylvania Commonwealth Court, 674 A.2d 338, Nos. 445 and 446 C.D. 1995, reversed. Operator appealed. The Pennsylvania Supreme Court, Nos. 016 and 017 W.D. Appeal Docket 1997, reversed. Certiorari was granted, and operator moved to dismiss case as moot. The Supreme Court, Justice O'Connor, held that: (1) case was not rendered moot by closing of the establishment; (2) ordinance was content-neutral. regulation; and (3) ordinance satisfied *O'Brien* standard for restrictions on symbolic speech.

Reversed and remanded.

Justice Scalia concurred in judgment and filed opinion in which Justice Thomas joined.

Justice Souter concurred in part dissented in part and filed opinion.

Justice Stevens dissented and filed opinion in which Justice Ginsburg joined.

West Headnotes

[1] Federal Courts C= 12.1
170Bk12.1

Case is moot when issues presented are no longer "live" or parties lack legally cognizable interest in outcome.

[2] Constitutional Law c. 46(1)
92k46(1)

Suit by operator of establishment featuring nude erotic dancing, challenging constitutionality of city's public indecency ordinance proscribing nudity in public places was not rendered moot by closing of the establishment, since operator was still incorporated, and could have decided to again operate nude dancing establishment in city; "advanced age" of owner did not make it "absolutely clear" that life of quiet retirement was his only reasonable expectation, and city had ongoing injury because it was barred from enforcing ordinance.

[3] Constitutional Law 2~- 90.4(2)
92k90.4(2)

[3] Constitutional Law c;- 90.4(3)
92k90.4(3)

Being "in a state of nudity" is not inherently expressive condition, but erotic nude dancing is "expressive conduct," within outer ambit of First Amendment's protection. (Per Justice O'Connor with two Justices and the Chief Justice concurring, and two Justices concurring in judgment). U.S. C.A. Const.Amend. 1.

[4] Constitutional Law ~:- 90.1(1)
92k90.1(1)

If governmental purpose in regulating expression is unrelated to suppression of expression, then regulation need only satisfy "less stringent" *O'Brien* standard for evaluating restrictions on symbolic speech, but if government interest is related to content of expression, regulation must be justified under more demanding standard. (Per Justice O'Connor with two Justices and the Chief Justice concurring, and two Justices concurring in judgment). U.S. C.A.

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Nestilaw,

[11] Theaters and Shows ⚡ 3.50
376-k3.50

Because nude dancing at establishment was of same character as adult entertainment at issue in prior Supreme Court opinions, it was reasonable for city to conclude that such nude dancing was likely to produce same secondary effects, and, to justify ordinance regulating nude dancing, city could reasonably rely on evidentiary foundation set forth in Supreme Court opinions to effect that secondary effects were caused by presence of even one adult entertainment establishment in given neighborhood; city was not required to develop specific evidentiary record supporting ordinance. (Per Justice O'Connor with two Justices and the Chief Justice concurring, and two Justices concurring in judgment).

[12] Administrative Law and Procedure
⚡ 459
15Ak459

As long as party has opportunity to respond, administrative agency may take official notice of "legislative facts" within its **special knowledge, and is not confined to evidence in record in reaching its expert judgment. (Per Justice O'Connor with-,two Justices and the Chief, Justice concurring, and two Justices concurring in judgment).**

***1384 Syllabus IFN'V*

FN* The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co., 200 U.S. 321, 337, 26* S.Ct. *282, 50* L.Ed. 499.

Erie, Pennsylvania, enacted an ordinance making it a summary offense to knowingly or intentionally appear in public in a "state of nudity." Respondent Pap's A.M. (hereinafter Pap's), a Pennsylvania corporation, operated "Kandyland," an Erie establishment featuring totally nude erotic dancing by women. To comply with the ordinance, these dancers had to wear, at a minimum, "pasties" and a "G-string." Pap's filed suit against Erie and city officials, seeking declaratory relief and a permanent injunction against the ordinance's enforcement. The Court of Common Pleas struck down the ordinance as unconstitutional, but the Commonwealth Court reversed. The Pennsylvania Supreme Court in turn reversed, finding that the ordinance's public nudity sections violated Pap's right to freedom of expression as protected by the First and Fourteenth Amendments. The Pennsylvania court held that nude dancing is expressive conduct entitled to some **quantum of protection under the First Amendment, a view that the court noted was endorsed by eight Members of this Court** in *Barnes v. Glen Theatre, Inc.,* **501 U.S. 560, 111 S.Ct. 2456, 115 L.Ed.2d 504. The Pennsylvania court explained that, although one stated purpose of the ordinance** was to **combat negative secondary effects,** there was also an **unmentioned purpose to "impact negatively on the erotic message of the dance." Accordingly, the Pennsylvania court concluded that the ordinance was related to the suppression of expression. Because the ordinance was not content neutral, it** was **subject to strict scrutiny. The court held that the ordinance failed the narrow tailoring requirement of strict scrutiny. After this Court granted certiorari, Pap's filed a motion to dismiss the case as moot, noting that Kandyland no longer operated as a nude dancing club, and that Pap's did not operate such a club at any other location. This Court denied the motion.**

Held: **The judgment is reversed, and the case is remanded.**

553 Pa. 348, 719 A.2d 273, reversed and remanded.

Justice O'CONNOR delivered the opinion of the Court with respect to Parts I and II, concluding that the case is not moot. A case is moot when the issues presented are no longer "live" or the parties lack a legally cognizable interest in the outcome. *County of Los Angeles v.* **Davis, 440 U.S. 625, 631, 99 S.Ct. 1379,59 L.Ed.2d 642. Simply closing Kandyland is not sufficient to moot the case because Pap's is still incorporated under Pennsylvania *278 law, and could again decide to operate a nude dancing establishment in Erie. Moreover, Pap's failed, despite its obligation to the**

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Court, to mention the.potential mootness issue in its brief in opposition, which was filed after Kandyland was closed and the property sold. See *Board of License Comm'rs of Tiverton v. Pastore,* 469 U.S. 238, 240, 105 S.Ct. 685, 83 L.Ed.2d 618. In any event, this is not a run of the mill voluntary cessation case. Here it is the plaintiff who, having prevailed below, seeks to have the case declared moot. And it is the defendant city that seeks to invoke the federal judicial power to obtain this Court's review of the decision. Cf. ASARCO *Inc. v. Kadish,* 490 U.S. 605, 617-618, 109 S.Ct. 2037, 104 L.Ed.2d 696. The city has an ongoing injury because it is barred from enforcing the ordinance's public nudity provisions. If the ordinance is found constitutional, then Erie can enforce it, and the availability of such relief is sufficient to prevent the case from being moot. See *Church of Scientology of Cal. v. United States,* 506 U.S. 9, 13, 113 S.Ct. 447, 121 L.Ed.2d 313. And Pap's still has a concrete stake in the case's outcome because, to the extent it has an interest in resuming operations, it **1385 has an interest in preserving the judgment below. This Court's interest in preventing litigants from attempting to manipulate its jurisdiction to insulate a favorable decision from review further counsels against-a finding of mootness. See, e.g:., *United States v. W.T. Grant Co.,* 345 U.S. 629, 632, 73 S.Ct. 894, 97 L.Ed. 1303. Pp. 1390-1391.

Justice O'CONNOR, joined by THE CHIEF JUSTICE, Justice KENNEDY, and Justice BREYER, concluded in Parts III and IV that:

1. Government restrictions on public nudity such as Erie's ordinance should be evaluated under the framework set forth in *United States v. O'Brien,* 391 U.S. 367, 88 S.Ct. 1673, 20 L.Ed.2d 672, for content-neutral restrictions on symbolic speech. Although being "in a state of nudity" is not an inherently expressive condition, nude dancing of the type at issue here is expressive conduct that falls within. the outer ambit of the First Amendment's protection. See, *e. g., Barnes, supra,* at 565-566, 111 S. Ct. 2456 (plurality opinion). What level of scrutiny applies is determined by whether the ordinance is related to the suppression of expression. E. *Texas v. Johnson,* 491 U.S. 397, 403, 109 S. Ct. 2533, 105 L.Ed.2d 342. If the governmental purpose in enacting the ordinance is unrelated to such suppression, the ordinance need only satisfy the "less stringent," intermediate *O'Brien* standard. *E. g., Johnson, supra,* at 403, 109 S.Ct. 2533. If the governmental interest is related to the expression's content, however, the ordinance falls outside *O'Brien* and must be justified under the more demanding, strict scrutiny standard. *Johnson, supra,* at 403, 109 S.Ct. 2533. An almost identical public nudity ban was held not to violate the First Amendment in *Barnes,* although no five 1/Iembers of the Court agreed on a single rationale for that conclusion. The ordinance here, like the statute in *Barnes, is* on its face a general prohibition on public nudity. By its terms, it regulates conduct alone. It does not target *279 nudity that contains an erotic message; rather, it bans all public nudity, regardless of whether that nudity is accompanied by expressive activity. Although Pap's contends that the ordinance is related to the suppression of expression because its preamble suggests that its actual purpose is to prohibit erotic dancing of the type performed at Kandyland, that is not how the Pennsylvania Supreme Court interpreted that language. Rather, the Pennsylvania Supreme Court construed the preamble to mean that one purpose of the ordinance was to combat negative secondary effects. That is, the ordinance is aimed at combating crime and other negative secondary effects caused by the presence of adult entertainment establishments like Kandyland, and not at suppressing the erotic message conveyed by this type of nude dancing. See 391 U.S., at 382, 88 S. Ct. 1673; see also *Boos v. Barry, 485* U.S. 312, 321, 108 S.Ct. 1157, 99 L.Ed.2d 333. The Pennsylvania Supreme Court's ultimate conclusion that the ordinance was nevertheless content based relied on Justice White's position in dissent in *Barnes* that a ban of this type *necessarily* has the purpose of suppressing the erotic message of the dance. That view was rejected by a majority of the Court in *Barnes,* and is here rejected again. Pap's argument that the ordinance is "aimed" at suppressing expression through a ban on

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nude dancing is really an argument that Erie also had an illicit motive in enacting the ordinance. However, this Court will not strike down an otherwise constitutional statute on the `basis of an alleged illicit motive. *O'Brien,* supra, at 382-383, 88 S.Ct. 1673. Even if Erie's public nudity ban has some minimal effect on the erotic message by muting that portion of the expression that occurs when the last stitch is dropped, the dancers at Kandyland and other such establishments are free to perform wearing pasties and G-strings. Any effect on the overall expression is therefore *de minimis.* If States are to be able to regulate secondary effects, then such *de minimis* intrusions on **1386 expression cannot be sufficient to render the ordinance content based. See, *e. g., Clark v. Community for Creative Non-Violence,* 468 U.S. 288, 299, 104 S.Ct. 3065, 82 L.Ed.2d 221. Thus, Erie's ordinance is valid if it satisfies the *O'Brien* test. Pp. 1391-1395.

2. Erie's ordinance satisfies O *Brien's* four-factor test. First, the ordinance is within Erie's constitutional power to enact because the city's efforts to protect public health and safety are clearly within its police powers. Second, the ordinance furthers the important government interests of regulating conduct througlh..a public nudity ban and of combating the harmful secondary effects associated with nude dancing. In terms of demonstrating that such secondary effects pose a threat, the city need not conduct new studies or produce evidence independent of that already generated by other cities, so long as the evidence relied on is reasonably believed to be relevant to the problem addressed. *Renton v. Playtime Theatres, Inc.,* 475 U.S. 41, 51-52, 106 S.Ct. 925, 89 L.Ed2d 29. Erie could reasonably *280 rely on the evidentiary foundation set forth in *Renton* and *Young v. American Mini Theatres, Inc.,* 427 U.S. 50, 96 S.Ct. 2440, 49 L.Ed.2d 310, to the effect that secondary effects are caused by the presence of even one adult entertainment establishment in a given neighborhood. See *Renton, supra,* at 51-52, 106 S.Ct. 925. In fact, Erie expressly relied on *Barnes* and its discussion of secondary effects, including its reference to *Remon* and *American Mini Theatres.* The evidentiary standard described in *Renton* controls here, and Erie meets that standard. In any event, the ordinance's preamble also relies on the city council's express findings that "certain lewd, immoral activities carried on in public places for profit are highly detrimental to the public health, safety and welfare ...." The council members, familiar with commercial downtown Erie, are the individuals who would likely have had first-hand knowledge of what took place at, and around, nude dancing establishments there, and can make particularized, expert judgments about the resulting harmful secondary effects. Cf., e.g., *FCC v. National Citizens Comm. for Broadcasting,* 436 U.S. 775, 98 S.Ct. 2096, 56 L.Ed.2d 697. The fact that this sort of leeway is appropriate in this case, which involves a content-neutral restriction that regulates conduct, says nothing whatsoever about its appropriateness in a case involving actual regulation of First Amendment expression. Also, although requiring dancers to wear pasties and G-strings may not greatly reduce these secondary effects, *O'Brien* requires only that the regulation further the interest in combating such effects. The ordinance also satisfies *OBrien's* third factor, that the government interest is unrelated to the suppression of free expression, as discussed supra. The fourth *O'Brien* factor--that the restriction is no greater than is essential to the furtherance of the government interest--is satisfied as well. The ordinance regulates conduct, and any incidental impact on the expressive element of nude dancing is *de minimis.* The pasties and G-string requirement is a minimal restriction in furtherance of the asserted government interests, and the restriction leaves ample capacity to convey the dancer's erotic message. See, *e. g., Barnes,* 501 U.S., at 572, 111 S.Ct. 2456. Pp. 1395-1398.

Justice SCALIA, joined by Justice THOMA5, agreed that the Pennsylvania Supreme Court's decision must be reversed, but disagreed with the mode of analysis that should be applied. Erie self-consciously modeled its ordinance on the public nudity statute upheld in *Barnes v. Glen Theatre, Inc.,* 501 U.S. 560, 111 S.Ct. 2456, 115 L.Ed2d 504, calculating (one would have supposed

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reasonably) that the Pennsylvania courts would consider themselves bound by this Court's judgment on a question of federal constitutional law. That statute was constitutional not because it survived some lower level of First Amendment scrutiny, but because, as a *****1387*** general law regulating conduct and not specifically directed at expression, it was not subject to First Amendment scrutiny at all. Id., at 572, 111 S.Ct. 2456 (SCALIA, J., concurring in ***4281*** judgment). Erie's ordinance, too, by its terms prohibits not merely nude dancing, but the act--irrespective of whether it is engaged in for expressive purposes--of going nude in public. The facts that the preamble explains the ordinance's purpose, in part, as limiting a recent increase in nude live entertainment, that city councilmembers in supporting the ordinance commented to that effect, and that the ordinance includes in the definition of nudity the exposure of devices simulating that condition, neither make the law any less general in its reach nor demonstrate that what the municipal authorities ***really*** find objectionable is expression rather than public nakedness. That the city made no effort to enforce the ordinance against a production of Equus involving nudity that was being staged in Erie at the time the ordinance became effective. does not render the ordinance dischimmatory on its face. The assertion of the city's counsel in the trial court that the ordinance would not cover theatrical productions to the extent their expressive activity rose to a higher level of protected expression simply meant that the ordinance would not be enforceable against such productions if the Constitution forbade it. That limitation does not cause the ordinance to be not generally applicable, in the relevant sense of being ***targeted*** against expressive conduct. Moreover, even if it could be concluded that Erie specifically singled out the activity of nude dancing, the ordinance still would not violate the First Amendment unless it could be proved (as on this record it could not) that it was the communicative character of nude dancing that prompted the ban. See *id.,* at 577, 111 S.Ct. 2456. There is no need to identify "secondary effects" associated with nude dancing that Erie could properly seek to eliminate. The traditional power of government to foster good morals, and the acceptability of the traditional judgment that nude public dancing ***itself is*** immoral, have not been repealed by the First Amendment. Pp. 1400-1402.

O'CONNOR, J., announced the judgment of the Court and delivered the opinion of the. Court with respect to Parts I and II, in which REHNQUIST, C.J., and KENNEDY, SOUTER, and BREYER, JJ., joined, and an opinion with respect to Parts III and IV, in which REHNQUIST, C.J., and KENNEDY and BREYER, JJ., joined. SCALIA, J., filed an opinion concurring in the judgment, in which THOMAS, J., joined, ***post, p.*** 1398. SOUTER, J., filed an opinion concurring in part and dissenting in part, ***post, p.*** 1402. STEVENS, J., filed a dissenting opinion, in which GINSBURG, J., joined, ***post, p.*** **1406.**

Gregory A. Karle, Erie, PA, for petitioners.

**282* John H. Weston, Los Angeles, CA, for respondent..

For U.S. Supreme Court Briefs See:

1999 WI, 996952 (Reply.Brief)

1999 WL 809553 (Resp.Brief)

1999 WI, 618392 (Pet.Brief)

1999 WL 975728 (Amicus.Brief)

1999 WL 966525 (Amicus.Brief)

1999 WL 805047 (Amicus.Briet)

1999 WL 787894 (Amicus.Brief)

1999 WI, 787890 (Amicus.Bhef)

1999 WL 787886 (Amicus.Brief)

1999 WL 787884 (Amicus.Brief)

1999 WL 787880 (Amicus.Brief)

1999 WL 679047 (Amicus.Brief)

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1999 WL 631666 (Amicus.Brief)

1999 WL 631.665 (Amicus.Briet)

1999 WL 627099 (Amicus.Brief)

1999 WL 592028 (Amicus.Brief)

1999 WL 459580 (Amicus.Brief)

For Transcript of Oral Argument See:

1999 WL 1075161 (U.S.Oral.Arg.)

Justice O'CONNOR announced the judgment of the Court and delivered the opinion of the Court with respect to Parts I and H, and an opinion with respect to Parts III and IV, in which THE CHIEF JUSTICE, Justice KENNEDY, and Justice BREYER join.

The city of Erie, Pennsylvania, enacted an ordinance banning public nudity. Respondent Pap's A.M. (hereinafter **283* Pap's), which operated a nude dancing establishment in Erie, challenged the constitutionality of the ordinance and sought a permanent injunction against its enforcement. The Pennsylvania Supreme Court, although noting that this Court in *Barnes v. Glen Theatre, Inc.,* 501 U.S. 560, 111 S.Ct. 2456, 115 L.Ed.2d 504 (1991), had upheld an Indiana ordinance that was "strikingly ***1388* similar" to Erie's, found that the public nudity sections of the ordinance violated respondent's right to freedom of expression under the United States Constitution. 553 Pa. 348, 356, 719 A.2d 273, 277 (1998). This case raises the question whether the Pennsylvania Supreme Court properly evaluated the ordinance's constitutionality under the First Amendment. We hold that Erie's ordinance is a content-neutral regulation that satisfies the four-part test of *United States v. OTrien,* 391 U.S. 367, 88 S.Ct. 1673, 20 L.Ed2d 672 (1968). Accordingly, we reverse the decision of the Pennsylvania Supreme Court and remand for the consideration of any remaining issues.

I

On September 28, 1994, the city council for the city of Erie, Pennsylvania, enacted Ordinance 75-1994, a public indecency ordinance that makes it a summary offense to knowingly or intentionally appear in public in a "state of nudity. " [FN*] **284* Respondent Pap's, a Pennsylvania corporation, operated an establishment in Erie known as "Kandyland" that featured totally nude erotic dancing performed by women. To comply with the ordinance, these dancers must wear, at a minimum, "pasties" and a "G-string." On October 14, 1994, two days after the ordinance went into effect, Pap's filed a complaint against the city of Erie, the mayor of the city, and members of the city council, seeking declaratory relief and a permanent injunction against the enforcement of the ordinance.

FN* Ordinance 75-1994, codified as Article 711 of the Codified Ordinances of the city of Erie, provides in relevant part:

"1. A person who knowingly or intentionally, in a public place:

"a. engages in sexual intercourse

"b. engages in deviate sexual intercourse as defined by the Pennsylvania Crimes Code

"c. appears in a state of nudity, or

"d. fondles the genitals of himself, herself or another person commits Public Indecency, a Summary Offense. "2. "Nudity" means the showing of the human male or female genital [sic], pubic area or buttocks with less than a fully opaque covering; the showing of the female breast with less than a fully opaque covering of any part of the nipple; the exposure of any device, costume, or covering which gives the appearance of or simulates the genitals, pubic hair, natal cleft, perineum anal region or pubic hair region; or the exposure of any device worn as a cover over the nipples and/or areola of the female breast, which device simulates and gives the realistic appearance of nipples and/or areola.

"3. "Public Place" includes all outdoor places owned by or open to the general public, and all buildings and enclosed places owned by or open to the general public, including such places of entertainment, taverns, restaurants, clubs, theaters, dance halls, banquet hails, party rooms or halls limited to specific members, restricted to adults or to patrons invited to attend, whether or not an admission charge is levied.

"4. The prohibidon set forth in subsection 1(c) shall not apply to:

"a. Any child under ten (10) years of age; or

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"b. **Any individual exposing a breast in the process of breastfeeding an infant under two (2) years of age.**

The Court of Common Pleas of Erie County granted, the permanent injunction and struck down the ordinance as unconstitutional. Civ. No. 60059-1994 (Jan. 18, 1995), Pet. for Cert. 40a. On cross appeals, the Commonwealth Court reversed the trial court's order. 674 A.2d 338 (1996).

The Pennsylvania Supreme Court granted review and reversed, concluding that the *public* nudity provisions of the ordinance violated respondent's rights to freedom of expression as protected *by* the First and Fourteenth Amendments. 553 Pa. 348, 719 A.2d 273 (1998). The Pennsylvania court first inquired whether nude dancing constitutes expressive conduct that is within the protection of the First Amendment. The court noted that the act of being nude, in and of *285 itself, is not entitled to First Amendment protection because it conveys no message. Id., at 354, 719 A.2d, at 276. Nude dancing, however, is expressive conduct that is entitled to some quantum of protection under the **1389 First Amendment, a view that the Pennsylvania Supreme= Court noted was endorse_ d by eight Members of this Court in *Barnes.* 553 Pa., at 354, 719 A2d, at 276.

The Pennsylvania court next inquired whether the government interest in enacting the ordinance was content neutral, explaining that regulations that are unrelated to the suppression of expression are not subject to strict scrutiny but to the less stringent standard of *United States v. O'Brien, supra,* at 377, 88 S.Ct. 1673. To answer the question whether the ordinance is content based, the court turned to our decision in *Barnes.* 553 Pa., at 355-356, 719 A.2d, at 277. Although the Pennsylvania court noted that the Indiana statute at issue in *Barnes "is* strikingly similar to the Ordinance we are examining," it concluded that "[u]nfortunately for our purposes, the *Barnes* Court splintered and produced four separate, non-harmonious opinions." 553 Pa., at 356, 719 A2d, at 277. After canvassing these separate opinions, the Pennsylvania court concluded- that, although it is permissible to find precedential effect in a fragmented decision, to do so a majority of the Court must have been in agreement on the concept that is deemed to be the holding. See *Marks v. United States,* 430 U.S. 188, 97 S. Ct. 990, 51 L.Ed.2d 260 (1977). The Pennsylvania court noted that "aside from the agreement by a majority of the *Barnes* Court that nude dancing is entitled to some First Amendment protection, we can find no point on which a majority of the *Barnes* Court agreed." 553 Pa., at 358, 719 A.2d, at 278. Accordingly, the court concluded that "no clear precedent arises out of *Barnes* on the issue of whether the [Erie] ordinance ... passes muster under the First Amendment. " *Ibid.*

Having determined that there was no United States Supreme Court precedent on point, the Pennsylvania court *286 conducted an independent examination of the ordinance to ascertain whether it was related to the suppression of expression. The court concluded that although one of the purposes of the ordinance was to combat negative secondary effects, "[i]nextricably bound up with this stated purpose is an unmentioned purpose ... to impact negatively on the erotic message of the dance." Id., at 359, 719 A.2d, at 279. As such, the court determined the ordinance was content based and subject to strict scrutiny. The ordinance failed the narrow tailoring requirement of strict scrutiny because the court found that imposing criminal and civil sanctions on those who commit sex crimes would be a far narrower means of combating secondary effects than the requirement that dancers wear pasties and G-strings. Id., at 361-362, 719 A.2d, at 280.

Concluding that the ordinance unconstitutionally burdened respondent's expressive conduct, the Pennsylvania court then determined that, under Pennsylvania law, the public nudity provisions of the ordinance could be severed rather than stri-king the ordinance in its entirety. Accordingly, the court severed § § 1(c) and 2 from the ordinance and reversed the order of the Commonwealth Court. Id., at 363-364, 719 A2d, at 281. Because the court

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determined that the public nudity provisions of the ordinance violated Pap's right to freedom of expression under the United States Constitution, it did not address the constitutionality of the ordinance under the Pennsylvania Constitution or the claim that the ordinance is unconstitutionally overbroad. *Ibid.*

In a. separate concurrence, two justices of the Pennsylvania court noted that, because this Court upheld a virtually identical statute in *Barnes,* the ordinance should have been upheld under the United States Constitution. 553 Pa., at 364, 719 A.2d, at 281. They reached the same result as the majority, however, because they would have held that the public nudity sections of the ordinance violate the Pennsylvania Constitution. Id., at 370, 719 A.2d, at 284.

*287 The city of Erie petitioned for a writ of certiorari, which we granted. 526 U.S. **1390 1111, 119 S.Ct. 1753, 143 L.Ed.2d 786 (1999). Shortly thereafter, Pap's filed a motion to dismiss the case as moot, noting that Kandyland was no longer operating as a nude dancing club, and Pap's was not operating a nude dancing club at any other location. Respondent's Motion to Dismiss as Moot 1. We denied the motion. 527 U.S. 1034, 119 S.Ct. 2391, 144 L.Ed.2d 792 (1999).

[1] As a preliminary matter, we must address the justiciability question. " '[A] case is moot when the issues presented are no longer "live" or the parties lack a legally cognizable interest in the outcome.' " *County of Los Angeles v. Davis,* 440 U.S. 625, 631, 99 S.Ct. 1379, 59 L.Ed.2d 642 (1979) (quoting *Powell v. McCormack* 395 U.S. 486, 496, 89 S.Ct. 1944, 23 L.Ed.2d 491 (1969)). The underlying . concern is that, when the challenged conduct ceases such that " 'there is no reasonable expectation that the wrong will be repeated,' " *United States v. W.T. Grant Co.,* 345 U.S. 629, 633, 73 S. Ct. 894, 97 L.Ed. 1303 (1953), then it becomes impossible for the court to grant " 'any effectual relief whatever' to [the] prevailing party," *Church of Scientology of Cal. v. United States,* 506 U.S. 9, 12, 113 S. Ct. 447, 121 L.Ed.2d 313 (1992) (quoting Mills v. *Green,* 159 U.S. 651, 653, 16 S.Ct. 132, 40 L.Ed. 293 (1895)). In that case, any opinion as to the legality of the challenged action would be advisory.

[2] Here, Pap's submitted an affidavit stating that it had "ceased to operate a nude dancing establishment in Erie." Status Report Re Potential Issue of Mootness 1 (Sept. 8, 1999). Pap's asserts that the case is therefore moot because "[tThe outcome of this case will have no effect upon Respondent." Respondent's Motion to Dismiss as Moot 1. Simply closing Kandyland is not sufficient to render this case moot, however. Pap's is still incorporated under Pennsylvania law, and it could again decide to operate a nude dancing establishment in Erie. See Petitioner's Brief in Opposition to A/lotion to Dismiss 3. Justice SCALIA differs with our assessment as to the likelihood that Pap's may resume its nude dancing *288 operation. Several Members of this Court can attest, however, that the "advanced age" of Pap's owner (72) does not make it "absolutely clear" that a life of quiet retirement is his only reasonable expectation. *Cf. Friends of Earth, Inc. v. Laidlaw Environmental Services (TOC), Inc.,* 528 U.S. 167, 120 S.Ct. 693, 145 L.Ed.2d 610 (2000). Moreover, our appraisal of Pap's affidavit is influenced by Pap's failure, despite its obligation to the Court, to mention a word about the potential mootness issue in its brief in opposition to the petition for writ of certiorari, which was filed in April 1999, even though, as Justice SCALIA points out, Kandyland was closed and that property sold in 1998. See *Board of License Comm'rs of Tiverton v. Pastore,* 469 U.S. 238, 240, 105 S.Ct. 685, 83 L.Ed.2d 618 (1985) *(per curiam).* Pap's only raised the issue after this Court granted certiorari.

In any event, this is not a run of the mill voluntary cessation case. Here it is the plaintiff who, having prevailed below, now seeks to have the case declared moot. And it is the city of Erie that seeks to invoke the federal judicial power to obtain this Court's review of the Pennsylvania Supreme Court decision. *Cf. ASARCO Inc. v. Kadish,* 490 U.S.

605, 617-618, 109 S.Ct. 2037, 104 L.Ed.2d 696 (1989). The city has an ongoing injury because it is barred from enforcing the public nudity provisions of its ordinance. If the challenged ordinance is found constitutional, then Erie can enforce it, and the availability of such relief is sufficient to prevent the case from being moot. See *Church of Scientology of Cal. v. United States,* supra, at 13, 113 S. Ct. 447. And Pap's still has a concrete stake in the outcome of this case because, to the extent Pap's has an interest in resuming operations, it has an interest in preserving the judgment of the Pennsylvania Supreme Court. Our interest in preventing litigants from attempting **1391 to manipulate the Court's jurisdiction to insulate a favorable decision from review further counsels against a finding of mootness here. See *United States v. W. T. Grant Co., supra,* at 632, 73 S.Ct. 894; cf. *Arizonans for Official English v. Arizona,* 520 U.S. 43, *289 74, 117 S. Ct. 1055, 137 L.Ed.2d 170 (1997). Although the issue is close, we conclude that the case is not moot, and we turn to the merits.

[3] Being "in a state of nudity" is not an inherently expressive --condition. As we explained in *Barnes,* however, nude dancing of the type at issue here is expressive conduct, although we think that it falls only within. the outer ambit of the First Amendment's protection. See *Barnes v. Glen Theatre, Inc.,* 501 U.S., at 565-566, 111 S. Ct. 2456 (plurality opinion); *Schad v. Mount Ephraim,* 452 U.S. 61, 66, 101 S.Ct. 2176, 68 L.Ed.2d 671 (1981).

[4] To determine what level of scrutiny applies to the ordinance at issue here, we must decide "whether the State's regulation is related to the suppression of expression." *Texas v. Johnson,* 491 U.S. 397, 403, 109 S. Ct. 2533, 105 L.Ed.2d 342 (1989); see also *United States v. O'Brien,* 391 U.S., at 377, 88 S.Ct. 1673. If the governmental purpose in enacting the regulation is unrelated to the suppression of expression, then the regulation need only satisfy the "less stringent" standard from *O'Brien* for evaluating restrictions on symbolic speech. *Texas v. Johnson, supra,* at 403, 109 S.Ct. 2533; *United States v. O'Brien, supra,* at 377, 88 S.Ct. 1673. If the government interest is related to the content of the expression, however, then the regulation falls outside the scope of the *O'Brien* test and must be justified under a more demanding standard. *Texas v. Johnson, supra,* at 403, 109 S.Ct. 2533.

[5] In *Barnes,* we analyzed an almost identical statute, holding that Indiana's public nudity ban did not violate the First Amendment, although no five Members of the Court agreed on a single rationale for that conclusion. We now clarify that government restrictions on public nudity such as the ordinance at issue here should be evaluated under the framework set forth in *O'Brien* for content-neutral restrictions on symbolic speech.

The city of Erie argues that the ordinance is a content-neutral restriction that is reviewable under *O'Brien* because the ordinance bans conduct, not speech; specifically, public *290 nudity. Respondent counters that the ordinance targets nude dancing and, as such, is aimed specifically at suppressing expression, making the ordinance a content-based restriction that must be subjected to strict scrutiny.

[6] The ordinance here, like the statute in *Barnes,* is on its face a general prohibition on public nudity. 553 Pa., at 354, 719 A.2d, at 277. By its terms, the ordinance regulates conduct alone. It does not target nudity that contains an erotic message; rather, it bans all public nudity, regardless of whether that nudity is accompanied by expressive activity. And like the statute in *Barnes,* the Erie ordinance replaces and updates provisions of an "Indecency and Immorality" ordinance that has been on the books since 1866, predating the prevalence of nude dancing establishments such as Kandyland. Pet. for Cert. 7a; see *Barnes v. Glen Theatre, Inc.,* supra, at 568, 111 S. Ct. 2456.

Respondent and Justice STEVENS contend nonetheless that the ordinance is related to the suppression of expression because language in the ordinance's preamble suggests that its actual purpose is to prohibit erotic

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dancing of the type performed at Kandyland. *Post,* at 1406 (dissenting opinion). That is not how the Pennsylvania Supreme Court interpreted that language, however. In the preamble to the ordinance, the city council stated that it was adopting the regulation " 'for the purpose of limiting a recent increase in nude live entertainment within the City, which activity adversely **1392 impacts and threatens to impact on the public health, safety and welfare by providing an atmosphere conducive to violence, sexual harassment, public intoxication, prostitution, the spread of sexually transmitted diseases and other deleterious effects.' " 553 Pa., at 359, 719 A.2d, at 279.

The Pennsylvania Supreme Court construed this language to mean that one purpose of the ordinance was "to combat negative secondary effects." *Ibid.*

*291 As Justice SOUTER noted in *Barnes,* "on its face, the governmental interest in combating prostitution and other criminal activity is not at all inherently related to expression." 501 U.S., at 585, 111 S.Ct. 2456 (opinion concurring in judgment). In that sense, this case is similar to *O'Brien.* O'Brien burned his draft registration card as a public statement of his antiwar views, and he was convicted under a statute making it a crime to knowingly mutilate or destroy such a card. This Court rejected his claim that the statute violated his First Amendment rights, reasoning that the law punished him for the "noncommunicative impact of his conduct, and for nothing else." 391 U.S., at 382, 88 S.Ct. 1673. In other words, the Government regulation prohibiting the destruction of draft cards was aimed at maintaining the integrity of the Selective Service System and not at suppressing the message of draft resistance that O'Brien sought to convey by burning his draft card. So too here, the ordinance prohibiting public nudity is aimed at combating crime and other negative secondary effects caused by the presence of adult entertainment establishments like Kandyland and not at suppressing the erotic message conveyed by this type of nude dancing. Put another way, the ordinance does not attempt to regulate the primary effects of the expression, i.e., the effect on the audience of watching nude erotic dancing, but rather the secondary effects, such as the impacts on public health, safety, and welfare, which we have previously recognized are "caused by the presence of even one such" establishment. *Renton v. Playtime Theatres, Inc.,* 475 U.S. 41, 47-48, 50, 106 S. Ct. 925, 89 L.Ed.2d 29 (1986); see also *Boos v. Barry,* 485 U.S. 312, 321, 108 S. Ct. 1157, 99 L.Ed.2d 333 (1988).

Although the Pennsylvania Supreme Court acknowledged that one goal of the ordinance was to combat the negative secondary effects associated with nude dancing establishments, the court concluded that the ordinance was nevertheless content based, relying on Justice White's position in dissent in *Barnes* for the proposition that a ban of this type *necessarily* has the purpose of suppressing the erotic message *292 of the dance. Because the Pennsylvania court agreed with Justice White's approach, it concluded that the ordinance must have another, "unmentioned" purpose related to the suppression of expression. 553 Pa., at 359, 719 A.2d, at 279. That is, the Pennsylvania court adopted the dissent's view in *Barnes* that " '[slince the State permits the dancers to perform if they wear pasties and G--strings but forbids nude dancing, it is precisely because of the distinctive, expressive content of the nude dancing performances at issue in this case that the State seeks to apply the statutory prohibition.' " 553 Pa., at 359, 719 A.2d, at 279 (quoting *Barnes, supra,* at 592, 111 S.Ct. 2456 (White, J., dissenting)). A majority of the Court rejected that view in *Barnes,* and we do so again here.

[7] Respondent's argument that the ordinance is "aimed" at suppressing expression through a ban on nude dancing--an argument that respondent supports by pointing to statements by the city attorney that the public nudity ban was not intended to apply to "legitimate" theater productions--is really an argument that the city council also had an illicit motive in enacting the ordinance. As we have said before, however, this Court will not strike down an otherwise constitutional statute on the basis of an alleged illicit motive. *O'Brien,*

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supra, at 382-383, 88 S.Ct. 1673; **1393 *Renton v. Playtime Theatres, Inc., supra,* at 47-48, 106 S.Ct. 925 (that the "predominate" purpose of the statute was to control secondary effects was "more than adequate to establish" that the city's interest was unrelated to the suppression of expression). In light of the Pennsylvania court's determination that one purpose of the ordinance is to combat harmful secondary effects, the ban on public nudity here is no different from the ban on burning draft registration cards in *O'Brien,* where the Government sought to prevent the means of the expression and not the expression of antiwar sentiment itself.

Justice STEVENS argues that the ordinance enacts a complete ban on e-Tression. We respectfully disagree with that characterization. The public nudity ban certainly has *293 the effect of limiting one particular means of expressing the kind of erotic message being disseminated at Kandyland. But simply to define what is being banned as the "message" is to assume the conclusion. We did not analyze the regulation in *O'Brien* as having enacted a total ban on expression. Instead, the Court recognized that the regulation against destroying one's draft card was justified by the Government's interest in preventing the harmful "secondary effects" of that conduct (disruption to the Selective Service System), even though that regulation may have some incidental effect on the expressive element of the conduct. Because this justification was unrelated to the suppression of O'Brien's antiwar message, the regulation was content neutral. Although there may be cases in which banning the means of expression so interferes with the message that it essentially bans the message, that is not the case here.

Even if we had not already rejected the view that a ban on public nudity is necessarily related to the suppression of the erotic message of nude dancing, we would do so now because the premise of such a view is flawed. The State's interest in preventing harmful secondary effects is not related to the suppression of expression. In trying to control the secondary effects of nude dancing, the ordinance seeks to deter crime and the other deleterious effects caused by the presence of such an establishment in the neighborhood. See *Renton, supra,* at 50-51, 106 S.Ct. 925. In *Clark v. Community for Creative Non-Violence,* 468 U.S. 288, 104 S.Ct. 3065, 82 L.Ed.2d 221 (1984), we held that a National Park Service regulation prohibiting camping in certain parks did not violate the First Amendment when applied to prohibit demonstrators from sleeping in Lafayette Park and the Mall in Washington, D.C., in connection with a demonstration intended to call attention to the plight of the homeless. Assuming, *arguendo,* that sleeping can be expressive conduct, the Court concluded that the Government interest in conserving park property was unrelated to the demonstrators' message about homelessness. Id., at 299, 104 S.Ct. 3065. *294 So, while the demonstrators were allowed to erect "symbolic tent cities," they were not allowed to sleep overnight in those tents. Even though the regulation may have directly limited the expressive element involved in actually sleeping in the park, the regulation was nonetheless content neutral.

Similarly, even if Erie's public nudity ban has some minimal effect on the erotic message by muting that portion of the expression that occurs when the last stitch is dropped, the dancers at Kandyland and other such establishments are free to perform wearing pasties and G-strings. Any effect on the overall expression is *de minimis.* And as Justice STEVENS eloquently stated for the plurality in *Young v. American Mini Theatres, Inc.,* 427 U.S. 50, 70, 96 S.Ct. 2440, 49 L.Ed.2d 310 (1976), "even though we recognize that the First Amendment will not tolerate the total suppression of erotic materials that have some arguably artistic value, it is manifest that society's interest in protecting this type of expression is of a wholly different, and lesser, magnitude than the **1394 interest in untrammeled political debate," and "few of us would march our sons and daughters off to war to preserve the citizen's right to see" specified anatomical areas exhibited at establishments like Kandyland. If States are to be able to regulate secondary effects, then *de minimis* intrusions on expression such as those at issue

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here cannot be sufficient to render the ordinance content based. See *Clark v. Community for Creative Non--Violence, supra,* at 299, 104 S.Ct. 3065; *Ward v. Rock Against Racism,* 491 U.S. 781, 791, 109 S. Ct. 2746, 105 L.Ed.2d 661 (1989) (even if regulation has an incidental effect on some speakers or messages but not others, the regulation is content neutral if it can be justified without reference to the content of the expression).

This case is, in fact, similar to *O'Brien, Communityy for Creative Non-- Violence,* and *Ward.* The justification for the government regulation in each case prevents harmful "secondary" effects that are unrelated to the suppression of expression. See, e.g., *Ward v. Rock Against Racism, supra,* at 791-792, 109 S.Ct. 2746. (noting that "[tThe principal justification for the *295 sound-amplification guideline is the city's desire to control noise levels at bandshell events, in order to retain the character of the [adjacent] Sheep Meadow and its more sedate activities," and citing *Renton* for the proposition that "[a] regulation that serves purposes unrelated to the content of expression is deemed neutral, even if it has an incidental effect on some speakers or messages but not others"). While the doctrinal theories behind "incidental burdens" and "secondary effects" are, of course, not identical, there is nothing objectionable about a city passing a general ordinance to ban public nudity (even though such a ban may place incidental burdens on some protected speech) and at the same time recognizing that one specific occurrence of public nudity--nude erotic dancing--is particularly problematic because it produces harmful secondary effects.

Justice STEVENS claims that today we "[f]or the first time" extend *Renton's* secondary effects doctrine to justify restrictions other than the location of a commercial enterprise. *Post,* at 1406 (dissenting opinion). Our reliance on *Renton* to justify other restrictions is not new, however. In *Ward,* the Court relied on *Renton* to evaluate restrictions on sound amplification at an outdoor bandshell, rejecting the dissent's contention that *Renton* was inapplicable. See *Ward v. Rock Against Racism, supra,* at 804, n. 1, 109 S. Ct. 2746 (Marshall, J., dissenting) ("Today, for the first time, a majority of the Court applies *Renton* analysis to a category of speech far afield from that decision's original limited focus"). Moreover, Erie's ordinance does not effect a "total ban" on protected expression. *Post,* at 1407.

In *Renton,* the regulation explicitly treated "adult" movie theaters differently from other theaters, and defined "adult" theaters solely by reference to the content of their movies. 475 U.S., at 44, 106 S.Ct. 925. We nonetheless treated the zoning regulation as content neutral because the ordinance was aimed at the secondary effects of adult theaters, a justification unrelated to the content of the adult movies themselves. Id., at *296 48, 106 S.Ct. 925. Here, Erie's ordinance is on its face a content- neutral restriction on conduct. Even if the city thought that nude dancing at clubs like Kandyland constituted a particularly problematic instance of public nudity, the regulation is still properly evaluated as a content-neutral restriction because the interest in combating the secondary effects associated with those clubs is unrelated to the suppression of the erotic message conveyed by nude dancing.

We conclude that Erie's asserted interest in combating the negative secondary effects associated with adult entertainment establishments like Kandyland is unrelated to the suppression of the erotic message conveyed by nude dancing. The ordinance prohibiting public nudity is therefore valid **1395 if it satisfies the four-factor test from *O'Brien* for evaluating restrictions on symbolic speech.

[8][9][10][11] Applying that standard here, we conclude that Erie's ordinance is justified under *O'Brien.* The first factor of the *O'Brien* test is whether the government regulation is within the constitutional power of the government to enact. Here, Erie's efforts to protect public health and safety are clearly within the city's police powers. The second factor is whether the regulation furthers an important or substantial government interest.

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The asserted interests of regulating conduct through a public nudity ban and of combating the harmful secondary effects associated with nude dancing are undeniably important. And in terms of demonstrating that such secondary effects pose a threat, the city need not "conduct new studies or produce evidence independent of that already generated by other cities" to demonstrate the problem of secondary effects, "so long as whatever evidence the city relies upon is reasonably believed to be relevant to the problem that the city addresses." *Renton v. Playtime Theatres, Inc., supra,* at 51-52, 106 S. Ct. 925. Because the nude dancing at Kandyland is of the same character as the adult entertainment *297 at issue in *Renton, Young v. American Mini Theatres, Inc.,* 427 U.S. 50, 96 S.Ct. 2440, 49 L.Ed.2d 310 (1976), and *California v. LaRue,* 409 U.S. 109, 93 S.Ct. 390, 34 L.Ed.2d 342 (1972), it was reasonable for Erie to conclude that such nude dancing was likely to produce the same secondary effects. And Erie could reasonably rely on the evidentiary foundation set forth in *Renton* and *American Mini Theatres* to the effect that secondary effects are caused by the presence of even one adult entertainment establishment in a given neighborhood. See *Renton v. Playtime Theatres, Inc., supra,* at 51-52, 106 S.Ct. 925 (indicating that reliance on a judicial opinion that describes the evidentiary basis IS sufficient). In fact, Erie expressly relied on *Barnes* and its discussion of secondary effects; including its reference to *Renton* and *American Mini Theatres.* Even in cases addressing regulations that strike closer to the core of First Amendment values, we have accepted a state or local government's reasonable belief that the experience of other jurisdictions is relevant to the problem it is addressing. See *Nixon v. Shrink Missouri Government PAC,* 528 U.S. 377, 393, n. 6, 120 S.Ct. 897, 145 L.Ed.2d 886 (2000) Regardless of whether Justice SOUTER now wishes to disavow his opinion in *Barnes* on this point, see *post,* at 1406 (opinion concurring in part and dissenting in part), the evidentiary standard described in *Renton* controls here, and Erie meets that standard.

[12] In any event, Erie also relied on its own findings. The preamble to the ordinance states that "the Council of the City of Erie *has, at various times over more than a century, expressed its findings* that certain lewd, immoral activities carried on in public places for profit - are highly detrimental to the public health, safety and welfare, and lead to the debasement of both women and men, promote violence, public intoxication, prostitution and other serious criminal activity." Pet. for Cert. 6a (emphasis added). The city council members, familiar with commercial downtown Erie, are the individuals who would likely have had firsthand knowledge of what took place at and around nude dancing establishments *298 in Erie, and can make particularized, expert judgments about the resulting harmful secondary effects. Analogizing to the administrative agency context, it is well established that, as long as a party has an opportunity to respond, an administrative agency may take official notice of such "legislative facts" within its special knowledge, and is not confined to the evidence in the record in reaching its expert judgment. See *FCC v. National Citizens Comm. for Broadcasting,* 436 U.S. 775, 98 S. Ct. 2096, 56 L.Ed.2d 697 (1978); *Republic Aviation `k*1396 Corp. v. NLRB,* 324 U.S. 793, 65 S. Ct. 982, 89 L.Ed. 1372 (1945); 2 K. Davis & R. Pierce, Administrative Law Treatise § 10.6 (3d ed.1994). Here, Kandyland has had ample opportunity to contest the council's findings about secondary effects--before the council itself, throughout the state proceedings, and before this Court. Yet to this day, Kandyland has never challenged the city council's findings or cast any specific doubt on the validity of those findings. Instead, it has simply asserted that the council's evidentiary proof was lacking. In- the absence of any reason to doubt it, the city's expert judgment should be credited. And the study relied on by *amicus Curae* does not cast any legitimate doubt on the Erie city council's judgment about Erie. See Brief for First Amendment Lawyers Association as *Amicus Curiae* 16-23.

Finally, it is worth repeating that Erie's ordinance is on its face a content-neutral restriction that regulates conduct, not First Amendment expression. And the government should have sufficient leeway to justify such a

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law based on secondary effects. On this point, *O'Brien* is especially instructive. The Court there did not require evidence that the integrity of the Selective Service System would be jeopardized by the knowing destruction or mutilation of draft cards. It simply reviewed the Government's various administrative interests in issuing the cards, and then concluded that "Congress has a legitimate and substantial interest in preventing their wanton and unrestrained destruction and assuring their continuing availability by punishing people *299 who knowingly and willfully destroy or mutilate them." 391 U.S., at 378-380, 88 S.Ct. 1673. There was no study documenting instances of draft card mutilation or the actual effect of such mutilation on the Government's asserted efficiency interests. But the Court permitted Congress to take official notice, as it were, that draft card destruction would jeopardize the system. The fact that this sort of leeway is appropriate in a case involving conduct says nothing whatsoever about its appropriateness in a case involving actual regulation of First Amendment expression. As we have said, so long as the regulation is unrelated to the suppression of expression, "[t]he government generally has a freer hand in restricting expressive conduct than= it has in restricting the written or spoken word." *Texas v. Johnson,* 491 U.S., at 406, 109 S.Ct. 2533. See, e.g., *United States v. O'Brien, supra,* at 377, 88 S.Ct. 1673; *United States v. Albertini,* 472 U.S. 675, 689, 105 S.Ct. 2897, 86 L.Ed.2d 536 (1985) (finding sufficient the Government's assertion that those who had previously been barred from entering the military installation pose a threat to the security of that installation); *Clark v. Community for Creative Non--Violence,* 468 U.S., at 299, 104 S.Ct. 3065 (finding sufficient the Government's assertion that camping overnight in the park poses a threat to park property).

Justice SOUTER, however, would require Erie to develop a specific evidentiary record supporting its ordinance. *Post,* at 1405-1406 (opinion concurring in part and dissenting in part). Justice SOUTER agrees that Erie's interest in combating the negative secondary effects associated with nude dancing establishments is a legitimate government interest unrelated to the suppression of expression, and he agrees that the ordinance should therefore be evaluated under *O'Brien. O'Brien,* of course, required no evidentiary showing at all that the threatened harm. was real. But that case is different, Justice SOUTER contends, because in *O'Brien* "there could be no doubt" that a regulation prohibiting the destruction of draft cards would alleviate the harmful secondary effects *300 flowing from the destruction of those cards. *Post,* at 1402-1403, n. 1.

But whether the harm is evident to our "intuition," *ibid.,* is not. the proper inquiry. If it were, we would simply say there is no doubt that a regulation prohibiting public nudity would alleviate the harmful secondary effects associated with nude dancing. In any event, Justice SOUTER conflates **1397 two distinct concepts under *O'Brien:* whether there is a substantial government interest and whether the regulation furthers that interest. As to the government interest, i.e., whether the threatened harm is real, the city council relied on this Court's opinions detailing the har af l secondary effects caused by establishments like Kandyland, as well as on its own experiences in Erie. Justice SOUTER attempts to denigrate the city council's conclusion that the threatened harm was real, arguing that we cannot accept Erie's findings because the subject of nude dancing is "fraught with some emotionalism," post, at 1404. Yet surely the subject of drafting our citizens into the military is "fraught" with more emotionalism than the subject of regulating nude dancing. *Ibid.* Justice SOUTER next hypothesizes that the reason we cannot accept Erie's conclusion is that, since the question whether these secondary effects occur is "amenable to empirical treatment," we should ignore Erie's actual experience and instead require such an empirical analysis. Post, at 1404, n. 3 (referring to a "scientifically sound" study offered by an *amicus curiae* to show that nude dancing establishments do not cause secondary effects). In *Nixon,* however, we -flatly rejected that idea. 528 U.S., at 394, 120 S.Ct. 897 (noting that the "invocation of

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academic studies said to indicate" that the threatened harms are not real is insufficient to cast doubt on the experience of the local government).

As to. the second point--whether the regulation furthers the government interest--it is evident that, since crime and other public health and safety problems are caused by the presence of nude dancing establishments like, Kandyland, a *301 ban on such nude dancing would further Erie's interest in preventing such secondary effects. To be sure, requiring dancers to wear pasties and G-strings say not greatly reduce these secondary effects, but *O'Brien* requires only that the regulation further the interest in combating such effects. Even though the dissent questions the wisdom of Erie's chosen remedy, *post,* at 1409 (opinion of STEVENS, J.), the " 'city must be allowed a reasonable opportunity to experiment with solutions to admittedly serious problems,' " *Renton v. Playtime Theatres, Inc.,* 475 U.S., at 52, 106 S.Ct. 925 (quoting *American illini Theatres,* 427 U.S., at 71, 96 S.Ct. 2440 (plurality opinion)). It also may be true that a pasties and G-string requirement would not be as effective as, for example, a requirement that the dancers be fully clothed, but the city must balance its efforts to address the problem with the requirement that the restriction be no greater than necessary to further the city's interest.

The ordinance also satisfies *O'Brien's* third factor, that the government interest is unrelated to the suppression of free expression, as discussed *supra,* at 1390-1395. The fourth and final *O'Brien* factor--that the restriction is no greater than is essential to the furtherance of the government interest--is satisfied as well. The ordinance regulates conduct, and any incidental impact on the expressive element of nude dancing is *de minimis.* The requirement that dancers wear pasties and G-strings is a minimal restriction in furtherance of the asserted government interests, and the restriction leaves ample capacity to convey the dancer's erotic message. See *Barnes v. Glen Theatre, Inc.,* 501 U.S., at 572, 111 S. Ct- 2456 (plurality opinion of REHNQLZST, C. J., joined by O'COtiiL\TOR and KENNEDY, JJJ: *id.,* at 587) 111 S.Ct. 2456 (SOUTER, J., concurring in judgment). Justice SOUTER points out that zoning is an alternative means of addressing this problem. It is far from clear, however, that zoning imposes less of a burden on expression than the minimal requirement implemented here. In any event, since this is a content-neutral restriction, least restrictive *302 means analysis is not required. See *Ward,* 491 U.S., at 798-799, n. 6, 109 S. Ct. 2746.

**1398 We hold, therefore, that Erie's ordinance is a content-neutral regulation that is valid under *O'Brien.* Accordingly, the judgment of the Pennsylvania Supreme Court is reversed, and the case is remanded for further proceedings.

It is so ordered.

Justice SCALIA, with whom Justice THOMAS joins, concurring in the judgment.

In my view, the case before us here is moot. The Court concludes that it is not because respondent could resume its nude dancing operations in the future, and because petitioners have suffered an ongoing, redressable harm consisting of the state court's invalidation of their public nudity ordinance.

As to the first point: Petitioners do not dispute that Kandyland no longer exists; the building in which it was located has been sold to a real estate developer, and the premises are currently being used as a comedy club. We have a sworn affidavit from respondent's sole shareholder, Nick Panos, to the effect that Pap's "operates no active business," and is "a 'shell' corporation." More to the point, Panos swears that neither Pap's nor Panos " any individuals involved in the nude dancing business," "maintain[s] any contacts in the adult entertainment business," "has any current interest in any establishment providing nude dancing," or "has any intention to own or operate a nude dancing establishment in the future." [FN1] App. to

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Reply to Brief in Opposition to Motion to Dismiss 7-8.

FN1. Curiously, the Court makes no mention of Panos' averment of no intention to operate a nude dancing establishment in the future, but discusses the issue as though the only factor suggesting mootness is the closing of Kandyland. *Ante,* at 1390. I see no basis for ignoring this averment. The only fact mentioned by the Court to justify regarding it as perjurious is that respondent failed to raise mootness in its brief in opposition to the petition for certiorari. That may be good basis for censure, but it is scant basis for suspicion of perjury-particularly since respondent, far from seeking to "insulate a favorable decision from review," *ante,* at 1391, asks us in light of the mootness to vacate the judgment below. Reply to Brief in Opposition to Motion to Dismiss 5.

*303 Petitioners do not contest these representations, but offer in response only that Pap's could very easily get back into the nude dancing business. The Court adopts petitioners' line, concluding that because respondent is still incorporated in Pennsylvania, it "could again decide to operate a nude dancing establishment in Erie." *Ante,* at 1390. That plainly does not suffice under our cases. The test for mootness we have applied in --voluntary-termination cases is. not whether the action originally giving rise to the controversy could not *conceivably* reoccur, but whether it is "absolutely clear that the ... behavior could not *reasonably be expected to recur. " United States v. Concentrated Phosphate Export Assn., Inc.,* 393 U.S. 199, 203, 89 S.Ct. 361, 21 L.Ed.2d 344 (1968) (emphasis added). Here I think that test is met. According to Panos' uncontested sworn affidavit, Pap's ceased doing business at Kandyland, and the premises were sold to an independent developer, in 1998--the year before the petition for certiorari in this case was filed. It strains credulity to suppose that the 72-year-old TIVlr. Panos shut down his going business *after* securing his victory in the Pennsylvania Supreme Court, and before the city's petition for certiorari was even filed, in order to increase his chances of preserving his judgment in the statistically unlikely event that a (not yet filed) petition might be granted. Given the timing of these events, given the fact that respondent has no existing interest in nude dancing (or in any other business), given Panos' sworn representation that he does not intend to invest--**1399 through Pap's or otherwise--in any nude dancing business, and given Panos' advanced *304 age, [FN2] it seems to me that there is "no reasonable *expectation,"* even if there remains a theoretical possibility, that Pap's will resume nude dancing operations in the future. [FN3]

FN2. The Court asserts that "[s]everal Members of this Court can attest ... that the 'advanced age' " of 72 "does not make it 'absolutely clear' that a life of quiet retirement is [one's] only reasonable expectation. " *Ante,* at 1390. That is *tres gallant,* but it misses the point. Now as heretofore, Justices in their seventies continue to do their work competently-indeed, perhaps better than their youthful colleagues because of the wisdom that age imparts. But to respond to my point, what the Court requires is citation of an instance in which a Member of this Court (or of any other court, for that matter) resigned at the age of 72 to begin a new career-or more remarkable still (for this is what the Court suspects the young Mr. Panos is up to) resigned at the age of 72 to go judge on a different court, of no greater stature, and located in Erie, Pennsylvania, rather than Palm Springs. I base my assessment of reasonable expectations not upon Mr. Panos' age alone, but upon that combined with his sale of the business and his assertion, under oath, that he does not intend to enter another.

FN3. It is significant that none of the assertions of Panos' affidavit is contested. Those pertaining to the sale of Kandyland and the current noninvolvement of Pap's in any other nude dancing establishment would seem readily verifiable by petitioners. The statements regarding Pap's and Panos' intentions for the future are by their nature not verifiable, and it would be reasonable not to credit them if *either* petitioners asserted some reason to believe they were not true *or* they were not rendered highly plausible by Panos' age and his past actions. Neither condition exists here.

The situation here is indistinguishable from that which obtained in *Anzonans for* Official *English v. Arizona,* 520 U.S. 43, 117 S.Ct. 1055, 137 L.Ed.2d 170 (1997), where the plaintiff-

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respondent, a state employee who had sued to enjoin enforcement of an amendment to the Arizona Constitution making English that State's official language, had resigned her public-sector employment. We held the case moot and, since the mootness was attributable to the " 'unilateral action of the party who prevailed in the lower court,' " we followed our usual practice of vacating the favorable judgment respondent had obtained in the *305 Court of Appeals. Id., at 72, 117 S.Ct. 1055 (quoting U.S. *Bancorp Mortgage Co. v.- Bonner Mall Partnership,* 513 U.S. 18, 23, 115 S.Ct. 386, 130 L.Ed.2d 233 (1994)).

The rub here is that this case comes to us on writ of certiorari to a state court, so that our lack of jurisdiction over the case also entails, according to our recent jurisprudence, a lack of jurisdiction to direct a vacatur. See *ASARCO Inc. v. Kadish,* 490 U.S. 605, 621, n. 1, 109 S. Ct. 2037, 104 L.Ed.2d 696 (1989). The consequences of that limitation on our power are in this case significant: A dismissal for mootness caused by respondent's unilateral action would leave petitioners subject to an ongoing legal disability, and a large one at that. Because the Pennsylvania Supreme Court severed the public nudity provision from the ordinance, thus rendering it inoperative, the city would be prevented from enforcing its public nudity prohibition not only against respondent, should it decide to resume operations in the future, and not only against other nude dancing establishments, but against anyone who appears nude in public, regardless of the "expressiveness" of his conduct or his purpose in engaging in it.

That is an unfortunate consequence (which could be avoided, of course, if the Pennsylvania Supreme Court chose-to vacate its judgments in cases that become moot during appeal). But it is not a consequence that authorizes us to entertain a suit the Constitution places beyond our power. And leaving in effect erroneous state determinations regarding the Federal Constitution is, after all, not unusual. It would have occurred here, even without the intervening mootness, if we had denied certiorari. And until the 1914 revision of the Judicial Code, it occurred *whenever* a state court erroneously sustained a federal constitutional challenge, since we did not even have *statutory* jurisdiction to entertain **1400 an appeal. Compare Judiciary Act of 1789, ch. 20, § 25, 1 Stat. 85-87, with Act of Dec. 23, 1914, ch. 2, 38 Stat. 790. In any event, the short of the matter is that we have no power to suspend the fundamental precepts that federal courts "are limited by the case-or-controversy requirement *306 of Art. III to adjudication of actual disputes between adverse parties," *Richardson v. Ramirez,* 418 U.S. 24, 36, 94 S.Ct. 2655, 41 L.Ed.2d 551 (1974), and that this limitation applies "at all stages of review," *Preiser v. Newkirk,* 422 U.S. 395, 401, 95 S. Ct. 2330, 45 L.Ed.2d 272 (1975) (quoting *Steffel v. Thompson,* 415 U.S. 452, 459, n. 10, 94 S.Ct. 1209, 39 L.Ed.2d 505 (1974)) (internal quotation marks omitted).

Which brings me to the Court's second reason for holding that this case is still alive: The Court concludes that because petitioners have an "ongoing injury" caused by the state court's invalidation of its duly enacted public nudity provision, our ability to hear the case and reverse the judgment below is itself "sufficient to prevent the case from being moot." *Ante,* at 1390. Although the Court does not cite any authority for the proposition that the burden of an adverse decision below suffices to keep a case alive, it is evidently relying upon our decision in *ASARCO,* which held that Article IQ's standing requirements were satisfied on writ of certiorari to a state court even though there would have been no Article III standing for the action producing the state judgment on which certiorari was sought. We assumed jurisdiction in the case because we concluded that the party seeking to invoke the federal judicial power had standing to challenge the adverse judgment entered against them by the state court. Because that judgment, if left undisturbed, would "cans[e] direct, specific, and concrete injury to the parties who petition for our review," *ASARCO,* 490 U.S., at 623-624, 109 S.Ct. 2037, and because a decision by this Court to reverse the State Supreme Court would clearly redress that injury, we concluded that the original plaintiffs' lack of standing was not fatal to our jurisdiction, *id.,*

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at 624, 109 S. Ct. 2037.

I dissented on this point in ASARCO, see id., at 634, 109 S.Ct. 2037 (REHNQUZST, C. J., concurring in part and dissenting in part, joined by SCALIA, J.), and remain of the view that it was incorrectly decided. But ASARCO at least did not purport to hold that the constitutional standing requirements of injury, causation, and redressability may be satisfied *solely* by *307 reference to the lower court's adverse judgment. It was careful to note--however illogical that might have been, see *id.,* at 635, 109 S.Ct. 2037--that the parties "remain[ed] adverse," and that jurisdiction was proper only so long as the "requisites of a case or controversy are also met," *id.,* at 619, 624, 109 S.Ct. 2037. Today the Court would appear to drop even this fig leaf. [FN4] In concluding that the injury to *Erie is* "sufficient" to keep this case alive, the Court performs the neat trick of identifying a "case or controversy" that has only one interested ply.

FN4. I say "appear" because although the Court states categorically that "the availability of ... relief [from the judgment below] is sufficient to prevent the case from being moot," it follows this statement, in the next sentence, with the assertion that Pap's, the state-court plaintiff, retains a "concrete stake in the outcome of this case." *Ante,* at 1390. Of course, if the latter were true a **classic case or controversy** existed, and resort to the exotic theory of "standing by virtue of adverse judgment below" was entirely unnecessary.

For the reasons set forth above, I would dismiss this case for want of jurisdiction. Because the Court resolves the threshold mootness question differently and proceeds to address the merits, I will do so briefly as well. I agree that the decision of the Pennsylvania Supreme Court must be reversed, but disagree with the mode of analysis the Court has applied.

The city of Erie self-consciously modeled its ordinance on the public nudity **1401 statute we upheld against constitutional challenge in *Barnes v. Glen Theatre, Inc.,* 501 U.S. 560, 111 S.Ct. 2456, 115 L.Ed.2d 504 (1991), calculating (one would have supposed reasonably) that the courts of Pennsylvania would consider themselves bound by our judgment on a question of federal constitutional law. In *Barnes,* I voted to uphold the challenged Indiana statute "not because it survives some lower level of First Amendment scrutiny, but because, as a general law regulating conduct and not specifically directed at expression, it is not *308 subject to First Amendment scrutiny at all." Id., at 572, 111 S.Ct. 2456 (opinion concurring in judgment). Erie's ordinance, too, by its terms prohibits not merely nude dancing, but the act--irrespective of whether it is engaged in for expressive purposes--of going nude in public. The facts that a preamble to the ordinance explains that its purpose, in part, is to "limi[t] a recent increase in nude live entertainment," App. to Pet. for Cert. 42a, that city councilmembers in supporting the ordinance commented to that effect, see *post,* at 1412-1413, and n. 16 (STEVENS, J., dissenting), and that the ordinance includes in the definition of nudity the exposure of devices simulating that condition, see *post,* at 1413, neither make the law any less general in its reach nor demonstrate that what the municipal authorities *really* find objectionable is expression rather than public nakedness. As far as appears (and as seems overwhelmingly likely), the preamble, the councilmembers' comments, and the chosen definition of the prohibited conduct simply reflect the fact that Erie had recently been having a public nudity problem not with streakers, sunbathers or hot dog vendors, see *Barnes, supra,* at 574, 111 S.Ct. 2456 (SCALIA, J., concurring in judgment), but with lap dancers.

There is no basis for the contention that the ordinance does not apply to nudity in theatrical productions such as Equus or Hair. Its text contains no such limitation. It was stipulated in the trial court that no effort was made to enforce the ordinance against a production of Equus involving nudity that was being staged in Erie at the time the ordinance became effective. App. 84. Notwithstanding

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Justice STEVENS' assertion to the contrary, however, see *post,* at 1411-1412, neither in the stipulation, nor elsewhere in the record, does it appear that, the city was aware of the nudity--and before this Court counsel for the city attributed nonenforcement not to a general exception for theatrical productions, but to the fact that no one had complained. Tr. of Oral Arg. 16. One instance of nonenforcement--against a play already in production that prosecutorial discretion might reasonably have *309 "grandfathered"--does not render this ordinance discriminatory on its face. To be sure, in the trial court counsel for the city said that "[t]o the extent that the expressive activity that is contained in [such] productions rises to a higher level of protected expression, they would not be [covered]," App. 53--but he rested this assertion upon the provision in the preamble that expressed respect for "fundamental Constitutional guarantees of free speech and free expression," and the provision of Paragraph 6 of the ordinance that provided for severability of unconstitutional provisions, id., at 53-54. [FN5] What he was saying there (in order to fend off the overbreadth challenge of respondent, who was in no doubt that the ordinance *did* cover theatrical productions, see *id.,* at 55) was essentially what he said at oral argumpnt before this Court: that the ordinance would not be enforceable against theatrical productions if the Constitution forbade it. **1402 Tr. of Oral Arg. 13. Surely that limitation does not cause the ordinance to be not generally applicable, in the relevant sense of being *targeted* against expressive conduct. [FN6]

FN5. This followup explanation rendered what Justice STEVENS calls counsel's "categorical" assertion that such productions would be exempt, see post, at 1411, n. 12, notably un categorical. Rather than accept counsel's explanation-in the trial court and here--that is compatible with the text of the ordinance, Justice STEVENS rushes to assign the ordinance a meaning that its words cannot bear, on the basis of counsel's initial fooifault. That is not what constitutional adjudication ought to be.

FN6. To correct Justice STEVENS' characterization of my present point: I do not argue that Erie "carved out an exception" for Equus and Hair. Post, at 1412, n. 14. Rather, it is my contention that the city attorney assured the trial court that the ordinance was susceptible of an interpretation that would carve out such exceptions to the extent the Constitution required them. Contrary to Justice STEVENS' view, *ibid., I* do not believe that a law directed against all public nudity ceases to be a "general law" (rather than one directed at expression) if it makes exceptions for nudity protected by decisions of this Court. To put it another way, I do not think a law contains the vice of being directed against expression if it bans all public nudity, except that public nudity which the Supreme Court has held cannot be banned because of its expressive content.

*310 Moreover, even were I to conclude that the city of Erie had specifically singled out the activity of nude dancing, I still would not find that this regulation violated the First Amendment unless I could be persuaded (as on this record I cannot) that it was the communicative character of nude dancing that prompted the ban. When conduct other than speech itself is regulated, it is my view that the First Amendment is violated only "[w1here the government prohibits conduct precisely because of its communicative attributes." *Barnes, 501 U.S.,* at 577, 111 S.Ct. 2456 (emphasis deleted). Here, even if one hypothesizes that the city's object was to suppress only nude dancing, that would not establish an intent to suppress what (if anything) nude dancing communicates. I do not feel the need, as the Court does, to identify some "secondary effects" associated with nude dancing that the city could properly seek to eliminate. (I am. highly skeptical, to tell the truth, that the addition of pasties and G-strings will at all reduce the tendency of establishments such as Kandyland to attract crime and prostitution, and hence to foster sexually transmitted disease.) The traditional power of government to foster good morals bonos mores), and the acceptability of the traditional judgment (if Erie wishes to endorse it) that nude public dancing *itself is* immoral, have not been repealed by the First Amendment_

Justice SOUTER, concurring in part and dissenting in part.

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I join Parts I and II of the Court's opinion and agree with the analytical approach that the plurality employs in deciding this case. Erie's stated interest in combating the secondary effects associated with nude **dancing establishments is an interest unrelated to the suppression of expression under** *United States v. O'Brien,* **391 U.S. 367, 88 S.Ct. 1673, 20 L.Ed.2d 672 (1968), and the city's regulation is thus properly considered under the** *O'Brien* standards. **I do not believe, however, that the current record allows us to say that the city has made a sufficient** *311 **evidentiary showing to sustain its regulation, and I would therefore vacate** the **decision** of **the Pennsylvania Supreme Court and remand the case for further proceedings.**

In several recent cases, we have confronted the need for factual justifications to satisfy intermediate scrutiny under the **First Amendment.** See, e.g., *1Viron v. Shrink Missouri Government PAC,* **528 U.S. 377, 120 S.Ct. 897, 145 L.Ed.2d 886 (2000);** *Turner Broadcasting System, Inc. v. FCC,* **520 U.S. 180, 117 S.Ct. 1174, 137 L.Ed.2d 369 (1997)** *(Turner 11); Turner Broadcasting System,* Inc. *v. FCC,* **512 U.S. 622, 114 S. Ct. 2445, 129 L.Ed.2d 497 (1994)** *(Turne7~. 7).* **Those cases do not identify with any specificity** a particular quantum **of evidence, nor do I seek to do so in this brief concurrence. FNI] What the **1403 cases do make plain, however, is that application of an intermediate scrutiny test to a government's asserted rationale for regulation of expressive activity demands some factual justification to connect that rationale with the regulation in issue.**

FNl. As explained below, infra, at 1405, the issue of evidentiary justification was never joined, and with a multiplicity of factors affecting the analysis, a general formulation of the quantum required under *United States v. O'Brien,* 391 U.S. 367, 88 S.Ct. 1673, 20 L_Ed.2d 672 (1968), will at best be difficult. A lesser showing may suffice when the means-end fit is evident to the untutored intuition. As we said in *Nixon,* "The quantum of empirical evidence needed to satisfy heightened judicial scrutiny of legislative judgments will vary up or down with the novelty and plausibility of the justification raised." 528 U.S., at 391, 12~0 S.Ct. 897. (In *O'Brien,* for example, the secondary effects that the Government identified flowed from the destruction of draft cards, and there could be no doubt that a regulation prohibiting that destruction would alleviate the concomitant harm.) The nature of the legislating institution might also affect the calculus. We do not require Congress to create a record in the manner of an administrative agency, see *Turner II,* 520 U.S. 180, 213, 117 S.Ct. 1174, 137 L.Ed.2d 369 (1997), and we accord its findings greater respect than those of agencies. See *id.,* at 195, 117 S.Ct. 1174. We might likewise defer less to a city council than we would to Congress. The need for evidence may be especially acute when a regulation is content based on its face and is analyzed as content neutral only because of the secondary effects doctrine. And it may be greater when the regulation takes the form of a ban, rather than a time, place, or manner restriction.

*312 In *Turner I,* **for example, we stated that "[w]hen the Government defends a regulation on speech as a means to redress past harms or prevent anticipated harms, it must do more than simply 'posit the existence of the disease sought to be cured.' Quincy** *Cable TV, Inc. v.* **FCC, 768 F.2d 1434, 1455 (C.A.D.Q.1985). It must demonstrate that the recited harms are real, not merely conjectural, and that the regulation will in fact alleviate these harms in a direct and material way." Id., at 664, 114 S.Ct. 2445 (plurality opinion).**

The plurality concluded there, of course, that the record, though swollen by three years of hearings on the Cable Television Consumer Protection and Competition Act of 1992, was insufficient to **permit** the **necessary determinations and remanded for a more thorough factual development. When the case came back to us, in** *Turner II,* **a majority of the Court reiterated those requirements, characterizing** the **enquiry** into **the acceptability of the Government's regulations as one that turned on whether they "were designed to address a real harm, and whether those provisions will alleviate it in a material way." 5?0 U.S., at 195, 117 S.Ct. 1174. Most recently, in Nixon, we repeated that "[w]e have never accepted mere conjecture as adequate to**

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carry a First Amendment burden," 528 U.S., at 392, 120 S.Ct. 897, and we examined the "evidence introduced into the record by petitioners or cited by the lower courts in this action ...," *ibid.*

The focus on evidence appearing in the record is consistent with the approach earlier applied in *Young v. American Mini Theatres, Inc.,* 427 U.S. 50, 96 S.Ct. 2440, 49 L.Ed.2d 310 (1976), and *Renton v. Playtime Theatres, Inc.,* 475 U.S. 41, 106 S. Ct. 925, 89 L.Ed.2d 29 (1986). In *Young,* Detroit adopted a zoning ordinance requiring dispersal of adult theaters through the city and prohibiting them within 500 feet of a residential area. Urban planners and real estate experts attested to the harms created by clusters of such theaters, see 427 U.S., at 55, 96 S.Ct. 2440, and we found that "[t1he record *313 discloses a factual basis" supporting the efficacy of Detroit's chosen remedy, *id.,* at 71, 96 S.Ct. 2440. In *Renton,* the city similarly enacted a zoning ordinance requiring specified. distances between adult theaters and residential zones, churches, parks, or schools. See 475 U.S., at 44, 106 S. Ct. 925. The city "held public hearings, reviewed the experiences of Seattle and other cities, and received a report from the City Attorney's Office advising as to developments in other cities. ", *.ibid.* We found that Renton's failure to conduct its own studies before enacting the ordinance was not fatal; "[t]he First Amendment does not require a city **1404 ... to conduct new studies or produce evidence independent of that already generated by other cities, so long as whatever evidence the city relies upon is reasonably believed to be relevant to the problem that the city addresses." Id., at 51-52, 106 S.Ct. 925.

The upshot of these cases is that intermediate scrutiny requires a regulating government to make some demonstration of an evidentiary basis for the harm it claims to flow from the expressive activity, and for the alleviation expected from the restriction imposed. [FN21 See, *e. g., Edenfield v. Fane,* 507 U.S. 761, 770-773, 113 S. Ct. 1792, 123 L.Ed.2d 543 (1993) (striking down regulation of commercial speech for failure to show direct and material efficacy). That evidentiary basis may be borrowed from the records made by other governments if the experience elsewhere is germane to the measure under consideration and actually relied upon. I will assume, further, that the reliance may be shown by legislative invocation of a judicial opinion that accepted an evidentiary foundation as sufficient *314 for a similar regulation. What is clear is that the evidence of reliance must be a matter of demonstrated fact, not speculative supposition.

FN2. The plurality excuses Erie from this requirement with the simple observation that "it is evident" that the regulation will have the required efficacy. *Ante,* at 1397. The *ipse dixit is* unconvincing. While 1 do agree that evidentiary demands need not ignore an obvious fit between means and ends, see n. 1, supra, it is not obvious that this is such a case. It is not apparent to me as a matter of common sense that establishments featuring dancers with pasties and G-strings will differ markedly in their effects on neighborhoods from those whose dancers are nude. If the plurality does find it apparent, we may have to agree to disagree.

By these standards, the record before us today is deficient in its failure to reveal any evidence on which Erie may have relied, either for the seriousness of the threatened harm or for the efficacy of its chosen remedy. The plurality does the best it can with the materials to hand, see *ante,* at 1395-1396, but the pickings are slim. The plurality quotes the ordinance's preamble asserting that over the course of more than a century the city council had expressed "findings" of detrimental secondary effects flowing from lewd and immoral profitmaking activity in public places. But however accurate the recital may be and however honestly the councilors may have held those conclusions to be true over the years, the recitation does not get beyond conclusions on a subject usually fraught with some emotionalism. The plurality recognizes this, of course, but seeks to ratchet up the value of mere conclusions by analogizing them to the legislative facts within an administrative agency's special knowledge; on which action is adequately premised in the absence of evidentiary challenge. *Ante,* at 1395-1396. r-2e analogy is

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not obvious; agencies are part of the executive branch and we defer to them in part to allow them the freedom necessary to reconcile competing policies. See *Chevron U.S.A. Inc. v. Natural Resources Defense CounciZ, Inc.,* **467 U.S. 837, 843-845, 104 S.Ct. 2778, 81 L.Ed.2d 694 (1984). That aside, it is one thing to accord administrative** leeway as to **predictive judgments in applying " 'elusive concepts' " to circumstances where the record is inconclusive and "evidence ...** is **difficult to compile," FCC** *v. National Citizens Comm. for Broadcasting,* **436 U.S. 775, 796-797, 98 S.Ct. 2096, 56 L.Ed.2d 697 (1978), and quite another to dispense with evidence of current fact as a predicate for banning a subcategory of expression. [FN3] As *315 to current fact, the city council's closest **1405 approach to an evidentiary record on secondary effects and their causes was the statement of one councilor, during the debate over the ordinance, who spoke of increases in sex crimes in a way that might be construed as a reference to secondary effects:** See App. 44. **But that reference came at the end of a litany of concerns ("free condoms in schools, drive-by shootings, abortions, suicide machines," and declining student achievement test scores) that do not seem to be secondary effects of nude dancing.** *Ibid.* **Nor does the invocation of** *Barnes v. -Glen Theatre, Inc.,* **501 U.S. 5~0, 111 S.Ct. 2456, 115 L.Ed.2d 504 (1991), in one paragraph of the preamble to Erie's ordinance suffice.** App. to Pet. for Cert. 42a. **The plurality opinion in** *Barnes* **made no mention of evidentiary showings at all, and though my separate opinion did make a pass at the issue, I did not demand reliance on germane evidentiary demonstrations, whether specific to the statute in question or developed elsewhere.** To invoke *Barnes,* **therefore, does not indicate that the issue of evidence has been addressed.**

FN3. The proposition that the presence of nude dancing establishments increases the incidence of prostitution and violence is amenable to empirical treatment, and the city councilors who enacted Erie's ordinance are in a position to look to the facts of their own community's experience as well as to experiences elsewhere. Their failure to do so is made all the clearer by one of the amicus briefs, largely devoted to the argument that scientifically sound studies show no such correlation. See Brief for First Amendment Lawyers Association as Amicus Curiae 16-23; id., at App. 1-29.

There is one point, however, on which an evidentiary record is not quite so hard to find, but it hurts, not helps, the city. The final *O'Brien* **requirement is that the incidental speech restriction be shown to be no greater than essential to achieve the government's legitimate purpose. 391 U.S., at 377, 88 S. Ct.** 1673. **To deal with this issue, we have to ask what basis there is to think that the city would be unsuccessful in countering any secondary effects by the significantly lesser restriction of zoning to control the location of nude dancing, thus allowing for efficient law enforcement, restricting effects on property values, and limiting exposure of the public. *316 The record shows that for 23 years there has been a zoning ordinance on the books to regulate the location of establishments like Kandyland, but the city has not enforced it. One councilor remarked that "I think there's one of the problems. The ordinances are on the books and not enforced. Now this takes place. You really didn't need any other ordinances." App. 43. Another commented, "I felt very, very strongly, and I feel just as strongly right now, that this is a zoning matter." Id., at 45. Even on the plurality's view of the evidentiary burden, this hurdle to the application** of *O'Brien* **requires an evidentiary response.**

The record suggests that Erie simply did not try to create a record of the sort we have held necessary in other cases, and the suggestion is confirmed by the course of this litigation. The evidentiary question was never decided (or, apparently, argued) below, nor was the issue fairly joined before this Court. **While respondent did claim that the evidence before the city council was insufficient to support the ordinance, see Brief for Respondent 44-49, Erie's reply urged us not to consider the question, apparently assuming that** *Barnes* **authorized us to disregard it. See Reply Brief for Petitioners 6-8. The question has not been addressed, and in that respect this case has come unmoored from the general standards of our First Amendment jurisprudence. [FN4]**

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not obvious; agencies are part of the executive branch and we defer to them in part to allow them the freedom necessary to reconcile competing policies. See *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 843-845, 104 S.Ct. 2778, 81 L.Ed.2d 694 (1984). That aside, it is one thing to accord administrative leeway as to predictive judgments in applying " 'elusive concepts' " to circumstances where the record is inconclusive and "evidence ... is difficult to compile," FCC *v. National Citizens Comm. for Broadcasting*, 436 U.S. 775, 796-797, 98 S.Ct. 2096, 56 L.Ed.2d 697 (1978), and quite another to dispense with evidence of current fact as a predicate for banning a subcategory of expression. [FN3] As *315 to current fact, the city council's closest **1405 approach to an evidentiary record on secondary effects and their causes was the statement of one councilor, during the debate over the ordinance, who spoke of increases in sex crimes in a way that might be construed as a reference to secondary effects: See App. 44. But that reference came at the end of a litany of concerns ("free condoms in schools, drive-by shootings, abortions, suicide machines," and declining student achievement test scores) that do not seem to be secondary effects of nude dancing. *Ibid.* Nor does the invocation of *Barnes v. Glen Theatre, Inc.*, 501 U.S. 5~0, 111 S.Ct. 2456, 115 L.Ed.2d 504 (1991), in one paragraph of the preamble to Erie's ordinance suffice. App. to Pet. for Cert. 42a. The plurality opinion in *Barnes* made no mention of evidentiary showings at all, and though my separate opinion did make a pass at the issue, I did not demand reliance on germane evidentiary demonstrations, whether specific to the statute in question or developed elsewhere. To invoke *Barnes*, therefore, does not indicate that the issue of evidence has been addressed.

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FN4. By contrast, federal courts in other cases have frequently demanded evidentiary showings. See, e.8., *Phillips v. Keyport,* 107 F.3d 164, 175 (C.A.3 1997) (en banc); J *& B Entertainment, Inc. v. Jackson,* 152 F.3d 362, 370-371 (C.A.5 1998).

Careful readers, and not just those on the Erie City Council, will of course realize that my partial dissent rests on a demand for an evidentiary basis that I failed to make when I concurred in *Barnes, supra.* I should have demanded the evidence then, too, and my mistake calls to mind Justice Jackson's foolproof explanation of a lapse of his own, when he quoted Samuel Johnson, "'Ignorance, sir, ignorance.' " *111cGrath v. K-istensen,* 340 U.S. 162, 178, 71 S.Ct. 224, 95 L.Ed. 173 (1950) (concurring *317 opinion). [FN5] I may not be less ignorant of nude dancing than I was nine years ago, but after many subsequent occasions to think further about the needs of the **1406 First Amendment, I have come to believe that a government must toe the mark more carefully than I first insisted. I hope it is enlightenment on my part, and acceptable even if a little late. See *Henslee v. Union Planters Nat. Bank & Trust Co.,* 335 U.S. 595, 600, 69 S. Ct. 290, 93 L.Ed. 259 (1949) *(per curiam)* (Frankfurter, J., dissenting).

FN5,,. : See Boswell, Life of Samuel Johnson, in 44 Great Books of the Western World 82 (R. Hutchins & M. Adler eds. 1952).

The record before us now does not permit the conclusion that Erie's ordinance is reasonably designed to mitigate real harms. This does not mean that the required showing cannot be made, only that, on this record, Erie has not made it. I would remand to give it the opportunity to do so. [FN6] Accordingly, although I join with the plurality in adopting the *O'Brien* test, I respectfully dissent from the Court's disposition of the case.

FN6. This suggestion does not, of course, bar the Pennsylvania Supreme Court from choosing simpler routes to disposition of the case if they exist. Respondent mounted a federal overbreadth challenge to the ordinance, it also asserted a violation of the Pennsylvania Constitution. Either one of these arguments, if successful, would obviate the need for the factual development that is a prerequisite to *O'Brien* analysis.

Justice STEVENS, with whom Justice GI't TSBURG joins, dissenting.

Far more important than the question whether nude dancing is entitled to the protection of the First Amendment are the dramatic changes in legal doctrine that the Court endorses today. Until now, the "secondary effects" of commercial enterprises featuring indecent entertainment have justified only the regulation of their location. For the first time, the Court has now held_ that such effects may justify *318 the total suppression of protected speech. Indeed, the plurality opinion concludes that admittedly trivial advancements of a State's interests may provide the basis for censorship. The Court's commendable attempt to replace the fractured decision in *Barnes v. Glen Theatre, Inc.,* 501 U.S. 560, 111 S.Ct. 2456, 115 L.Ed.2d 504 (1991), with a single coherent rationale is strikingly unsuccessful; it is supported neither by precedent nor by persuasive reasoning.

As the preamble to Ordinance No. 75-1994 candidly acknowledges, the council of the city of Erie enacted the restriction at issue "for the purpose of limiting a recent increase in nude live entertainment within the City." *Ante,* at 1391 (internal 'quotation marks omitted). Prior to the enactment of the ordinance, the dancers at Kandyland performed in the nude. As the Court recognizes, after its enactment they can perform precisely the same dances if they wear "pasties and G-strings." *Ante,* at 1393; see also *ante,* at 1404, n. 2 (SOUTER, J., concurring in part and dissenting in part). In both instances, the erotic messages conveyed by the dancers to a willing audience are a form of expression protected by the First Amendment. *Ante,* at 1391. [FN 1] Despite the similarity between the messages conveyed by the two forms of dance, they are not identical.

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FN1. Respondent does not contend that there is a constitutional right to engage in conduct such as lap dancing. The message of eroticism conveyed by the nudity aspect of the dance is quite different from the issue of the proximity between dancer and audience. Respondent's contention is not that Erie has focused on lap dancers, see *ante,* at 1401 (SCALIA, J., concurring in judgment), but that it has focused on the message conveyed by nude dancing.

If we accept Chief Judge Posner's evaluation of this art form, see Miller v. South *Bend,* 904 F.2d 1081, 1089-1104 (C.A.7 1990) (en bane), the difference between the two messages is significant. The plurality assumes, however, that the difference in the content of the message resulting from *319 the mandated costume change is *"de minimis." Ante,* at 1393. Although I suspect that the patrons of Kandyland are more likely to share Chief Judge Posner's view than the plurality's, for present purposes I shall accept the assumption that the difference in the message is small. The crucial point to remember, however, is **1407 that whether one views the difference as large or small, nude dancing still receives First Amendment protection, even if that protection lies only in the "outer ambit" of that Amendment. *Ante,* at 1391. Erie's ordinance, therefore, -burdens a message protected by the First Amendment. If one assumes that the same erotic message is conveyed by nude dancers as by those wearing miniscule costumes, one means of expressing that message is banned; [FN2] if one assumes that the messages are different, one of those messages is banned. In either event, the ordinance is a total ban.

FN2. Although nude dancing might be described as one protected "means" of conveying an erotic message, it does not follow that a protected message has not been totally banned simply because there are other, similar ways to convey erotic messages. See *ante,* at 1393. A State's prohibition of a particular book, for example, does not fail to be a total ban simply because other books conveying a similar message are available.

The plurality relies on the so-called "secondary effects" test to defend the ordinance. *Ante,* at 1391-1395. The present use of that rationale, however, finds no support whatsoever in our precedents. Never before have we approved the use of that doctrine to justify a total ban on protected First Amendment expression. On the contrary, we have been quite clear that the doctrine would not support that end.

In *Young v. American Mini Theatres, Inc.,* 427 U.S. 50, 96 S.Ct. 2440, 49 L.Ed.2d 310 (1976), we upheld a Detroit zoning ordinance that placed special restrictions on the location of motion picture theaters that exhibited "adult" movies. The "secondary effects" of the adult theaters on the neighborhoods where they were located--lower property values and increases in crime (especially prostitution) to name a few--justified the burden imposed *320 by the ordinance. Id., at 54, 71, and n. 34, 96 S. Ct. 2440 (plurality opinion). Essential to our holding, however, was the fact that the ordinance was "nothing more than a limitation on, the place where adult films may be exhibited" and did not limit the size of the market in such speech. Id., at 71, 96 S.Ct. 2440; see also *id.,* at 61, 63, n. 18, 70, 71, n. 35, 96 S.Ct. 2440. As Justice Powell emphasized in his concurrence:

"At most the impact of the ordinance on [the First Amendment] interests is incidental and minimal. Detroit has silenced no message, has invoked no censorship, and has imposed no limitation upon those who wish to view them. The ordinance is addressed only to the places at which this type of expression may be presented, a restriction that does not interfere with content. Nor is there any significant overall curtailment of adult movie presentations, or the opportunity for a message to reach an audience." Id., at 78-79, 96 S. Ct. 2440.

See also id., at 81, n. 4, 96 S. Ct. 2440 ("[A] zoning ordinance that merely specifies where a theater may locate, and that does not reduce significantly the number or accessibility of theaters presenting particular films, stifles no expression").

In.Renton v. Playtime Theatres, Inc., 475 U.S. 41, 106 S.Ct. 925, 89 L.Ed2d 29 (1986), we upheld a similar ordinance, again finding that the "secondary effects of such theaters on the

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surrounding community" justified a restrictive zoning law. Id., at 47, 106 S. Ct. 925 (emphasis deleted). We noted, however, that "[t]he Renton ordinance, like the one in *American Mini* **Theatres, does not ban adult theaters altogether," but merely "circumscribe[s] their choice as to location." Id., at 46, 48, 106 S.Ct. 925; see also** *id.,* **at 54, 106 S.Ct. 925 ("In our view, the First Amendment requires ... that Renton refrain** from **effectively denying respondents a reasonable opportunity to open and operate an adult theater within the city ... "). Indeed, in both** *Renton* and *American Mini Theatres,* **the zoning ordinances were analyzed as mere "time, *321 place, and manner" regulations. [FN3] See** *Renton,* 475 U.S., at 46, **1408 **106 S.Ct. 925;** *American Mini Theatres,* **427 U.S., at 63, and n. 18, 96 S.Ct. 2440;** *id.,* at 82, n. 6, 96 S. Ct. 2440. **Because time, place, and manner regulations must "leave open ample alternative channels for communication of the information,"** *Ward v. Rock Against Racism,* **491 U.S. 781, 791, 109 S.Ct. 2746, 105 L.Ed.2d 661 (1989), a total ban would necessarily fail that test.** [FN4]

FN3. The plurality contends, *ante,* at 1394, that *Ward v. Rock Against Racism,* 491 U.S. 781, 109 S.Ct. 2746, 105 L.Ed.2d 661 (1989), shows that we have used the secondary--effects rationale to justify more: burdensome restrictions than those approved in *Rent on* and *American Mini Theatres.* That argument is unpersuasive for two reasons. First, as in the two cases just mentioned, the regulation in *Ward* was as a time, place, and manner restriction. See 491 U.S., at 791, 109 S.Ct. 2746; id., at 804, 109 S.Ct. 2746 (Marshall, I., dissenting). Second, as discussed below, *Ward is* not a secondary effects case. See *infra,* at 1410-1411.

FN4. We also held in *Renton* that in enacting its adult theater zoning ordinance, the city of Renton was permitted to rely on a detailed study conducted by the city of Seattle that examined the relationship between zoning controls and the secondary effects of adult theaters. (It was permitted to rely as well on "the 'detailed findings' summarized" in an opinion of the Washington Supreme Court to the same effect.) 475 U.S., at 51-52, 106 S.Ct. 925. Renton, having identified the same problem in its own city as that experienced in Seattle, quite logically drew on Seattle's experience and adopted a similar solution. But if Erie is relying on the Seattle study as well (as the plurality suggests, *ante,* at 1395), its use of that study is most peculiar. After identifying a problem in its own city similar to that in Seattle, Erie has implemented a solution (pasties and G-strings) bearing no relationship to the efficacious remedy identified by the Seattle study (dispersal through zoning). But the city of Erie, of course, has not in fact pointed to any study by anyone suggesting that the adverse secondary effects of commercial enterprises featuring erotic dancing depends in the slightest on the precise costume wom by the performers--it merely assumes it to be so. See infra, at 1409-1410. If the city is permitted simply to assume that a slight addition to the dancers' costumes will sufficiently decrease secondary effects, then presumably the city can require more and more clothing as long as any danger of adverse effects remains.

And we so held in *Schad v. Mount Ephraim,* **452 U.S. 61, 101 S. Ct. 2176, 68 L.Ed.2d 671 (1981). There, we addressed a zoning ordinance that did not merely require the dispersal of adult theaters, but prohibited *322 them altogether. In striking down that law, we focused precisely on that distinction, holding that the secondary effects analysis endorsed in the past did not apply to an ordinance that totally banned nude dancing: "The restriction** [in *Young v. American Mini Theatres]* **did not affect the number of adult movie theaters that could operate in the city; it merely dispersed them. The Court did not imply that a municipality could ban all adult theaters--much less all live entertainment or all nude dancing--from its commercial districts citywide." Id., at 71, 96 S.Ct. 2440 (plurality opinion); see also** *id.,* **at 76, 96 S.Ct. 2440;** *id.,* **at 77, 96 S.Ct. 2440 (Blackmun, J., concurring) (joining plurality);** *id.,* at 79, 96 S.Ct. 2440 **(Powell, J., concurring) (same).**

The reason we have limited our secondary effects cases to zoning and declined to extend their reasoning to total bans is clear and straightforward: A dispersal that simply limits the places where speech may occur is a minimal imposition, whereas a total ban is the most exacting of restrictions. The State's interest in fighting presumed secondary effects is sufficiently strong to justify the former; but

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far too weak to support the latter, more severe burden. [FN5] Yet it is perfectly clear that in the present case--to use Justice Powell's metaphor in *American Mini* Theatres--the city of Erie has totally silenced a message the dancers at Kandyland want to convey. The fact that this censorship may have a laudable ulterior purpose cannot mean that censorship is not censorship. **1409 For these reasons, the Court's holding rejects the explicit reasoning in *American Mini* Theatres and Renton and the express holding in *Schad.*

FN5. As the plurality recognizes by quoting my opinion in Young v. *American Mini Theatres, Inc.,* 427 U.S. 50, 70, 96 S.Ct. 2440, 49 L.Ed.2d 310 (1976), see *ante,* at 1393-1394, "the First Amendment will not tolerate the total suppression of erotic materials that have some artistic value," though it will permit zoning regulations.

The Court's use of the secondary effects rationale to permit a total ban has grave implications for basic free speech principles. Ordinarily, laws regulating the primary effects of speech, *i.e.,* the intended persuasive effects caused by the *323 speech, are presumptively invalid. Under today's opinion, a State may totally ban speech based on its secondary effects--which are defined as those effects, that "happen to be associated" with speech, Boos *v. Barry,* 485 U.S. 312, 320-321, 108 S.Ct. 1157, 99 L.Ed.2d 333 (1988); see *ante,* at 1392--yet the regulation is not presumptively invalid. Because the category of effects that "happen to be associated" with speech includes the narrower subset of effects caused by speech, today's holding has the effect of swallowing whole a most fundamental principle of First Amendment jurisprudence.

The plurality's mishandling of our secondary effects cases is not limited to its approval of a total ban. It compounds that error by dramatically reducing the degree to which the State's interest must be furthered by the restriction imposed on speech, and by ignoring the critical difference between secondary effects caused by speech and the incidental effects on speech that may be caused by a regulation of conduct.

In what can most delicately be characterized as an enormous understatement, the plurality concedes that "requiring dancers to wear pasties and G-strings may not greatly reduce these secondary effects." *Ante,* at 1397. To believe that the mandatory addition of pasties and a G-string will have *any* kind of noticeable impact on secondary effects requires nothing short of a titanic surrender to the implausible. It would be more accurate to acknowledge, as Justice SCALIA does, that there is no reason to believe that such a requirement "will at all reduce the tendency of establishments such as Kandyland to attract crime and prostitution, and hence to foster sexually transmitted disease." *Ante,* at 1402 (opinion concurring in judgment); see also *ante,* at 1404, n. 2 (SOUTER, J., concurring in part and dissenting in part). Nevertheless, the plurality concludes that the "less stringent" test announced in *United States v. O'Brien,* 391 U.S. 367, 88 S.Ct. 1673, 20 L.Ed.2d 672 (1968), "requires only that the regulation further the interest in *324 combating such effects," *ante,* at 1397; see also *ante,* at 1391. It is one thing to say, however, that *O'Brien* is more lenient than the "more demanding standard" we have imposed in cases such as *Texas v. Johnson,* 491 U.S. 397, 109 S.Ct. 2533, 105 L.Ed.2d 342 (1989). See *ante,* at 1391. It is quite another to say that the test can be satisfied by nothing more than the mere possibility of *de minimis* effects on the neighborhood.

The plurality is also mistaken in equating our secondary effects cases with the "incidental burdens" doctrine applied in cases such as *O'Brien;* and it aggravates the error by invoking the latter line of cases to support its assertion that Erie's ordinance is unrelated to speech. The incidental burdens doctrine applies when " 'speech' and 'nonspeech' elements are combined in the same course of conduct," and the government's interest in regulating the latter justifies incidental burdens on the former. *O'Brien,* 391 U.S., at 376, 88 S. Ct. 1673. Secondary effects, on the other hand, are indirect consequences of protected speech and may justify regulation of

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the places where that speech may occur. See *American Mini Theatres,* 427 U.S., at 71, n. 34, 96 S.Ct. 2440 ("[A] concentration of 'adult' movie theaters causes the area to deteriorate and become a focus of crime"). [FN6] When a State enacts **1410 a regulation, it might focus on the secondary effects of speech as its aim, or it might concentrate on nonspeech related concerns, having no thoughts at all with respect to how its regulation will affect speech--and only later, when the regulation is found to burden speech, justify the imposition as an unintended incidental consequence. [FN7] But those interests are not the *325 same, and the plurality cannot ignore their differences and insist that both aims are equally unrelated to speech simply because Erie might have "recogniz[ed]" that it could possibly have had either aim in mind. See *ante,* at 1394. [FN8] One can think of an apple and an orange at the same time; that does not turn them into the same fruit.

FN6. A secondary effect on the neighborhood that "happen[s] to be associated with" a form of speech is, of course, critically different from "the direct impact of speech on its audience." Boos v. *Berry,* 485 U.S. 312, 320-321, 108 S.Ct. 1157, 99 L.Ed.2d 333 (1988). The primary effect of speech is the persuasive effect of the message itself.

FN7. In fact, the very notion of focusing in on incidental burdens at the time of enactment appears to be a contradiction in terms. And if it were not the case that there is a difference between laws aimed at secondary- effects and general bans incidentally burdening speech, then one wonders why Justices SCALIA and SOUTER adopted such strikingly different approaches in *Barnes v. Glen Theatre, Inc.,* 501 U.S. 560, 111 S.Ct. 2456, 115 L.Ed.2d 504 (1991).

FN8. I frankly do not understand the plurality's declaration that a State's interest in the secondary effects of speech that "are associated" with the speech are not "related" to the speech. *Ante,* at 1393. See, e.g., Webster's Third New International Dictionary 132 (1966) (defining "associate" as "closely related"). Somerimes, though, the plurality says that the secondary effects are "caused" by the speech, rather than merely "associated with" the speech_ *See, e.g., ante,* at 1392, 1393, 1395, 1396-1397. If that is the definition of secondary effects the plurality adopts, then it is even more obvious that an interest in secondary effects is related to the speech at issue. See *Barnes,* 501 U.S. at 585-586, 111 S.Ct. 2456 (SOUTER, J., concurring in judgment) (secondary effects are not related to speech because their connection to speech is only one of correlation, not causation).

Of course, the line between governmental interests aimed at conduct and unrelated to speech, on the one hand, and interests arising out of the effects of the speech, on the other, may be somewhat imprecise in some cases. In this case, however, we need not wrestle with any such difficulty because Erie has expressly justified its ordinance with reference to secondary effects. Indeed, if Erie's concern with the effects of the message were unrelated to the message itself, it is strange that the only means used to combat those effects is the suppression of the message. [FN9] For these reasons, the plurality's argument that "this case is similar to *O'Brien,* " *ante,* at 1392; see also *ante,* at 1394, is quite wrong, as are its *326 citations to *Clark v. Community for Creative Non-Violence,* 468 U.S. 288, 104 S.Ct. 3065, 82 L.Ed.2d 221 (1984), and *Ward v. Rock Against, Racism,* 491 U.S. 781, 109 S.Ct. 2746, 105 L.Ed.2d 661 (1989), *ante,* at 1393-1394, neither of which involved secondary effects. The plurality cannot have its cake and eat it too--either Erie's ordinance was not aimed at speech and the plurality may attempt to justify the regulation under the incidental burdens test, or Erie has aimed its law at the secondary effects of speech, and the plurality can try to justify the law under that doctrine. But it cannot conflate the two with the expectation that Erie's interests aimed at secondary effects will be rendered unrelated to speech by virtue of this doctrinal polyglot.

FN9. As Justice Powell said in his concurrence in *Young v. American Mini Theatres,* 427 U.S., at 82. n. 4, 96 S.Ct. 2440: "[Mad [Detroit] been concerned with restricting the message purveyed by adult theaters, it would have tried to close them or restrict their number rather than circumscribe their choice as to location. " Quite plainly, Erie's total ban evinces its concern with the message being regulated.

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Correct analysis of the issue in this case should begin with the proposition that nude dancing is a species of expressive conduct that is protected by the First Amendment. As Chief Judge Posner has observed, nude dancing fits well within a broad, cultural tradition recognized as expressive **1411 in nature and entitled to First Amendment protection. See 904 F.2d, at 1089-1104; see also Note, 97 Colum. L.Rev. 1844 (1997). The nudity of the dancer is both a component of the protected expression and the specific target of the ordinance. It is pure sophistry to reason from the premise that the regulation of the nudity component of nude dancing is unrelated to the message conveyed by nude dancers. Indeed, both the text of the ordinance and the reasoning in the plurality's opinion make it pellucidly clear that the city of Erie has prohibited nude dancing *'precisely because of its communicative attributes. "* *Barnes,* 501 U.S., at 577, 111 S.Ct. 2456 (SCALIA, J., concurring in judgment) (emphasis iii original); see id., at 596, 111 S.Ct. 2456 (White, J., dissenting).

The censorial purpose of Erie's ordinance precludes reliance on the judgment in *Barnes* as sufficient support for the Court's holding today. Several differences between the Erie ordinance and the statute at issue in *Barnes* belie the plurality's assertion that the two laws are "almost identical." *327 *Ante,* at 1391. To begin with, the preamble to Erie's ordinance candidly articulates its agenda, declaring:

"Council specifically wishes to adopt the concept of Public Indecency prohibited by the laws of the State of Indiana, which was approved by the U.S. Supreme Court in *Barnes v. Glen Theatre Inc., ...for the purpose of limiting a recent increase in nude live entertainment within the City. "* App. to Pet. for Cert. 42a (emphasis added); see also *ante,* at 1391-1392. [FN10]

FN10. The preamble also states: "[T]he Council of the City of Erie has [found] ... that certain lewd, immoral activities carried on in public places for profit ... lead to the debasement of both women and men ... ." App. to Pet. for Cert. 41 a.

As its preamble forthrightly admits, the ordinance's "purpose" is to "limi[t]" a protected form of speech; its invocation of *Barnes* cannot obliterate that professed aim. CFN11]

FNll. Relying on five words quoted from the Supreme Court of Pennsylvania, the plurality suggests that I have misinterpreted that court's reading of the preamble. Ante, at 1392. What follows, however, is a more complete statement of what that court said on this point:

"We acknowledge that one of the purposes of the Ordinance is to combat negative secondary effects. That, however, is not its only goal. Inextricably bound up with this stated purpose is an unmentioned purpose that directly impacts on the freedom of expression: that purpose is to impact negatively on the erotic message of the dance.... We believe ... that the stated purpose for promulgating the Ordinance is inextricably linked with the content-based motivation to suppress the expressive nature of nude_ dancing." 553 Pa. 348, 359, 719 A.2d 273, 279 (1998).

Erie's ordinance differs from the statute in *Barnes* in another respect. In *Barnes,* the Court expressly observed that the Indiana statute had not been given a limiting construction by the Indiana Supreme Court. As presented to this Court, there was nothing about the law itself that would confine its application to nude dancing in adult entertainment establishments. See 501 U.S., at 564, n. 1, 111 S. Ct. 2456 (discussing Indiana Supreme Court's lack of a limiting construction); see *also id.,* at 585, n. 2, 111 S.Ct. 2456 (SOUTER, J., concurring in judgment). *328 Erie's ordinance, however, comes to us in a much different posture. In an earlier proceeding in this case, the Court of Common Pleas asked Erie's counsel "what effect would this ordinance have on theater ... productions such as Equus, Hair, 0[h!] Calcutta[!]? Under your ordinance would these things be prevented ... ?" Counsel responded: "No, they wouldn't; Your Honor. " App. 53. [FN12] Indeed, as *stipulated* in **1412 the record, the city permitted a production of Equus to proceed without prosecution, even after the ordinance

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was in effect, and despite its awareness of the nudity involved in the production. Id., at 84. EFN13] Even if, in light of its broad applicability, the statute in *Barnes* was not aimed at a particular form of speech, Erie's ordinance is quite different. As presented to us, the ordinance is deliberately targeted at Kandyland's type of nude dancing (to the exclusion of plays like Equus), in terms of both its applicable scope and the city's enforcement. [FN14]

FN12. In my view, Erie's categorical response forecloses Justice SCALIA's assertion that the city's position on Equus and Hair was limited to "[o]ne instance," where "the city was [not] aware of the nudity, " and "no one had complained." *Ante,* at 1401 (opinion concurring in judgment). Nor could it be contended that selective applicability by stipulated enforcement should be treated differently from selective applicability by statutory text. See *Barnes,* 501 U.S., at 574, 111 S.Ct. 2456 (SCALIA, J., concurring in judgment) (selective enforcement may affect a law's generality). Were it otherwise, constitutional prohibitions could be circumvented with impunity.

FN13. The stipulation read: "The play, 'Equus' featured frontal nudity and was performed for several weeks in OctoberYNovember 1994 at the Roadhouse Theater in downtown Erie with no efforts to enforce the nudity prohibition which became effective during the run of the play."

FN14. Justice SCALIA argues that Erie might have carved out an exception for Equus and Hair because it guessed that this Court would consider them protected forms of expression, see *Southeastern Promotions, Ltd. v. Conrad,* 420 U.S. 546, 550, 557-558, 95 S.Ct. 1239, 43 L.Ed.2d 448 (1975) (holding that Hair, including the "group nudity and simulated sex" involved in the production, is protected speech); in his view, that makes the distinction unobjectionable and renders the ordinance no less of a general law. *Ante,* at 1401-1402 (opinion concurring in judgment). This argument appears to contradict his earlier definition of a general law: "A law is 'general' ... if it regulates conduct without regard to whether that conduct is expressive." *Barnes v. Gien Traeatre, Inc., 501 U.S.,* at 576, n. 3, !1! S.Ct. 2456 (opinion concurring in judgment). If the ordinance regulates conduct (public nudity), it does not do so without regard to whether the nudity is expressive if it exempts the public nudity in Hair *precisely* "because of its expressive content." *Ante,* at 1402, n. 6 (opinion concurring in judgment)_ Moreover, if Erie exempts Hair because it wants to avoid a conflict with the First Amendment (rather than simply to exempt instances of nudity it finds inoffensive), that rationale still does not explain why Hair is exempted but Kandyland is not, since *Barnes* held that both are constitutionally protected.

Justice SCALIA also states that even if the ordinance singled out nude dancing, he would not strike down the law unless the dancing was singled out because of its message. *Ante,* at 1402. He opines that here, the basis for singling out Kandyland is morality. *Ibid.* But since the "morality" of the public nudity in Hair is left untouched by the ordinance, while the "immorality" of the public nudity in Kandyland is singled out, the distinction cannot be that "nude public dancing *itself is* immoral." *Ibid.* (emphasis in original). Rather, the only arguable difference between the two is that one's message is more immoral than the other's.

*329 This narrow aim is confirmed by the expressed views of the Erie City Councilmembers who voted for the ordinance. The four city councilmembexs who approved the measure (of the six total councilmembers) each stated his or her view that the ordinance was aimed specifically at nude adult entertainment, and not at more mainstream forms of entertainment that include total nudity, nor even at nudity in general. One lawmaker observed: "We're not talking about nudity. We're not talking about the theater or art .... We're talking about what is indecent and immoral .... We're not prohibiting nudity, we're prohibiting nudity when it's used in a lewd and immoral fashion." App. 39. Though not quite as succinct, the other councilmembexs expressed similar convictions. For example, one member illustrated his understanding of the aim of the law by contrasting it with his recollection about high school students swimming in the nude in the school's pool. The ordinance was not intended to cover those incidents of nudity: "But what I'm getting at is [the swimming] wasn't indecent, it wasn't an immoral thing, and *330 yet there was nudity." Id., at 42. The

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same lawmaker then disfavorably compared the nude swimming incident to the activities that occur in "some of these clubs" that exist in Erie--clubs that would be covered **1413 by the law. *Ibid. [FNIS]* Though such comments could be- consistent with an interest in a general prohibition of nudity, the complete absence of commentary on that broader interest, and the councilmembers' exclusive focus on adult entertainment, is evidence of the ordinance's aim. In my view, we need not strain to find consistency with more general purposes when the most natural reading of the record reflects a near obsessive preoccupation with a single target of the law. [FN16]

FN15. Other members said their focus was on "bottle clubs," and the like, App. 43, and attempted to downplay the effect of the ordinance by acknowledging that "the girls can wear thongs or a G-string and little pasties that are smaller than a diamond." *Ibid.* Echoing that focus, another member stated that "[t]here still will be adult entertainment in this town, only it will be in a little different form." Id., at 47.

FN16. The plurality dismisses this evidence, declaring that it "will not strike down an otherwise constitutional statute on the basis of an alleged illicit motive." *Ante,* at 1392 (citing *United States v. OB-rien,* 391 U.S. 367, 382-383, 88 S.Ct. 1673, 20 L.Ed.2d 672 (1968); *Renton v. Playtime 77aeatres, Inc.,* 475 U.S- 41, 47-48, 106 S.Ct. 925, 89 L.Ed.2d 29 (1986)). First, it is worth pointing out that this doctrinaire formulation of *O'Brien's* cautionary statement is overbroad. See generally L. Tribe, American Constitutional Law § 12-5, pp. 819-820 (2d ed.1988). Moreover, *O'Brien* itself said only that we would not strike down a law "on the *assumption* that a wrongful purpose or motive has caused the power to be exerted," 391 U.S., at 383, 88 S.Ct. 1673 (emphasis added; internal quotation marks omitted), and that statement was due to our recognition that it is a "hazardous matter" to determine the actual intent of a body as large as Congress "on the basis of what fewer than a handful of Congressmen said about [a law]," *id-,* at 384, 88 S.Ct. 1673. Yet neither consideration is present here. We need not base our inquiry on an "assumption," nor must we infer the collective intent of a large body based on the statements of a few, for we have in the record the actual statements of all the city councilmembers who voted in favor of the ordinance.

The text of Erie's ordinance is also significantly different from the law upheld in *Barnes.* In *Barnes,* the statute defined "nudity" as "the showing of the human male or female *331 genitals" (and certain other regions of the body) "with less than a fully opaque covering." 501 U.S., at 569, n. 2, 111 S.Ct. 2456. The Erie ordinance duplicates that definition in all material respects, but adds the following to its definition of "[nuudity": "'[T]he exposure of any device, costume, or covering *which gives the appearance of or simulates* the genitals, pubic hair, natal cleft, perineum anal region or pubic hair region; or the exposure of any device worn as a cover over the nipples and/or areola of the female breast, *which device simulates and gives the realistic appearance* of nipples and/or areola.' " *Ante,* at 1388, n. * (emphasis added).

Can it be doubted that this out-of-the-ordinary definition of "nudity" is aimed directly at the dancers in establishments such as Kandyland? Who else is likely to don such garments? [FN17] We should not stretch to embrace fanciful explanations when the most natural reading of the ordinance unmistakably identifies its intended target.

FN17. Is it seriously contended (as would be necessary to sustain the ordinance as a general prohibition) that, when crafting this bizarre definition of "nudity," Erie's concern was with the use of simulated nipple covers on "nude beaches and [by otherwise] unclothed purveyors of hot dogs and machine tools"? *Barnes,* 501 U.S., at 574, 111 S.Ct. 2456 (SCALIA, J., concurring in judgment); see also *ante,* at 1401 (SCALIA, J., concurring in judgment). It is true that one might *conceivably* imagine that is Erie's aim. But it is far more likely that this novel definition was written with the Kandyland dancers and the like in mind, since they are the only ones covered by the law (recall that plays like Equus are exempted from coverage) who are likely to utilize such unconventional clothing.

It is clear beyond a shadow of a doubt that the Erie ordinance was a response to a more specific concern than nudity in general, namely, nude dancing of the sort found in

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Kandyland. CFN18] Given that the **1414 Court has not even tried to defend *332 the ordinance's total ban on the ground that its censorship of protected speech might be justified by an overriding state interest, it should conclude that the ordinance is patently invalid. For these reasons, as well as the reasons set forth in Justice White's dissent in *Barnes,* I respectfully dissent.

FN18. The plurality states that Erie's ordinance merely "replaces and updates provisions of an 'Indecency and Immorality' ordinance" from the mid-19th century, just as the statute in *Barnes* did. Ante, at 1391. First of all, it is not clear that this is correct. The record does indicate that Erie's Ordinance No. 75-1994 updates an older ordinance of similar import. Unfortunately, that old regulation is not in the record. Consequently, whether the new ordinance merely "replaces" the old one is a matter of debate. From statements of one councihnember, it can reasonably be inferred that the old ordinance was merely a residential zoning restriction, not a total ban. See App_ 43. If that is so, it leads to the further question why Erie felt it necessary to shift to a total ban in 1994.

But even if the plurality's factual contention is correct, it does not undermine the points I have made in the test. In *Barnes,* the point of noting the ancient pedigree of the--Indiana statute was to demonstrate that its passage antedated the appearance of adult entertainment venues, and therefore could not have been motivated by the presence of those establishments. The inference supposedly rebutted in *Barnes* stemmed from the timing of the enactment. Here, however, the inferences I draw depend on the text of the ordinance, its preamble, its scope and enforcement, and the comments of the councilmembers. These do not depend on the timing of the ordinance's enactment_

120 S.Ct. 1382, 529 U.S. 277, 146 L.Ed.2d 265, 68 USLW 4239, 28 Media L. Rep. 1545, 00 Cal. *Daily Op.* Serv. 2443, 2000 Daily Journal *D.A.R.* 3255, 2000 CJ C.A.R. 1618, 13 Fla. L. Weekly Fed. S 203

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Citation: 2000 wisc app lexis 734

2000 WI app *214; 238 Wis. 2d 842;*
618 N, W.2d 274; 2000 Wisc. App. LEXIS 734;

East of the River Enterprises II, L.L.C., Plaintiff-Appellant, Melissa Soman and Donald Busch, Plaintiffs, v. City of Hudson, Defendant-Respondent.

No. 99-2667

COURT OF APPEALS OF WISCONSIN, DISTRICT THREE

2000 WI App 214; 238 Wis. 2d 842; 618 N. W.2d 274; 2000 Wisc. App. LEXIS 734

August 1, 2000, Decided
August 1, 2000, Filed

NOTICE: [*1] Pursuant to Wis. Stat. Rule 809.23(3) of Appellate Procedure, an unpublished opinion is of no precedential value and for this reason may not be cited in any court of this state as precedent or authority except to support a claim of res judicata, collateral estoppel or law of the case.

PRIOR HISTORY: APPEAL from a judgment of the circuit court for St. Croix County: ERIC J. LUNDELL, Judge.

DISPOSITION: Affirmed.

CASE SUMMARY

PROCEDURAL POSTURE: Appellant, operator of a business featuring live nude dance entertainment, sought review of an order from the Circuit Court for St. Croix County (Wisconsin), entering a declaratory judgment, which rejected appellant's U.S. Const. amend. I challenge to a city ordinance that regulated sexually oriented businesses.

OVERVIEW: A city ordinance prohibited physical contact between nude dancers and patrons, required all performances to occur on a stage or table at least 18 inches above floor level, created a five-foot buffer zone between dancers and patrons, and restricted operating hours. Appellant, operator of a business featuring live nude dance entertainment, brought a challenge to appellee city's ordinance. The trial court entered declaratory judgment rejecting appellant's challenge, and appellant sought review of the judgment. Because the ordinance did not prohibit nude dancing, it was a content-neutral regulation measured by intermediate scrutiny, and was subject to the traditional time, place, and manner doctrine. The regulation was within the constitutional power of the government to enact, it furthered an important government interest, the interest was unrelated to the suppression of free speech, and the restriction was no greater than was essential to further the interest. Appellant's U.S. Const. amend. I rights were not threatened because appellee did not effectively deny appellant a reasonable opportunity to open and operate within the city. The trial court's judgment was affirmed.

OUTCOME: The court affirmed the trial court's declaratory judgment rejecting appellant's First Amendment challenge to appellee city's ordinance regulating live nude dancing because the regulation was within the constitutional power of the government to enact, it furthered an important government interest, the interest was unrelated to the suppression of free speech, and the restriction was no greater than was essential to further the interest.

CORE TERMS: regulation, ordinance, nude, secondary effects, First Amendment, five-foot, dancer, dancing, buffer, patron, public health, suppression, content-neutral, entertainment, sexually, oriented, dance, reasonable opportunity, constitutional power, government interest, property values, patron-focused, municipality, undesirable, co.mbatting, unrelated, erotic, exotic, narrowly tailored, cabaret

contact between the dancers and patrons, requires all performances to occur on a stage or table at least eighteen inches above floor level, creates a five-foot buffer zone between the dancers and patrons, and restricts the operating hours, requiring the cabaret to close at 2 a.m. on week days, 2:30 a.m. on Saturdays and Sundays.

P2 ERE argues that (1) no contact and five-foot buffer regulations constitute content-based censorship; (2) even if the regulations were content-neutral, they constitute an unlawful prior restraint on freedom of expression because they would have the effect [*2] of totally suppressing a distinct medium of communication; (3) the regulations are not narrowly tailored to prevent adverse secondary effects; and (4) the hours of restriction cannot be justified as content-neutral time, place and manner regulations under the First Amendment. We reject these arguments and affirm the judgment.

P3 After the parties submitted their briefs in this appeal, the United States Supreme Court issued its decision in *City of Erie v. Pap's A.M.*, 529 U.S. 277, 146 L. Ed. 2d 265, 120 S. Ct. 1382 (2000), reiterating and clarifying First Amendment principles as they apply to nude entertainment. The Court upheld an ordinance prohibiting public nudity, the effect of which was to require exotic dancers to wear, at a minimum, pasties and a G-string. The Court reiterated that HN1 Tnude dancing is expressive conduct that falls only within the "outer ambit" of the First Amendment's protection. *See* 120 S. Ct. at 1391. HN2 To determine the level *of* scrutiny that applies to an ordinance, the courts must consider whether the regulation relates to the suppression *of* expression. *See id. If* the governmental purpose is unrelated to the suppression of expression, such [*3] as combating negative secondary effects, the regulation need only satisfy the less stringent standard set out in *United States v. O'Brien*, 391 U.S. 367 0 L. Ed. 2d 672, 88 S. Ct. 1673 1968). n1See id. Even if the regulation has some minimal effect on the erotic message by muting a portion of the expression, the regulation is not deemed unconstitutional if it has merely a *de* minimis or incidental effect. See 120 S. Ct. at 1393-94.

----------Footnotes ----------

n1 HN3 +"The four-factor test set out in *O'Brien* requires that: (1) the regulation is within the constitutional power of the government to enact, such as protecting public health or safety and deterring crime; (2) the regulation must further an important or substantial government interest, although the municipality need not conduct new studies or produce independent evidence to demonstrate the problem of secondary effects and is allowed a reasonable opportunity to experiment with solutions; (3) the government interest must be unrelated to the suppression of free expression; and (4) the restriction must be no greater than is essential to further the governmental interest. *See City of Erie v. Pap's A.M.*, 120 S. Ct. at 1394-97.

---------- End Footnotes ---------- [*4]

P4 The City of Hudson's ordinance does not prohibit nude dancing or any expression of eroticism arising from the dance. Therefore, it is deemed HN4 7a content-neutral regulation measured by intermediate scrutiny, and subject to the traditional time, place and manner doctrine. *See Turner Broadcasting System v. FCC*, 512 U.S. 622, 642, 129 L. Ed. 2d 497 114 S. Ct. 2445 1994)

P5 The ordinance satisfies the *O'Brien* test. Its stated intent and the City's legislative findings show that the ordinance is aimed at the undesirable secondary effects of sexually oriented business, particularly crime, decreased property values and public health risks. HN5 -#The City has the constitutional power to pass ordinances that relate to these traditional police powers. *See Erie, 120 S.* Ct. at 1386. The regulation furthers the City's interest in combatting crime. n2 It is supported by numerous studies that establish indesirable secondary effects that arise from the nude dancing industry. Affidavits of police officers presented to the city counsel establish that contact between the dancers and patrons during the performance entailed either acts *of* prostitution [*5] or sexual assault. HN 5 7 Requiring a five-foot buffer assists law enforcement in determining whether the dancer or the patron initiated the contact. *See DLS nc, v, City of Chattanooga, 107* F.3d 403, 411 (6th Cir. 1997) Further, maintaining a five-foot buffer only minimally interferes with any expression or communication. The no touching and five-foot buffer restrictions do not have the effect *of* banning individual, patron-focused exotic dance. Therefore, the ordinance is sufficiently narrowly tailored to achieve the municipality's legitimate interest in preventing crime.

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contact between the dancers and patrons, requires all performances to occur on a stage or table at least eighteen inches above floor level, creates a five-foot buffer zone between the dancers and patrons, and restricts the operating hours, requiring the cabaret to close at 2 a.m. on week days, 2:30 a.m. on Saturdays and Sundays.

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----------End Footnotes---------- [*4]

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n2 Because the ordinance furthers the government's interest in combatting crime, we need not review its other stated intentions of protecting property 'values and promoting public health.

-_------_---_-_-- End Footnotes --_----------_--

P6 The restrictions on the cabaret's operating hours do not infringe on ERE's First Amendment rights. Similar and more restrictive restrictions have been upheld in numerous other cases. *See, e.g., Rfchland Bookmart, Inc, v,* Nichols, 137 F.3d 435 (6th Cir. 1998) *[*6J Star Satellite, Inc. v, City of Blloxi,* 779 F.2d 1074 (5th Cir, **1986), Schultz** yr *City of Cumberland,* 26 F. Sugp. 2d 1128 (W.D Wis 1998. *HN7*TRestricting the hours of operation can promote public safety by permitting local law enforcement to focus its limited resources on other matters. *See* Schultz, 26 F. Supp. 2d at 1145. '- s TOperating hours may be restricted during times when people are generally sleeping and when peaceful enjoyment of the home is most important. *See* ***Tee & Bee,*** *Inc. v, City of West Allis,* 936 F Supp 1479, 1492 (E.D. Wis. 1996).

P7 ERE argues that all of the restrictions have the effect of destroying its business and excluding nude dancing in the city. HIV-'The test for determining whether a sexually oriented business's First Amendment rights are threatened is whether the City has effectively denied the business a reasonable opportunity to open and operate within the city. *See City of Renton v, Playtime Theatres, Inc.,* 475 U.S41, 54, 89 L. Ed. 2d 29, 106 S. Ct. 925 (1986). Patron-focused erotic performances are allowed in the City of Hudson 127 hours per.week. [*7] The City is not obligated to design its attack on the secondary effects of nude entertainment in a manner that insures the business's economic viability. *See id,*

By the Court.-Judgment affirmed.

This opinion will not be published. *See Wis.* Stat. Rule 809.23(1)(b)5.

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United States Court of Appeals,
Seventh Circuit.

BEN'S BAR, INC., Plaintiff-Appellant,
v.
VILLAGE OF SOMERSET, Defendant-Appellee.

No. 01-4351.

Argued May 30, 2002.
Decided Jan. 17, 2003.

Tavern and two of its nude dancers brought § 1983 action against city, seeking declaratory and injunctive relief against enforcement of ordinance that prohibited sale, use, or consumption of alcohol on premises of "Sexually Oriented Businesses, " alleging violation of their right to freedom of expression under First and Fourteenth Amendments_ The United States District Court for the Western District of Wisconsin, Barbara B. Crabb, Chief Judge, granted judgment for city. Plaintiffs appealed. The Court of Appeals, Manion, Circuit Judge, held that municipal ordinance was reasonable attempt to reduce or eliminate undesirable "secondary effects" associated with barroom adult entertainment.

Affirmed.

West Headndtes

[1] Constitutional Law G-90(3)
92k90(3)

A governmental regulation is sufficiently justified, despite its incidental impact upon expressive conduct protected by the First Amendment, if: (1) it is within the constitutional power of the government; (2) it furthers an important or substantial governmental interest; (3) the governmental interest is unrelated to the suppression of free speech: and (4) the incidental restriction on alleged First Amendment freedoms is no greater than is essential to the furtherance of that interest. U.S.C.A. Const.Amend. 1.

[2] Constitutional Law (~;:- 90.4(3)
92k90.4(3)

A time, place; and manner regulation of adult entertainment will be upheld under the First Amendment if it is designed to serve a substantial government interest and reasonable alternative avenues of communication remain available; additionally, a time, place, and manner regulation must be justified without reference to the content of the regulated speech and narrowly tailored to serve the government's interest. U.S.C.A. Const.Amend. 1.

[3] Constitutional Law ~90.4(3)
92k90.4(3)

The analytical frameworks and standards utilized in evaluating adult entertainment regulations under the First Amendment, be they zoning ordinances or public indecency statutes, are virtually indistinguishable. U.S.C.A. Const.Amend. 1.

[4] Constitutional Law X90.4(5)
92k90.4(5)

A liquor regulation prohibiting the sale or consumption of alcohol on the premises of adult entertainment establishments does not violate the First Amendment if: (1) the state is regulating pursuant to a legitimate governmental power; (2) the regulation does not completely prohibit adult entertainment; (3) the regulation is aimed not at the suppression of expression, but rather at combating the negative secondary effects caused by adult entertainment establishments; and (4) the regulation is designed to serve a substantial government interest, narrowly tailored, and reasonable alternative avenues of communication remain available, or, alternatively, the regulation furthers an important or substantial government interest and the restriction on expressive conduct is no greater than is essential in furtherance of that interest. U.S.C.A. Const.Amend. 1.

[5] Constitutional Law C;7-90.4(5)
92k90.4(5)

[5] Intoxicating Liquors ~ 15
223k15

Municipal ordinance, that restricted sale or consumption of alcohol on premises of businesses that served as venues for adult entertainment, was reasonable attempt to reduce or eliminate undesirable "secondary effects" associated with barroom adult entertainment, in § 1983 lawsuit under free speech clause of First Amendment: regulation of alcohol was within city's general police powers, -regulation did not have any impact on tavern's ability to oiler nude or semi- nude

dancing to its patrons, and liquor prohibition was no greater than was essential to further city's substantial interest in combating secondary effects resulting from combination of nude and semi-nude dancing and alcohol. U.S.C.A. Const. Amend. 1; 42 U.S.C.A. § 1983.

[6] Constitutional Law (° 90.4(3)
92k90.4(3)

The level of First Amendment scrutiny a court uses to determine whether a regulation of adult entertainment is constitutional depends on the purpose for which the regulation was adopted; if the regulation was enacted to restrict certain viewpoints or modes of expression, it is presumptively invalid and subject to strict scrutiny, if, on the other hand, the regulation was adopted for a purpose unrelated to the suppression of expression, e. g., to regulate nonexpressive conduct or the time, place, and manner of expressive conduct, a court must apply a less demanding intermediate scrutiny. U. S. C. A. Const.Amend_ 1.

[7] Administrative Law and Procedure. X412.1
15Ak412.1

[7] Municipal Corporations « 120
268k120

[7] Statutes |&-184
361k184.

Federal courts evaluating the "predominant concerns" behind the enactment of a statute, ordinance, regulation, or the like, may do so by examining a wide variety of materials including, but not limited to, the text of the regulation or ordinance, any preamble or express legislative fmdings associated with it, and studies and information of which legislators were clearly aware.

[8] Constitutional Law 090.4(3)
92k90.4(3)

Regulations of adult entertainment' receive intermediate scrutiny under the First Amendment if they are designed not to suppress the "content" of erotic expression, but rather to address the negative secondary effects caused by such expression. U.S.C.A. Const.Amend: 1.

[9] Constitutional Law 090.4(5)
92k90.1(5)

Regulations that prohibit nude dancing where alcohol is served or consumed are independent of expressive or communicative elements of conduct; and, therefore, are treated as if they were content-neutral under the First Amendment. U. S. C. A. Const.Amend. 1.

[10] Constitutional Law 090.4(5)
92k90.4(5)

In the context of the First Amendment, whether an adult entertainment liquor regulation is treated as a time, place, and manner regulation, or as a regulation of expressive conduct, a court is required to ask whether the municipality can demonstrate a connection between the speech regulated by the ordinance and the secondary effects that motivated the adoption of the ordinance. U.S.C.A. Const.Amend. 1.

[1,1] Constitutional Law (° 90(3)
92k90(3)

In order to justify a content-based time, place, and manner restriction under the First Amendment, or a content-based regulation of expressive conduct, a municipality must advance some basis to show that its regulation has the purpose and effect of suppressing secondary effects, while leaving the quantity and accessibility of speech substantially intact; the regulation may identify the speech based on content, but only as a shorthand for identifying the secondary effects outside, and, furthermore, a municipality may not assert that it will reduce secondary effects by reducing speech in the same proportion. U.S.C.A. Const.Amend. 1.

[12] Constitutional Law ~90.4(5)
92k90.4(5)

The First Amendment does not entitle a tavern, its dancers, or its patrons, to have alcohol available during a "presentation" of nude or semi-nude dancing; even though the First Amendment does require that such establishments be given a reasonable opportunity to disseminate the speech at issue, a "reasonable opportunity" does not include a concern for economic considerations. U.S.C.A. Const. Amend. 1.

`704 Matthew A. Biegert (argued), Doar, Drill & Skow, New Richmond, WI, for Plaintiff-Appellant.

Ted Waskowski, Meg Vergeront (argued), Stafford

Rosenbaum, YSadison, WI, for Defendant-Appellee.

Before FLAUM, Chief Judge; and WOOD, Jr. and ivIANION, Circuit Judges.

MANION, Circuit Judge.

**1 Ben's Bar, Inc. operates a tavern in the Village of Somerset, Wisconsin, that formerly served as a venue for nude and semi-nude dancing. After the Village enacted an ordinance that, in part, prohibited the sale, use, or consumption of alcohol on the premises of "Sexually Oriented Businesses," Ben's Bar and two of its dancers filed suit under 42 U.S.C. § 1983, seeking declaratory and injunctive relief against the enforcement of the ordinance. The plaintiffs' complaint alleged, among other things, that the ordinance's alcohol prohibition violated their right to freedom of expression under the First and Fourteenth Amendments to the United States Constitution. Shortly thereafter, plaintiffs filed a motion for a preliminary injunction, which the district court denied. The Village then filed a motion for summary judgment, which the district court granted. Ben's Bar appeals this decision. Because we conclude that the record sufficiently supports the Village's claim that the liquor prohibition is a reasonable attempt to reduce or eliminate the undesirable "secondary effects" associated with barroom adult entertainment, rather than an attempt to regulate the expressive content of nude dancing, we affirm the district court's judgment.

On October 24, 2000, the Village of Somerset, a municipal corporation located in St. Croix County, Wisconsin ("Village"), enacted Ordinance A-472, entitled "Sexually *705 Oriented Business Ordinance" ("Ordinance"), for the purpose of regulating "Sexually Oriented Businesses and related activities to promote the health, safety, and general welfare of the citizens of the Village of Somerset, and to establish reasonable and uniform regulations to prevent the deleterious location and concentration of Sexually Oriented Businesses within the Village of Somerset." The Ordinance regulates hours of operation, location, distance between patrons and performers; and other aspects concerning the operations of Sexually Oriented Businesses.

In the legislative findings section of the Ordinance, the Village noted that:

> Based on evidence concerning the adverse secondary effects of Sexually Oriented Businesses on the community in reports made available to the Village Board, and on the holdings and findings in [numerous Supreme Court, federal appellate, and state appellate judicial decisions], as well as studies and summaries of studies conducted in other cities ... and findings reported in the Regulation of Adult Entertainment Establishments in St. Croix County, Wisconsin; and the Report of the Attorney General's Working Group of Sexually Oriented Businesses ... the Village Board finds that:
>
> (a) Crime statistics show that all types of crimes, especially sex-related crimes, occur with more frequency in neighborhoods where sexually oriented businesses are located.
>
> (b) Studies of the relationship between sexually oriented businesses and neighborhood property values have found a negative impact on both residential and commercial property values.
>
> '`*2 (c) Sexually oriented businesses may contribute to an increased public health risk through the spread of sexually transmitted diseases.
>
> (d) There is an increase in the potential for infiltration by organized crime for the purpose of unlawful conduct.
>
> (e) *The consumption of alcoholic beverages on the premises of a Sexually Oriented Business exacerbates the deleterious secondary effects of such businesses on the community*.
>
> (Emphasis added.)

On February 2, 2001, two months before the Ordinance's effective date of April 1, 2001, Ben's Bar, Inc. ("Ben's Bar"), a tavern in the Village featuring nude and semi-nude barroom dance, [FN1] and two of its dancers, Shannen Richards and Jamie Sleight, filed a four-count complaint against the Village, pursuant to 42 U.S.C. § 1983 and Wis. Stat. § 806.04 (the State's "Uniform Declaratory Judgments Act"), in the United States District Court for the Western District of Wisconsin. The plaintiffs' complaint alleged that portions of the Ordinance were unconstitutional and preempted by Wisconsin law, sought a declaratory judgment resolving those issues; and requested permanent injunctive relief. Specifically, the plaintiffs argued that the Ordinance: (1) violated their right of free expression under the First and Fourteenth Amendments to the United States Constitution and Article 1; § 3 of the Wisconsin Constitution; [FN2]

(2) violated their right to *706 equal protection under the Fourteenth Amendment to the United States Constitution and Article 1, § 1 of the Wisconsin Constitution; [FN3] (3) was an illegal "policy or custom" of the Village within the meaning of *31fonell v. New York Ciry Dep't of Social Services,* 436 U.S. 658, 98 S.Ct_ 2018, 56 L.Ed.2d 611 (1978), and *Owen v. City of Independence,* llllissouri, 445 U.S. 622, 100 S.Ct. 1398, 63 L.Ed.2d 673 (1980); and (4) was an *ultra vires* legislative act in violation of Wis. Stat. § 66.0107(3). [FN4]

FN1. Ben's Bar holds a liquor license issued by the Village.

FN2. Article 1, § 3 of the Wisconsin Constitution provides, *inter alia,* that "[e]very person may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of that right, and no laws shall be passed to restrain or abridge the liberty of speech or of the press." Wis. Const., art. 1, § 3.

FN3. Article 1, § 1 of the Wisconsin Constitution provides that "[a]ll people are born equally free and independent, and have certain inherent rights; among these are life, liberty and the pursuit of happiness; to secure these rights, governments are instituted, deriving their just powers from the consent of the governed." Wis. Const., art. I, § 1.

FN4. Wis. Stat. § 66.0107(3) provides that "[t]he board or council of a city, village or town may not, by ordinance, prohibit conduct which is the same as or similar to conduct prohibited by § 944.21 [i.e., the state's obscenity statute]."

On March 19, 2001, the plaintiffs moved for a preliminary injunction against the enforcement of Sections 5(a) and (b) of the Ordinance. Section 5(a) provides that "[i]t shall be a violation of this ordinance for any Person to knowingly and intentionally appear in a state of Nudity in a Sexually Oriented Business. " [FN5] Section 5(b) of the Ordinance provides that "[t]he sale, use,. or consumption of alcoholic beverages on the Premises of a Sexually Oriented Business is prohibited. " Plaintiffs argued that under § 66.0107(3) the Village was prohibited from enacting these regulations of adult entertainment because such conduct is already covered by the state's obscenity statute--i.e., Wis. Stat. § 944.21. They also contended that, nov/vidistandmg § 66.0107; Sections 5(a) and (:o) violated their right to free expression under the First and Fourteenth Amendments.

FN5. Under Section 3(o) of the Ordinance, "Nudity" or "state of nudity" is defined as "the appearance of the human bare anus, anal cleft or cleavage; pubic area, male genitals, female genitals, or the nipple or areola of the female breast, with less than a fully opaque covering; or showing of the covered male genitals in a discernibly turgid state."

On April 17, 2001, the district court denied plaintiffs' motion for preliminary injunctive relief, holding that they did not have a reasonable chance of succeeding on the merits of their complaint. The district court, utilizing the test established by this circuit in *Schultz v. City of Cumberland,* 228 F.3d 831 (7th Cir.2000), held that Section 5(a)'s complete prohibition of full nudity in Sexually Oriented Businesses was constitutional under the First Amendment because " 'limiting erotic dancing to semi-nudity [i.e., pasties and G-strings] represents a *de minimis* restriction that does not unconstitutionally abridge expression.' " (quoting *Schultz,* 228 F.3d at 847). The district court also concluded that Section 5(b) passed constitutional muster under *Schultz* because it: (1) was justified without reference to the content of the regulated speech; (2) was narrowly tailored to serve a significant government interest in curbing adverse secondary effects; and (3) left open ample alternative channels for communication. Finally, the district court ruled that the Ordinance was not subject to preemption under Wis. Stat. § 66.0107(3) because the plaintiffs had conceded that: (1) the Ordinance only regulates non-obscene conduct; and (2) they were seeking only to provide non-obscene barroom dancing.

**3 Following unsuccessful attempts at settlement, on August 20, 2001, the Village moved for summary judgment of plaintiffs' complaint. On November 23, 2001, the district court granted the Village's motion, concluding that the Ordinance was constitutional for the reasons expressed in its *707 April 17, 2001 order. The court also addressed plaintiffs' equal protection claim, noting that they had waived the argument by failing to develop it in their briefs. A judgment in conformity with that order was entered on November 26, 2001. Ben's Bar anneals the district court's decision granting summary judgment; [FN6] arguing that the court erred in concluding that Section 5(b) does not constitute an unconstitutional restriction on nude dancing under the First Amendment. *See Di~Wa*

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Corp. v. Town of Hallie, 185 F.3d 823, 827 n. 2 (7th Cir.1999) (holding that corporations may assert First Amendment challenges). We review the district court's grant of summary judgment *de novo,* construing all facts in favor of Ben's Bar, the non-moving party. *Commercial Underwriters Ins. Co- v. Aires Bnvtl. Services, Ltd.,* 259 F.3d 792, 795 (7th Cir.2001).

FN6. Plaintiffs Shannen Richards and Jamie Sleight did not appeal the district court's judgment_

The First Amendment provides, in part, that "Congress shall make no law ... abridging the freedom of speech ...." U.S. Const. amend. 1. The First Amendment's Free Speech Clause has been held by the Supreme Court to apply to the states through the Fourteenth Amendment's due process clause. *Gitlow v. New York,* 268 U.S. 652, 666, 45 S.Ct. 625, 69 L.Ed. 1138 (1925); *Di1Lla Corp.,* 185 Fad at 826 (acknowledging the applicability of the Supreme Court's "incorporation doctrine" in the First Amendment context). The Supreme Court has further held that "nude dancing ... is expressive conduct *within the outer perimeters of the First Amendment,* though we view it as only marginally *so." Barnes v. Glen Theatre, Inc., 501 U.S.* 560, 566, 111 S.Ct. 2456, 115 L.Ed.2d 504 (1991) (plurality opinion) (emphasis added). *See also Blue Canary* Corp. *v. City of Milwaukee,* 251 F.3d 1121, 1124 (7th Cir.2001) (noting that "[t]he impairment of First Amendment values is slight to the point of being risible since the expressive activity involved in the kind of striptease entertainment provided in a bar has at best a modest social value .....). Thus, while few would argue "that erotic dancing ... represents high artistic expression," Schultz v. *City of Cumberland,* 228 F.3d 831, 839 (7th Cir.2000), the Supreme Court has, nevertheless, afforded such expression a diminished form of protection under the First Amendment. *City of Erie v. Pap's A.M.,* 529 U.S. 277, 294, 120 S.Ct_ 1382, 146 L.Ed.2d 265 (2000) (plurality opinion) (holding that " 'even though we recognize that the First Amendment will not tolerate the total suppression of erotic materials that have some arguably artistic value, *it is manifest that society's inrerest in prorecring this type of expression is of a wholly different, and lesser, magnitude than the interest in untrammeled political debate ....' ")* (citation omitted) (emphasis added).

**4 This case requires us to determine whether a municipality may restrict the sale or consumption of alcohol on the premises of businesses that serve as venues for adult entertainment without violating the First Amendment. On appeal, Ben's Bar's primary argument is that Section 5(b) is unconstitutional because the regulation has the "effect" of requiring its dancers to wear more attire than simply pasties and G-strings. [FN7] This argument *708 may be summed up as follows: (1) Section 5(b) prohibits the sale, use, or consumption of alcohol on the premises of Sexually Oriented Businesses; [FN8] (2) Ben's Bar is an "Adult cabaret," a sub-category of a Sexually Oriented Business under the Ordinance, [FN9] if it features nude or semi-nude dancers; (3) Section 3(o) of the Ordinance defines "seminude or semi-nudity" as "the exposure of a bare male or female buttocks or the female breast below a horizontal line across the top of the areola at its highest point with less than a complete and opaque covering"; and (4) Ben's Bar's dancers must wear more attire than that required by the Ordinance's definition of "semi-nude or semi-nudity" in order for the tavern to be able to sell alcohol during their performances and comply with Section 5(b)--i.e., more than pasties and G-strings. Ben's Bar contends that Section 5(b) significantly impairs the conveyance of an erotic message by the tavern's dancers [FN10] and is not narrowly tailored to meet the Village's stated goal of reducing the adverse secondary effects associated with adult entertainment. [FN11]

FN7. The Supreme Court has, on two separate occasions, held that requiring nude dancers to wear pasties and G-strings does not violate the First Amendment. *Pap's AArl.,* 529 U.S. at 301, 120 S.Ct. 1382 (plurality. opinion), id. at 307-10, 120 S.Ct. 1382 (Scalia, J., concurring); *Barnes,* 501 U.S. at 571-72, 111 S.Ct. 2456 (plurality opinion), id. at 582, 111 S.Ct. 2456 (Souter, J., concurring).

FN8. Section 3(w) of the Ordinance defines "Sexually Oriented Business" as "an adult arcade, adult bookstore or adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, escort agency or sexual encounter center."

FN9. Section 3(c) of the Ordinance is the definition for "Adult cabaret_" which "means a nightclub, dance hall, *bar,* restaurant, or similar Commercial establishment that re2ularly features: (1) persons who appear in a state of Nudity or Semi-nudir/; or (2) live performances that are characterized by 'specified sexual activities': or (3) films, motion pictures; video cassettes, slides; or other photographic reproductions chat are

Corp. v. Town of Hallie, 185 F.3d 823, 827 n. 2 (7th Cir.1999) (holding that corporations may assert First Amendment challenges). We review the district court's grant of summary judgment *de novo,* construing all facts in favor of Ben's Bar, the non-moving party. *Commercial Underwriters Ins. Co. v. Aires Envtl. Services, Ltd.,* 259 F.3d 792, 795 (7th Cir.2001).

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**4 This case requires us to determine whether a municipality may restrict the sale or consumption of alcohol on the premises of businesses that serve as venues for adult entertainment without violating the First Amendment. On appeal, Ben's Bar's primary argument is that Section 5(b) is unconstitutional because the regulation has the "effect" of requiring its dancers to wear more attire than simply pasties and G-strings. [FN7] This argument *708 may be summed up as follows: (1) Section 5(b) prohibits the sale, use, or consumption of alcohol on the premises of Sexually Oriented Businesses; [FN8] (2) Ben's Bar is an "Adult cabaret," a sub-category of a Sexually Oriented Business under the Ordinance, [FN9] if it features nude or semi-nude dancers; (3) Section 3(o) of the Ordinance defines "seminude or semi-nudity" as "the exposure of a bare male or female buttocks or the female breast below a horizontal line across the top of the areola at its highest point with less than a complete and opaque covering"; and (4) Ben's Bar's dancers must wear more attire than that required by the Ordinance's definition of "semi-nude or semi-nudity" in order for the tavern to be able to sell alcohol during their performances and comply with Section 5(b)--i.e., more than pasties and G-strings. Ben's Bar contends that Section 5(b) significantly impairs the conveyance of an erotic message by the tavern's dancers [FN10] and is not narrowly tailored to meet the Village's stated goal of reducing the adverse secondary effects associated with adult entertainment. [FN11]

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FN9. Section 3(c) of the Ordinance is the definition for "Adult cabaret_" which "means a nightclub; dance hall, *oar,* restaurant; or similar commercial establishment that regularly features: (1) persons who appear in a state of Nudity or Semi-nudity; or (2) live performances that are characterized by 'specified sexual activities': or (3) films, motion pictures, video cassettes. slides, or other photographic reproductions that are

characterized by the depiction or description of 'specified sexual activities' or Nudity or 'specified anatomical areas.' " (Emphasis added.)

FN10. According to Ben's Bar, Section 5(b) goes far beyond the pasties and G-strings regulation upheld by the Supreme Court in *Barnes* and *Pao's* :4.1YL, prohibiting "any display of the buttocks or of breast below the top of the areola"--i.e., "conservative two piece swimsuits, moderately low-cut blouses, short shorts, sheer fabrics and many other types of clothing that are regularly wom in the community and are in mainstream fashion."

FNll. It is not entirely clear whether Ben's Bar is arguing that Section 5(b) is facially unconstitutional or merely unconstitutional as applied. To the extent Ben's Bar seeks to bring a facial challenge, it faces an uphill battle. Ben's Bar does not argue that the regulation is vague or overbroad, and therefore may only prevail if it can demonstrate "that no set of circumstances exists under which the [regulation] would be valid." *United States v. Salerno,* 481 U.S. 739, 745, 107 S.Ct. 2095, 95 L.Ed.2d 697 (1987). *See also Horton v. City of St. Augustine, Florida,* 272 F.3d 1318, 1331 (11th Cir.2001) (noting exception to the *Salerno* rule; that, in the limited context of the First Amendment, a plaintiff may also bring a facial challenge for overbreadth and/or vagueness).

The central fallacy in Ben's Bar's argument, however, is that Section S(b) restricts the sale and consumption of alcoholic beverages in establishments that serve as venues for adult entertainment, not the attire of nude dancers. In the absence of alcohol, Ben's Bar's dancers are free to express themselves all the way down to their pasties and G-strings. The question then is not whether the Village can require nude dancers to wear more attire than pasties and G-strings, but whether it can prohibit Sexually Oriented Businesses like Ben's Bar from selling alcoholic beverages in order to prevent the deleterious secondary effects arising from the explosive combination of nude dancing and alcohol consumption.

While the question presented is rather straightforward, the issue is significantly complicated by a long series of Supreme Court decisions involving the application of the First Amendment in the adult entertainmentx709 context. Because these decisions establish the analytical framework under which we must operate; our analysis necessarily begins with a comprehensive summary of the Supreme Court's jurisprudence in this area.

A. California v. LaRue

Initially; we note that the Supreme Court addressed the precise issue before us in *California v. LaRue,* 409 U.S. 109, 93 S.Ct. 390, 34 L.Ed.2d 342 (1972), when it considered the constitutionality of regulations promulgated by California's Department of Alcoholic Beverages ("Department") that prohibited bars and nightclubs from featuring varying degrees of adult entertainment. [FN12] The Department enacted the regulations, after holding public hearings, because it concluded that the consumption of alcohol in adult entertainment establishments resulted in a number of adverse secondary effects--e.g., acts of public indecency and sex-related crimes. As in this case, adult entertainment businesses filed suit alleging that the regulations violated the First Amendment. Id. at 110, 93 S. Ct. 390.

FN12. The regulations at issue in *LaRLIe* prohibited: (a) The performance of acts, or simulated acts, of sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation or any sexual acts which are prohibited by law;
(b) The actual or simulated touching, caressing or fondling on the breast, buttocks, anus or genitals;
(c) The actual or simulated displaying of the pubic hair, anus, vulva or genitals;
(d) The permitting by a licensee of any person to remain in or upon the licensed premises who exposes to public view any portion of his or her genitals or anus; and, by a companion section;
(e) The displaying of films or pictures depicting acts a live performance of which was prohibited by the regulations quoted above.
409 U.S. at 411-12.

*:k5 The Supreme Court began its analysis in *LaRue* by stressing that "[f he state regulations here challenged come to us, not in the context of a dramatic performance in a theater, but rather in a context of licensing bars and nightclubs to sell liquor by the drink." 409 U.S. at 114, 93 S.Ct. 390. For this reason, the vast majority of the Court's opinion addressed the States' power to regulate "intoxicating liquors" under the Twenty-first Amendment. [FN13] *See generally id.* at 115-19, 93 S.Ct. 390_ Specifically, the *LaRue* Court concluded that:

FN13. The second section of the Twenty-first Amendment provides that "[t]he transporation or

importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited." U.S. Const. amend. =, § 2.

While the States, vested as they are with general police power, require no specific grant of authority in the Federal Constitution to legislate with respect to matters traditionally within the scope of the police power, the broad sweep of the Twenty-first Amendment has been recognized as conferring something more than the normal state authority over public health, welfare, and morals. 409 U.S. at 114, 93 S.Ct. 390.

In doing so, the *LaRue* Court rejected the plaintiffs' contention that the state's regulatory authority over "intoxicating beverages" was limited, as applied to adult entertainment establishments, to "either dealing with the problem it confronted within the limits of our decisions as to obscenity [i.e., *Roth v. United States,* 354 U.S. 476, 77 S.Ct_ 1304, 1 L.Ed.2d 1498 (1957) and its progeny] or in accordance with the limits prescribed for dealing with some forms of communicative conduct in [*United States v. O'Brien,* 391 U.S. 367, 88 S.Ct. 1673, 20 L.Ed.2d 672 (1968)]," 409 U.S. at 116, 93 S.Ct. 390, reasoning " '[w]e '1710 cannot accept the view that an apparently limitless variety of conduct can be labeled _'speech' whenever the person engaging in the conduct intends thereby to express an idea.' " Id. at 117- 18, 93 S.Ct. 390 (citation omitted). The Court found that "the substance of the regulations struck down prohibits licensed bars or nightclubs from displaying, either in the form of movies or live entertainment, 'performances' that partake more of gross sexuality than of communication." Id. at 118, 93 S.Ct. 390. The Court also concluded that although "at least some of the performances to which these regulations address themselves are within the limits of the constitutional protection of freedom of expression, the critical fact is that California has not forbidden these performances across the board ... [but] has merely proscribed such performances in establishments that it licenses to sell liquor by the drink. " Id. The *LaRue* Court ended its analysis by noting that "[t]he Department's conclusion, embodied in these regulations, that certain sexual performances and the dispensation of liquor by the drink ought not to occur at premises that have licenses was not an irrational one," and that "[g]iven the added presumption in favor of the validity of the slate regulation in :his area that The Twenty-first Amendment requires, we cannot hold that the regulations on their face violate the Federal Constitution." Id. at 118-19, 93 S. Ct. 390. [FN14]

Fh114. *See also Cry of Newport v. Iacobucci,* =179 U.S. 92, 95, 107 S.Ct. 383, 93 L.Ed.2d 334 (1986) (upholding the constitutionality of a city ordinance prohibiting nude or nearly nude dancing in local establishments licensed to sell liquor for consumption on the premises); *New York State Liquor Auth. v. Bellanca,* 452 U.S. 714, 717, 101 S.Ct. 2599, 69 L.Ed.2d 357 (1981) (holding that "[fhe State's power to ban the sale of alcoholic beverages entirely includes the lesser power to ban the sale of liquor on premises where topless dancing occurs"); *Doran v. Salenz Inn. Inc.,* 422 U.S. 922, 932-33, 95 S.Ct. 2561, 45 L.Ed.2d 648 (1975) (noting that under *LaRue* states may ban nude dancing as part of their liquor licensing programs); *City of Kenosha v. Bruno,* 412 U.S. 507, 515, 93 S.Ct. 2222, 37 L.Ed.2d 109 (1973) (noting that "regulations prohibiting the sale of liquor by the drink on premises where there were nude but not necessarily obscene performances [are] facially constitutional").

B. 44 Liquormart, Inc. v. Rhode Island

**6 After the Supreme Court's decision in *44 Liquormart, Inc. v. Rhode Island,* 517 U.S. 484, 116 S.Ct. 1495, 134 L.Ed.2d 711 (1996), however, the precedential value of the reasoning anchoring the Court's holding in *LaRue* was severely diminished. In *44 Liquormart,* the Court held that Rhode Island's statutory prohibition against advertisements providing the public with accurate information about retail prices of alcoholic beverages was "an abridgement of speech protected by the First Amendment and that is not shielded from constitutional scrutiny by the Twenty-first Amendment." Id. at 489, 116 S.Ct. 1495. In reaching this conclusion, the Court noted:

Rhode Island argues, and the Court of Appeals agreed, that in this case the Twenty-first Amendment tilts the First Amendment analysis in the State's favor [of the advertising ban] .... [T]he Court of Appeals relied on our decision in *California v. LaRue* ... [where] five Members of the Court relied on the Twenty-first Amendment *to* buttress the conclusion that the First Amendment did not invalidate California's prohibition of certain grossly sexual exhibitions in premises licensed to serve alcoholic beverages. Specifically; the opinion stated that the Twenty-first Amendment required that the prohibition be given an added presumption in favor of its

validity. x711 *We are now persuaded that the Court's analysis in* LaRue would *have led to precisely the same result if it had placed no reliance on the Twenty-first Amendment. Entirely apart from the Twenty-first Amendment, the State has ample power to prohibit the sale of alcoholic beverages in inappropriate locations. Moreover, in subsequent cases, the Court has recognized that the States' inherent police powers provide ample authority to restrict the kind of "bacchanalian revelries" described in the* LaRue *opinion regardless of whether alcoholic beverages are involved.... See, e_g., Young v. American Mini Theatres, Inc.,* 427 U.S. 50, 96 S.Ct. 2440, 49 L.Ed.2d 310 (1976); *Barnes v. Glen Theatre, Inc.,* 501 U.S. 560, 111 S.Ct. 2456, 115 L.Ed.2d 504 (1991). As we recently noted: "*LaRue* did not involve commercial speech about alcohol, but instead concerned the regulation of nude dancing in places where alcohol was served." *Rubin v. Coors Brewing Co.,* 514 U.S., at 483, n. 2, 115 S.Ct. 1585. Without questioning the holding of *LaRue,* we now disavow its reasoning insofar as it relied on the Twenty-first Amendment.
Id. at 515-16, 116 S.Ct_ 1495 (emphasis added).

The foregoing makes clear that *LaRue's* holding remains valid after 44 *Liquormart,* but for a different reason. The 44 *Liquormart* Court concluded that "the Court's analysis in *LaRue* would have led to precisely the same result if it had placed no reliance on the Twenty-first Amendment, " 517 U.S. at 515, 116 S.Ct. 1495 because "[e]ntirely apart from the Twenty-first Amendment, the State has ample power to prohibit the sale of alcoholic beverages in inappropriate locations. " Id. In making this assertion, the 44 *Liquormart* Court relied on the *LaRue* Court's conclusion that: "the States, vested as they are with general police power, require no specific grant of authority in the Federal Constitution to legislate with respect to matters traditionally within the scope of the police power ... [i.e.,] the normal state authority over public health, welfare, and morals." 409 U.S. at 114, 93 S.Ct. 390. But in recent years, the Supreme Court has held, on a number of occasions, that "non-obscene" adult entertainment is entitled to a minimal degree of protection under the First Amendment, even in relation to laws enacted pursuant to a State's general police powers. *City of Los Angeles v. Alameda Books, Inc.,* 535 U.S. 425, 122 S.Ct. 1728, 1739; 152 L.Ed.2d 670 (2002) (Kennedy, J., concurring) (noting that "if a city can decrease the crime and blight associated with [adult entertainment] speech by the traditional exercise of its zoning power, and at the same time leave the quantity and accessibility of speech substantially undiminished, there is no First Amendment objection"); *Pap's A.M.,* 529 U.S- at 296; 120 S.Ct. 1382 (plurality opinion) (holding that city's public indecency ordinance, enacted to "protect public health and safety," must be analyzed as a content-neutral regulation of expressive conduct); *id.* at 310, 120 S.Ct. 1382 (Souter, J., concurring in part and dissenting in part). .

**7 Given the foregoing, it is difficult to ascertain exactly what "analysis" the 44 *Liquormart* Court was referring to as having persuaded it that the *LaRue* Court would have reached the same result even without the "added presumption" of the Twenty-first Amendment. We find noteworthy, however, the 44 *Liquormart* Court's citation of the *post-LaRue* decisions of *Young v. American illlini Theatres, Inc.,* =127 U.S. 50, 96 S.Ct. 2440, 49 L.Ed.2d 310 (1976), and *Barnes v. Glen Theatre, Inc.,* 501 U.S. 560, 582, 111 S.Ct. 2456, 115 L.Ed.2d 504 (1991), in support of its assertion that "the States' inherent police powers provide ample authority to restrict the kind of 'bacchanalian revelries' *712 described in the *LaRue* opinion regardless of whether alcoholic beverages are involved. " 44 *Liquormart,* 517 U.S. at 515, 116 S.Ct. 1495. In *American Mini Theatres* and *Barnes,* the Supreme Court held that the adult entertainment regulations at issue were subject to intermediate scrutiny for purposes of determining their constitutionality under the First Amendment. *American Mini Theatres,* 427 U.S. at 79, 96 S.Ct. 2440 (Powell, J., concurring) ("it is appropriate to analyze the permissibility of Detroit's action [zoning ordinance separating adult theaters from residential neighborhoods and churches] under the four-part test of *United States v. O'Brien .....); Barnes,* 501 U.S. at 582, 111 S.Ct. 2456 (Souter, J., concurring) ("I also agree with the plurality that the appropriate analysis to determine the actual protection required by the First Amendment is the four- part enquiry described in *United States v. O'Brien .... ").*

Like the Fourth and Eleventh Circuits, we conclude that after 44 *Liquormarr* state regulations prohibiting the sale or consumption of alcohol on the premises of adult entertainment establishments must be analyzed in light of *American %Yiini Theatres* and *Barnes,* as modiied by their respective progeny. *See Giovani Carandola Ltd. v. Bason,* 303 F.)d

507, 513 n. 2 & 519 (4th Cir.2002) (noting the 44 *Liquormart* Court's reliance on *American Mini Theatres* and *Barnes* and holding that "the result reached in *LaRue* remains sound not because a state enjoys any special authority when it burdens speech by restricting the sale of alcohol, but rather because the regulation in *LaRue* complied with the First _Amendment"); *Sammy's of Mobile, Ltd. v. City of Mobile,* 140 F.3d 993, 996 (11th Cir.1998) (holding that "the Supreme Court [in 44 *Liquormart]* ... reaffirmed the precedential value of *LaRue* and the *Barnes-O'Brien* test .... [and] reaffirmed that the *Barnes- O'Brien* intermediate level of review applies to [adult entertainment liquor regulations] "). *But see BZAPS, Inc. v. City of Nlankato,* 268 F.3d 603, 608 (8th Cir.2001) (upholding the constitutionality of an adult entertainment liquor regulation solely on the basis of *LaRue's* holding).

We reach this conclusion notwithstanding the fact that in *LaRue* the Supreme Court upheld the constitutionality of the adult entertainment liquor regulations using the rational basis test, *see* 409 U.S. at 115-16, 93 S.Ct. 39.0, and explicitly refused to subject the regulations to *O'Brien's* intermediate scrutiny test. Id. at 116, 93 S. Ct. 390 ("We do not believe that the state regulatory authority in this case was limited to ... dealing with the problem it confronted ... in accordance with the limits prescribed for dealing with_ some forms of communicative conduct in *[O'Brien] ").* We do so because the 44 *Liquormart* Court's reference to *American Mini Theatres* and *Barnes* makes clear that the Court is of the opinion that adult entertainment liquor regulations, like the ones at issue in *LaRue, will* pass constitutional muster even under the heightened intermediate scrutiny tests outlined in those cases.

**8 In making this determination, we are by no means suggesting that the Supreme Court's decisions in *American fplini Theatres* and *Barnes* are of greater precedential value than *LaRue.* On the contrary, as noted *infra,* our decision in this case is largely dictated by *LaRue's* holding. At the time *LaRue* was decided, however, the Supreme Court had not yet established a framework for analyzing the constitutionality of adult entertainment regulations. This changed with the Court's subsequent decisions in *American _Ylini Theatres* and *Barnes,* cases that serve as a point of origin for two distinct, yet overlapping, lines of jurisprudence that address the decree of First _Amendment *713 protection afforded to aduit entertainment_ Given the significant development of the law in this area since *LaRue,* as well as the Court's refashioning of *LaRue's* reasoning in 44 *Liquormart,* we conclude that it is necessary to apply *LaRue's* holding in the context of this precedent.

C. The 44 *Liquormart* "road map"

The 44 *Liquormart* decision established a road map of sorts for analyzing the constitutionality of adult entertainment liquor regulations, i.e., the Supreme Court's decisions in *Young v. American I11fini Theatres, Inc.,* 427 U.S. 50, 96 S.Ct. 2440, 49 L.Ed.2d 310 (1976), and *Barnes v. Glen Theatre, Inc.,* 501 U.S. 560, 111 S.Ct. 2456, 115 L.Ed.2d 504 (1991), providing two separate but similar routes. [FN15] First, the *American tvlini Theatres* decision, as modified by the Court's subsequent decisions in *City of Renton v. Playtime Theatres, Inc.,* 475 U.S. 41, 106 S.Ct. 925, 89 L.Ed.2d 29 (1986), and City *of Los Angeles v. Alameda Books, Inc.,* 535 U.S. 425, 122 S.Ct. 1728, 152 L.Ed.2d 670 (2002), delineates the standards for evaluating the constitutionality of *adult entertainment zoning ordinances.* Second, the *Barnes* decision, as modified by the Court's recent decision in *City of Erie v. Pap's A.M.,* 529 U.S. 277, 120 S.Ct. 1382, 146 L.Ed.2d 265 (2000), provides guidelines for analyzing the constitutionality of *public indecency statutes.*

FN15. *See J & B Social Club No. 1, Inc- v. City of Mobile,* 966 F.Supp. 1131, 1136 (S.D.Ala.1996) (Hand, J.).

[1] The analytical frameworks utilized in both lines of jurisprudence can be traced back to the four-part test enunciated by the Supreme Court in *United States v. O'Brien,* 391 U.S. 367, 376, 88 S.Ct. 1673, 20 L.Ed.2d 672 (1968), where the Court held that a statute prohibiting the destruction or mutilation of draft cards was a content-neutral regulation of expressive conduct. *American Mini Theatres,* 427 U.S. at 79, 96 S.Ct. 2440 (Powell, J., concurring) (applying *O'Brien* test); *Barnes,* 501 U.S. at 582, 111 S.Ct. 2456 (Souter, J., concurring) (same). Under the *O'Brien* test, a governmental regulation is sufficiently justified, despite its incidental impact upon expressive conduct protected by the First Amendment, if: (1) it is within the constitutional power of the government; (2) it furthers an important or substantial governmental interest; (3) the govermnentalyinterest is unrelated to the suppression

507, 513 n. 2 & 519 (4th Cir.2002) (noting the 44 *Liquormart* Court's reliance on *American Mini Theatres* and *Barnes* and holding that "the result reached in *LaRue* remains sound not because a state enjoys any special authority when it burdens speech by restricting the sale of alcohol, but rather because the regulation in *LaRue* complied with the First Amendment"); *Sammy's of Mobile, Ltd. v. City of Mobile,* 140 F.3d 993, 996 (11th Cir.1998) (holding that "the Supreme Court [in 44 *Liquormart* ... reaffirmed the precedential value of *LaRue* and the *Barnes-O'Brien* test .... [and] reaffirmed that the *Barnes- O'Brien* intermediate level of review applies to [adult entertainment liquor regulations] "). *But see BZAPS, Inc. v. City of 11llankato,* 268 F.3d 603, 608 (8th Cir.2001) (upholding the constitutionality of an adult entertainment liquor regulation solely on the basis of *LaRue's* holding).

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of free speech; and (4) the incidental restriction on alleged First Amendment freedoms is no greater than is essential to the furtherance of that interest. *O'Brien*, 391 U:S. at 377, 88 S.Ct. 1673.

**9 [2] . While the *O'Brien* test is still utilized by the Supreme Court in analyzing the constitutionality of public indecency statutes, *see* Pap's A.Af., 529 U.S. at 289, 120 S.Ct. 1382 (plurality opinion); *id.* at 310, 120 S.Ct. 1382 (Souter, J., concurring in part and dissenting in part), the Court currently evaluates adult entertainment zoning ordinances as time, place, and manner regulations. *Alameda* Books, 122 S.Ct. at 1733 (plurality opinion); id. at 1741 (Kennedy, J., concurring); Renton, 475 U.S. at 46-47, 106 S.Ct. 925. A time, place, and manner regulation of adult entertainment will be upheld if it is "designed to serve a substantial government interest and ... reasonable alternative avenues of communication remain[ ] available." *Alameda* Books, 122 S.Ct. at 1734. Additionally, a time, place, and manner regulation must be justified without reference to the content of the regulated speech and narrowly tailored to serve the government's *714 interest_ Schultz, 228 F.3d at 845. [FN16]

FN16. In *Renton*, the Supreme Court created some confusion as to the appropriate test for analyzing time, place, and manner regulations by asserting that "time, place, and manner regulations are aeceptable so long as they are designed to serve a substantial governmental interest and do not unreasonably limit alternative avenues of communication." 475 U.S. at 47, 106 S.Ct. 925. However, as we emphasized in *City of Watseka v. Illinois Public Action Council*, 796 F.2d 1547 (7th Cir.1986), '[t]he Supreme Court does not always spell out the 'narrowly tailored' step as part of its standard for evaluating time, place, and manner restrictions." Id. at 1553. Moreover, a close examination *of Renton* reveals that the Court did consider whether the zoning ordinance at issue was narrowly tailored. 475 U.S. at 52, 106 S.Ct. 925 ("[t]he Renton ordinance is 'narrowly tailored' to affect only that category of theaters shown to produce the unwanted secondary effects .... "). In any event, both the Supreme Court and this circuit have continued to apply the "narrowly tailored" step to time, place, and manner regulations. *See Ward v. Rock Aoainst Racism*, 491 U.S. 781, 796, 109 S.Ct. 2746, 11105 L.Ed.2d 661 (1989); *Frisby v. Schultz*, 487 U.S. 474, 481, 108 S.C,,. 2495, 101 L.Ed.2d -.20 (1988); *Pleasureland iLluseum, Inc. v. Beutter*, 288 F.3d 988, 1000 (7th Cir.2002)

[3] In this case; however, we are not dealing with a zoning ordinance or a public indecency statute. Instead, we are called upon to evaluate the constitutionality of an adult entertainment liquor regulation. Therefore, it, is not entirely clear whether Section 5(b) should be analyzed as a time, place, and manner restriction or as a regulation of expressive conduct under *O'Brien's* four-part test; or for that matter whether the tests are entirely interchangeable. *See LLEH, Inc. v.* Wichita *County*, Texas, 289 F.3d 358, 365 (5th Cir.), cart. *denied*, --- *U.S.* ----, 123 S.Ct. 621, --- L.Ed.2d ---- (2002) (noting uncertainty as to which test courts should use in analyzing the constitutionality of adult entertainment regulations: "the test for time, place, or manner regulations, described in Renton ... or the four- part test for incidental limitations on First Amendment freedoms, established in *O'Brien* .....). For all practical purposes, however, the distinction is irrelevant because the Supreme Court has held that the time, place, and manner test embodies much of the same standards as those set forth in *United* Stares v. *O'Brien. Barnes,* 501 U.S. at 566, 11.1 S.Ct. 2456 (plurality opinion) (relying on Clark v. *Community for Creative Non-Violence*, 468 U.S. 288, 298- 99, 104 S.Ct. 3065, 82 L.Ed.2d 221 (1984)); *LLEH*, 289 F.3d at 365-66 (same). [FN17] Moreover, as explained infra, two of the- Supreme Court's post-44 *Liguormart* decisions--Pap's *A.Nl.* and *Alameda* Books--make it abundantly clear that the analytical frameworks and standards utilized by the Court in evaluating adult entertainment regulations, be they zoning ordinances or public indecency statutes, are virtually indistinguishable. We, therefore, conclude that it is appropriate to analyze the constitutionality of Section 5(b) using the standards articulated by the Supreme Court in the five decisions comprising the *American* tl'Iini *Theatres* and *Barnes* lines of jurisprudence. Thus, before proceeding to the merits of Ben's Bar's argument, we begin our analysis by summarizing the reasoning and holdings of these decisions.

FN17. *But see* ,*Vaineda Books*, 122 S.CL at 1745 n. 2 (Souter, J., dissenting) (joined by Stevens, J. and Ginsburg, J.) (noting that "[b]ecause *Renton* called its secondary-effects ordinance a mere. time, place; or manner restriction and thereby glossed over the role of content in secondary-effects zoning ... I believe the soft focus of its statement of the middle-tier test should be rejected in favor of the ... [*O Brien*] formulation ... a closer relative of secondary effects zoning Than mere time. place. and manner regulations. as the Court ... imDlicitly

recognized [in *Pap's A.M.]. ").*

*715 (1) *Young v. American Mini Theatres, Inc.*

**10 In *Young v. American 1Llini Theatres,* 427 U.S. 50, 96 S.Ct. 2440, 49 L.Ed.2d 310 (1976), the Supreme Court addressed, *inter alia,* whether a zoning ordinance enacted by the City of Detroit violated the First Amendment. [FN18] Id. at 58, 96 S.Ct. 2440. The "dispersal" ordinance at issue prohibited the operation of any adult entertainment movie theater within 1,-000 feet of any two other "regulated uses" (e.g., adult bookstores, bars, hotels, pawnshops), or within 500 feet of a residential area. Id. at 52, 96 S.Ct. 2440. A majority of the Court upheld the constitutionality of the ordinance, but in doing so did not agree on a single rationale for the decision. Id. at 62-63, 96 S.Ct. 2440 (plurality opinion); *id.* at 84, 96 S.Ct. 2440 (Powell, J. concurring). The plurality concluded that "apart from the fact that the ordinance treats adult theaters differently from other theaters and the fact that the classification is predicated on the content of material shown in respective theaters, *the regulation of the place where such films may be exhibited does not offend the First Amendment."* Id. at 63, 96 S.Ct. 2440 (emphasis added). In reaching this conclusion, the plurality emphasized that "even though we recognize that the First Amendment will not tolerate the total suppression of erotic materials that have some arguably artistic value, it is manifest that society's interest in protecting this type of expression is of a wholly different, and lesser, magnitude than the interest in untrammeled political debate." Id. at 70, 96 S.Ct. 2440. The plurality also found that the city's zoning ordinance was justified by its interest in "preserving the character of its neighborhoods," *id.* at 71, 96 S.Ct. 2440, and therefore "the city must be allowed a reasonable opportunity to experiment with solutions to admittedly serious problems. " Id. The plurality concluded its analysis by noting that "what is ultimately at stake is nothing more than a limitation on the place where adult films may be exhibited . . . . . Id. [FN19]

FN18. The Court also concluded that the zoning ordinance did not violate the Due Process and Equal Protection Clauses of the Fourteenth Amendment, *American _Ylini Theatres,* 427 U.S. at 61, 72-73, 96 S.Ct. 24.-'0; *see generally* id_ at 73-84; 96 S.Ct. 2^-.^^-.0 (Powell, J., concurring), issues that are not before us on appeal.

FN19. The *American Illlini Theatres* plurality also noted, in a footnote, that the city had enacted the zoning ordinance because of its determination that "a concentration of 'adult' movie theaters causes the area to deteriorate and become a focus of crime, *effects* which are not attributable to theaters showing other types of films," 427 U.S. at 71 n. 34, 96 S.Ct. 2440 (emphasis added), noting "[i]t is this *secondary effect* which these zoning ordinances attempt to avoid, not the dissemination of ' offensive' speech." Id. (emphasis added).

Justice Powell concurred in the judgment of the Court, agreeing with the plurality that the zoning ordinance "is addressed only to the places at which this type of expression may be presented, a restriction that does not interfere with content. " Id. at 78-79, 96 S.Ct. 2440. He disagreed, however, with the plurality's determination that "nonobscene, erotic materials may be treated differently under First Amendment principles from other forms of protected expression." Id. at 73 n. 1, 96 S.Ct. 2440. Instead, Justice Powell concluded that it was appropriate to analyze and uphold the constitutionality of the zoning ordinance under the four-part test enunciated in *United States v. O'Brien,* 391 U.S. 367, 88 S.Ct. 1673, 20 L.Ed.2d 672 (1968). Id. at 79, 96 S.Ct. 2440. [FN20]

FN20. Under *iYlarks v. United States,* 430 U.S. 188, 193, 97 S.Ct. 990, 51 L.Ed.2d 260 (1977), Justice Powell's concurrence is the controlling opinion in *American Mini Theatres,* as the most narrow opinion joining four other Justices in the judgment of the Court. *Entertainment Concepts, Inc.,* 111v. *Maciejewski,* 631 F.2d 497, 504 (7th Cir.1980).

'k716 (2) *City of Renton v. Playtime Theatres, Inc.*

The Supreme Court's decision in *American Nlini Theatres* laid the groundwork for the Court's decision in *City of Renton v. Playtime Theatres, Inc.,* 475 U.S. 41, 106 S.Ct. 925, 89 L.Ed.2d 29 (1986). [FN21] In *Renton,* the Court considered the validity of an adult entertainment zoning ordinance virtually indistinguishable from the one at issue in *American Alini Theatres.* Id. at 46, 106 S. Ct. 925. Unlike the *American dllini Theatres* plurality, however, the *Renton* Court outlined an analytical framework for evaluaiing the constitutionality of these ordinances. The Court's analysis proceeded in three steps. First, the Court found that the ordinance did not ban adult theaters altogether, but merely required That they be

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distanced from certain sensitive locations. Id. Next, the Court considered whether the ordinance was content-neutral or content-based. If an ordinance is content-based, it is presumptively invalid and subject to strict scrutiny. Id. at 46-47, 106 S.Ct. 925. On the other hand, if an ordinance is aimed not at the content of the films shown at adult theaters, but rather at combating the secondary effects of such theaters on the surrounding community (e.g., increased crime rates, diminished property values), it will be treated as a content-neutral regulation. Id. In *Renton,* the Court held that the zoning ordinance was a "content neutral" regulation of speech because while "the ordinance treats theaters that specialize in adult films differently from other kinds of theaters .... [it] is aimed not at the *content* of the films shown ... but rather at the *secondary effects* of such theaters on the surrounding community." 475 U.S. at 47, 106 S. Ct. 925. Finally, given this finding, the *Renton* Court found that the zoning ordinance would be upheld as a valid time, place and manner regulation, id. at 46, 106 S.Ct_ 925, if it "was designed to serve a substantial governmental interest and [did] not unreasonably limit alternative avenues of communication." Id. at 47, 106 S. Ct. 925. The Court concluded that the zoning ordinance met this test, noting that a " 'city's interest in attempting to preserve the quality of urban life is one that must be accorded high respect.' " *id.* at 50, 106 S.Ct. 925 (quoting *American Alini Theatres,* 427 U.S. at 71, 96 S.Ct.' 2440), [FN22] and that the ordinance allowed for reasonable alternative avenues of communication because there was "ample, accessible real estate" open for use as adult theater sites. Id. at 53, 96 S.Ct. 2440.

FN21. Falling in between *American* ***iYlini Theatres*** and *Renton is* the Supreme Court's decision in ***Schad v. Borough Mount*** *Ephraim,* 452 U.S. 61, 101 S.Ct. 2176, 68 L.Ed2d 671 (1981), where the Court struck down, on First Amendment grounds, a zoning ordinance that did not--like the ordinance in *American* ***Afini*** Theatres--require the dispersal of adult theaters, but instead prohibited them altogether. Id. at 71-72, 96 S.Ct. 2440 (plurality opinion); *id.* at 77. 96 S.Ct. 2440 (Blackmun, J., concurring): *id.* at 79. 96 S.Ct. 2440 (Powell. J., concurring). The only significance *of Schad,* for purpose of our analysis, is that the holding of chat case serves as the basis for the first step in the *Renton* framework--i.e._ does the ordinance completely prohibit the expressive conduct at issue? *See Alameda Books,* 122 S.Ct. at 1733 (noting that the first step in the *Renron* framework was the Court's determination that "the ordinance did not ban adult theaters altogether, but merely required that they be distanced from certain sensitive locations"); *Renton,* 475 U.S. at 46, 106 S. Ct. 925.

FN22. *See also American Mini* Theatres, 427 U.S. at 80, 96 S.Ct. 2440 (Powell, J., concurring) ("Nor is there doubt that the interests furthered by this ordinance are both important and substantial").

**11 The Supreme Court's decision in *Renton is* also notable because in addition to upholding the constitutionality of the zoning ordinance, the Court also held that the *717 First Amendment did not require municipalities, before enactin such ordinances, to conduct new studies or produce evidence independent of that already generated by other cities (whether summarized in judicial decisions or not), *Renton,* 475 U.S. at 51-52, 106 S.Ct. 925, so long as "whatever evidence [a] city relies upon is reasonably believed to be relevant to the problem that the *city* addresses. " Id_

(3) *Barnes v. Glen Theatre, Inc.*

In *Barnes v. Glen Theatre, Inc.,* 501 U.S. 560, 111 S.Ct. 2456, 115 L.Ed.2d 504 (1991), the Supreme Court was called upon to address the constitutionality of Indiana's public indecency statute. In a splintered decision, a narrow majority of the Court held that the statute--which prohibited nudity in public places--could be enforced against establishments featuring nude dancing, i.e., by requiring dancers to wear pasties and G-strings during their performances, without violating the First Amendment's right of free expression. Id. at 565, 111 S. Ct. 2456 (plurality opinion); id. at 572, 111 S.Ct. 2456 (Scalia, J. concurring); id. at 582, 585, 111 S.Ct. 2456 (Souter, J. concurring). Of that majority, however, only three Justices agreed on a single rationale.

The plurality--Chief Justice Rehnquist and Justices O' Connor and Kennedy-- began its analysis by emphasizing that while "nude dancing ... is expressive conduct within the outer perimeters of the First Amendment .... [wje must [still] determine the level of protection to be afforded to the expressive conduct at issue, and ... whether the Indiana statute is an impermissible infringement of that. protected activity." *Barnes,* 501 U.S. at 566, 111 S.Ct. 2456. The plurality noted that the public indecency statute did not "ban [ ] nude dancing, as such, but ... proscribed public nudityy across the board," id., and than "the Supreme Court of Indiana

has construed the Indiana statute to preclude nudity in what are essentially places of public accommodation. " Id. Next; the plurality concluded that the public indecency statute should be analyzed under *O'Brien's* four-part test for evaluating regulations of expressive conduct protected by the First Amendment. [FN23] Applying, this test, the plurality found "that Indiana's public indecency statute [was] justified despite its incidental limitations on some expressive activity, " *id.* at 567, III S.Ct. 2456, because: (1) the statute was "clearly within the constitutional power of the State and furthers substantial governmental interests [i.e., protecting societal order and morality]," *id.* at 568, 111 S.Ct. 2456; (2) the state's interest in protecting societal order and morality by enforcing the statute to prohibit nude dancing was "unrelated to the suppression of free expression" because "the requirement that the dancers don pasties and G-strings does not deprive the dance of whatever erotic message it conveys; it simply makes the message slightly less graphic [and] [t]he perceived evil that Indiana seeks to address is not erotic dancing, but public nudity," *id.* at 570-71, 111 S.Ct. 2456; (3) the incidental restriction on First Amendment freedom placed on nude dancing by the statute was no greater than essential to the furtherance of the governmental interest because "[t]he statutory prohibition is not a means to some greater end, but an end in itself," id. at 571-72, 111 S.Ct. 2456; and (4) the public indecency statute was narrowly tailored because "Indiana's requirement that the dancers wear pasties and G-strings is modest, and the *bare minimum necessary ~7I8 to achieve the State's purpose.* " Id. at 572, 111 S.Ct. 2456 (emphasis added).

FN23. In doing so, the *Barnes* plurality noted that the *O'Brien* test and the time, place, and manner test utilized by the Court in *Renton* have "been interpreted to embody much the same standards ...." 501 U.S. at 566, 111 S.Ct. 2456.

*.`12 Justice Scalia concurred in the judgment of the Court, but in doing so expressed his opinion that "the challenged regulation must be upheld not because it survives some lower level of First Amendment scrutiny, but because, as a general law regulating conduct and not specifically directed at expression, it is not subject to First Amendment scrutiny at all." Id. at 572, 111 S.Ct. 2456. Justice Souter also concurred in the judgment of the Court, agreeing with the plurality that "the appropriate analysis to determine the actual protection required by the First Amendment is the four-part inquiry described in *United States v. O'Brien.* " Id. at 582, 111 S.Ct. 2456. He wrote separately, however, to rest his concurrence in the judgment, "not on the possible sufficiency of society's moral views to justify the limitations at issue, but on the State's substantial interest in combating the secondary effects of adult entertainment establishments ....' Id. [FN24] In doing so, Justice Souter relied heavily on the Court's decision in *Renton.* *Id.* at 583-87, 111 S.Ct. 2456.

FN24. Under *lllarks,* 430 U.S. at 193, 97 S.Ct. 990, Justice Souter's concurrence is the controlling opinion in *Barnes,* as the most narrow opinion joining the judgment of the Court. Schultz, 228 F.3d at 842 n. 2; *Dilllla* Co7p., 185 F.3d at 830.

(4) *City of Erie v. Pap's A.Al.*

The Supreme Court revisited the *Barnes* holding in *City of Erie v. Pap's A.M.,* 529 U.S. 277, 120 S.Ct. 1382, 146 L.Ed.2d 265 (2000), where a majority of the Court upheld the constitutionality of a public indecency ordinance "strikingly similar" to the, one at issue in *Barnes.* *Id.* at 283, 120 S.Ct. 1382. Unlike *Barnes,* however, in *Pap's A.1I.* five justices agreed that the proper framework for analyzing public indecency statutes was *O'Brien's* four-part test_ *Id.* at 289, 120 S.Ct. 1382 (plurality opinion) ("We now clarify that government restrictions on public nudity ... should be evaluated under the framework set forth in *O'Brien* for content- neutral restrictions on symbolic speech"); *id.* at 310, 120 S.Ct. 1382 (Souter, J., concurring in part and dissenting in part) (agreeing with the "analytical approach that the plurality employs in deciding this case [he., the *O'Brien* test]"). *See also Ranch House, Inc. v. Amerson,* 238 F.3d 1273, 1278 (11th Cir.2001) (holding that "[a]lthough no opinion in [Pap's A.M.] was joined by more than four Justices, a majority of the Court basically agreed on how these kinds of statutes should be analyzed [i.e., *O'Brien's* four-part test]"). A majority of the Justices also agreed that combating the adverse secondary effects of nude dancing was within the city's constitutional powers and unrelated to the suppression of free expression. Pap's A.,V., 529 U.S. at 296; 301, 120 S.Ct. 1382 (plurality opinion) ("Erie's efforts to protect public health and safety are clearly within the city's police powers .... [and] [tjhe ordinance is unrelated to the suppression of free expression .... "); id. at 310, 120 S.Ct. 1382 (Souter, J., concurring in part and

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dissenting in part) ("Erie's stated interest in combating the secondary effects associated with nude dancing establishments is an interest unrelated to the suppression of expression .....), thus satisfying the first and third prongs of the *O'Brien* test.

**13 A majority of the Justices in Pap's A.M. could not, however, agree on whether the public indecency statute furthered an important or substantial interest of the city (second prong of *O'Brien),* and if so whether the incidental restriction on nude dancing was no greater than that essential to the furtherance of this interest (fourth prong). The plurality--Chief Justice Rehnquist and Justices O' Connor, Kennedy, *719 and Breyer--concluded that Erie's public indecency ordinance furthered an important or substantial government interest under *O'Brien* because "[t]he asserted interests of regulating conduct through a public nudity ban and of combating the harmful secondary effects associated with nude dancing [e.g., the increased crime generated by such establishments] are undeniably important." *Pap's A.A1.,* 529 U.S. at 296, 120 S.Ct. 1382. [FN25] The *Pap's A.M.* plurality also found that Erie's public indecency statute was no greater than that essential to furthering the city's interest in combating the harmful secondary effects of nude dancing because:

> FN25. The *Pap's A.M.* plurality's reliance on *Renton's* secondary effects doctrine is significant because it marks a departure from the *Barnes* plurality's determination that a public indecency ordinance may be justified by a State's interest in protecting societal order and morality, *Barnes,* 501 U.S. at 568, 111 S.Ct. 2456, and an adoption of the approach advocated by Justice Souter in his concurrence in that case. Id. at 582, 111 S.Ct. 2456.

> The ordinance regulates conduct, and any incidental impact on the expressive element of nude dancing is *de minimis*_ The requirement that dancers wear pasties and G-strings is a minimal restriction in furtherance of the asserted government interests, and the restriction leaves ample capacity to convey the dancer's erotic message.
> 529 U.S. at 301, 120 S.Ct. 1382.

Justice Scalia, joined by Justice Thomas; agreed with the plurality that the ordinance should be upheld, but wrote separately to emphasize that " 'as a general law regulating conduct and not specifically directed at expression, [the city's public indecency ordinance] is not subject to First Amendment scrutiny at all,' " *Pap's A.M.,* 529 U.S. at 307-08, 120 S.Ct. 1382 (quoting *Barnes,* 501 U.S. at 572, 111 S.Ct. 2456 (Scalia, J., concurring)), and that "[t]he traditional power of government to foster good morals *(bonos mores*), and the acceptability of the traditional judgment (if Erie wishes to endorse it) that nude public dancing *itself is* immoral, have not been repealed by the First Amendment." Id_ at 310, 120 S. Ct. 1382. Justice Souter concurred in part and dissented in part, stressing his belief that "the current record [does not] allow us to say that the city has made a sufficient evidentiary showing to sustain its regulation ...." Id. at 310-11, 120 S.Ct. 1382. Justice Stevens, joined by Justice Ginsburg, dissented, asserting that the ordinance was a "patently invalid" content-based ban on nude dancing that censored protected speech. Id. at 331-32, 120 S.Ct. 1382. Because the plurality's decision offers the narrowest ground for the Supreme Court's holding in *Pap's A.M.,* we find the reasoning of that opinion to be controlling. *Marks,* 430 U.S. at 193, 97 S.Ct. 990.

(5) City *of Los An -eles v. Alameda Books, Inc.*

This past term in *City of Los Anoeles v. Alameda Books, Inc.,* 535 U.S. 425, 122 S.Ct. 1728, 152 L.Ed.2d 670 (2002), the Supreme Court upheld, at the summary judgment stage, an ordinance prohibiting multiple adult entertainment businesses from operating in the same building. Id. at 1733_ The Court reached this conclusion despite the fact that the city had not, prior to the enactment of the ordinance, conducted or relied upon studies (or other evidence) specifically demonstrating that forbidding multiple adult entertainment businesses from operating under one roof reduces secondary effects. Id. at 1736 (plurality opinion); *id.* at 1744 (Kennedy, J., concurring). Once again, however, a majority of the Court could not agree on a single rationale for this decision.

*720 **14 The primary issue in *Alameda Books* was the appropriate standard "for determining whether an ordinance serves a substantial aover:unent interest under *Renton.* " 122 S. C t. at 1733. The plurality--written by Justice O' Connor and joined by Chief Justice Rehnquist and Justices Scalia and Thomas--concluded that whether a municipal ordinance is " 'designed to serve a substantial government interest and does not

unreasonably limit alternative avenues of communication' ... requires [courts to] ... ask[ ] whether the municipality can demonstrate a connection between the speech regulated by the ordinance and the secondary effects that motivated the adoption of the ordinance." Id. at 1737. According to the plurality, this requirement is met if the evidence upon which the municipality enacted the regulation " 'is reasonably believed to be relevant' for demonstrating a connection between [secondary effects producing] speech and a substantial, independent government interest. " Id. at 1736. The plurality stressed that once a municipality presents a rational basis for addressing the secondary effects of adult entertainment through evidence that "fairly support[s] the municipality's rationale for its ordinance, " id., the plaintiff challenging the constitutionality of the ordinance must "cast direct doubt on this rationale, either by demonstrating that the municipality's evidence does not support its rationale or by furnishing evidence that disputes the municipality's factual findings." Id. If a plaintiff fails to cast doubt on the municipality's rationale, the inquiry is over and "the municipality meets the standard set forth in Renton. " Id. If, however, a plaintiff succeeds "in casting doubt on a municipality's rationale in either manner, the burden shifts back to the municipality to supplement the record with evidence renewing support for a theory that justifies its ordinance. " Id. Because the plurality concluded that the city, for purposes of summary judgment, had complied with the evidentiary requirement outlined in Renton, id_, it remanded the case for further proceedings. Id. at 1738.

Justice Scalia, in addition to joining the plurality opinion, wrote separately to emphasize that while the plurality's opinion "represents a correct application of our jurisprudence concerning the regulation of the 'secondary effects' of pornographic speech .... our First Amendment traditions make 'secondary effects' analysis quite unnecessary. The Constitution does not prevent those communities that wish to do so from regulating, or indeed entirely suppressing, the business of pandering sex." Alameda *Books,* 122 S.Ct. at 1738-39.

Justice Kennedy concurred in the judgment of the Court, but writing separately because he concluded, inter alia, that "the plurality's application of Renton might constitute a subtle expansion, with which I do not concur." Id. at 1739. He began, however, by expressing his agreement with the plurality that the secondary effects resulting from "high concentrations of adult businesses can damage the value and integrity of a neighborhood," *id.,* stressing "[t]he damage is measurable; it is all too real." Id. He also agreed with the plurality that "[t]he law does not require a city to ignore these consequences if it uses its zoning power in a reasonable way to ameliorate them without suppressing speech," *id.,* emphasizing that "[a] city's 'interest in attempting to preserve the quality of urban life is one that must be accorded high respect.' " Id. (quoting American Adini Theatres, 427 U.S- at 71, 96 S.Ct. 2440). In Justice Kennedy's opinion, if a municipality ameliorates the secondary effects of adult entertainment through "the traditional exercise of its zoning power, and at the same time leaves the quantity and accessibility of the speech *721 substantially undiminished, there is no First Amendment objection .... even if the measure identifies the problem outside by reference to the speech inside--that is, even if the measure is in that sense content based." [FN26] Id. Like the plurality, he concluded that "[a] zoning law need not be blind to the secondary effects of adult speech, , so long as the purpose of the law is not to suppress it. " Id. at 1740. He also expressed his belief that zoning regulations "do not automatically raise the specter of impermissible content discrimination, even if they are content based, because they have a prima facie legitimate purpose: to limit the negative externalities of land use ... [and that] (t]he zoning context provides a built-in legitimate rationale, which rebuts the usual presumption that content-based restrictions are unconstitutional_" Id. at 1741.

FN26. The plurality in ***Alameda Books*** characterized the second step of the ***Renton*** framework as follows: "[w]e next consider[ ] whether the ordinance [is] content neutral or content based." 122 S.Ct. at *1734.* In his concurrence, Justice Kennedy joined the four dissenters, *id.* at *1744-45,* in jettisoning the "content neutral" label, noting that the "fiction" of adult entertainment zoning ordinances being "content neutral ... is perhaps more confusing than helpful .... These ordinances are content based and we should call them so." Id. at *1741.* In reaching this conclusion, Justice Kennedy emphasized that "whether a statute is content neutral or content based is something that can be determined on the face of it; if the statute describes speech by content then it is content based." Id. Justice Kennedy concluded, however, that an adult entertainment zoning ordinance is not subject to

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strict scrutiny simply because it "identifies the problem outside by reference to the speech inside," id. at 1740, and, as such. "the central holding of *Renton is* sound: A zoning restriction that is designed to decrease secondary effects and not speech should be subject to intermediate rather than strict scrutiny." Id. at 1741. Thus, while the label has changed, the substance of *Renton's* second step remains the same.

**15 Based on the foregoing principles, Justice Kennedy believes that two questions must be asked by a court seeking to determine whether a zoning ordinance regulating adult entertainment is designed to meet a substantial government interest: (1) "what proposition does a city need to advance in order to sustain a secondary-effects ordinance?", *Alameda Books,* 122 S. Ct at 1741; and (2) "how much evidence is required to support the proposition?" Id. According to Justice Kennedy, the plurality skipped the second question, giving the correct answer, but neglected to give sufficient "attention" to the first question, *id., i.e.,* "the claim a city must make to justify a content- based ordinance." Id. at 1742. In his view, "a city must advance some basis to show that its regulation has the purpose and effect of suppressing secondary effects, while leaving the quantity and accessibility of speech substantially intact, " *id.,* and "[t]he rationale of the ordinance must be that it will suppress secondary effects ... not ... speech. " Id. Justice Kennedy's primary area of disagreement with the =plurality's analysis was that, in,his opinion, it failed to "address how speech [would] fare under the city's ordinance." Id.

The differences between Justice Kennedy's concurrence and the plurality's opinion are, however, quite subtle. Justice Kennedy's position is not that a municipality must *prove* the efficacy of its rationale for reducing secondary effects *prior to* implementation, as Justice Souter and the other dissenters would require, *see, generally Alameda Books,* 122 S.Ct at 1744-51; but that a municipality's *rationale* must be *premised* on the theory that it "*may* reduce the costs of secondary effects without substantially reducing speech_" Id. at 1742 (emphasis added). Significantly, while Justice Kennedy believed that the plurality did not adequately address this aspect of the city's rationale, he agreed *722 with the plurality's overall conclusion that a municipality's initial burden of demonstrating a substantial government interest in regulating the adverse secondary effects associated with adult entertainment is slight, noting:

As to this, we have consistently held that a city must have latitude to experiment, at least at the outset, and that very little evidence is required .... As a general matter, courts should not be in the business of second-guessing fact-bound empirical assessments of city planners. The Los Angeles City Council knows the streets of Los Angeles better than we do. It is entitled to rely on that knowledge; *and if its inferences appear reasonable,* we should not say there is no basis for its conclusion.

Id. at 1742-43 (emphasis added).

The dissenting opinion of Justice Souter, joined by Justices Stevens and Ginsburg in full and by Justice Breyer with respect to part II, asserted that the Court should have struck down the ordinance. *Alameda Books,* 122 S.Ct. at 1747 (Souter, J., dissenting).

**16 Because Justice Kennedy's concurrence is the narrowest opinion joining the judgment of the Court in *Alameda Books,* we conclude that it is the controlling opinion. *Marks,* =130 U.S. at 193, 97 S. Ct. 990.

D. Does Section 5(b)'s prohibition of alcohol on the premises of Sexually Oriented Businesses violate the First Amendment?

[4] Based on the road map provided by the Supreme Court in 44 *Liquormart,* as described *supra,* we conclude that a liquor regulation prohibiting the sale or consumption of alcohol on the premises of adult entertainment establishments is constitutional if: (1) the State is regulating pursuant to a legitimate governmental power, *O'Brien,* 391 U.S. at 377, 88 S.Ct. 1673; (2) the regulation does not completely prohibit adult entertainment, *Renton,* 475 U.S. at 46, 106 S.Ct. 925; (3) the regulation is aimed not at the suppression of expression, but rather at combating the negative secondary effects caused by adult entertainment establishments, *Pap's A.M.,* 529 U.S. at 289-91, 120 S.Ct. 1382; [FN27] and (4) the regulation is designed to serve a substantial government interest, narrowly tailored, and reasonable alternative avenues of communication remain available, *see Alameda Books,* 122 S.Ct. at 1734 (plurality opinion); id. at 1739- 44 (Kennedy, J. concurring); *or,* alternatively, the regulation furthers an important or substantial government interest and the restriction on expressive conduct is no grearer than is essential in furtherance of that interest. *Pap's A.M.,* 529 U.S. at 296, 301 (plurality opinion); *id.* at 310,

120 S.Ct. 1382 (Souter, J., concurring in part and dissenting in part).

FN27. This prong is, for all practical purposes, identical to the ***Alameda Books*** plurality's inquiry into whether the zoning ordinance "was content neutral or content based." 122 S.Ct. at 1733-34. Although a majority of the Justices no longer employ the content neutral label when evaluating the constitutionality of a "secondary effects" ordinance, the ultimate inquiry remains the same. ***See supra*** n. 26.

[5] Applying the foregoing analytical framework here, we conclude that Section 5(b) does not violate the First Amendment. To begin with, the Village's regulation of alcohol sales and consumption in "inappropriate locations" is clearly within its general police powers. 44 *Liquormart,* 517 U.S. at 515, 116 S.Ct. 1495; *LaRue,* 409 U.S. at 114, 93 S.Ct. 390. As such, the Village enacted Section 5(b) "within the constitutional power of the Government." Pao's *A.111.,* 529 U.S. at 296, 120 S.Ct. 1382 (holding that a municipality's efforts to protect the public's health and safety through its 'k723 general police powers satisfies this requirement); *O'Brien,* 391 U.S. at 377, 88 S.Ct. 1673 (same).

[6] The next two prongs of our test concern the level of constitutional scrutiny_that must be applied to Section 5(b). The level of First Amendment scrutiny a ' court uses to determine whether a regulation of adult entertainment is constitutional depends on the purpose for which the regulation was adopted. If the regulation was enacted to restrict certain viewpoints or modes of expression, it is presumptively invalid and subject to strict scrutiny. *Texas v. Johnson,* 491 U.S. 397, 403, 411-12, 109 S.Ct. 2533, 105 L.Ed.2d 342 (1989); *Renton,* 475 U.S. at 46-47, 106 S.Ct. 925. If, on the other hand, the regulation was adopted for a purpose unrelated to the suppression of expression--e.g., to regulate nonexpressive conduct or the time, place, and manner of expressive conduct--a court must apply a less demanding intermediate scrutiny. 491 U.S. at 406-07, 109 S.Ct. 2533; *PaD's A.1LI.,* 529 U.S. at 289, 120 S.Ct. 1382 (plurality opinion); *id.* at 310, 120 S.Ct. 1382 (Souter, J., concurring in part and dissenting in part).

*17 [7][8] The Supreme Court has held that regulations or adult entertainment receive intermediate scrutiny if They are designed not to suppress the "content" of erotic expression, but rather to address the. negative secondary effects caused by such expression. *Alameda Books,* 122 S.Ct. at 1733-34 (plurality opinion), *id.* at 1741 (Kennedy, J., concurring); *Renton,* 475 U.S. at 48, 106 S.Ct. 925. Here, Section 5(b), like the liquor regulations at issue in *LaRue,* 409 U.S. at 118, 93 S.Ct. 390, does not completely prohibit Ben's Bar's dancers from conveying an erotic message; it merely prohibits alcohol from being sold or consumed on the premises of adult entertainment establishments. *See, e. g., Wise Enterprises, Inc. v. Unified Gov't of Athens-CZarke County, Georgia,* 217 F.3d 1360, 1365 (11th Cir.2000) (holding that "[t]he ordinance does not prohibit all nude dancing, but only restricts nude dancing in those locations where the unwanted secondary effects arise"); *Sammy's of Mobile, Ltd. v. City of JYlobile,* 140 F.3d 993, 998 (11th Cir.1998) (holding that ordinance prohibiting alcohol on the premises of adult entertainment establishments did not ban nude dancing, but merely restricted "the place or manner of nude dancing without regulating any particular message it might convey"). Moreover, it is clear that the "predominant concerns" motivating the Village's enactment of Section 5(b) " 'were with the secondary effects of adult [speech], and not with the content of adult [speech].' " *Alameda Books,* 122 S.Ct. at 1737 (plurality opinion) (quoting *Renton,* 475 U.S. at 47, 106 S.Ct. 925); id. at 1739-41 (Kennedy, J., concurring). [FN28] The Village enacted the Ordinance because it believed "there is convincing documented evidence that Sexually Oriented Businesses have a deleterious effect on both existing businesses around them and the surrounding residential areas adjacent to them, causing increased crime and the downgrading of property values." Specifically, the Village concluded that "the consumption of alcoholic beverages on the premises of a Sexually Oriented Business exacerbates the deleterious secondary effects of such businesses on the community." Additionally, in passing the Ordinance, the Village emphasized (in the text of the Ordinance) that its intention was not *724 "to suppress any speech activities protected by the First Amendment, but to enact a[n] ... ordinance which addresses the secondary effects of Sexually Oriented Businesses," and that it was not attempting to "restrict or deny access by adults to sexually oriented-materials protected by the First Amendment ...."

FN28. Federal courts evaluatine the "predominant concerns" behind the enactment of a statute, ordinance, regulation, or the like; may do so by

examining a wide variety of materials including, but not limited to, the text of the regulation or ordinance, any preamble or express legislative findings associated with it, and studies and information of which legislators were clearly aware. *Ranch House,* 238 F.3d at 1280.

[9] For all of the foregoing reasons, Section 5(b) is properly analyzed as a content-based time, place, and manner restriction, or as a content-based regulation of expressive conduct, and therefore is subject only to intermediate scrutiny. *Alameda Books,* 122 S.Ct. at 1733-36 (plurality opinion), *id.* at 1741 (Kennedy, J. concurring); *Pap's A.M.,* 529 U.S. at 294-96, 120 S.Ct. 1382 (plurality opinion), *id.* at 310, 120 S.Ct. 1382 (Souter, J., concurring in part and dissenting in part). [FN29] *See also Artistic Entm't, Inc. v. City of Warner Robins,* 223 F.3d 1306, 1308-09 (11th Cir.2000) (holding that "a prohibition on the sale of alcohol at adult entertainment venues --- [is] content-neutral and subject to the *O'Brien* test"); *Wise Enterprises,* 217 F.3d at 1364 (holding that "[i]t is clear from these [legislative] statements the County's ordinance is aimed at the secondary effects of nude dancing combined with the consumption of alcoholic beverages, not at the message conveyed by nude dancing .... [T]he district court was [therefore] correct in [applying] .. . intermediate scrutiny .....). Regulations that prohibit nude dancing where alcohol is served or consumed are independent of expressive or communicative elements of conduct, and the are treated as if they were content-neutral. *Wise Enterprises,* 217 F.3d at 1363.

FN29. *Compare G.O. Gentlemen's _Ouarters, Inc. v. City of Lake Ozark, Missouri,* 83 S. W.3d 98, 103 (2002) (holding that because the city presented no evidence that its purpose in enacting an ordinance restricting nudity in establishments where alcoholic beverages are sold "was to prevent the negative secondary effects associated with erotic dancing establishments, and, thus, that the ordinance was unrelated to the suppression of expression, the City had the heavy . burden of justifying the ordinance under the strict scrutiny standard").

**18 [10] This brings us to the heart of our analysis: whether Section 5(b) is designed to serve a substantial government interest, narrowly tailored, and does not unreasonably limit alternative avenues of communication, *or,* alternatively, furthers an important or substantial goverrnment interest and the restriction on expressive conduct is no greater than is essential in furherance of that interest. As previously noted, it is not entirely clear whether an adult entertainment liquor regulation is to be treated as a time, place, and manner regulation, or instead as a regulation of expressive conduct under *O'Brien. See, e. g., LLEH, Inc.,* 289 F.3d at 365. But in either case, we are required to ask "whether the municipality can demonstrate a connection between the speech regulated by the ordinance and the secondary effects that motivated the adoption of the ordinance." *Alameda Books,* 122 S.Ct. at 1737 (plurality opinion). At this stage, courts must "examine evidence concerning regulated speech and secondary effects." Id. In conducting this inquiry, we are required, as previously noted, to answer two questions: (1) "what proposition does a city need to advance in order to sustain a secondary-effects ordinance?"; and (2) "how much evidence is required to support the proposition?" Id. at 1741 (Kennedy, J. concurring). [FN30]

FN30. As noted *supra,* under *iYlarks v. United States,* 430 U.S. 188, 97 S.Ct. 990, 51 L.Ed.2d 260 (1977), Justice Kennedy's concurrence is the controlling opinion, as the most narrow opinion joining the judgment of the Court.

^725 [11] At the outset, we note that in order to justify a content- based time, place, and manner restriction or a content-based regulation of expressive conduct, a municipality "must advance some basis to show that its regulation has the purpose and effect of suppressing secondary effects [i.e., is designed to serve, or furthers, a substantial or important governmental interest], while leaving the quantity and accessibility of speech substantially intact [i.e., that the regulation is narrowly tailored and does not unreasonably limit alternative avenues of communication, or, alternatively, that the restriction on expressive conduct is no greater than is essential in furtherance of that interest]." [FN31] *Alameda Books,* 122 S.Ct at 1741 (Kennedy, J. concurring). The regulation may identify the speech .based on content, "but only as a shorthand for identifying the secondary effects outside. " Id. A municipality may not assert that it will reduce secondary effects by reducing speech in the same proportion. " Id. Thus, the rationale behind the enactment of Section 5(b) must be that it will suppress secondary effects, not speech. Id.

FN3i. In this case, it is unnecessary to conclusively resolve which of these two standards is applicable. A s explained *infra,* Section 5(b)'s alcohol prohibition is, as a practical matter; the least restrictive means of furthering the Village's

interest in combating the secondary effects resulting from the combination of adult entertainment and alcohol consumption, and therefore satisfies either standard.

The Village's rationale in support of Section 5(b) is that the liquor prohibition will significantly reduce the secondary effects that naturally result from combining adult entertainment with the consumption of alcoholic beverages without substantially diminishing the availability of adult entertainment, in this case nude and semi-nude dancing. In enacting the Ordinance; the Village Board relied on numerous judicial decisions, studies from 11 different cities, and "findings reported in the Regulation of Adult Entertainment Establishments of St. Croix, Wisconsin; and the Report of the Attorney General's Working Group of Sexually Oriented Businesses (June 6, 1989, State of Minnesota)," to support its conclusion that adult entertainment produces adverse secondary effects.

:"*19 Ben's Bar argues that the Village may not rely on prior judicial decisions or the experiences of other municipalities, but must instead conduct its own studies, at the local level, to determine whether adverse secondary effects result when liquor is served on the premises of adult entertainment establishments. This view, however, has been expressly (and repeatedly) rejected by the Supreme Court_ *Alameda Books,* 122 S. Ct. at 1743 (Kennedy, J. concurring) (holding that " '[t]he First Amendment does not require a city, before enacting ... an [adult entertainment secondary effects] ordinance to conduct new studies or produce evidence independent of that already generated by other cities, so long as whatever evidence the city relies upon is reasonably believed to be relevant to the problem that the city addresses.' ") (quoting *Renton,* 475 U.S. at 51-52, 106 S.Ct. 925); *Barnes,* 501 U.S. at 584, 111 S.Ct. 2456 (Souter, J. concurring) (same).

Ben's Bar also contends that the Village failed to meet its burden of demonstrating the constitutionality of Section 5(b) because "the Village's evidentiary record did not include any written reports relating specifically to the effects of serving alcohol in establishments offering nude and semi-nude dancing. " In *LaRue,* however; the Supreme Court explicitly held that a State's conclusion that "certain sexual performances and the dispensation of liquor by the drink ought not to occur at premises that have licenses was not an irrational *726 one." 409 U.S. at 118, 93 S.Ct. 390. Because the adult entertainment at issue in this case is of the same character as that at issue in *LaRue,* it was entirely reasonable for the Village to conclude that barroom nude dancing was likely to produce adverse secondary effects at the local level, even in the absence of specific studies on the matter. *Alameda Books,* 122 S.Ct. at 1736-37 (plurality opinion) (adopting view of plurality in Pap's A.111. as to the evidentiary requirement for adult entertainment cases), *id.* at 1741 (Kennedy, J., concurring) (agreeing with the plurality on this point, as a fifth vote); *Pap's A.Al.,* 529 U.S. at 296-97, 120 S.Ct. 1382 (plurality opinion) (same); *Giovani,* 303 F.3d at 516 (same). In fact, the Supreme Court has gone so far as to assert that "[c]ommon sense indicates that any form of nudity coupled with alcohol in a public place begets undesirable behavior." *Bellanca,* 452 U.S. at 718, 101 S.Ct. 2599. *See also Blue Canary,* 251 F.3d at 1124 (noting that "[l]iquor and sex are an explosive combination"); *Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Bd. of California,* 99 Cal.App.4th 880, 121 Cal.Rptr.2d 729, 737 (2002) (same). For these reasons, we conclude that the evidentiary record fairly supports the Village's proffered rationale for Section 5(b), and that Ben's Bar has failed "to cast direct doubt on this rationale either by demonstrating the [Village's] evidence does not support its rationale or by furnishing evidence that disputes the [Village's] factual findings ...." *Alameda Books,* 122 S.Ct. at 1736.

**20 Ben's Bar also contends that Section 5(b) is not narrowly tailored because the Village offered no evidence that "the incidental restrictions placed on Ben's [Bar], over and above the pasties and G-strings requirement, ameliorate any purported negative secondary effects." This argument, however, is problematic for several reasons, two of which we will address briefly.

[12] First, as previously noted, Section 5(b) does not impose any restrictions whatsoever on a dancer's ability to convey an erotic message. Instead, the regulation prohibits Sexually Oriented Businesses like Ben's Bar from serving alcoholic beverages to its patrons during a dancer's performance. This is not a restriction on erotic expression, but a prohibition of nonexpressive conduct (i.e., serving and consuming alcohol) during the presentation of expressive conduct. The First Amendment does not entitle Ben's Bar, its

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dancers, or its patrons, to have alcohol available during a "presentation" of nude or semi-nude dancing. *See Gary v. City of Warner Robins, Georgia,* 311 F.3d 1334, 1340 (11th Cir.2002) (holding that ordinance prohibiting persons under the age of 21 from entering or working at "any establishment ... which sells alcohol by the drink for consumption on premises" did not violate an underage nude dancer's First Amendment right to free expression because she "remains free to observe and engage in nude dancing, but she simply cannot do so ... in establishments that primarily derive their sales from alcoholic beverages consumed on the premises"); *Sammy's of Mobile,* 140 F.3d at 999 (holding that while nude dancing is entitled to a degree of protection under the Supreme Court's First Amendment jurisprudence, "we are unaware of any constitutional right to drink while watching nude dancing"); *Dept. of Alcoholic Beverage Control,* 99 Cal.App.4th at 895, 121 Ca1.Rptr.2d 729 (noting that "(f he State ... has not prohibited dancers from performing with the utmost level of erotic expression. They are simply forbidden to do so in establishments which serve alcohol, and the Constitution is thereby not offended"). What the First Amendment does require is that establishments like Ben's Bar be given "a 727 'reasonable opportunity' to disseminate the speech at issue." *North Ave. Novelties, Inc. v. City of Chicago,* 88 F.3d 441, 445 (7th Cir.1996). A "reasonable opportunity," however, does not include a concern for economic considerations. *Renton,* 475 U.S. at 54, 106 S.Ct. 925. [FN32]

FN32. In an affidavit filed with the district court, Barry Breault, part-owner of Ben's Bar, stated that:

The bulk of Ben's Bar's revenues are derived from beverage sales and associated food sales. Revenues from adult entertainment ... account for only about one-third of Ben's revenues. *Ben's Bar cannot operate at a profit without the revenue from the sale of alcoholic beverages, and the business such sales bring in.*

(Emphasis added.)

Second, Section 5(b)'s alcohol prohibition, like the one in *LaRue, is* limited to adult entertainment establishments; and does not appiy to:

[T]heaters; performing arts centers; civic centers; and dinner theaters where live dance. ballet. music, and dramatic performances of, serious artistic merit are offered on a regular basis; and in which the predominant business or attraction is not the offering of entertainment which is intended for the sexual interests or titillation of customers: and where the establishment is not distinguished by an emphasis on or the advertising or promotion of nude or semi-nude performances. [FN33]

FIN-33. This section of the Ordinance also emphasizes that '[while expressive live nudity may occur within these establishments [those noted in section (6)], this ordinance seeks only to minimize and prevent the secondary effects of Sexually Oriented Businesses on the community. Negative secondary effects have not been associated with these establishments. "

*21 Ordinance A-472(6). *Compare Giovani,* 3.03 F.3d at 515 (noting that lack of evidentiary support for adult entertainment liquor regulations "might not pose a problem if the challenged restrictions applied only to bars and clubs that present nude or topless dancing ").

Finally, we note that Section 5(b)'s liquor prohibition is no greater than is essential to further the Village's substantial interest in combating the secondary effects resulting from the combination of nude and semi-nude dancing and alcohol consumption because, as a practical matter, a complete ban of alcohol on the premises of adult entertainment establishments is the *only* way the Village can advance that interest. As the Supreme Court recognized in *LaRue,*

Nothing in the record before us or in common experience compels the conclusion that either self-discipline on the part of the customer or self-regulation on the part of the bartender could have been relied upon by the Department to secure compliance with ... [the] regulation[s]. The Department's choice of a prophylactic solution instead of one that would have required its own personnel to judge individual instances of inebriation cannot, therefore, be deemed an unreasonable one ....

409 U.S. at 116, 93 S.Ct. 390. *See also Wise Enterprises, Inc. v. Unified Government of Athens-Clarke County, Georgia,* 217 F.3d 1360, 1364-65 (11th Cir.2000) (holding that ordinance prohibiting alcohol on the premises of adult entertainment establishments satisfied *O'Brien's* requirement that restriction on First Amendment rights be no greater than necessary to the furtherance of the government's interest because "[t]here is no less restrictive alternative"). Indeed, unlike the zoning ordinance at issue in *Alameda Books,* there is no need to speculate as to whether Section 5(b) will

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achieve its stated purpose. Prohibiting alcohol on the premises of adult entertainment establishments will unquestionably reduce the enhanced secondary *728 effects resulting from the explosive combination of alcohol consumption and nude or semi-nude dancing.

Given the foregoing, we conclude that Section 5(b) does not violate the First Amendment. The regulation has no impact whatsoever on the tavern's ability to offer nude or semi-nude dancing to its patrons; it seeks to regulate alcohol and nude or semi-nude dancing without prohibiting either. The citizens of the Village of Somerset may still buy a drink and watch nude or semi-nude dancing. They are not, however, constitutionally entitled to do both at the same time and in the same place. Gary, 311 F.3d at 1338 (holding that there is no generalized right to associate with other adults in alcohol- purveying establishments with other adults). The deprivation of alcohol does not prevent the observer from witnessing nude or semi-nude dancing, or the dancer from conveying an erotic message. Perhaps a sober patron will find the performance less tantalizing, and the dancer might therefore feel less appreciated (not necessarily from the reduction in ogling and cat calls, but certainly from any decrease in the amount of tips she might otherwise receive). And we do not doubt Ben's Bar's assertion that its profit margin will suffer if it is unable to serve alcohol to its patrons. But the First Amendment rights of each are not offended when the show goes on without liquor.

III.

*22 For the reasons expressed in this opinion, Section 5(b)'s prohibition of alcohol on the premises of adult entertainment establishments does not violate the First Amendment. We, therefore, affirm the district court's decision granting the Village's motion for summary judgment.

316 F.3d 702, 2003 WL 132541 (7th Cir.(Wis.))

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Final Report to the City or Garden Grove:

The Relationship between Crime and-Adult-Business Operations

on Garden Grove Boulevard

Richard McCleary, Ph.D.

James W. Meeker, J.D., Ph.D.

October 23,1991

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I. Introduction and Executive Summary

This report summarizes an exhaustive series of statistical analyses conducted over a ten-month period by Richard McCleary, Ph.D., James W. Meeker, S.D., Ph.D., and five research assistants. This document presents the statistical analyses that we feel are the most relevant for the legal requirement it of basing zoning restrictions on adult businesses on their negative impact on the community in terms of crime, decreased property value and decreased quality of life. It is constitutionally important that the City of Garden Grave base any restrictions on adult businesses on these so-called "secondary effects" and not upon the content or moral offensiveness of such businesses. We are confident that any independent reanalysis will reach similar conclusions.

In July 1990, we were contacted by the City Manager's Office and Police Department for advice on problems related to the operation of adult businesses on Garden Grove Boulevard. After year of experience with these businesses, the Police Department had come to suspect that their operation constituted a public safety-hazard. Partly in response to this situation, the city had adopted a zoning ordinance that restricts the location and density of adult businesses. In order to withstand constitutional scrutiny, the City needs to be able to show that the ordinance was based on the negative secondary effects such businesses have on their surroundings and not on the content of these businesses or their morality. The precise dimensions of the negative impact of these businesses were unknown, however. It was not clear that the superficial spatial relationship between crime

and these businesses was statistically significant, for example, and if the relationship was significant, it was not clear what aspect of the operation was responsible for the hazard. The exact extent of other negative effects, such as decreased property values and reduced quality of environment for others in the area, were also unknown.

In several meetings with the City Manager's Office and the Police Department during the summer and fall of 1990, and after reviewing several studies conducted by other cities to justify zoning restrictions on adult businesses, it was decided that we would assist the City in undertaking its own study. This study would consist of an extensive statistical analysis of the City's crime data, a survey of real estate professionals, and a survey of City residents living close to the currently operating adult businesses. The study was designed to focus on the following questions:

• Does crime increase in the vicinity of an adult business? If so, is the increase statistically significant and does it constitute a public safety hazard?

• Can the public safety hazard be ameliorated by requiring a minimum distance between adult business? What is the required minimum distance?

• Are there any other practical zoning restrictions that would ameliorate the public safety hazard?

• Are adult businesses associated with a decrease in property values?

• Are adult businesses associated with declining quality of neighborhood?

We agreed to conduct the surveys and appropriate statistical analyses under

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three conditions: First, we could expect to have any public data held by the Police Department or the City Manager's Office; second, we could expect the full cooperation of the Police Department and the City Manager's Office; and third, the City would accept any and all (ridings regardless of their implications far past, present, or future policy. These conditions were accepted in principle and honored in practice. We enjoyed an extraordinary degree of autonomy and cooperation from both the Police Department and the City Manager's Office.

In November 1990, we began working with the Police Department to. define the parameters of the crime data to be analyzed. The complete set of crime reports for 1981-90 were eventually downloaded and read into a statistical analysis system. The reliability of these data was ensured by comparing samples of the data downloaded from the Police Department computers with data archived at the California Bureau of Criminal Statistics and Federal Bureau of investigation. Satisfied that the reliability of our data was nearly perfect, in January 1991, we began the arduous task of measuring the absolute and relative distances between crime events. We were eventually able to measure the relevant distances for a subset of 34,079 crimes to within 40 feet of the actual occurrence with 99 percent confidence. In late January through April 1991, these distances were analyzed in various models and with various methods. The results of these analyses showed that:

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• Crime rises whenever an adult business opens or expands its operation and the change is statistically significant. The rise is found in the most serious crimes, especially assault, robbery, burglary, and theft. The rise in "victimless" crimes (drug and alcohol use, sex offenses, etc.) is also significant, though less consistent and interpretable. Given the

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nature and magnitude of the effects, the adult businesses on Garden Grove Boulevard constitute a serious pubic hazard.

• Except for expansions, the adult businesses were in operation at their present locations on Garden Grave Boulevard prior to 1981. There has been so little variation in spatial density since then that the relationship between density and crime cannot be determined

• Architectural devices designed to ameliorate the nuisance of these businesses have no significant impact on crime.

• When an adult business opens within 1000 feet of a tavern (or vice verse) the impact of the adult business on crime is aggravated substantially and significantly.

During this same period of time, two questionnaire instruments were developed and administered. In January and February 1991, a sample of real.estate professionals were surveyed. Over nine hundred questionnaires were distributed with a response rate of fifteen percent The results at this survey show that:

• Real estate professionals overwhelming agree that close proximity of adult businesses is associated with decreased property values for commercial, single family residential and multiple family property.

• Real estate professionals associate the close proximity of adult business with increased crime and other negative impacts on the quality of the neighborhood.

During 'the spring and summer, 1991, a random sample at households living near the adult businesses was surveyed. The results of this survey show that:

• Residents who live near adult businesses, as well as those who live farther away, associate adult businesses with increased crime and other negative impacts on the quality of the neighborhood.

• A large proportion of residents who live near adult businesses report personal negative experiences that are attributed to these businesses

• Public support for regulation of adult businesses is overwhelming. While virtually all segments of the community voice support for all regulatory initiatives, home owners and women are the strongest supporters of regulation.

Each of these findings is fully supported by every bit of data available to us and by every analysis that we conducted.

The crime data and analyses underlying our four major research tasks are described in subsequent sections. Most readers will be more interested in the policy recommendations based on these analyses. however. Based on the four major components of our research, we recommend that:

-Lacking any conclusive evidence on the relationship between spatial density and crime, there is no reason to change the current 1000 foot minimum spacing requirement between two adult businesses

Given the serious public safety hazard, no adult business should operate within 1000 feet of a residence

• There feasible, the Conditional Use Permit process should be used to ameliorate the public safety hazard For optimal effectiveness, the Police Department must be fully involved in every aspect of this process.

• Given the interaction effect, no tavern should be allowed to operate within 1000 feet of an adult business and vice versa.

The evidence clearly supports the current city ordinance in demonstrating the presence of negative secondary effects associated with location and density of adult businesses as required by current federal and state case law.

These recommendations are informed by an understanding of the legal foundation of the problem. After developing that foundation in the following section, we present our analyses of crime patterns in Garden Grove and two related opinion surveys.

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II. Legal Requirements For Controlling Adult Businesses

The legal control and regulation of pornography in general and "adult entertainment" businesses-specifically has a long and controversial history. The 1970 Commission on Obscenity and Pornography overwhelmingly voted to eliminate all legal restrictions on use by consenting adults of sexually explicit books, magazines, pictures and films.' While President Nixon, who appointed the Commission, was not pleased with the findings, they were consistent with the general liberal view that pornography should be tolerated as a matter of individual choice and taste unless it directly harms others.2 The Williams Committee in England supported a similar position in 1979.3 Alternatively, the 1986 Attorney General's Commission on Pornography called for a more aggressive enforcement of obscenity laws and regulation of pornography that it deemed harmful even if not legally obscene. 4

The current judicial doctrinal standard that governs the difficult balance of constitutionally protected free speech and the direct regulation of pornography, is

'Report of the Commission on Obscenity and Pornography (Bantam Books,1970).

2See D.A. Downs, The New Politics of Pornography (University of

a

Chicago Press 1989.)

3 SeeW.A Simpson, Pornography. and Politics: Report of the Home Office (Waterlow .Publishers, 1983).

¢Attoreney General's Commission on Pornography, Final Report (US Department of Justice, 1986).

found in Miller v. California 413 U. S. 15 (1973):

> (a) whether "the average person, applying contemporary community standards' would find that the work, taken as a whole, appeals to the prurient interest; (b) whether the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law; (c) whether the work, taken as a whole, lacks serious literary, artistic, political, or scientific value. (24)

Despite this standard, the Attorney General's Commission concluded that

> [after the Aliller decision]._. the nature and extent of pornography in the United States has changed dramatically, the materials that are available today are more sexually

explicit and portray more violence than those available before 1970. The production, distribution and sale of pornography has become a large, well organized and highly profitable industry.[5]

Indeed, there is some empirical evidence to suggest that the number of prosecutious[6] **and appeals of obscenity convictions have declined nationwide.**[7]

Recently much of the local control of pornography has been of a more indirect nature given the difficulties of direct regulation and legal constraints involving First Amendment rights. One rather unique approach has,been the attempt to regulate pornography as **a violation of women's civil rights. This use of anti-discrimination statutes was first tried by Minneapolis**[9] **but has failed to catch on in general.**[10]

[5] *Final Report* **supra note 4 at 461.**

[6] **The New York Obscenity Project, "An Empirical Inquiry into the Effects of Miller v. California on the Control of Obscenity",** *New York University Law Review* **52:843 (197'7)**

[7] **R.E. Riggs, "Miller v. California Revisited: An Empirical Note,"** *Brigham Young University Law Review* **2:247 (1981)**

Mee generally *Downs,* **supra, note 2 at 20.**

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However, many municipalities have been very successful in regulating where pornographic businesses and adult entertainment businesses can locate through. the use of zoning laws.

Municipalities have followed two major strategies in regulating the location of adult entertainment businesses. One approach is to concentrate adult businesses in a limited area, often called the Boston or 'combat zone' approach. The other approach follows the opposite tactic by dispersing adult entertainment businesses, preventing their concentration, often called the Detroit approach.11

In Boston, adult entertainment businesses had been unofficially concentrated in a specific area of the city for many years.12 This "combat zone' was officially established as the Adult Entertainment District in 1974. It was felt that by formally restricting such businesses to an area where they were already established would prevent the spreading of these businesses to neighborhoods

9minneapolis Code of Ordinances (AO), Title 7, ch. 139.20, sec. 3, *subd. (g-).*

1QSee Downs supra note 2.

"For a general discussion of these two approaches see Planning Committee of the Los Angeles City Council, Study Of *the Effects of the concentration of Adult Entertainment Establishments In the City of Los Angeles, Los* Angels City Planning Department (June, 1977) (Hereinafter LA Study).

12 This discussion of Boston and the 'combat zone' approach is taken from the LA Study id., at 9-10.

where they were deemed inappropriate. In addition. concentration of adult businesses might aid in the policing of such activities and would make it easier for those who wanted to avoid such businesses to do so. There has been some question as to the effectiveness of this regulatory approach, as the LA Study observed:

> The effectiveness and appropriateness of the Boston approach is a subject of controversy. There has been some indication that it has resulted in an increase in crime within the district and there is an increased vacancy rate in the surrounding office buildings. Due to complaints of serious criminal incidents, law enforcement activities ban been increased and a number of liquor licenses in the area have been revoked. Since the "Combat Zone" and past of the surrounding area are part of various redevelopment projects, however, the change in character of the area cannot be attributed solely to the existence of "adult entertainment" -businesses. [13]

The other approach that municipalities have followed is the disbursement model, sometimes called the Detroit model. In 1972 Detroit modified an "Anti-Skid Row Ordinance" to provide that subject to waiver, an adult theater could not be located within 1,000 feet of any two other "regulated uses" or within 500 feet of a residential area. Regulated uses applied to ten different kinds of business establishments including adult theater; adult bookstores, cabarets, bar, taxi dance halls and hotels. This statutory zoning approach to regulating adult business was legally challenged and subsequently upheld by the Supreme Court as

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[13]Id., at 9.

constitutional in Young v. American lVini *neatres,* Inc.[14] This model has been adopted by numerous cities including Los Angeles and twelve other Southern California cities f6r controlling adult businesses.[15]

While the dispersal model has been found constitutionally valid, several subsequent court decisions have limited the way in which municipalities can adopt

14 427 U.S. 50 (1976) (Hereinafter Mini Theatres). This decision is often cited as the legal basis for a dispersal approach, however the opinion appears to support the constitutionality of both the dispersal and concentration models:

> It is not our function to appraise the wisdom of its [Detroit's] decision to require adult theater to be separated rather than concentrated in the same areas. In either event, the city's interest in attempting to preserve the quality of urban life is one that must be accorded high respect Moreover, the city must be allowed a reasonable opportunity to experiment with solutions to admittedly serious problems (427 U.S. 50, 71).

Indeed the Supreme Court upheld the Constitutionality of the concentration model in Renton, " Cities may regulate adult theater by dispersing them, as in Detroit, or by effectively concentrating them, as in Renton" (infra note 16 at 52).

1'The best single source for information on this topic is the Los Angeles City Council Planning Committee. According to the LA Study:

> Locally, the cities of Bellflower and Norwalk have enacted ordinances requiring adult bookstores and theaters to obtain a conditional use permit. As a part of their study the City of Bellflower surveyed over 90 cities in Southern California to determine how other cities were controlling adult bookstores. Of the cities which responded to the Bellflower survey, 12 require a conditional use permit for new bookstores. The conditions for obtaining such a permit generally include dispersal and distance requirements based upon Detroit model. Bellflower also includes. (LA Study supra note-at 12).

The LA Study also presents a table listing 9 cities nationally that have taken a dispersal zoning approach (Id., Table 11).

such zoning laws. In *Renton x Playtime Theatre, Inc.*[16] the Supreme Court held such statutes cannot be enacted for the purpose of restraining speech but have to be "content neutral" time, place, and manner regulations designed to serve a substantial governmental interest and not unreasonably limit alternative avenues of communications. In making this determination the court must look to the municipality's motivation and purpose for enacting the statute. if the statute is primarily aimed at suppressing First Amendment rights it is content based and invalid. But, if it is aimed at the "secondary effects" such businesses have on the surrounding community, it is content neutral and therefore valid..

In making this determination the court must look at a number of factors, from the evidence the municipality offers to support a Finding of secondary effects, to whether the zoning statute eliminates the possibility of any adult within the jurisdiction of the municipality. It is the first factor this report is primarily concerned with.[17] In the Mini Theaters case the Detroit Common Council made a finding that adult, businesses are especially injurious to a

16475 U.S. 41 (1986)(Hereinafter Renton)

17Even if an ordinance were enacted for the proper reasons the court still must determine whether the ordinance would effect effectively prevent any operation of an admit business within the municipality's jurisdiction, see Walnut Properties, Inc v. City of Whittier 808 F.2d 1331(1986). However this is presumably not an issue for the City of Garden Grove's ordinance because the enforcement of the ordinance would still allow the operation of adult businesses in various locations throughout the city.

neighborhood when they are concentrated. This was supported by expert opinion evidence:

> In the opinion of urban planners and real estate experts who supported the ordinances, the location several such businesses in the same neighborhood tends to attract an undesirable quantity and quality of transients, adversely affects property values, causes an increase in crime, especially prostitution, and encourages residents and businesses to move elsewhere. 18

The courts have not been very explicit in terms of the exact type and nature of the evidence of "secondary effects" that is required to uphold Zoning ordinances regulating the location of adult businesses. On the one hand, failure to introduce any evidence linking secondary effects with the way the ordinance is enforced, is insufficient19 On the other hand, a complete independent analysis of secondary effects in each, jurisdiction that enacts such laws is not necessary. In Renton[20] the Supreme Court upheld an ordinance without benefit of an independent analysis.

18NIini Theater supra note 18 at 55.

19fr$ere, the County has presented no evidence that a single showing of an adult movie would have any harmful secondary effects on the community. The County has thus famed to show that the ordinance, as interpreted by a. County to include any theater that shows an adult movie a single time is sufficiently" narrowly tailored' to affect only that category of theatres shown to produce the unwanted secondary effects." Renton 106 S.Ct. at 931. Nor do we see how the County could make such a showing, since it is difficult to imagine that only a single showing ever, or only one in a year, would have any meaningful secondary effects." Tollis, Inc- v. San Bernadino County 827 F.2 d 1329, 1333 (9th Cir. 1987).

20City of Renton v. Playtime Theater, Inc, 475 U.S. 41,106 S.Ct 925,89 LFd.2d 2x(1986).

In this case the City of Renton relied heavily upon the study of secondary effects done in Seattle to justify its ordinance. The Court held:

> We hold that Renton was entitled to rely on the experiences of Seattle and other cities, and in particular on the 'detailed findings' summarized in the Washington Supreme Court's [Northend Cinema, Inc v. Seattle, 90 Wash. 2d 709, 585 P. 2d 1153 (1978)] opinion, in enacting its adult theater zoning ordinance. The First Amendment does not require a city, before enacting such an ordinance, to conduct new studies or produce evidence independent of that already generated by other cities, so long as whatever evidence the city relies upon is reasonably believed to be relevant to problem that the city addresses." [21]

The Los Angeles City Planning Department conducted a study of secondary effects in 1977.'--' to support a spacing ordinance similar to the Detroit dispersal model. Since Garden Grove's ordinance follows the same *model* it may have been legally sufficient for the City of Garden

Grove to rely on the Los Angeles study. However, the Los Angels study is 19 years old and it could be argued that because of its size population structure, real estate market and other municipal characteristics, Los Angels IS not a good comparison city for Garden Grove.

Like the LA Study23 this analysis relies on a mulimethodologRal approach to analyze secondary effects associated with the location of adult businesses. Both

an analysis of crime rates and surveys were conducted to analyze secondary effects

21 Renton, Id. 475 U.S. 41 at 51-52.

22 See LA Study supra note

23 Supra note 11.

associated with such businesses. Unlike the LA Study this analysis is more sophisticated in several respects.

The LA Study examined the secondary effect of crime rates and their association with adult business by comparing the crime rates of Hollywood area (which had a large concentration of adult businesses during the period studied, November 1975 and December 1976) to the rest of the city.24 This analysis did show there was an increase in both Part 125 and Part I126 crimes associated with the Hollywood area and in higher concentration of adult businesses in comparison to the rest of the city. While supporting the presence of secondary effects, the analysis has several disadvantages for supporting a dispersion regulation model in Garden Grove.

The City of Garden Grove is not very similar to Hollywood, either in municipal character, or concentration and type of adult businesses.27 More

24 The analysis presented in the LA Study was taken from a report prepared by the Los Angeles City Police Department, The Impact of Sex Oriented Businesses on the Police Problems in the City of Los Angeles.

25 Part I crimes include homicide, rape, aggravated assault, robbery burglary, larceny and vehicle theft.

26 Part II crimes include other assaults. forgery and counterfeiting, embezzlement and fraud. stolen property, prostitution, narcotics, liquor law violations, gambling, and other miscellaneous misdemeanors.

27 Hollywood in 1969 had 1 hard<ore motel. 2 bookstores, 7 theaters, and 1 massage pariorf5cam joint; in 1975 had 3 hard-core motels, 18 bookstores, 29 theatres, and 38 massage parlor/scam joints. (see IA Study, Table VI, p.54). Garden Grove on the other hand only has Seven bookstores and adult video stores.

importantly, Garden Grove seeks to control adult businesses in terms of their location to schools, churches, and residences (200 feet) and in relation to each other (1000-feet) 28 To substantiate the relation between these distances and the secondary effects needed to justify the regulation, the analysis should demonstrate an association between the' secondary effects and these distance. For example, if crime rates are higher within 1000 feet of an adult business than they are around other businesses, this demonstrates a stronger association between secondary effects and the regulation designed to control them. While areas of a city that have higher concentrations of adult businesses may ban higher crime rates than other areas, this gives little support for regulation of specific distances between adult business and other land uses.

The I,A Study also presents the analyses of two questionnaires, one to businessmen and residential property owners, and one to realtors, real estate appraisers and lender, to determine the effects at adult businesses. While the questionnaires do ask the residents about possible negative effects, there was no distinction between the negative effects when the distances from adult businesses varied, nor when then were two or more such business located near each other. Both of these issues are important aspects of the Garden Grove ordinance.

28See Appendix for the Garden Grove ordinance.

III. Crime in Garden Grove, 1981-1990

During the decade of our study, 1981-1990, the Garden Grove Police Department recorded 108,196 tiCR Part I crimes (112 homicides, 548 rapes, 3;835 robberies, 16,677 assaults, 24,498

burglaries, 51,393 thefts, and 11,133 auto thefts) and 17,274 YTCR Part 11 crimes (2,828 sexual offenses, 5,353 drug offenses, 5,651 alcohol offenses, 972 weapons offenses, and 2,460 disorderly conduct. Figure 1 lends perspective to these numbers Part I crimes, *which* are ordinarily thought to be the 'most serious'. crimes, make up more than 85 percent of the total. Part H crimes, which include many of the so-called 'victimless" crimes, make up less than fifteen percent of the total. Another important difference between these two categories is that, while Part I crimes almost always begin with a citizen complaint, Part II crimes may result from proactive polieing..For this reason, Part II crimes have turned out to be less interesting to this study. Although we find a strong relationship between the distribution of Part II crimes (especially Part II sex offenses) and the location of adult business, we cannot draw a valid causal relationship from this finding. Part I crimes are quite another matter.

As shown in Figure 1, Part I crimes cm be divided further into Personal and Property categories. Personal crimes (or crimes against the person) account for approximately twenty percent of the Part I total. Seventy-eight percent of Personal crimes are assaults: 18 percent are robberies, three percent are rapes,

Figurt I - Distribution of Crimes in Garden Grave, 1981-1990

Total Crime

Part 11

Psr t tt 54+
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and slightly less than one percent are homicides. Property crimes (or crimes against property) account for approximately eighty percent of the Part I total_ Of these, 60 percent are thefts, 28 percent are burglaries, and 12 percent are auto thefts. Although it is tempting to think of Property crimes as less serious than Personal crimes, we caution the reader to remember that every crime has a deadly potential. Every armed robbery is a potential homicide. Every theft, burglary, or auto theft could quickly turn into a deadly confrontation_ While subsequent analyses may distinguish among the seven crimes then, we do this for didactic purposes only_ In our opinion, in practice, any Part I crime poses a serious threat to public safety.

With this caveat, we note that the mix of crimes in Garden Grove is not significantly different than the mix found in other California cities during the same period. This is also true of population-adjusted crime rates Relative to other California cities, Garden Grove has neither a "high" or "low" crime rate.[29] To illustrate this point, Table 1 lists the 1985 Part I crime rates for twenty-four representative cities. Garden Grove ranks slightly above the median on homicide and auto theft, and slightly below the media on rape, robbery, assault, burglary,

29The Garden Grove Police Department is organized into community'teams,' however, and it is generally believed that this organizational structure encourages police-citizen interaction, including reporting of crimes. Other things being equal, Garden Grove is expected to have a higher crime rate than a city whose police department is structured along more traditional lines.

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Table 1 - Crimes per 100,000 Population for California Cities, 1985

	Homicide	Rape	Assault	Robbery	Burglary	Theft	Auto Theft
Anaheim	7.3	48.8	273.8	199.6	2351.	4348.	777.
Bakersfield	6.6	65.3	567:2	489.5	3651.	6649.	796.
Berkeley	10.6	41_6	638.7	435.5	2836.	7971.	841.
Concord	2.9	27_9	1 02.2	258.3	1376.	4076.	430.
Fremont	2.3	25.8	65.2	372.1	1354.	2969.	265.
Fresno	21.2	81.8	566.9	392_7	3632.	7745.	812.
Fullenon	4. 9	32.3	168.2	201.5	1503.	4071_	503.
Garden Grove	10.5	38-13	25.2	293.6	2159_	4040.	693.
Glendale	2.9	-12.2	189.1	140.2	1378.	2940.	663_
Hayward	6.4	385	267.1	405.0	1809.	4926.	503.
Huntington Beach	2.4	22_3	100.9	147_8	1378_	2883.	450.
In-e'wood	28_7	112.6	1236.1	630_8	2417.	2586.	1660.

Modesto	4.7	52.4	187.0	276.7	1979-	6149.	505.
Ontario	9.0	76.6	327.6	713.8	2821.	4088.	699.
Orange	5.5	25.2	219.8	247.1	1712.	3540_	602.
Ornard	6_5	61-9	294.8	300.4	2008.	3984.	527.
Pasadena	24.6	49.1	596.3	590.3	2262.	5110.	921.
Pomona	25.9	92_7	907.9	1035_1	3155.	4337.	911.
Riverside	8.2	57_4	340.0	690.5	2628.	4849.	570.
San Bernadino	14_3	87.6	876.3	914.2	3783.	5295.	1127.
Santa Ana	16.2	28.9	424.0	294.6	2498.	6612.	1134.
Stockton	18.2	61.4	475.4	497.7	3347.	7937_	739.
Sunnyvale	4.7	27.2	77.9	100.4	759.	2544_	245.
Torrance	3.1	28.5	254.9	202.5	1150.	3024.	865.

Source: Uniform Crime Reports, 1985

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and theft. None of these rankings is significantly different than the median, of course, and furthermore, the rankings fluctuate slightly from year to year. While Garden Grove has an "average" crime rate relative to other cities, however, like any other city, Garden Grove has a range of "high" and "low" crime neighborhoods. We will address this point in greater detail shortly. For the present, it is important-to note that crime rates vary widely across any city.

Crime rates also vary widely over time. To illustrate again, Figure 2 shows annual Part I and Part II crime totals for Garden Grove over the decade of this study, 1981-1990 In some cases, auto theft and assault, for example, crime appears to trend steadily upward_ In other cases, particularly burglary, crime appears to trend steadily downward. In all cases, however, the trend is only apparent. In every constant spatial area that we have examined for this report, we in found ten-year trends to lie well within the bounds of stochastic error. In other words, we found no statistically significant trends. For reasons too numerous, complicated, and obscure to be discussed here, time series of crime totals drift stochastically from year to year and it is the

mathematical nature of a drifting process to appear to rise or fall over time. Although this phenomenon has been widely reported by statisticians Since the early 19th century, it is not well.

'Since these are crime totals (not crime rates), Figure 2 must be interpreted cautiously. Due to annexation, in-migration, out-migration, and growth, the population of Garden Grove has changed dramatically over the last ten years.

Annua].Crime Trends

Figure 2 - Annual Crime Trends in Garden Grove, 1981-1990

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Figure 2. Annual Crime Trends In Garden Grove, 1981-1990

understood by popular media or the public. Nevertheless; each of the seven Part I crime trends is consistent with a "random" process and, hence, each is amenable to a statistical analysis_ The five Part II crime trends, in contrast, are not at all consistent with a "random" process. To illustrate, note that total sex offenses increase (from 320 to 480) by fifty percent from 1987 to 1988 and then decrease (from 480 to 232) by fifty percent from 1988 to 1989. Annual changes of this magnitude lie well

beyond the bounds of Normal "random" variation. In fact, the anomalous 1988 total is due to a concerted enforcement effort by the Garden'Grove Police Department. Lacking complete information on Part II enforcement activities during the 1981-1990 decade, we cannot attribute changes in Part IT crime rates to the operation of adult businesses. Although we report effects for Part II crimes in subsequent analyses, only internally valid effects are for Part I crimes.

Figure 3 shows another type of trend. Examining the day of the week of the seven Part I crimes, a distinct pattern emerges. We see here that the occurrence of Personal crimes peaks on weekends. Conversely, Property crimes peak during midweek and an least likely to occur on weekends. The basis for this pattern is well established in theory: crime occur when the opportunity is made available to a - person who is inclined to commit criminal actions. Opportunity is defined differently for Personal and Property crimes, however. Personal crimes (especially anonymous robbery and assault committed against strangers) are best

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Figure 3. Crimes Weekday-in Garden Grove, 1981-1990

conducted under cover of darkness, on an intoxicated victim, in a relatively deserted public location. These conditions presumably occur on weekend nights outside bars or adult businesses. In daylight, the desired anonymity is unobtainable and the vulnerable, prospective victims are not on the street Thus. Personal crimes are committed most often on weekend nights.

The opposite pattern holds for Property crimes. These crimes, notably theft and burglary, are most often committed when the offender is least likely to encounter any witnesses. In theory, the best time to break into a residence undetected is during the weekday daytime hours when mast occupants are away from home. For our purposes, however, the weekday patterns found in these data, as shown in Figure 3, are a simple confirmation of the reliability of our data. More important, perhaps, finding the same patterns in all four Personal crimes and all three Property crimes justifies collapsing Part I crimes into two broad categories. Hereafter, except where an effect or pattern varies across the Part I crimes, effects and patterns will be reported for Personal, Property, and Part If crime categories.

IV. The Impacted Area and the Public Safety Hazard

At present, seven adult oriented businesses operate on Garden Grove Boulevard. The Party House, located at 8751 Garden Grove Boulevard, was in operation on December 16,1980, when the City of Garden Grove annexed this area. Two other adult businesses, the Bijou and the Video Preview Rental Center, located at 8745 and 8743 Garden Grove Boulevard in the same building as the Party House, opened in March, 1986 and August 1988 respectively. Given the proximity of these three businesses, their individual impacts on crime are confounded. Treating them as a single cluster of businesses, however, we find a significant increase in both Personal and Property crimes following the openings of the adult businesses at 8745 and 8743 Garden Grove Boulevard in March, 1986 and August, 1988.

The Adult, located at 8502 Garden Grove Boulevard, and the A to Z, located at 8192 Garden Grove Boulevard, are far enough away from the 8700 *block* to allow for an assessment of individual impact. But since these businesses opened in February and May, 1980, at the very beginning of our crime data,- there is no simple casual benchmark for attributing crime around these businesses to their operation. The pattern of crime around these businesses is nevertheless consistent with that hypothesis. At the other end of Garden Grove Boulevard, the Hip Pocket (12686) and the Garden of Eden (12061-5), which opened in 1971

and 1977 respectively, pose the same problem. In Alarch, 1983, however, the Garden of Eden expanded its operation from one suite to three. As in the case of the Party House-Bijou-Video Preview Rental Center complex on the other end of Garden Grove Boulevard, we find a **significant rise in crime coincident with this expansion. The analyses supporting these fmdings will be presented shortly.**

In our opinion, these seven adult businesses constitute a serious and significant public safety hazard. One aspect of this hazard is apparent in Table 2. During the 1981-90 decade, 610 Garden Grove Boulevard addresses had one or more crimes.31 The seven adult business addresses accounted for 239 Personal, 694 Property, and 538 Part II crimes, however, so these seven addresses accounted for 10.5 percent of the Part I and 25.5 percent of the Part H crime on Garden Grove Boulevard during the last decade. Since this disparity could occur by chance done less than one time in one hundred, the implied difference between these seven addresses and the 603 other Garden Grove Boulevard addresses with one or more crimes is statistically significant. The second column of numbers in Table 2 are ranks. These numbers tell the same story but from a different perspective. As shown, three of the top ten Part I crime "hot spots" are found at the adult business addresses. Five of the top ten Part II crime "hot spots" are found at the adult

31 **Of course, most Garden Grove Boulevard addresses had no crimes during 1981- 90. Of these addresses with at least one crime, more than 55 percent had only one crime.**

'fable 2 - Reported Crimes for Adult Businesses

Garden Grove Boulevard Only, 1981-1990

Bocksfnr=Teepshcws

,Address	Pe.'sonal N	Bank	property tit	wk	PM1 1 N	Rank	Peru .11 N	Rank
8192 Garden Grove	*16*	*19*	*19i3*	*5*	*2%*	*5*	*160*	*1*
8502 Garden Grove	**25**	9_	93	13	**118**	**11**	**52**	**7**
8743 Gardezr Grave	**0**		**7**	**192**	**7**	**217**	**4**	**71**
$745 Garden Crove	**3**	**91**	**17**	**98**	**2f1**	**112**	**10**	**70**
8751 Garden Grove	**12**	**29**	**116**	**7**	**128**	**9**	**94**	**5**
12061 Garden Grove	**11**	**34**	**98**	**10**	**109**	**15**	**68**	**. 6**
12686 Garden Grove	**6**	**57**	**173**	**6**	**179**	**6**	**150**	**2**

BxrlTsverns

	Pvonal N	***R=k***	***Frcpe7~*** N	***stunk***	***Pxr I*** N	***Rank***	*Pun* N	***Rank***
8112 Garden Grave	41	**1**	**94**	**12**	**135**	**8**	**22**	**17**
$284 Garden Gro6s	15	**23**	**35**	**50**	**50**	**40**	**4**	**69**
8575 Gard-a Grcwe	**28**	**7**	**34**	**16**	**112**	**13**	**35**	**11**
8802 Garden Grave	**10**	**46**	**38**	**47**	**48**	**41**	**14**	**31**
8303 Garden Grove	**23**	**13**	**56**	28	77	23	20	20
12045 Garden Grave	***26***	***8***	***59***	***25***	***85***	***20***	***19***	***23***
12082 Garden grove	**33**	**4**	**87**	15	**120**	**9**	**43**	**9**
12761 Garden Grove	**11**	**40**	**24**	**78**	**35**	**61**	**4**	**81**
-12889 Garden Grove	**34**	**3**	**78**	**18**	**112**	**13**	**19**	**23**

business addresses, but this may be expected.

Of course, one can argue that the relationship is noncausal or spurious

that these businesses simply moved into a neighborhood that happened to already have a high crime rate. We test and reject this hypothesis in the next section. For now, we draw attention to the

Bar/Tavern addresses in Table 2. If the alternative hypothesis is that the Garden Grove Boulevard neighborhoods had high crime rates before the seven adult businesses moved in, we would expect to these addresses to have high crime rates as well (more so given that alcohol is served at these addresses). On the contrary, however, we find that these addresses have generally lower crime rates . than the adult business addresses. Whereas three of seven adult business addresses are in the top ten Part I crime "hot spots," only two of nine bar/tavern addresses make the top ten list. In this sense, the seven adult business addresses on Garden Grove Boulevard constitute serious, significant public safety hazards.

V. Quasi-Experimental Contrasts

The address-specific crime counts in Table 2 are compelling evidence of the public safety hazard posed by the adult businesses on Garden Grove Boulevard. Simple counts do not satisfy the criterion of scientific validity, however, for there are many non-causal explanations for any set of number. Validity requires that a change in the operation of an adult business be fbliowed by a change in the crime rate near the business. If the before-after change proves statistically significant, validity requires further that the same before-after change not be found in a suitable "control" area. Only after both criteria are satisfied can we state in scientifically valid terms that an adult business poses a public safety hazard.

The fact that the adult businesses on Garden Grove Boulevard have operated continually for the past decade has had an impact on our ability to conduct proper before/after analyses. Ideally, crime should be contrasted in a location before and after an adult business opens. Although this is not literally possible, given the constraints of time and data, there were three major expansions of adult businesses at two crime existing locations and analyses of these changes confirm the picture of these businesses painted by-Table 2. The quasi-experimental contrasts derived from these analyses are outlined in greater" detail here.

1) In March, 1982, the Garden of Eden expanded from a single suite at

12061 Garden Grove Boulevard into the adjoining suites at 12063 and 12065

Garden Grove Boulevard. The before/after and test/control contrasts for this change are:

One Year Before One Year After

Test Site	200'	500'	1000'	200'	500'	1000'	
Personal Crimes	1	14	28	43	15	16	28 59
Property Crime	10	46	84	140	17	58	167 242
Part 11 Crime	21	11	16	48	16	12	17 45

Control Site	200'	500'	1000'	200'	500'	1000'	
Personal Crime	0	11	12	33	1	9	28 39
Property Crime	13	52	76	141	12	56	87 155
Part II Crime	15	23	27	65	1122	29	62

Over the next year, Personal crimes within a200-foot radius rose significantly compared to the preceding year.[32] Also compared to the preceding year, Property crimes within a 1000 foot radius rose significantly. The effect of the expansion on Part II crimes was mixed and largely insignificant. To control for the possibility that these effects were due to unrelated extraneous variables, a "control" site was developed from the mean crime counts of the other six adult businesses. While crime rose in the vicinity of the Garden of Eden, however, crime remained static at the "control" site. Accordingly, we attribute the increases iri-Personal and Property crimes to the expansion of the adult business.

[32] Hereafter, unless stated otherwise, a significant effect will imply a probability of .01 or less.

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2) In March, 1986, the Bijou opened at in present location, 8745 Garden Grove Boulevard. Since the Party House had been operating at 8751 Garden Grove Boulevard prior to this time, the opening of Bijou was in effect an expansion. The before/after and test/control contrasts for this change are:

	One Year Before			One Year After		
Test Site	200'	500'	1000'	200'	500'	1000'
Personal Crimes	2	7	2130	6	11	30 47
Property Crimes	3	19	94	116	1140	113 164
Part 11 Crimes	13	14	43	70	8	13 42 63

ControtSite	200'	500'	1000'	200'	500'	1000'
Personal Crimes	2	10	30	42	1	113143
Property Climes	19	49	76	144	20 60 67	147
Part II Crimes	24	13	25	62	19	16 34 69

Over the next year, both Personal and Property crimes rose significantly within a 500 -foot radius_ The effect on Part II crimes was mixed and largely insignificant. Since no similar effects was observed at a "control" site developed from the mean crime counts of four other adult businesses, the increases an attributed to the opening of the Bijou.

3) In August; 1988, the Video Preview Rental Center opened at 8743 Garden Grove Boulevard_ Since the Party House and Bijou were already in operation, this opening too is treated as an expansion. The

before/after and test/control contrasts

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for this change are:

	One Year Before				One Year After			
Test Site	200'	500'	1000'	200'	500'	1000'		
Personal Crimes	0.	10	51	614	15	46	65	
Property Crimes	3	19	67	89	6	25	60	91
Part II Crimes	11	13	15	40	34	11	25	70

Control Site	200'	500'	1000'	200'	500'	1000'		
Personal Crimes	1	13	49	63	1	11	54	66
Property Crimes	5	22	74	1014	24	68	96	
Part IT Crimes	9	17	2148	28	13	20	41	

In the following year, Personal crime rose significantly within a 500-foot radius, Property crime rose significantly within a 200-foot radius, and Part II crimes rose significantly within a 200-foot radius (which is to say, at the Party House - Bijou Video Review Rental Center complex)_ No increases were observed at a "control" site developed from the mean crime counts of four other adult businesses.

The consistent pattern of effects in these three cases demonstrates that the adult businesses are indeed a public safety hazard as the data presented in the preceding section suggest. Given the nature of the operational changes in these three cases, furthermore, it appears that any expansion of an adult business will have the same effect_ In light of the potentially large area of the hazard and the predatory nature of the crimes associated with the hazard, we recommend- that no new adult businesses be allowed to operate within 1000 feet of a residential area."

Of course, virtually any increase in economic or social activity might be

expected to produce some increase in crime (though perhaps not so large an increase as was observed in these three cases). When an increase in crime can be attributed to a specific economic or social activity, it is reasonable to expect the responsible parties to take steps designed to ameliorate the problem. In one instance where an adult business acted to ameliorate a nuisance, howeverl the act had no impact on crime_

4) In September, 1988, the City installed a blockade in the alley immediately to the west of the Adult (8502 Garden Grove Boulevard) to prevent "cruising_" While the blockade undoubtedly accomplished this intended purpose, there was no significant effect on Personal, Property, or Part II crimes in the vicinity of the Adult_ The before/after contrasts for this change are:

	One Year Bd'are				Ome Yt2r Afar			
Test Site	**200'**	**3W'**	**.1000'**		**200'**	**500'**	**I ' ' '**	
Perscrvct 0imrs	**2**	**13**	**25**	**.41**	**2**	**11**	**21**	**34**
Prvperry Crimes	**3**	**19**	**67**	**39**	**6**	**25**	**60**	**91**
Art 17 Crimes	**11 -**	**13**	**16**	**40**	**34**	**11**	**23**	**70**

Although this simple architectural device had no significant impact on crime, there are undoubtedly many positive steps that an adult business can take to reduce crime in its vicinity. Since to our knowledge, no such steps were taken during 1981-1990, we cannot speak with authority on the likely effectiveness of the various

amelioration strategies.33 Nevertheless, we recommend that the City use its legitimate zoning authority to ensure that any new adult business will have a minimum ¡mpact on crime in its vicinity. Beyond this recommendation, we find strong evidence to suggest that the public safety hazard posed by adult businesses on Garden Grove Boulevard is exacerbated by proximity to a bar or tavern_ This is

based on two contrasts.

5) In April, 1985, a bar opened at 8112 Garden Grove Boulevard, approximately 425 feet from the A to Z. The before/after and test/control contrasts for this change are:

	One Yeir Before				One Yeir After			
Test Site	.200'	Soo`	10001*		200,	500'	1000A	
Personal Crimes	0	1	12	13	:	3	35	45
grope' Crimes	9	29	56	54	'T	41	6.z	Ila
Part IT CrLn=	4	2	7	1,3	2	9	11	22
Comm[Site	2000,	Sot?'	1000,		200,	.500'	1000,	
Person yes	0	1	14	15	0	2	14	16
Prcpary inC1	4	12	45	-41	2	19	51	72
Pans II Crimes-s	4	S	7	19	5	9	12	26

In the subsequent year, Personal crime within 1000 feet rose significantly.

33A similar architectural device was installed at the A to Z (8192 Garden Grove Boulevard) in May, 1990. '- We have insufficient data to measure the effect of this intervention, however.

Although Property crime also rose, the increase was not significant. No significant change was observed at a "control" site, so the increase in Personal crime was attributed to proximity to the bar. Since analyses of crime 200, 500, and 1000 feet from 8112 Garden Grove Boulevard (the bar) show no comparable effect, the rise in Personal crime cannot be attributed to the bar alone. Rather, it must be due to an interaction between the bar and the adult business.

	Ore Yesr Beforz				One Year After			
Test Site	200'	S0 0,	1000,		200'	Soo,	low,	
Prrsan4d Crfrnrs	2	9	13	24	2	13	9	26
.Frop Crnines	4	15	29	43	5	19	39	63
Pan 11 Cr=zs	13	=	S.	4.3	80	26	f	111
Coal Site	?/V7J	3W'	1''Y'		200,	3001 .	1000'	
F= I Crimes	tl	2	12	14	1	· 1	14	16
Froperry ter	5	11	39 ~	53	,3	13	44	60'
pa7t Ir Cranes	7	3	7	2:	7	3	13	33

6) In May, 1989, a bar closed at 12889 Garden Grove Boulevard, approximately 1075 feet from the Hip Pocket. The before/after and test/control contrasts for this change are:

In the subsequent year, no significant change was observed either in Personal or Property crime; significance not withstanding the change was in the opposite direction of what was expected. Part H crimes within 200 feet of the Hip Pocket rose precipitously and significantly. No change was observed at a "control" site.

Information from the Police Department suggests, however, that the increase in Part II crimes was the result of an unrelated enforcement campaign.

Failure to find any significant effect in this case suggests that the interaction effect observed in the preceding case is limited to 1000 feet. While we strongly recommend that no new adult business be located within 1000 feet of a bar (and vice versa), there is no evidence of interaction at distances exceeding 1000 feet.

VI. Survey or Real Estate Professionals

Following the research model of the LA Study, an analysis of real estate professionals was conducted to determine the prevailing professional opinion of the secondary effects produced by presence of adult businesses. The questionnaire instrument developed for this task distinguished between the effects on single-family residential property, multiple-family residential property and commercial property values. In addition, it asked for information on the effects of adult businesses within 200 feet, within 200-500 feet and the effects of two or more adult businesses within these distances. Not only were the effects on property values determined but also, effects on other issues that litigation in this area has found important such as crime, traffic, noise, safety, of women and children, quality of life, rents, loitering, and the ability to attract other businesses and customers were identified.

In January and February, 1991, copies of the instrument were sent to the membership list of the West Orange County Association of Realtors of the total 954 surveys sent out, 30 were returned with incorrect addresses_ The remaining sample of 924 resulted in a return of 141 completed questionnaires. Of these 141,

[34] See the Appendix for a copy of the questionnaire instrument and a complete tabulation responses.

19 where eliminated because of response bias- 35 The final analysis is based on

122 valid responses.') 6

The overall sample was very experienced in real estate, with 12.6 of years experience on average. This group of real estate professionals was very knowledgeable about Garden Grove real estate, with a mean experience in Garden Grove real estate of 10_1 years. The overwhelming majority of respondents (94.3%) also said that they had an opinion on the impact of adult businesses on the community.

The first set of items in our survey elicited opinions pertaining to the impact on property values by adult businesses_ When adult businesses are located within 200 feet of a residential or commercial property the overwhelming Opinion is that property values win be substantially decreased-

35 Throughout the questionnaire, various question were worded in either a negative or positive fashion. This is done to eliminate respondents that merely circle one response. such as strongly agree, to all questions_ The assumption is that a respondent who is answering all the questionnaire in a responsible fashion would not strongly agree with both a negative assessment of adult businesses and a positive assessment of adult businesses-

3 6 This gives a response rate of 122/924 or 13.2%. This is somewhat lower than the response rate for the LA: Study at 811/400 or 20% (p. 38). However, that report makes no mention of connection for response bias. If the 19 returned questionnaires that were eliminated for response bias had been included in the a-is, the response rate would have been 141/924 or 15.3%.

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use. **The density impacts on property value are large and significant nevertheless and support a density regulation.**

For location and density alike, the overall pattern is clear_ The vast majority of real estate professionals associate location of an adult business with decreased property values for single-family residential, multiple-family residential and commercial property. Clearly, these data indicate the presence of an adult business creates the secondary effect of decreased property values.

A second set of items elicited opinions on the impact of adult businesses on residential neighborhood qualities. A majority of respondents felt that locating an adult business within 200 feet of a residential area would result in increased crime, trafEc, litter, loitering and noise; and decreased safety for women and children, quality of life, and rents. Specific responses were:

	Increase	No Effect	Decease
Crime	93.1%	6.0%	0.9%
Traffic	97.4%	1-7%	0.9%
Litter	86.1%	12.1%	1.8%
Noise	72_4%	24.1%	3.6%
Safety	27_4%	10.6%	**61.9%**
Quality. of Life	18.4%	6.1%	75 .4%
Rents	8.0%	10_6%	81.4%
Loitering	85.5%	5.1%	9_4%

When asked about problems in relation to commercial properties, the vast majority of respondents blamed adult businesses for the same problems cited for residential

properties and, also, for decreases in quality of business environment, commercial rents, ability to attract new businesses, and ability of non-adult businesses to attract customers. Specifically:

	Increase	No Effect	Decrease
Crime	88.7%	9.6%	1.7%
Traffic	76_7%	20.7%	2.6%
Litter	83.5%	15.7%	0.9%
Noise	67.0%	29.5%	3.6%
Safety	23.1.2%	12.5 %	64.2%
Business Environment	11.5%	6.3%	81.2%
Commercial Rents	8.4%	15.9%	75.7%
Loitering	77_0%	8.0%	15.0%
Attract Businesses	7.9%	3.5%	88.5%
Attract Customers	8_8%	7.0%	84.3%

This general response pattern is essentially duplicated when respondents are asked about the impact of locating two or more adult businesses within 1000 feet of each other and within 200 feet of a residential or commercial area.

These findings are consistent with other studies addressing the negative impact associated with the location of adult businesses.[37] Closer analysis of response patterns reveals that respondents who felt adult businesses produce a decrease in property values also are likely to respond that these businesses have a negative effect on a neighborhood. One of the strongest associations was between decreased property values and increased crime. This is consistent with our analysis

[37] See for example the LA Report.

of the crime data. The data from this survey clearly indicates that real estate professionals feel that adult businesses are associated with decreased property values and decreased quality of neighborhood for both residential and commercial areas.

VII. Household Survey Results

The final component of this research project was a survey of Garden Grove households to assess citizen perceptions of the issues. Toward this end, we first developed a questionnaire instrument based

on instruments used in prior research but modified to reflect the particular circumstances of Garden Grove. After field-testing an early version of the instrument on a random sample of Santa Aria telephone households in March and April, '1991, a refined final version of the instrument was then administered to a stratified "random" ample of Garden Grove telephone households in the summer of 1991. To ensure that the sample included households in the proximity of problem areas, the total sample of N-250 included 200 addresses located within 1500 feet of an adult business_ We cannot therefore generalize our results to the larger population without applying a set of sample weights. As it turns out however, the survey results are so nearly unanimous that there is no need for complicated statistics.

Interviews were conducted by Garden Grove Police' Department cadets, the Consultants, and their research assistants. Standard survey research conventions were observed and independent audits were used to maintain the reliability and validity of responses. By Labor Day, 1991, each of the 250 households in the

[38] A copy of the final version of this instrument and tabulated response frequencies are found in the Appendix.

sample had either been contacted (with a completed interview or a refusal) or ruled out of the sample.[39] The final breakdown of the sample by interview status is:

4

Completed,	118	47.2%	803%
Refused	29	11.6%	19.7%
Language	20	8.0%	
No Answer	42	16.8%	
Invalid	41	16.4%	
Total	250	100.0%	100.0%

Non-English speaking households could not be interviewed and this is unfortunate. Nevertheless, the number of completed interviews (118) and the completion rate (80.3%) of this survey (80.3%) exceed the number realized in household surveys conducted in other cities. Accordingly, we believe that our

results present the most accurate available picture of attitudes toward adult businesses.

General Perceptions of the Problem_ The general public perceives the adult businesses on Garden Grove Boulevard as a serious problem that has a real impact on daily life. While perceptions of the nature of this problem vary somewhat; virtually everyone polled associates these businesses with One or more negative

39Phone number were ruled out for any of three reasons: (1) the number was not located in Garden Grove; (2) the number was a business; or (3) no one at the number spoke English.

aspects of urban life_ Exceptions to this rule are rare and the intensity of the feeling is greatest in neighborhood nearer Garden Grave Boulevard.

Each interview began by asking the respondent to estimate the distance from his or her house to the nearest adult business. The breakdown of responses in the sample of completed interviews was_

200 Feet/1 Block	12	9.8%	6.9%
500 Feet/ 2 Blocks	17	14.4%	4.9%
1000 Feet/3 +Blocks	54	45.8%	65.1
Don't Know	35	29.7%	

The accuracy of these subjective estimates was checked by asking the respondent to name (or at least, to descnbe) the adult business nearest their home. In a subset of cases, we were also able to measure the distance objectively_ From these data, it is clear that people are quite aware of how' near or far away they live from these businesses.

We next asked respondents to asses the impact that an adult entertainment business located in their neighborhood would have on series of "social problems." Specifically:

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Don't Know	35	29_7%0	

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We next asked respondents to asses the impact that an adult entertainment business located in their neighborhood would have on series of "social problems." Specifically:

going to ask a Series of questions concerning what the impact of adult entertainment business has, or would have, if it were located within *500* feet of your neighborhood. Please tell me if the impact would be a substantial increase, some increase, no effect, some decrease or a substantial decrease.

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Responses to this series of questions reveal a consistent perception of the impact of adult businesses on the pan of citizens. Broken down into three categories·

	Increase	No Effect	Decrease
Crime	*72.9%*	*27.1 %*	*0. 0%*
Traffic	*60.7%*	*38.5%*	*0.9%*
Litter	*6,6..7%*	*32.5%*	*0.9%*
Noise	*62.1%*	*36.2%*	*1.8%*
Safety	*31.9%*	*20.7%*	*47.5%*
Quality of Life	*16.3%*	*23.9%*	*59.8%*
Property Values	*14.5%*	*15.4%*	*70.1%*
Rents	*15_7%*	*38.9%*	*45.2%*
Loitering	*74.3%*	*22_2%*	*3.5%*
Graffiti	*56.6%*	*41-7%*	*1.7%*
Vandalism	*65.5%*	*32.8%*	*1.7%*

Respondents were asked if they knew of any specific incidents related to adult entertainment businesses in their neighborhoods. Twenty-five respondents (21.4%) answered affirmatively, citing specific examples of the 11 general problem areas covered in the survey instrument. Not surprisingly, most of these respondents lived relatively near an adult businesses.

Finally, to measure the depth of public sentiment, respondents were asked whether they would move if an adult entertainment business were to move into their neighborhood. Seventy-one respondents (61.2 %) indicated that they would ("definitely" or "probably") move. Of the minority (38.8%) who indicated that they would ("definitely" or "probably") not move, nearly half qualified their answers by

explaining that financial considerations precluded a move for any reason.

Attitudes on Regulation. With an exception to be noted, the public believes

that the City should regulate adult businesses. One hundred respondents (85.5%) believe that the City should regulate the location of adult businesses. Despite the apparent laissez faire implications Of the minority opinion, however, only one respondent (0.9%) believed that adult businesses should be allowed to operate in residential neighborhoods_ Though perhaps disagreeing on the nature and extent of regulation then, even the most ardent opponents of regulation seem to support some type of regulation.

A series of questions designed to measure support for and/or opposition to various approaches to regulation reveal a remarkable depth of support for all types of regulation. Regulatory initiatives designed to protect the integrity at residential life, for example, gamer nearly unanimous support from every element of the community:

Would you support a law that prohibited the establishment of an adult entertainment business within 500 fret at a residential area, school or church?.

Strongly Support 92 78.0% 78.0%

Support 13 11.0% 11.0%

Neutral 4 3.4% 3.4%

Oppose 6 5_1% 5_1%

Strongly Oppose 3 2.5% 2_5%

Regulatory initiatives designed to reduce the density of adult businesses, on the

going to ask a Series of questions concerning what the impact of adult entertainment business has, or would have, if it were located within 500 feet of your neighborhood. Please tell me if the impact would be a substantial increase, some increase, no effect, some decrease or a substantial decrease.

Consultants' Final Report - Page 42

Responses to this series of questions reveal a consistent perception of the impact of adult businesses on the pan of citizens_ Broken down into three categories:

	Increase	No Effect	Decrease
Crime	72.9%	27.1 %	0. 0%
Traffic	60.7%	38.5%	0.9%
Litter	6.6..7%	32.5%	0.9%
Noise	62.1%	362%	1_8%
Safety	31_9%	20.7%	47_5%
Quality of Life	16.3%	23.9%	59.8%
Property Values	14_5%	15_4%	70.1%
Rents	15.7%	38_9%	45.2%
Loitering	74.3%	22.2%	3.5%
Graffiti	56.6%	41.7%	1.7%
Vandalism	65.5%	32.8%	1_7%

Regulatory initiatives designed to reduce the density of adult businesses, on the other band, while not nearly so popular, are supported by a significant majority of citizens.

Would you support a law that prohibited the concentration of adult entertainment businesses within 1000 feet of each other?

Strongly Support 52 44.1 44.4

Support 21 17_8 17.9

Neutral 16 13.6 13.7

Oppose 22 18.6 18.6

Strongly Oppose 6 5.1 5.1

It should be noted, furthermore, that some of the respondents who oppose density regulations do so because they oppose any initiative shaft of prohibition.

Group Differences. Due to the overwhelming degree of support for almost any regulatory initiative and, also, due to the relatively small sample size, few

group differences are statistically significant. Home ownership and gender are exceptions. In general, home owners are more likely than renters and women are more likely than men to endorse any regulatory initiative. These differences are expected, of course, but a careful examination of response patterns reveals a curious difference. When asked whether the City should regulate the locations of adult businesses, for example, home owners and women alike express stronger support for regulation than their complementary groups_ Specifically,

Own Rent Own Rent

Regulate Yes 74 24 98 57 42 99

Regulate No 7 10 17 6 11 17

8134 115 63 53 116

Both differences (owners vs. renters and women w. men) are statistically significant. This common factor helps define the small minority (14.5%) of respondents who feel that the City should not regulate adult businesses at all.[40] Asked if they would move if an adult business were to open in their neighborhood, on the other hand, borne owners and women

diverge slightly:

Own Rent Own Rent

Move Yes 52 17 69 43 27 70

Move No 28 17 45 20 25 45

80 34 114 63 52 115

While home owners are more likely (vs. renters) to fly that they would move out of their neighborhoods to avoid an adult business, the difference is not statistically significant In contrast, the difference for women (vs. men) is quite significant -

[40] Respondents who expressed the opinion that the City should not regulate adult businesses tend to be younger (76.5% under 45) men (64.7%) who rent (58.8%). More important, perhaps, these respondents tend to live relatively far away from adult businesses (76.5% at least three blocks way) and live in households with no children (70.6%). Several of these respondents volunteered that they were "libertarians" of course, many of the respondents who initially told us that they opposed any regulation later expressed the opinion that adult businesses should not be allowed to locate near residential neighborhoods.

This divergence reflects a salient difference in the way home owners and women calculate costs and benefits. In the unstructured portions of the interviews, many home owners expressed feelings of resignation. One respondent who had lived in the vicinity of an adult business for more than thirty years, for example, told us that the social and economic-costs of moving to another neighborhood precluded this option; and in any event, there would no guarantee that adult businesses would not eventually move into the new neighborhood. On the other hand, many women respondents expressed overwhelming fear for their safety and the safety of their children. One woman respondent with three young children told us that she had already moved because one of her children had been harassed by a

man who she believed was a customer of an adult business. Although her new apartment was smaller and more expensive, she believed that the,move was absolutely necessary for the safety of her children_ Anecdotal data of this sort are not amenable to statistical analysis. Nevertheless, these data provide a context for interpreting the objective item responses of bur survey.

VII_ Conclusions

The data and analyses reported in this document make a clear, compelling statement about the secondary consequences of the adult entertainment businesses along Garden Grove Boulevard. In terms of property values alone, the survey of real estate professionals leads to the unambiguous conclusion that the mere presence of these businesses depresses residential and commercial property values. While the effect on commercial property values is problematic, the effect on residential property values argues for strict regulations governing the distance of adult businesses from residential neighborhoods. In commercial zones, moreover, the consistent opinions of real estate professionals suggest that high density also depresses commercial property values. This argues for strict regulations governing the distances between adult businesses.

A separate survey of Garden Grove households is fully consistent with the responses of real estate professional. Put simply, these businesses have a real impact on the daily lives of their neighbors. By all measures, respondents living near out of these businesses are aware of the presence of the businesses and have a pessimistic (but apparently realistic) view of their impact on the neighborhood. Whereas public hearings might lead one to conclude that actual incidents involving these businesses are rare, our survey results show the opposite; more than one in five respondents reported a specific incident related to the operation of adult

businesses. This experience leads to strong public support for regulation. Nine of ten respondents endorse regulations that prohibit adult businesses from operating near residential neighborhoods; nearly two-thirds endorse regulations that prohibit the gbographical concentration of adult businesses.

Although these two surveys may represent subjective opinion, their results are consistent with objective analyses of creme data_ Comparing temporal crime rates before and after changes in the operation of adult businesses, we find strong evidence of a public safety hazard. The subjective impression of Garden Grove residents and real estate professionals have an empirical basis, in other word. Given the seriousness nature of this public safety hazard, we recommend that

- No new adult businesses should be allowed to operate within 1000 feet of a residence.

We find a significant interaction effect between the adult businesses and taverns or ban. When an adult business opens within 1000 feet of a tavern or bar, crime rates rise by a factor that cannot be attributed to either business alone. Accordingly, we recommend that

• No new tavern or bar should be allowed to operate within 1000 feet of an adult

business and vice versa.

Since the adult businesses an Garden Grove Boulevard (or more precisely, their locations) were in operation prior to the advent of our data, we find no optimum

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or ideal distance between locations that would ameliorate the public safety hazard. Accordingly, we recommend that

• The present spacing code between adult businesses should be maintained.

Recognizing the legal and practical difficulties of changing the existing operations, furthermore, we have no recommendations for the existing operations. Although we find no evidence that the public safety hazard can be ameliorated by simple architectural barriers (walls, e.g.), the hazard could conceivably be minimized by regulations such as limiting the hours of operation, special lighting, and so forth. Toward this end, we recommend that

• Where feasible, the Conditional Use Permit should be used to ameliorate the public safety hazard. For optimal effectiveness, the Police Department must be fully involved in every aspect of this process.

There is a tendency to view adult entertainment businesses as "moral nuisances" when, in fact, the data show that they are public safety "hot spot." Adopting this view, it may be useful to enact policies designed to ensure the safety of customers and neighbors. Garden Grove Police Department is ideally suited to advise on the range of policy options that might be implemented.

A final recommendation pertain: to public involvement in the process. The results of our household survey reveal strong sentiments favoring any attempt to ameliorate the secondary consequences of this

problem. Neverfeless, we detect a

spirit of cynicism in the responses of citizens who live in the midst of the problem_ For example, the weaker public support for density regulation (w. regulating the distance from a residential neighborhood) reflects in part a draconian view of the problem; more than a few. of the respondents who expressed little or no support for this regulation did so on the grounds that the businesses should not be allowed to operate anywhere in the City. It would not be entirely correct to attribute this view to moral or moralistic attitudes. In many cases, respondents related personal experiences and fears that make these views understandable. Public support for any practical regulation may require a process that addresses the experiences and fears of these citizens. Unfortunately, we have no expertise (or even specific insights) to suggest how this might be accomplished.

APPENDIX

Real Estate Survey Frequencies

Household Survey Frequencies

Real Estate Instrument

Household Instrument

Proposed Statute

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Real Estate Professionals Survey Response Tabulations

Based on your personal observations as a real estate professional, or on information received through the practice of your profession, do you have an opinion as to whether the presence of an adult bookstore affects the resale or rental values of nearby properties?

Yes 115 94.3 94.3

No 6 4_9 4.9

Missing 1.8.8

How many years have you practiced in the real estate profession?

5 Years or Less 36 29.5 29.5

6-10 Years 16 13.1 13.1

11-25 Years 60 49.2 49.2

25 Years or More 10 8.2 8.2

How many years have you practiced real estate in the Garden Grove area?

5 Years or Less 47 3 8_3 3 8.5

6-10 Years 19 15.6 15.6

11-25 Years 51 41.8 41.8-

25 Years or More 3 2.4 4-1

Missing 2 1.6

Based on your professional experience, following types of property to be effected adult bookstore?

... Single-family residential

20% Decrease 76 62.3 618

10-20% Decrease 28 23_0 2').1

0-10% Decrease 14 11.5 11.6

No Effect 3 2.5 2.5

Missing 1 .8

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...Multiple-family residential

20% Decrease 46 37.7 38.3

10-20% Decrease 42 34_4 3 5.0

0-10% Decrease 26 21.3 21.7

No Effect 6 4.9 5.0

Missing 2 1.6

...Commercial

20% Decrease 24 19.7 20-2--

10-20% Decrease 40 32.8 33.6

0-10% Decrease 33 27.0 27.7

No Effect 18 14.8 15.1

0-10% Increase 3 2.5 2.5

20% Increase 1 .8.8

Missing 3 2.5

How would you expect the average value to be affected if the properties are within 200 to 500 feet of the new adult bookstore?

Single-family residential

20% Decrease 67 54.9 55.4

10.20% Decease 29 23.8 24.0

0-10% Decrease 19 15.6 15.7

No Effect 6 4.9 5. 0

Missing 1 .8

Multiple-family residential

20% Decease 41 33.6 34.2

10-20% Decease 36 29.5 30_0

0-10% Decease 34 27.9 2 8.3

No Effect 8 6.6 6.7

10-20% Increase 1 .8 .8

Missing 2 1 6

._.Commercial

20% Decrease 20 16.4 16_7

10-20% Decrease 37 3 0.3 3 0-10% Decrease 36 29.5 30. 0

No Effect 24 19.7 20.0

0-10% Increase 2 1.6 1.7

10-20% Increase 1 .8 .8

Missing 2 1.6

Assume that a new adult bookstore will be located within 1000 feet of an existing adult

bookstore or other adult entertainment use. Based upon your professional experience, how would you expect the average values of the following types of properties to be affected if they are less than 200 feet away from the new bookstore?

...Single-family residential

20% Decrease 51 41.8 41.8

10-20% Decrease 38 31.13 1.1

0-10% Decrease 20 16.4 16.4

No Effect 12 9.8 9.8

0-10% Increase 1 .8 .8

...Multiple-family residential

20% Decrease 41 33.6 33.6

10-20% Decrease 32 262 26.2

0-10% Decrease 33 27.0 27.0

No Effect 15 12.3 12.3

0-10%Increase 1 .8.8

--- Commercial

20% Decrease 27 22.1 22.3

10-20% Decease 27 22.1 22.3

0-10% Decrease 33 27.0 27.3

No Effect 33 27.0 27.3

10-20% Increase 1 .8 .8

Missing 1 .8

Consultants' Final Report - A4

How would you expect the avenge values to be affected if the properties are within 200 to 500 feet of the adult bookstore?

. ..Single-family residential

20% Decrease 65 53.3 55-1

10-20% Decrease 29 23.8 24.6

0-10% Decrease 15 12_3 12_7

0-10% Decrease 33 27.0 27_0

No E$Fect 15 12.3 12.3

0-10% Increase 1 .8.8

--- Cornrnercial

20% Decrease 27 22.1 22.3

10-20% Decease 27 22-122.3

0-10% Decrease 33 27.0 27.3

No Effect 33 27.0 27.3

10-20% Increase 1 .8.8

Missing 1 .8

Consultants' Final Report - A4

How would you expect the avenge values to be affected if the properties are within 200 to 500 feet of the adult bookstore?

.-Single-family residential-

20% Decrease 65 53 .3

24_6

0-10% Decrease 15 12.3 12_7

Substantial Increase 59 48.4 50.9

Some Increase 49 40.2 42.2

No Effect 7 5.7 6. 0

Some Decrease 1 .8 .9

Missing 6 4.9

Consultants' Final Report - A5

Traffic

Substantial Increase 28 23.0 23.9

Some Increase 60 49.2 5-1.3

No Effect 26 21-3 222

Some Decrease 2 1.6 1.7

Substantial Decrease 1 .8 .9

Missing 5 4.1

Litter

Substantial Increase 52 42_6 44.8

Some Increase 48 39.3 41.4

No Effect 14 11_5 12_I

Some Decrease 1 .8 .9

Substantial Decrease 1 .8.9

Mssing 6 4.9

._Noise

Substantial Increase 35 28.7 31.3

Some Increase 46 37.7 41.1

No Effect 27 22.1 24.1

Some Decrease 3 2.5 2_7 .

Substantial Decease 1 .8.9

Missing 10 8.2

Safety _

Substantial manse 24 19.7 21.2

Same Increase 7 5.7 6.2

No Effect 12 9.8 10.6

Same Decrease 24 19.7 21.2

Substantial Decrease 46 37.7 40.7

Missing 9 7.4

...Quality of life

Substantial Increase	14	11.5	12.3
Some Increase	7	5.7	6.1
No Effect	7	5.7	6.1
Some Decrease	39	32.0	34.2
Substantial Decrease	47	38.5	412
Missing	8	6_6	

...Rents

Substantial Increase	3	2.5	2.7
Some Increase	6	4.9	5.3
No Effect	12	9.8	10.6
Same Decrease	51	41.8	45.1
Substantial Decrease	41	6	36_3
Missing	9	7.4	

...Loitering

Substantial Increase 60 49.2 51.3

Some Increase 40 32.8 34.2

No Effect 6 4.9 5.1

Some Decrease 3 2.5 2.6

Substantial Decrease 8 6_6 6.8

Missing 5 4.1

Based upon your professional experience, hoW would you evaluate the impact of locating an adult bookstore within 200 feet of an area on the following problems. If the area is commercial?

... Crime

Substantial Increase 45 36.9 39.1

Same Increase 57 46.7 49_6

No Effect 11 9.0 9.6

Substantial Decrease 2 1_6 1.7

Mining 7 5.7

...Traffic

Substantial Increase 24 19.7 20.7

Some Increase 65 53_3 56.0

No Effect 24 19.7 20.7

Some Decrease 1 .8 .9

Substantial Decrease 2 .1.6 1.7

Missing 6 4.9

...Litter

Substantial Increase 36 29.7 31.3

Some Increase 60 492 52.2

No Effect 18 14.8 15.7

Substantial Decrease 1 .8 .9

lYlissing 7 5.7

...Noise

Substantial Increase 27 22.1 24.1

Some Increase 48 39.3 42.9

No Effect 33 27.0 29.5

Some Decrease 3 2.5 2.7

Substantial Decrease 1 .8.9

Missing 10 8.2

... Safety

Substantial Increase 16 13.1 143

Some Increase 10 8.2 8.9

No Effect 14 11.5 12.5

Some Decrease 36 29_5 32.1

Substantial Decrease 36 29.5 32.1

Missing 108.2

--- Quality of business environment

Substantial Increase 6 4.9 5.4

Same Increase 8 6.6 7-1

No Effect 7 5.7 6.3

Some Decrease 53 43 _4 47.3

Substantial Decrease 38 31.1 33.9

Missing 10 8.2

Consultants' Final Report - A8

.._Commercial rents

Substantial Increase 3 2.5 2_8

Some Increase 6 4.9 5.6

No Effect 17 13_9 15.9

Some Decrease 58 47_5 54.2

Substantial Decrease 23 18.9 21.5

Missing 15 12.3

..1,OIterlng

Substantial Increase 413 -1.6 36.3

Some Increase 46 37.7 40.7

No Effect 9 7_4 8.0

Some Decrease 11 9.0 9_7

Substantial Decrease 6 4.9 5.3

Missing 9 7.4

...Ability to attract new businesses

Substantial Increase 4 3.3 3.5

Some Increase 5 4.14.4

No Effect A 33 3.5

Some Decrease 39 32.0 34.5

Substantial Decrease 61 50.0 54.0

Missing 9 7_4

... Ability to attract east-en

Substantial Increase 6 4.9 53

Some Increase 4 3.3 3.5

No Effect 8 6.6 7.0

Some Decrease 37 3 0.3 32_5

Substantial Decrease 59 48_4 51.8

Missing 8 6.6

Based on your professional experience, how would you evaluate the impact of locating two or more bookstores within 1000 feet of each other and within 200 fret of an area on the following problems if the area is residential?

Consultants' Final Report - A9

...Crime

Substantial Increase 75 61.5 64.1

Some Increase 37 30_3 31.6

No Effect 4 3.3 3.4

Substantial Decrease 1 .8 .9

Missing 5 4.1

_._ Traffic

Substantial Increase 43 35.2 36.1

Some Increase 60 49.2 50.4

No Effect 14 11.5 11.8

Substantial Decrease 2 1.6 1.7

Missing 3 2.5

. ..Litter

Substantial Increase 63 51_6 52.9

Some Increase 46 37.7 3 8.7

No Effect 8 6.6 6-7

Substantial Decrease 2 1.6 1.7

l~lssing 3 2.5

.. .Noise

Substantial Increase 48 39.3 41.4

Some Increase 46 37.7 39.7

No Effect 17 13.9 14.7

Same Decease 2 1-6 1-7

Substantial Decease 3 2_5 2.6

Mssing 6 4.9

… Safety

Substantial Increase 22 18_0 18.8

Some Increase 10 8.2 8.5

No Effect 7 5.7 6.0

Some Decrease 24 19.7 20.5

Substantial Decrease 54 44.3 46.2

Missing 5 4.1

Mssing 3 2.5

.. .Noise

Substantial Increase 48 39.3 41.4

Some Increase 46 37_7 39.7

No Effect 17 13.9 14.7

Same Decease 2 1.6 1.7

Substantial Decease 3 2.5 2.6

Missing 6 4.9

... Safety

Substantial Increase 22 18.0 18_8

Some Increase 10 8.2 8.5

No Effect 7 5.7 6_0

Some Decrease 24 19.7 20.5

Substantial Decrease 54 44.3 46.2

Missing 5 4-1

Consultants' Final Report - Al 0

.-. Quality of life

Substantial Increase 10 8.2 8_5

Some Increase 2 1.6 1.7

No Effect 6 4.9 5.1

Some Decrease 30 24.6 25.6

Substantial Decrease 69 56.6 59.0

Missing 5 4.1

--- Rents

Substantial Increase 5 4.1 44

Some Increase 5 4.14.4

NoEffect 75.76.1

Same Decrease 45 36.9 39_5

Substantial Decrease 52 42.6 45.6

Missing 8 6.6

... Loitering

Substantial Increase 62 50.8 53.4

Some Increase 37 30.3 31.9

No Effect 5 4-14.3

Some Decrease 6 4.9 5.2

Substantial Decrease 6 4_9 5.2

Missing 6 4_9

Based on your professional experience, how would you evaluate the impact of location two or more bookstores within 1000 feet of each other and within 200 feet of an following problems if the area is commercial?

... Crime

Substantial Increase 53 43.4 44.2

Same Increase 59 484 49.2

No Effect 6 4.9 3. 0

Substantial Decease 2 1.6 1.7

Missing 2 1.6

Consultants' Final Report - A10

...Traffic

Substantial Increase 33 27.0 27.5

Some Increase 62 50.8 51_7

No Effect 22 18.0 18_3

Some Decrease 2 1.6 1.7

Based on your professional experience, how would you evaluate the impact of location two or more bookstores -within 1000 feet of each other and within 200 feet of an following problems if the area is commercial?

... Crime

Substantial Increase 53 43.4 44.2

Same Increase 59 48.4 49.2

No Effect 6 4.9 3.0

Substantial Decease 2 1.6 1.7

Missing 2 1.6

Consultants' Final Report - A10

...Traffic

Substantial Increase 33 27.0 27.5

Some Increase 62 50.8 51_7

No Effect 22

2 1.6 1.7

...Quality of business environment

Substantial Increase 5 4.14.3

Some increase 3 2.5 2_6

No Effect 8 6_6 6.9

Some Decrease 47 38.5 40.5

Substantial Decrease 53 43.4 45.7

Missing 6 4.9

Consultants' Final Report - A12

...Commercial rents

Substantial Increase 6 4.9 5.4

Some Increase 9 7.4 8-1 No Effect 13 10.7 11.7

Some Decrease 39 32.0 35_1

Substantial Decrease 44 3 39.6

Missing 11 9.0

...Loitering

Substantial Increase 49 402 42.6

...Quality of business environment

Substantial Increase 5 4.143 Some Increase 3 2_5 2.6

No Effect 8 6.6 6_9

Some Decrease 47 3 8.5 40.5

Substantial Decrease 53 43.4 45.7

Missing 6 4.9

Consultants' Final Report - A12

...Commercial rents

Substantial Increase 6 4.9 5.4

Some Increase 9 7.4 8.1

No Effect 13 10.7 11.7

Some Decrease 39 32.0 35_1

Substantial Decrease 44 36.1 39.6

iVlissing 119.0

...Loitering

Substantial Increase 49 40.2 42.6

Same Increase 45 36.9 39-1

No Effect 5 4-14.3

Some Decrease 8 6.6 7.0

Substantial Decrease 8 6.6 7.0

Missing 7 5.7

...Ability to attract new'businesses

Substantial Increase 4 3.3 3.5

Some Increase 4 3.3 3.5

NoEffect 75.76.1

Some Decease 43 35.2 37.7

Substantial Decrease 56 45.9 49.1

Missing 8 6_6

...Abilityto attract customers

Substantial Increase 7 5.7 5_9

Some Increase 3 2.5 2.5

No Effect 10 8.2 8.5

Some Decease 38 3 32.2

Substantial Decrease 60 49.2 50.8

Missing 4 3.3

Would you mind if we contacted you in the future regarding your responses to these survey questions?

No 63 51.6 64_3

Yes 26 21.3 26.5

Missing 33 78.1

Household Survey Response Tabulations

To the best of your knowledge, how close is the nearest adult 'bookstore or adult entertainment establishment?

200 Feet	6	5.1	5.1
500 Feet	2	1.7	1.7
1000 Feet	8	6.8	6.8
1 Block	6	5.1	5.1
2 Blocks	15	12.7	12.7
3+ Blocks	46	39.0	39.0
Don't Know	35	29.7	29.7

I am going to ask a series of questions concerning what the impact of an adult entertainment business has or would have if it were located within 500 fret of your neighborhood_ Please tell me if the impact would be a substantial increase, some increase, no effect, some decrease, or a substantial decrease.

. . . Crime

Substantial Increase 55 46.6 46.6

Some Increase 126.3 26.3

No Effect 32 27.1 27.1

Some Decrease

Substantial Decrease

_.. Traffic

Substantial Increase 42 35.6 35.9

Some Increase 29 24.6 24.8

No Effect 45 38.1 38.5

Same Decrease 1 .8 .9

Substantial Decrease

Missing 1 3

...Litter

Substantial Increase 43 36.4_36.8

Some increase 35 29.7 29.9

No Effect 3 8 32.2 32.5

Some Decrease 1 .8 .9

Substantial Decrease

Missing 1 .8

Consultants' Final Report - A14

. ..Noise

Substantial Increase 40 33.9 34.5

Some Increase 32 27.1 27.6

No Effect 42 35.6 36.2

Same Decrease 1 .8 .9

Substantial Decrease 1 .8 .9

Nfissing 2 1_7

... Safety

Substantial Increase 25 21.2 21-6

Some Increase 12 10.2 10.3

No Effect 24 20.3 20.7

Some Decrease 9 7_6 7.8

Substantial Decrease 46 39.0 39_7

1blissing 2 1.7

„. General Quality of Life

Substantial Increase 14 11.9 12.0

Some Increase 5 4.2 4.3

No Effect 28 23.7 23.9

Some Decrease 18 15.3 15_4

Substantial Decrease 52 44.1 44.4

Nlissing 1 _8

. . .Property Values

Substantial Increase 9 7.6 7.7

Same Increase 8 6.8 6_8

No Erect 18 15.3 15.4

Some Decease 23 19.5 19.7

Substantial Decrease 59 50.0 50.4

Miss- 1.8

Consultants' Final Report - A15

...Rents

Substantial Increase 12 10.2 11.1

Some Increase 5 4.2 4.6

No Effect 42 35.6 38.9

Some Decrease 17 14.4 15.7

Substantial Decrease 32 27.1 29.6

Missing 10 8.5

...Loitering

Substantial Increase 68 57.6 58.1

Some Increase 19 16.1 16.2

No Effect 26 22.0 22.2

Same Decrease 3 2.5 2.6

Substantial Decrease 1 .8 .9

Missing 1 .8

...Graffiti

Substantial Increase 44 37.3 383

Some Increase 21 17. 8 18.3

No Effect 48 40.7 41.7

Some Decrease 2 1.7 1.7

Substantial Decrease

Missing 3 2.5

... Vandalism

Substantial Increase 53 44_9 45.7

Same Increase 23 19.5 19.8

No Effect 38 32.2 32.8

Some Decrease 2 1.7 1.7

Substantial Decrease

Mining 2 1.7

Would"you move if an adult entertainment business were located near your neighborhood?

Definitely Move 36 30.5 31.0

Probably Move 35 29.7 30.2

Probably not Move 28 23.7 24.1

Definitely not Move 17 14.4 14.7

Missing 2 1_7

Do you believe the City ***should*** regulate tile location of adult businesses?

No 17 14.4 14.5

Yes 100 84.7 85_5

J

Missing 1. 8

The courts have ruled that cities must provide a place for adult businesses to operate. How far away from your neighborhood would these businesses have to be to have a negligible effect on your neighborhood?

500Feet 43.43.4

1000 Feet 10 8_5 8.6

1 Block 3 2.5 2.6

3+ Blocks 89 75.4 76.7

Farther 10 83 8.6

Missing 2 1.7

In what zone do you think these types of business should be allowed?

Residential 1 .8 .9

Commercial 44 372 37.6

Industrial 68 57.6 58.1

None43.43.4

Missing 1. 8

Would you support a law that prohibited the establishment of an adult entertainment

business within 500 feet of a residential area, school or church?

Strongly Support 92 78.0 78.0

Support 13 11.0 11_0

Neutral 4 3.4 3.4

Oppose 6 5.1 5.1

Strongly Oppose 3 2.5 2.5

Would you support a law that prohibited the concentration of adult entertainment businesses within 1000 feet of each other?

Strongly Support 52 44.1 44.4

Support 21 17.8 17.9

Neutral 16 13.6 13.7

oppose 22 18.6 18.8

Strongly Oppose 6 5.1 5.1

Missing 1 .8

Consultants' Final Report - A17

Are you aware of any specific incidents related to adult entertainment businesses in your neighborhood?

No9278.078.6

Yes 25 21.2 21-4

?vlissing 1 .8

Do you own your home or do you rent?

Owner 82 69.5 70.7

Renter 34 28.8 29.3

Missing 2 1.7

How long have you lived at your current residence?

One Year or Less 9 7.6 7.7

Four Years or Less 26 22.0 22.2

Ten Years or Less 30 25.4 25.6

More than Ten Years 52 44.1 44.4

Missing 1 .8

What is your sex?

Female 64 54.2 54_7

Male 53 44.9 45.3

Missing 1 .8

What is your age?

21 or Under 6 5.1 5.5

22 thru 35 32 27.1 29.1

36 thn 45 26 22.0 23.6

46 thru 65 34 28.8 30_9

66 or Older 12 102 10_9

Missing 8 6.8

Consultants' Final Report – Al 8

What is your highest level of education?

Grade School 2 1.7 1.8

High School 32 27-128.1

Same College 48 40.7 42.1

College Degree 28 23_ 7 24.6

Graduate 4 3.4 3.5

Missing 4 3.4

How many children do yau_currently have living with you under the age of eighteen?

None 60 50.8 51.3

1-2 42 35.6 35.9

3 or More 15 12.7 12.8

Mining 1 .8

How would you characterize your ethnicity?

Caucasian 85 72.0 72.6

Hispanic 19 16.1 16.2

Vietnamese *4 3.4 3_4*

Oriental *5 4.2 4.3*

Black 1 .8.9

Other *3 2.5 2.6*

Missing 1 .8

Would you like to be notified of any public hearings related to the restriction of adult entertainment businesses in Garden Grove?

Yes *76 65.0 65.0*

No4235.035.0

CITY OF GARDEN GROVE

ADULT BUSINESS SURVEY CALL SHEETS

CASE ID:

Phone number:

Address:

General Notes and Problems:

Hello, my name is , I am an employee with the City of Garden Grove_ We are conducting a survey of Garden Grove residents to gather information an the impact of certain business, such as adult bookstores, nude or topless dancing establishments,. massage parlors, adult theaters showing X-rated movies, peep shows, etc_ on your residential area. The City is conducting this survey in order to properly develop legislation in this area. Your responses are greatly appreciated and will be kept confdential_

(Need to confirm that the respondent is a responding from a residence and not a business. If responding from a business discontinue the interview)

1. To the best of your knowledge, how dose is the nearest adult bookstore or adult entertainment establishment?

200 Feet

500 Feet

1000 Feet

1 Block

2 Blocks

3 Blocks

2_ Which adult entertainment establishment is it?

(Prompt respondent for identifying information, ie the exact business name, or location, or general identification)

6. The courts have ruled that cities must provide a place for adult businesses to operate. How far away from your neighborhood would these businesses have to be to have a negligible effect on your neighborhood?

Less than 500 feet 0 1 block

0 500 feet 0 2 blocks

01000 feet 0 3 blocks

7. In what zone do you think these types of businesses should be allowed?

0 Residential

0 Commercial

0 Industrial

8. Would you support a law that prohibited the establishment of an adult entertainment business with 500 feet of a residential area, school or church?

0 Strongly support

0 Support

0 Neutral

0 Oppose

0 Strongly oppose

9_ Would you support a law that prohibited the concentration of adult entertainment business within 1000 of each other?

0 Strongly support

0 Support

0 Neutral

0 Oppose

0 Strongly oppose

10 Are you aware of any specific incidents related to adult entertainment businesses in your neighborhood?

0 No

·0 Yes

If yes please explain:

11. Do you own your home, or do you rent?

0 own

0 Rent

18. Would you like to be notified of any public hearings related to the restriction of adult entertainment businesses in Garden Grove?

0 Yes

0 No

If yes, confirm name and mailing address

Thank you for your assistance in responding to our questions_

(If they insist on a number of someone to contact about the survey give them the City Managers Office number 714-741-5101)

REAL ESTATE PROFESSIONAL SURVEY

Please complete this brief survey and return fI to the City of Garden Grove, City Manager Office, by March 1, 1991. A postage paid envelope is enclosed for your convenience_

I_ Based upon your personal observations as a real estate professional, or on information received through the practice of your profession. do you have an opinion as to whether the presence of an adult bookstore affects the resale or rental values of nearby properties?

Yes

No opinion

2. How many years nave you practiced in the real estate profession?

3. How many years have you practiced real estate in the Garden Grove area?

Questions 4 through 15 :

Please read the following information about a hypothetical neighborhood and respond to a few questions In tern's of your professional experience and judgment.

A middle-income residential neighborhood borders a win street that contains various commercial uses that serve the neighborhood. Although most of the neighborhood is comprised of single-family homes, there are two multiple-family residential complexes in the neighborhood as well. A commercial building recently has become vacant and will open shortly as a ical adult bookstore. (A "typical" adult bookstore in Garden Grove also contains several "pep show" booth.) mere are no other adult bookstores or similar activities in the area. There is no other vacant commercial space presently available In the area.

Based upon your professional experience, how would you expect average values of the following types of property to be affected if they are less than 200 feet away from the view adult bookstore? (Circle the appropriate number for each type of property.)

Decrease 20%	Decrease 10-20%	Decrease 0-10%	No Effect	Increase 0-10%	Increase 10-20%	Increase 20%

4. Single-family residential 1 2 3 4 5 6 7

5. Multiple-family residential 1 2 3 4 5 6 7

6. Commercial 1 2 3 4 5 6 7

How would you expect the average value to be affected if the properties are within 200 to 500 feet of the new adult bookstore?

Decrease 20%	Decrease 10-20%	Decrease 0-10%	No Effect	Increase 0-10%	Increase 10-20%	Increase 20%

7. Single-family residential 1 2 3 4 5 6 7

8. Multiple-fancily residential 1 2 3 4 5 6 7

9. Commercial 1 2 3 4 5 6 7

Assume that the new adult bookstore will be located within 1000 feet of an existing adult bookstore. or other adult entertainment use. Based upon your professional experience, how would you expect te average values of the following types of property to be affected, if they are less than 200 feet away from the new bookstore?

Decrease 20%	Decrease 10-20%	Decrease 0-10%	No Effect	Increase 0-10%	Increase 10-20%	Increase 20%

10. Single-family residential 1 2 3 4 5 6 7

11. 1'V1ultiple-family residential 1 2 3 4 5 6 7

12- Commercial 1 2 3 4 5 6 7-,

How would you expect the average values to be affected if the properties are within 200 to 500 feet of the new adult bookstore?

Decrease 20%	Decrease 10-20%	Decrease 0-10%	No Effect	Increase 0-10%	Increase 10-20%	Increase 20%

13. Single-family residential 1 2 3 4 5 6 7

14_ Multiple-family residential 1 2 3 4 5 6 7

15_ Commercial 1 2 3 4 5 6 7

Questions 16 and 17:

Based upon your professional experience, how would you within 200 feet of an area on the following:

16. If the area is residential_

Substantial Increase	Some Increase	No Effect	Some Decrease	Substantial Decrease

a_ crime 1 2 3 4 5

b_traffic 12345

c. litter 1 2 3 4 5

d_ noise 1 2 3 4 5

e. safety of women

and children 1 2 3 4 5

f general quality of life 1 2 3 4 5

g. rents 1 2 3 4 5

h. loitering 1 2 3 4 5

17. If the area is commercial

Substantial Some No Some Substantial

Increase Increase Effect Decrease Decrease

a. crime 1 2 3 4 5

b. traffic 1 2 3 4 5

c. litter 1 2 3 4 5

d. noise 1 2 3 4 5

e. safety of women

and children 1 2 3 4 5

f general quality of life 1 2 3 4 5

g_ rents 1 2 3 4 5

h. loitering 1 2 3 4 5

i_ ability to attract

other new business 1 2 3 4 5

J. ability of other

business to attract customers 1 2 3 4 5

Questions 18 and 19:

Based on your professional experience, how would you evaluate the impact of locating two or more adult bookstores within 1000 feet of each other and within 200 feet of an area on the following:

18. If the area is residential:

Substantial Some No Some Substantial

Increase Increase Effect Decrease Decrease

a. crime 1 2 3 4 5

b. traffic 1 2 3 4 5

c. litter 1 2 3 4 5

d. noise 1 2 3 4 5

e. safety of women and

children 1 2 3 4 5

f general quality of life 1 2 3 4 5

g.rents 1 234S

h. affect loitering 1 2 3 4 5

19_ If the area is commercial:

Substantial Some No Some Substantial

Increase liicrease Effect Decrease Decrease

a. crime 1 2 3 4 5

b.traffic 12345

c. litter 1 2 3 4 5

d. noise 1 2 3 4 5

e. safety of women and

children 1 2 3 4 5

f. general quality of the

business environment 1 2 3 4 5

g.rents 1 2345

h. loitering 1 2 3 4 5

i. ability to attract other businesses 1 2 3 4 5

j. ability of other businesses

to attract customers 1 2 3 4 5

20. In general, to what degree do you feel adult entertainment businesses affect property values?

21. Why do you feel this way?

22. OPTIONAL: Name, Name of Firm, and Address:

Would you mind if we contacted you in the future regarding your responses to these survey questions?

Yes-

No-

Thank you again for your assistance with this survey.

13261/1443A

02/04/91

SECTION 9.1.1.05 DEFINITIONS

A. PURPOSE The purpose of this Section is to promote consistency and precision in the application and interpretation of this Chapter. The meaning of words and phrases defined in this Section shall apply throughout this Chapter, except where the context or usage of such and phrases clearly indicates a different meaning intended in that specific case.

B. GENERAL INTERPRETATION The following general interpretations shall apply throughout this Section:

l. The word "shall" is mandatory and not discretionary. The word "may" is permissive and discretionary_

2. In case of any conflict or difference in meaning between the text of any definitions and any illustration or sketch, the text shall control_

3. Any references in the masculine or feminine genders are interchangeable.

4. Words in the present and future tenses are interchangeable and words in the singular and plural tenses are interchangeable, unless the context clearly indicates otherwise.

5. In case a definition is not listed in this section, the most current Webster Collegiate Dictionary shall be referred to for interpretation

6. In the event of a conflict between the definitions section and the remainder of Title IX~ the Title IX provision shall prevail.

C. DEFINITIONS Unless otherwise specifically provided, thb words and phrases used in the Chapter shall have the following meanings. -

A ACCESSORY BUILDINGS AND STRUCTURES (NON-RESIDENTIAL): A building, part of a building, or structure that is incidental or subordinate to the main building or use on the same lot, which accessory use does not alter the principal use of such lot or building. If an accessory building is attached to the main building either by a common wall or if the roof of the accessory building is a continuation of the roof of the main building, the accessory building will be considered a part of the main building_

ACCESSORY LIVING QUARTERS: Living quarters within aaaccessory building that is ancillary and subordinate to a principal dwelling unit, located on the same lot, for the sole use of persons employed on the premises or for temporary use by guests of the occupants. Such quarters are expressly prohibited from containing kitchen facilities or any other area used for the daily preparation of food.

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ADULT ENTERT BUSINESSES: Adult entertainment businesses shall be defined as follows:

1. **<u>Adult Book Store</u> means an establishment having as a substantial or significant portion of its stock in trade, books, magazines, other periodicals, prerecorded motion picture film or videotape whether contained on an open reel or in cassette form, and other materials that are distinguished or characterized by their emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas or an establishment with a segment or section devoted to the sale, display, or viewing of such materials_**

2. Adult Motion Picture Theater means an enclosed building with a capacity of fifty (50) or more persons used for presenting material distinguished or characterized by their emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas for observation by patrons therein_

3. Adult Mini Motion Picture Theater means an enclosed building with a capacity for less than fifty 150) persons used for presenting materials distinguished or characterized by an emphasis on matter depicting or relating to specified sexual activities or specified anatomical areas for observation by patrons therein.

4. Adult Hotel or Motel means a hotel or motel where material is presented that is distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas.

5. Adult Motion Picture Arcade means any establishment required to obtain a permit under chapter 5.60 of the Garden Grove Municipal Code or any other place to which the public is permitted or invited wherein coin, token, or slug-operated or electronically, electrically or mechanically controlled still or motion picture machines, projectors or other image-producing devices are maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by an emphasis on depicting or describing specified sexual activities or specified anatomical areas.

6. Cabaret means a nightclub, theater or other establishment that features live performances by topless and bottomless dancers, "go-go" dancers, exotic dancers, strippers, or similar entertainers, where such performances are distinguished or characterized by an emphasis on specified sexual activities or specified anatomical areas.

7. Escort Bureau and Introductory Services means any establishment required to obtain a permit pursuant to Chapter 5.55 of the Municipal Code_

S. Massage Parlor or Bath House means any establishment required to obtain a permit pursuant to Chapter 5.12 of the Garden Grove Nfunicipal Code where, for any form of consideration or gratuity-

2. Adult Motion Picture- Theater means an enclosed building with a capacity of fifty (50) or more persons used for presenting material distinguished or characterized by their emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas for observation by patrons therein.

3. Adult Mini Motion Picture Theater means an enclosed building with a capacity for less than fifty 150) persons used for presenting materials distinguished or characterized by an emphasis on matter depicting or relating to specified sexual activities or specified anatomical areas for observation by patrons therein.

4. Adult Hotel or Motel means a hotel or motel where material is presented that is distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas.

5. Adult Motion Picture Arcade means any establishment required to obtain a permit under chapter 5.60 of the Garden Grove Municipal Code or any other place to which the public is permitted or invited wherein coin, token, or slug-operated or electronically, electrically or mechanically controlled still or motion picture machines, projectors or other image-producing devices are maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by an emphasis on depicting or describing specified se-mal activities or specified anatomical areas.

6. Cabaret means a nightclub, theater or other establishment that features live performances by topless and bottomless dancers, "go-go" dancers, exotic dancers, strippers, or similar entertainers, where such performances are distinguished or characterized by an emphasis on specified sexual activities or specified anatomical areas.

7. Escort Bureau and Introductory Services means any establishment required to obtain a permit pursuant to Chapter 5.55 of the Municipal Code.

S- Massage Parlor or Bath House means any establishment required to obtain a permit pursuant to Chapter 5.12 of the Garden Grove Municipal Code where, for any form of consideration or gratuity-

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massage, alcohol rub, administration of fomentations, electric or magnetic treatments, or any other treatment or manipulation of the human body occurs.

9_ Model Studio means any business where, for any form of consideration or gratuity, figure models who display specified anatomical areas are provided to be observed, sketched, drawn, painted_ sculptured, photographed or similarly depicted by persons paying such consideration or gratuity.

10. Sexual Encounter Center means any business, agency or person who, for any form of consideration or gratuity, provides a place where three or more persons, not all members of the same family, may congregate, assemble or associate for the purpose of engaging in specified sexual activities or exposing specified anatomical areas.

11. Any other business or establishment that offers its patrons services, products, or entertainment characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas.

12. For purposes of the above definitions, "emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas" is found to be in existence when one or more of the following conditions exist:

1

a_ The area devoted to merchandise depicting, describing or relating to specified sexual activities or specified anatomical areas exceeds more

than 15 percent of the total display or floor space area open to the public or is not screened and controlled by employees.

b. One of the primary purposes of the business or establishment is to operate as an adult entertainment establishment as evidenced by the name, signage, advertising or other public promotion utilized by said establishment_

c. One of the primary purposes of the business or establishment is to operate as an adult entertainment establishment as demonstrated by its services, products or entertainment constituting a regular and substantial portion of. total business operations and/or a regular and substantial portion of total revenues received; where such services, products or entertainment are characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas. For purposes of this Section, "regular and substantial portion" is defined to mean greater than fifteen (15) percent of total operations or revenues received.

d_ Certain types of "adult merchandise" are displayed or merchandised. For purposes of this Section, "adult merchandise" means adult, sexually oriented implements and paraphernalia.

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such as, but not limited to: dildo, auto suck, sexually oriented vibrators, edible underwear, benwa balls, inflatable orifices, anatomical balloons with orifices, simulated and battery operated vaginas, and similar sexually oriented devices.

AGRICULTURAL CROPS: The use of property for the growth and harvest of agricultural crops, including the display or sale of seasonal agricultural products grown on the parcel or an adjacent parcel in a roadside stand_

ALLEY: A public or private thoroughfare or way that may afford a prinary or a secondary means of access to abutting properties.

APARTiVMN-T: A room, or a suite of two or more rooms, in a multiple dwelling, occupied or

suitable for occupancy as a dwelling unit for one family but not including motels or hotels.

ARCADE: Any place of business containing ten (10) or more amusements devices, including but not limited to pinball, air hockey and video games, for use by the public at a fee.

B BAR: A public or private business open to the general public and licensed by the California Department of Alcoholic Beverage Control with an "on-sale premises" type license, providing preparation and retail sale of alcoholic beverages for consumption on the premises, including taverns, bars and similar uses.

BILLBOARD: A sign identifying a use, facility, or service not conducted on the premises or a product that is produced, sold or manufactured off site.

BILLIARD PARLOR OR PQOL HALL: "Billiard parlor" or "pool hall" means a building, structure, or portion thereof in that are-located one or more tables designed or used for play of pool, billiards, bagatelle, mocker, bumper pool, or similar games, or any establishment required to obtain a permit under Chapter 5.40.20 of the Municipal Code.

BOARDING/LODGING FACILITY: A building containing a dwelling unit where lodging is provided, with or without meals, for compensation with not more than five (5) guest rooms for ten (10) persons.

BUILDING: Any structure that is completely roofed and enclosed on all sides, excluding all forms of vehicles even though immobilized_

BUILDING FRONT. That side of any building designed or utilized as the primary customer or pedestrian entrance to the building. Each building may have more than one side of the building designated as a front under this definition-

BUILDING HEIGHT: The vertical distance measured from the average level of the building site to the uppermost roof point of the structure, excluding chimneys, antennas, architectural appurtenances and similar features_

(7) For shopping center associations, the number of days shall be used on a monthly or quarterly schedule.

(7) For shopping center associations, the number of days shall be used on a monthly or quarterly schedule.

(8) The number of days for individual business addresses shall count toward the maximum allowable days allocated far special event sales.

(9) All merchandise, materials, signs and debris shall be removed from the outdoor area by 10:00. a.m. of the day following the closure of the event, unless extended by the Director.

7_ Holiday Lot Sales

Christmas tree sales, fireworks sales and pumpkin sales may be permitted to operate, subject to the following conditions:

a. Such use shall be restricted to commercially zoned property.

b. Applications must be submitted ten (10) days in advance of the sale.

SECTION 9.1.2.06 ADULT ENTERTAIFTVIEMT USES

A. PURPOSE.

The City Council of the City of Garden Grove finds that adult entertainment businesses, as defined in Section 9.1_1.05C, because of their very nature, have certain harmful secondary effects on the community. These secondary effects include:

1. Depreciated property values, vacancy problems in commercial space (particularly in the newer commercial buildings).

2. Interference with residential neighbors' enjoyment of their property due to debris, noise, and vandalism.

er crime rates in the vicinity of adult businesses.

4. Slighted conditions such as a low level of maintenance of commercial premises and parking lots.

The City Council further finds that the restrictions and development standards contained in this Section will tend to mitigate, and possibly avoid, the harmful secondary effects on the community associated with adult entertainment businesses. The primary purpose of these regulations is the amelioration of harmful secondary effects on the community. The regulations contained in this section are unrelated to the suppression of free speech and do not limit access by adults to materials with First Amendment potential.

2. Interference with residential neighbors' enjoyment of their property due to debris, noise, and vandalism.

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4. Slighted conditions such as a low level of maintenance of commercial premises and parking lots.

The City Council further finds that the restrictions and development standards contained in this Section will tend to mitigate, and possibly avoid, the harmful secondary effects on the community associated with adult entertainment businesses. The primary purpose of these regulations is the amelioration of harmful secondary effects on the community. The regulations contained in this section are unrelated to the suppression of free speech and do not limit access by adults to materials with First Amendment potential.

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B. SPECIFIED SEXUAL ACTIVITIES AND ANATOMICAL AREAS.

Pursuant to Section 911.05C, an adult entertainment business is any business or establishment that otters its patrons services, products or entertainment characterized by an emphasis on matter depicting, describing or relating to "specified sexual activities" or "specified anatomical areas."

_1. For purposes of this Section, "specified sexual activities" shall include the following:

a_ Actual or simulated sexual intercourse, oral copulation, anal intercourse, oral-anal copulation, bestiality, direct physical stimulation of unclothed genitals, flagellation or torture in the context of a sexual relationship, or the use of excretory functions In the context of a sexual relationship, and any of the following depicted sexually oriented acts or conduct_ analingus, buggery, coprophagy, coprophilia, cunnilingus, fellatio, necrophilia, pederasty, pedophiha, piquerisn4 sapphism, zooerasty; or

b. Clearly depicted human genitals in a state of sexual stimulation, arousal or tumescence; or

c. Use of human or animal masturbation, sodomy, oral copulation,

coitus, ejaculation; or

d_ Fondling or touching of nude human genitals, pubic region, buttocks or female breast; or

e_ Masochism, erotic or sexually oriented torture, beating or the infliction of pain, or

f. Erotic or lewd touching, fondling or other contact with an animal by a human being; or

g. Human excretion, urination, menstruation, vaginal or anal irrigation_

h. Dancing by one (1) or more live entertainers in a manner displaying specific anatomical areas.

2-:For the purpose of this Section, "specified anatomical areas" shall include the following:

a. Less then completely and opaquely covered human genitals, pubic region, buttock, and female breast below a point immediately above the top of the areola; and

b. Human male genitals in a discernibly turgid state. even if completely and opaquely covered.

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C. SPECIAL REGULATIONS.

In a C21 zone; where the adult entertainment businesses regulated by Part would otherwise be permitted, it shall_ be unlawful to establish any such entertainment business without the benefit of the hearing body approving 'a Conditional Use Permit and if the location is,

I Within two hundred (200) feet of any area zoned for residential use or within two hundred (200) feet at any building owned and occupied by a public agency;

2. Within one thousand (1,000) feet of any other "adult entertainment" business;

3, Within one thousand (1,000) feet at any school facility, public or private, grades K through 12; park: playground; public libraries; licensed day care facilities; church and accessory uses.

The "establishment" of any "adult entertainment" business shall include the opening of such a business as a new business, the relocation of such business or the conversion of an existing business location to any "adult entertainment" business uses.

For the purposes of this Section, all distances shall be measured in a straight line, without regard to intervening structures or objects, from the nearest point of the building or structure used as a part of the premises where said adult entertainment business is conducted to the nearest property line of any lot or premises zoned for residential use, or to the nearest property line of any lot or premises of a church or educational institution utilized by minors or to the nearest point of any building or structure used as a part of the premises of any other adult entertainment business.

D. VARIANCE OF LOCATIONAL PROVISIONS

Any property owner or his authorized agent may apply to the hearing body for a variance of any locational provisions contained in this Section_ The hearing body, after a hearing, may grant a variance to any locational provision, if the following findings are made:

I_ That the proposed use will not be contrary to the public interest or injurious to nearby properties, and that the spirit and intent of thus Section will be observed;

2. That the proposed use will not unreasonably interfere with the use and enjoyment of neighboring property or cause or exacerbate the development of urban blight;

3 That the establishment of an additional regulated use in the area will not be contrary to any program of neighborhood conservation or revitalization nor will it interfere with any program being carved out pursuant to the Community Redevelopment Law; and

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4. That all applicable regulations of this Code will be observed.

The procedure for this hearing shall be the same as that provided in Article 6, Division 2 of the Garden Grove Municipal Code, with, among other matters, the same notice requirements, the same right of appeal the City Council, and the same fees payable by the applicant. The Development Services Department shall prepare the necessary application form for this variance.

E. ADULT MERCHANDISE IN NON-ADULT USE BUSINESS.

1. Definitions. For the purposes of this Part, "adult merchandise" is defined as any product dealing in or with explicitly sexual material as characterized by matter depicting, describing, or relating to specified sexual activities or specified anatomical areas. In addition, "non-adult use business" means any business or establishment not included in Section 9.11.05C.

2. Floor Space Limitations. No more than fifteen (15) percent of total floor space area open to the public of a non-adult use business shall be devoted to adult merchandise_

3. Segregation of Adult Merchandise. Retailers Classified as non-adult use establishments shall display adult merchandise in an area of the business segregated and screened from the area used for the sale and display at non-adult merchandise_ Screening may be accomplished with partitions or said adult materials may be displayed in separate rooms.

4. Access by Minors. Non-adult use establishments shall provide

controls sufficient to prohibit access by persons under eighteen (IS) years of a&e to areas screened or segregated for the purpose of selling or displaying adult merchandise_

5. Certain Merchandise Prohibited_ Non-adult use businesses shall not display or merchandise adult, sexually oriented implements and paraphernalia, including, but not limited to: dildos, auto sucks, sexually oriented vibrators, edible underwear, benwa balls, inflatable orifices, anatomical balloons with orifices, simulated and battery operated vaginas, and similar sexually oriented devices_

F_ NEWSRACKS.

Newsracks shall not display specified sexual activities or specified anatomical areas.

SECTION 9.1-2.07 ALCOHOLIC BEVERAGE SALES

A_ PURPOSE. To establish criteria and conditions for uses that sell, serve, or allow consumption of alcoholic beverages.

Please complete this brief survey and return it to the City of Garden Grove, City Manager's Office, by March 1, 1991. A postage paid envelope is enclosed for your convenience.

1. Based upon your personal observations as a real estate professional, or on information received through the practice of your profession, do you have an opinion as to whether the presence of an adult bookstore affects the resale or rental values of nearby properties?

Yes

No Opinion

2. How many years have you practiced in the real estate profession?

3. How many years have you practiced real estate in the Garden Grove area?

Questions 4 through 15:

Please read the following information about a hypothetical neighborhood and respond to a few questions in terms of your professional experience and judgment.

A middle-income residential neighborhood borders a main street that contains various commercial uses that serve the neighborhood. Although most of the neighborhood is comprised of single-family homes, there are two multiple-family residential complexes in the neighborhood as well_ A commercial building recently has become vacant and will open shortly as a typical adult bookstore. (A "typical' adult bookstore in Garden Grove also contains several "peep show" booths_) There are no other adult bookstores or similar activities in the area_ There is no other vacant commercial space presently available in the area.

Based upon you! professional experience, how would you expect average values of the following

types of property to be affected if they are less than 200 feet way from the new adult bookstore? (Circle the appropriate amswer for eacc type of property.)

Decrease Decrease Decrease No Increase Increase Increase

20% 10-20% 0-10% Effect 0-10% 10-20% 20%

4_ Single-family residential 1 2 3 4 5 6 7

5. Multiple-family residential 1 2 3 4 5 6 7

6. Commercial 1 2 3 4 5 6 7

How would you expect the average value to be affected if the properties are within 200 to 500 feet of the new adult bookstore?

Decrease Decrease Decrease No Increase Increase Increase

20% 10-20% 0-10% Effect 0-10% 10-20% 20%

7. Single-family residential 1 2 3 4 5 6 7

8. Multiple-family residential 1 2 3 4 5 6 7

9. Commercial 1 2 3 4 5 6 7

Assume that the new adult bookstore will be located within 1000 feet of an existing adult bookstore or other adult entertainment use. Based upon your professional experience, how would you expect the average values of the following types of properties to be affected, if they are less than 200 feet away from the new bookstore?

Decrease Decrease Decrease No Increase Increase Increase

20% 1 0-20% 0-10% **Effect** 0-10% 10-20% 20%

10. **Single-family residential** 1 2 3 4 5 6'7

11. **Multiple-family residential** 1 2 3 4 5 6 7

12. **Commercial** 1 2 3 4 5 6 7

How would you expect the average values to be affected if the properties are within 200 **to 500 feet of the new adult bookstores?**

Decrease Decrease Decrease No Increase Increase Increase

20‰ 10-20% 0-10% **Effect** 0-10% 10-20% 20%

13. **Single-family residential__)** 2 3 4 5 6 7

14. **Multiple-family residential** 1 2 3 4 5 6 7

15. **Commercial** 1 2 3 4 5 6 7

Questions 16 and 17:

Based upon your professional experience. how woul d you evaluate the impact of locating an adult bookstore within 200 **feet of an area on the following:**

16. **If the area is residential:**

Substantial Some No Some Substantial

Increase Increase Effect Decrease Decrease

a. crime 1 2 3 4 5

btraffic 1 2345

c.litter 12345

d_ noise 1 2 3 4 5

e_ safety of women and

children 1 2 3 4 5

f. general quality of life 1 2 3 4 5

g. g. rents 1 2 3 4 5

h. loitering 1 2 3 4 5

16. If the area is commercial:

a. crime 1 2 3 4 5

btraffic 1 2345

c_ litter 1 2 3 4 5

d_ noise 1 2 3 4 5

e. safety of women and

children 1 2 3 4 5

f general quality of the

business environment 1 2 3 4 5

g. g. rents 1 2 3 4 5

h. loitering 1 2 3 4 5

h. i_ ability to attract other

businesses 1 2 3 4 5

j. ability of other businesses

to attract customers 1 2 3 4 5

Questions 18 and 19·

Based on your professional experience, how would you evaluate the impact of locating two or more adult bookstores within 1000 feet of each other and within 200 feet of an area on the following:

16. If the area is residential:

Substantial Some No Some Substantial

Increase Increase Effect Decrease Decrease

a_ crime 1 2 3 4 5

btraffic 1 2345

c. litter 1 2 3 4 5

d. noise 1 2 3 4 5

e. safety of women and

children 1 2 3 4 5

f general quality of life 1 2 3 4 5

g. g. rents 1 2 3 4 5

h_ affect loitering 1 2 3 4 5

h. 1. ability to attract other

businesses 1 2 3 4 5

j. ability of other businesses

to attract customers 1 2 3 4 5

19_ If the area is commercial:

Substantial Some No Some Substantial

Increase Increase Effect Decrease Decrease

a. Cline] 2 3 4 5

b traffic 1 2 3 4 5

c. litter 1 2 3 4 5

d. noise 12345

e. safety of women and

children 12 3 4 5

f general quality of the

business environment 12 3 4 5

g. g. rents 12 3 4 5

h. Loitering 1 2 3 4 5

h. i. ability to attract other

businesses 12 3 4 5

J., ability of other businesses

to attract customers 12 3 4 5

20. In general, to what degree do you feel adult entertainment businesses affect property values?

21. Why do-you feel this way?

22. OPTIONAL: Name, Name of Firm, and Address

Would you mind If we contacted you in the future regarding your responses to these survey questions?

Yes-

No-

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Thank you again for your assistance with this survey.

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Regulation of

Adult Entertainment stablis e ts

. Cro County,

St. Croix County

Planning Department

September, 1993

REGULATION OF

ADULT ENTERTANIv1ENT ESTABLISPIZvENTS

IN ST_ CROIX COUNTY, WI

I. SUMM

II_ Poiential Adverse Impacts

A Economic Impacts
B. Physical Impacts

C. Social Impacts

1. Morality

2. Crime

3. Community Reputation

4_ Quality of Life,

1. Adult Entertainment Establishments in St. Croix County

IV_ Definitions

A_ Specified Sexual Activities

B. Specified Anatomical Areas

C. Adult Establishments

V. Regulatory Techniques

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2. Permitted Districts

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B_ Licensing

VIII. Proposed Zoning Text Amendments

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Regulation of

Adult Entertainment Establishments

in St. Croix County

I. Summary

Interest in regulating adult entertainment businesses is increasing throughout the Country, as such establishments continue to proliferate. Potential negative impacts of adult businesses include declining property values, blight and deterioration of surrounding neighborhcods, crime, and loss of "quality of life".

Unincorporated St. Croix County does not currently have a concentration of adult entertainment establishments. However, there are no regulations in effect to control the future location of such businesses_ St. Croix County should consider following the lead of other communities that have used zoning to regulate adult entertainment establishments.

One of two zoning approaches is generally used. The dispersal technique requires that adult businesses be separated from each other and located away from residential zones, churches, schools, and parks_ The concentration technique, on the other hand, allows adult entertainment uses only within a specified area. A primary purpose of either zoning approach is to prevent deterioration of the surrounding area.

Courts have generally upheld the constitutionality of zoning ordinances aimed at controlling adult entertainment establishments, providing that regulations do not totally exclude or excessively restrict such businesses. Local jurisdictions can only sees to curb the negative effects of adult businesses, not to prevent their establishment

It is recommended that St. Croix County adopt the dispersal technique. Adult entertainment businesses should be required to locate a minimum of 1,000 feet away from any other adult entertainment business, a minimum of 1,000 feet away from any property zoned Residential or Ag-ResidentaL a minimum of 1,500 feet from any property zoned Agricultural or Agricultural Two and 2,000 feet from any school, library, church, park, playground, or daycare facility. Adult entertainment establishments should be permitted in the Commercial or Restricted Commercial districts with a Special Exception Permit as part of a new Adult Entertainment Overlay District_ In addition, it is recommended that sexually-oriented signs or displays not be permitted within view of the general public. Finally, the County should explore the possibility of requiring licenses for adult entertainment businesses.

IT. Potential Adverse Impacts

Over the past several years, there has been an increasing concern about "adult entertainment establishments"_ However, these establishments continue to proliferate. The adult entertainment industry, which includes sexually-oriented businesses such as massage parlors, adult bookstores, adult theaters, and clubs and bars featuring live nude dancing, has become a multi-billion dollar growth industry (Rchan, p_ 1 1-1)

This proliferation has generated a great deal of debate over the possible adverse economic, physical, and social effects of adult businesses. These potential impacts are outlined in the following sections-

A. Economic Impacts

Several municipalities have documented the economic impact of existing adult entertainment businesses on their communities. Real estate experts in Los Angeles concluded in 1977 that areas with a concentration of adult entertainment

establishments have lower market value, rental value, and rentability- salability, and that these adverse effects diminish with distance (McClendon, p.2-3).

Detroit, one of the first communities that used zoning to control adult entertainment businesses (in 1972), successfully defended a Supreme Court challenge to its ordinance in 1976. The City's success in this legal battle was partly due to documentation by the City that concentration of adult businesses results in deteriorating property values and depressed neighborhood conditions, among other effects (Yow, p.34)_

The effects of the concentration of adult entertainment uses in the City of Beaumont Texas were noted in a neighborhood plan prepared by the City's planning department. The plan described the "economic decline that followed the establishment and concentration" of adult businesses, and noted that these businesses drove away neighborhood commercial stores (McClendon, p.3).

In 1983, Indianapolis, surveyed real estate appraisers on the impact of adult entertainment uses on surrounding property values in a hypothetical neighborhood. The overwhelming majority responding to the survey (80%) felt that an adult bookstore would have a negative effect on residential property values within one block of the site_ Furthermore, 72% felt that commercial property values within one block would also be affected The negative impact dissipates markedly 'with distance. At three blocks, less than 40% of the responding appraisers predicted a negative impact (McClendon, p3).

B_ Pbysical impacts

The economic decline resulting from adult businesses often causes physical deterioration and blight in communities. Negative physical impacts have been documented in Detroit, Los Angeles, and other cities @4cClendon, p?)_

Traffic congestion has also been reported (Yow, p.34). In addition, late at night, during their primary operating hours, adult entertainment businesses can create problems of noise and glare, as reported by the Amarillo, Texas Planning Department (McClendon, p.2).

C. Social Impacts

Potential social effects of adult entertainment establishments cover a wide range of impacts - morality, crime, community reputation, and quality of life.

1. Morali . The moral implications of pornography have been the subject of much public debate, pitting First Amendment rights of free speech against the desire to protect the public from exposure to pornography Nevertheless, morality is often cited as a key, reason to regulate adult entertainment_ The Commission on Obscenity and Pornography noted in 1970 the concern of many people that adult entertainment businesses cause "a deleterious effect upon the individual morality of American citizens and upon the moral climate in America as a whole" (Radzinowicz and Wolfgang, p- 503, as quoted in Yow, p. 34).

2. Crime. There is much evidence to support the assertion that concentrations of adult businesses often result in an increase in crime, particularly prostitution, drugs, assault and sex crimes_ A planning department study in Phoenix, for example, compared three study areas containing adult entertainment businesses with three control areas that had comparable demographics and land use, but without adult entertainment businesses_ The three study areas had, on average, 43% more property crimes, 4% more violent crimes, and over 500% more sex crimes than the control area (McClendon, p.3).

A high rate of crime near concentrations of adult entertainment establishments has also been reported in Detroit, Los Angeles, and Beaumont Texas 1vlcC ll endon, pp.2-3). Crime statistics for 1978 and 1979 in Fayetteville, North Carolina reveal this impact. In 1978, i ayetteville's overall crime rate decreased 11 %, while crime in the district encompassing Hay Street (which had a large concentration of adult entertainment businesses) increased 7.5%_ During 1979, the overall crime rate continued to decrease while increasing in the Hay Street district (Yow, p.34).

Another aspect of crime is the rowing concern that organized crime is controlling the adult entertainment business. Local governments are concerned about thus involvement and the potential for corruption tat accompanies it (Yow, p.34).

3. Community Reputation. A proliferation of adult entertainment establishments may lead to a negative perception of a neighborhood, or of the. entire community. In a neighborhood, this negative reputation can lead to declining property values and physical deterioration. The effects can also be felt city-wide. Fayetteville for example, has expressed concern about the City's reputation and its effect on industrial location decisions (Yow, p34).

4. Quality of Life. Although "quality of life" is a nebulous term, courts have upheld zoning restrictions based on this concern_ In 1976, for example, the United States Supreme Court upheld in Young vs_ American Mini-Theatres (427 US 50) a Detroit zoning ordinance that restricted the location of adult motion picture theaters (Rohan, p. 11-5). Jusuce Powell stated that "zoning, when used to preserve the character of specific areas of the city, is perhaps the most essential function performed by local government, for it is one of the primary means by which we protect that sometimes difficult to define concept of "quality of life" (McClendon,p.1).

III. Adult Entertainment Establishments in Unincorporated St Croix Countv

In general_ unincorporated St Croix County has not experienced any major problems with adult entertainment establishments. Currently, there are two adult cabaret establishments operating in the unincorporated part of the County that could be affected by new County policies on adult entertainment. These businesses are located in the Towns of St. Joseph and Somerset_

With the ansion of the interstate highwa stem between St. Croix Count greater Twin Cities metropolitan area, there is a growing concern about the expansion of the adult entertainment industry in the County. While it is recognized that adult entertainment businesses cannot be prohibited entirely, the County would like to have some control over their location and o2eration. There is also concern that such establishments might be located near schools, churches, parks or residential areas.

Furthermore, it is felt that the issue needs to be addressed before it becomes a major problem_ According to attorneys general in support of Renton. Washington's adult entertainment ordinance. "Preventative. versus after-the-fact zonina is an appropriate means of cities to use in protecting and preserving possibly their most valuable resource, 'Quality' of Life'."

IV. Definitions

The following definitions are generally accepted in zoning ordinances throughout the country. The definitions are taken with few revisions from Kenosha County, Wisconsin and New Hanover County, North Carolina.

A. "Specified sexual activities" means any of the following:

1. Human genitals in a state of sexual stimulation or arousal;

2. Acts of human masturbation, sexual intercourse or sodomy;

3. Fondling or other erotic touching of human genitals, pubic region, buttock or female breast;

4. Flagellation or torture in the context: of a sexual relationship;

5. Masochism, erotic or sexually oriented torture, beating or the infliction of pain;

6. Erotic touching, fondling or other such contact with an animal by a human being; or

7. Human excretion, urination, menstruation, vaginal or anal irrigation as part of or in connection with any of the activities set forth in "1'. through "6" above..

B. "Specified anatomical areas" means any of the following:

1. Less than completely and opaquely covered human genitals, pubic region, buttocks, anal region or female breast below a point immediately above the top of the areola; or

2. Human male genitals in a discernibly turgid state even if completely and opaquely covered.

C_ **"Adult establishments" includes** bookstores,. motion picture theaters, mini motion picture theaters, bath house, massage parlors, modeling studios, body painting studios, cabarets, and video stores and are more specifically defined as:

1. Adult bookstore. An establishment having as a substantial or significant portion of its stock-in- trade in books, magazines and other periodicals which are distinguished or characterized by their emphasis on matter depicting, describing or relating to "specified sexual activities" or :'specified anatomical areas" as defined herein or an establishment with a segment or section devoted to the sale or display of such material.

2_ Adult motion picture theater. An enclosed building with a capacity of 50 or more persons used for presenting material distinguished or characterized by an emphasis on matter depicting, describing or relating to "specified sexual activities" or "specified anatomical areas" as defined herein for observation by patrons therein.

3: Adult motion picture theater (outdoor). A parcel of land from which individuals may view a motion picture presented out of doors which presents material distinguishably characterized by an emphasis on matter depicting, describing or relating to "specified sexual activity" or "specified anatomical areas"_

4. Adult mini-motion picture theater. An enclosed building with a capacity for less than 50 persons used for representing materials distinguished or characterized by an emphasis on matter depicting, describing or relating to "specified sexual activities" or "specified anatomical areas" as defined herein for observation by patrons therein.

5. Adult bath houses. As establishment or business which provides the services of baths of all kinds, including all forms and methods of hydrotherapy, that is not operated by a medical practitioner or a professional physical therapist licensed by the State of Wisconsin and which establishment provides to its patrons an opportunity for engaging in "specified sexual activities" as defined in this ordinance.

6. Adult massage parlors. An establishment or business with or without sleeping accommodations which provides the services of massage and body manipulation, including exercises, heat and light treatments of the body, and all forms and methods of physiotherapy, not operated by a medical practitioner or professional physical therapist licensed by the State of Wisconsin and which establishment provides for its patrons the opportunity to engage in" specified sexual activity" as defined in this ordinance.

7 Adult modeling studios. An establishment or business which provides the services of modeling for the purpose of reproducing the human body wholly or partially in the nude by means of photography, painting, sketching, drawing or otherwise_

8. Adult body painting studios. An establishment or business wherein patrons are afforded an opportunity to paint images on a body which is wholly. or partially nude. For purposes of this ordinance, the adult body painting studio shall not be deemed to include a tattoo parlor.

9. Adult Cabaret. An establishment or business which features male and/or female topless and/or bottomless dancers, go go dancers, exotic dancers, strippers, burlesque shows, male or female impersonators, or similar entertainers. =--

10. Adult novel shop. An establishment or business having as a substantial or significant portion of its stock-in-trade in novelty or other items which are distinguished or characterized by their emphasis on, or designed for, ' 1 specified sexual activity" as defined herein or stimulating such activity.

11. Adult video store. An establishment having as a substantial or significant portion of its stock-in-trade in videotapes for sale or rent which are distinguished or characterized by their emphasis on matter depicting, describing or relating to "specific sexual activities" or "specified anatomical areas" as defined herein or an establishment with a segment or section devoted to the sale, display or rental of such material

V. Regulatory Techniques

A Zoning Techniques

Municipalities have generally limited adult entertainment uses to commercial and/or industrial zones.

Cumberland County, North Carolina permits adult businesses in its C-3 Heavy Commercial District and M-2 Heavy Industrial District_ Kenosha County, Wisconsin permits adult entertainment uses in its B-3 Highway Business District as part of an Adult Entertainment Overlay District.

The St Croix County Zoning Ordinance does not currently deal with adult entertainment uses directly.

The two night clubs in the county that provide adult cabaret shows are currently allowed as permitted uses in the Commercial District. Such uses could also be considered in the Restricted Commercial or Industrial Districts.

Some municipalities require a Special Use Permit for potentially objectionable uses such as adult entertainment establishments_ Whinier, California, for example, allows adult businesses in "C-2 or less restrictive" zones, but requires a Special Use Permit Wyoming, Michigan allows adult entertainment businesses in its B-2 district with a Special Use Permit

The Special Use Permit is an effective tool for dealing with uses, such as adult entertainment establishments, which are recognized as having objectionable characteristics. The equivalent of the Special Use Permit in the St. Croix County Zoning Ordinance is the Special Exception Permit Special Exceptions are certain uses and situations that are of such special nature or their effect is so dependent upon actual contemporary circumstances as to make impractical the determination in advance of permissibility". [St_ Croix County Zoning Ordinance, Sec_ 17.70(7)]

Any use requiring a Special Exception Permit requires a public hearing and approval by the County Board of Adjustment subject to the following general standards:

1. No grant of a special exception shall violate the spirit or general intent of this chapter:

2. No special exception shall be allowed which would be contrary to the public health, safety or general welfare or which would be substantially adverse to properly values in the neighborhood affected;

3_ No use shall be permitted by special exception that would constitute a nuisance by reason of noise, dust smoke, odor or other similar factors; and

4. The Board shall also apply standards set forth in other sections of this chapter which apply to particular classes of special exceptions. [St. Croix County Zoning Ordinance, Sec_ 17.70.(7Xa)]

Furthermore, the County Board of Adiustment may require additional conditions which it deems reasonable and appropriate to assure the use will be harmonious with the area in which it is located_

In addition to limiting zoning districts in which adult entertainment uses may be located, and requiring Special Use Permits,

there are two basic zoning strategies used by local officials to control adult entertainment – dispersal and concentration The City of Detroit is generally credited with pioneering the dispersal approach Another approach less commoniv used. is concentration Boston is most often cited as an example of the concentration approach

1. Dispersal. The most commonly used zoning technique for controlling adult entertainment is the strategy of dispersing such establishments_ This method attempts to prevent clustering and its potential adverse effects.

The City of Detroit originally adopted an "Anti-Skid Row Ordinance" in 1962. This ordinance was aimed at such establishments as bars, pawn shops, and pool halls. The City added sex businesses to the list in 1972, citing the deleterious effects of adult entertainment uses on surrounding neighborhoods (Yow, p. 35).

The ordinance had two objectives: 1) to keep "skid-row" uses from locating near one another, and 2) to keep such uses away from residential areas. The first objective was met by not allowing a listed use within 1,000 feet of two other listed uses. The second objective was met by requiring that no listed use be located within 500 feet of a residential unit. The result was a policy of dispersing "skid-row uses" throughout commercial and industrial areas (Yow, p.35). Many jurisdictions have since used the dispersal approach t0 control adult entertainment businesses (living-Cwiek, pg- 7).

2_ Concentration. Unlike the dispersal technique, the concentration approach uses zoning to set aside one or more areas for the location of adult businesses. The City of Boston, for example, contained an area already dominated by adult businesses - the "Combat Zone". In an effort to prevent the spread of this district, the City created an overlay zone, covering approximately seven acres, to which all adult uses were confined_

To prevent the potential skid-row effect, Boston supplemented its efforts with a renovation program_ The city spent money on parks, street lighting3 improved streets, sign removal. and renovation of store fronts. In this case, the concentration approach legitimized and successively controlled what already existed.

Although this approach proved useful for Boston, few localities have similar existing circumstances to warrant the concentration of adult entertainment establishments. Before adopting dispersal zoning, Fayetteville, North Carolina considered the concentration approach. With its concentration of adult entertainment uses downtown on Hay Street, Fayetteville had a situation similar to Boston_ However, due to a perception by the public that such zoning would condone pornography, and opposition by other downtown businesses and the police, the concentration proposal failed. (Yow, p_38-39).

B. Other Regulatory Techniques

While zoning is one method used to control adult entertainment, other approaches can be used_ In addition to zoning. a comprehensive approach may also include licensing, active law enforcement, sign regulations and/or nuisance provisions.

Fayetteville has combined licensing with dispersal zoning flow, p.39). Many municipalities, including Des Moines; Chicago, Portland, Denver, Tucson and Washington have successively used licensing laws and other legal measures to close massage parlors offering illegal sex activities. The City of Dallas, Texas made it illegal for a person to be massaged by anyone of the

opposite sex, thereby substantially reducing the operation of massage parlors (Rohan, pp. 11-9, 11-10).

Many municipalities use traditional law enforcement techniques to control adult entertainment establishments For example, police raids are often used to enforce anti-obscenity laws" Law enforcement can be used to control crimes such as prostitution, assault and drug use, that are often associated with

adult entertainment businesses" However, when used alone, such techniques are usually only a "stalling mechanism", treating the symptoms rather than eliminating the problem (row, p.35).

VI. Constitutionality of Zoning Approaches

An increasing number of local jurisdictions are using zoning regulations to control adult entertainment establishments" While such regulations "cannot be used to totally exclude or excessively restrict local adult entertainment uses, it is clear that reasonable regulations can be used to concentrate or disperse sex businesses and to control their proximity to residential areas, churches, parks, or schools." (McClendon, p.1).

The constitutionality issue cannot be overstated. Localities must be sure that regulations are not used to prohibit adult entertainment businesses at the expense of First Amendment rights. If taken to court, the burden of proof is on the local government to show that its regulations meet a four-part test:

1. The regulation is within the constitutional power of the government;

2. The regulation furthers an important or substantial government interest"

3. The government interest is unrelated to a suppression of free expression; and

4. The incidental restriction of First Amendment freedom is no greater than necessary to fiuther the government interest (McClendon, p.2-3)

Galveston, Texas, for example, passed a strict adult entertainment ordinance in 1979. Galveston modeled its ordinance on Detroit's ordinance, which had been upheld in a 1976 U.S" Supreme Court case. However, Galveston's ordinance was struck down by a federal appeals court in 1982 because the City had failed to designate "commercially viable" locations for adult entertainment uses, and in effect banned such businesses (McClendon, p.2).

More recently, the Supreme court in 1986 upheld an ordinance from Renton, Washington that restricted adult theaters to 520 acres of industrially zoned land and prohibited them within 1,000 feet of any residential zone or use,. school, or church. The Court ruled that Renton's ordinance was "aimed, not at the content of the film, . . . but rather at the secondary effects of the business on the surrounding community" (Zoning News. p.4, McClendon, p2)"

Dallas, Texas has stringent, zoning and licensing restrictions on sexually-oriented businesses" Dallas has the 1,000 foot dispersal rule, similar to other jurisdictions. However, the Dallas ordinance is more stringent in several respects:

1) it requires amortization and relocation within three years if a business does not meet the 1,000 foot restriction;

2) it denies licenses for these businesses to people convicted of certain types of crimes, and may revoke business licenses for future employee offenses; and

3) it attempts to restrict adult motels by requiring ten-hour or greater rental periods (Zoning New, p-3-4)-

It appears that reasonable regulations to control, but not eliminate adult entertainment businesses will be upheld in court. Authors stress, however, the necessity of documenting the need for regulation with studies and reports such as this one"

VII. Recommendations

The following recommendations are made concerning adult entertainment establishments.

A. Zoning

I. Dispersal. Since St. Croix County does not currently have any concentrations of adult entertainment businesses, it is felt that the best zoning approach is dispersal. This technique should prevent the development of a "skid row" effect with its concomitant adverse impacts_ It is therefore recommended that St Croix County adopt a dispersal approach to zoning for adult entertainment.

One goal of dispersal zoning is to prevent clustering of adult businesses. In order to disperse adult entertainment businesses; the zoning ordinance should require a minimum distance between such uses. Courts have upheld a distance of 1,000 feet between adult businesses, which is a little greater than an average city block. Therefore, it is recommended that adult entertainment establishments should not be permitted within 1,000 feet of any other adult entertainment establishment.

Another goal of dispersal zoning is to protect residential areas from encroachment by adult businesses_ In addition, it is felt that adult entertainment uses should be segregated from schools, libraries, churches, parks, playgrounds and daycare facilities. It is therefore recommended that adult entertainment establishments should not be permitted within 1,000 feet of any property zoned Residential or Ag-Residential, within 1,500 feet of property zoned Agricultural or Agricultural Two, or within 2,000 feet of any school, library, church, park, playground or daycare facility.

2. Permitted Districts. Municipalities have generally limited adult entertainment uses to commercial and/or industrial zones. However, there is very little industrial zoning in St. Croix County. Therefore, to both control and account for adult entertainment uses, it would be most appropriate to provide for such uses in the Commercial and Restricted Commercial Districts_

Furthermore, even in appropriate districts 1 there may be deleterious effects in specific circumstances and locations. The location of adult businesses may be more appropriately decided on a case-by-case basis through the Special Exception process. It is therefore recommended that adult entertainment establishments should be allowed only in the Commercial and Restricted Commercial Districts, and only by Special Exception as part of an Adult Entertainment Overlay District

3. Exterior Display. The County should make a reasonable effort to protect the public, particularly young children and teenagers, from exposure to obscene material that may be associated with adult businesses_ Therefore, it is recommended that any exterior display, sign, etc. shall not depict or describe "specified sexual activities" or "specified anatomical areas".

B. Licensing

Many communities have found licensing to be an effective approach to regulating adult entertainment businesses, particularly when combined with zoning regulations_ Requiring a license for.the operation of such businesses may give local law enforcement and elected officials more control over their operation. It is therefore recommended that the County Public Protection Committee explore the possibility of requiring licensing for adult entertainment establishments.

VIIL Prouosed Zoning Text Amendments

17.20 Adult Entertainment Overlay (AEO) District

(1) Intent it is the intent of this Ordinance to protect the health, safety, general welfare and morals of the residents of St Croix County, to preserve the quality of family life, to preserve the rural and urban characteristics of the neighborhoods in St Croix County and to prevent adverse and deleterious effects contributing to the blight and downgrading ofneighborhoods. Being mindful of the effects of adult entertainment upon minors and the criminal activity and disruption ofpublic peace associated with such establishments, while also giving due consideration to the civil rights of persons partaking in such entertainment, it is the intent of this section toregulate the location of such establishments of adult entertainment. By the enactment of this ordinance, the St Croix County Board of Supervisors does not intend to give any explicit, implicit or tacit approval or condone any activity relating to adult entertainment_

(2) Definitions. For the purpose of this section:

"Specified sexual activities" is defined as:

(a) Human genitals in a state of sexual stimulation or arousal;

(b) Acts of human masturbation, sexual intercourse or sodomy;

(c) Fondling or other erotic touching of human genitals, pubic region, buttock or female breast

(d) Flagellation or torture in the context of a sexual relationship;

(e) Masochism, erotic or sexually oriented torture, beating or the infliction of pain;

(f) Erotic touching, fondling or other such contact with an animal by a human being; or

(g) Human excretion, urination, menstruation, vaginal or anal irrigation as part of or in connection with any of the activities set forth in (a) through (f) above.

"Specified anatomical areas" is defined as:

(a) Less than completely and opaquely covered human genitals, pubic region, buttocks, anal region or female breast below a point immediately above the top of the areola; or

(b) Human male genitals in a discernibly turgid state even if . completely and opaquely covered.

"Adult establishments"includes bookstores, motion picture theaters, mini motion picture theaters, bath houses, massage parlors, modeling studios, body painting studios, cabarets, and video stores and are more specifically defined as:

(a) Adult bookstore, An establishment having as a substantial or significant portion of its stock-in-trade in books, magazines and other periodicals which are distinguished or characterized by their emphasis on, matter depicting, describing or relating to "specified sexual activities" or

"specified anatomical areas" as defined herein or an establishment with a segment or section devoted to the sale or display of such material.

(b) Adult motion picture theater_ An enclosed building with a capacity of 50 or more persons used for presenting material distinguished or characterized by an emphasis on matter depicting, describing or relating to "specified sexual activities" or "specified anatomical areas" as defined herein for observation by patrons therein.

(c) Adult motion picture theater. (outdoor). A parcel of land from which individuals may view a motion picture presented out of doors which present material distinguishably characterized by an emphasis on matter depicting, describing or relating to "specified sexual activities" or "specified anatomical areas".

(d) Adult mini-motion picture theater. An enclosed building with a capacity for less than 50 persons used for presenting materials distinguished or characterized by an emphasis on matter depicting, describing or relating to "specified sexual activities" or "specified anatomical areas" as defined herein for observation by patrons therein.

(e) Adult bath houses_ As establishment or business which provides the services of baths of all kinds, including all forms and methods of hydrotherapy, that is not operated by a medical practitioner or a professional physical therapist licensed by the State of Wisconsin and which establishment provides to its patrons an opportunity for engaging in "specified sexual activities" as defined in this ordinance.

(f) Adult massage parlors. An establishment or business with or without sleeping accommodations which provides the services of massage and body manipulation, including exercises, heat and light treatments of the body, and all forms and methods of physiotherapy, not operated by a medical practitioner or professional physical therapist licensed by the State of Wisconsin and which establishment provides for its patrons the opportunity to engage in "specified sexual activities" as defined in this ordinance.

(g) Adult modeling studios. An establishment or business which provides the services of modeling for the purpose of reproducing the human body wholly or partially in the nude by means of photography, painting, sketching, drawing or otherwise.

h_ Adult body painting studios_ An establishment or business wherein patrons are afforded an opportunity to paint images on a body which is wholly or partially nude. For purposes of this ordinance, the adult body painting studio shall not be deemed to include a tattoo parlor.

(1) Adult Cabaret. An establishment or business which features male and/or female topless and/or bottomless dancers, go-&Q dancers, exotic dancers, strippers, burlesque shows, male or female impersonators, or similar entertainers. --

(j) Adult novelty shop. An establishment or business having as a substantial or significant portion of its stock-in-trade in novelty or other items which are distinguished or characterized by their emphasis on, or designed for, "specified sexual activities" as defined herein or stimulating such activity

k. Adult video store. An establishment having as a substantial or significant portion of its stock and trade in videotapes for sale or rent which are distinguished or characterized by their emphasis on matter depicting, describing or relating to "specific sexual activities" or "specified anatomical areas" as defined herein or an establishment with a segment or section devoted to the sale, display or rental of such material_

(3) Adult Entertainment Overlay' District So as to ensure a maximum benefit to the community and a minimum impact upon existing and future uses of land, there is hereby created an Adult Entertainment Overlay District which, subject to the standards set forth in this Ordinance may be used for an adult establishment as defined herein except as may be prohibited in section 1720(8).

(4) Principal Uses_ No principal uses shall be permitted as a matter of right in the Adult Entertainment Overlay District Alt uses shall be special exceptions.

(S) Special Exceptions.

(a) Adult Bath Houses

(b) Adult Body Painting Studios

(c) **Adult Bookstores**

(d) Adult Cabarets

(c) Adult Massage Parlors

(f) Adult 1vEni motion Picture Theaters

(g) Adult Modeling Studios

(h) Adult Motion Picture Theaters

(i) Adult Motion Picture Theaters (outdoor)

(j) Adult Novelty Shops

(k) Adult Video Stores

(6) Underlying District Standards. Lot area and width, building height and area, yard and sanitary sewer system requirements in (he underlying district shall be complied with in the Adult Entertainment Overlay District.

(7) Procedure for Establishing Adult Entertainment District.

(a) A petition to amend the County Zoning Ordinance to establish an Adult Entertainment Overlay District and an application for a special exception permit shall be riled with the County Planning and Development Committee_ The Committee shall refer each petition and application to the Town Board of Supervisors of the town wherein the property sought to be zoned is located. The Town Board of Supervisors shall review and make a recommendation regarding such petition and application. The County Planning and Development Committee shall make a recommendation to the County Board of Supervisors regarding the petition for amending the County Zoning Ordinance, but not until it has received a recommendation from the Town Board of Supervisors, or until such time as the Town Board of Supervisors has failed to act within a reasonable time after a referral of an application. The procedure set forth in section 59.97(5) (e) 3 of the Wisconsin Statutes and section 17.72 of this ordinance shall be followed. In addition, those requirements set forth in section 17.70(7) of this ordinance relating to the issuance of a special exception permit shall be adhered to. No Adult Entertainment Overlay District shall be created which does not substantially comply with the standards Set forth in this Ordinance_

(b) A petition to amend the County Zoning Ordinance to establish an Adult Entertainment Overlay District must be accompanied by three copies of the proposed site plan prepared by a certified land surveyor or planner in addition to any other information required under section 1-7.72(2) of this Ordinance_

(c) The County Planning and Development Committee shall within a reasonable time after receipt of the recommendation of the Town Board of

Supervisors, review the petition and application in accordance with the requirements of this Ordinance. After such review, the Planning and Development Committee shall make a recommendation to the St Croix County Board of Supervisors in accordance with section 59.9 7 (S)(e)3 of the Wisconsin Statutes. Such recommendation may approve, disapprove or approve subject to modifications the petition for zoning, and shall include a written statement of the Committees findings. No petition for an Adult Entertainment Overlay District shall be approved by the Committee and County Board_ unless, however, the following findings have been made:

1. That all the standards and requirements in this Ordinance will be met by the proposed use.

2. That the proposed use will not be a detriment 10 the public welfare.

3. That the proposed zoning is consistent with the general intent of any comprehensive plan in existence-

I- That the existing streets and utility services are adequate for the proposed use,

5. That the proposed use will in no substantial way contribute to the deterioration of the surrounding neighborhood

6. That the presence of the proposed use will not have a harmful influence on children residing in or frequenting the area.

(8) Standards for Adult Entertainment Uses. In addition to all other applicable requirements of this Ordinance, all adult entertainment uses shall meet the following standards_

(a) The Adult Entertainment Overlay District shall only be established in situations in which the underlying district is a Commercial or Restricted Commercial District

(b) No more than one of the adult entertainment uses defined herein may be established on any one parcel and any of the adult entertainment uses defined herein shall be at least 1,000 feet from any other adult entertainment use_ No adult entertainment use shall be permitted within 500 feet of any establishment serving alcoholic beverages, within 1,000 feet of property zoned Residential or Ag-Residential, within 1,500 feet of any property zoned Agricultural or Agricultural Two, or within 2,000 feet of any school, library, church, park, playground, or daycare facility.

(c) There shall be no sale of intoxicating beverages' in the Adult Entertainment Overlay District

(d) Signs advertising any of the adult entertainment uses defined herein shall conform with section 17_65 of this ordinance with the exception, however, that no tower or portable signs or billboards shall be permitted on the premises, and with the further exception that signs will not depict or describe "specified anatomical areas" or "specified sexual activities and

provided further that there shall be no flashing or traveling lights located outside the building

(e) Adequate parking shall be provided in a lighted area.

(f) There shall be no display windows on the premises.

(g) The owner and/or operator of the adult entertainment establishment shall comply with all federal, state and local laws and ordinances, including obscenity, liquor and cabaret laws, and shall further ensure that minors are not permitted on the premises. Solicitation for purposes of prostitution shall he strictly prohibited.

(h) In the case of adult cabarets, the hours of operation for such establishments shall be limited to the same hours of operations for bars and taverns within that community within which the district is located.

(i) In the case of outdoor adult motion picture theaters, the establishment shall confine its hours of operation to those hours of operation established for bars and taverns within the community within which the establishment is located. Outdoor adult motion picture theaters shall also have the viewing screen located in such a fashion as to not be visible from any road, street or highway or residence and the premises shall be surrounded by solid fencing at least eight feet in height. All theaters shall comply with section 134.46 of the Wisconsin Statutes.

() Prior to the establishment of an Adult Entertainment Overlay District, an inventory of the surrounding area and population shall be made along with a study of the proposed development and plans for the area so as to enable the Planning and Development Committee to make appropriate findings relative to the effect of the establishment of such a district in that area_

(k) The owner of the parcel upon which the adult entertainment use is to be established and the operator of the establishment and owner of the establishment shall appear in person before the Planning and Development Committee-

4. Th the event of noncompliance with any conditions imposed on the adult entertainment use, the special exception permit may be revoked, the Adult Entertainment Overlay District may be abolished by the Committee, and the parcel shall revert to its underlying zoning.

IX. Bibliography

Iiving-Cwiek, Patricia M., "Zoning and Free Speech: A Review of Adult Entertainment Caselaw" Planning & Zoning News, August 1991, pp-5-1 0_

Luedtke, Gerald, "Spaced-Out ZON-D G," Planning: & Zoning News February 1989, pp. 10-11.

McClendon, Bruce W., "Zoning for Adults Only," Zoning News, August 1985, pp- 1-3.

Radzinowicz, Sir Leon, and Marvin H. Wolfgang, Crime and Justice: the Criminal in Society Vol. 1, New York: Clark Boardman, Ltd, 1977 (as quoted in Yow).

Regulation of Adult Entertainment Establishments in New Hanover County. Wilmington, North Carolina:

New Hanover County Planning Departrnent, 1989_

Rohan, Patrick S_, Zoning and Land Use Controls. Volt, New York: Matthew Bender and Co., 1988

"Supreme Court to Review Porn Zoning, " Zoning News, Chicago: American Planning Association, May 1989, pp.34

Yow, Robert B., "Adult Entertainment Zoning: A Case Study," Carolina Planning Vol.7, No. l, Spring 1981, pp. 33.-41.

Zoning Ordinance, Kenosha County, Wisconsin.

Zoning Ordinance, Marion County, Indiana.

Zoning Ordinance, New Hanover County, North Carolina.

Zoning Ordinance, San Bernardino, California

A e © On fl l gAnd 0t erMethods (n-'Regulating Adult Entertainment In Amarillo

September 12, 1977

PLANNING DEPARTMENT

CITY OF AIVLARLLO, TEXAS

A Report On Zoning And Other Methods Of Regulating

Adult Entertainment In Amarillo

CITY COMMISSION

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PLA1N 1\TG STAFF

H. Dale Williamson

Director of Planning, Traffic and Code Enforcement

Secretary, Planning and Zoning Commission

J. D. Smith, Jr-

Chief Planner

Donna Stanley, Planner II Geno Wilson, Draftsman II

Gary Dumas, Planner I Steve Rodriquez, Draftsman I

Michael D. Moore, Planner Gail Beck, Secretary III

Tom Horton, Draftsman II Maxine Hawk, Clerk II

September 12, 1977

PREFACE

This report presents the findings of the Amarillo Planning Department regarding the adult entertainment industry within the confines of the Amarillo City Limits. These findings analyze the land use effects of adult entertainment businesses and alternatives for their regulation. Adult entertainment businesses are those that customarily are not open to the general public by the exclusion of minors by reason of age.

Presently, the only authority available to a city for regulating adult businesses is the city's power to zone and license. These methods of control have been sanction by the Young v American Mini Theaters, Inc. case.

The determination of what is or is not obscene is to be made by a jury **on a case by case basis in accordance with the test described in the Marvin Miller v State of California decision.. The criminal offenses for dealing in obscenity, proscribed by the Texas Penal Code, are the exclusive province of the State, and the city may not invade this area by seeking to define obscenity or provide rebuff for its sale, display or distribution.**

A REPORT ON ZONL1\TG AND' OTHER METHODS

OF REGULATNG ADULT ENTERTAINMENT IN _AMARILLO

Introduction

This report on the current extent of pornography in Amarillo was initiated upon the request of the Amarillo Planning and Zoning Commission April 25, 1977. Accompanying the request was the desire for information concerning the possible zoning control of all businesses catering to adults only. For the purpose of this report, adult-only businesses have not been limited to those that display pornographic material, but include bars, lounges and any other business type which restricts entry, sale or viewing based upon a minimum age.

This study is an attempt to briefly explore the national problem of adult-only businesses with a major emphasis on those which deal in pornographic material. The Amarillo situation was analyzed in relation to the extent of the national growth of the adult-only industry and the extent and limitations to which the City can control, through land use mechanisms, the proliferation of the industry outlets. No city ordinance regulating any type of adult business is included within this report and none will be drafted until discussion has occurred on the various options available for the control of adult businesses.

In any consideration of whether or not to control and restrict adult-only outlets within the municipal jurisdiction, the following should be reviewed:

1. To prohibit these uses to locate anywhere in the municipality, three points must be considered.-

A. The Courts have generally invalidated legislation which attempts to prohibit a particular use altogether from a municipality.

B. Prohibiting the location of any pornographic use in the city could be contested on the grounds that it provides an individual engaged in such practice no means of livelihood within the City-

C. Such legislation could also be contested on the grounds that it infringes upon the right of freedom of speech.

2. If these uses are to be allowed and restricted within the municipality, the City must decide where such uses are to be located-'

METHOD OF ANALYSIS

In the preparation of this report several data sources were employed. Current weekly national news magazines were searched for references to the problems of major urban areas relative to this topic. Several individual cities known to be exploring methods of controlling the growth of the adult-only industry were contacted and adopted City Ordinances were reviewed. The American Society of Planning Officials provided advance information from an unreleased publication on Adult Entertainment which has since been published (copy included for your review). Several recent Supreme Court decisions were reviewed in order to determine the general mood of the law as handed down-2

This information was synthesized into a form which details the national limitations placed upon a state and city in the land use control of adult-only businesses. The Texas obscenity law was then reviewed in order to deternvne the limitations of legislative regulation of adult-only businesses and the extent which Amarillo, as a city, may regulate the industry through land use and licensing mechanisms.

DEFNITIONS

Obscenity is defined by the Supreme Court in the following excerpts from Marvin Miller v State of California:

1. "Obscene material is not protected by the First Amendment, Roth v. United States, 354, U.S. 476, 77 S Ct. 1307, 1L. Ed. 2d 1498, reaffirmed. A work may be subject to state regulation where that work, taken as a whole, appeals to the prurient interest in sex; portrays, in a patently offensive way, sexual conduct specifically defined by the applicable state law; and taken as a whole, does not have serious literary, artistic political, or scientific value."

2. "The basic guidelines for the tner of fact must be: (a) whether the average person, applying contemporary community standards would find that the work, taken as a whole, appeals to the prurient interest, Roth, Supra, at 489, 77 S. CT at 1311; (b) whether the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law, and (c) whether the work, taken as a whole, lacks serious literary, artistic, political, or scientific value. If a state obscenity law is thus limited, First Amendment values are adequately protected by ultimate independent appellate review of constitutional claims when necessary.

3. "The jury may treasure the essentially factual issues of prurient appeal and patent offensiveness by the standard that prevails in the forum community, and need not employ a 'national standard'."

As stated above the basic guideline for determining what is obscene is through an evaluation of the material utilizing the forum community standard. In Smith v United States, 97 S. Ct. 1756 (1977) the Court amplified its consideration of the community standard when it stated that community standards are required to be applied by the jury in accordance with its understanding of the tolerance of the average person in the community. The result being that the fur has the. discretion to determine what appeals to the prurient interests and what is patently offensive in its community. "State law cannot define the contemporary community standards for appeal to the prurient Interest and patent offensiveness that under Miller v California are applied in determining whether or not material is obscene_ Though state legislatures are not completely foreclosed from setting substantive limitations for obscenity cases, theycannot declare what community standards shall be.. [Smith v United States (1759)]

The conduct regulated by the Texas Legislature is defined in the Texas Penal Code Subchapter 43B, "Obscenity". The following is that portion of chapter 43 which regulates the sale, distribution and display of obscene material:

43.21. Definitions

In this subchapter:

(1) "Obscene" means having as a whole a dominant theme that:

(A) appeals to the prurient interest of the average person applying contemporary community standards;

(B) depicts or describes sexual conduct in a patently offensive way, d

(C) lacks serious literary, artistic, political, or scientific value.

2. "Material" means a book, magazine,, newspaper, or other printed or written material; a picture, drawing. photograph, motion picture, or other pictorial representation; a play, dance, or performance; a statue or other figure; a recording, transcription, or mechanical,. chemical, or electrical reproduction; or other article, equipment or machine.

(3) "Prurient interest" means an interest in sexual conduct that goes substantially beyond customary limits of candor in description or representation of such conduct. IF it appears from the character of the material or the circumstances of its dissemination that the subject matter is designed for a specially susceptible audience, the appeal of the subject matter shall be judged with reference to such audience.

(4) "Distribute" means to transfer possession, whether with or without consideration.

(5) "Commercially distribute" means to transfer possession for valuable consideration.

(6) "Sexual conduct" means:

(A) any contact between any part of the genitals of one person and the mouth or anus of another person,

(B) any contact between the female sex organ and the male sex organ;

(C) any contact between a person's mouth or genitals and the anus or genitals of an animal or fowl; or

(D) patently offensive representations of masturbation or excretory functions. 3

43 .22. Obscene Display of Distribution

a. A person commits an offense if he intentionally or knowingly displays or distributes an obscene photograph, drawing, or similar visual representation or other obscene material and is reckless about whether a person is present who will be offended or alarmed by the display or distribution.

(b) An offense under this section is a Class C misdemeanor_

43.23. Commercial Obscenity

(a) **A person commits an offense if, Knowing the content of the material:**

(1) he sells, commercially distributes, commercially exhibits, or possesses for sale, commercial distribution, or commercial exhibition any obscene material;

(2) he presents or directs an obscene play, dance, or performance or participates in that portion of the play, dance, or performance that makes It obscene; or

(3) he hires, employs, or otherwise uses a person under the age of 17 years to achieve any of the purposes set out in Subdivisions (1) and (2) of this subsection.

(b) It is an *affirmative* **defense to prosecution under this section that the obscene material was possessed by a person having scientific, educational, governmental, or other similar justification.**

(c) An offense under this section is a Class B misdemeanor unless committed under Subsection (a)(3) of this section, In which event it is a Class A misdemeanor.

43.24. **Sale, Distribution, or Display of Harmful Material to Nlinor**

(a) For purposes of this section,-

(1) "Minor" means an individual younger than 17 years.

(2) "Harmful material" means material whose dominant theme taken as a whole:

(A) appeals to the prurient interest of a minor, in sex, nudity, or excretion;

(B) is patently offensive to prevailing standards In the adult community as a whole with respect to what Is suitable for minors; and

A. is utterly without redeeming social value for minors.
B.

a. **A person commits an offense if, knowing that the material is harmful:**

(1) and knowing the person is a minor. he sells, distributes, exhibits, or possesses for sale, distribution, or exhibition to a minor harmful material ;

(2) he displays harmful material and is reckless about whether a minor is present who will be offended or alarmed by the display; or

(3) he hires, employs, or uses a minor to do or accomplish or assist in doing or accomplishing any of the acts prohibited in Subsection (b)(1) of (b)(2) of this section.

(c) It is a defense to prosecution under this section that:

(1) the sale, distribution,. or. exhibition was by a person having scientific, educational, governmental, or other similar justification; or

(2) the sale, distribution, or exhibition was to a minor who was accompanied by a consenting parent, guardian, or spouse.

(d) An offense under this section is a Class A misdemeanor unless it is committed under Subsection (b) (3) of this section in which event it is a felony of the third degree. 4

The preceding has outlined the substantive limitations of that which can be found obscene in the State of Texas. The enforcement of those sections of the State Penal Code applying to obscene material is left to the discretion of the District and County Attorneys.

The remainder of this report will concern the controls that the City may impose to regulate the adult-only industry through land use controls, licensing, and measures to assure that minors will not be allowed to purchase or view the display of pornographic material in commercial businesses.

THE NATIONAL PROBLEM/CITIES

Urban areas across the nation are beginning a crackdown on the growth of sex-oriented businesses. Recent public outcries and national exposes have been forcing new evaluations of existing pornography law. This renewed attack on pornography is partially founded upon the Supreme Court decision In Young, v American Mini Theater. This decision, affirming the City of Detroit's police power ability to zone adult entertainment, redefined the standards the community can use to appraise that material which is found to be adult entertainment and protected by the 1st and 14th Amendments of the U_ S. Constitution. The following excerpt from Young, v American Mini Theaters makes clear the Supreme. Court view of adult entertainment and zoning:

> Though the First Amendment protects communication in the area of adult motion pictures from suppression, the State may legitimately use the content of such pictures as the basis for placing theaters exhibiting them in a different classification from other motion picture theaters for zoning purposes. The City's interest in the present and future character of its neighborhoods adequately support the limitation imposed . . . on the place where adult films may be exhibited.

As a result of Young v American Mini Theaters, several cities have initiated zoning ordinances similar to Detroit's to control the proliferation of sex industry outlets into incompatible areas of city development. Kansas City, Missouri and Atlanta, Georgia, are examples of cities recently implementing zoning ordinances to control the adult entertainment industry. These cities have accepted,the fact that there is a large market for adult entertainment. By implementing and enforcing a zoning ordinance to control site location choices to those sites meeting certain minimum requirements, these cities have sanctioned the adult entertainment industry. However, this sanction does not entail a condonation of commercial sex activities outside the control of land use planning activities_

The problems with the proliferation of adult businesses in major urban areas are growing, not only in the volume of outlets, but also in new types of adult businesses. Cities that have attempted to use zoning ordinances to define explicitly each controlled adult entertainment business have found that the ordinances are subject to constant update as the adult entertainment industry implements flew

techniques for the dissemination of its product. The following list illustrates some of the kinds of pornographic adult businesses that could have a blighting effect upon a neighborhood if allowed to grow uncontrolled_ The list also points to the problem of attempting to define each new adult business.

Pomoaranhic Adult Businesses

Adult bookstores

Adult mini motion picture theater (peep shows)

Adult motion picture theaters

Artists body painting studios

Eating places with adult entertainment

Exotic photo studios

Lounges and bars, topless

Lounges and bars, bottomless

Massage parlor

Nude theater

Nude wrestling parlor

As cities strengthen laws dealing with certain listed businesses, new businesses providing the same or similar services have been invented by the industry. For example, in Birmingham, laws governing massage parlors were tightened forcing most to close.[5] As a result, shoeshine shops, where you can lie down while getting your shoes shined and providing the same service as the message parlor, were opened. The City was then forced to adopt another ordinance requiring that a person could not lie down to get a shoeshine. Similar situations occurred in Boston when massage parlors were under attack. A quick metamorphosis was made of adult entertainment businesses under the guise of sensitivity training parlors, nude wrestling studios and

exotic photography centers. These later generation businesses were clearly not massage parlors, even though similar services were offered, and were not subject to the massage parlor ordinances_

Two distinctly different zoning techniques have been used to regulate the adult entertainment industry. They are:

l. The Boston, Massachusetts approach. In 1974 Boston was the first city in the nation to put its official stamp on the adult entertainment zone. Boston created a special zoning category for adult bookstores, peep shows, x-rated movies and strip joints_ This zone was a special overlay district applying to only seven acres of the City's space_ The overlay zone had two main purposes: (A) The City wanted to

concentrate similar adult entertainment uses into a single small area; and (B) the City wanted to prevent the spread of these uses to other areas of the City.

The district approach has certain advantages over a case by case zoning approach. Specific district boundaries are set and development standards are established. These two items when taken together reduce greatly the administrative cost when compared to a case by case conditional or specific use permit requirement. The limited confines of the district boundary reduces the potential for new development. The district approach also reduces the opportunity for arbitrary and subjective decisions.

The overlay district offers the potential to evaluate the total public service impact of adult uses. The concentration in a single area allows for the review of relative cost and revenues to the City. Police costs will certainly be higher, as will related traffic and parking costs_ These costs though can be determined. Permits can be required and the fees for these can reflect the true costs to the community.

2. The Detroit, Michigan approach. In 1972 Detroit implemented an ordinance designed primarily to prevent the development of additional "skid-rows." It was found that concentrations of various straight and pornographic uses were generally determinates of the deterioration of surrounding areas.

Detroit has two objectives: (A) to separate typical "skid-row" uses from each other; and (B) to keep these same uses separate from residential areas. These objectives lead to a single policy of dispersing "skid-row" uses and spreading them throughout the commercial and industrial areas of the City.

After "skid-row" uses had been determined, defined and subjected to a

conditional permit process, they were allowed in only certain zones

of the City and then only in sites meeting certain requirements.

These two techniques and adaptations to then are the only methods currently being used to control the location of adult entertainment activities. The Supreme Court in Young v American Mini Theaters has upheld the approach that Detroit has implemented. No test has yet been made of the Boston method of controlling the spread of adult businesses. Recently the Boston "Combat Zone" (the seven acre overlay district) has obtained some notoriety as being a failure, with social and administrative costs exceeding a tolerable level.

Both Detroit and Boston have chosen land use controls as their primary method of regulating adult businesses. Both use coincidentally a licensing regulation. Other cities such as Santa Maria, California have chosen licensing as their primary approach to regulating adult businesses. Licensing approaches have been adopted in order to maintain certain minimum standards at places of adult entertainment. The licensing mechanism is designed to regulate entertainment businesses which also provide food, alcoholic beverages or exhibition of the human body. Licensing outlines required performance standards and sets fees and required deposits as guarantees of compliance with the standard.

ADULT ENTERTA.12\12VENT IN AMARILLO

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ADULT ENTERT_A NiYlENT IN AMARILLO

Several businesses in Amarillo cater either wholly or partially to the adult-only market. The attached map, LOCATION OF ADULT ENTERTAINNIENT RT AIMARILLO, illustrates the general location of the majority of businesses whose activities include catering to the adult-only market. As the attached map indicates, adult businesses in Amarillo have generally tended to congregate into several areas in a strip fashion along major thoroughfares.

The Amarillo Police Department in a statistical analysis of street crimes

(rape, robbery, all assaults, theft from persons, auto burglary, driving under the influence, public intoxication, vandalism and illegal weapons) found that the incidence of street crimes was significantly greater around the concentrations of adult-only businesses than the overall City average. The Police Department went further in their analysis and noted that these street crimes were two and a half times the City average in the immediate vicinity of alcohol only adult businesses, and one and a half times the City average immediately surrounding businesses featuring alcohol and semi-nude entertainment_ In reviewing these facts relative to crime in the vicinity of adult businesses, the reader should be aware that adult-only establishments, especially

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alcohol only lounges, have tended to concentrate in several areas while lounges featuring semi-nude entertainment are fewer in number and have tended to somewhat isolate themselves from other adult-only establishments.

Outlets for adult-only material in the City include several book stores, drug stores, grocery stores, etc. with sections of books and magazines featuring nudity and non-explicit sexual activity. Pornographic publications featuring nudity with explicit sexual activity, are available within the City in only seven known locations, three being adult theaters with books, magazines, novelties and peep shows. These are dispersed lineally across the CBD and its fringe. There are also four book stores that devote space to publications featuring pornography with explicit sexual activity. No attempt has been made to locate all activities featuring minimal amounts of pornographic publications.

As can be discerned from this overview of the extent of pornography distribution within the City, our current problem is not great. However, the following paraphrased statement concerning Mason City, Iowa, illustrates the potential for growth of the adult entertainment industry.

> Between 1963 and 1964 go-go dancers gradually began to appear in the lounges and bars of the town_ By 1965 the dancers were topless. In 1973 the City received an application for its first adult movie house license. The license was refused (probably by an arbitrary and subjective decision). The applicant filed a judicial appeal and won the case forcing the City to grant the license. In 1973 an adult book store opened, complete with sex novelties and movies. Also in 1573 a popular lounge hired totally nude dancers. Four competitors soon followed suit. Finally the City gained its first massage parlor.

There is no reason to assume that Amarillo will be exempt from a growth of adult oriented businesses similar to Mason City_ The lack of any valid City mechanism to control and regulate the anticipated growth could lead to (a) concentrations of adult entertainment businesses creating a crime incidence condition equal to or greater than the current situation around concentrations of alcohol only businesses; and (b) a proliferation of adult entertainment businesses in and around residential areas and other family or juvenile oriented activities.

POSSIBLE CONTROL MECHANISMS OF ADULT BUSINESSES IN AMARILLO

Adult businesses in Amarillo are comprised of taverns, lounges, lounges with semi-nude entertainment, adult bookstores and adult theaters. Various state and local laws currently regulate to certain extents each of these uses. The Texas Liquor Control Act regulates all businesses selling alcoholic beverages after local option-approval, through a licensing procedure. These same businesses must also be licensed by the City and must conform to zoning and occupancy requirements. Those businesses that feature semi-nude entertainment are also controlled by Federal Code Section 21.07, 21.08, and 43.23 (Public Lewdness, Indecent Exposure, and Commercial Obscenity) and City Ordinance 13.29 (Operation Regulations;. grounds for revocation, violations of Dance Establishments). Purveyors of adult printed and celluloid material are controlled only by Penal Code Sections 43.22, 42.23, and 43.24 and general zoning and occupancy requirements_

While the above state and local ordinances work to regulate portions of the adult entertainment industry they are at best a piecemeal approach. For example, the enforcement of chapters 21 and 43B

of the Penal Code through the appropriate court is generally a slow and tedious process requiring manpower that is not available for this type of low priority victimless crime. The maintenance of the minimum requirements of the Texas Liquor Control Act and the various local laws regulating the sale of alcoholic beverages are only a means to maintain certain standards of operation in taverns, lounges, etc. The general zoning regulations which currently restrict adult businesses are not designed for the particular land use impacts resulting from the adult businesses. These impacts range from late night hours of operation and resulting noise, traffic, lighting, etc to increases in crime rates immediately surrounding the businesses.

Bypassing the intrinsic limitations of enforcement of the Penal Code, an approach to a more definite control of these businesses is through a strengthening of zoning regulations specifically defined to moderate the land use impact of adult-only businesses. Coincidentally with the improved zoning regulations, a license and permit mechanism can be implemented. This mechanism can set and require compliance with minimum standards of operation for various adult businesses and recover actual or expected expenses incurred in their enforcement through annual permit fees. These fees can reimburse the City for the added costs of police patrols, improved streets, additional street lighting to reduce accident and crime potential, routine City Department inspection, etc.

These measures would generally be applied to all adult-only businesses. No infringement upon their constitutional rights would result from compliance with a zoning and licensing mechanism designed to minimize the land use and social impacts of adult-only businesses.

Zoning regulations specifically designed to restrict adult-only businesses can serve the following purposes:

1. Assure a land use compatibility between the adult use and the surrounding land use.

1. Require that certain minimum density standards for adult uses are maintained.

3. Require the amortized termination of those adult uses not currently meeting either or both of the preceding zoning purposes.

Licensing adult-only businesses can serve the following purposes:

1. Maintain a record of business, location, owner, etc.

2. Assure that certain performance requirements are met, such as hours of operation, maintenance of employment standards and compliance with all laws governing material sold or displayed by the business.

3. Provide a method by which the City can recoup any expenditure for public services required above the city average exclusive of the licensed business type.

Performance standards can include a provision for administrative revocation of an adult business license for any noncompliance with a performance standard. This revocation of license would not necessarily be supported by any conviction or state criminal charge against the license holder. The basis for the revocation would be for violation of the performance standards as defined explicitly in the City Code's standards for operations of an adult business. Performance standards would of course be required to vary in content relative to controlled adult business type.

Adult business licenses should not attempt to regulate the land use effect of the use on the neighborhood or community but should be utilized to assure performance at a certain standard, to maintain an accurate-record of business locatlons, and to provide fees to the City for services above the average. By maintaining a clear distinction between the requirements of a license and the zoning ordinance the entire control mechanism is strengthened.

The preceding portion of this section has dealt with the regulation of businesses that totally restrict entry, sale, and viewing of products to adults only. Methods to control the ease of view of generally distributed pornographic material are numerous and not detailed explicitly in this report. Briefly though, methods to control the display of this material range from requiring the display to be in separate rooms with an enforceable and enforced restricted admittance, to simply covering the entire publication with an opaque slip cover with the publication's name printed on the cover. The control of the display and sale of pornographic material through a City Ordinance licensing mechanism would work to protect minors from harmful maternal (Section 43.24) and adults who would be offended by certain displays of pornographic material (Section 43.22) generally available for the public's view.

SUNRvIARY AND FINDING

The analysis of the impacts of adult-only businesses upon surrounding land'uses indicates that these businesses do have effects that can be distinguished from other uses allowed in like zoning districts. The following identifies two causal factors isolated in this preliminary analysis:

l. The Amarillo Police Department's statistical survey of street crime in the vicinity of adult-only business indicates that crime rates are considerably above the City's average immediately surrounding the adult-only businesses analyzed.

2. Concentrations of these adult-only activities have detrimental effects upon surrounding residential and commercial activities_ These effects are caused by (a) the noise, lighting and traffic generated by the pedestrian and vehicular traffic frequenting these businesses whose primary hours of operation are from late evening to late night, (b) the increased opportunity for "street crimes" in areas with high pedestrian traffic, and (c) the tendency to avoid areas where adult businesses (especially pornographic) are established_ This avoidance and other factors can lead to the deterioration of surrounding commercial and residential activities.

Other cities have noted these effects of adult-only businesses and have attempted remedies to the problem. Boston, Massachusetts has concentrated all adult uses into a single area of the City. Detroit, Michigan has dispersed adult uses throughout the city to sites that meet certain minimum land use requirements. Both of these cities have adopted zoning ordinances that restrict location choices of adult book stores, theaters, cabarets, etc. Their ordinances are limited to those activities that definitely do not fall under penal code control. The City of Los Angeles study on adult entertainment includes a consideration for the zoning control of other adult oriented activities including massage parlors, nude modeling studios, adult motels, arcades, etc. Los Angeles has disregarded the question of legitimacy and has suggested zoning those adult businesses as recognized existing land uses.

Detroit has implemented an ordinance which requires that adult entertainment businesses not be located within 500 feet of residentially zoned areas, or within 1000 feet of another regulated use. In Amarillo, adult uses are currently allowed in general retail and all less restrictive zoning districts. If Amarillo adopted an ordinance with space requirements between regulated uses and residential zones similar to that of Detroit, the number of potential sites for adult businesses would be severely limited. This method, limiting severely the potential site choices of adult businesses, would probably not be upheld by the Courts. The limitation of site choices would be caused by the narrow commercial strip developments less than 500 feet wide along most Amarillo's major thoroughfares. Also, this approach would probably tend to concentrate adult activities into the central business district and a few industrial areas.

RECON1I4ENDATIONS FOR THE CONTROL OF ADULT-ONLY BUSINESSES IN AMARILLO

If the Planning and Zoning Commission and City Commission should find from the data presented In this report that there exists sufficient need to control adult-only businesses and businesses which display generally circulated pornographic material, the Planning Department would recommend the following:

A. Any zoning ordinance amendments proposed to regulate adult businesses should not attempt to define individual activities but should instead regulate the site location choices of all businesses that restrict sale, display or entry based upon a minimum age, and not consider the legitimacy of the use.

B. The potential site location choices for adult-only uses should be dispersed rather than concentrated. This distance should be measured radially from property line to property line and should be at least 1,000 feet. Requirements designed to maintain the integrity of residential zones and other areas where the there is considerable traffic in juvenile or family oriented activities should be adequate for the purpose but should not be overly restrictive.

C. Should the City develop amendments to the Code of Ordinances designed to control the site location choices of adult entertainment businesses, it may be desirable to specify an amortized termination schedule for any existing adult business which does not meet the minimum site

location standards as specified in the Ordinance.

D. Concurrent with any zoning ordinance revisions designed to control adult uses, a permit and license mechanism should also be developed. The minimum operational standards specified by the license will. vary according to the type of business to be regulated.

E. Any zoning ordinance amendments concerned with adult businesses should provide provisions to regulate signs and similar forms of advertising.

F. The City Commission should encourage a vigorous enforcement of the State Penal Code to remove illegitimate uses. Especially important is that portion of the Penal Code which protects minors from all pornographic material. The City should impose specific amendments to the Code of Ordinances requiring businesses publicly displaying generally circulated pornographic material to prohibit minors, by an enforced physical barrier, from viewing or purchasing pomographic material.

If the City Commission, following a recommendation from the Planning and Zoning Commission, finds the necessity to control adult-only businesses and the public display of generally circulated pornographic material all amendments to the Code of Ordinances should be prepared as a total package and submitted to the Planning and Zoning Commission for preliminary review, before action by the City Commission_ The Planning and Zoning Commission review should have the Intention of assuring the purpose and continuity of each amendment to the overall goal of regulating these adult businesses and adult material displays.

'Zoning for the Pornographic Arts, City Development Department, August, 1976, Kansas City, Missouri

2 The cases reviewed in depth were:

A. Young v American Mini Theaters, Inc., 96 S. Ct. 2440 (1976). This was the Supreme Court review of the City of Detroit zoning ordinance which regulated (a) the proximity of adult uses to residential zones, (b) the proximity of adult uses to other areas where heavy traffic or concentrations of minors were found and (C) the density of adult businesses. The Court held that a city has the authority to control the location and density of adult entertainment businesses based on its police power right and duty to protect the health, safety and welfare of its citizenry.

B. Miller v California, 93 S. Ct. 2607 (1973). This decision laid down the most recent standard for determining what is obscene. This decision is the basis for the Texas Penal

Code Chapter 43, Public Indecency.

C. Smith v United States, 97 S. Ct. 1756 (1977), Paris Adult Theatre I v Slaton, 93 5. Ct. 2629 (1973), and Roth v United States, 77, 5. Ct. 1304 (1957). These earlier decisions were reviewed in order to determine the history of restrictions upon 1st Amendment guarantees. This review revealed that in effect the Court is ruling on the controversial problem of obscenity and state community standards determining prurient appeal and patent offensiveness on- a case by case basis.

3Amended by Act 1975, 64th Leg., p 372, Ch. 163, 1, eff September 1, 1975.

4Acts 1973, 63rd Leg. p 863, Ch. 399, 1, eff. January 1, 1974.

SU.S. News & World Report, September 13, 1976, p. 76.

6Time, April 5, 1976.

HOUSTON CITY COUNCIL

SEXUALLY ORIENTED *BUSINESS*

ORDINANCE REVISION COMMITTEE

LEGISLATIVE REPORT

COMMITTEE MEMBERS:

Jew Don Boney, Jr.

Helen Huey

John Castillo

Ray Driscoll

Joe Roach

Judson. Robinson, Jr.

Gracie Guzman Saenz

Orlando Sanchez

January 7, 1997

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INTRODUCTION

This report has been prepared by the Sexually Oriented Business Revision Committee for the purpose of summarizing the Committee's work in drafting a proposed amendment to Articles ll and Ill of Chapter 28 of the Code of Ordinances, Houston, Texas. In addition; a new Article Vlll has been proposed to be added to Chapter 28. **These summaries include prior efforts of regulating sexually oriented businesses (hereinafter "SOBS", testimony by the Vice Division of the Houston Police Department, reports and requests, citizen correspondence, industry memos, legal department research, and summaries of the principal themes** heard in the public **testimony** taken by the **Committee.**

The Committee's intention is to supplement prior reports issued in 1983, 1986; and 1991.

The original Ordinance was adopted in 1983. The 1986 Supplemental Report included premises that serve alcoholic beverages. The 1991 Supplemental Report addressed the addition of adult bookstores and movie theaters as regulated enterprises within the Ordinance's land use controls. The primary purpose of the current committee was twofold- First, the Committee desired to review the existing Ordinance and the City's ability to enforce the existing Ordinance. Secondly, there existed a need to assess and analyze the Ordinance with regard to its strengths and weaknesses and review them with regard to how effectively this Ordinance protects the interests of the public as well as the rights of the businesses subject to regulation. These amendments and additions relate primarily to the licensing of SOB employees, lighting configurations, distancing requirements between land uses, prohibition of "glory holes," elimination of closed-off areas, public notification of sexually oriented business applications, clear lines of vision, and dancer 'no-touch" policies.

SOBs enjoy Constitutional protection and must be allowed to exist and operate regardless of feelings about them. If the regulations were to be so onerous or so burdensome that they preclude, or inhibit them being able to even exist, they would likely be declared unconstitutional The Committee made it clear, both during the hearings and afterwards, that it was not the intention of the Committee to propose any ordinance that would be subject to a successful court challenge because it either directly or indirectly (or for that matter inadvertently) eliminated the opportunities for such businesses to exist in the City of Houston. Therefore, the challenge is to keep SOBs from infringing on the rights of citizens without denying SOBS a reasonable opportunity to operate in the City.

This report is not intended as a legal treatise on the regulation of SOBs, although the Commlttee was guided in its deliberations at various points from advice by the Legal Department and received numerous legal comment from counsel for the regulated businesses. This report is intended to be reviewed from a lay perspective for the use of the members of the City Council and members of the public in understanding the reasons that the amendments and additions to the Ordinance have been proposed. This report is intended only as a summary. The Committee has developed extensive files in connection with its work that are available for review.

On May 24, 1996, the Mayor's Office announced the members of the newly re-created committee, now entitled the "Sexually Oriented Business Ordinance Revision Committee." Council Members Jew Don Boney, Jr. and Helen Huey served as cc-chairs. In addition, Council Members Castillo, Driscoll, Roach; Robinson, Sanchez and Saenz served as members.

HISTORY OF THE ORDINANCE

The existing Ordinance had its basis in the work of the 1983 City Council Committee on Sexually Oriented Businesses that resulted in the adoption of Ordinance 83-1812. The history or the Committee's work is documented in the report filed with the City Secretary in connection with Ordinance 83-1812. This ordinance adopted a land use program that was controlled through permits and various incidental regulations for SOBs. Its focus was on regulating adult modeling studios, adult entertainment parlors, adult massage parlors and other similar businesses. Ordinance 83-1812 did not extend land use controls to premises that had alcoholic beverage permits and licenses, to adult bookstores or to. adult movie theaters because the state enabling law upon which the Ordinance was predicated did not then authorize land use controls on those forms of adult businesses. See former Art. 2372w Tex. Rev. Civ. Stat. Ann.

In 1985 the Texas Legislature revised the state enabling law to delete the exemption for premises that held alcoholic beverage permits and licenses. Following the revision of the state enabling law, the Committee reconvened to consider adding the so-called "topless bars" to the land use control structure of the Ordinance. The Committee reconsidered its prior work and took additional evidence relating in the adoption of Ordinance 86-323 which extended land use controls to the topless bars and placed the Ordinance into substantially its present form. The work of the Committee in the submission of Ordinance 86-323 is extensively documented in the Legislative Report filed with the City Council at the time of its adoption.

The genesis for the 1991 proposal amending the Ordinance related to circumstances virtually identical to those that arose in 1985. The Legislature in its 1989 session again amended the state enabling law. The 1989 amendments deleted the exemption from land use controls that had formerly existed in the state law for adult bookstores and adult movie theaters. However, some of the evidence received from the public in 1983 and 1986 related to adult bookstores and adult movie theaters. For this reason the Committee_ drew upon its 1983 and 1986 works in the preparation of the amended Ordinance draft and regarded the 1983 and 1986 evidence and experiences as pertinent to its 1991 work.

The scope of the Committee's recent work evolved as a result of increasing community concern regarding the proliferation of Sexually Oriented Business under the existing regulations. In addition, the Houston Police Department urged the City Council to consider means to control serious violations that were increasingly repetitive at numerous SOB establishments. Because of these requests and concerns the current Committee was established to review and strengthen the existing ordinance.

A DESCRIPTION OF THE COMMITTEE'S WORK

General. **The Committee was re-established in the summer of 1996 to review ideas on strengthening the current Ordinance. The Committee has conducted its business in public meetings. These meetings were posted on the City Hall bulletin board and were typically attended by the Committee Members, City support staff and interested members of the public and/or the regulated businesses The Committee also conducted three of its meetings as public hearings at which members of the industry and the general public testified. Along with the City Hall posting, notification of these public meetings was published in the newspaper and letters were sent to civic associations, individuals who had requested participation, and current SOB permit holders. The mailing list consisted of more than 1,000 names and was maintained in the office of Council member Huey and the Mayor's Citizens Assistance Office. Proponents and opponents of the regulation of SOBs were encouraged to speak openly of their ideas and viewpoints.**

In addition to these public hearings, a significant number of people chose to voice their opinions through written correspondence to the mayor, city council, and/or legal department. The authors of these letters consisted of civic association presidents, topless club owners, City of Houston citizens, SOB dancers, state elected officials, advocates of various organizations and other concerned citizens. There are approximately two hundred and seventy-five letters on file. Most urged for the strengthening and enforcement of the current ordinance. While others stressed First Amendment rights, some urged industry cooperation, and others voiced concerns about the growing number of unlicensed SOBs.

Findings and Conclusions. Based upon these proceedings, the committee has made additional findings and conclusions to supplement previous **legislative reports.**

First, because of the criminal activities that are associated with SOBs, the Committee determined the necessity of licensing all SOB entertainers and managers. Requiring an entertainer or manager to be licensed would establish a foundation for documenting those who have previous convictions for prostitution, public lewdness and other similar offenses. In addition, licensing could help eliminate underage entertainers because they would be required to prove that they are eighteen or older in order to obtain the license.

Second, the Committee found that there exists a serious predicament in the enforcement of public lewdness, prostitution, indecent exposure, and other criminal activities. Vice officers testified that because they do not engage in inappropriate behavior (such as removing their clothing), convictions are difficult to achieve. The officer's non-participation is perceived by

the entertainer that' he is working under cover. The entertainer proceeds with caution, avoiding lewd behavior that might normally occur. In addition, when a patron is charged along with the entertainer, it is difficult to obtain a conviction because of the sensitivity of the relationship between the two accused.

Third, the Committee was shown a video by the HPD Vice of a bookstore "glory hole." These exist in small rooms or booths in which individuals are admitted and permitted to use one or more arcade devices. The enclosed booths are joined to the neighboring booth by a hole in the wall. These "glory holes" are used to promote anonymous sex and thus facilitate the spread of sexually transmitted diseases.

Fourth, the Committee found that sexually oriented businesses that did not have clear lines or vision encouraged lewd behavior or sexual contact. Many businesses are designed with areas that are out of the view of managers and are conducive to illegal behavior. Entertainers are cognizant of these areas where violations can occur unobserved by management or law enforcement personnel who are conducting open inspections. For example, high back chairs are used as barricades to shield illicit behavior. In addition, testimony revealed that private, secluded, dimly lit areas have the same effect. Testimony revealed that once the entertainer felt comfortable with the patron, ruling out that he was an undercover officer, he would be asked fo move to a more private area.. In some cases he would be asked to pay a fee to enter the "VIP" room by either purchasing a membership or purchasing an expensive bottle of champagne. HPD cannot always afford these admittance fees in the course of investigations and often cannot access and monitor these specific areas.

Fifth, the Committee considered the issue that multi-family tracts were being counted as one tract in the residential quota, when in actuality, many families were living independently upon one tract. Through the Planning and Development Department a new formula was established band on average homeowners' property size that would account for the piece of land. These new figures were used to achieve a residential formula of eight single family tracts for each acre of multi-family tract. In addition, those lots pitted for residential development, but currently unimproved, were added to the residential tract formula.

Sixth, inadequate lighting prevents managers and police officers from monitoring illegal activities. Often the lighting is so dim that an investigator cannot observe the activities from one table to the next. Vice officers testified that smaller businesses use lighting as a way to camouflage illegal activities. As. a measurement for responsible lighting it was suggested that the requirement be similar to those minimum requirements established by the Uniform Building Code for'exit' signs.

Seventh, the committee determined that enterprises that had locked rooms, were often used as fronts for prostitution. An entertainer would simply request the patron to remove his clothing. Those who objected were deemed to be Vice officers therefore restricting the usual services of the entertainer. The more money that a customer showed, the greater the 'services.'

Eighth, in keeping with the theme of family preservation, the committee was urged through public and expert testimony to include public parks in distancing restrictions. A "public park" is defined as a publicly owned or publicly leased tract of land, whether situated in the city or not, designated, maintained and operated for public use for recreational purposes by the city or any political subdivision of the state and containing improvements, pathways, access or facilities intended for public recreational use. The term "public park" shall not include public roads, rights-of-way, esplanades, traffic circles, easements or traffic triangles unless such tracts or areas contain and provide improvements or access to a recreational use by the public. Additionally, members of the Committee felt that the testimony supported inclusion of "private parks" as a protected land use. The Legal Department was asked to consider possible inclusion of this category in the final draft Ordinance.

Ninth, repeated testimony requested that notification of a pending Sexually Oriented Business Permit be given to surrounding neighbors of proposed sites. It is within the framework of the current case law to require a SOB applicant to post signs on the proposed site in addition to publishing an intent to apply for a permit in the local newspaper. Testimony revealed a great deal of concern over the general public's lack of warning of the SOB application until it has been approved and opened.

Tenth, the committee found that continuing the amortization provisions of the previous Ordinances would be preferable to grandfathering the sexually oriented businesses that do not comply with the amended Ordinance. Grandfathering would allow nonconforming uses to continue under the new ordinance in perpetuity, or until market forces wiped out the business. Grandfathering creates a monopolistic position for non-conforming property uses and prevents the municipality from exercising its power to protect its residents. Under the amortization provisions of the previous Ordinance, a business regulated as to location had six months to come into compliance. However, if such a business believed that six months was an inadequate period in which to recoup a reasonable return on invested capital, the business would have the opportunity to request an extension of the compliance period. In light of this recourse, and taking into account the present, ongoing and serious detriment of such businesses pose for the community at large, the Committee determined that an appropriate balancing of interests justified continuation of the amortization provisions.

HPD Vice Review

The Houston Police Department's Vice Division played a major role in providing the City with statistics, details and testimony regarding their experiences with SOBs. In addition to written reports, three undercover vice officers testified at the August 29th hearing. Currently, the licensed SOBs are broken down as follows:

36 **Topless Clubs**

9 Adult Theaters

9 Nude Clubs

4 Video Stores

28 Modeling Studios

28 Adult Bookstores

In addition to the above list, there are approximately 18 adult theaters, bookstores and video stores with injunctive relief under federal court order in pending litigation styled, 4330 Richmond Avenue Incorporated, et al. v. The City of Houston. The City cannot enforce the SOB ordinance against the **enterprises** while the **litigation** is pending.

Between July 1, 1995 and August 31, 1996, the Houston Police Vice Division recorded 517 arrests in SOBs resulting in 355 convictions, or a conviction rate of 69%. Topless clubs experienced 289 dancer arrests with a conviction rate of 59%. In addition two managers were arrested but not convicted. There were six patrons of adult theaters taken into custody, resulting in a conviction rate of 83%. Dancers in all nude clubs accounted for 31 arrests, of which 71 % were convicted. Thirty-six patrons of adult video stores were arrested resulting in an 86% conviction. The modeling studios' record consisted of four arrests and one conviction. One hundred and forty-nine patrons of adult bookstores were arrested with 125 convictions (84%).

Of the 36 topless clubs, the number of arrests per club ranged from 0 to 50. While seventeen clubs had less than 10 arrests in the last two years, one club had 50. Prostitution, public lewdness, narcotics, and indecent exposure made up **these violations. Auto thefts are also on the rise in topless bar vicinities. This is due largely to the fact that a**

thief knows that he has about an hour and a half to. steal the car before the owner comes back.

Topless clubs make up the majority of arrests in the Vice Division's enforcement experience. When the officer goes under cover in a club, he must assume the identity of a patron. Employees explicitly ask for badges, weapons, handcuffs, and go as far as feeling around the patron looking for these items. Once they feel comfortable that the patron is not a police officer, they will often ask him to move to a more secluded area, or possibly the VIP room of the club_ The entertainer explains that she can do better dances in these areas and a "lot more things" because they aren't watched as closely. This is when the opportunity for sexual or lewd activities occurs.

The Vice Division representatives testified that licensing and criminal background checks will assist in the regulation of the entertainers behavior. Often, the same dances is arrested under a different or "stage" name. A license will ensure an individual true name, thus avoiding the use of stage names. This will ensure that individuals who are arrested and convicted are properly **identified** in the event of future criminal arrests.

Modeling studios, tanning salons, encounter parlors and similar SOBs require the patron to disrobe on entry. Performance is based specifically on the amount of money a patron is willing to spend. This take place behind locked doors. Vice officers' testimony revealed that in their opinion, these businesses were merely fronts for prostitution. Vice officers elaborated on scheme_ s of credit card fraud contributed to these enterprises. Often the charged amounts are altered or bogus charges are sent through for payment. When the client complains, he is threatened with the disclosure of the type of enterprise that he was in.

Vice officers testified that "bookstores are nothing more than just blatant open sexual contact between people with complete anonymity." With professionally cut "glory holes," random sexual activity between males is rampant. One officer went as far as testifying that in his eleven years with Vice he does not recall ever seeing anyone go into a booth, watch the movie for thirty minutes and walk out.

The HPD Vice officers felt that the following ordinance change suggestions would be helpful in the enforcement and **regulation** of sexually oriented **businesses:**

1. **licensing of persons involved in a SOB - manager, owners, dancers, waiters, bartenders**

2. minimum age 21 (this requires a state law change)

3. premises need to be well lit inside

4. no touching

5. models in modeling studios should not be allowed to remove all their clothes

6. make it a violation for models to ask patrons to remove all clothes

7. require bookstores and arcades to be well lit, no dark corners, no booths, no access between video booths, and no "glory holes"

8. entertainers to be considered employees rather than contractors

9. all investors and shareholders to be disclosed and licensed

10. public display of licenses

11. 6 foot distances between performer and patron

12. no private viewing areas

13. devices used as barriers limited to four foot heights

14. illumination of one candle foot at floor level minimum

15. no locked interior doors in modeling or tanning studios

16: regulate escort services

17. prohibition against use of inanimate objects by SOB employees to depict sexual conduct

18. prohibition against warning systems

19. redefine "multi-unit center"

20. restrict transfer or permitflicense

21. develop time line for revocation/suspension hearing

22. amend terms "knowingly" and "negligence"

23. owners, managers and employees of a SOB shall have their license immediately available

Although not all of these items were determined by the Legal Department as legally defensible under the extent enabling statute and case law, they were taken into

consideration.

PUBLIC HEARING SUMMARY

The initial Public Hearing was held on July 15, 1996 in the City Council Chamber. Council Member Boney outlined the intentions of the current committee as:

a. review the ordinance

1. **enforcement issues**
2. **effectiveness of the ordinance**
3. **operating procedures**

a. **review all SOBS, regulated and licensed, unlicensed and illegal**
b. licensing of employees
c. visibility issues
d_ revision of land policies
e_ balance SOBS' constitutional right and the right of the communities

The public testimony proceeded as follows:

According to members of the industry, policies for public lewdness cases are made in a personal and participatine way. In other words, Vice officers encourage lewd behavior, even to the extent of participating in order to "get a case." Industry representatives generally agreed that employees licensing is necessary, though some prefer the Police Department, others prefer the Health Department. Depending on the quality of an arrest, three or five within twelve months should be sufficient for revocation/suspension of SOB license. In addition, it is felt that there lacks effective police enforcement of unlicensed tanning salons and massage parlors.

Dr. **Devinney, professor of Abnormal psychology, testified that sexual deviants are attracted to communities because of Sexually Oriented Businesses. There are some deviants who cannot get sexual satisfaction unless they pay.for it. While others are not satisfied unless they take or steal it. In addition, there are some sexual deviants who cannot have sexual satisfaction without forbidden partners such as children, invalids or elderly. SOBS located in residential or even retail areas attract sexual deviants because they have their entertainment, then they come out and have a fertile field for solicitation. Therefore, they do not belong in or near residential communities.**

Because of the adverse secondary effects caused by Sexually Oriented Businesses, citizen responses urged the increase of distancing of SOBS from schools, churches and licensed day cares. In addition, they perceived a need to decrease the current residential formula of 75% to 25%. They also requested notification to area residents of proposed SOBS, either by posting a large sign on the property or individual mail outs. In addition, they urged that billboard advertising be illegal.

The second public hearing occurred on July 29, 1996. Attorneys representing the SOB

industry requested that a hearing panel be developed to deal with permitting issues. In addition, the panel should consist of non-law enforcement individuals, and contain several different hearing officers.

Testimony indicated that although many SOBs follow the rules, most industry representatives are not against stronger regulations in regards to licensing the entertainers. Often the dancers are transient. The establishment of a license issued through HPD would create a data base of information.

Furthermore, a great deal of discussion was given to a. "no touch" policy. Owners and dancers alike stated that touching was part of the entertainment. Plexiglas barriers, mini-stages, and six foot distancing were all criticized.

A third public hearing was scheduled for the public to comment on the draft ordinance prior to final approval, and was held January 6, 1997.

REVIEW ©F WRITTEN CORRESPONDENCE

More than two hundred seventy-five letters were received regarding the sexually oriented business ordinance. These letters came from- property owners, SOB employees, concerned citizens, parents, educators, civic associations, and business owners. While not all suggestions could be incorporated into this summary, each letter was carefully reviewed and passed to other members of the committee. These documents are on file in the Legal Department.

Approximately one hundred seventy-five letters were the result of a letter writing campaign promoted by "Adults for Legal Freedom." The principal theme of these letters was the over-regulation of the adult business industry. They feel that this industry attracts tourism, pays considerable tax revenues, and creates jobs, and therefore is a valuable asset to the city. In addition, they believe the reworking of this ordinance is for political reasons only.

Letters came in urging the extension of distancing between a SOB and neighborhoods, schools, licensed daycares, churches, medical clinics, government offices, historic districts, public parks, hospitals, and distancing between sexually oriented businesses. It was asked that new residential projects with preliminary approval from the planning commission be included in the residential formula. Also, concerns arose over the representation of multifamily dwellings in the residential radius computations.

Notification of the public that a Sexually Oriented Business has applied for an application was a relatively new issue brought before the committee members. Suggestions ranged from 90 day notices by property signs to postcards being mailed to all residents in the area. Notification by newspaper, certified mail, and public hearings were also brought forth_

With regard to entertainers, recommendations were to prohibit touching, prohibit asking customers to undress, install an 8' high stage, require 6 feet distances from patrons, and Plexiglas barriers, license all dancers, increase minimum dancing age, require criminal background checks, no licenses issued to convicted felons, and require license to be worn

at all times when inside an enterprise.

Other correspondence recommended that SOB permits should be renewed annually, repeated violations should be ground for denial, prohibit locked interior doors, require sufficient illumination of the facility, and to hold owner/manager accountable for activity occurring on the premises.

While opinions and suggestions varied, most people agreed with the proposition that sexually oriented businesses would continue to exist, and expressed concern to create a solution in which they could coexist without infringing on the rights of the citizens of the city.

COMMITTEE RECOMMENDATIONS

A. Adult Arcade Ordinance Changes

1. It is recommended that the Police Department's concerns regarding "adult arcades" or "peep shows" be addressed by amending Art. 11 of Ch. 28 of the Code of Ordinances to eliminate problems of sexually transmitted disease and criminal sexual conduct in such operations. At present; Art. 11 prohibits enclosed booths for viewing sexually oriented entertainment but regulates only establishments whose "arcade devices" are intended for the viewing of five or fewer persons. The recommended amendment would make devices intended for viewing by less than one hundred persons come under the purview of Art. 11. In addition, no adult arcade or adult mini-theatre shall be configured in such a manner as to have any opening in any partition, screen, wall or other barrier that separates viewing areas for arcade devices or adult mini-theatre devices from other viewing areas for arcade devices or adult mini-theatre devices. This provision shall not apply to conduits for plumbing, heating, air conditioning, ventilation or electrical service, provided that such conduits shall be so screened or otherwise configured as to prevent their use as openings that would permit any portion of a human body to penetrate the wall or barrier separating viewing areas. This should eliminate the problem of enclosed booths and, "glory holes" in such establishments. In addition, it shall be the duty of the owners and operator and it shall also be the duty of any agents and employees present in an adult arcade or adult mini-theatre to ensure that the premises is monitored to assure that no openings are allowed to exist in violation and to ensure that no patron is allowed access to any portion of the premises where any opening exists in violation.

2. It is recommended that responsibilities for hearing appeals from permit decisions of the Director be considered by a hearing officer, rather than the city"-s General Appeals Board, which is the present appellant body under Art. 11 of Ch. 28 of the Code of Ordinances. This recommendation would only impact Article 11 of Chapter 28, as all other appeals . regarding sexually oriented. businesses are presently heard by a hearing official. The hearing officer shall be an official appointed by the mayor and confirmed by city council. If, after the hearing officer determined, based upon the nature of the violation, that the ends of justice would be served by a suspension in lieu of a revocation, he may suspend the operation of the permit for a period of time

to be stated in the order of suspension, not to exceed two (2) months. The General Appeals Board has never heard such an appeal is principally concerned with Building Code matters, rather than'. regulation of sexually oriented businesses.

3. In addition, it is recommended that the fees associated with the processing of applications should be brought up to date to reflect current actual costs.

B. Procedural Changes - Sexually Oriented Business Enforcement

1. It is recommended that the appellate procedures in Art. 111 of Ch. 28 of the Code of Ordinances be revised to provide for a panel of hearing officers, appointed by the Mayor and confirmed by the City. Council, consisting of licensed attorneys, serving on rotation, who will consider all appeals relating to sexually oriented businesses and licenses. Decisions by such hearing officers will be final and subject to immediate judicial review. The availability of an intermediate appeal to the City Council from decisions of the hearing officer should be eliminated. Although the need for an intermediate appeal from permit decisions to the City Council at one time appeared necessary, it now appears that due process requires only one administrative hearing prior to judicial review. This change will eliminate delay and will prevent City Council from being inundated with the large number of appeals anticipated due to implementation of increased regulations..

2. It is recommended that the Chief of Police be required by ordinance to report to the Mayor and the City Council, on a monthly basis, all violations of sexually oriented business regulations and related state laws, with respect to all licensed facilities and licensed persons.

3. It is further recommended that the Legal Department, through the City Attorney, should have authority to initiate all administrative actions regarding suspension or revocation of any permit or license under the various ordinances. The city attorney shall execute a monthly report summarizing revocation actions filed, currently pending or decided during the reporting period. This authority currently rests with the Chief of Police in his capacity as Director.

4. It is recommended that sexually oriented business permits involved in administrative hearing or procedures regarding denial, suspension or revocation be prohibited from being transferred to another entity during the pendency of the administrative process.

5. It is recommended that the Chief of Police continue as Director under Ch. 28 of the Code of Ordinances for purposes of permitting, investigation and enforcement requirements, with the exception noted above that the Legal Department will be responsible for initiating administrative enforcement actions.

C. Land Use and Related Changes - Sexually Oriented Businesses

1. Information from the Planning Department indicates that the present distance requirements with respect to, churches, schools and day care centers could be substantially increased, perhaps to as much as 1500 feet from the present 750 feet; and that the radius for counting residential tracts could be increased to 1500 feet from the present 1000 feet, all without unduly restricting availability of conforming locations for sexually oriented businesses to operate. The Committee recommends that these changes be instituted to protect such land uses from the adverse secondary effects of SOBs.

2. It is recommended that multi-family dwellings situated on a single tract be considered for additional protection under the residential test. Under the present ordinance, a sexually oriented business may not operate at a location if 75 percent or more of the tracts within a 1,000 foot radius of the business are residential in character. However, many multi-family dwellings are located on single tracts. Although it may not be possible to count each unit in a multifamily development as a separate residential "tract" for purposes of the residential restrictions of the ordinance, it is recommended that a ratio of eight single family tracts for each acre of multi-family tract be considered to provide additional consideration for protection of residential neighborhoods that include multi-family developments.

3. Signage restrictions under the present ordinance apply essentially only to single use, freestanding sexually oriented businesses and not to "multi-tenant centers." As a practical matter, this allows some sexually oriented businesses to utilize large signage and otherwise prohibited exterior decorations by the simple expedient of including two or more small non-sexually oriented businesses on the same premises. It is recommended that the signage and exterior appearance provisions of the ordinance be strengthened to eliminate this practice.

4. In keeping with the theme of family preservation, the Committee recommends the inclusion of "public park," and, if legally definable, "private parks" to the protected land uses_ Public and expert witnesses testified that the inclusion of the was necessary to continue their rejuvenation. The term "residential" shall also include any unimproved tract designated for tax appraisal purposes as residential by the Harris County Appraisal District. In addition, it shall include any tract, that, based upon the records of the planning official has been subdivided or platted for residential use, but that is not yet designated for tax appraisal purposes as residential.

5. The committee recommends that each applicant, following the filing of the application and payment of the filing fee, place signs at the premises intended as the site for the SOB (at least 24 inches x 36 inches in size) that provide notification and information specifically stated "Sexually Oriented Business Permit Application Pending."

6. The committee recommends that each applicant give notice of the application by publication at his own expense in two consecutive issues of a newspaper published in Houston, Texas_

D. Conduct and Operations - Sexually Oriented Business Entertainers and

Managers

1. **The committee recommends that all entertainers and managers of SOBs hold permits issued by the vice division of the police department. The permit application shall include name, address, date of birth, photo identification, a list of criminal charges pending, convictions and time in jail. Crimes justifying a denial of a permit are limited to offenses relating to criminal sexual conduct and criminal activities known to be prevalent in SOBs.**

2. The committee recommends the issuance of two photographic permits, a personal card and an on-site card. Each manager or entertainer shall conspicuously display his personal card upon his person at all times while acting as an entertainer or manager of or in an enterprise. The on-site card shall remain in the charge of the on-site manager of the enterprise to hold while the manager or entertainer is on the premises.

3. **The committee recommends that it shall be unlawful for any entertainer to touch a customer or the clothing of a customer while engaging in entertainment or while exposing any specified anatomical areas or engaging in any specified sexual activities.**

E. Amortization

Beginning in 1983, prior to the adoption of the current series of City regulations regarding sexually oriented businesses, the City Council Committee studying the issue concluded that the nature of the adverse secondary effects produced by the operation of sexually oriented businesses could only be addressed by enforcing regulations against existing businesses (i.e., "amortization"), rather than allowing businesses existing at the time of the ordinance passage to exist essentially in perpetuity (i.e., "grandfathering"). The City Council legislative report, which was subsequently adopted by the full City Council concluded, "During the hearings, it became evident to the Committee that the problems created by sexually oriented businesses had been allowed to persist for so long that merely addressing the problem "from here on out" would not be adequate. Prospective legislation would do little or nothing to alleviate the current serious problem caused by businesses already existing. The Committee therefore concluded that existing businesses should come under the ordinance; for this reason the Committee rejected grandfathering of existing businesses and determined that amortization would be the appropriate approach." (Houston City Council on the Proposed Regulation of Sexually Oriented Businesses Report, December 1, 1983, pg. 29).

This position was reconfirmed when the City Council revisited regulation of sexually oriented businesses in 1986 and 1991. Each subsequent revision of the City's sexually oriented business ordinances included an amortization provision, designed to give all existing affected sexually oriented businesses an initial six-month period for compliance, including relocation, if necessary, and an opportunity to justify an additional extension for lawful operation before a hearing examiner appointed by the director under the ordinance. Records of the amortization hearings indicate that many affected businesses were able to obtain extensions of up to **5'/ years following the initial six-month compliance period.** The

average extension, historically, has been about 2 to 3 years. The factors considered in granting additional extensions of time included:

1. the amount of the owner's investment in the existing enterprise through the date of passage and approval of the Ordinance;

2. the amount of such investment that has been or will be realized through the 180th day following the effective date of the Ordinance;

3. the' life expectancy of the existing enterprise;

4. the existence or nonexistence of lease obligations, as well as any contingency clauses therein permitting termination of such_leases.

Amortization, as opposed to grandfathering, or existing sexually oriented businesses in Houston was specifically upheld by the federal district court in the case of SDJ, *Inc. v, City of Houston,* 636 F.Supp. 1359 (S.D. Tex. 1986), affirmed 837 F.2d 1268 (5th Cir in SDJ, the court held that "it is generally accepted that pre-existing non-conforming uses, subject to zoning or similar regulations, are not to be perpetual, and that amortization to allow for the recoupment of investment in an existing land use is an appropriate measure to balance the property owners' rights against the proper exercise of the City's police power to regulate non-conforming uses. See, e.g., City of *University Park v. Benners,* 485 S.W.2d 773 (Tex. 1972).

"Grandfathering" essentially contemplates the indefinite continuance of non-conforming businesses or land uses following the passage of zoning or similar land use ordinances, notwithstanding that such businesses or uses clearly violate the provisions of the ordinance. The effect of "grandfathering" is to continue such non-conforming uses indefinitely, although new land uses may be subject to the newly enacted restrictions. A number, of authorities hold that established non-conforming uses that are grandfathered must be allowed to continue the use, notwithstanding transfer or change in ownership. See Section 25-183.50, McQuillin, Municipal Corporations. These authorities hold that only if a non-conforming use is abandoned altogether can the zoning or other ordinances be enforced against the particular property or business use. Id. While-these authorities may not necessarily preclude termination of non-conforming rights upon transfer of ownership under Texas law, it is altogether possible that non-conforming sexually oriented businesses could find ways to structure sale of assets or ownership interests in such a manner as to perpetuate the entity "owning" the sexually oriented business to avoid termination of non-conforming rights. In any event, most non-conforming sexually oriented businesses would likely enjoy the opportunity for a very long continuation in business under any "grandfathering" scheme_

In contrast, amortization has been determined by the prevailing majority of courts in this country to be a reasonable means of accommodating the need to protect the public from adverse land uses, while at the same time giving consideration to the rights of business owners to recoup business investments, prior to feeling the effects of a restrictive ordinance. The problem with "grandfathering' is that it perpetuates non-conforming uses for an indefinite period, thus preventing the effective exercise of the City's police powers to protect its residents. As noted by the Supreme Court of Texas, "There are strong policy

arguments and a demonstrable public need for the fair and reasonable termination of non-conforming property uses which most often do not disappear but tend to thrive in monopolistic positions in the commuhity..We are in accord with the principle that municipal zoning ordinances requiring the termination of non-conforming uses under reasonable conditions are within the scope of municipal police power. That property owners do not acquire a constitutionally protected vested right in property uses once commenced or in zoning classifications once made. Otherwise, a lawful exercise of the police power by the governing body of the City would be precluded." City of *University Park v. Benners, supra,* 485 S.W.2d at 778.

The adult bookstores and theaters that challenged the 1991 City of Houston sexually oriented business amendments as requiring them to change operation or relocate claimed in the pending federal lawsuit that the City was legally required to grandfather them at their present locations. The City has vigorously contested this contention, which is not in accord with the settled law governing the matter. In addition, all prior City Council committees and City Councils considering implementation of new sexually oriented business ordinance revisions have concluded that amortization is necessary to provide protection to all residents of the City, while recognizing the ability of business owners to remain in operation without. relocating for a reasonable period of time. Although the City haw occasionally experimented, on a small scale, with "grandfathering" in the past, such provisions have been limited to relatively small numbers of businesses such as automotive salvage yards. In no such case has the City Council documented extensive adverse secondary effects on surrounding neighborhoods, such as have been presented to this Committee and prior City Council committees regarding the operation of sexually oriented businesses.

As a practical matter, the "grandfathering" of existing sexually oriented businesses under any proposed ordinance revision would allow such businesses to continue to operate in violation of new regulations indefinitely. However, persons proposing to operate new sexually oriented businesses would have to comply with the full force of more stringent regulation's, and residents and neighborhoods presently adjacent to existing sexually oriented businesses would have to essentially live With the continuing effects of such businesses on their localities for an indefinite period. While such a situation would not necessarily give rise to any legal cause of action on the part of such new businesses or existing neighborhoods, the potential for the perception of uneven treatment with respect to the protected position of existing sexually oriented businesses is readily apparent.

Historically, the City's amortization program has significantly reduced the adverse secondary effects of sexually oriented businesses in a relatively short time-frame, while still terminating existing non-conforming businesses in a legally permissible fashion. Further, the City's position in pending litigation involving amortization of adult bookstores is best served by maintaining an amortization policy consistent with past practice, rather than experimenting with grandfathering. In conclusion, although "grandfathering" remains technically available as a legal option for implementation of proposed sexually oriented business amendments, it clearly poses significant legal and policy disadvantages, as noted above. The Committee therefore recommends that existing SOBs rendered non-conforming be allowed to recoup investment through an amortization process.

SECTION BY SECTION ANALYSIS

The Amended Ordinance incorporates a substantial number of procedural and administrative changes that reflect ten years of operating experience with the Original and two Amended Ordinances and a better understanding of the ways in which enforcement of the ordinance could be improved. This portion of the Report briefly outlines on a section-by-section basis the major changes that have been made and the reasons for those changes.

Section 28-81. Definitions. General Comment. As a general matter, definitions in Section 28-81 have in many cases been reworded to conform more closely with definitions already used in other municipal ordinances.. In addition, "adult mini-theatre" has been added throughout this amended ordinance.

Section 28-81. **Definitions. "Adult mini-theatre." In the previous Ordinance, no mention was made of an "adult mini-theatre." This definition has been added to incorporate theatres that are intended** for the **viewing** of five (5) to one **hundred** (100) **patrons.**

Section 28-81. Definitions_ "Mini-theatre device." In the previous Ordinance, no mention was made of a "mini-theatre device_" This definition has been added to incorporate any coin or slug operated or electrically or electronically or mechanically controlled machine or device that dispenses or effectuates the. dispensing of "entertainment," that is intended for the viewing of more than five (5) persons but less than 100 persons in exchange for any payment of any consideration. It is not intended to include any conventional motion picture screen or projections that are designed to be viewed in a room containing tier or rows of seats with a viewer seating capacity of 100 or more persons.

Section 28-81- Definitions. "Owner or owners." This definition has been expanded to **include the major stockholders/controllers of a corporation. Although requests** came in **to list. A stockholders,** it **does not require the disclosure of non-controlling parties.**

Section 28-81. Definitions. "Specified anatomical areas." In the **previous Ordinance, no mention was made of "specified anatomical areas" in this particular section. As a matter of consistency throughout the ordinance, it has been added here.**

Section 28-92 (e). Application. The adult arcade or adult mini-theatre permit fee was established eleven years ago and analysis reveals that with the increase in administrative costs, this figure is no longer viable. Therefore, the increase from $75.00 to $275.00.

Section 28-92 (f). **Application.** In **an effort to clarify the application process, the submission of the applicant must be submitted by hand delivery by "the intended operator."**

Section 28-92 (h). Application. Where a premises is so configured and operated as to constitute both an adult arcade and an adult mini-theatre, then the operator may apply for and obtain a combined permit authorizing operation as both an adult arcade and an adult mini-theatre.

Section 28-93 (a). Issuance or denial by _police chief. For purposes of consistency throughout the ordnance, the notice of issuance or denial of the permit has been expanded

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Section 28-81. Definitions. "Mini-theatre device." In the previous Ordinance, no mention was made of a "mini-theatre device." This definition has been added to incorporate any coin or slug operated or electrically or electronically or mechanically controlled machine or device that dispenses or effectuates the. dispensing of "entertainment," that is intended for the viewing of more than five (5) persons but less than 100 persons in exchange for any payment of any consideration. It is not intended to include any conventional motion picture screen or projections that are designed to be viewed in a room containing tier or rows of seats with a viewer seating capacity of 100 or more persons.

Section 28-81. Definitions. "Owner or owners." This definition has been expanded to include the major stockholders/controllers of a corporation. Although requests came in to list arl stockholders, it does not require the disclosure of non-controlling parties.

Section 28-81. Definitions. "Specified anatomical areas." In the previous Ordinance, no mention was made of "specified anatomical areas" in this particular section. As a matter of consistency throughout the ordinance, it has been added here.

Section 28-92 (e). Application. The adult arcade or adult mini-theatre permit fee was established eleven years ago and analysis reveals that with the increase in administrative costs, this figure is no longer viable. Therefore, the increase from $75.00 to $275.00.

Section 28-92 (f). Application. In an effort to clarify the application process, the submission of the applicant must be submitted by hand delivery by "the intended operator."

Section 28-92 (h). Application. Where a premises is so configured and operated as to constitute both an adult arcade and an adult mini-theatre, then the operator may apply for and obtain a combined permit authorizing operation as both an adult arcade and an adult mini-theatre.

Section 28-93 (a). Issuance or denial by police chief. For purposes of consistency throughout the ordnance, the notice of issuance or denial of the permit has been expanded

which most activity takes place, whether standing or seated.

Section 28-111 (aa)- Grounds . In the previous Ordinance revocation hearings were conducted by the general appeals board as established pursuant to the provisions of the building code. This has been changed to a hearing officer appointed by the mayor and confirmed by city council. This change should speed up the revocation process with more efficiency.

Section 28-111 (a) (3). Grounds . Again, the terms "indecent exposure" and "lewd conduct" have been added to consistency.

Section 28-114. Order of the hearing officer . Because of the transfer of authority from the general appeals board to the hearing officer, this section has been reworked. If, after the hearing, the hearing officer finds that the permit should be revoked, he shall issue a written order revoking such permit which shall be effective on the third day after notice thereof is given to the operator. If the hearing officer determines, based upon the nature of the violation, that the ends of justice would be served by a suspension in lieu of a revocation, he may suspend the operation of the permit for a period of time to be stated in the order of suspension, not to exceed two (2) months, In addition, the decision of the hearing officer is final.

Section 28-115 . Posting removal of permit, discontinuation of use as adult arcade or adult mini-theatre . This subsection is new. It has been added for clarification. "The procedures for judicial review set forth under Section 28-135 of this code shall apply to adult arcades and adult mini-theatres.

Section 28-121. Definitions_ "Multifamily tract." In the previous Ordinance, no mention was made of "multifamily tract_" Concerns developed over the limited representation of multifamily dwellings such as apartment complexes, condos, and town homes in the overall residential formula_ Therefore, the addition of "multifamily tract" shall be defined as any residential tract that contains any building or buildings or portion or portions thereof, that is designed, built, rented, leased, sold, let out or hired out to be occupied, or which is occupied, in separate units, each containing living, sleeping and food preparation facilities, as the homes or residences of three or more families, groups, or individuals living independently of each other.

Section 28-121. Definitions, "Owner or owners ," This definition has been expanded to include the major stockholders/controllers of a corporation. Although requests came in to list all stockholders, it is not applicable to disclose non-controlling parties.

Section 28-121- Definitions, "Public Park." In the previous Ordinance, no mention was made of "public park," Concerns over the preservation of the family and the facilities geared toward the family brought forth the necessity to include "public parks" in protected land uses. Considered as centers of family recreation, a "public park" is defined as "a publicly owned or publicly leased tract of land, whether situated in the city or not, designated, dedicated, controlled, maintained and operated for use by the general public for active or passive recreational or leisure purposes by the city or any political subdivision of the state and containing improvements, pathways, access or facilities intended for public recreational use." The term "public park" shall not include parkways, public roads, rights-of-way, esplanades, traffic circles, easements or traffic triangles unless such tracts

or areas contain and provide improvements or access to a recreational or leisure use by the public. A current list of public parks, shall be compiled and revised by the Director of the Parks and Recreation Department and maintained for public inspection in the office of the City Secretary.

Section 28-121. Definitions. "Residential ." With the inclusion of "multifamily tract," it is necessary to clarify the definition of "residential" to include any unimproved tract designated for tax appraisal purposes as residential by the Harris County Appraisal District if situated in the City or by the appraisal district of the county in which the tract is situated if not situated in the City. The term additionally shall include any tract, that, based upon the records of the planning official has been subdivided or platted for residential use, but that is not yet designated for tax appraisal purposes as residential." In addition, the definition has been extended to exclude college- or university dorms.

Section 28-123 Same-Application . In an effort to clarify the application process, the submission of the applicant must be submitted by hand delivery by "the intended operator."

Section 28-123 (b) (1) (Same-Application . The sexually oriented business permit application fee has been raised to $475.00. The original fee of $350.00 was put into effect eleven years ago and analysis reveals that with the increase in administrative costs, this figure is no longer viable to recover costs of investigation and permit issuance.

Section 28-123 (b) (b) Same-Application . The sexually oriented business permit renewal fee has been increased to $225.00. The original fee of $100.00 was put into effect eleven years ago. That figure is no longer viable to cover administrative costs.

Section 28-123 **Same-Application . Section 28-123 (e) of this Amended Ordinance is totally new. This section was established to notify surrounding property owners that a SOB permit has been applied-for- "Each applicant shall, following the filing of the application and payment of the filing fee, place signs (at least 24 inches x 36 inches in size) that provide notification and information specifically stated** *"SEXUALLY* **ORIENTED BUSINESS PERMIT APPLICATION PENDING" and the date on which the application was filed along with the notation: 'For further information, contact the Vice Division of the Houston Police Department.' All lettering on the signs must be at least 1 and l inches x 2 inches in size for each letter on the sign. It shall be the duty of each applicant as to each particular application to erect at least one such sign along each of the property's public road or highway frontages so as to be clearly visible from the public road or highway. If a property does not have a public road or highway frontage, then signs shall be placed upon the property at the point visible from the nearest right-of-way. Said signs shall be erected not less than three days after the filing of the application for the sexually oriented business permit and shall be checked daily by the applicant and re-posted to ensure that they remain posted until the application has been approved or denied."**

Section 28-123 Same-Application . Section 28-123 (f) of this Amended Ordinance is totally new. This section was established to notify the public of the application of a SOB permit. "Every applicant shall give notice of the application by publication at his own expense in two consecutive issues of a newspaper published in Houston, Texas with a daily circulation of not less than 100,000 copies. The notice shall be printed in 10-point boldface type and shall include: (1) the fact that a sexually oriented business permit has been applied for; (2) the street address, including suite or unit number, if any, of the place

of business for which the permit is sought; (3) the names of the business and, if the business is operated under an assumed name, the trade name, and (4) if the applicant is a corporation, the names and titles of all officers. The notices shall be published within seven (7) days after the application is filed with the director." The choice of a daily circulation of not less than 100,000 copies was developed to avoid publication in newspapers with limited circulation.

Section 28-123 Same-Application. Section 28-123 (g) of this amended Ordinance has been added to clarify the duties of the director. He/she shall be responsible for a monthly report submitted to the mayor and the city council, with a copy to the city attorney, summarizing all applications submitted under this section, and including the name of the proposed enterprise and the street address or the proposed location.

Section 28-125 (b) (1). Same-Issuance or denial. In the previous ordinance the applicant's enterprise could not be located within seven hundred fifty (750) feet of any school, church, or licensed day care centers. This has been expanded to one thousand five hundred (1,500) feet and "public park" has been added to protected land uses. Advance computer technology has brought about . a more sophisticated program for determining site availability_ The increase in distance allows for more protection to specific land uses while only slightly reducing the number of "reasonable alternatives sites" for the sexually oriented businesses.

Section 28-125 (b) (3). Same-issuance or denial. In the previous ordinance the applicant's enterprise could not be located within a one thousand (1,000) foot radius where seventy-five (75) percent or more of the tracts were residential in character. This has been expanded to a one thousand five hundred (1,500) foot. radius. In addition, the "multifamily tracts shall be counted as multiple residential tracts based upon the acreage of the multifamily tract according to the following formula: each one-eighth (1/8 th) acre of land or fraction thereof shall be equivalent to one (1) residential tract. For purposes of this calculation a residential tract or multifamily tract shall be considered to be in the circular area in its entirety if any portion of it lies within the circular area." In the past, multifamily tracts were counted as one or consistent with the actual number of property owners.

Section 28-125 (d). Same-Issuance or denial. In the previous ordinance the appeal process was handled by a single hearing official. The general consensus is to create a panel of hearing officials. "Such hearing officials shall be attorneys licensed to practice law in the state of Texas and shall serve without compensation. Hearings shall be conducted by each hearing official in rotation as appeals are filed. Should the hearing officer next in rotation be unavailable to hear an appeal within the time specified under this section, the hearing official next in order who is available shall be designated to hear such appeal." The hearing panel shall not exceed ten in number. An applicant requesting a hearing now has 20 days to file a written request for hearing. The purpose of this increase was to conform with other areas of this Ordinance_ This change should streamline the process with greater efficiency and expertise of the law and law related issues.

Section 28-125 (e). Same-Issuance or denial. The previous ordinances allowed for an appeal to City Council pertaining to the denial of an application. Again, in an effort to streamline the process, this has been deleted. Decisions by the hearing official are final. In addition, the hearing must be conducted within 20 days.

Section 28-125 Same-Issuance or denial. As a result of the hearing official's decision being final, this section has become obsolete, **therefore** it has **been deleted.**

Section 28-126 Same-Transfer upon change. In the previous ordinance this section read "operator designated in the application." For more clarity of responsibility this has been edited to read "...holds the permit on the owner(s)' behalf as the owner(s)' agent..." This wording change clarifies the **responsibility** of the on-premise operator.

Section 28-126 (d) **Same-Transfer upon change. Previous ordinances did not address the issue of ownership change during the pendency of any administrative proceeding. For greater control regarding enforcement issues, the committee finds the necessity of the prevention of permit transfers while any revocation or suspension is pending. Historically, ownership transfers have occurred to avoid regulation.**

Section 28-127 (a). **Same-Revocation or suspension. In the previous ordinances the revocation or suspension authority was held by the director. In an attempt to address the separation of power the revocation and suspension authority has been transferred to the City Attorney. Not only will this streamline into a more efficient process, it will remove the power of authority from the investigative agency.**

Section 28-127 (a) (1). Same-Revocation or suspension. Since the previous ordinance, the state of Texas has changed the law regarding the minimum age allowed in a sexually oriented business. In order to be consistent with the state, this ordinance will raise the age from 17 to 18.

Section 28-127(a) (31 Same-Revocation or suspension. For the purpose of enforcement, the "operator or any manager" has been included with the owner in the responsibility of actions occurring in the establishment_ The addition of "should have known that such violations were occurring or did occur" makes the on-premise operator accountable for behavior on the premise.

Section 28-127 (b)- Same-Revocation or suspension. The city attorney shall have sole authority to initiate any action for revocation of a permit.

Section 28-127 (c). Same-Revocation or suspension. The director shall provide the mayor, city council, and the city attorney with a monthly report summarizing the number and type of violations for each permitted enterprise. The city attorney shall execute a monthly report summarizing revocation actions filed, currently pending or decided during the reporting period. The city attorney may withhold any information from this report that may compromise any ongoing investigation.

Section 28-127 (d)- Same-Revocation or suspension. This section has been changed to transfer the power of permit revocation from the mayor to the city attorney- The "designated" hearing official will be appointed by the mayor and confirmed by city council instead of the director. In addition, the hearing shall be held not less than twenty (20) days after notice is given.

Section 28-127 (e). Same-Revocation or suspension. **In keeping with the consistency of the hearing. official's decisions as final, "filing an appeal" has been changed to "...final disposition of any court action involving judicial review of..."**

Section 28-130 (c) (3) (Signage . This section is new to this amended ordinance. Historical evidence indicates that enterprises have evaded the size limitation of the sign ordinance by renting out a portion of their building thus changing their status to a "mufti-unit center." In turn, they directly advertise on the allowed over sized signs. "Any sign located on the premises of a commercial mufti-unit center containing an- enterprise that displays the name, or any portion of the name of the enterprise, any name under which any enterprise was. formerly operated on the premises, or that contains any of the terms set forth in item (2) of subsection (c) or any other terminology that is commonly used to identify, or is associated with the presence of a sexually oriented business, shall comply with all restrictions of this section."

Section 28-131 "Persons younger than seventeen prohibited from entry; attendant required." The Amended Ordinance forbids the presence of anyone younger than eighteen in a sexually oriented business for whatever reason as consistent with state law.

Section 28-135 Judicial review. This section is new to the Ordinance_ The decision of the hearing official suspending or revoking a permit under section 28-127 of this Code shall be final as of the date written notice of the hearing official's decision is given to the owner or operator of the enterprise, but in order to afford the permit holder an opportunity to seek judicial review shall not be effective for purposes of enforcement of the decision by the director until the twentieth (20 th) day following such notice. If the permit holder initiates litigation for the purpose of seeking judicial review within the twenty (20) day period, then the decision shall not be effective for purposes of enforcement prior to the sixtieth (60th) day following such notice. This subsection shall apply only to a decision sustaining the suspension or revocation of a permit for an existing enterprise, and shall not apply to a decision sustaining the denial of an initial application for a proposed enterprise.

Section 28-136 (a). Access visibility, lighting and operations. Terms in this section shall be governed by the definitions in section 28-151 of this Code.

Section 28-136 Access, visibility, lighting and operations. "it shall be unlawful for any owner, operator or manager of any enterprise to permit any employee to provide any entertainment to any customer in any separate area within an enterprise to which entry or access is blocked or obscured by any door, curtain or other barrier, regardless of whether entry to such separate area is by invitation, admission fee, club membership fee or any form of gratuity or consideration.

Section 28-136 (c). Access, visibility, lighting and operations . The owner, operator or manager of an enterprise must allow immediate access by any police officer, city fire department official or city health officer to any portion of the premises upon request regarding administrative search procedures ensuring compliance with the law.

Section 28-136 (d). Access. visibility. lighting and operations. "Each enterprise shall be equipped with lighting fixtures of sufficient intensity to illuminate every place to which customers are permitted access at an illumination of not less than one (1.0) foot candle as measured at four feet above floor level." According to the Uniform Building Code, one foot candle is the standard floor level light required for all emergency exits. A photographic expert testified that this level of illumination can be accurately measured with currently

available light metering equipment. Therefore, this should be considered. a reasonable standard.

Section 28-136 (e). Access, visibility, lighting and operations. One on-site manager is to be on duty on the premises at all times during which the enterprise is open for business or customers are on the premises. This will ensure supervision and accountability by SOBs for prevention of criminal activities.

Section 28-136 (f). Access, visibility, lighting and operations. It shall be the duty of any owner, operator or manager of an enterprise to ensure that all persons acting as managers or entertainers on the premises hold and display permits.

Section 28-136(q)_ Access, visibility, liahtin and operations. The on-site manager shall ensure that no entertainer or manager is allowed to conduct any business unless the on-site manager has in his possession or control an on-site card. On-site cards shall be made available for immediate inspection by any police officer, fire department official or health officer. Managers or entertainers working at more than one enterprise may retrieve their on-site cards upon departing the premises in order to present them to a manager at any other enterprise where such persons are employed.

Section 28-136 Access, visibility, lighting and operations. In order to assist as a cross check, a list of permits for each manager and entertainer conducting business on the premises is required.

Article Vill. "SEXUALLY ORIENTED BUSINESS EMPLOYEES, CONDUCT AND OPERATIONS. Article VII of the Amended Ordinance is totally new.

Section 28-251. Definitions. General Comment. As a general matter, definitions in Section 28-25'1 have in many cases been worded to conform closely with definitions already used in other municipal ordinances. The following words and terms shall have the meanings ascribed to them in this section, unless the context of their usage clearly indicates another meaning:

Section 28-251. Definitions. "Conduct any business in _an enterprise." Any person who does any one (1) or more of the following shall be deemed to be conducting business in an enterprise:

(1) Operates a cash register, cash drawer or other depository on the premises of the enterprise where cash funds or records *of* credit card or other credit transactions generated in any manner by the operation of the enterprise or the activities *of* the premises of the enterprise;

(2) Displays or takes orders from any customer for any merchandise, goods, entertainment or other services offered on the premises of the enterprise;

(3) Delivery or provides to any customer any merchandise, goods, entertainment or other services offered on the premises of the enterprise;

(4) Acts as a door attendant to regulate entry of customers or other persons into the premises of the enterprise; or

(5) Supervises or manages other persons in the performance of any of the foregoing activities on the premises of the enterprise.

Section 28-251. Definitions. "Customer." Any person who:

(1) Is allowed to enter an enterprise or any portion of an enterprise in return for the payment of an admission fee, membership fee or any other form of consideration or gratuity;

(2) Enters an enterprise or any portion of an enterprise and purchases, rents or otherwise partakes of any merchandise, goods, entertainment or other services offered therein; or

(3) Is a member of and on the premises of an enterprise operating as a private or membership club or an enterprise that reserves any portion of the premises of the enterprise as a private or membership club.

Section 28-251. Definitions. "Director." The chief of police and such employee(s) of the police department as he may designate to perform the duties of the director under this article.

Section 28-251. Definitions. "Employee." Any person who renders any service whatsoever to the customers of an enterprise, works in or about an enterprise or who conducts any business in an enterprise and who receives or has the expectation of receiving any compensation from the operator, or customers of the enterprise_ By way of example, rather than limitation, the term includes the operator and other management personnel, clerks, dancers, models and other entertainers, food and beverage preparation and service personnel, door persons, bouncers, and cashiers. It is expressly intended that these definitions cover not only conventional employer-employee relationships but also independent contractor relationships, agency relationships, and any other scheme or system whereby the "employee" has an expectation of receiving compensation, tips or other benefits from the enterprise or its customers in exchange for services performed.

Section 28-151. Definitions. "Enterprise." An adult bookstore, adult cabaret, adult encounter parlor, adult lounge, adult modeling studios, adult movie theatre or any establishment whose primary business is the offering of a service or the selling, renting or exhibiting of devices or any other items intended to provide sexual stimulation or sexual gratification to its customers, and which is distinguished by or characterized by an emphasis on matter depicting, describing or relating to specific sexual activities or specified anatomical areas. The term "enterprise" shall include any premises for which a permit is required under either or both of Articles If and III of this chapter. However, the term "enterprise" shall not be construed to include:

(1) Any business operated by or employing licensed psychologists, licensed physical therapists, licensed athletic trainers, licensed cosmetologists, or licensed barbers performing functions authorized under the licenses held;

(2) Any business operated by or employing licensed physicians or licensed chiropractors

engaged in practicing the healing arts; or

(3) Any retail establishment whose major business is the offering of wearing apparel for sale to customers.

Section 28-251. Definitions. "Entertainer." Any employee of an enterprise who performs or engages in entertainment.

Section 28-251. Definitions. "Entertainment." Any act or performance, such as a play, skit, reading, revue, fashion show, modeling performance, pantomime, role playing, encounter session, scene, song, dance, musical rendition or striptease that involves the display or exposure of specified sexual **activities or specified anatomical** area. The **term "entertainment" shall include any employee or entertainer exposing any specified anatomical areas or engaging in any specified sexual activities whatever in the presence of customers.**

Section 28-251. Definitions. "Manager." Any person who supervises, directs, or manages any employee of the enterprise or any other person who conducts any business in an enterprise with respect to any activity conducted on the premises of the enterprise, including any "on-site manager."

Section 28-251. **Definitions_ "On-site manager." A person charged by an owner or operator of an enterprise with the responsibility for direct supervision of the operation of, the enterprise an with monitoring and observing all areas of the enterprise to which customers are admitted at all times during which the enterprise is open for business or customers are on the premises of the enterprise.**

Section 28-251. Definitions. "Operator." The manager or other natural person principally in charge of an enterprise..__

Section 28-251. Definitions. "Owner or owners." The proprietor if a sole proprietorship, all general partners if a partnership, or the corporation if a corporation.

Section 28-251. Definitions. "Permit." A current, valid permit shall be issued by the director pursuant to the terms of this article.

Section 28-251. Definitions. "Separate area." Any portion of the interior of an enterprise separated from any other portion of an enterprise by any wall, partition or other divider.

Section 28-251. Definitions. "Specified anatomical areas.":

1. **Less than completely and opaquely covered_**

    a. **Human genitals, pubic regions or pubic hair;**

    b. **Buttock;**

    c. **Female breast or breasts or any portion thereof that is situated below a point immediately above the top of the areola; or**

engaged in practicing the healing arts; or

(3) Any retail establishment whose major business is the offering of wearing apparel for sale to customers.

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Section 28-251. Definitions. "Operator." The manager or other natural person principally in charge of an enterprise.__

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Section 28-251. Definitions. "Separate area." Any portion of the interior of an enterprise separated from any other portion of an enterprise by any wall, partition or other divider.

Section 28-251. Definitions. "Specified anatomical areas.":

1. Less than completely and opaquely covered:

   a. Human genitals, pubic regions or pubic hair;

   b. Buttock;

   c. Female breast or breasts or any portion thereof that is situated below a point immediately above the top of the arecla; or

d. **Any combination of the foregoing; or**

1. **Human male genitals in a discernibly erect state, even if completely and opaquely covered.**

Section 28-251. Definitions. "Specified sexual activities."

1. **Human genitals in a discernible state of sexual stimulation or arousal;**

2. **Acts of human masturbation, sexual intercourse or** sodomy;

(3) **Fondling or other erotic touching of human genitals, pubic regions or pubic hair, buttock or female breast or breasts, or**

(4) Any combination of the foregoing.

Section 28-253 Permit required. All entertainers and managers must have an individual license. "It shall be unlawful for any person who does not hold a permit to act as an entertainer or a manager of or in an enterprise."

Section 28-253 Permit required. The operators and owners shall ensure that all entertainers and manager have a personal license. "It shall be the duty of the operator and owners of each enterprise to ensure that no person acts as an entertainer or manager of or in the enterprise unless that person holds a permit."

Section 28-254 Issuance of permits. "Any person who desires to obtain an original or a renewal permit shall make application to the **director in person at the offices__ of the vice division of the police department between the hours of 8:00 a.m.' and 4:00 p.m., Monday , Wednesday, or Friday, city observed holidays excepted. The application shall be made under an oath upon a form prescribed by the director." The application shall require the applicants name, home address, mailing addresses, proof of the date of birth, photographic identity card issued by a governmental agency, a list of any criminal charges pending, convictions, and time of service in jail** or prisons, **and two passport-type photograph of the applicant.**

Section 28-254 **Issuance of permits. The nonrefundable processing fee for each application shall be $29.00. Each applicant shall be required to provide fingerprints in order to verify the applicant's identity and criminal history. A waiver shall be signed authorizing the director to request criminal history reports from the Texas Department of Public Safety and any appropriate federal agency.**

Section 28-254 (c). Issuance of permits. A permit shall be issued by the director within ten days from filing date. If the application is not granted, the applicant shall be mailed a notice of the grounds as provided by Section 1-9(a) of this Code, within ten days from filing date.

Section 28-254 (d). Issuance of permits. Each permit issued by the director

shall consist of two (2) photographic identification cards, a personal card and an on-site card.

Section 28-254 issuance of permits. "Any.applicant whose application is denied and who requests a hearing on the denial shall be granted a hearing within ten days following the receipt of the request by the vice division of the police department. The hearing shall be conducted as provided in Section 1-9(c) of the Code. If the hearing officer rules against the applicant, then the applicant shall be given notice of the right to seek an injunction or judicial review of the decision as provided in Section 1-9 of the Code and applicable laws, including Article 6252-13d of the Texas Revised Civil Statutes."

Section 28-254 (f). Issuance of permits. Should the director fail to issue or deny a permit application within the time specified, or to provide a hearing within the specified time, the applicant, upon written request, will be issued a temporary permit which shall be valid until the third day after the applicant is given notice of the director or hearing officer's decision.

Section 28-254 (g). Issuance of permits. If any personal card or on-site card is lost or stolen, the holder thereof shall immediately notify the vice division and request a replacement, which shall be issued for a fee.of ten dollars ($10.00) within three (3) days following verification of the identity of the holder_

Section 28-255 (a). Term, transfer, amendments. A permit is valid for two years from the date of its issuance.

Section 28-255 Term, transfer, amendments. A permit is personal to the named license holder only.

Section 28=255 (c). Term, transfer, amendments. The vice division shall be advised of changes of addresses within ten days following the move.

Section 28-256 (a). Display. Each holder of a permit shall conspicuously display his permit at all times while acting as an entertainer or manager of an enterprise.

Section 28-256 (b). Display. Each manager or entertainer shall provide his on-site card to the manager or on-site manager in charge of the enterprise to hold while the manager or entertainer is on the premises.

Section 28-256 Display. It shall be presumed that the actor did not have a permit unless the permit is on display.

Section 28-257_ Revocation. In the event that the director has reasonable ground to believe that any permit holder has been convicted of or spent time in jail or prison for an offense as specified in the applicable provision of Section 1-10 of this Code within the time specified therein, then the director may revoke the permit following a notice of the grounds and a hearing as provided in Section 1-9(b) of this Code. In the event that the hearing officer determines that the permit should be revoked; then he shall issue his final decree to be effective

in thirty days following the mailing of notice of the decree to the permit holder in order to allow the permit holder an opportunity before the permit must be surrendered to seek an injunction or judicial review of the decision as authorized in Section 1-9 of this Code and applicable laws, including Article 6252-13d of the Texas Revised Civil Statutes."

Section 28-258 (a). Conduct of entertainers. While engaging in entertainment or while exposing any specified anatomical areas or engaging in any specified sexual activities, an entertainer may not touch a customer or the clothing of a customer.

Section 28-258 (b)- Conduct of entertainers. This section is intended to eliminate the closed areas in the enterprise. No employee shall engage in entertainment or expose any specified anatomical areas or engage in any specified sexual activities in the presence of a customer in any "separate area" of an enterprise in which the entry or access is blocked or obscured by any door, curtain or other barrier.

Section 28-259 (a). Penalties. The violation of any provision of this Article, including the doing of anything which is herein prohibited or declared to be unlawful or the failure to do anything or perform any duty which is required herein, shall be punishable as provided by Section 243. 010(b) of the Local Government Code. Each day that any violation shall continue shall constitute and be punishable as a separate offense.

Section 28-259 (b). Penalties. The revocation or suspension of any permit shall not prohibit the imposition of a criminal penalty and the imposition of a criminal penalty shall not prevent the revocation or suspension of a permit.

Section 1-10 of the Code of Ordinances, Houston Texas is hereby amended by adding a new item (3) to Subsection (b) thereof, which reads as follows:

3. Permits for sexually oriented business enterprise entertainers and managers issued pursuant to Article VI I I or Chapter 28 of this Code:

   a. Any of the following offenses as described in Chapter 43 of the Texas Penal Code:

      i. prostitution;

      ii. promotion of prostitution;

      iii. aggravated promotion of prostitution,

      iv. compelling prostitution;

      v. obscenity;

      vi. sale, distribution or display of harmful material to a minor;

vii. sexual performance by a child;

viii. employment harmful to children; or

ix. possession or promotion of child pornography;

a. Any of the following offenses as described in Chapter 21 of the Texas Penal Code.-

i. public lewdness;

ii. indecent exposure; or

iii_ indecency with a child;

a. Sexual assault or aggravated sexual assault as described in Chapter 22 of the Texas Penal Code;

b. Harboring a runaway child as described in Chapter 25 of the Texas Penal Code; or

c_ Criminal attempt, conspiracy or solicitation to commit any of the above offenses.

d. Any violation of Article Vlll of Chapter 28 of this Code.

The above-listed offenses shall be grounds for the denial, revocation or refusal for renewal of a permit under Article VII of Chapter 28 of this Code because persons who hold that permit are employed by_ sexually oriented businesses where there is a high degree of opportunity for unlawful sexual conduct or the solicitation thereof, lewd conduct, obscenity offenses, and conduct harmful to minors. Therefore, the enumerated offenses are directly related to the duties and responsibilities authorized by the subject permit. There is a serious need to protect members of the public and fellow employees of sexually oriented business enterprises from persons who have the foregoing criminal histories."

Section 7.

a. Section 2 of this Ordinance shall be effective on the 120th day next following date of its passage and approval. An adult mini-theatre operator may obtain an extension of such compliance date to the thirtieth (30th) day from the effective date of this ordinance by filing the following with the police chief by the thirtieth (30th) day prior to such effective date:

1. A statement under oath setting forth that remodeling for which a City building permit is required will be necessary to conform the adult mini-theatre to the requirements of this Article, specifying the nature thereof and stating that such building permit has been obtained and work thereunder has commenced.

2. A copy of the building permit, and

3. A statement under oath that all interior doors, and all screens or curtains that may be used as door coverings have been removed from any portion of the adult mini-theatre to which patrons are admitted.

(b) A permit issued under Article il of Chapter 28 of the Code of Ordinances for the operation of an adult arcade does not constitute a valid permit for the operation of any premises that also constitutes an adult mini-theatre following the effective date or an extension as provided in Subsection (a), above. Any such premises shall be required to obtain a new permit authorizing operation as both an adult arcade and an adult mini-theatre before the effective date or the expiration of any extension granted, as provided in (a).

Section 8.

(a) Except as provided in Subsection (f) below, the amendments to Article)11 of Chapter 28 of the Code of Ordinances adopted in Section 3 of this Ordinance shall take effect on the 180 th day next following the passage and approval of this Ordinance_ All permits issued under Article III of Chapter 28 of the Code of Ordinances prior to the date of passage and approval of this Ordinance shall become void on the effective date. The purpose of this section is to provide for the orderly implementation of this Ordinance insofar as the amendments to Article Ill of Chapter 28 of the Code of Ordinances adopted in Section 3 of this Ordinance institute new requirements for enterprises permitted prior to the date of passage and approval of such amendments_ With respect to enterprises that fail to conform to such requirements, this section is intended to provide for an initial period for recoupment of investment, subject to extension as provided in Subsection (c) below, and an opportunity to apply for a permit.-and, if the permit is denied by the director and the hearing officer, to initiate,, judicial review prior to the effective date of this Ordinance.

(b) Any enterprise that on the date of passage and approval of this Ordinance holds a current and valid permit issued under Article Ill of Chapter 28 of this Code of Ordinances prior to the date of passage and approval of this Ordinance, may operate until the effective date. However, in order to qualify for amortization or for the land use provisions of subsection (e), any such enterprise shall apply for a new permit under Article III of Chapter 28 of the Code of Ordinances as amended by Section 3 of this Ordinance on or before the 45th day next following the date of passage and approval of this Ordinance. Any enterprise that is authorized to operate until the effective date under this subsection must remain at the same location at which it was situated on the date of passage and approval of this Ordinance. Enterprises that hold a permit on the date of passage and approval of this Ordinance and apply for a new permit within 45 days, as provided above, shall be afforded a prorated credit as determined by the director for permit fees previously paid_

(c) The provisions of this Subsection (c) shall only be applicable to enterprises that on the date of passage and approval of this Ordinance hold a current and valid permit issued under Article III of Chapter 28 of the Code of Ordinances prior to the date of passage and approval of this ordinance; that timely apply for a permit within 45 days following the date of passage and approval of this Ordinance under Subsection (b) above; and the permit is

denied. The director shall grant an extension for the continued operation of the enterprise_ in the event that the owner proves that he will be unable to recoup his investment in the business that was incurred through the date of passage and approval of this Ordinance by the effective date.

In order to secure an extension of time, the owner must submit to the Director a written request for such extension on or before the ninetieth day next following the date of passage and approval of this Ordinance. No application for extension received by the Director after that date shall be considered. Such written request shall set.forth the following information:

(1) the amount of the owner's investment in the existing enterprise through the date of passage and approval of this Ordinance;

(2) the amount of such investment that has been or will be realized through the effective date;

(3) the life expectancy of the existing enterprise;

(4) the existence or nonexistence of lease obligations, as well as any contingency clauses therein permitting termination of such lease.

This information shall be supported by- relevant documentary evidence such as financial statements and tax records. Copies of such documentary evidence must be attached to the request for extension. No investment that was not incurred by the date of passage and approval of this Ordinance shall be considered.

The Director shall notify an applicant for an extension of time of the time and place of a hearing to be held on such request before the Director or a hearing official that he may designate. After such hearing, the Director or hearing official shall issue a written order on the request for extension. If the owner desires to seek judicial review of the Director's or hearing official's order, he may do so by following the procedure set forth in Section 28-135 of the Code of Ordinances. Extensions that are granted shall specify a date certain for closure, and shall not be valid for operation of any other location.

(d) Existing enterprises that remain in operation pursuant to Subsections (b) and (c) shall not be considered as having a permit for purposes of measurement of distances between enterprises as required pursuant to Section 28-125 (b) (2) of the Code of Ordinances.

(e) For the purpose of limiting the impact of the amendments in Article 111 of this Ordinance upon existing businesses, the provisions of Sections 28-125 (b) (2) that enterprises be situated 1,000 feet or more from each other shall not be applicable to any enterprise that holds a current and valid permit issued under Article 111 of Chapter 28 of the Code of Ordinances on the date of passage and approval of this Ordinance, provided that such enterprise makes application for a permit under Subsection (b) of this Section on or before the 45th day next following passage and approval of this Ordinance, and provided, further, that the application is not denied under any other land use criterion of Article Ill of Chapter 28 of the Code of Ordinances, Houston, Texas.

(f) The effective date of Section 3 of this Ordinance as provided in Subsection (a), above

shall only apply with respect to enterprises that hold a current and valid permit issued prior to the date of passage and approval of this Ordinance under Article 111 of Chapter 28 of the Code of Ordinances on the date of passage and approval of this Ordinance. Any enterprise that does not hold a current, valid permit, including any enterprise for which application is pending but not yet granted or denied on the date of passage and approval of this Ordinance shall be subject to all provisions of this Ordinance on such date of passage and approval, and this Ordinance shall be effective immediately upon its passage and approval with respect to any such enterprise_ Any permit application currently pending or the denial of which is under appeal to a hearing official shall become invalid immediately upon the date of passage and approval of this Ordinance and shall be returned along with a refund of the application fee to the applicant. Any permit application received after passage and approval of this ordinance shall be considered by the Director under the criteria set forth in Article III of Chapter 28 of the Code of Ordinances as amended in this Ordinance, provided that any appeal to a hearing official may be heard by a hearing official appointed by the mayor and confirmed by the city council. Any enterprise for which an otherwise current and valid permit has been suspended shall be treated as though it had a current and valid permit in the administration of this Section.

Section 9.

Sections 4 and 5 of this Ordinance shall become effective on the 120th day next following the date of its passage and approval by the Mayor. In order to afford any person who requires a permit under Article V11 of Chapter 28 of the Code of Ordinances, Houston, Texas, an opportunity to apply for a permit and, if the permit application is denied by the director and the hearing officer, initiate judicial review prior to the effective date of the Ordinance, the Police Chief or his designees shall commence accepting and processing applications for permits on the ninetieth day prior to the effective date of this Ordinance. Permit applications shall be processed and hearings shall be conducted within the times specified in Section 28-254 of the Code of Ordinances, as adopted in Section 4 of this Ordinance, so as to ensure that applicants who promptly apply for permits and, if denied, request hearings, will have a period of at least thirty days in which to seek judicial review or injunctive relief before this Ordinance becomes effective. Permits issued prior to the effective date shall be postdated to the effective date.

CONCLUSION

It is the hope of the committee that by strengthening this Ordinance the following will be achieved:

(1) Streamlining through the legal department should expedite the process of revocation.

(2) The licensing of entertainers and managers should bring accountability to the profession.

(3) Configurations and lighting should aid the police department in their investigations.

(4) Increased distancing should bring more protection to the city's family centers, parks and neighborhoods.

(5) The elimination of the "glory hole" should reduce the risk of anonymous sex.

Not all sexually oriented businesses are run illegally. With stronger regulations the inclination toward criminal activity will deteriorate. Thus, allowing legitimate business to be protected along with Houston and its residents.

Sexually Transmitted Disease Surveillance 1999

Division of STD Prevention

September 2000

DEPARTMENT OF HEALTH AND HUMAN SERVICES
Centers for Disease Control and Prevention
National Center for HIV, STD, and TB Prevention
Division of STD Prevention
Atlanta, Georgia 30333

Centers for Disease Control and
Prevention .....Jeffrey P Koplan, M.D., M.P.H.
f7 R>~-E-R

National Center for
HIV, STD, and TB Prevention ..... Helene D. Gayle, M.D., M.P.H.
U i3>M-1R

Division of STD Prevention .....Judith N. Wasserheit, M.D., M.P.H.
U R>3~-±R

Statistics and Data Management
Branch .....Owen J. Devine, Ph.D.

Melinda L. Flock, M.S.P.H.
U»°«-§ I', »°

Epidemiology and Surveillance
Branch ..... William C. Levine, M.D., M.Sc.

Surveillance and Special Studies
Section ..... William C. Levine, M.D., M.Sc.
S3Z-21 I, ->>,

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The report is also available by Internet via the CDC home page at:
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Foreword

"STDs are hidden epidemics of enormous health and economic consequence in the United States. They are- hidden because many Americans are reluctantto address sexual health issues in an open way and because of the biologic and social characteristics of these diseases. All Americans have an interest in STD prevention because all communities are impacted by STDs and all individuals directly or indirectly pay forthe costs of these diseases. STDs are public health problems thatlack easy solutions because they are rooted in human behavior and fundamental societal problems. Indeed, there are many obstacles to effective prevention efforts. The first hurdle will be to confront the reluctance of American society to openly confront issues surrounding sexuality and STDs. Despite the barriers, there are existing individual- and community-based interventions that are effective and can be implemented immediately. That is why a multifaceted approach is necessary to both the individual and community levels.

To successfully prevent STDs, many stakeholders need to redefine their mission, refocus their efforts, modify how they deliver services, and accept new responsibilities. In this process, strong leadership, innovative thinking, partnerships, and adequate resources will be required. The additional investment required to effectively prevent STDs may be considerable, but it is negligible when compared with the likely return on the investment. The process of preventing STDs must be a collaborative one. No one agency, organization, or sector can effectively do it alone; all members of the community must do their part. A successful national initiative to confront and prevent STDs requires widespread public awareness and participation and bold national leadership from the highest levels."'

'Concluding statement from the Institute of Medicine's Summary KeportO 000 0 ®000 00®00 0 00®0®0 OOGGO® OO:0m ® O ®=Q National Academy Press, Washington, DC, 1997, p.43.

Preface

0C000® 017007 ® 0®007 O0m0IlIIlOm00000 presents statistics and trends of sexually transmitted diseases (STDs) in the United States through 1999. This annual publication is intended as a reference document for policy makers, program managers, health planners, researchers, and others who are concerned with the public health implications of these diseases. The figures and tables in this edition supersede those in earlier publications of these data.

The surveillance information in this report is based on the following sources of data: (1) case reports from the STD project areas; (2) prevalence data from the Regional Infertility Prevention Projects, STD project areas, the U.S. Job Corps, the Jail STD Prevalence Monitoring Projects, the U.S. Army, and the Indian Health Service; (3) sentinel surveillance of gonococcal antimicrobial resistance from the Gonococcal Isolate Surveillance Project; and (4) national sample surveys implemented by federal and private organizations.

The *STD* surveillance systems operated by state and local STD control programs, which provide the case report data, are the sources of many of the figures and all of the statistical tables in this publication. These systems are an integral part of program management at all levels of STD prevention and control in the United States-

0CDO0® =007 0EE0 0 ®0m 000]0(OmOO00O consists of four parts. The National Profile contains figures that provide an overview of STD morbidity in the United States. The accompanying text identifies major findings and trends for selected STDs. The Special ***Focus Profiles*** contain figures and text describing STDs in selected subgroups and populations that are a focus of national and state prevention efforts. The Detailed Tables provide statistical information about STDs at the state, county,-city, and national levels. The Appendix includes the sources and limitations of the data used to produce this report. Included in this section, are figures (Al-A3) that show progress made by states in converting from hardcopy aggregate reporting to electronic line-listed data.

Selected figures and tables in this document identify goals that reflect progress towards some of the Healthy People 2000 (HP2000) national health status objectives for STDs.l The original HP2000 health status objectives were developed in 1989 and revised in 1995. Appendix Table Al displays progress made towards the HP2000 Priority Area 19, Objectives 19.1-19.8, for ***STDs.*** These objectives are used as reference points throughout this edition of 0 000O® ®007 ®0 0 0007 00®®Omm000. In addition, provisional Healthy People 2010 2 (HP2010) objectives forthe rates of gonorrhea, primary and secondary syphilis, congenital syphilis, and the prevalence of 0 0®O 00® ®m00 O® genital infection among specific populations of adolescents and young adults are introduced in both the text and in the Appendix.

Any comments and suggestions that would improve the usefulness of future publications are appreciated and should be sentto Director, Division of STD Prevention, National CenterforHN, *STD,*

and TB Prevention, Centers forDisease Control and Prevention, 1600 Clifton Road, Mailstop E-02, Atlanta, Georgia, 30333.

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This report was prepared by the following staff members of the Division of STD Prevention, National Center for HIV, STD, and TB Prevention, Centers for Disease Control and Prevention: Charles Akers, Susan Bradley, Sharon Clanton, Darlene Davis, Owen Devine, Linda Webster Dicker, Lyn Finelli, Melinda Flock, LaZetta Grier, Alesia Jester Harvey, Sharon Hixon, Kathleen Hutchins, William Levine, Kristen Mertz, Debra Mosure, Raymond Ransom, LuEtta Schneider, Maya Sternberg, Emmett Swint, Susan Wang and Akbar Zaidi.

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Geographic Divisions of the United States

West	Midwest	South	Northeast
Alaska	Illinois	Alabama	Connecticut
Arizona	Indiana	Arkansas	Maine
California	Iowa	Delaware	Massachusetts
Colorado	Kansas	District of Columbia	New Hampshire
Hawaii	Michigan	Florida	New Jersey
Idaho	Minnesota	Georgia	New York
Montana	Missouri	Kentucky	Pennsylvania
Nevada	Nebraska	Louisiana	Rhode Island
New Mexico	North Dakota	Maryland	Vermont
Oregon	Ohio	Mississippi	
Utah	South Dakota	North Carolina	
Washington	Wisconsin	Oklahoma	
Wyoming		South Carolina	
		Tennessee	
		Texas	
		Virginia	
		West Virginia	

National Overview of Sexually Transmitted Diseases, 1999

The logo on the cover of Sexually *Transmitted Disease Surveillance, 1999 is a* reminder of the multifaceted, national dimensions of the morbidity, mortality, and costs that result from sexually transmitted diseases (STDs) in the United States. It highlights the central role of STD prevention in improving women's and infants' health and in promoting HIV prevention. Organized collaboration among interested, committed public and private organizations is the key to reducing STDs and their related health burdens in our population. As noted in the report of the Institute of Medicine, *The Hidden Epidemic: Confronting Sexually Transmitted Diseases,*[1] surveillance is a key component of our efforts to prevent and control these diseases.

This overview summarizes national surveillance data on the three diseases for which we have federally-funded control programs: chlamydia, gonorrhea, and syphilis. Several observations for 1999 are worthy of note.

In 1999, 659,441 cases of infection with genital *Chlamydia trachomatis* were reported to CDC. This case count corresponds to a rate of 254.1 cases per 100,000 persons, an increase of 8.5% compared with the rate of 234.2 in 1998. Rates of reported chlamydial infection among women have been increasing annually since the late 1980s when public-programs for screening and treatment of women were first established to avert pelvic inflammatory disease and related complications_ Chlamydia screening and reporting are likely to expand further in response to the recently implemented Health Plan Employer Data and Information Set (HEDIS) measure for chlamydia screening of sexually active.-women aged 15 to 25 years of age who are provided care through managed carp-organizations.[2] The increase in chlamydia case reports in 1999 most likely represents a continued increase in screening for this infection and also increased use of nucleic acid amplification tests (NAATs), which are more sensitive than other types of chlamydia screening tests.

In 1999, the overall reported rate of chlamydial infection among women (404.5 cases per 100,000 females) was four times the reported rate among men (94.7 cases per 100,000 males), reflectingthe large number of women screened forthis disease. However, with the increased availability of urine testing with the NAATs, men are increasingly being tested for chlamydial infection. From 1995 to 1999, the reported chlamydial infection rate in males increased by 64.1% (from 57.7 to 94.7 cases per 100,000 males) compared with a 27.9% increase in women over this period (from 316.3 to 404.5 cases per 100,000 females).

Data from multiple sources on prevalence of chlamydial infection in defined populations have been useful in monitoring disease burden and guiding chlamydia screening programs. These data show that in many states prevalence of infection remains substantially above the I-EP2000 goal of 5 % for sexually active women aged 15 to 24 years. In 1999, the median state-specific chlamydia test positivity among women aged 15 to 24 years who were screened at selected familyplanning clinics in all states and the Virgin Islands was 5.5% (range, 2.6% to 15.0%) and at selected prenatal clinics in 22 states, 7.2% (range, 4.5 % to 14.4%). For economically-disadvantaged women aged 16 to 24 years who entered the U.S. Job Corps in 1999, from 32 states, the District of Columbia and Puerto Rico the median state-specific prevalence was 11.1 % (range, 5.7% to 18.9%). Forwomen aged 17

to 37 years entering the U.S. Army, the overall chlamydia prevalence was 9.9% (range, 4.1%-19.6% by state of residence), and for women aged 15 to 30 years screened at Indian Health Service (IHS) clinics in four IHS regions, the prevalence ranged from 5.4% to 10.8%. For adolescent women entering juvenile detention centers in 21 U.S. counties, the median chlamydia positivity was 13.0% (range, 4.9O to 25.2%). For males entrants to the U.S. Army who were screened in 1999, the overall chlamydia prevalence was 4.7% (range, 1.1 % to 10.3 % by state of residence). For adolescent men entering juvenile detention centers in 23 counties, the median chlamydia positivity was 4.3% (range, 1.5% to 10.0%). Although these data on prevalence are not entirely comparable because of differences in the performance characteristics of the screening tests and variations in screening criteria, they provide important information on the continuing high burden of disease in these populations.

In parts of the United States where large scale chlamydia screening programs have been instituted, prevalence of disease has often declined substantially. During 1988-1999, among 15- to 44-year-old women participating in the screening programs in Health and Human Services (HHS) Region X family planning clinics, chlamydia test positivity declined 62% (from 13.0% to 4.9%). After adjusting trends in chlamydia positivity to account for changes in laboratory test methods and associated increases in test sensitivity, chlamydia test positivity decreased in five of 10 HHS regions from 1998 to 1999, increased in four regions and remained the same in one. Although chlamydia positivity has declined in the past year in some regions, most likely due to the effectiveness of screening and treating women, continued expansion of screening programs to populations with higher prevalence of disease may have contributed to the increases in positivity seen in other regions. See the Appendix for a definition of the HHS regions.

Following a 72% decline in the reported rate of gonorrhea from 1975 to 1997, in 1999 the gonorrhea rate increased for the second year in a row. The gonorrhea rate for 1999 (133.2 cases per 100,000 persons) was 1.2% higherthan the 1998 rate (131.6 cases per 100,000 persons) and 9.2% higherthan the rate reported in 1997 (122.0 per 100,000 persons). Although screening (usually associated with simultaneous testing for chlamydial infection) and improved reporting may account for a portion of the recent increase, true increases in disease in some populations and geographic areas also appear to have occurred. The 1999 rate for gonorrhea exceeds the Healthy People 2000 (HP2000) objective of 100 cases per 100,000 persons.

The gonorrhea rate in the U.S. among females in 1999 was similar to the rate in 1998 (129.9 and 130.0 cases per 100,000 females respectively). However, from 1998 to 1999, the gonorrhea rate in men increased by 2.5%, from 132.7 to 136.0 cases per 100,000 males. In contrast to the 20 years prior to 1998, which generally exhibited decreasing age-specific rates for gonorrhea, for most 5-year age categories there was little change in the reported rates between 1998 and 1999. Similar to chlamydia, rates of gonorrhea in women are particularly high in 15- to 19-year-olds.

In 1999, new data on gonorrhea prevalence in defined populations were available from several sources. These data showed continuing high burden of disease in adolescents and young adults in some parts of the United States. Among 15- to 24-year-old women attending selected family planning clinics in 32 states, the median state-specific gonorrhea prevalence was 1.0% (range, 0% to 5.2%). For women in this age group attending selected prenatal clinics in 15 states, the median prevalence was 1.1% (range, 0% to 4.1%). For 16- to 24-year-old women entering the U.S. Job Corps in 14 states in 1999, the median gonorrhea prevalence was 3.6% (range, 0.9% to 9.4%). The median gonorrhea prevalence among adolescent women entering juvenile detention centers in 14

counties was 6.4% (range, 1.3% to 14.1 %); for adolescent men entering detention facilities in 11 counties, the median prevalence was 1.9% (range, 0.4% to 3.8%).

Antimicrobial resistance in 0 0®® 0000©0000 remains a continuing concern, with the most recent threat being the increase in fluoroquinolone resistance that has been reported most notably from several Asian countries. Ciprofloxacin is a fluoroquinolone antibiotic that has been recommended fortreatment of gonorrhea by CDC; this is an oral medication that, is inexpensive and effectively treats gonorrhea with a single dose. Although only 0.4% of 0 0000001]0000 isolates tested through the Gonococcal Isolate Surveillance Project (LISP) in 1999 demonstrated resistance to ciprofloxacin, this was a substantial increase from 1998, when only 0.1 % of isolates were reported to be resistant. Of note, 14.3% of GISP isolates from Hawaii in 1999 were resistant to ciprofloxacin, requiring a change in the gonorrhea treatment recommendations in that state. See Appendix for a further description of GISP

Data on characteristics of patients in the GISP sample have been used to obtain information on the sexual orientation of male STD clinic patients with gonorrhea. In 1999, there was a continuing increase in the proportion of GISP isolates from men who have sex with men (MSM). In 1999, the proportion of GISP isolates from MSM increased to 13.1 % compared with 12.0 0 in 1998. In 1988 only 4.0% of isolates were from MSM. The proportional increase in MSM in GISP has corresponded to an absolute increase in gonorrhea cases among MSM at STD clinics in several large cities that participate in GISP

In view of the important role of syphilis in facilitating the transmission of HIV infection, the differential impact of syphilis on racial and ethnic minorities, and the recent cyclical decline in this disease, the National Plan to Eliminate Syphilis from the United States was developed, and announced by the Surgeon General in October 1999[2]. The 6,657 cases of primary and secondary (P&S) syphilis reported in 1999 were the fewest cases reported in the United States since 1957. The P&S syphilis rate of 2-5 per 100,000 persons (the lowest since national reporting began in 1941) is below the HP2000 objective of 4 cases per 100,000 persons, but remains substantially above the goal for syphilis elimination of 0.4 cases per 100,000 persons (about 1,000 cases per year).'

The number of P&S syphilis cases reported in 1999 was 5.4% lower than the 7,035 cases reported in 1998. However, this decline was substantially less than the reductions of approximately 20% per year since the last major syphilis epidemic peaked in 1990. Although this smaller decline may partially reflect improved case finding and reporting, it also reflects the persistence of this disease in some populations and recent outbreaks in several geographic areas, including_outbreaks among MSM.

One factor that greatly facilitates syphilis elimination efforts is thatthis disease continues to be primarily reported only in specific areas of the country. In 1999, 79% of the 3,115 counties in the United States reported no cases of P&S syphilis and half of all the cases were reported from only 25 (0.8%) of the counties. However, 1999 P&S syphilis rates exceeded the HP2000 objective in 265 counties (9% of the total number of U.S. counties). These 265 counties accounted for 74% of all reported P&S syphilis cases. Ninety-two percent (243 out of 265) of these counties are located in the southern United States. In addition, 9 of the 11 states with 1999 reported rates of P&S syphilis greater than the HP2000 objective are located in the South. These data suggest that comprehensive syphilis prevention efforts focused in the South could markedly reduce the number of syphilis cases occurring in the United States.

Between 1998 and 1999, the national rate of congenital syphilis decreased by 34%, from 21.6 to 14.3 cases per 100,000 live births. The continuing reduction in congenital syphilis rates, evident since the early 1990s, reflects the substantial reduction in the rate of P&S syphilis among women over the same period. In 1999, only one state had a reported rate of congenital syphilis that exceeded the HP2000 objective of 40 cases per 100,000 live births.

Although wide disparities exist in the reported rates of STDs among racial and ethnic groups, there has been a reduction in these differences for some diseases over the past five years. For example, the P&S syphilis rate reported for 1999 among African-Americans was 30 times the rate reported among whites, reflecting a substantial decline from 1995, when the rate ratio was 56. Although reporting biases likely magnify differences in reported rates by race and ethnicity, these factors continue as risk markers among the U.S. population that correlate with other, more fundamental, determinants of health status such as socioeconomic status and access to quality medical care.

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'National Committee for Quality Assurance (NCQA). 0 O0 ® OOOOOOOmO®0000®®OO, Washington, DC, 1999, pp. 68-70,285-286.

'Division of STD Prevention. 0000 O®OOm®O ® O®®C®OOOO®®O ®00 0®O OMMO. National Center for HIV, STD, and TB Prevention, Centers for Disease Control and Prevention, 1999.

REPORT ON ADULT ORIENTED

BUSINESSES IN AUSTIN

Prepared By

Office of Land Development Services

May 19,'1986

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This report was prepared by the Special Programs Division of the office of Land Development Services (OLDS), with assistance front other city agencies.

The following staff members were involved:

Office of Land Development Services

James B_ Duncan, Director

Lilas Kinch, Acting Deputy Director

Marie Gaines, Assistant Director for Land Use Review

Sager A. Williams, Jr., Division Planner

Dan Drentlaw, Planner III, Project Manager

Kirk Bishop, Planner 11

Stephen M. Swanke, Planner 1, Primary Contributor

Jean Page, Artist 11

Monica Moten, Drafter il

Sharon McKinney, Senior Administrative Clerk

Fletcher Eubanks, Intern

Mike Hovar, Intern

Mike Major, Intern

James K. Parks, Intern

Robin Walker, Intern

Austin Police Department

Jim Everett, Chief of Police

Joe Hidrogo, Director of Research and Planning

P.O. Kevin Behr, Administrative Assistant to the Chief

Leslie Sachanowicz, Planner Analyst

Galloway Beck, Planner Analyst

E. Gay Brown, Administrative Technician 11

Karen Murray, Senior Administrative Clerk

Building Inspection Department

James W. Smith, Director

Bill Cook, Manager, Neighborhood Conservation

Edward Sanchez, Acting Supervisor, General Inspections

L. Meadows, Senior Inspector, General inspections

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Kirk Bishop, Planner 11

Stephen M. Swanke, Planner 1, Primary Contributor

Jean Page, Artist 11

Monica Moten, Drafter 11

Sharon McKinney, Senior Administrative Clerk

Fletcher Eubanks, Intern

Mike Hovar, Intern

Mike Major, Intern

James K. Parks, Intern

Robin Walker, Intern

Austin Police Department

Jim Everett, Chief of Police

Joe Hidrogo, Director of Research and Planning

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Leslie Sachanowicz, Planner Analyst

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Karen Murray, Senior Administrative Clerk

Building Inspection Department

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Map 8 Control Area 2

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Map 7 Control Area 3

Map 8 Study Area 4

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Map 11 Adult Business Trade Area - Cinema West

Map 12 Adult Business Trade Area - Yellow Rose

SUMMARY

P ose

This report provides the basis for develo.oment of an amendment to the Austin zoning ordinance repaulatinz adult businesses. Austin's current adult business zoning ordinance was tDermanentiv enioined. from being enforced in January, 1985 when Taurus Enterprises sued over a "Code Violation Notice" issued by the City. The violation occurred because a bo okstore was located within 1000 feet

of property zoned and used for residential proposes

Existinz Research and Legal Basis

The first portion of the study examines existing research concerning the me of adult business on crime rates and property values. Results from these studies contain similar findings - crime rates are hider and property values lower near adult oriented businesses

Despite the negative impacts. regulation of adult businesses must respect constitutional rights of owners and patrons. Therefore an overview of pertinent legal and constitutional issues is also provided.

Existinf, Adult Businesses in Austin

Austin has 49 adult oriented businesses, consisting primarily of bookstores theaters massage parlors and topless bars_ Generally, these businesses are located in an area between Lamar Boulevard and Interstate Highway 35.

Analysis of the Irnpacts of Adult Businesses in Austin

An anal of crime rates was conducted comparing areas with adult businesses stud areas to areas without adult businesses (control areas). Both control and study areas are circular in shape with a 1,000 foot radius, contain similar land uses, and are in close proximitX to one another. Four study areas were defined_ two with simle businesses and two with more than one business. Within the study areas, sex-related crimes were found to be from two to nearly five times the city-wide average Also sex-related crime rates were found to be 66% higher in study areas with two adult businesses compared to study areas with only one business.

In order to assess the me of adult businesses on property values, questionnaires were mailed to 120 real estate appraisal and lending firms: Eight-eight percent of those responding indicated a belief

of property zoned and used for residential proposes

Existing Research and Legal Basis

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In order to assess the imp of adult businesses on property values, questionnaires were mailed to 120 real estate appraisal and lending firms: Eight-eight percent of those responding indicated a belief

that an adult bookstore would decrease residential tiro values within one block. and 59% felt that residential oro e values would decrease within three blocks. Respondents based their opinions on several factors. Thev noted that adult businesses made homes less attractive to families. thus lowering demand and property values. Others stated that the existence of adult businesses leads mortgage underwriters to believe that the neighborhood is in decline. thus makin¢ 95% financing difficult

Trade Area Characteristics

In order to make appropriate recommendations for assignment of adult businesses to specific zoning districts, a study of trade area characteristics was conducted. Three adult businesses – a bookstore theater an a topless bar – were examined to determine customer addresses an observation of vehicle license numbers Of the 81 observations made, only three customers had an address within one mile of an adult business Neariyhalf (44%) of all customer addresses were located outside the City of Austin.

Recommendations

Based on the findings of this study, the following recommendations are made:

1. Adult businesses should be limited to hi hway or regionally-oriented zone districts

2. Adult businesses should be dispersed to avoid the over concentration of such business.

3. Conditional use permits should be required for adult businesses in certain specified zone districts.

CHAPTER I

INTRODUCTION

As is the case in many large American cities, Austin has witnessed a rapid rise in the number and type of adult entertainment businesses over the past decade. These businesses present a particular problem due, in part, to the moral implications associated with such enterprises in the minds of many members of the community. In addition, the proliferation and alleged detrimental effects of these businesses upon surrounding neighborhoods have been the focus of community attention for quite some time. This attention has resulted in numerous requests for the City to regulate adult businesses.

The regulation of adult entertainment. businesses is a controversial matter. While legal and constitutional bases for municipalities to control the use of land within their jurisdictions in order to protect the "public health, safety; morals, and general welfare of their citizens" has been firmly established, the Supreme Court has upheld the right of adult entertainment businesses to operate in the community by virtue of the First and Fourteenth Amendments of the U.S. Constitution. Resolving conflicts between the legal rights of municipal governments and those of adult business operators and patrons has been a difficult task.

Austin enacted a "Sexually Oriented Commercial Establishments Ordinance" on May 22, 1980. This ordinance prohibits adult businesses from being closer than 1,000 feet_ from a residential use. On October, 25, 1903, a lawsuit was filed attacking the validity of the Ordinance. The lawsuit was filed after the Building Inspection Department issued a "Code Violation Notice" for an adult bookstore located at 8004 Research Blvd. This violation notice was filed because the bookstore was located within 1,000 feet of property zoned and used for residential purposes. The suit disputed the city's assertion of harm to areas zoned and used,for residential purposes.

On January 10, 1985, a trial was held. Because the court was unable to make a factual finding on the validity of the City's assertion, it permanently enjoined the City from enforcing the ordinance at that location. The court did not declare the ordinance unconstitutional. However, because of the precedent set by this action, Austin currently lacks an adult business ordinance that can be effectively enforced. Therefore, it is the purpose of this study to objectively evaluate the impacts of adult entertainment businesses on surrounding neighborhoods and to formulate appropriate regulations based on these findings.

G1-1APTER"11

SUMMARY OF EXISTING RESEARCH

This chapter presents a brief overview of existing research and regulations written to address adult oriented businesses in various parts of the country. An understanding of the effects of adult oriented businesses on surrounding properties and the legal basis for regulations controlling such businesses is critical in developing an ordinance for Austin_

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COUNCIL MEMBERS

Mark Rose
Smoot Carl-Mitchell
Sally Shipman
George Humphrey
Charles E. Urdy

CITY MANAGER

Jorge Carrasco

1. ANALYSIS OF EXISTING RESEARCH

Amarillo, Texas

The city of Amarillo's study, A Report on Zoning and Other Methods *of* Regulating Adult Entertainment Uses in Amarillo, concluded that adult entertainment uses are distinguishable from other businesses in that they have negative impacts on surrounding land uses. The study established a relationship between high crime rates and proximity to adult businesses. Furthermore, the study found that the late operating hours of most adult businesses created special problems to surrounding neighborhoods in the form of noise, glare, and traffic.

Beaumont, Texas

A planning department study done for the Charlton-Pollard Neighborhood in Beaumont, Texas investigated the effect of adult businesses on economic decline and crime. The study concluded that the concentration *of* adult businesses drove away neighborhood commercial stores and contributed to an increase in crimes such as prostitution, drug use, and muggings.

Indianapolis, Indiana

In February, 1984, the Division of Planning in Indianapolis published a report titled Adult Entertainment Businesses in Indianapolis: An Analysis. This report contained the results of an evaluation of the impact of adult business upon surrounding areas in terms of crime rates and real estate values. The study assessed the impact of adult entertainment businesses on crime rates by researching six areas containing adult businesses and six similar areas containing no adult businesses. A comparison of these areas revealed that sex-related crime rates were 77 percent higher in areas containing adult businesses.

The second portion of the study evaluated the impact of adult businesses on real estate values by surveying professional real estate appraisers. Two surveys were conducted. The first surveyed opinions of members of the American Institute of Real Estate Appraisers practicing in 22 metropolitan areas similar in size to Indianapolis. The second survey was a 20% random sample of AIREA members drawn at a national level. In the metropolitan area survey, 78% of those surveyed felt that residential property values would decrease if located within one block of an adult business_ The national survey generated similar results - 80% of those surveyed felt residential property values would decrease if located within a block of an adult business_

Los Angeles, California

The Department of City Planning for Los Angeles published a report in June, 1977 entitled Study of the Effects of the Concentration of Adult Entertainment Establishments in the City of Los Angeles. An evaluation of the impact of adult businesses on both crime rates and property values was conducted_ Crime rates were evaluated by comparing the Hollywood area with the remainder of the city. Hollywood was selected as a study area because of its high concentration of adult businesses. The study focused on the years 1969 to 1975, during which the number of adult businesses increased from 11 to 88 establishments. The study indicated that prostitution arrests in the Hollywood area were 15 times greater than the city average.

Like the Indianapolis report; the Los Angeles study surveyed real estate appraisers to

assess the impact of adult businesses on property values. Over 90°fo of those surveyed felt that the concentration of adult businesses would decrease the market value of private residences located within 1000 feet of the adult business. Eighty-seven percent indicated that the concentration of adult businesses would decrease the market value of business property located in the vicinity of such establishments.

Los Angeles County, California

In April, 1978, the Department of Regional Planning of the County of Los Angeles published a study entitled Adult Entertainment Study and Proposed Zoning Ordinance Amendment. In the study, law enforcement officers were surveyed. Responses from the surveys indicated that areas with a concentration of adult businesses have a higher incidence of public intoxication, theft, assault, disturbing the peace, and sex-related vice. Respondents indicated that nude bars, modeling studios, and massage parlors caused the most individual problems_

Phoenix, Arizona

The City of Phoenix study investigated the incidence of crime by comparing three study areas containing adult businesses with three control areas without adult businesses. They concluded that crimes were 43 percent higher, violent crimes were 4 percent higher, and sex related crimes were over 500 percent higher in the study areas.

St. Paul Minnesota

The planning department in St. Paul conducted a study entitled Effects on Surrounding Area of Adult Entertainment Businesses. The study found that there was a statistically significant correlation between diminished housing values and crime rates and the location of adult businesses. The study also concluded that there was a stronger correlation with neighborhood deterioration after the establishment of an

adult business.

B, LEGAL BASIS

Regulation of adult businesses has taken a variety of forms in cities throughout America. Boston, Massachusetts, for example, has adopted an ordinance that restricts all adult businesses to a single geographic area known as the "Combat Zone." Detroit, Michigan, on the other hand, enacted an ordinance intended to disperse adult businesses. This ordinance, passed in 1972, prohibited adult entertainment businesses within 500 feet of a residential area or within 1000 feet of any two other regulated uses. The term "regulated use" applied to a variety of businesses, including adult theaters, adult bookstores, cabarets, bars, taxi dance halls, and hotels. At this time, only Seattle and Renton, Washington have ordinances similar in nature to the Boston ordinance. However, several cities have adopted regulations similar to those enacted in Detroit, which are aimed at dispersing adult entertainment businesses.

The Detroit ordinance was legally challenged_ and ultimately upheld by the United States Supreme Court in 1976. This court case, known as Young V. American Mini Theaters, Inc., now serves as the primary legal precedent regarding the use of zoning powers to regulate adult entertainment business. In Young, the Supreme Court held that "even though the First Amendment protects communication in this area (sexually explicit activities) from total suppression, we hold the State may legitimately use the content of these materials as a basis for placing them in a different classification from other movie theaters_"

The plurality opinion for this court case set out three First Amendment criteria that ordinances regulating adult entertainment businesses must satisfy in order to be Constitutionally upheld.

1. Regulations must be motivated not because of a distaste for the speech itself, but by a desire to eliminate its adverse effects.

2_ Properly motivated legislation may be unconstitutional if it severely restricts First Amendment rights.

3. A properly motivated ordinance with only a limited impact on free expression may be unconstitutional if the municipality cannot demonstrate an adequate factual basis for its conclusion that the ordinance will accomplish its object of eliminating the

adverse effect of adult businesses.

The limitations established by these criteria are best illustrated by analysis of the invalidation of Atlanta, Georgia's Adult Entertainment Ordinance. This ordinance prohibited adult entertainment businesses from locating within 1,000 feet of any other such use, within 500 feet of any residential zoning district, or within 500 feet of any church or place used for religious worship. The,ordinance also restricted all new adult entertainment businesses to three zoning districts. The Atlanta ordinance further required the amortization of certain existing businesses.

Although factual evidence was presented in support of Atlanta's ordinance, the U.S. Supreme Court found that the ordinance violated the first two criteria cited in Young. The Court first found evidence of an improper motive in enacting the ordinance. Minutes of a zoning review board meeting indicated that the board would help citizens opposed to the conduct of adult businesses to "zone them out of business." At the meeting an assistant city attorney indicated that the proposed ordinance was the "strongest vehicle toward elimination" of these businesses and the city was "hoping for complete eradication" of adult businesses. The court also found that the locational restrictions of the ordinance would significantly reduce and possibly eliminate public access to adult businesses. The court had ruled in Young that "pornography zoning" is constitutional only if "the market for this commodity is essentially unrestrained." The locational restrictions and amortization requirements in Atlanta were deemed too severe a restriction on the First Amendment rights of adult businesses.

CHAPTER 111

ADULT ORIENTED BUSINESSES IN AUSTIN

A, LOCATION ©F EXISTING BUSINESS

There were 49 adult-oriented businesses located within the corporate limits of Austin as of January 1, 1986- These businesses have been grouped into two major types of businesses_ Adult Entertainment Businesses and Adult Service Business. Adult Entertainment Businesses consist of adult bookstores, theaters, and film stores. Adult Service Businesses consist of massage parlors, nude modeling studios, and topless/bottomless bars or clubs. Adult Entertainment Businesses must be carefully regulated due to their constitutionally protected status as an expression of free speech.

The classification of these businesses is difficult, particularly in the case of Adult Entertainment Businesses, since many of these are involved in the selling of printed material as well as novelty items, and the showing of peep shows. For the purposes of this study, businesses listed as bookstores include a substantial portion of the business involved in the selling of printed material, but may include the distribution of novelty items, showing of peep shows, and other related forms of adult entertainment. Any business that exhibits adult films on a single screen with 100 seats was classified as an adult theater even though it may offer adult video tapes or films for sale.

Table 1 lists the names and locations of the 49 existing Adult Entertainment businesses in Austin. Map .1 depicts the locations of these in the City of Austin. As shown on this map, 21 of the 49 existing businesses are not located within 1000 feet of another adult business. Of the remaining 29 businesses, there are eight groups of two businesses, one group of three businesses, one group of four businesses, and one group of five businesses. The locational pattern illustrated on Map 1 indicates a propensity for adult businesses to locate along the major north/south roadways or on major east/west roadways between Lamar Blvd and IH35.

Table 1

Existing Adult Businesses

Austin, Texas

January 1, 1986

Adult Entertainment Businesses

Adult Bookstores

1. Adult Theater 3401 A- North IH35
2. Mr. Video 1910 Guadalupe St.
3. River City Newsstand 613 West 29th St.
4. River City Newsstand 8004 Research Blvd.
5. Video Barn 615 West 29th St.
6. Southside News 2053 South Lamar Blvd.
7. The Pleasure Shop 603 West Oltorf St.
8. Oasis Adult Book Store 8601 North IH35
9. Ms. Video 718 Red River St.
10. Sixth Street NQWs 706 East 6th St.

Adult Theaters

1. Cinema West Theater 2130 South Congress Ave.
2. Texas Adult Theater 2224 Guadalupe St.

Adult Film Stores

1. Video Barn 5726 Bumet Rd.
2. Video Barn 708 East 6th St.

3. Video Barn 9640 North Lamar Blvd.

4. Video Barn 2055 South Lamar Blvd.

5. Video Barn 512 West Stassney Lane

6. Video Etc. 5610 North Lamar Blvd.

Adult Service Businesses

Massage Parlors

1. Ann's Massage Clinic 1406 South Lamar Blvd.

2. Body Works, Inc. 2906 San Gabriel St.

3_ Fantastic Oriental Massage 1104 West Koenig Lane

4. Fantasy Massage 5520 North Lamar Blvd.

5. 1 Dream of Jeanie 4406 North Lamar Blvd.

6_ La Femme 3502 North IH35

7. Michelle's Massage 403 East Ben White Blvd.

8. Midnight Cowboy Oriental 313 East 6th St.

9. Oriental House of Massage 3007 North IH35

10. Pandora's 631 West Ben White Blvd.

11. Relaxation Plus Massage 2716 Guadalupe St.

12. Relaxation Plus Massage 612 Nueces St.

13. Satin Spa 6735 U.S. 290 East

14. Tokyo Spa 9601 North IH35 #104

15. Vickie's Massage 3004 Guadalupe St.

3. Video Barn 9640 North Lamar Blvd.

4. Video Barn 2055 South Lamar Blvd.

5. Video Barn 512 West Stassney Lane

6. Video Etc. 5610 North Lamar Blvd.

Adult Service Businesses

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9. Oriental House of Massage 3007 North IH35

10. Pandora's 631 West Ben White Blvd.

11. Relaxation Plus Massage 2716 Guadalupe St_

12. Relaxation Plus Massage 612 Nueces St.

13. Satin Spa 6735 U.S. 290 East

14. Tokyo Spa 9601 North IH35 #104

15. Vickie's Massage 3004 Guadalupe St.

16. **Silk Lady Massage 92 East Ave.**
17. **New Seoul Korean Massage 8312 South Congress**
18. **The Casbah 9401-B South IH35**
19. **The Chateau 9401-B South** IH35
20. **Singletons Massage 1410 Ulit**

Topless Clubs and Nude Modeling Studios

1. **The Crazy Lady 3701 North IH35**
2. **The Doll House 3615 South Congress**
3. **The Red Rose 336 East Ben White Blvd.**
4. **Honey's 629 West Ben White Blvd.**
5. **Sugar's 404 Highland Mall Blvd.**
6. **The Yellow Rose 6528 North Lamar Blvd.**
7. **Ladies of the Eighties 2304 South Lamar Blvd.**
8. **Adams Nude Modeling Resort 1023 Reinli St.**
9. **French Quarter 10600 Middle Fiskville** Rd.
10. **Burlesque Modeling Studio 4912 North IH35**
11. **Pearls Place 4814 North IH35**

B. EVALUATION OF ADULT BUSINESS IMPACTS

In order to develop appropriate recommendations for regulating adult businesses, it is

16. **Silk Lady Massage 92 East Ave.**

17. **New Seoul Korean Massage 8312 South Congress**

18. **The Casbah 9401-B South IH35**

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8. **Adams Nude Modeling Resort 1023 Reinli St.**

9. **French Quarter 10600 Middle Fiskville Rd_**

10. **Burlesque Modeling Studio 4912 North IH35**

11. **Pearls Place 4814 North IH35**

B. EVALUATION OF ADULT BUSINESS IMPACTS

In order to develop appropriate recommendations for regulating adult businesses, it is

essential to assess the impact of such businesses on the neighborhoods that surround them. Research conducted in other cities suggests that adult businesses have a detrimental effect on the incidence of crime and property value. This report will assess the impact of adult businesses in Austin by comparing the incidence of crime in areas surrounding adult businesses to similar areas having no adult businesses and by surveying the opinions of real estate professionals concerning the effect of adult businesses on property values. The methodology used in this research is similar to those used in the Indianapolis, Indiana and Los Angeles, California studies. For a more detailed discussion of the methodology and results of these studies, see Appendix A_

Incidence of Crime

Methodology . The effect of adult businesses on the incidence of crime was measured by collecting crime data for areas with adult businesses (Study Areas) and comparing them to similar areas having no adult businesses (Control Areas). This evaluation focuses on three questions. First, is the incidence of crime, particularly sexually related crime, higher in areas surrounding adult business sites than in similar areas without adult business sites? _Second, is the incidence of crime, particularly sexually related crime, higher in areas having more than one adult business than in areas having a single adult business? Finally, how does the incidence of crime in these areas compare to crime rates for the City of Austin as a whole?

This study collected data for 45 serious criminal offenses, termed Part 1 Crimes by the Uniform Crime Report, and 21 sexually related criminal offenses. These offenses are detailed in Appendix B. The data collected represents calls to the Austin Police Department from January 1, 1984 through December 31, 1985. Crime rates are expressed as the number of reported incidents per 1000 area residents.

Selection of Study and Control Areas . The selection of appropriate study and control areas was a crucial element in the objective assessment of the impact of adult businesses on the incidence of crime. Study Areas containing adult business sites were carefully selected to be representative of the adult businesses existing in the Austin area.

Four study areas were selected_ Study Area One includes two businesses, a modeling studio and a topless club. Study Area Two also includes two businesses, an

adult bookstore and an adult oriented film rental store. Study Areas Three and Four contain single businesses, an adult bookstore and topless bar, respectively.

Table 2

Study Area Businesses

Study Area I

Burlesque Modeling Studio 4912 N. IH35

Pearls Place 4814 N. IH35

Study Area 2

Southside News 2053 S. Lamar

Video Barn 2055 S. **Lamar**

Study Area 3

The Pleasure Shappe 610 w. **Oltorf**

Study Area 4

The Yellow Rose 6528 N. Lamar Blvd.

As noted, two of the Study Areas contain one, and the others each contain two, adult businesses. Although two adult businesses does not reflect the highest concentration

of adult business located in Austin, this level of concentration is more representative of existing locational patterns in the City. Those areas containing more than two adult businesses were examined and found unsuitable for this evaluation.

The highest concentration of adult businesses is located just west of the University of Texas campus along West 29th Street. This area was considered unsuitable because the transient population associated with the University of Texas might unduly influence the results of the evaluation. The concentration of adult businesses existing in the Central Business district was deemed unsuitable for study due to the lack of residential uses in the area. Three adult businesses are located along IH35 near its intersection with East 38 112 street. This area was not selected because a large portion of the Study Area is occupied by Concordia Lutheran College, and a suitable control area with similar land uses was difficult to define.

In order to draw valid comparisons, the Control Areas were selected according to their proximity and similarity to the Study Areas. Four Control Areas were selected for comparison to the four study areas.

MAP 2
STUDY APEA

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Multi Family
Commercial
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Adult Business

MAP 3
CONTROL AREA I

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MAP 4
STUDY AREA 2

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MAP 5
CONTROL AREA 2

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Single Family

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MAP 6
STUDY AREA 3

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Multi Family

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MAP 7
CONTROL SEA

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MAP 8
STUDY AREA 4

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Abiamimbaimmi Industrial
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MAP9-
CONTROL AREA

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Multi Family

Ccmrrz*rcisl

Offico

Industrial

Public

Study and Control Area Characteristics. All of the Study and Control Areas were examined to identify similarities. They all are circular in shape with-a 1000 foot radius, a size of 72.12 acres, and have similar population and land use characteristics. The population characteristics of each area were analyzed using block data from the 1980 Census of Population and Housing. The results are summarized in Tables 3. 4, 5, and 6. Land use characteristics are summarized in Tables 7, 8, 9, and 10.

Table 3

Area 1

Population Characteristics

Ethnicity	Study	Control
Anglo	69.8	68.0
Black	7.9	10.4
Hispanic	21.5	21.5
%- Other	0.8	0.1

Age Composition		
Under 18	11.0	19.6
18 to 64	80.0	72.7
65 and over	9.0	7.5

Owner Occupancy	17.5	25.5

Table 4

Area 2

Population Characteristics

Ethnicity	Steady	Control
Anglo	60.9	75.2
Black	4.4	6.2
°fa Hispanic	33.5	18.0
Other	1.2	0.5
Age Composition		
Under 18	24.0	20.8
18 to 64	62.5	71.2
65 and over	13.5	8.0
Owner Occupancy	34.7	26.7

Table

Area 3

Population Characteristics

Ethnicity Study Control

% Anglo 17.7 54.8

°lo Black 12.1 2.4

Hispanic 64.1 42.8

Other 6.1 0.0

Age Composition

Under 18 40.1 25.1

18 to 64 51.6 69.6

65 and over 8.3-5.3

Owner Occupancy 27.9 48.9

Table 6

Area 4

Population Characteristics

Ethnicity Study Control

Anglo 84.4 72.8

Black 2.5 2.5

Hispanic 12.4 19.4

Other 0.7 5.3

Age Composition

Under 18 16.1 23.8

%18to6469.40.5

65 and over 14.5 5.7

Owner Occupancy 38.2 24.8

Table 7

Area

Existing Land Use

(in acres)

Study Control

Single Family 14.1 18.9

Multi-Family 3.0 1.5

Commercial 11.9 9.7

Office 0.3 2.2

Industrial -- -

Public 3.9 4.4

Parkland - -

Vacant 1.6 0.7

Roads 37.3 34.7

Table 8

Area 2

Existing Land Use

(in acres)

Study Control

Single Family 22.2 24.6

Multi-Family 1.6 4.7

Commercial 23.2 23.3

Office 0,8 2.0

Industrial - -

Public 1.2 --

Parkland -- -

Vacant 5.1 --

Roads 18.0 17.5

Table 9

Area

Existing Land Use

(in acres)

	Study	Control
Single Family	19.0	34.2
Multi-Family	7.2	9.6
Commercial	7.2	5.6
Office	0.1	0.4
Industrial	--	--
Public	9.3	8.2
Parkland	6.6	-
Vacant	8.0	4.2
Roads	14.7	9_9

Table 10

Area 4

Existing Land Use

tin acres)

	Study	Control
Single Family	25.1	22.7
Multi-Family	2.3	4.9
Commercial	26.6	15.8
Office	1.1	5.1
Industrial	-	2.3
Public	--	0.4
Parkland	-	-
Vacant	1.6	3-7
Roads	15.4	17.2

Results

The crime rates calculated for each Study and Control Area and for the city at large are indicated in Table 11.

Table I I

Average Annual Crime ***Rates***

(per 1000 population)

	Part 1 Crime Rate	Sex Related Crime Rate
Study Area 1	181.82	8.72
Control Area 1	320.65	2.17
Study Area 2	552.54	13.56
Control Area 2	96.69	2.48
Study Area 3	128.59	4.97
Control Area	369.60	2.37
Study Area 4	165.77	7.91
Control Area 4	133.41	1.84
City of Austin	83.14	2.81
All Control Areas	132.23	2.21

Analysis of Table 11 reveals a definite pattern concerning sex-related crime rates_ Sex related crime rates in Control Areas are consistently low, ranging from 65% to 88% of the city-wide average. In contrast, sex related crime rates in the Study Areas are substantially higher than the city-wide average, ranging from 177% to 482%

higher.

The sex related crime rates for Study Areas 1 and 2, which each contain two adult business sites, are higher than those in Study Areas 3 and 4, which each contain one adult business site: Table 12 consolidates the crime rates for Study Areas 1 and 2 and Study Areas 3 and 4. This analysis indicates that the sex related crime rate in areas having more than one adult business site is 66 percent higher than in areas having only one adult business site.

Table 12

Combined Average Annual Crime Rates

	Part 1 Crime Rate	Sex Related Crime Rate
Study Areas 1 & 2	281.42	10.02
Control Areas I & 2	193.43	2.35
Study Areas 3 & 4	159.70	6.02
Control Areas 3 & 4	97.44	2.21

Real Estate Impacts

Methodology. In an effort to assess the impacts of adult entertainment businesses on property values in Austin, a survey of the opinions of real estate professionals was conducted. A three-part questionnaire was designed to gauge the opinion of real estate appraisers and lenders in the Austin area regarding the effect that an adult entertainment business would have on surrounding property values_

The first part asked respondents to indicate the effect of one adult bookstore on residential and commercial properties located within one block and three blocks of the bookstore_ The second part of the survey asked respondents to gauge the effect on residential property values within one block for a variety of commercial uses other than an adult bookstore. The third part of the survey asked questions designed to estimate the degree to which property values are affected by adult businesses, and to establish the basis for the appraisers' opinions. A sample questionnaire is included in Appendix D.

Results. The questionnaire was mailed to 120 firms listed in the **Southwestern Bell Yellow Pages** under "real estate appraisers" and "real estate lenders." The Office of Land Development Services received 54 responses; a response rate of 45 percent. The responses to the questionnaire concerning the effect of adult businesses on property values are tabulated in Table 13. Table 14 summarizes the results of the questionnaire regarding the effect of other commercial uses on property values.

Table 13

The Effect of Adult Businesses on

Property Values in Austin, Texas

	Decrease	Decrease	Decrease
	No Chanae	1 to 10%	10 to 20%	20% or more
Residential Property				
One Block Radius	12%	31%	26%	31
Commercial Property				
One Block Radius	31%	30%	33%	6%

Residential Property

Three Block Radius 41% 28% 26% 5%

Commercial Property

Three Block Radius 59% 30% 9% 2°%0

The tabulated responses in Table 13 indicate that a substantial majority (88%) of those surveyed felt that an adult bookstore would have a negative effect on residential property located within one block. Of these, 31 percent felt that value would decrease by more than 20 percent. A majority (69%) felt that the value of commercial property within one block of the bookstore site would be negatively affected. Only 6 percent felt, however, that the decline in value would be greater than 20 percent.

When the distance from the adult bookstore is increased, the negative impact on property values appears to be less severe. While a majority of respondents (59%) indicated that residential property located three blocks from the bookstore would decline in value,. only 5 percent felt the decline would be greater than 20 percent and over 40 percent felt that there would be no change in value at this distance. The majority of respondents (59%) felt that there would be no change in value of commercial property located three blocks from the adult bookstore site.

Table 14

The Effect of Commercial Businesses on

Residential Property Values in Austin, Texas

Much Somewhat About Somewhat Much

Higher Hig her The Same Lower Lower

Church 2% 16% 58% 24% --

Pool Hall -- 2% 39% 45% 14%

Welfare Office -- 4°% 36% 45% 15%

Neighborhood Tavern -- 9% 38% 34% 21

Record Store -- 26% 61% 11% 2%

Medical Office 18% 36% 41% 6% --

Branch Library 21% 40% 33% 6% --

Drug Rehabilitation -- 2% 22% 48% 28%

]ce Cream Parlor 6% 42% 46% 6% --

Video Game Parlor -- 16% 53% 31 ℃ --

Adult Video Arcade -- 4% 27% 28% 42%

Topless Bar -- -- 19% 23% 58%

Massage Parlor -- -- 19% 23% 58%

Adult Theater ---=- 23% 21% 56%

The survey also asked respondents to indicate the effect on residential property values if the site was used for something other than an adult bookstore. As indicated ¡n Table 14, the majority felt that property values would be higher if the site were used as a medical office or branch library. They indicated that residential property values would be reduced if the site were used as a pool hall, tavern, welfare office, drug rehabilitation center, or another type of adult entertainment business.

Causes of Property Value Decline. The real estate professionals were asked to describe'the effect of adult businesses on property values in general and the basis for their opinions. These questions are important because they help establish why property values are affected by adult businesses.

The respondents based their opinions on several factors. They noted that the type of clientele attracted by adult businesses create concerns among families with children.

Several noted that residential properties in close proximity to adult business sites are no longer suitable as homes for families with children. This eliminates a large portion of the market, lowering demand, which in turn decreases the market value of the property_ It was also noted that the existence of adult business facilities leads mortgage underwriters to believe that the general neighborhood is in decline. Therefore, they would be less willing to make 90 to 95% financing available for these properties.

Several respondents indicated that "pride of ownership" has an important influence on property values. When families are encouraged to leave a residential area or discouraged from locating in a particular area due to the existence of an adult business nearby, a transition from a family-oriented, owner-occupied neighborhood to a more transient, renter-occupied neighborhood may result. This trend is reinforced by the reluctance of real estate lenders to make 90 to 95% financing available for residential properties in the area.

With regard to the effect on commercial properties, respondents commented that commercial property values were negatively impacted but to a lesser degree than residential properties. It was also noted that the impact of a single adult entertainment business would be less severe than the impact resulting from a concentration of businesses. Other comments indicated a. negative impact on the sales of businesses engaged in neighborhood trade. One respondent commented that adult entertainment businesses tend to drive.out residential or commercial uses.

Those respondents who indicated little or no change in property values cited several reasons for their opinions. Several commented that adult businesses locate in areas where property values are already in decline. One comment noted that commercial properties would experience very little effect because most commercial properties are encumbered by long term leases. Another respondent stated that there is no market evidence that values will change.

In summary, most appraisers and lenders believe that adult businesses will contribute to a decrease in surrounding property values, particularly residential properties within a one block radius. The appraisers opinions will affect property values because their lending and appraisal policies will, to some extent, determine property value.

C, TRADE AREA CHARACTERISTICS

The use of zoning authority to regulate the locations of adult businesses implies that these businesses will be limited to certain zoning districts. In order to make appropriate recommendations for assignment of these businesses to specific zoning

L7 ~

MAP 10

Aduit SuWreas Trade Area

Southaida Niwa 2083 So. Ls+ear Blvd.

Austin Area 0uslnasv Pilron

Out of Town Bushwss Patron,

IrYsa, TX

Saitlr+illa. TX

Houacon. TL

Maraca, TX

7r_ Morcl, TX

lacy. 'CC

districts, an understanding of their trade area characteristics is important. Specifically, it is useful to know if a substantial portion of the adult businesses clientele is drawn from the immediate neighborhood or from a larger regional area.

MAP 11

CME?M WEST 2130 SOUTH COrxRES3

A Auatla Area Businosa Patron

OtA Of Town Businaaa Patrons

San Marco*, TX.
1 LGckb-rm, Tit.
A 1a*tr", TS_
ASr Autoaio, Tx.
ALascsxraz, TY.
AHD"ton, T3.

reflected in housing value) and low crime rates are better than low quality housing and high crime.

In this study "Adult entertainment establishments" include all types of alcohol serving establishments, plus businesses which commercialize sex -- saunas,. "adult" theaters and bookstores, rap parlors, and arcades. The various combinations of these establishments will be considered for their impact on the measures of neighborhood quality. They are considered the independent variables.

The entire analysis in this report is conducted at the level of the census tract. All of the measures used here were available at that level or could be easily aggregated to that level. The census tract is not necessarily the best level of analysis for all the purposes of this study, but the others are either impractical due to cost or availability. For example, block-level analysis is possible given available data, but the cost of acquiring that data and running analyses on about six thousand cases was prohibitive in this study. Though there are problems with the census tract level of analysis, it is a common and useful way to measure phenomena that are of interest at a geographical area larger than the site.

The remainder of this chapter is divided into four sections. Section A summarizes the policy issues that motivate the study. Section B then gives the empirical research questions to be examined here that follow from these policy issues. This second section briefly reports the research design followed in answering the research questions. Section C provides the results of the study in-written and tabular form. Section D is a summary of the study results in light. of the policy issues identified in Section A. Appendix B describes and justifies the methods used in this portion of the study_

Section A – Policy Issues

The central issue is whether the city can and should use its zoning and licensing powers to regulate the concentration and combinations of adult entertainment establishments. It has been well established in law that zoning is a valid use of the state's police power to protect the "health; safety, morals and general welfare" of a community. Likewise, the licensing function is an established way to regulate the existence and condition of a business_ The more narrow question is whether these powers can be exercised to regulate adult entertainment without infringing on other guaranteed rights of proprietors and customers; such as the First Amendment right to free speech.

In Young v. American Mini Theaters, Inc., the Supreme Court held that a Detroit ordinance that caused the dispersal of adult Theaters from certain other "regulated" land uses, including adult bookstores and theaters, and on-safe liquor establishments, was constitutional. It was held that, in principle, the ordinance did 'not deprive proprietors and customers of the right to distribute or consume certain ideas, _specifically those with explicit sexual content. Further, the particular limits placed on adult businesses by the law were seen as justified by a "compelling state interest" to preserve the city's neighborhoods. The ordinance represented a rational response to the problem of neighborhood decline based on the testimony and evidence of expert witnesses.

The conditions laid down in Young v. American Mini Theaters are narrow, and the legal issues are complex_ It is not the intention of this report to enter the legal thicket in search of optimum solutions. The relevant point raised by the Detroit decision is that one of the conditions that must be satisfied to sustain the use of zoning powers to regulate adult entertainment businesses is that there must be a demonstrable public interest to be served by such regulation. Among the considerations raised by the Young case are the concerns that a concentration of adult entertainment businesses in a neighborhood may have an adverse effect on property values, result in an increase in crime, or undermine the stability of businesses and residents in the area. These are among the. concerns that are empirically examined in this study, as indicated by the primary measures of relative neighborhood deterioration, housing values and crime rates.

This study looks at the effects of both sexually-oriented and alcohol serving adult entertainment establishments on neighborhoods in Minneapolis. Alcohol-serving establjshments and movie theaters are subject to both licensing and zoning restrictions, while many sexually-oriented businesses are subject only to zoning restrictions (as of July 1, 1980).

Discussions with Council members and City staff produced several specific policy questions that can be pursued in this research:

1. Do different types of alcohol-serving establishments have different impacts on neighborhoods?

This is a complex question since City Council and License Staff members have raised numerous ways to classify bars. The legal definitions embodied in licensing requirements are included in the classification scheme, used here, e.g., liquor; wine; or beer; class A, B, or C entertainment. A further consideration raised is the extent to which a business is based on serving food and how this may alter the effects of the establishment on the

neighborhood.

2. Do particular combinations or concentrations of adult entertainment establishments have particular impacts on neighborhoods?

This question asks whether the location of adult entertainment establishments in clusters will have different or greater impacts on neighborhoods than will similar establishments separated by a significant amount of distance. As of July 1981, the zoning code will regulate sexually-oriented businesses to 500 foot intervals between them and with 500 foot intervals between the businesses and other priority uses like residences or churches. One assumption in the regulation is that concentration of these establishments will exacerbate their negative impacts on neighborhoods. This assumption requires empirical support.

3. Does the location of a bar or sexually-oriented business in an area recede the decline of a neighborhood or does it follow it?

There is some evidence that adult entertainment businesses locate in areas that are already in decline, or perhaps are undergoing rapid change in character with relatively few stable residents or businesses. The problem then is to determine if adult businesses further or contribute to the cycle of decline that is already in existence.

Given the severe limitations in the quality and availability of data on neighborhoods for most years, some of these policy questions are very difficult to answer, however, they can be translated into research questions that can be investigated empirically_ There can be no absolute certainty in answering questions of this sort, but information can be produced that will place policy decisions on firmer grounds.

Section B - *The Research Design*

The policy concerns expressed in the previous section must be translated into research questions amenable to appropriate statistical techniques. This section discusses the research questions identified above and provides an outline of the techniques used in answerino them.

1. Introduction: The Research Question

a. Are the location and number of adult entertainment establishments and the various sub-types within this general category associated with measures of neighborhood decline?

This portion of the research utilizes simple correlation analysis to establish whether or not adult entertainment establishments of various types are empirically associated with measures of neighborhood deterioration at the census tract level.

b_ Do these relationships between adult businesses and deterioration change after controlling for the impacts of other variables known to be associated with deterioration?

If the simple relationships described in a_ are established, it is reasonable to ask if they remain after the effects of other variables that may be associated with neighborhood decline are controlled. Two related statistical techniques are used in this portion of the analysis. First, the simple correlations are re-analyzed while "holding constant" some other variables thought to be related to the measures of neighborhood quality. Second, multiple regression analysis is performed to determine if any or all combinations of the adult entertainment establishments are associated with measures of neighborhood quality when considered together with other control variables. The regression equations permit some estimate of the impacts of adult entertainment establishments on neighborhoods in comparison with other variables, using the regression coefficients.

c. Does a concentration of these establishments have a disproportionate impact on neighborhood decline? That is, are the observed relationships non-linear?

The relationship established in a. and b. may reveal that changes in neighborhood deterioration increase at a greater or lesser rate than increases in the concentration of adult entertainment establishments. If this is the case, the relationships are non-linear, and it may be possible to identify the point at which further increases in the concentration of adult uses will have disproportionately great impacts on surrounding areas. The simple relationships are tested using one-way (bivariate) analysis of variance techniques to identify significant departure from linearity. The multi-variate regression analyses are tested through examination of residuals.

d. Do the relationships observed in the data, either over time or cross-sectionally; permit

the inference that adult entertainment establishments precede or accelerate neighborhood decline?

For policy concerns, it is important to determine whether adult entertainment establishments precede or follow neighborhood deterioration_ This will be impossible to prove empirically. However, circumstantial evidence can be developed which is consistent with our suspicions about neighborhood decline. In the present case, the statistical technique of path analysis is used to determine whether adult businesses precede or follow signs of deterioration. We hypothesize that deterioration does follow the location of such businesses, (in the sense that adult businesses contribute to the existing cycle of decline in the neighborhood), even though it may be the case that adult businesses are attracted to areas already in the process of decline (the businesses follow decline).

It is also possible to examine hypotheses about causal relationships using longitudinal data_ Observations of actual changes in variables over time were made, comparing 1979 to 1970 measurements, but these observations were unsatisfactory due to measurement error and lack of sufficient data points. Therefore, these cross-time measurements and the analyses of them are not reported in this document.

Variables and Data Sources

Numerous data sources were used to obtain measures of the many variables used in this study_ Measurements were taken at two points in time for as many variables as possible. Generally, the years for which measurements are available are 1970 and 1979, although some variables were measured for different years if data was not available for one of these years. These can best be discussed as independent, dependent, and control variables_

a. Independent Variables

The independent variables are all on-sale liquor serving establishments of all types and classes, plus sexually-oriented businesses_

(1) On-sale liquor establishments. Establishments may be licensed to sell beer only, wine and beer, or liquor; wine, and beer. We will refer to these simply as

beer, wine, or liquor. !Nine licenses are issued to businesses whose total volume is expected to be at least 60 percent food service. These businesses also obtain different types of licenses depending on the kind of entertainment provided on the site. As discussed in Chapter l, a Class C license permits only juke boxes, machines, T.V. and the like. The Class B license permits a single performer to play an instrument; plus the entertainments permitted under the C license. The Class A license permits any of the entertainment allowed under the first two licenses, plus live bands, shows, dancing, and so forth. Table 11.1 shows the numbers of bars in each category for 1970 and 1979, excluding the downtown tracts.

Table 11.1

Number of Bars by Category, 1970 and 1979

	1970					
	Class A	Class B	Class C	Class A	Class B	Class C
Beer	10	3	175	5		128
Wine*			0			
Liquor	28	3	58	47		62
Total	38	6	233	53		207

*"Wine" was not a license category in 1970.

(2) Adult sexually-oriented businesses. These businesses include adult (X-rated) movie theaters, adult book stores, saunas and rap parlors, plus bars

which provide live sexually-oriented entertainment. The 1980 data is complete, . but information on sexually-oriented businesses that were not licensed in the period around 1970 (e.g.,.. sexually-oriented entertainment in bars) cannot be reliably measured at this point and were omitted from the analysis. Table 11.2 provides counts of these businesses for 1970 and 1979, again omitting downtown.

Table 11.2

Number of Sexually-Oriented Businesses by Category

1970 and 1979

	1970	1979
Saunas, etc.*		14
Adult bookstores	UNK	
Adulf theaters		
Bars with sexually-oriented entertainment	UNK	

*License records are available beginning with 1973.

The source for saunas and theaters are License Department records for the different years_ Complete up-to-date counts of these businesses plus adult bookstores, rap parlors, and so forth, were also obtained from the Office of the Zoning Administrator. Bars with live sexually-oriented entertainment in 1979-1980 were identified by members of the Minneapolis Police Department and License Department staff.

b. **Dependent Variables**

The main dependent variables used in this study are mean housing value and an index of crime rate per 1,000 population, at the census tract level. These variables are generally recognized to be good indicators of neighborhood deterioration.

(1) Housing value. For 1970, mean housing value is the owner estimated single-family housing value in the 1970 census, averaged for each tract.

For 1979, the mean housing value is the average assessed value of the single family housing in each. census tract- The Property Management System of the City of Minneapolis is the source of this information.

Though neither of these measures perfectly reflects the arm's length market value of housing, each should provide an unbiased estimate of housing value in each tract for that year, thus producing valid measures of variation from tract to tract.

(2) Crime. rate. **Adequate census tract level data on crime rates is not available for 1970_ The substitute measure used here is an index of crime using data from a one year period extending from the middle of 1974 to the middle of 1975. This data was collected by staff of the Minnesota Crime Prevention Center as part of a study of crime in Minneapolis.**

Crime data for 1979 and 1980 was collected from the files of the Minneapolis Police Department's Integrated Criminal Apprehension Program, for which the Minnesota Crime Prevention Center provides technical assistance. A crime index was constructed from this data using commercial robbery and burglary, residential burglary, personal robbery, rape and assault. The index is an aggregated tract-level measure of the number of crimes per 1,000 population.

Finally, other measures of neighborhood'quality were considered for inclusion in the list of dependent variables, including measures of commercial vacancy rates and area condition estimates. Some analysis was performed using these variables, and will be reported where appropriate.

which provide live sexually-oriented entertainment. The 1980 data is complete, but information on sexually-oriented businesses that were not licensed in the period around 1970 (e.g.,.. sexually-oriented entertainment in bars) cannot be reliably measured at this point and were omitted from the analysis. Table 11.2 provides counts of these businesses for 1970 and 1979, again omitting downtown.

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Finally, other measures of neighborhood quality were considered for inclusion in the list of dependent variables, including measures of commercial vacancy rates and area condition estimates. Some analysis was performed using these variables, and will be reported where appropriate.

c. **Control Variables**

Certain third variables believed to have an impact on neighborhood quality were also measured for 1970 and 1979. **These variables are used in the analysis to determine the extent to which the associations of adult entertainment establishments with neighborhood quality are actually due to the control variables rather than the independent variables themselves. It is possible that both the location of adult businesses and the level of housing value or crime rate are caused by some third** variable_ **Control variables can be held constant with statistical techniques to see how the variables of major concern are related when the controls can no longer make a difference. Statistically speaking, these variables are used to identify spurious relationships or to help confirm the effects of an independent variable. Because a large number of these third variables are used, the data sources and variable** definitions will be **presented** only in **summarized fashion.**

(1) 1970 Data. **The major sources used for measuring 1970 control variables were the 1970 census and the Polk Company's Minneapolis City Directory. Tract level measures of neighborhood characteristics like residential stability and percent of owner occupied dwellings were taken from the census. The Polk directory provided information** on **commercial structures** in **1972.**

(**2**) 1979 Data. **The 1979 data was obtained from several sources. Data on residential units, including age, type, condition, number, gross building area, lot size, and tax status (i.e., homestead or not) were collected from the Property Management System_**

The bulk of the commercial property descriptions were taken from the Polk city directory for 1978. In addition, estimates of 1978 household income and tract population were taken from Polk data.

Measures of household occupancy and turnover rates were taken from the Minneapolis quarterly report on vacancy and turnover for January 1, 1980 to March 31, 1980 produced by the Minneapolis Planning Department. The original source of this data was the NSP billing tapes.

3. Level of Analysis

All variables have been measured at the census tract levels. This means that observations for a given variable have been aggregated within a tract for the appropriate time period, and a summary measure produced. For example, the measure of all alcohol serving businesses for 1979 is a count of all types and classes of on-sale licenses issued by the city for that year, by census tract.

Section C -Analysis and findings

1. Simple Relationships

Are the location and number of adult entertainment establishments and the various sub-types within this general category associated with measures of neighborhood decline?

Based on previous related research and discussions with interested persons, we expected to find that a high concentration of such businesses is associated with an increased crime rate and decreased housing values. The simple correlation coefficients confirm these expectations.

Table 11.3

Pearson Correlation Coefficients: Adult Entertainment

Establishments and reasures of Neighborhood Quality, 1979

	Mean Housing Value 1979	Crime Rate Index, 1979-80
All adult businesses	-.1320	.1926*
Sexually-oriented businesses	-.1533*	
Alcohol-serving businesses	-.1208	
Beer	-.2531	.1683*
Wine	.1079	-.0441
Liquor	.0267	.0760
Class A	.0584	.0405
Class B	-.0691	.2415*
Class C	-.1409.	.1421

*Correlations are significant at the .05 level or better.

As Table 11.3 shows, several categories of adult businesses have a statistically significant relationship with the measures of neighborhood deterioration. Concentrations of sexually-oriented businesses and beer bare show relatively strong relationships with both housing value and the crime rate in the expected directions. The relationship between the |ocation of adult entertainment businesses and crime is generally stronger than that between these businesses and housing value. Most of the observed correlations are very weak.

The relationships in Table i1.3 vary among the sub-types of adult establishments: some of the types are more closely related to the neighborhood variables than others. It is possible that these differences are due entirely to differences between the types of establishments. but that seems to be only a part of the issue. It is likely that other variables are affecting the relationship.

Included among these other variables, the effects of city policy, business decisions, and the general environment of the adult business are likely to make a difference in the way the business is related to housing value and crime. The classification of the businesses that is used here already reflects the licensing procedures of the city, but other policies, especially zoning regulations, may have an impact. Zoning regulations affect the size and type of commercial area within which different types of adult businesses may locate, with possible consequences for their impacts on neighborhoods. One business decision that Council members suggested might affect an establishment's relationship with crime and housing value is the proportion of the business that is devoted to food service. Businesses that are actually restaurants that happen to have alcohol licenses may be different than those that are primarily bars. The residential environment of the adult business may be characterized by many variables that could have an impact.

In this study, these concerns are measured and taken into account through the use of statistical controls. The zoning policy issue is summarized in a measure of the proportion of commercial units found in each tract. The restaurant vs. bar distinction is based on a measure of the proportion of a business that is food-related, with those that are greater than 50 percent food considered primarily restaurants. The residential environment is characterized by a measure of average household income in a census tract. Income is very highly related to other measures of residential area type_

The simple relations between these control variables and the types of adult entertainment establishments suggest that they might make a difference in the relationships between types of adult businesses and crime or housing value_ The next section presents some analyses-that explicitly use these control variables to examine the relationship between adult business and neighborhood deterioration more closely.

Summary Findings: Simple Relationships

(1) Concentrations of beer licensed bars and sexually-oriented businesses are significantly related to lower housing values. Host types of adult businesses are negatively related to housing values; even if they are not significant.

(2) A summary measure of all adult businesses; sexually-oriented businesses, beer and Class B entertainment licensed alcohol-serving businesses are significantly related to high crime rates. All but one type of adult business are positively related to the crime rate.

(3) **Overall, the relationship between adult business concentrations and neighborhood deterioration measures are weak.**

2. Comple; Relationships

Do the observed relationships change after controlling for the impacts of other variables known to be associated with neighborhood quality?

This section is in two parts. The first part presents first order partial correlations between concentrations of adult businesses and measures of neighborhood quality, controlling for the policy relevant variables of food percentage of business and commercial characteristics of bar locations, in addition to controlling for the effects of type of residential area on the relationships. In the second half of this section, even more stringent statistical tests are reported which permit an estimation of the amount of impact of various combinations and concentrations of adult businesses on neighborhood quality, while simultaneously controlling for tile effects of other variables.

a. Partial Correlation

Table 11.4 shows how the simple **relationships between** adult **entertainment establishments and neighborhood quality measures change when the effects of other variables that measure important policy and environmental factors are controlled_**

The partial correlations in the third and fourth columns of Table 11.4 show the effects of controlling for food business on the relationships between adult entertainment business types and the neighborhood deterioration measures. Bars that are devoted primarily to serving alcohol are more strongly related to lower housing value and higher crime rates. With the effects of restaurant-type businesses removed, more of the relationships are significant, and nearly all of them are in the direction expected, i.e.,' concentrations of bars are associated with lower property values and higher overall crime rates. Liquor bars and Class C entertainment licensed bars, in particular, are significantly related to crime and/or housing value when food business is controlled.

Table 11.4

Partial Correlation Coefficients:

Adult Entertainment l=stablishrnents and Neighborhood Quality, 1979

Partial Control Partial Control

Simple Partial Control for Percent for Mean

Correlations for Food Commercial Income

	House Value	Crime Index	House Value	Crime Index	House Value	Crime Index	House Value	Crime Index
All adult	-.1320	.1926"	–		0707	-.0147	.0738	-.0861
Sexually-oriented	-.1533*	.2440	–		1415	.2314*	-.1089	.2153
Alcohol-serving	-.1208	-.1380	-.2865*	.1751*	-.0405	-.0700	.1023	-_1398
Beer	.2531	.1683	-.2254	.1618	-.2423	1418	-.2036*	.0897
Wine	_1079	-.0441	-2800*	0029	.1627*	-.2154*	.2219*	-2034*
Liquor	-.0267	.0760	-.1592*	.1039	.1022	1482	.2254*	-_1859*
Class A	_0584	.0405	-_1137	.0645	.1191	-.1514	_2334	-.1975
Class B	-.0691	.2415*	-.1310	.2494*	-.0441	1898*	.0360	.1420
Class C	-.1409	.1421	.3217	1667	_056	.0560	.0303	-.1066

*Significant at the .05 level or better.

The controls for commercial area (the fifth and sixth columns in Table 11.4) and mean income (seventh and eighth columns) also change the simple relationship dramatically, and the two variables are fairly similar in their effects on the relationships of particular types of adult businesses to neighborhood deterioration.

Partial Correlation Coefficients:

Adult Enteriainment Establishments and Neighborhood Quality, 1979

Partial Control Partial Control

Simple Partial Control for Percent for Mean

Correlations for Food Commercial Income

	House Value	Crime Index	House Value	Crime Index	House Value	Crime Index	House Value	Crime Index
All adult	-.1320	.1926*	–			-_0147	.0738	-.0861
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Alcohol-serving	-.1208	.1380	-.2865*	.1751"	-.0405	-.0700	.1023	-.1398
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Liquor	-,0267	.0760	-.1592*	.1039	_1022	1482	2254"	-_1859*
CIa8sA	.0584	.0405	-_1137	.0645	.1191	-.1514	.2334*	.975*
Class B	-.0691	.2415*	-.1310		-.0441	.1898*	.0360	.1420
Class C	-.1409	.1421	.3217	.1667	-.0856	0560	.	-1066

*Significant at the .05 level or better.

The controls for commercial area (the fifth and sixth columns in Table 4) and mean income (seventh and eighth columns) also change the simple relationship dramatically, and the two variables are fairly similar in their effects on the relationships of particular types of adult businesses to neighborhood deterioration_

When the percentage of all units in a census tract that are commercial is used as a control, the overall relationship between adult businesses and deterioration is reduced almost to zero_ However, when the various sub-categories of adult businesses are investigated, some fairly strong relationships remain.

Sexually-oriented businesses continue to be related to higher crime rates, and beer bars continue to be related to lower property values, even when commercial business concentrations are controlled. Beer bars are likely to be nearer to residential areas than wine or liquor bars are, in part because of zoning requirements. The fact, that sex businesses are significantly related to crime even after the commercial concentration is controlled possibly suggests that these businesses may have an impact on crime rates independent of other commercial businesses_

On the other hand, the control for commercial characteristics raises the relationships between liquor or Class A bars and crime from zero to almost significant levels. In the case of the liquor bars, this probably reflects the zoning restrictions which requires that they locate in "seven-acre" commercial zones. Wine licensed businesses' relationships to neighborhood deterioration change from insignificant to significant, but in the opposite directions expected, i.e., wine bars are associated with higher housing values and lower crime rates when commercial concentration is controlled_ This finding is suspect because of the small number of establishments involved.

Controlling for income (columns 7 and 8) produces strong relationships between liquor, wine, and Class A entertainment bars and higher housing values, and between these types of adult businesses and lower crime rates_ These relationships are opposite to what would be expected if all concentrations of bars were associated with neighborhood decline. They suggest that income -- or the social conditions in neighborhoods that income represents -- accounts for a large proportion of the simple relationship between these alcohol-serving businesses and neighborhood quality. One inference is that a bar may be an amenity if the neighborhood is already of higher socio-economic type as indicated by income. Generally, the observed relationships are similar to those observed when commercial land use was the control, only more pronounced. As with the commercial control variables, beer bars and sexually-oriented businesses continue to be related to the deterioration measures in the same direction, although not as strongly, when income is controlled. The effects of these establishments are relatively constant, or independent of changes in mean income in surrounding tracts.

One possibility that these partial correlations do .not take into account is that the control variables themselves are related to each other and have effects on the relationships between adult businesses and neighborhood measures in combination. This possibility will be explored using multiple regression in the following section.

b. Multiple **Regression:** Adult **Entertainnnent Establishments** and **Crime**

The objective of this section is to determine whether adult businesses have an impact on neighborhood quality when other factors - the control variables described above -- are considered simultaneously, and if these establishments do have an impact, how great is this relative to the other variables.

A set of multiple regressions using the crime index as the dependent variable are reported in Table 11.5. The regression coefficients indicate how much change in the dependent crime variables is associated with a change of one unit of the independent variables. For example, in Regression #1, the regression coefficient, b, indicates that the crime rate per 1,000 population drops 28.20 crimes, on the average, for each tract in which all the bars serve 50 percent or more of their volume in food (since the measure of food volume is a proportion). Care must be taken when interpreting the regression coefficients because the units they are associated with are not always comparable. The b for the income variable is very small, but it is more significant than the food service variable. For the purposes of this report, the significance of the coefficients and the beta weights provide the key information_ If a coefficient is significant (.05 or less), then the beta weight provides a way to compare the strengths of the relationships between the independent variables (type of adult business) and the measure of crime rate.

Consistent with the partial correlations discussed in the section above, **only the sexually-oriented businesses have significant coefficients and are associated with a higher crime rate. Both liquor bars and Class A bars are associated with lower crime rates when other factors are taken into account. No other type of adult businesses are significantly related to the crime index when they are considered simultaneously with the control variables.**

Table 11.5

Multiple Regression; Adult Entertainment Establishments

and Crime, 1979, with Controls

The first regression shows the relationships between the three control variables of food, commercial concentration, and mean income. All of them are significantly related to the crime index; although the beta weights suggest that_ mean income is associated with the greatest changes in neighborhood quality. Both mean income and the percent of bars predominantly in the food business (50 percent- food service or greater) have negative signs which indicate that higher incomes and more bars that are primarily food businesses are in lower crime areas. Crime increases as the percent of an area that is commercial increases. These coefficients are about the same size and have the same signs in all the regressions in Table 11.5 except for number 3, which includes downtown tracts. This

¡ndicates that the estimates for these control variables are fairly reliable, at least with respect to the adult businesses.

The sub-types of the adult businesses that do have significant relationships with crime -- liquor bars, Class A entertainment bars, and sexually-oriented businesses -- are shown in Table 11.5.

The presence of sexually-oriented businesses in a census tract is not as strongly related to the crime rate in the tract as any of the control variables, as indicated by the beta weight. Yet, these businesses do have a significant relationship with crime: the regression coefficient, b, suggests that the addition of one sexually-oriented business to a census tract will increase the overall crime rate index by 9.15 crimes per thousand people per year, after the control variables are taken into account.

Liquor bars and Class A entertainment bars are also significantly related to crime, but not ¡n the expected direction. After the effects of the control variables are taken into account, these types of adult businesses are significantly associated with lower crime rates. This confirms the evidence drawn from the partial correlations, above_ In the case of liquor bars, each one is associated with a decrease in the crime rate of 2_7 crimes per thousand per year, and the beta indicates that this bar variable is about as strong in its associations with the crime rate as the restaurant control variable. Class A entertainment bars produce an even stronger relationship, on the average, with a decrease of 5.15 crimes for each additional bar of this type in a tract.

In literal terms, when the environment of a bar, as described by the commercial and residential variables, and its internal business procedures, as described by the food control variable, are taken into account, bars of some types may be an amenity to a neighborhood ¡n terms of crime. But, common sense argues that bars are not very likely to produce safety from crime in a neighborhood. The more realistic interpretation of these results is that the associations between liquor bars and Class A entertainment bars and crime are greatly affected by their surroundings. In other words, the environment of the bar produces the conditions that spawn crime., not the bar itself. Nevertheless, the bar may be a focal point for whatever crime disturbances do occur -- these data do not necessarily contradict that point.

c, Multiple Regression: Adult Entertainment Establishments and Housing Value

Table 11_6 contains regressions that evaluate the impact of the control variables -- food in bars, commercial concentration, and mean income -- plus the impact of adult business on housing value. The only type of adult entertainment establishment that is significantly

¡ndicates that the estimates for these control variables are fairly reliable, at least with respect to the adult businesses.

The sub-types of the adult businesses that do have significant relationships with crime -- liquor bars, Class A entertainment bars, and sexually-oriented businesses -- are shown in Table 11.5.

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c. Multiple Regression: Adult Entertainment Establishments and Housing Value

Table 11_6 contains regressions that evaluate the impact of the controi variables -- food in bars, commercial concentration, and mean income -- plus the impact of adult business on housing value. The only type of adult entertainment establishment that is significantly

related to housing value is the wine bar. Higher concentrations of wine license bars in a tract are associated with lower housing values. This finding is probably spurious_ there are relatively few wine licenses in the city, which exaggerates the impact of each one on the measure of housing value_ Since several of these licenses are in businesses like the restaurant in the Art Institute, the fact that they are in neighborhoods with low housing values is due to the location of the business prior to acquisition of the license. The wine license per se is almost certainly not "causing" deterioration_ This conclusion is further bolstered by the fact that wine licenses were not issued in the 1970 sample, so neighborhood deterioration was probably well underway before any business acquired a wine license.

In summary, adult entertainment establishments do not appear to have a very strong relationship to changes in housing value when other variables are taken into account. The relationships are weaker than the ones found for crime as the measure of neighborhood quality. Although housing value is negatively associated with adult businesses, these coefficients are statistically insignificant, and therefore no conclusions should be drawn. Similarly, the measure of. commercial concentration is insignificantly associated with housing value. Since adult businesses must locate in commercial concentrations, it may be reasonable to interpret the lack of a relation between adult businesses and housing value as a reflection of the lack of association between commercial concentrations and housing values.

Overall, one reasonable interpretation of the patterns in these regressions is that housing value may be high or low whether or not there are concentrations of adult businesses. The direction of the relationship probably depends on particular businesses in particular neighborhoods_ In part this depends on the kind of neighborhood surrounding the commercial establishments, as the consistent relationships in the other control variables, such as mean income, demonstrate. In other words, when mean income is low, a relatively high crime rate probably exists given the strong negative relationship between income and crime, regardless of whether bars or other commercial businesses are present.

Table II_5

Multiple Regression: Adult Entertainment Establishments

and Housing Values, 1979

n

Summary Findings: Complex Relationships

Controlling for the effects of policy relevant and environmental variables changes the relationships between many of the types of adult establishments and neighborhood deterioration measures.

(1) The effects of beer bars on housing values is negative and significant regardless of which controls are used, as long as they are used one at a time.

(2) The effects of sexually-oriented businesses on crime rate index is positive and significant regardless of which control variable is used.

(3) Controlling for those businesses that are basically restaurants changes the simple relationship between several types of bars and crime or housing value very strongly in the expected direction_ It appears that primarily alcohol-serving businesses are much more strongly related to low housing values and high crime rates than are food service businesses.

(4) The impact of zoning policy can be. weakly discerned in the relationships when commercial concentration is controlled. Commercial areas themselves have some independent impacts on crime and housing value as indicated by the changes caused by controls. Wine, liquor, and Class A entertainment bars, which are all more likely to be required to locate in highly commercial areas, have stronger -- though not always significant -- relationships, especially with crime.

(5) When mean income by census tract is controlled, liquor, wine, and Class A entertainment bars have a positive association with neighborhood quality, i_e., they are associated with higher housing values and lower crime rates.

(6) Sexually-oriented businesses continue to be associated with higher crime rates, even when the control variables' impacts are considered simultaneously_

(7) Liquor bars and Class A entertainment bars appear to decrease crime when the controls are taken into account_ This is taken as evidence that the neighborhood residential and commercial characteristics are really determinative regarding the crime rate. The bars reflect their surroundings.

(8) Only wine bars have significant associations with housing value, appearing to decrease that value. However, the small number of licenses and the types of establishments that have wine licenses suggest that this finding is spurious_

3. Tests for Linearity

There are two reasons to be concerned about whether or not the relationship here are

linear. First, non-linear relationships would mean that increases in concentrations of adult businesses would have effects on neighborhoods in geometric proportion, which could mean that concentrations are especially undesirable. Second, discovery of a non-linear relationship-would indicate that the methods used in the previous section are improper, as they are based on the assumption of linearity.

The analysis of variance tests performed on the two-variable regressions of adult entertainment and neighborhood measures show no significant departures from linearity. The inspection of residuals from multiple regressions reveal no clear-cut interactions or curvilinear relationships. Therefore, the linear methods and assumptions, and conclusions drawn from them, are appropriate for this study.

4. Causal Analysis

This section addresses the following question ·

Do the relationships observed in the data, either over time or cross-sectionally, permit the inference that adult entertainment establishments precede or accelerate neighborhood decline?

In order to provide answers to this question, we must make use of special techniques and make assumptions about what causes what_ If the data are consistent with the assumptions, then there is circumstantial evidence chat the causal relations assumed are correct.

The major technique used here to assess causality is path analysis. This approach makes use of Pearson and partial correlations to test some assumptions about the causal impacts of adult entertainment establishments on neighborhood quality. To perform this analysis; summary variables for neighborhood quality in 1970 and 1979 were created. These variables take into account many factors describing neighborhoods. other than adult businesses, mean housing value, or the crime rate. These summary variables are used as controls_ In the analysis presented here, only the 1979 factor scores are considered.

The central hypothesis tested is that adult entertainment establishments have a direct

causal impact on neighborhood quality measures, but that they also follow from neighborhood quality. That is, these businesses are in a cycle where they are more likely to locate in areas where there is already some deterioration, and then contribute to further decline of the area. This hypothesis is consistent with both our intuitive notions about the matter, and with some evidence developed in an earlier study in St. Paul. Using arrows to indicate the direction of causality, Figure 11.1 represents this hypothesis. Causally speaking, Figure 11.1 assumes that 1) the overall measure of neighborhood quality is causally prior to all the other variables; 2) that characteristics of adult establishments are caused by the general quality of the neighborhood, 3) that crime is caused by both general quality and adult businesses; and 4) that housing value is dependent upon all of the other variables. Table 11.7 contains the relevant predictions and actual values of the correlation coefficients obtained from the data.

Figure 11.1

Path Diagram of the *Hypothesis that* Adult Establishments Contribute to Can-Going Processes of Deterioration in Census Tracts

is Variable'l : Variable 2:

Neighborhood Adult

Quality, 1979 Establishments, 1979

Variable 4: Variable 3;

Housing Crime Index,

Value, 1979 1979

The model in Figure 11.1 says that there should be a direct relationship between adult entertainment establishments and housing value, even when the general effects of neighborhood quality are taken into account. According to the logic of the path analysis, this means that a number greater than zero should describe the relationship even after general neighborhood quality is controlled. This relationship is shown in Table 11.7 in prediction #3. However, the observed partial correlation in Table 11.7 is -.0044 (Actual Value #3), which is too close to zero to accept the prediction as being accurate. The actual value suggests that when the general effects of the neighborhood quality index are taken into account, adult business concentrations have no relationship to housing value. In other words, the general character of the neighborhood is responsible for both housing values and concentrations of adult establishmQnts.

Table 11.7

Path Analysis Predictions and Actual Empirical Value

Predictions

(1) Pearson's r, variables 2 and 4_ $r_{24} = (r_{12})(r_{14})$

(2) Pearson's r, variables 2 and 3: $r_{23} = (r_{12})(r_{13})$

(3) Partial correlation, variables 2 and 4, controlling for 1: $r_{24.1} = 0$

(4) Partial correlation, variables 2 and 3, controlling for 1: $x_{23.1} > 0$

Actual Values

(1) $r_{24} = -.1320 = (r_{12})(r_{14}) = -.130$

(2) $r_{23} = .1926 = (r_{12})(r_{13}) = .25$

(3) $x_{24.1} = -.0044$ -

(4) $x_{23.1} = -.0761$

The predictions for adult businesses and crime (predictions #2 and #4) are not so clear cut. The predicted correlations in Table 11.7 are similar to the actual ones $(1-211 = -.0767 > 0)$. Conservatively, we must conclude that some small direct relationship between adult businesses and the crime index remains, even though the magnitudes involved are very small. Alternatively, since the partial correlation between adult businesses and crime, controlling for the neighborhood quality index, drops toward zero, we might also conclude that the neighborhood quality index is responsible for both the crime index and the presence of adult entertainment. This is similar to the case of housing value. However, the evidence suggests that a direct connection between crime and adult businesses is possible, but slight-

Figure 11.2 shows the revised model that seems to reflect the data more adequately than Figure 11.1. The dotted line between adult entertainment and crime indicates that a weak direct link between adult businesses and crime remains. The link between housing value and crime disappears completely- These results are consistent with other findings here which indicate almost no relationship between housing value and adult businesses remains when any of a number of different controls are used. Even though the crime rate index

does have a slightly stronger direct relationship with adult business (r = -.076), it, too, is very weak and tends to disappear when other variables are considered.

Figure 11.2

Revised Causal Path Model of **Adult Entertainment**

and Measures of Neighborhood Decline

Neighborhood Adult

Quality, 1979 Entertainment, 1979

Housing Crime Index,

Value, 1979 1979

Summary Findings: Causal Analysis

(1) The assumption that concentrations of adult entertainment businesses have a direct impact on property values is not born out in the path analysis. Controlling for general neighborhood quality indicates that, at the census tract level, adult businesses as a group do not lower housing value.

(2) The.assumption that crime has a direct link with adult businesses is confirmed in this path analysis; but very weakly.

Section D- Summa-ry and Conclusions

This portion of the study of adult entertainment in Minneapolis has produced several tentative conclusions.

(1) Different types of adult entertainment businesses are different in their relationships to crime and housing value. Some types of these businesses have significant relationships with crime or housing value, others do not. Neighborhood stabilization policies should attempt to take these differences into account.

Sexually-oriented businesses and beer bars are significantly related to both crime and housing value_ In addition, a summary measure of all adult businesses and Class B entertainment bars are significantly related to crime, using simple bivariate statistical techniques.

(2) Taking factors which reflect business decisions, urban policy **decisions, or neighborhood environment into account changes the simple relationships between adult businesses and neighborhood deterioration a great deal.**

The evidence suggests that past policies or residential developments may have greatly affected current observations of the relationships between types of adult businesses and crime or housing value. By law the liquor bars have to be located in seven-acre commercial zones, and therefore they are more likely to be statistically related to commercial crimes (since they are in proximity to more commercial establishments) than residential crimes. Wine licenses are by law only given to establishments that primarily serve food, and the partial correlations reflect this fact. When average income is taken into account, some types of bars -- such as liquor bars and Class A entertainment bars -- even appear to have desirable effects, i.e., the neighborhood crime rates are lower. This is a result which actually indicates that the type of surrounding neighborhood determines a great deal of the relationship between adult businesses and measures of **deterioration.**

(3) Evaluation of the data using the technique of path analysis suggests that adult entertainment variables are not causally prior to crime rate and/or housing value.

The path analysis is a technique which can be used co test the compatibility of. a hypothesis about the causal relations.-hips among a set of variables with empirical data. The hypothesis tested here was intended to answer the question whether adult entertainment preceded or followed neighborhood deterioration. Specifically, it was assumed in the path model that adult entertainment was likely to locate in areas that were already in decline, and then contribute further to that decline. This assumption is very weakly supported in the case of crime, but it is clearly not supported in the case of housing values. Adult entertainment establishments do concentrate in areas that are relatively deteriorated, but they do not appear to cause that deterioration. At most, they contribute very weakly towards its continuation.

(4) Sexually-oriented businesses have a greater number of significant relationships to high crime rates and low property values than any other type of adult entertainment establishment in this study.

The relationship between sex businesses and higher crime rates is especially strong. The association between these businesses and lower housing values disappears, however, when other factors are taken into account. In addition, these businesses are quite strongly related to percentage of vacant commercial properties, which is often used as a measure of a declining commercial area. These associations alone are not evidence that a sexually-oriented business. locating in an area causes other businesses to leave, or property values to go down_ Alternatively, these associations may indicate that sex businesses locate where property values have already fallen and demand for commercial space is weak enough to permit them to compete successfully for space.

(5) The most general finding is that while adult businesses appear to be located in areas of higher crime and lower property values, this is not because they have caused these undesirable conditions. Once in place, they may contribute to the maintenance of such conditions in a neighborhood_

The central thrust of the findings in this study is that adult entertainment establishments do tend to be located in areas of higher crime and lower property values than other parts of the city. The conditions which encourage the businesses to locate in an area may also be the ones that cause lower property values and higher crime rates. This is especially clear for the sexually-oriented businesses. For alcohol-serving businesses, it is less consistent_ The license types are apparently not related to neighborhood decline, but there is some evidence that other properties of bars -- such as extensive food service -- may change or modify the impact of a licensed establishment on a neighborhood. These characteristics; such as management procedures; cannot be studied in an approach like the one taken here. The final implication of the study is that these establishments appear to have very localized impacts: even though we know of some bars that are associated with significant amounts of crime or angr`f neighbors; they do not, on the average; show up in this analysis

of census tracts.

CHAPTER III – *EMPIRICAL* FINDINGS AND POLICY RECOMMENDATIONS

In a sense, this study is an evaluation of the effects of past policy decisions. Directly or indirectly, some of the assumptions underlying those policies have been examined, with an eye toward specifying policies for the future that will help achieve the goals of the city.

One very general finding of the study is that the relationships between adult entertainment establishments and crime or housing values show the effects of past policy decisions. For example, the combination of the old liquor patrol limits and zoning requirements which restrict liquor licensed bars to large commercial areas are reflected in the fact that most of this type of business is located downtown, or in a few commercial areas of the city. Likewise, beer licensed bars are permitted in smaller commercial zones and they have not been restricted by the liquor patrol limits. Thus they are less concentrated than liquor bars, and they are, on the average, closer to residential areas.

The purpose of this chapter is to draw upon the findings that are strongest and most consistent in both portions of the study and relate them to policy concerns. The two portions of the study used differer methods, different measurements, and different data sources to investigate a related set of research questions. Wherever these different approaches converged on similar findings, we can have more confidence that they are providing an accurate picture of the relationships as they actually exist, even though some of the statistical results may be weak.

Below are several tentative policy recommendations we make to the City Council, based on the results of the study. The recommendations are stated, and the rationale for them follows.

1. Establishments which intend to serve alcoholic beverages as a complement to food service should be viewed favorably in licensing decisions, other things being equal.

2. Applications for wine licenses also should be viewed favorably, assuming current requirements about volume of food business necessary to qualify for these licenses are maintained.

Certain categories of alcohol-serving establishments are not significantly related to crime, either in immediately surrounding areas as measured by the distance decay analysis, or in the neighborhood as measured at the census tract level. These are wine-licensed bars and establishments that do more than 50 percent of their business in food service. The common characteristic here is the food service aspect. Because of current licensing requirements, wine bars do a high percentage of their business in food service (the wine license requires that the vendor have at least 60 percent of his/her business volume in food service). Restaurant-type businesses are not associated with crime or lower housing values. If the Council issues wine licenses without the food service requirement at some point in the future, the relationship between wine licenses and crime or housing value would have to be re-evaluated.

3. The City should avoid locating sex businesses in residential areas.

4. The current policy of avoiding concentrations of sex businesses can neither be supported nor contradicted.

Sex businesses do have significant and consistent positive correlations with the crime rate index and a negative correlation with the mean single family housing value, measured at the census tract level. The relationship with crime remains when commercial concentration and average household income are taken into account. The small number of these businesses, plus their distribution, means that no large concentrations of them exist- The large majority of census tracts that have sex businesses have only one. The two-or-three-establishment concentrations that exist, such as along Lake Street, cannot be analyzed apart from their generally commercial surroundings using the techniques in this study. These sex businesses are statistically related to high commercial vacancies and high commercial crime rates, which suggest that they locate in less desirable commercial areas-

5. Adult entertainment business (including bars) should be permitted only in locations that are at least 1/10 mile from residential areas (about 500 feet)-

6. **Adult entertainment establishments and other kinds of late night businesses should not be placed adjacent to each other.**

The effects of adult entertainment establishments, if any, occur in the immediate vicinity of the business. They do not extend far into surrounding neighborhoods. This general finding is supported by both portions of the study: the distance decay analysis suggests in numerous places that crime is concentrated in the areas immediately surrounding bars, and the census tract analysis reveals only weak relationships between adult entertainment and crime or housing value at the neighborhood level.

The intent of recommendation (6) is to avoid mixed commercial uses that may have undesirable effects. For example,. the location of a bar next door to a movie theater or late-night Laundromat may result in patrons of the non-adult businesses interacting with patrons of adult businesses, possibly increasing **their** chances **of victimization.**

7. **The circumstantial evidence generated by the study suggests that, although concentrations of adult businesses may not have disproportionate effects, they can raise the total level of crime or reduce housing values more than single establishments. So, all things being equal, concentrations of adult establishments should be encouraged only if a concentration of crime and housing value effects is also desirable.**

8. **Concentrations** of **adult business** in **declining** areas should be avoided.

One policy issue is whether the concentration or the dispersal of adult businesses will have better overall effects on the quality of life in the city. The information the study generates on this issue is fragmentary, but several patterns emerge-

- **Concentrations are not disproportionately related to crime or housing value, e.g., five bars located right together have no greater <u>total</u> impact on assaults than five similar bars in widely separated, but similar, areas.**

- **Concentrations are weakly related** to **lower housing values and higher crime rates at the census tract level; e.g.; the impact of five bars located together will be greater than the impact of one, two, three, or four similar bars located in the same area.**

- Controlling for other characteristics of the neighborhood, like percent commercial or average income,. reduces or reverses the relationship and deterioration. Thus, the impact of concentration of adult businesses at the tract level may depend on the kind of neighborhood in which they are located.

- There is no direct evidence in the study that shows that adult businesses have eater impacts on deterioration in declining areas, but the possibility cannot be eliminated. Further, other studies of urban development suggest that adult businesses may be seen as a barrier to upgrading neighborhoods.

- Dispersal, as observed in the removal of the liquor patrol limits, has- not had any area-wide impacts that raised the crime rate higher than would have been expected anyway.

9. Adult entertainment establishments should be located in large commercial zones in various parts of the city.

The intent of this recommendation is to locate adult businesses in a number of large community-level commercial areas in different parts of the city, not to create a singular concentration of adult businesses like Boston's infamous "combat zone." Rather, the intent is to confirm what is really current city policy, with some extensions. It is already the case that adult businesses, especially liquor licensed bars, are quite concentrated downtown. In addition, zoning restrictions already ensure that many adult business land uses will be in highly commercialized areas. What is recommended here is to continue and accentuate this policy, consistent with the other recommendations made here.

Concentrating bars (and probably other adult uses as well) in large commercial zones will neither raise nor lower crime rates appreciably. There have been numerous indications in this study that it is the commercial areas of town where assaults and street robberies occur. This confirms what has been found in other studies. Because bars are all located in commercial areas, by definition, it is difficult to separate out the crime effects due only to bars from those due to commercial areas. However, we believe that the independent impact of commercial areas is quite great, and could not be appreciably affected by removing bars. This is also confirmed by previous studies.

Such a concentration would improve the efficiency of some city efforts, such as polic-e

patrol, and it would also make the achievement of some of the other recommendations made here, like separating adult uses from residential areas, more practicable. Ii is important to emphasize that this recommendation should be seen as a complement, not a replacement to other recommendations made here.

10. In the long run, policies which foster or supplement attitudes and activities that strengthen the quality of the neighborhood are more likely to have desired impacts on crime and housing value than simple removal or restriction of adult businesses.

There is no evidence in either portion of the study that adult businesses cause neighborhood deterioration, although other measurement or analysis techniques may reveal such a connection. On the basis of this study, the alternative hypothesis that general neighborhood quality determines the kind and quality of businesses to locate in the neighborhood seems more plausible.

11. The study tends to support the position that adequate off-street parking or equivalent spaces on non-residential streets adjacent to the establishment should be required for issuance of licenses to serve alcohol_

12_ Type of entertainment, specifically game rooms, may have a relationship to the nuisances generated by an establishment.

13. Individual differences among alcohol-serving establishments should be taken into account in licensing decisions.

14. Parking, entertainment, clientele, and management practices of adult entertainment businesses should be investigated further.

The part of the study that analyzes the relationship between certain characteristics of bars and whether or not they are "nuisance" bars has pointed to several factors that may help to explain the differences among individual bars in their effects on crime and other measures of neighborhood quality. The "nuisance bar" portion of the study was developed in response to the concern of several Council members expressed during the course of the research. The nuisance study should be considered preliminary, but it does tend to confirm the expectations of Council members and staff" regarding the effect of parking, and possibly other characteristics as well. We believe that these characteristics can be studied in a

systematic and straightforward way. Currently, licensing decisions are made on a case-by-case basis, using some of the kinds of information for each case that further study would classify and evaluate more systematically. The efforts of the Council to use this kind of information in licensing decisions appears to be justified.

APPENDIX A

Supplementary Materials for Chapter I - Bars and Crime

Appendix

Distance Decay Methodology

Distance decay is a method for analysis of crime at a limited level and a means for deriving crime ' impact statements. The method described is based on the distributional characteristics of crime which can be attributed to the geographic location of individual sites. The approach proposed here focuses on the types of crime patterns which can be derived from the analysis of the geography of crime with respect to individual sites. We have taken as a priori the assumption that for some types of crimes, and some types of sites, there is a distinct geographic pattern that can be derived for the distribution of crime around these sites. Further, we assume that given the derivation of such a distribution, the actual impact of the site on crime can be derived and transformed into a crime impact assessment of individual sites, and sites of a similar character. It is important to note that these assumptions are only valid if there is some theoretical interpretation that can assign meaning to the observed associations_

The approach taken for this evaluation is derived from distance decay analysis common to urban geographic studies. Distance decay analysis is a methodology which measures the density of events in relationship to the location of a single site or node. The assumption tested by distance decay analysis is that the closer one gets to the node; the more events, or crimes; occur. Thus, the node is theoretically assumed to be a point from which events or crimes emanate or are drawn toward. In order to develop a distance decay analysis, one

generates a distance decay curve as shown in Figure 1.

Figure I

An Interpretive wide to Distance Decay Curves*

High

DISTANCE DECAY PATTERN

4 Relative

Crime Crime density decreases

U Density as distance from site increases.

Distance from Site (in miles)

H

High

NO DISTANCE DECAY PATTERN

1 Relative

Crime Crime density is constant

4 Density as distance from site increases.

1 Low

.1 .2.3.4.5.6

Distance from Site (in miles)

High

INVERSE DISTANCE DECAY PATTERN

' Relative

Crime Crime density is constant

~ Density as distance from site increases.

j Low

A .2.3.4.5,6

Distance from Site (in miles)

*These are pure types. Actual curves may display some amount of random variation and/or curvilinearity.

The uses of a Distance Decay Analysis are ·

a) to ascertain whether the crime density changes systematically as one approaches a specific geographic location,

b) to ascertain the direction of this change, i.e., whether the crime rate increases or decreases as the site is approached, and

c) to estimate the magnitude of the change in the crime density as one approaches the site.

As with any statistical technique, the distance decay analysis will produce misleading results if it is used improperly. As noted above, the analysis is meaningful only if some theoretical assumption about the relationship' of the nodes to the events in the areas around them can be made, and the measurement conform to these assumptions. Otherwise, associations produced by this technique may be spurious in the same way that other kinds of statistical associations may be spurious. For example, if a bar is next door to a fast food outlet where teenagers hang out and cause trouble, the distance decay analysis using only bars to define the nodes would assign crimes actually related to the fast food outlet to that bar. If the fast food outlet were explicitly taken into account, weighting procedures to overcome this problem could be developed, and an evaluation of the theoretically suggested relationship of bars and crime could be made_ Individual distance decays should be carefully assessed to determine that the results are actually due to the measured node and not to some other unmeasured factor(s) within the distance decay area.

The distribution of crimes around the various nodes can be aggregated to perform a single distance decay analysis for a class of nodes as defined by some theoretical or policy-,relevant criterion. Distance decays of this sort should be interpreted similarly to distance decays for individual sites, remembering that the analysis is producing an averaged result which may be valid for a class of nodes, but not necessarily for all individual nodes within the class.

Aggregated distance decays follow a similar procedure to the single node distance decays as described below with one difference. The aggregation procedure used is to identify the total number of events (e.g., crimes) occurring in each ring of each individual distance decay, then adding these to set a total number of events for the aggregate analysis, and then proceeding as usual for calculating the density of events and testing this distribution for significance. The counting procedure thus introduces an implicit weighting function wherever the areas around nodes overlap · any event which lies within two or more areas will be counted two or more times in the aggregating procedure_ This is only one of many weighting procedures; and it is one which heavily weights crimes counted numerous times; especially if they are counted as members of the ·same or adjacent rings in the aggregate analysis.

f=igure 2, below, and its associated text, provide a step-by-step guide to the distance decay. analysis.

Figure

Constructing a Distance Decay Curve

Distance of _6 mile study area around

1. Count the number of sites within each band.

2. Transform each count into a crime proportion by dividing by the sum of all crimes within .6 miles of the site of interest_

3. Transform each crime proportion into a relative crime rate by dividing by the proportion of the total area of that land (see table below).

4_ Plot the resulting crime rates for each band against the distance for site.

Figure 2, below, and its associated text, provide a step-by-step guide to the distance decay analysis.

Figure 2

Constructing a Distance Decay Curve

Distance of .6 mile study area around

the site of.

1. Count the number of sites within each band.

2. Transform each count into a crime proportion by dividing by the sum of all crimes within .6 miles of the site of interest.

3. Transform each crime proportion into a relative crime rate by dividing by the proportion of the total area of that land (see table below).

4_ Plot the resulting crime rates for each band against the distance for site.

DISTANCE DECAY CRIME WORK SHEET

DISTANCE TO SITE (miles)	COUNT OF CRIMES*	RELATIVE CRIME PROPORTIONS**	AREA PROPORTION	CRIME RATE ***
0 through .1		.0278		
.1+ through 2		.0833		
2+ through .3		.1389		
.3+ through .4		.1944		
.4+ through .5		.2500		
.5+ through.6		.3056		

SUM OF CRIMES:

*Count of crime incidents within band_

Count of crime incidents within band divided by sum of incidents for all bands.

Crime proportion divided by area proportion.

The relationship between crime density distance is assumed to be of the form-

$$D = F\ (\text{distance})$$

where D is the density of crime; and F denotes the function relating distance to density. For our purposes, it is unnecessary to derive the empirical function F; which can easily be derived using simple or polynomial regression techniques. Our primary concern is with deriving. the characteristic slope of F; or F`. We can simplistically observe that if F' < 0 then a distance decay effect is present. If F'> 0 then a distance decay effect is not present. Our analysis has focused on determining the degree to which we can assert that F' < n-

Two tests have been employed to derive indications of the randomness of F. The first is a classic chi-square statistic which reports whether events in the space are uniformly distributed. A significant chi-square is taken to indicate nonuniforrrmity in the space.

The second test is the signs test applied to the difference between distance decay coefficients in a band of lesser radius and a band of greater radius. Since we have six bands, we are making five comparisons and trying to assess the degree to which the coefficients vary in relation to each other. Where the signs of all five comparisons are negative (i.e., each band's coefficient is less than that of the band immediately inscribed to it), then we can assume a probability of '/ to the observed slope of the overall distance decay curve.

Where all three tests, the distance decay curve, the chi-square, and the signs test indicate significant negative slopes, a distance decay effect is assumed to be observed in the data.

Appendix A.2

Results of Summary Distance Decay Analyses for Detailed Categories

Figure A.2.1

Distribution of Came Around Bars by Types of Liquor Licenses,

Controlling for Neighborhood

Figure A.2.1

Distribution of Crime Around Bars by Types of Liquor Licenses,

Controlling for *Neighborhood*

Figure A,2.'l

Distribution of Crime Around Bars by Types of Liquor Licenses,

Controlling for Neighborhood

Figure A.2.2

Distribution of Crime Around Bars by Tees of Entertainment Categories,

Controlling for Neighborhood

Cell 8 **1.93** 1.17 0.96 0.92 0.79 1.11

Cell 9 4.37 1.18 1,01-11.10 0.75 0.77

Row Total 2.20 1.62 1.28 1.01 0.84 0.71

Column 1 Total 2.18 1.63 1.25 1.02 0.84 0.72

Column 2 Total 2.52 1.27 1.04 0.96 0.83 0.93

Column 3 Total 3.59 1.26 0.95 1.14 0.80 0.78

Values for Figure A.22, Type of Entertainment Categories and Neighborhood

Cell 1 2.31 1.40 1-18.1.01 0.86 0.79

Cell 2 2_40 1.25 1.09 0.97 0.84 0.95

Cell 3 3_54 1.28 0.95 1.15 0.81 0.77

Row 1 Total 2.35 1.38 1.16 1.01 0_86 0.81

Cell 4 1.56 2_15 1.07.0:&7 0.90 0.77

Cell 5 None

Cell 6 None

Row 2 Total Same as Cell 4

Cell 7 2.11 1.86 1.39 1.07 0.79 0.61

Cell 8 3.33 1.40 1.18 0.92 0.74 0.86

Cell 9 5.14 0_68 1.25 0.73 0.57 1.13

Row 3 Total 2.15 1.84 1.38 1.07 0.79 0.62

Column Values Same as I

Values for Figure A_2.3, Volume of Food and Neighborhood

Appendix A.3

Crime Concentration Values for Category Analysis

Values for Figure A.2.1, Type of Liquor License and Neighborhood

Cell 1 2.38 1.50 1-08 0.96 0.86 0.84

Cell 2 2.67 1.29 1.06 0.98 0_83 0_90

Cell 3 3.49 1.19 0.93 1.16 0.81 0.80

Row Total 2.52 1.42 1.07 0.97 0.85 0.86

Cell 4 1.15 2.08 1.07 1.37 0.70 0.67

Cell 5 2.32 1.14 1.16 0.92 1.00 0.82

Cell 8 0.90 3.60 1.09 0.89 0.90 0.41

Row Total 1.21 2.04 1.07 1.34 0.71 0.68

Cell 7 2.19 1.63 1.29 1.01 0.84 0.71

Cell 1 2.89 1-57 1.29 1.10 0.75 0.68

Cell 2 2.47 1.39 1.23 0.96 0.71 0.91

Cell 3 4.25 1.25 0.99 1.16 0.78 0.72

Row 1 Total 2.88 1.56 1-29 1.10 0.75 0.69

Cell 4 1.57 1.69 1.24 0.99 0.92 0.73

Cell 5 1.36 0.88 0.68 0.87 0-94 1.27

Cell 6 2_88 2.24 1.16 0.82 0.75 0.74

Row 2 Total 1.57 1.68 1.23 0.99 0.92 0.74

Column 1 Total 2.13 1.64 1.26 1.04 0_85 0.71

Column 2 Total 2.01 1.18 1-01 0.93 0.81 1.06

Column 3 Total 3_90 1-50 1.03 1.07 0_77 0.72

Appendix A.4

Liquor Licenses Granted Outside the Liquor Patrol Limits

Betireen **1974 and 1979**

Date Liquor

Name Address License Granted

1. Ames Lodge #106 1614 Plymouth Avenue 6/28/76

2. Artist's Quarter 14 East 26th Street 1 2r201-74

Figure A.2.3

Distribution of Crime Around Bars by Volume of-Food,

Controlling for Neighborhood

3. Black Forest 1 East 26th Street 10/8/76

4. CC Club 2600 Lyndale Avenue South 7/25/75 .

5. Calhoun Beach Club 2730 West Lake Street 2/25x7

6. Campus Club 300 Washington S SE 8/25177

7. Howie's 2119 West Broadway 10/10x5

8. Improper Fraction 710 Washington SE 4/25/6

9. Jimmy's 3675 Minnehaha Avenue 2/28x5

10. Martini's and Bagels 3025 West Lake Street 3117!78

11. Minnikahda Club 3241 Zenith 12/12/75

12. Occie's 2951 Lyndale Avenue South 2/28/75

13. Poodle 3001 East Lake Street 214/75

14. Popeye's 3601 East Lake Street 3/27/75

15. Rainbow Cafe 2916 Hennepin Avenue 3/27175

16_ Society of Fine Arts 2400 3rd Avenue South 7/25175

17. Stardust Lanes 2520 26th Avenue South 818/75

18. Stub n' Herbs 227 Oak Street S E 2/14/75

19. Sunny's 2944 Chicago Avenue 2/28/75

20. Uptown Bar and Cafe .30-6 Hennepin Avenue 2/13/76

21. Waldo's 4601 Lyndale Avenue North 11/27174

22. Walker Art Center Vineland Place 4/30/76

23. Williams Pub 2911 Hennepin Avenue 3/28/75

Appendix A.5

List of Bars in the Nuisance Study

Bars Identified as Nuisance Bars	Bars Identified as Non-Nuisance Bars
Addison's	Arthur's
Beanie's	Black Forest
Carousel	Cedar Inn
Dollie's	Charlie's
Duffy's	Duffs
Jimmy's	Dusty's
Longhorn	Elsie's
Moby Dick's	Famous Bar
Moore on University	Hub Cap
Mousey's	Jax
Mr. Arthur's	LaFamilia
Mr. Z's	Lake Inn
New Wonder	Bar Monte Carlo
Occie's	Nye's
Poodle	Parkway

Rainbow Bowl Sebastian'

Spring Inn Sunny's

Uncle Sam's The First Story

Union Williams Pub

Waldo's Zurbey's

Appendix A.6

Collection Instrument for Nuisance Bars

NAME: Arthurs ADDRESS.

1.. Is the volume of food business more or less than 50 percent of the bar's total volume?

< 50 percent = 0

50 percent = 1

2_ What is the proximity of the bar to a predominantly residential area?

Within 1 block = 0

1-2 blocks = 1

Greater than 2 blocks = 2 „

3. What is predominant parking situation?

Street parking = 0

Metered parking = 1

Other lots available = 2

Own lot = 3

4. What predominant type of clientele frequent the bar?

19-29=0

30-45=1

46+ = 2

Race

White = 0

5. What is the level of entertainment?

None = 0

Sound System = 1

Single performer = 2

Band = 3

6. Is there sexually-oriented entertainment?

Yes =0

No= 1

7. What type of license does the bar have?

Alcohol Entertainment

Beer =1 C=1

Wine= 2 B = 2

Liquor = 3 A = 3

8. Management practices:

Other employees to Policy to deal

Bouncer maintain order with drunks

No =0 No =0 No =0-

Yes = 1 Yes = I Yes =

9_ Open ended comments:

APPENDIX B

Supplementary Materials for Chapter 11 – Adult Entertainment and *Neighborhood* Deterioration

Appendix BA:

Methods used in the Research on Adult Entertainment

A. Simple Relations

The Pearson correlation, as reported, only establishes that a relationship exists, to what degree, and whether it is positive or negative. What degree of confidence we can have that the observed association is not due to chance (significance) can be easily calculated. These coefficients are appropriate for exploring a set of data when theoretical expectations are absent or minimal. They cannot be interpreted as indications of causal order, especially in the absence of a theory. They are used in this report to establish benchmarks for more complex analyses building up toward testing of causal assumptions.

Some simple, bivariate correlations are presented here to substantiate and extend the discussion in the main text.

To begin, the overall crime rate index reported in the main text hides some important differences due to type of crime. Table 7 shows four of the crimes that make up the crime index and their simple correlations with the different types of adult businesses. Table 7 shows a fairly great range of correlation between type of adult establishment and type of crime_ In particular, note the significant positive correlation between beer bars and residential burglary as compared with the significant negative relation of liquor and Class A bars with residential burglary. These figures illustrate the impact of zoning policy. The relatively high correlations between sex businesses and commercial crimes may indicate that these businesses are located in relatively undesirable commercial areas, an interpretation substantiated by the fact that sex businesses are significantly related to percent of commercial vacancies as shown in Table 8.

Table

Pearson Correlation Coefficients: Adult Entertainment Establishments and Selected Crime Races, 1979

	Assault Rate	Residential Burglary Rate	Commercial Burglary Rate	Commercial Robbery Rate
All adult businesses				
Sexually-oriented businesses	.1889	-.1010	.0937	.0317

Alcohol-serving businesses				
Beer	1 .1876*	1.0848	.3096*	SOON
Wine				
Class A	.1258	1 ,1239	1 1315	-.0315
Class B				
Class	1173	.2008	.1210	1 .1054
	-.0356	Q225	0,907	1 ,0629
	1 .0951	Q360	1 Q197	,0869
	.24872	.1402	.1084	.1266
	j .1232	-_ 0518	1.0565	M91
Beer Class A				
Class 3'	9 .0357	.0555		
Class C				
Wine Class A		.2701 *		
Class B				
Class C	N .0879	.1412		
Liquor Class				
Class B	.0195	1.0333		
Class C				

4

-.0401	-:1086
.0456	-_ 1090
.1273	a ". .0722
.1175	-.0873

*Significant at the .05 level or better.

Next, Table 8 gives the simple Pearson Correlations between types of adult businesses and various measures of business and city policy effects. Specifically, the food service measurement and three different measures of commercial activity in a tract are related to adult businesses_ Again, clear confirmation of the fact that different types of adult entertainment cluster in different areas in response to zoning policy is given. For example, liquor bars cluster in areas where the overall proportion of the tract that is commercial is high, but they are negatively related to number of non-manufacturing businesses_ Both of these.fesults may reflect the seven-acre zoning requirement for liquor bars, since many seven-acre zones include some manufacturing or wholesaling establishments.

Table 8

Pearson Correlation Coefficients: Adult Entertainment Establishments

and Measures of Policy influence

	Assault Rate	Residential Burglary Rate	Commercial Burglary Rate	Commercial Robbery Rate
All adult businesses				
Sexually-oriented businesses		1.4219-	.4030-	.2081-
Alcohol-serving businesses				
Beer	-.0486	.0873	.0453	1 .2457*
Me				
Liquor	3212*	2960*	.4290	.1736*
Class A				
Class B		.0925	.2375*	.0422
Class C				
	.6183-	.2825*	1 .3994*	-.0042
	.3259*	A023	1 -.3318*	.1609*
	.3076-	.3410*	.3063*	.1887'
	.0927	.1603'	1 1487	1 .1774*
	1.2678*	1 1860	1.4569*	

*Significant at the .05 level or better.

Finally, Table 9 shows the relations between the measures of neighborhood deterioration -- crime and housing value -- and the control variables.

Table 9

Pearson Correlation Coefficients: Measures of Neighborhood Deterioration and Control Variables

	Mean Housing Value	Crime Rate Index
Mean Income	.4686'	-.6216*
Food Business	.4856*	-.0676
Commercial Concentration	-_1631	.4840*

Significant at the .05 level or better.

One general conclusion to these figures is that the various adult businesses relate to their environments differently. Sexually-oriented businesses appear to be related relatively strongly to several different measures of neighborhood quality, including commercial vacancies. These establishments apparently are not generally located in tracts that are heavily commercial as defined by the Polk index. Beer bars are similar in this respect, since they appear to be located in less commercial areas. Beer licenses also have a relatively strong association with residential burglary. Liquor bars, on the other hand, are located in heavily commercial areas, and exhibit lower correlations with housing value or residential burglary than beer bars_ Finally, sexually-oriented businesses appear more likely to be located in tracts with high commercial crime rates; even though these tracts are not the ones with the highest concentrations of commercial uses .

B. Statistical Controls

(1) Partial correlations: in this portion of the report, partial correlation is used to elaborate the patterns found among the simple correlations, and to demonstrate how the mutual effects of several variables operating simultaneously can alter a simple relationship. Statistically, partial correlations are correlations between the residual variances of two variables after the variance in each of them accounted for by one or more third variables has been removed. Thus, over-interpretation of partials may result if true causal connections are violated: the statistical operation removes the effects of control variables before it assesses the residual relationship between the two variables of interest. This is analogous to a causal assumption that the control variable precedes the other variables in causal ordering. In the section on causal inference we make use of this property to evaluate some assumptions about the causal ordering among the variables. In the present section, however, the partials are only used to examine the relationship between adult business and neighborhood quality when presumably relevant variables are controlled.

(2) Multiple regression: multiple regression permits us to move a step beyond the Pearson and partial correlations because it not only helps establish that an .association exists between two (or several) variables, it also provides an estimate of how much change in one variable is associated with a change in a second variable. Thus it gives an estimate of the relative importance of the several independent variables in accounting for the variance of the dependent variable.

The independent variables used in the multiple regressions reported here and in the main text were selected in part by initial step-wise regressions which help identify those variables that account for the largest proportions of the variance in the dependent variables. This exploratory technique helped to identify the variables which were then used in the further simple multiple regressions reported.

Because this approach doesn't necessarily yield the most meaningful equations, mostly because of the implicit causal assumptions in the step-wise technique, additional criteria were used to select the independent variables. These included evidence from the partial correlation analysis; substantive considerations, and statistical requirements. The variables utilized in the partial correlation analysis are good candidates because we have reason to believe they are relevant to policy decision made about adult entertainment, and they obviously change the relationship between adult entertainment and neighborhood quality. In addition to these substantive considerations, the variables selected have been used in other studies for similar purposes. For example, income is frequently associated with

housing choice, both for sociological (e.g., class preferences) and institutional (e.g., mortgage requirements) reasons.

Finally, variables were selected to meet certain statistical requirements. The primary interest here was to avoid multicollinearity. Technically, this is a problem that occurs in multiple regression when a set of independent variables contain some relationships with high correlations between them. The effect of this is to make the coefficients derived to estimate the association of an independent variable and the dependent variable unreliable, i.e_, containing a high degree of error that results in different estimates from one sample to the next. If the objective of the research is to estimate the total relationship (R or R^2), multicollinearity is usually thought to pose no problem_ However, we are interested here in comparing the effects of different variables on the dependent variables, so we want to avoid multicollinearity. The regressions reported in the main text use two variables that are correlated fairly high: mean household income and percentage of units in an area that are commercial_ The simple Pearson correlation is -.6388, which may be high enough to cause trouble. In our judgment, the value of continuity in the presentation and analysis, and the intuitive value of both variables, outweigh the danger of the multicollinearity.

Some further multiple regressions using variables with little or no correlation among the independent variables were also run_ The contribution of the adult entertainment variables is not improved. Other regressions were run which permitted the computer to select the variables according to the total amount of variance explained. In several of these, the adult variables achieved significance with respect to crime, but always with lower crime. These were rejected since they permit high multicollinearity among the variables, and thus the particular coefficients--are uninterpretable.

Multiple regression produces several different coefficients and test values that must be understood in order to interpret the regression. The brief definitions to follow can serve as an introduction to these terms and as a justification for their use in this report_ Only those terms useful in understanding tile report are defined.

(1) b - the ordinary partial regression coefficient: The coefficient b is the estimate of the amount of change that occurs in the dependent variable for each unit change in the independent variable it modifies.

(2) Error of b - This is the standard error of b, the regression coefficient. It is the standard deviation of the dependent values predicted from that b and its independent variable, taking the number of cases into account_ The standard error tells us how much uncertainty there is in predictions based on the regression coefficient. It is the basis for the significance test.

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(3) Beta weights: **This is the standardized regression coefficient. It is obtained by multiplying the ordinary regression coefficient by the ratio of the standard deviation of the independent variable to the standard deviation of the dependent variable. The point of doing this is to transform the dependent and independent variables into units of measurement that are directly comparable - in this operation the unit of measurement for all variables becomes the standard deviation. Therefore any change of so many standard deviation units in one independent variable is associated with just so much change in similar units of the independent variable. The independent variables can thus be directly compared for the magnitude of their impact, which is a major point of interest in this report. When the beta weight approaches zero, there is little or no relationship between two variables.**

(4) Significance: This is a test of the confidence we may have that a regression coefficient (standardized beta weights or ordinary Us) is actually different from zero. The closer to zero the significance test, the more confidence can be had that the regression coefficient is a good estimate of the relationship_ The conventional minimum level of significance for accepting a relationship, is .05, which is used in this report_

(5) R is the multiple correlation coefficient that measures the overall strength between the dependent variable and the combined independent (including control) variables. It is analogous to the simple Pearson correlation coefficient, and can be interpreted similarly.

(6) RZ is the squared multiple correlation coefficient, and it measures the proportion of the variance of the dependent variable accounted for by the independent variables.

(7) Significance of R: describes the confidence we can have that the multiple correlation coefficient is sufficiently different from zero.

C. Tests for Linearity

T·1v0 tests for linearity were made on the results of the analyses described above: standard analysis of **variance** tests on the **bivariate** relationships between **measures of neighborhood quality and adult entertainment establishments, and an examination of residuals for selected multiple regressions-**

Some researchers suggested that concentrations of adult businesses may have disproportionate effects on measures of neighborhood quality. Figure A. presents this "non linear" hypothesis. If the data do match this hypothesis, there are two consequences. First, it means that concentrations of adult business are increasingly bad for neighborhoods as concentration increases, and second, that the common statistical techniques, such as linear regression, must be modified.

Figure A

Graphic Representation of the Non-linear Hypothesis of the Relationship Between Adult Businesses and Neighborhood Deterioration

High

Deterioration

' Low

Low High

Concentration of Adult Businesses

Fortunately, the analysis of variance tests for linearity made on the bivariate relationships; and inspection of regression residuals; confirm that the relationships are linear. Presumably, Figure B is closer to the form of the true relationship_ Figure B indicates that adult businesses' effects on neighborhoods; if any, would increase in direct proportion to the number of establishments.

e

Figure B

Graphic Representation of the Non-linear Hypothesis of the Relationship Betveen Adult Businesses and *Neighborhood* Deterioration

High

Deterioration

Low

Low High

Concentration of Adult Businesses

The analysis of variance test is an F-test that is based on a comparison of the correlation ratio, Eta 2 , with the squared correlation coefficient; r 2 . The formula for the test is:

F,~_;, N-k _ (E 2 r2) (N-K)

·(I -E/) (K-2),

where N is the number of cases and k is the number of categories (greater than 2) into which the independent variable has been divided. If the relationship is not linear, the F-test. should yield a significant result.

Inspection of residuals in this study simply involved visual inspection of scatterplots of residuals for each case (tract) against the estimated value of the dependent variable for that case. More sophisticated tests were not deemed necessary given the lack of non-linearity in the bivariate tests and no apparent deviations in the residuals scatterplots.

D. Analysis of Causality

The path analysis technique used here is a way of comparing either regression coefficients or correlation and partial correlation coefficients to determine if the pattern of relationships in a data set are consistent with theoretical assumptions. The theoretical assumptions or hypotheses are a critical element in this technique: It is only by making these assumptions that causal inferences can be made. The results of the tests provide either falsification of the model being tested or circumstantial evidence to support it. Using this technique it is possible to compare_ several different models (assumptions about causal relations in the data),to see which one is most consistent with the data. The approach has the advantage that it is possible to make causal inferences with cross-sectional (one time only) measurements_ Since the data available cannot provide enough observations over time to do reliable time-series analyses, this advantage is decisive in this report.

It is important to have some passing acquaintance with the path analysis technique used here. Figure C presents a simple model of the relationships between three (unknown) variables. The arrows represent causal connections we expect on the basis of some theory: logically, there are many different possible sets of relationships among these variables, but we have eliminated all but the one shown in Figure C. Next, the model has to be tested against empirical measurements to see if the hypotheses it represents are consistent with data.

Figure C

Simple 3-Variable *Path Diagram, With Predictions*

Z

Predictions

FYz =

ryz.x ?.0

Specifically, the model in Figure C asserts that variable X is the cause of both Y and Z, but that there is no direct connection between Y and Z. Mathematicians have shown that these hypotheses translate into predictions about the behavior of simple and partial correlation coefficients, and regression coefficients. These predictions are shown beneath Figure C. The first prediction is that the simple correlation coefficient between Y and Z ('yz) should equal the product of the correlations between X and Y and X and Z. The second prediction is that the partial correlation between Y and Z controlling for X (ryz.x) should be zero. In other words, the model says that any observed correlation between Y and Z is spurious; that is, it is due to the fact that X is related to both of them. The predictions reflect this hypothesis.

If the predictions do not match the evidence; then the hypothetical model can be rejected, or modifications can be made to fit the data better. When the model does fit the data, we can say that it is provisionally correct, until further evidence comes along that disconfirms

Figure D shows the pattern of simple Pearson correlations among the variables used in the path analysis in the text. Figure D includes the variables for overall neighborhood quality and adult establishments for 1970. These correlations form the basis for the path analysis.

Figure D: Pearson Correlation Coefficients
Among; Path Analysis 'Variables

Neighborhood *4uality, 1910* --,3524 Adult Establishments, 197u

.9726 *-.3818* *-,3409*

Neighborhood Quality, 1979 *-.3962* Adult Establishments, 1979 .2660

-.1320
-, 623 8 , - ' .1962

Housing Value, 1979 -.5231 Cxir~e Index, 1979

The decision was made to use only the data for 1979 as (1) the measurements for 1970 were not identical to those for 1979, (2) there were too few observations to do a genuine time series analysis, and (3) the 1970 neighborhood quality measure and the 1970 adult business measure were very highly correlated with their 1979 counter parts. This last point means that, in this context, we cannot assume that the- measures' error terms are uncorrelated across time, making inference based. on the relationships between them impermissible.

The correlations in Figure D are compatible with many sets of assumptions besides the ones used in the text. However, the assumptions used were chosen because they are reasonable and they do reflect the substantive issues at stake.

Among the alternative assumptions that could be made here, see Figure E. For instance, if adult businesses cause general neighborhood quality, which in turn causes housing value, as in the figure shown here, then the correlation between the quality index and housing value should drop to zero. However, this test on the data only changes the observed relationship between the quality measure and housing value from .3235 to .2980. The hypothesis is clearly disconfirmed. This matches the expectations of common sense in this case_

Figure E

Some Alternative Causal Assumptions

Neighborhood Quality Index

Adult Businesses

Housing Value

Appendix B.2

List of Variables for Neighborhood Deterioration Study

Variables 45 through 70 refer to 1979 data. Variables that begin with "FM" are taken from

the Property Management System. Variables that begin with "P8" are from the 1978 Polk. City Directory.

Rel Variable

Pos Name Variable Label

1. SEQNUM
2_ SUBFILE
3. CASWGT
.4. TRACT
5. V12 TOTAL NUMBER OF HOUSING UNITS
6. V17 TOTAL OWNER OCCUPIED
7. V20 TOTAL RENTER OCCUPIED
8. V111 PCT RESIDENTS STABLE 1965-1970
9. V112 PCT HOUSING UNITS OCCUPIED
10_ V113 PCT OWNER OCCUPIED
11. DEM01 TOTAL POPULATION
12. POLK2 TOTAL COML STRUCTURES PER CENT OF ALL
13_ POLK6 TOTAL COML UNITS CURRENT COUNT
14_ POLK8 NET CHANGE COML UNITS DURING PERIOD
15. POLK9 NO COML UNITS WITH CHG OF OCCUPANTS
16. POLK11 VACANT COML UNITS CURRENT COUNT
17_ POLK12 PER CENT OF TOTAL COML UNITS VACANT
18_ POLK16 TOTAL NON-MFG FIRMS CURRENT COUNT
19. XTRACT X-COORDINATE OF TRACT CENTER
20_ YT PACT Y-COORDINATE OF TRACT CENTER

17

21. **DISTCBD DISTANCE** *OF TRACT* CENTER TO IDS TOWER

22. **RATEF1 FREQUENCY OF CRIME-SEX** RELATED **CRIMES**

23. **RATEF2 FREQUENCY OF CRIME-STREET ASSAULT**

24. RATEF3 **FREQUENCY OF CRIME-STREET ROBBERY**

25. **RATEF4 FREQUENCY OF CRIME-RES BURGLARY**

26. **RATEF5 FREQUENCY OF CRIME-COMM BURGLARY**

27. **RATEF6 FREQUENCY OF CRIME-COMM ROBBERY**

28. **RATEF7 FREQUENCY** *OF* **CRIME-VANDALISM**

29. **RATEF8 FREQUENCY OF CRIME-AUTO THEFT**

30. **AREA AREA IN SQUARE MILES OF TRACT**

31. **OWNVM MEAN VALUE OWNER** *OCC* RES **UNIT**

32. **MEANI MEAN FAM AND UNREL INCOME**

33. **HAGEPCTI PCT RES STR BUILT 1969-70**

34. **HAGEPCT2 PCT RES STR BUILT 1965-68**

35. **HAGEPCT3 PCT RES** STR **BUILT 1960-64**

36_ **HAGEPCT4 PCT RES STR BUILT 1950-59**

37. **HAGEPCT5 PCT RES STR BUILT 1940-49**

38. **HAGEPCT6 PCT RES STR BUILT BEFOR 1940**

39. **FACT01 CRIME RATE BY** *OPP-1 2* **3 7 8**

40_ **FACT02 CRIME RATE BY OPP 4 5 6**

41. **ZVI 7 Z SCORE % OWNER OCCUPIED**

42. **ZDEM03 Z SCORE % POPULATION WHITE**

43. **ZMEANI Z SCORE MEAN INCOME**

NEIGH 3 TYPES OF NEIGHBORHOODS DERIVED FROM Z

45. **PM8SF TOTAL SINGLE FAMILY UNITS**

46. PM8DT *TOTAL* DUPLEX-TRIPLEX UNITS

47. PM8MF *TOTAL* MULTI-FAMILY UNITS

48. PM8HSF TOTAL HOMESTEAD SINGLE FAMILY UNITS

49. PM8HDT TOTAL DU-TRIPLEX HOMESTEAD UNITS

50. PM8HMF TOTAL HOMESTEAD MULTIFAMILY UNITS

51. PM8A1 %TOTAL SF BUILT BEFORE 1940

52. PM8A2 % TOTAL SF BUILT 1940-59

53. PM8A3 % TOTAL SF BUILT AFTER 1960

54. PM8C1 % TOTAL SF WITH CONDITION 4 5

55. PM8X1 SUM AREA CODES BY TOTAL SF UNITS

56. PM8X2 SUM SF BLD AREA BY TOTAL SF UNITS

57. PM8X3 GBA OF COMMERCIAL BY TOTAL COMMERCIAL

58 PM8X4 SUM LOT AREA OF SF DUP TRIPLES

59 PM8X5 SUM LOT AREA FOR UNITS WITH ALPHA NOT=C

60 PM8X6_ SUM LOT AREA FOR UNITS WITH ALPHA = C

61 PM8X7 SUM LOT AREA FOR ALL UNITS

62 PM8X8 SUM MARKET VALUE *SF BY TOTAL SF* UNITS

63 PM8X9 SUM EMV COMMERCIAL BY TOTAL COMMERCIAL

64 PM8X10 SUM BLD CODES BY TOTAL SF

65 V81-11 NSP PCT STABLE

66 V8112 NSP PCT UNITS OCCUPIED

67 P8LK2 % COMMERCIAL UNITS

68 P8LK6 SUM COMMERCIAL UNITS

69 P8LK8 CHANGE COMMERCIAL UNITS

70 P8LK9 % COMMERCIAL UNITS CHANG OF OCCUPANTS

71 P8LK11 VACANT COMMERCIAL-UNITS

72 P8LK12 % VACANT COMMERCIAL UNITS

73 P8LK16 TOTAL NON-MANUFACTURING FIRMS

74 P8LKH TOTAL HOUSEHOLDS

75 P8LKAH AVE SIZE HOUSEHOLDS

76 P81-KIN AVE HOUSEHOLD INCOME

77 BAR7A BEER BAR 1970 CLASS C

78 BAR7B BEER BAR 1970 CLASS B

79 BAR7C BEER BAR 1970 CLASS A

80 BAR7D WINE BAR 1970 CLASS C

81 BAR7E WINE BAR 1970 CLASS B

82 BAR7F WINE BAR 1970 CLASS A

83 BAR7G LIQUOR BAR 1970 CLASS C

84 BAR7H LIQUOR BAR 1970 CLASS B

85 BAR71 LIQUOR BAR 1970 CLASS A

86 GMOV7 GENERAL MOVIE 1970

87 SUANA7 SAUNA 1970

88 AMOV7 ADULT MOVIE 1970

89 DBK7 ADULT BOOKSTORE 1970

90 POOL7 POOLHALL 1970

91 BAR8A BEER BAR 1980 CLASS C

92 BAR8B BEER BAR 1980 CLASS B

93 BAR8C BEER BAR 1980 CLASS A

94 BAR8D WINE BAR 1980 CLASS C

95 BAR8E WINE BAR 1980 CLASS B

96 BAR8F WINE BAR 1980 CLASS A .

97 BAR8G LIQUOR BAR 1980 CLASS C

98 BAR8H LIQUOR BAR 1980 CLASS B

99 BAR81 LIQUOR BAR 1980 CLASS A

100 GMOV8 GENERAL MOVIE 1980

101 S UANA8 SAUNA 1980

102 AMOV8 ADULT MOVIE 1980

103 DBK8 ADULT BOOKSTORE 1980

104 POOL8 POOLHALL 1980

105 PRBAR8 PROBLEM BAR 1980

106 FOOD8 OVER 50% FOOD 1980

107 SEX8 SEXUAL ENTERTAINMENT BAR 1980

108 OASLT8 OTHER ASSAULTS 1980 CRIMES

109 NASLT8 NONSTRANGER 1980 ASSAULTS

110 SASLT8 STRANGER TO STRANGER 1980 ASSAULTS

111 TASLT8 TOTAL ASSAULTS 1980

112 RAPE8 RAPES 1980

113 OCSC8 OTHER CRIMINAL SEXUAL CONDUCT 1980

114 TCSC8 TOTAL CSC 1980

115 SROB8 STREET ROBBERY 1980

116 PROB8 PERSONAL ROBBERY 1980

117 TPROB8 TOTAL PERSONAL ROBBERY

118 BROB8 BUSINESS ROBBERY 1980

119 RBURG8 BURGLARY OF RESIDENCE 1980

120 BBURG8 BUSINESS BURGLARY

121 PM800 # OWNER OCCUPIED

122 PM8TRU TOTAL RESIDENTIAL UNITS

123 PM8P00 % OWNER OCCUPIED

124 EPOP8 EST 1980 POP FROM POLK

125 ASLT8R 1980 ASSAULTS PER 1000 POP

126 RAPE8R 1980 RAPES PER 1000 POP

127 PROB8R TOTAL PERSONAL ROBBERIES PER 1000 POP

128 BROB8R BUSINESS ROBBERIES PER 1000 POP

129 RBURG8R RESIDENT BURGLARIES PER 1000 POP

130 BBURG8R BUSINESS. BURGLARIES PER 1000 POP

131 CRDEX8 1980 TOTAL CRIMES ASLT THRU BBURG

132 RESPCT8 % AREA RESIDENTIAL 1980

133 COMPCT8 % AREA COMMERCIAL 1980

134 RAPE7 FREQ. 1974 RAPES

135 ASLT7 FREQ ALL ASSAULTS 1974

136 RAPE7R RAPES PER 1000 POP

137 ASLT7R ASSAULTS PER 1000 POP

138 EPOP 1974 ESTIMATED POP FROM POLK

139 CRDEX8R SUM OF RESIDENTIAL CRIMES 1979 DATA

140. FACTS7

141. BEER SUM OF 1980 BARS WITH BEER LIC

142. WINE SUM OF 1980 BARS WITH WINE LIC

143. LIQUOR SUM OF 1980 BARS WITH LIQUOR LIC

144. BEER7 SUM OF 1970 BARS WITH BEER LIC

145. WINE7 1970 WINE LIC

146. LIQUOR7 SUM OF 1970 LIQUOR ,LIC

147. SEXBIZ SUM OF 1980 SAUNAS, ADULT MOVIES, ADULT B

148. BARS SUM OF ALL 1980 BARS

149. BARS? SUM OF ALL 1970 BARS

150. HUPCTMF PM8MF BY PM8SF+PM8DT+PM8MF

151. AREAMMF PM8X5-PM8X4

152_ CBAR CONDENSED BARS VARIABLE 0&1 =1, GT 2 BAR

153. DENSE8 EPOP8 DIVIDED BY AREA

154. ADULT BARS+SEXBIZ

155. TYPEA 1980 BARS WITH CLASS A LIQUOR LIC

156. TYPEB 1980 BARS WITH CLASS B LIQUOR LIC

157. TYPEC 1980 BARS WITH CLASS C LIQUOR LIC

158. TYPEA7 1970 BARS WITH CLASS A LIQUOR LIC

159. TYPEB7 1970 BARS WITH CLASS B LIQUOR LIC

160. TYPEC7 1970 BARS WITH CLASS C LIQUOR LIC

161. RBURG7R RATEF4*1000 BY DEM01

162_ BBURG7R RATEF5*1000 BY DEM01

163_ BROB7R RATEF6*1000 BY DEM01

1 64. DV8111 V8111-V111

165. DV8112 V8112-V112

166. DPM8P00 PM8P00-V113

1 67. DEPOP8 EPOP8-DEM01

168. DP8LK2 P8LK2-POLK2

169. DP8LK12 P8LK12-POLK12

170. DP8LKIN P8LKIN-MEAN!

171. DPM8~8 PM8X8-OWNVM

172. DRBURG RBURG8R-RBURG7R

173. DBBURG

174. DBROB BROB8R-BROB7R

175. DRAPE RAPE8R-RAPE7R

176. DASLT ASLT8R-ASLT7R

177. DBARS BARS-BARS7

178. DBEER BEER-BEER7

179. DVNINE WINE-WINE?

180. DLIQUOR LIQUOR-LIQUOR 7

181. DTYPEA TYPEA-TYPEA7

182_ DTYPEB TYPEB-TYPEB7

183. DTYPEC TYPEC-TYPEC7

184. FOODPCT FOOD8 BY BARS

185. .FACTOR? FACTOR SCORES FROM NEIGHBORHOOD VAR

186. FACTOR8 1980 FACTOR SCORES FROM NEIGH VAR S

REFORM" OF THE A770PNEY GENERAL'S WORK S.-. G C P THE RE aUL.ATION CF SEXUALLY ORIENTED BUSINESSES

HUSERT H_ HUMPHR „ Ili
Attorney General
State of Minnesota

A`0SNEYGENERAL, S wcRxING GROUP
C AE FELLVLAdIiJN CFSS.. UALLY0RIENT=D BUSINESSES

Ann Bur r
Associate Prcfassor
Uxlivers;ty of Wnne
L.iw-Schdol
Minne2polis, MInnesccta

Hsr W* tNn A. Slatz
Mirne-- == House Of Rapreuantatiyes
lR1Bloc mi;igmn, Minnesota

Hbr=2h 7 pay
Minnesota House of Reprasa=tives
JWNew Ulm, Minnes=

'ni=a's „ s'
Lindquist & Venn=
minneapolis, Minnesota

John Lj=
minneapoils Chief of PClice
Minneapciis, Minnesota

Sww 'tA es-Salfon
Co~nc~lweman
Wnne$pdiis, Minnesota

r2bfo #N"n Yofenga
Minne House of Repras~arrtatives
DFL~St Paul, MIrnwS=

wusan
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St Pa.LA, Minnesota

IINTRODUCTION ..... »....,.....w..... .

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IMPACTS OP SZECUALLY CRI BUSINESSES _.....__.....-.....

Minneapolis Study .....,.»..._.....___._.___..._..._. $

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..,.....r._.»...._.~..... ____.....,.

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W-MODU ON

Mary oomrntjniti9s in Wnnezot;. have raiSQd c:ncams aeout tn-e impact cf Saxuatly oriented businesses on their quality 0Y has been suggmvmd dhat s,-NLjaijy crieatad busin -sarvo as a rna-qnet to drag pros ituticn and other akres i=

vulnerabfa n6ighiror dd. Community groups hzve al b il-ad the oonc2m thzt *sa~afy Orientzd busin as = l an zdyersa offect cn* property Vnlues and *arnpede neighbcrhcod* re-vitdi=bcr,, ti ha:5 art suggested tiiat spillcer of€ect:s of the *businesses can irsad to saxuai harassment of residue and scatter unwanted evidence of* saxud l%-ai in the p at ch2dran and ttw yards cf noighbom.

cui;h many =mrntnitias hmm =ughrt tz) mg swxuatly rated businesses, *the sffcrts h.ave* own been =ntmv-ersW and madly oft-an unsuccessful. Much =-mrnunity samlmert ~gainz5t sax-tally crlentad ~~ *is ~an* outgrowth of hO,Mt1lty to sax~fy explicit form of axpre:ssicn. Apy sum strategy to combat sexually oriented btjsiness~ rru-t taks *lnto morn tea* constitutional rights to fma speech which limit fable rambles.

Only the porrcgr h€c mate:~ which are d miried to be "cbscane" have no consituticr~d protection, explained late' in rare detaff, cnty that pornography which, a dng = =nmunity =ndards and taken as a ale, "appeals to the prurient frtnrest' (as oppcsed to an hterazt in fttiy sexuality), dascribes or depicts sexu-a1 conduct, it_7 a "patantfyy off8 +e wEy' and 'lacks lft*r;wry. ~, politic--I or- scientific tut,' c2n be prohibtt:d c;r pro:SqVu~_ Miller v- C-aliirornfa, 413 U.S. 15, 24 (1873).

Other pomzgraphy and- the bLsfr.3essas idi purvey *it c2n cnhy* be regulated where a *harm* is darr4r=,at~d and tie r i m sutff y *grad* to prwvef,z that harm without burdening FT= Amendment dchM In order to reduce off' 63Minate tt~s impgcts at saxi.ially Or —— in ,, =~~ity mAXsf ii thv balance bet n the bar;ers & p c 'Zy ttv c=3fh —— rim ~0 such. Ea& =mm.unity mL-wzl e 8v~er= r,f E--:'7 =rzrr=i, try 4' — the range of legaf 1,cols Whidl =1 be used to Combat the rzv ~rnp & pvrzgraphy and saxu2tly nt. d bus

Me · a ;as ts~

Cn JU21, 1S Z2, Tns~y Genes HLbart Humpt,ray III vncuncs(~ -the farrraugn of a 'N&ng pup on the i-t i-tfon of Sexually Oriented Businesses to assist public of,cais and za c ans in findirg l-ggzd '2ys to r;ducs the impactz of sexually Cr° rr d b>rsir .s,;~ Membefs of the Working Croup were saie,;.~-vd for their spec:zi xpertisa ~M the ar:.w zoning and !:w rcrnaM *and irxdude-d bipartisan* raprasvntatjres of the V~a L gislatu.c as well as members of bcth the Minneapclis and St Pawl City odurd+f WhO flVe played Critical roles in d oping city ordit?ances regulating Dually oriwtsd bus es .

Th,q Wcrking Group hard tusfxncny and conduced briefings on the impacts of sa=a&y or7amad businass~ *on crfm e ar,4 =mmunWes and the methods available to* raduc,j or eliminate i3asa lrnpact:2. Exia~~Fva rasaarcM =nducted to 'review regulaton arm pros*c.rl1w dies used in other hates and to aralyze the legal ramifcations of the$,* stratgi*5-

testimony was prasentad. #is Wing Croup rea&ei a t arsus that a compr2hensive approach is r&quirad to radL* of silmin the irnpaca of sexually *priantei bcrsinassgs. Zoning and li~thg regulations am needed to* protect rasidents from ttia ir~:on of " bat z cm' sexual V and harasvrer'zt W~to their neighbCrhoods. Fros on cr obscanity has eyed an lrnpcnant role in each of the dies which have signi ~ redun*d or elfrniruzited pomcgtaphy. The addfticral threat posed by ttia ir~rc rnant cf crgani ~ Mme, if prown to exist, may iustrfy the *rssourc needed--- for prosa~cn d obscerity · cr 3aquira us* of* a fbrfeiturv or r:aVcSt ering Statum_

Tha Wcr C-rrr.xp detsrmlr*d *that* it couid neidier advo=o prchibitidn of all s&aj2lfy expitct n=BrW r t of › u1a as t> 3 to rgliminai5 all saxualfy oriented busir7ez~. T =rdtmlcn is m endorsement of Pamography or the busin ⊗ Whiz profd frog it. T Wcrk!N Orcup Wsvw muCli pornography nveys a Message wnx:h is d dirg to Women and art a*= to human dignity. prcrrr s #°A rniau Qj VUr4raj~ja people and can b-e used Mitt;mar perpqt=Cr Cr it Vktrn Ln ratiCr2fiZS 3aDa;al VX:iOna. Sexuafly oriertad busIr:. s have a dQM-,og~Q ~-ffac: upcn r ai> +l: rt- d3 drew irnrclverrEarrt cf organi¢ c-rrr .

znuni~es a nct 9c d to =M a *pmblerrz.* ... BLA to *be mcsd e fn d ndrng ff fret Ccmcq=hhy each cor?IPnurfty* M= WCrx frcrj +l-0 evidence arC witthin &,e faw. The *mmort of his Wcrlacing* GPCLp _~s d i ned nssI lollc mmunities in develcping an appropriate and sffect~ve defense.

The firs: s it.n of te n3i dz as id&nc,-a se>"~ly oriented 'YLSir; , and the mo-aerials f which ze r f~t an jades smp; On e sLxrounding =rrmunillss. It provides tel aut eviden:,a ~r'ch focal *=mmunftjjjs can* use as PZn Cf Vl~ir ju3tim acn for raasonaVe regdabcn of saxuaJly oriented businesses.

The Working Group giso dis the telatonahip betweer. ly crieritgd businesses and or;,t_nizffd crime. Conaims ah tfj~ dv' offacm of saxuaily *crierfLd* businesses undarfie the Working Gmup's naccr=andadons that obscarlty *s;'iouid pros d and tw tcods ci* c ni3y sljJz,ad whon Nuatiy crfe-ntsd *businesses bra the f* _

·Tile send sactrcn of oafs report describes st-ztegies fCT r;Rguiat~ng sexualfy crienttd busin g aruj pvs&=~ cb niy. re presam the principaj a]tamatives, the re=mmandadons of orKing G=p *and some of the legal* issues to considvr n the s=tagies am ado rd.

7-ne goal of.` a, GW~'S Wor GmuP il prvuidirg #1is report is to support and assist low czmnunities a a s gi!rg against the blight of pomogr2phy, When c~'~izBns. poles cfcLz~z am comemed about sXrrnw and dOW4raton Cj , ~ cf us liv'' nmd door. No community stands aiorm.

SUMMARY

A=my nkm1's Wcrkr scup Cr. t-a segdabcn of Sex-1;my Orlentad BL=inessas mak2s J~e fofcWirV r rvr4r4atkrss to asist ccmm-uns in ptctec;ir,9· thsmsahras fmm tt-A rsa wject3 ct sea aily ~ bLmz-Amsas. Some or all of

r^a~ nd ,~'1c M"ded -in arly givan cx^ c.:r~r;p, ac. rrrl~~. tit • rnL;Ut d i e fcr i~-Stf naturB Ct the prCbler-nz R faczs and tf:e proposed sctul:ons which would be Mcrt ding.

L and ~U attCrna 0 In thQ Twin C-t:as mat:opciitmn 3~b0tifd dOSIG:rlat,9 il PtOS4iSrl?XF 10 PUMUO Qb=ln and Support ,-At prCSao+drtcr Wfth Spgo1aiia.*d i;IIMJ.

~Aha lagIsl rs Should C=3idar tu d$ng g pilot program to demcnst-ala tfiv 0 ca of cb niti prosecution and should ~r3oourag thie POCIIng of rasourc b*tWeign urban and suburban pr acutor o uts by making zuch cccpvr fon a oorad1ticn W racalving any such grant funds.

T~hiv Aftrney Ganval should provide tr~rmatlcn2i r ur for ci and =urrly attorna who pro obtc-sni crimes.

~b~ n pra~~a~~iior~ ~i3puid b fn ~ ~~~~ Irr~rpi ~ag those M.arials i mo fl2gmntiy offend =mmun SUndsrds.

` a isiatzive ;hculd amend the pr am torta ca s=tjta to Include grounds for forye 211 felonies and grazz m4dameanor's port;3injng to jail zflor4 Inducarnard, p mcUcn sir racelving profit fl®M pru%tt on and opgration of a "di$ordorfy hcu2s.*

mould ldior tte n l-ai for 3 RiCO-~ik2 Statuta wig an obscwI prOdfc2ts.

7. Pr C.rtcrz 2-hpuld use the pubfIc nu ni-_0 3 a to enjoin cp*ratons of .uafy criGntad busina 3 which rvp9at#dfy viola3-S part2ining to prosifLdIon' 2arnblfng or cp*rxdng a d1sordor 1~oua-a.

unl a Culd dc==0 flndln of a scond-f a-,j-aC!3 at a u~l orlarrted buzInasmas prfior arbclng zonlrig ragr.112Von3 sn =rtrol Dada Usas ea thr, such reigulators =n hd -Theld *if chailergad 1n Court*

COmmunivas Should adopt 2=lnS *rasula1ons which -341 d1slan* raquiremants b4tween sexually crlan3sd basin s and *samitNe uza5,* including but r-Crt JIMUd 10 r ld~ a1 arm, schOCIS, ct,Hd =ra 12cUitga, churches and par .

1-0. To r2du" advar Jmpa m concarrmucn b Ireas , =rnrnunitlas should adopt zoning Ordfr= Jch $ at *dleanc b rQQra a IJ i n In* .ar9d ~a n ~ 1 -4riontad buSisg -a.l 2nd l1qu ~ | ra~~rr „ a atld ccnsidar *restricting z al orl-smad busin ot to cne* a PW b.QUdln5.

11. Communklas zhould requira i:s~dng b"Ingas to Carnply wlih now zoning or Othar rVgU1jjt$Cn *of* X1 *a1ty orierltad buajn* ,jj Within *a* raasonabld time so that prior usaz will =nform tc n jaws-

Frlor tz) nastin5; iltattsincg r"WaUonz, comm=lVez shcutd dacitmarrf YInding3 of aidvaazo =ndary tffacts of saxual orlanted busine ss and the ral:,Wombip betwton thes*- Vf and prapcsad rnuwtcr so tfit such r~ u o uphaid It C!~~liangad ln =urt.

C-ornrv.snidv3 3hculd adapt raguiaWo~* raduc* uto fkailbood c# o rLm inal aouvity r*121*-d to sazuai CeArrtsd busitessas, ivdlng but not ldrn d to n bc-aM ortinar and ord€namas wtdch author3L2 dgnjaj Cr m on of fc*ns" when t Itcor " =mm d 014m343 ralavant to tba OpAmuen of ths bustn ..

m un4 c id adept re ulatA Whiff du e p ur tha =rnmuni d minom to t> ll hting 2ppe4ranc. of* SQxti;2l1v crlontad busin es, including but t;ot iftnitad to rvGcaatjOn4 of 3agn;Ga and ex!arlor design of such businesses, *2nd* sbouid Onforc:8 X42 t.2 W requiring saatad uppers and cpaque =y9ra or, saYUAiY oriernted rrtaterfal.

l PA == OFSFXUALLY ORIENTED BUSINESSES

The Working pup reviewed evidencs tom st;.tdies conducted, in Minneapoif-- and St. Paul and in =er Cite$ tixour;lcut the country. The studles, taken together, prcvida =rnpefling avidanc3 that sexu0y tented busirmissi~s are c&: ci With high cairns rates and deprawion cf prop values. In additabn, *t~* Working Group heard* tes~ony ttiat tt'm &Tr ' of 2 neig ln == drr ticairy drange when there is a concar7-ation cf ashy crud burin s adacsnt to raside-ctial property.

MJT1ne;kPP1lt stud"r

1n 1980, cn dir icfi tern the W-,neapdts Ci3y Co+nca, *V-Ie* Minne:apaffs Crime Fmertcn r zcaMMd the effa= O sex-or -ted and alcctiohorientad adult witart~ent up<~n prop ▾▾ VOILL:!* ' rains. Iris study used both simple ~agresslcn and r pie mgra ssi-n =as=l aaatysis to evaluate wramer thers was a causes relatior„ship between *sa busin g and naighbcrhccd bilgt,t,*

Tw study conauded that the was a c~csa assca~n been saxually oriented *busx, , high a* and lcr 1-4N=ing *va s ire_ a r~eighbcrhocid. when the data,* waz r ir-red uswV cv-rtsof variaNes such '13 ttra mean lngme in #e no r,hbcrhccd = daVwmale w Ma ass es od c2umx~,)t was unclear her cr*rttsd caused a deeFrr4 an pmperty values. The Mirneapolis std u lt& sax-4#y crud bus~~ corXef-,tsta in are= whip are relapre~ de ated and, al; wrest, they nay weakiy oorrtrilxrts tc the cviti ~ d;iprwss = a prcpv-ty values_

However, t~a Mirmaapchs sts-d d a M,='l Sr. cngsr r;0t 2bcn.5,nrp betwelen se~:aily criemsd busines8as Z~nd =ime rzes_ A =ime irid ax was =r,,,',-,U d inc;L;Qirg rclabery, burglary, rasps and as5Z>;it. *Ths rate of* Vir-ne in arm *nezr saxua~y criers;ed* Business-vs W2S tL iefi =,;Pared tO =Md rates *in ctier arses. The sti-:dy drew the* tollcWing =ndusions:

14. ire e i c~f sully criwted dusines-as rn crime rata ircex is posies and signklricant regardlesss & whiff ccntrd *Ymiable is used.*

Sexually brient~,d~dbusinezss~ =ntinue to be asscc~atsd with higher crime r=as, even when the canb~N vatiables' impacts am ccrsidered sirnuttar-iect.zsl~.

Acc rding to is'Jc~ai Wnafy= condt-tom in the ?-ikrxmPcifs =dy, the addition & cre Sax~,~ly cr:eisd bum to a thus tr' area wf cam an irjcnNasa in the gall a^;rrre rate Index in *that area by 9.15 crimes* piar d cusar~d people per year even if alt tomer Kcal fa=rs r4r» ur ng .

In 1978, the St, Paul Dives cf Plarrirg and VA Minr4qs= Cry ntrol Pfannir7g boar canductad 2 *s dy cf the raiabonship between* Sax-crianted and ;~1cohol-ariantad adult entertairmerit bLzu ~ ltd Paig e *biight This* Study lcokad it trims r;it4s per tiic =ind ar,d median i,=tsing values over tmo as indices of neighdorhccd dat e _ study ccmbired six-0ri6rtod and al=hci-oriented businesses, so its , Iz:s:on ara cnty geZvve of the effactz Ct saxuahy Qriarrtnd bvsfness~ alana_ N rthef , the st d nachad #Le fnllcwing importarrt ccncit~ior~;

~a | 7 777 7 ¼ t1ay~ s}C~r1II bet*ven Vie lccar w adult b=ines-t,~ and tgh ~ da rtc tic _

t .ow ' *in n* *biLhm* tend t totem in s== at *deteriicrated ar*

ddiiic7n~i t I~~i`b^ d tericraaon *or* ~n arse fta rs IOc,;trn ct -n adLTit business in the ara2-

There is a signiff fy higher crirnO rZ9 Ciaizd wih twO such bL5ir1e s in at arsa t an is as:oc~a ! wrth only one adult business.

Housing vatues are also sianifi y iOver in an area where there are tlira-a adult busin nan era in an area *with* cnty one sucfi business.'

Scrnila =ncusions about t~s imp & Sexually cxieMed businesses on the =rnmLnity were raached in =dies conducted in cities across the nation.

~ndtart~ooll~

In 1:283, the C of lndJa lit r anched the rel riship between sexuallY oriented bLtsfnessas and property value, The stuffy was basad on data tom a n nal random sample & 20 ant of the Arn;ar=n lnstftuia ct Razl iws=e Appraisers. –

The iy d to flowing:

The apprais= r*t&Jr=giy fW%) fed ttat an adult bcakstore d in a rvighbotcod would have a negathm xnp on midential prop VZiUZ5 *Wdhin one* blots of the site.

. *The i eW ,.~ta vp o cYw-M*mi4y (71%'x) believed that th,-era would be a* det er *effac-4* efi *coavn€rcial property val ue min the she One bkx~k* had*iiri.*

~. is m v7 paj.=t d=a m as tv dl=~ fr y tt•a 340 inreasas, i b t PrOP tt~ bi d Y i~rcm an adult boors, its impact on vajUSS would be minimw.

lrtdi t~a li~ di rv'l-c~~p t' t ="Irr1S ~.~ and sexually on -sd Coronas, caber' , th em, modes and massage parlors. A 1.9~u stt~ entitled "Adt.~t l rMinment SuS —— it indlarzpcfIs' furd j.-.t was With s nail ° crienta~d businesses lead higher V ime r than sh-nifar areas with rv sexually criented businesses.

~ s, tl ~ ~s txsms'nal ı ı i de, , rcbb,ery, assauit burgh, and lorry, grad 2t 2 MtD t at WSS 23 parent higher zj thos-e arm xt sexually crieni-d business_

mz--Mated crime raW, wing rte, i-~d&cam ~~, and dhild rncl iom, tend to be 77 p rst higlher In t= ae smally orler d busi es.

73tia PunmN De eM of Plceni c, .rizvna pubiivhed a v—/ lo 1979 -andded "RialaC-on cf Cirrina AcOvit,i and Ajdt.~t ir e'. i'79z Judy showed #iat army Yor sex-ml cr= eed tv io~°Jon fly onw~md bizirws-ras wara diracty related. The study mmp d tl' 2re Sm~WPy ei busir sa3 WIt: three contra(which had iar daq ~!c ar4 land Lxa no Sa=aJty oriented biisl~rrs. study k)i-r4 4i-o,

1. Property cremes warB 4:3 art hig-'a~ In tt-c~ wa~2z which wed a sre —— cr;e d huz~-ess.

Te Sax al SCO t hx;rw in 21cse wI= Wn't sexu~ly

a St: tl'9 grez, W COr'C;enrzgCn zually trieme-d busirasz-as liad a sex crimes rate r 11 tires as large as a sjrr~ar area hover s aily ori~+rlt d busirl sses.

Los Anceles

A study ra)-sasad by the Lcs Angeles PQlaj:S spartrnerrt in 1984 suppcrts a relationship batwear s al)y orierted businesses and rising crime rates. This study is l delni , since i was nat dasii;ned to U54 sirTillar 2reas as a oornrcl_ The study indicated t if8t'a 1? saxu Jly ot'ier'rte~d ad):~t establishMents 4-1 the Hollywood, *ibmia, a in 196S. By 1,97~* tie number had gr to 6Z. flurirV* trig sZMQ time. *perfad, reported* irv-id of "Part I"· Mme O.a., *h=idd, rape, aggravated assault,* rubbefy, burglary, lay *and* vehide 1t) *)ncraau7d 7.$ per in t*Ae* hcllywrcd area while rest, of *Lcs* Arlgales had a 41 parcwit ¯Pan H" xT-asts O.s. C-ry, *pr* y , 'na=tics, liq== *lair* viclatlom, and gambfng) ir. zsad 3.4 rc3r~ fn *tea rest ;I Los A;Vales,, but* 44.4 *p ryt Li* 2v Holler tea..

ncer1iTativn of Uxually Orfertted Suzfnezs
Helahbcrhood Case Study

·In St. PaUL .t~ ~S *one rl k;h~d which* hw an *especially heavy* ccrc:sntrabcn ci sexuaily oriented busa'~~. Thre bi d acatt to t 'utaracdon of University Avgnue D;je See harq ttk-n Z perz~aat of the cry's adult uses (4 out Of. 1-9), lndudlng ail of fit. Pad's sexu~tY oriented lcstvras and movie theaters.

Tie neig h , as a 'tee, -`iovees signs of sigruflc:ard dist~, Pnduding tyre hignest unemployment ratas ri ~^r* city, tip highest page of famXes below the pcvw-ty !it* in tt a , t sti median f~y h=74 and ttv lowest Wcartege cf high sdlx~ cline graduztv-, (40- 2Lgt crl Adult Ettl rtainmert, St Pm.~ Deparfrr of Pamirg and E l topment, 0i~jCxi of Fang, 1 S57 at p. 19.) lt wcuid t~a dim t-n zttritLta prablemz in arty sirr~e way to s4~ly cr,Rftted buss -

icy , ;t z R ly Vim h is a reiztt ~ p ,ten the CC tCn of se,;uafly cnfernw busirl ss nefghbcrfi Crime rte. The "'L PZVI PCHCE

st-q-at prostitU46C1 ~ if,M9dfataty adjacSnt to tht i-rtarset jOrl mere Lhrij se ι) - ty vient-ed ;usinassc-s ar-B lczated. Police s+ ~cz fcr i~;Sa mow , Cf 279 prcstt ion anras·s for whi& species 10=ticrL3 ccuid be idsnfed, r'0 Per--SM (Ig5) were withir the "Street prcsttion zcrdg." · Mor r, all Cf the locavinns Wittl Ia or more arrasts fcr *prcsfrticn in iflis =rye.*

Ihee Lion Cf as ily onerr'.ed dus ts Nis 81-to cra2tad a per=pt;crs it tha =mmuniiy ttvrt tfz izs an tzzafa undesirable p.-vi of the city- In 7 Gza?, Wastarr, ,q Sank, ri& is curren#y 1O=·ad across the s it from ar, 2dtft kVrre, hired a research firm to sum a resident r;~Igarding ir pr~rred lccadnn for. a bank and their parc2#orz of d int loi n& A sample of hle. rs given a list of lcrcadons and ask-id, " 2%ri any & thssa limns Whem you uld not fe-al s ccrduCting your ban busirnaS3?"

No mon than 4 per czf7t d tie respondants said y would l urs-alb banking at =er l ti in tQ ~. -a:d add feW tsrz.~ bankng at Dala and Un rsiy, the comer bra to sa=any'onenned ir~are c7j~a . .

The Wing C-roup Iam 1957 a StL)dy on Adult Enteftamrnern par~ by the Oi c-n O Pfwning in . ' ' tDOp rTt & Ptarrning and t=nCmlc lopment 'i'nis 5t. &~zz.-d t3stim prtad to to Punning C~ommissicn r ung rla bCrh p(ObLems:

Rasider~ in *the Unl* sifyX'da area report fra uerrfi x- l haras$crent and ita r*ighboth~-- A&,c~ ft canr4t ba proved tf= tMe ~aras patr~ Of adLqt dtts =Us, it :s rezsLnabl,- to suspeix s,=~ a bcriu~=m Mme, igh~~ r id~Rrrts subrrl arx~* tc VA Ffo=irg = == 3n the fic rm d discardad pour mc li zrat.xa 21fegedfy IbLnd in ·s$, S;dewa'rcs, bias And alleys near adLft tt;Sir · SLR; i—— is -,va;liy ' k, rAr on mar,

s

and r. n~der tha present sar m n~s ~~ v2ii le to mwacrs eVP.Ij tough itz e to rrinors is prohibited-

T-A:~5tlrno ny

ihe o6&9, GrCUP ~'Sard S rr a CC4 7cant~aiicrs of ".xudly Oriented business has ssrious irrpa= upon the surrounding neighborh . The Workirg Grcup heard that pcmorraphic materials are left in adjacent lots. *Qne person repor'ed to* tW pclica e"t he had found w piers of pomcgraphic rriatanvi In a ctiurc~'1 *panting* lot near g saxuaify cnent-ad bxrsire,~. Neighbors *rvpc~i ffnd4~g d* condoms an their iay— and sidewalk and tat sex actt wrth pros' es occur on streets and alleys in plain view of families and children_ The Working Group heard testsmony tal arres, rates Under tile fell of crime aswciatad Sa="Illy oriented busir — - Many robberjes and ttt from '°)Chm m as~-f3 upon prcsftites are never reported to the police.

Provttrtlon 2f; c rssutts in haraswn of nefghborhocd rasidents. Young giri5 on their way to cr y g ins cn INsr way to work era o prnpasTtioned dy johns. The Fick teeter cat= tc homo Ntizf *lnadq,* Qnd n-ale *prcsttAon has been* noted in tj-,e area.. Neighborhcod b mw are 2iso tested of tm street. A pogcB offi== te ed tt~t ore resident had k·ifomt$d hirn tt== he f used condarns in.hL yard all tt'A tfme. E~oth his menage son and d"hta' had be-an softie 9n their dray to schcd and to work-

'lea cr~cir,Q p heard wry ttut *n* the Frogtown neigh bcr,"00d, imrnedi y rcrth & ttm 1jrwAr,-,4-Gale ir~ters$ctfan in St. Path, t has been a age cver Ems in ttA quality cf lift *sjc8* tta s8=211y Oriented bu S S moved info Me aroma. Tire c G=p heard tt== the r}eighbCrt0Cd used to be primarify middle doss„ did rat h a hdgh C"+ Irrv rats and did r== r,rm prostitution. St. Pout pctir* t ,sd tt3za b4~tAA~d sexcally arented h ——— =SSd se' problarns, parbculx~ thA ir—— —— Ln prQsli{ution and other crkria rates. Prcperty v2lues wwa suffarrg, ttA pxaserx:* of high crime rates rr4ds the area

~#cn h tt ^ 'c *~17T1~ e~1 ~v m~ia or a er fmmctt c ncn° rnaf~ rla r-t~IeSs highly crganizzed crime.

Id. ai i&47_..-$_

Tsomas Bohling of to Vlic~Zgc Pcliaa Dap -nSrIIt Crganizsd Cry Division, Vfc:!e Control Sectfon, told Pcrrkcgrap~hy c~-,Tnri5zicn "I i5 the bal& of sue, fLidara and icc~d Law onforcemern that the n-cgr pt~ indus, i$ c_rrton iy arg nia]y crime families. It they do not own the business outright, they rnoS4 certainly exrxao: stmt tag from ind4_p8ndbrTt Smut Oeddlers." Id_ at 10-48 (emphasis in original).

The Pornography Cor=Lss"n Statad that it had n advised by Loz Angefes Pollcv Chief Doryi F. Gstes Crat "omrwi ;, e frmies ftrn Chfc:4go; New York. New Jeragy Florida arv cParIiy trOffirig and directing the moo? pornography operations in Los Angal ." Id.

Th,B Pornography MM Ssion wzzS told ty JTMmy Pradarzro, de-scribad by the ccmmissicn as.a member o~ LVI,:'that large proats have kept crganizad or~ne h:eavi y rwofvsd are the c nRy. indus~." Id. 105Z 4— wed that "95% air the families invc d In one way or arc&~w in , mcgraphy, . . . iV4 t= big. 'They jus, won't let It go.' Id_ at 10-52-53-

The Pornograpf)y CcrnrLz~on ccrzludad tit "organted Mme in its traditional LCN forms and her fcrrm 9xvta ub al kiMuerxz anrd ccrtr over the obscsnriy industry. 'Dough a nurnbiar C~ signiic= u ard distrilaut= era riot memb-ei-s of LCN families, stl mi~jcr prcdUC-RTS grad distributOM cf ob OrlfQ rratarial are highly organized ar~d nary = fflagrl 2ct~&eswfth a 7ear d" ct wph c~_' Id_ at 104?.

Tne Pcmzgs r, ryli4sicr1 rQpat t31at Mi& George Thevis, reportedly one of tthe lari;ast pornc~,Ors in to Urbd S- during tm ~ ' was icted in 197 -,I P3 CP et Inrluen ard CQ~pt OManiza—) vaolabom including murdar, arsz~-n arm acme T~* Czrrrrliss= also repcitad examples of ottier times as=,at$d WrLh th'a pcrhcgr-2phy Z"dustry, udLrG pr and other sax:w

abuse, rtar = disttritut;Ct', tdnav faundaring 2nd vl:Ia~crs, ,;r i iofat;>un~ and fraud Id at 110b

At icugh tt'e PomOgraphy Commission report has beers crtic zed for refying on the tastimony of unreliable informants in drawing i#s condtsicr,, ~rldlrg links better ponncgraphy and organzz-ad crime (2~ft2 Sock sevfews, 78 J. Crirnr. L C`, ir tc- 1 , - (1!;U)), r ic .add on.-iE -u .rs to r r~t s~ata s~rdi~.

iate Caidcrnla Department of JUSVC3 r utty sported t, t:

Celibmia's lacy in the adult ectape induce is of law enforcernent ocnc em puma the pC mphy busin Y been prone to organizes cruse involvement. lmrnensa proms be rzai through pornography apera ions, and until rsc arttsy, making and distributing pomography involved *reiabteiy fow risk Of pr'S~fon_ ®Lt More* agressi've law anfort~3rarrt *g-fforts and turmoR w3 hin the Pornography buslr~ has destabilized the sniooth low* C1,S honey for e of its rrmitx operatiom. _: .

As long as =trot r pornd!;raphy dlstri n is contested, ar4 organized to fgum cont4tue their ' ctvament in t bus~ POrr'C1raphy industry wil1 ramain of irderes-t tO law event cfcisls statewide.

Suraau of Crgartizad CriMG *and CriminW)rttalffgwx;~e, lepartmer t d juste. State oi` llfcmi2,* J_Manized _*Ctime in Calilbrni;t 1987: Annuaf Raccrt to the CaMomia L!-gislaturs zt x--52 (1988).*

The Nnr i;yiv^ CrfrrA CcrT rrriss~--n similarty d rmined in a 1S,80 report *that rr7031* MograPhy 8S 4xaMred w aMh^ted cr *t;wrred by orA cf three mart who had ties with* "any kr, -t pomjagraphy *fi~~ who am mernb or assc:atad of organizes oin~ families.' FsnnsyNran~ Cr!rrA CafranL~ A Decade of Omanizad Crime: -r960 Rsccrt at 119.*

Fcr e mrpte, Reuben Sam, a leader *4* May *figuTi bassad in* Cleveland, was ,-apoficed *by* the- FBI in 1978 to lea buf hks arnp;ra with Cie =sfs~,ca ci LGM member Diierrzrdc. Federal Bureau of Invastiq2ton PeoCTt qe~rqardirfl no

who

repc;~,edl.y =,C ▷ Cf *the bill* S ¡Jr~ ~P ' L,, *was* recantly ind!C.sd by *a federal* grand jury in Las VagaLsaor rackateering vidaticrs and *t;y a !&derw grand jury* in clavul ,d fcr inccma ta~c evasion and tax fraud. Newsweek. *.AL;gu.45~4, 8, 1 ½2EZ, p. 3.*

Evidenca C€ &,a *~11ifierab7i* cli :~[Y *Ori* b sr~es to organized C:iMQ invclvernent urnders=res the irnpcrtanc2 cf criminal prcSacLTean of th businesas hen they engage *in illegal ac~v~~Ces, including* dis1ribution C1 obscsnity and suppcr of prose-tution. Pro~cutlon car, irW-ra-2S;* tho risk and reduce the prot margin cf dtjc-irig if1 ai activittss. It mQY also disc!css crgwi;zed Mme aeon with ¡CCaj pnrr`,ogrphy busiriassas and invu e of a-iminal enterprise in Minnescta.

In addiiion to prwacuton, fodaiturg of property d in tt e Mega1 aC~~~a$ related to sexually *one bus-in s n cut* d9epty stn prci~s, pagul ' n to permit Manse r bcn for conviction & tu uant cr;rr s may wx a ki~--rtase -ritrrl over crimir er WP~ relates td Mxualiy oriented busin g -

P-POSEC ORIAL AND RE-GULATORY ALTERNAVS

7-he r;~guda'dcn Ct MAany S3=si[Y crime buses, lice w businesses deafirng *in* =jvity *wth* 2n e,p·qwivv =mpcnerri, is circurrrs ~ by the Fu's Amafxdment of 'tt~e United h=as Const.tcn. Ncn i F .5t Arne dnr doea not irnposia a barns to ttv prcs tion of c q, which ig = protat~ by the Firrt ndment, cr to rea=labie r ui Cd dually ori ~ buSirsesses ff die

31 The Fuji Arnerdmarit provides:

> Con es shall make no law raspectng an eatrblishrrent of rei}gior,, car pfchibiting ttie ft as axarci" there& or abridging the freedom ofi *eec~% cr of #"4 pry* or V)s right of pscpie peaceably to azzamt;Ja, or W r ti^A gcvemrn;t fior a radrat3 of

Ti-,e =r4ttA5cr,al g tae d fratdcrn cf sue, often to bash fcr c Jlor~ges tc ;-eg of saxuwty cr y b~i~es., rastr< std as 8Z fades acticrxz. Sms, ear. ., Erska v. Kansas, 274 U_S. , 47 S, CL 655 (792 -

, gz;Jm.icn is rt dasign4d o. ~uppre-',s the coratsm of expras5~va a itV ar>d f$ 5;fcisntly tniicraid to air, tpfi~sh e regulatory ptjrp -

~O WC4 1(ir19 C-ri:up fl Y..s mat =mmuniti8S h~ ncra pros.~crisf and rnuf=cry oppcrnrnities than they r -y C,. rasity r~gnize. The pt~rpose of tt"is section ct thig Papcrt is to idea* and re=rnmar~d en ment and raguiatory oppOriur'~ftf~s, , -a = –rTIunfty *must decade on b mar; r to a ?z limited* r ourcas and tt'v wid# ety d COrnpetirg demands *for* such rescurcas.

le *OSSCENrTY PROSECU-nON*

Obscene material is rat pmtected- tfie First Amendment. Miller Y. Caffmia. S. 1Z7 ;-3 S, L. ,L The e or dts~butlon of o no *m2terfal in* Minnes is a crirnind offarisa. The penaity was *r utty ir~aaasad to up to 'cne year ire jai grad a , fro for a first cftnsa, and up to Invo* yew in 1afl and a S1o,cou ire ·Or a end or zubsaquerA eansa, within *frsa years,. ML-m. Std 1 617.247, subd. 3 (rt988).4I*

The brtIking up balievas t= Inras='s ct) nity s are adequ= to prosea-ite 2nd penal as to s2ie and distibution d o va maiarisis. Hc ver, histor~alIy, widasp d obscenity prcsecudcn has rct rred.

i~e Working C-rcup believes t is r= b rsa *the* szile or *d!VHbuifcn of* amine pubilr-ations in Wr y is ram, but because pross*c rtcrs have baan raiucMrtt to *bring* obsuniiy charges, ~~ of ftmied resources, di fdes iacad n pra5 *ifng* cbzc:anity, and becausa obsc*nitty has hist~c;alfy been =midar$d a victfmiess crime.

) pr y penalty was a fir', only -- up to $10, WO for a first o-mmse and up to $J,MO jor a .d r, ubs .errt affw~se. MirwL Stat. 1617,241, ,,, . 3 ('Q8q. CbsC:anity arraS7tS are $o- irecuen~ tflsi irC ir=Mng po"N vaolaticns Of saciicn 17-.41 am rack zap y cmpiled by ttA Wr~ SLTsu d Criminal C,-Mpreher,sicr. See B d CnmfnM A qMh $cn 1987 Mirresata Annual Retort on C~Yime, ~ r oran and Lraau Ao9retaansr on ,

~N YjQWWd Irrit , . i `t"h i'a

r:-~C id r~ t ~1y i n d businesses azeier in is rePom n di With ir= ~aS in C:7~mle rtes zird 2 dsci~re in VIS quaff Of lifL. of r~eigNbcThacds in i T tM6y are lc=asd. FurtPar, as di ed 1r Y b;Siy, . n ber-q is ı c p=acuticn ~~ obscenity, ı s t pmfi3 m pocr ;~ ıc CpMticns very vrr c:;vtc members cf crganizad crimes. The Woexing Group t= b-alieves that prcsea icn of cb=Pi3y, ;:-21rutL1ar'1y cssaz irn~yirg Childrar., vicdence cr bestiality, ouid az"Sume a higher rity tr law ar~b '-ment off ls.

In additfcn, Many Ct the dir'~cutios facsd when Prosecuting Ob ni',y c.~In be addrasad -a:eqr. tr~irg and istz~rm ~n order to prove t~~ matjqrial is cb e, a proz&cutor mum pry:

thal the av e perm, applying =n m r Community stud s would lnd thatthe wcrk, ta as a while, ap :~ to prurient · f ~n saw

~31 Mat the work d$p ~ cCnduct , > . in a antly 4ffernsive manner; and

(Ti) that tlt~e r:R, takan as a Qfz, lacks sarii ,s it S, artistic, Politic-81, or enter Jua.

MinrL . 1 817-241, subd. I(a)(Hzi This strft~j Stand2rd was drawn to be Cons 'with- ftt ~ s ib ut k0rl"3 in MH1*f, SuDr&

V Two blue rib S =minissiorm h-.ja reached diffamrrt condusicm r8lflardirxg &,a PIQO~rie~ of UWly axpkit rates to bdMduais. A prazidendW C¢mmizzion on Ct1 ity and Fi;: ~ ~W ki Y9~ ttud ~ was m evidence of "soc:ai zx adu~ try ~az. wd ty salty axpiicit rr ria}s and, tiwafors, "fader7i, 2rxJ 1=6 legishzdw prchibidrQ #4 s.-1e, axhib6cr, or distribution of m matir~W3 to ccr aduf mh,cUd be rspaWed.~ T~m Report cf the Comm'n on ——— i and . at 57--8' fBarztam P 00. 1:970), Howsvmr, in ~ ——— Y s rr —— cn uded t "sax-*11Y vicl~, matarials . . , bar . . . a m, at raL ship to anbsc-cW ac's c # . . [and th~t:j &m — sLpport3 ttv =r4usiam subst~ — tc ~(rC-Vic~~J degradkxq mata~ the ilkeik·— far I MMdu~~,.,~, 1 . . . =MrT1it an act of sexU3i vx~snc~ or ~ ccer m' ~rmey Clar4rzXz Ccmm'n m Forrsc — , 1 E?nai Report at 22E, 333 (1-Saq.

To be sLra, prcSzm=rs a nun r & ,,.wards in pro utir1g Ctrsce rbi - hey include- inad uate =lining· irl this speiz~allzad araa -W, 2rampts ty dafensa eys to r m ju==, o i'mti p rr raptrr offensive. rir into ider,C.3 ;;r poih sand s ey:s thrcugn ia ~,$,$ t tedroe fy tz~ prove tolarant =1'nmunky slard rts, efcrts to guide 1=rs wig jury instuc:~--ns ft~rabla to th defense, and dis:.curagiz~ment with u=uc,Sssfui prosac.Jtiom.

But the hazards can be overcome. AJ2n E **Sears,.1brmer 8xe=rtiva director of the** U.S. AttcMey General's Comrrusslon on PornogWi-,y s~.atad;

> FrasacLAcTs == su=SSfully obtain obsc2nity com6cda-z in virally any jurisdiction in #~e United States. In order to obtain a cc-r~on, it is incurnbent upon a prosecutor to prepare well, krcw the law, not Wl unto ttia °'ons casiv syndrome' trap, obtain a reprase Jury through proper voir dire, keep the focus ~01 the trial an tho urnt td =nduct ct the dafandwnt and obtain legally sound instructfcnss.

Sears, "How io A Pcrrography ,a The COL *Report-mr (n.d.),*

The YlCrking Group heard testimony fns prose~ wh~o ! pursued obscenity casas natcn-31ly regarding eff0C!E-,Pa" Y:S t~= pro8ec:xAe abscaniiy cases. *Materials can be bou,~tt or pentad, radw thw* seized under warrant. In the absanc~-- cl *survey data, community st "ards can be haft to the wi~sdorn of* ttv jury. In tf~ , *experts should by prapa-ed to testify if tl'~s daibnsa attempts to make a statistical case tl tat the material is not cldscane. Prosacutlon of cbscsnity Is also likefy to be most* affa it initlai prosecutions fv as on materials wfiidt are patesidy offensive to the community, such as sq involving children, va s or beastiality.

a oz has d rzt-ated 3-A ix ~ ~az~stalned.: ty raduca Cr virtually arninate sexually odent.d b in ~ - ~ . 9 r'xiati + mar= ; *a, =?, `rar~a~ Fs and* 1' i ~Y~ Oted to *the* W-Crkirg Group az vaznpiez cf cities wmi& have

su=tea Prcgt of cbscam 7~°,-6 working Grcup -ar ourmagn-Z pravs to ~zgv of irso asing training apporunities ar~d cthisr ass;s-,ar fcr obsrii prt;sec ticr,4 and to reazsess the desirzbilrty tat ircr:easad r toar;, r:i. 1he Wring Group is pleasad to note lit unty avom ard law enfor'arnAm grcu ir. Minn a r-scar,1 ld fours and sarrfrl= C~n absnenity jaw ardor=rr»t and pct; .tior% T U.S. Ju$'oa Oepa=r-rrt'3 Naijunal Cb$c--nty aforcemarrt Uric ours istanc:l tc i prgsmAors, 'srY-+uding sample pleadings'. indic=merrts, sa li its, mctiGm~S, respcn am trite remcranda.7/

City and =11n y tame o's'no*s In the Twin Cfas metropolitan araz sbculd dQslgn-ata :2 pro~or to pursue obscani-tyy prcsao~onz and suppoft that proso r W zPaclalh9d training.

Ttaa L2glSIZtUrg shOLIId C*=Ider tundlng a piilct grogrim to damonstjW ihm ofca cb nl prcsQ on and should OnCOUTZt5e thO Pooling e r*Sot=33 b4tW**n Urb2n 2nd SubUrbQn prtzacxUng oM by making uch ecoper;ffon d condfon of r lvlng 2ny such gr2rzt d...

S-! Mi@mor2ndum to Jinn Ballus, exacrtive assLtzrrf to St. Paul Mayor Gaorge Latimer (preparad by Sl:, Pad Deparvnent of Planning and E=ncmic Dev~etopmerrt) (July 5, 1988); saw atso W.-tam, HrA e= on sleazil, - Newsw"k, Feb. ,t, 1988, at 4-5 C"After rr rq tt„an 10 year. of ~ig he s ar~3 n arrests, AtanM teas worn natlor.,~ ramwn a3 'the c:tj 2*rat dewed up pcr raphy-).

7/ The Addrams 0$ t~e Na Obscpn Enf6rct nt Unit is U.S. Justics Depw·tr loth A P*nrs~Ea Ave. N.W., Ro= 2:218, WasfiirZgtcr, D.G. 24530. its tell nurm bw is =-833-5780- L-,tanc~a i3 also avaUable fmm G,ttzsns for Dec--rx-y ttvtt.,O Law, ., 2 E.. C,~r~l4acxc Ad.. Sui#s 7-4C, | nix, AZ 650 15. ~ is tt,A publistw of 7?* Praparat~or and Trial of an Obscamtf C2sa: A Guide for thA Freaacu:&V Ate-'7 fs tvlep~,orw mimber is X72-381-1 == 1h* NaVor-J Cl nity Law Carttff, ar pweta cr~=Z=-,Cxi, m load at 475 Pivemde CT-,,v, Suita 2'8, New York, N.Y. 10115. ft publisr~ 2n Q Lair Bdietln and v-a "Hand cn tt',e Prcsacution ~ ~bs,= *eprZne num"r' is 212-870-3.27 4..

%10.. 7Me A_nomwy 42onaral should r4_.~aUM*-S for titly and courty attzrnays whz prczanjaa otm=nky M-iMR4.

4, 0bZ4:VnitY NOWWOM sho~lid =nCentr2te on czaaz th2t , nagr2nvy onn-d community zt2ndards..

If. OTHEA LEGAL REMEDIES

AL ***PROINQUIPZ100ri:***

In additcn to traditionvJ aiming Prsacutick, Lza Ct RICO t--:5 Sand crimir end civil trfeftLTa actionz may also prove to ~e Su=WtU *ag0w: obwwnRy* Wanders. By ~ing the criminal cyganiaicn and the PrIHS CS Agwax,410 wch ZZWOS *cwwn* provide a at-c4lg dizinc'sntive to t~* astabl grad Cgladon of vowdy 066vad *bLYMUSAW* Rrur =am-Pte, the feden~ S17AMMA8fX ;b1Cj a M;MWIr Of 210 W&MY-eight walew *QW1* flaw w4wed rau0nowe ~uanc*d and ccrrupt crgani (FUCC) states indude cbsc~snity offeases as predicate crhT,as. Generally spaaking, to viclate. a RICO stat.rte, 2 pe=n must acquire or maic~fn an ktm~st in or ccorltc4 of ;in enterprL_a, or mum con;duc: the 2ftirs ct an srtafprisa tv=0Ji a "palm of crirninai acbvjty.;* Tj*~v patam cf &WHS a=tNv& =y 1roalude obscenity whsd't in tram can expo-se viola -to k1creased fines and penatte$ as wall = forfah" of all PmpertY ~c;guired or usad in the cmzw of -a PJC0 These statAas generaffy enable pr0$ac_it== to obtain a=er rximmai or cA kulaitLre gel's to seiza asszm and may ~Usc ~ used to obtain jnjLnctY* relief to di.~sst repeat offendem of ffr=6W imarasts in soxuafl'y orientind Dines . Ne 18 U.S.C. 11 1961-68 (W05t &4PP. IzS8). RICO rannez may be patculavY elawAl V WINT k4 bi-minesses dcmrzt*d by *oq;anjzd crime, tut fey be appOd agailmat cther targets as* W1afl,

Wark~-,g Group **tzl4rfaz** SHMAd 11*lact a F&SRe statute* 010:11 wouid arcompaw ila d Pffr*&131 fcr *L*-ir4 a C' *criminal* cbsc=ity acts to conduct the affak-z & a bLzin-ass arlty. Prcvzcns au~ri2~g the S*=M Ct -Issets fbr obscanity vic4zlionS &-ziad be ccrm~vvd, bLt Jv l ~pcsed by ~e Fj'5t Amtr~dment must be taken 11tc amt:

h , been argued r= a_ RICO ry, fcrfaltjm !5','tLf,' a3ad cr3 cl7 ir} rne viclatcas thra 'is to "cO prctacnd ~psec!i" lr rs it wctld permit prcsa-cwrtors to r~rr-o mgtsnals from distnbvt" c-crtvicxd cf viciatirlg the obscznity Axnarrl== Civil Lberde-* Unicri, F011L'tincj 1"ie C rsor~rin Debate-_ A Surnnnarv A,nd a;ikicue Of Trio Final iseccrt Cf ' Art~m ey General?s Ciri?~?;1 3iCr'? On Pamo<7raoty at 11 C-117 (1!;66).

H er, a narrow maiority ct the United S;atas Supreme Court rv,----rrty l;eld dlzt tiara is nc cons' on 7 bar to a sae's indusicn Of Substarriva cbsscanity viclaticns among the ;cre~dic Ofartsos for iS RICO et=trt. Sappenfield a. Indiana. 57 U.S.LW. 4100, 4180-41S4 (FabrJary 2'1, 1989). TlFM Curt ra=Wiz2d the " farm of criminal obscsnity . et-trto applk:z~.a to a bock?.aljV Wia induc:8 soma tendency self-c,an.scrship and have some inhibdory aftct cn the dl~aminadon of matariai not cbsrane," ld. at 4184- But tria Court ruled tt 4 "the mere assarticn.cf *sorno possible* sa **f-c;ansnrship resulting fir.m a ms's** rct ar to rander an anti-cb_ ity lair ur ~mlcr.al under cur pr d g d. ' Cart specfic:a~ upheld RICO prc,ps which Ir ate P-enalves Whom terra is a palm Of multiple Violations of odsc:snity 5_

However, in a companicn casa, the Court al t invalided a pratrW sai2!ra of 2 bcckstora and its =nterrts after crly a pmfjrnins~ . dIng of "probable use' to b lie t ail vicl dn grad_ Fort, re Scckn, In , v, Indiana, ? .L "T 18Q, 4154-4185 (LM3 21, 1.989). Or e Court aq~lalhed there is r$buttable pras=ption =r ive materiaiz are protect"ad the Firs, Amendment That prasumptar is not re!buttad watt the dairned jLrstffication for saizura ot materials, the eiemardS C~ a RICO v et, Sra pt d 41 an zdv r7 prOcsding_ ld, at 4185,

ThQ hurt did nct sl K::a1fy rva& t ~e fur}damental question of her ssizurv of at3 ct a z,~e~~fy cr ams -*j.~ch as a =k=m is rstitutiwr~ally permissible czr-x::* a RICO vicla6crt 3s praved. The Coot wcp4aired:

[Fjc r t-~e pua·posan of dip= & this , wQ aHSzjm*0 but dac:ijg t~~ ;c,-,k:s44'" and tlei , conts= are t— Rable (tip ct'~er PfcpartY

such a.: a bznk a vunt· cr y-jch-≈ wh,,n tt is prci/eld t~at t o ~arl-j$ are *proper ~Iy* "mad in, or de *ad t"M* 2 *peam* 0 *violations ot* the =2's cb~o nity laws.

Id. at ~_ The Wcrlcing Grcup belleves that a RICC) S-,2tLtg Wzhic.1 provided fcr F'aizure c.f tf^-a c^M of a sexu80Y Crientsd businessz upon P Cf RICO vicladcns wcufd have t< a potential to significantly Cunail tfle diSt 7bLS1i.,n Ct obs=na materials.

rough Minnesota does not have a 11CC tuta, it d have a f Aura statUt8 pi~ri-nifng tie seizure of money and property which are tte prods Cf designated falcrry offsrsas. Minn. Stnnt (IS88). Sui, tf~s statfta does nut parm~t se:rure of pr, per-' misted to =rnrn~ssicn of th's was rr 1&a y to be associated with z *~ly cneryted busine-sses.* Obscenity es era r among the offenses *which* Judy forfeifurs. Athough solcrtatic:n or Ind=3ment of a person under age 18 (Minn. St x.32C, subd. 7) or b veen the age ct 16 and IS to prate pros'dtuticn CMIrn- Std. I ?2.Z subd. 2) are induded arrzng tie cffersi~s which could justriy seiztZe of property, many 'runes irxVo ing rosftuticn fds the reach of to present *innZSCts iC1i`eit1.A'e* law.

The follc~Mng Crlrnsz an rlOt irdudad *aMON* tha Crir~ Whk c7 ju5tPy saimr'a of prop-arty and profits: -5olicitaign, induc=eM or prcmudon of a pens-nn tetween the ages of 13 and I S to pracdca prcstit-tticn *(Mien.* Sam. j · ; ·+,u>bd_ 1A); sofio.-tation, inducsnem cr promotion of i person 18 years of ,gio cr cider to pracll~ prcst~on ; lnn. S . 2', mod. a): r ig profit dv ~ h-CM prQ$t7Wticn (Mlnn. $tat. .323), owning, operating or managing a "discrdarly P a,a in which =nduv habituaily ors In viciatiw of partainirW to ikquor, gaming, controlled subs=c,qs cr t~ (Minor latai. .3),

Although as Tack would much nrmm Jimitad, ttv ~e~ature si~Cuid ~lsa cc-nsidej· prcviding for fo htura & prate used to comm4 an entity dense rr which mprasarts the pr=~,--ds of cbs=nidy arm.. Urnder 2-;i holdir4 in Fort Wayne woks, irc_ v. Indiana sum itu~ Cculd = tsks pLics, ~ at all, undl ~t was prcv--':~ that the c,rdarfyirg cbsc:anfty c'imc3 had bin axr.-ndted.

'iner-a ric r}p r6. =r=tLrd'crzl ias-U&S read 9i~z ing cr 'n n Cr ICMWi stvz. ba-sad. on vir fatiorz c` PrCVt.ri=, gambling, Cr liquor L"~. The tegisJ .;r rnay rac,~:» Saxually orient busirvs Wmic~l violata tM iaws to roda~ 1heti prcfrts_ irs c ng Grcup -believes' teat -SuC~t an exp icn Of f rfaftars ta: wa&d give prcsacstnrs graater-l r- g to, =&ci th-9 cation d th tL-mirlesSey which po-s-a the gramme dangar to tlQ cornrrzur{~y.

R5-COMMENDA'1t 0NS

io Jag Iatura shouid w and tho prams& 3crfalturv rt.;tt to Inc;uds g=Undz for for,40 ra 211 1vIcnfs3 and gr misdemeanom pertaInIng to 4sclIc-itation, Jnduc~aMarP, promotIon or rvc:*Iving proM from r~on ~r~d opa-ratlcn o1 2 "clIscrdar houza,*

2, The I Islatsrv ouW c4 ider the pctantIzi for a SIC0-Jika statsta w en o canity pradfrsts.

NUISANCE INJUNCTIONS

mii-mcta law anfcr a ritfes r obtain an ~ijun~ and dosa down cpera crs wha tcit comes a pubJio miisan. A pubic nuL-,ai~ exists when a. business mpa +iy viotatzs lags partairing to g.ambilng cr keeping a "discrderfy i`ne Minr*s pijbic rzuisqzncd JQw pwMits a court to order -a' buUding to be clrsead'c-' ons y*W, Minas. 13 817.E-.87 (19Z8).

Nui ir-4un tc ci dca;m s~~araiJ cr4ntad bu!sirs:~ which repeatadiy tata tars wing to prcz ttor, gambJ or di=d'' C Lxt are pct''iy zerfui regguiatcry d sz. The mc! tiat a buking n mad prt sacut~cn Or ot~Or o=x —— a sexually c6' t f Jar s do'' rv skid amity from appi,-4,-~, of nu n law based cn --~uc:h cff&-~. bra Y. ao;xi 30ok32 Inc., x7& U,S. 6G7, 1 CC- S. C',. 3172 (IS,86) (F-V.. A~, rrant does r~ot swirl mutt t=k=a

YJJ- Izf- 1771) Ic-C1r- 'r rMtq i n~w"n uv~I"all

f-;,m *appd$czbon* of New ',"crk · S nuisanc-a law desiGned *in* *t b us ptac_-a* e *won).*

,ruaough th-a Working Group believes that nusanz~ fnjunc:ions with 2n cbscansty prt3dic3IS woUd be ffe in r oilir- -^c,tai}y r r; d busins 5, suc:'i pro7isicn-S would probably be un=ns kx"J under =rrant U_S. Suprame Court d lcr . Six Sliprema Ccurl juste Joined in the Arcara r lt but two of them --. Jus4ices O'Conncr and Stevens - ccncured with twhesso ids of caution:

> It, fiver, a wers to usa a nuis ~ jts as 2 prat= for ciosifng down a b store be e ~ 'pfd i nt. ks cr becaLse & tt)e parr-eived sa=ndary ef of hsving a purer of such books in the neighborhocd, the e wouid cfearfy impf FwV Amendment corcrns and require Isis under tea ;kpprnpriata Fwst Arrzndment standard of review. i usa there Is nfl suggestion in the wa=rd or opinion below of such pretextud use of the New York nu provision in tiis cam, I toncur in th Court's opinion and judgr t

'oar.,, SUIT, 4n U.S. at 708,1X 1. 6..+d.. at 3Zn.

In an earner tom, Vanca v. Univ~ Amussmen~ 445 L).S. , 100 S Ct 1155 (1!g8o), th's Court ruled urccnsttj5cq"ai a Tax= public nuisan= state autt)orizi N the dosing of ;2 building for a ye^af I t&is buRdhg Is used habiftial y "k 't 1e "commercial a~chlbidcn of cbsctr^e material_" Id. at 310 rLZ 1W S. C- at 1158 rL2..

The Court's rent holdings in Sapoerreid and Ecrt ayne Scok3, Incr. give no indic atlon tip the Court uld new i=k more favorably upcn an injunction to dcs'e down a f 7ity which sold obscene r rsaiz. 7-A CcL~d assumOd without deciding that i`orfartur;a cd tcckst~ assay =xdd he =rztt=rzi n a RICO case. But, in making this assz~, pbcn, tt~a Coc,:rt distinguished fcrfacLrrs d assatrs u-~er RICO from a general ro$t-aim cn um fy prct ad speec~L t aPprcssd tt'e raasonir~g of the Indiar~ Supra Caxt , ' ba remedy cf ss irwndad not to ms',-.,n ttm fL;t— di~titudrn ct p mp ly pmtsct~ffd sperm bu rattier tc disgorge asses .1cqu thrct. r ig .' Ecf. Wad ks, Im at 41 x3. Trxa Co,.t assirned tti~, AICO provisia~ o l d be uphoid on to bass tiai

AN *addling* ***cbsc:P-r.jty-taw vic4aticras to*** *jist o. A = pr*4ic4tj q;;mgz r m ra*
rL=Z to *sidsl.ap the F Amerlam* " *id.* wrthcU2 *the MIZiOnship t₅ Prace-eds as*
Crime-, *a remedy* WrsiCh *dc;sad a* ~3cil ; ~bs;.Bnity vtCi~:i *oul* ~ *~i?s~ tikai*
to wrthstta~ =nstrbatlorrsl srtirty.

RE,CCM M ENDA-PCIqS

Prcsactrtcra thcutd u se public nuisznca ↓"atufa to anoin
oparatfom of 30=211Y orIa nd buslnazz-ad Which repeatedly violate
laws part2inin-g proVM91on, gambling or oporatlng a disrarderiv
house.

to disp,s-a cr c*r ⁓ sax;-0y criat⁓ *at designr'3tad*
.70ning ordirtar=s can be adopted to regulate thm 1rc tQn of sexually oriented
btzlnesses without vioi;"ting the rim ArEmdment- 8uc:h ordin2ru-as can bar designed
dices from sp c buHdixigs or era , such as was, schocis end residential
nighbcrti⁓ or to rastict bUdin~s to a **sir4e taxupiliy** criented usage. Souse
zoning is an important ragulatnry tod en proper enacted, th~e Working Group
ba-lfiava$ a 2's~ul axpixigton cf)air and a review of pom-n" prcbioms in drafting
zoning ord4-,an may be helpful tO Ccrrmaunitiez COns;dering zoning to re~gu[ate
sex.;≃ly arierrti?d business.

ma CoUrt 00cf3fons

TFr-e U.S. Suprans Ccurt uphetd tie valida`ty Ct muraicipai adult en r=inm~z rtt zoning rsgufations in YounG v. American Mini 'eaters Inc., 427 U.S. Z-0, 98

In ycur~, &,e LTt UPh$ld tt7-@ VWidi'~y of Detroit crclrancas hi~itfng t~A operation of the m shoring sexually explic~t "adult movies, min i, = feet of arTV two other adult btishrr1e S/ 7be crdVancas ali-tt~d a waiver of the -j,XC-;oct restr-icticn iY a propo d usza tad r; t be =r-LI-j to the pubk i-rterav, and/or other t utors ' s- d. Young supra, . U_S_ zt, -4 M7, 96 S.CL t 2.-44 n_7. The ordinances ra supported by urban plarmefz and r estatq ,arts ,o tas4aed th,-T conceatrstor, adulttype a. ltshrnartts "tends tc an undasirabie quantity and qLg~ of vw~slerit3, xdvers&f ajf;t-c~ prop Valtles, =tea an increase in crime, asp cially p ~tut. , and er ages midents and butinassas to move el-sawhem' 11~, at 55, 6 S.C, at 22444. A "Myrizd* ci iocz6orz were. latt av~abfe for adult: 3~ish~mei C=ida the hidden I,QCC-ft dis~ zone, and is existing eztablishrr~ents were affected. Id. 71 nM, 96 S-Ct at 2453 n,25.

VJridng fb a plurafRy of four, Ju~c3 Stns upheid =nIng ordinance as a reasonable r at of tha placs wt addutt Nrrz may-fry atN a (1) fihera was a tact-aj. his for to ms's C=fus= ltd the ordinsn= mould ' blight; (2) ..he ardinzncs was d' at pr y 'zaccrxI&"t tom* cf ac~li-osmbtisshmemt conc:ant-.,t~ rather it-= protaoing errs from un ad "oferisive' speak; (Z) thR crdl ncs did = grzzify r 'ic: aCc2= to lavdU sperm, and (4) "tee city must be allowed a rsa2m~~e opportunity tc :rrP-M sdutMs try adrntledly serious problem&' . at s3 rL i S, 71 rxL-S4, 35, S. Ct 2t 244Z-49 n.18, 2452-f;3 nn_14, :.5.

81 7,e rapcrtad Mrresotz an aduft -arrtertaintneni =ring crdir38Px:o is Cstl of S. Paul Y. Cadc", 4 .Z~ 129 (!Minx. Ct. App. (vp#r.~Idinq fac =zt k of . aui ordhV-At*)_

Sl The crdiar also abitad t~* l n cf an adttt the = Within! -r-C4 fa~ Cf a rasider;t~ am a, btA th~ PrCVMcn was rrvaj;dztMd by the distr~ =Wt and that d~siw s r~ appealed. Ycurm v. Arn~ Mini Tl"aztars, lire., 427 U.S_ 50, 52 n.2, 96 S_Ct 244D, 2444 n.2 (1

JUSita *dtavQnZ did rhot* L-x;;r8SSJY *desi.ribe the* s radari he had used, bcft ~ was *clear that the plural'cty* would *eerd n. n-o sc~n~ Saxuaciv sxx~ic;z s c.b lesser errs;* Amendmem prct-lion ~ athar ratagories of *saes, However, four d=entar:s an{!* eras c0nCuring justices oondudad tf~ M1 degre@ of protec'*ion *afforded spae!l t-Y the* Fry Amandmern does net vary *with thQ* s0cf-W valut a=ibed to that speech in t,Is concurring opinion Juste PC'WO *Miad that* tfie four-part tert of United 5ratgs *v.* '13rien, 3-cj U.S. 367> 377, £S S.CL 1673, 18:9 (1), should apply. YcwQil explained:

> under that test, a govesmrentai regutatfon is sufficiently justiFed, dsspi;e its incidental impact upon First Amendment irtsra==, "If *it is dirt the ca~tional poi' of the Ga~emnent; f* it furthers an important or substantial govemmental interest; if tha gcvsmmental irttamst is unrelated to the suppression of free axpreszian; and if the incidental restriction on . _ . First Amendmem freedom is rz grnatar than is f to tf7e iirtheranca c~f fnteresL" .

427 U.S, at 79-8t7, 98 S,Ct at 2457 (citaticn omitted), (P ll, J., concurring).

Perhaps rzssa Jus.~ S2 rm' plurality opinion did r>> offer a r!eariy ariis:~ljlat =ndard. of ravfear, post-YO≡ courts own applies 3 O'Brien test advocated by Just P ll In his conrx.TrirQ opin.!On. M crdirar=s regulating sg=-.11y oriented busin ⊗ were invalidated umder the O'flrien test. See R.M. Shin, Regulation ref Adult Businesses Throuch Zoning Aft8r Renton, le Pa- LJ, 351. 360 *(1987) ('"COnsistarty irtvalidated)* SA* Swndar, Regulattnq Fomc r-aghy Throuch Zoning: Can We :Mean izQ' *Hor~clulu2 8 U, H". L* Ray. 75, 1 05 (1986) (ordinances upheld in onfy abovt had thm cases).

App~~ Yaunq, tre Egt~ CirctA Court of Appsais irnraiidated a zoning Grdinanca adcptad try the city of mirneapcifs. Alexander v. City Qf Minneapolis, eG8 F.2d 936 (8th *Cir. 19 3). in Al~x~ndsr, die* d-allengad ordinate *had three major* rations on *sexually crisntad s ssas: dis Ir t= sped ttsas, praventJon of it prthibfed a saxisaJfy orw-fted business from operairx; witfiin f disticts =r,d fcs rasidwtial or olca~a--id s, a c~lurcn,*

sta't&4ic--Sn..ad day a tzc'~rty and r=r, PUNIC s. " :3,- forbade an ad1:1 5-CI)j fao~i tr cp "fr'g wi#',in $00 i of any o t^ r ult | Il:y. ' inatly, e crdinannca ;'wired exLUrig se:uaily cdientad enterMinment e=biishments ;a .r c~n io its r iwi by mpg to Q nay ?odor, ff S=r'Y, witlin tc?-T year.

T"he Oghth Circuit rulad tl= ttlK inMapOlis =irate Cr8at9d moons tco s ir to vphsdd ur49r 1-a yo.ra ds iom ft ?d raquirRd all · of City's s8xually criantsd theatar~ and b tt n and nine of C ' terl ~,azuall;~ criented be-okstcrs to rofccate and would have requirsd tie facilitias to cornpeta w~th notl*r I$ 2dLt-Y 3 f3~.1X~'9ent-- (s2urlSs, age patigrs and ' rap' perrz) fo a maximum of 12 ralcc2iicn srisq_ Th effactJ,e msuft ofa ing tto crdlnancs ufd be a subst wTdal reduotfon im t run Of adLA b=kstcres and t~eaters, and no new adLt =kstor or thes s utd 'be able to open, t~e hurt ccndlud-ed. Alexander, suorl, ESS a . d at _

1n Re=n, Suc , the Unit$d Stems Supreme rt ado a ciaarer standard under -Rhicii r aticn cf sexual1y orient~d businesses raid t tezstad and upheld. The- Court upheld an crdins~ prohibfing adult movie thaws from ? ing w~hin 1, feet of any r-sider xorla, single- or multirpfo-fzm~y aping, chLxch, perk Or cl_

,JL1st1C:a Rahnqui5t, wing tr a , 'b Majority f euded Ju.. css Stavens and Po n, sMtad tie Ran ordin r= d1d = ban adut th rs ,fog-ather and that, thwr ra, it was "pro arzy2 as a torm of tirrr*, pl manner mgulaticn." _id. at 48, 106 S.a at n drre, placa and manmr ra at ara "=r~ant-neutT~° and n t '^fcx purposa of -=7kt rQ sp .'i cn t o t}asis of its cz~rrvnt,~ d-≈ -ira " te a so lcng they designed to sn substarrtiaf govemmerntai | ri and do not unraasanaiay lu-nit aferrat" 'avenues_ c c cmmLnczbm~ AehNuist std. Id. He end Ran ordir ,ca to t~e content-n -ai b ra lK at ttv =nuff~t cf Fdms r~+ at adu~ theaters. t,-e C~ty':$ " cmin~ corms' 'wart with t~ r',d~ry of tte ors. Id- at -4?, IC6 S.CL at (irn sis ii lgi I}, a tirrR, piacs or mane''' mgun"b-on is d to tax-ri-n.~c. 3, „It1he appropr:zta inquiry . . . i5 whether tfM ... or-c" ir~ is datigr,-d to zAr,x a dal gov4srr rRntdi aTtara-V, and

albs reasonable a nuesof rrtrr Ir;i i: ,' 3ehnquist -rots for the CCUM Id. s;, I ~3.ct at 5W.

I)e Supreme Ocurt fcur}d Z=t Pent-n z "irnerQs~ in preserving the quality Cy ~;ruar~ Him' is a "ViUs governmental interest ihg Subztartdali of ' t-inzarsst vas in % y diMiniSMsd ty the fia= #;at Renton "relied Mealy" or. studies of the secondary afr O of aduq srtartainrrent establishMerrt3 Sere ar~d t~e v=periencvs e o ar cages, Rehnquit 2ddvd id at 106 $. . at

" *The Fit AMef'idmarif* does *rzt raquim a City,* before ana&jN such an *ordinance, to conduct new dies or prod=e SrOdanc:a ir;dependerrt of that already generated by other cittes, so long as whatever evidents the city relies* upon is reasdnat7ly befi d to be relevant to the problem *that the city* addresses. That was the 8 hera, Nor is our l10tdfng affected by the faci that Seattis ultirn ly otiose a difif rrt method & adult tneatar zorning dean choun by Renton, sing Seattie'z choiCt of 2 dWemnt r&T to combat th6 seconds effects ci add th rs d rct call into question after SBaitls's identr tion of tfiosa saurond2.-y *effects ct the relevsnco of* Seattle's erienct to Renttut.

51-5z 1M S.Ct at 931.

Rahnqui;$Vs inquirY *then -ddres-'ad tla mans Chasan to furt`~ Rarrton's sub t4 lntcr and ]r4t.tired* WTx Mbar the ps..nton ordirancs was suffic-tentty „rerrowly tilored.`__

His commerrt:3 on Psrr~n's rneans to *'urther* its substantial imerw, suggest t municipalitias have z e latttude in anacing content-neutral ordinancos aimed at the sacordary effects of add--4ntertairxnent sstablLxz~nt s_ He quoted the Young piural]ty for the propcsi that

!t is nct oLT funo+iCr; to ap P thja oi-n of Pe ci~'sj decision to tequila aduft #~eztam to be uc sd raw man =r=ntrated in t~a same areas. . . . M r t be al t; reasonable opponxiry to edmer-t *itti soft rs to admiftedi/ sar~== problems.

Id. at,52, 1C-6 S.C. aft S31 (q`-9 Yot-Tr.q 427 U.S. at 7-l, 96 S.Lt at 2~).

As tz the 1`narro-my tailcrod" requirar^errt, Rehnpuist fbLmd !4-t t!',* R-artcrt ordinance cmiy a .ad tMeater:5 PrOdtsirg ur— S mdary efte~= and, there WZZ Satisawry. d_

Mc sa=rd prQrg of Penton's " T placz, manner* inquiry ~- availabilr11 of ta at;va avenues of r-imLni tion -- s sZ^#.i1iad *ty the dist cOUrt's ffndlrg that X20 acres of hand, car mora &w p m, cf Rerrtcn, ra l am-table fcr adult e rtainment uses, even though some of ttiz developed araa was alrgady occupied and tie urdeveloped lamd wzz not available fi:;r ate or lease. A majority c~ tha Court found:*

> Thai jadult theater Owner] *must kand fcr hem-eb ki the real* -S market, on *an equal footing* r p purcl1aszrS and heS_5aes, does nQt give Pisa to a F= n m v em . . , In our , the F'us: AmendmarTl raquirz cr1y ttud Renter ga in from e'factN * d"ing [aduh the m ownarsl a roasccrl—a oppcMunity to open and cp s an adult theatsr In tha city, and #v ord er moors us aasily mss tfii$ raqu"Ment

Id- at -54, 106 S.Ct at 93Z

ndzrds and Nood r.t ;ii :Zcntng

Unlike Yo-LT1q. tt"A Per u Cass SpQfls C-Qt *the r s which* zoning cf saxu~afy onentsd businessas shOJd be temd. Rerrtori and era! lager curt dacisicris randemd in f>s *W* get rnc~ *Crj—* was by whictl *the* crdmanc:as wfft be]egad are 1) wheew tf is a*d ~,Ct tud* orditiarecas wore ermciad to addr *s"=nd* fr a on *thA* nmur , arld 2) thler-* ar4 *enough l cxa 1* a40nbja fcr _-,-a=fy o ad busn es so t zcning is Pa ct *just a pratwd to Si4nklaia pcmc_~~c spe rm*

l *of of t I r pc:s~.4-Raptcn adt~t- 'miru =rlr~g* ti by federal =Urts, tldatsd crd' s, ttvas upt eid cn:flr ar4 ttv e ord er a remand to diz-mct fbr kxtw psceaed' crd m in Avalcn Cirmra moo. v. inomcscm 66? F2 1~~(city o~xxLi-e faiTed to as (Fectncta 1Q a9 on exz Page)

This Y'l 11.J~ **tascribes sor10 Of the legal Con:sjderariorts which** COMT-M;Ilities m= k"p in mind in **drafng ZCnirig Crdin2acaz fcr sexuajry crizr7taa buzinessas- Then, soma suggestions are prcr%idad, bas*d** On **--videnca rQviawsvd b,** it:a **~A'Orxing Croup, of** "γ **of zoning which can be enat~nd to raduoa tine** ',ndary effLbctz C'f sexually Oriented businesses.

~. ~3~ourner13a1Tcr1 to ~t~~~~rt Z4nlr~~ ~3rdltran~s

Sexudjy sp"C!I which is **tict Obs~ne cannot be restrictQd 00 tle basis cf its Cor7terlt Without running afoul Of** vie **First** *Gndrnenb The just;;i5oatjcn for rvgulatirg sexually oriented businesses is based do proof that thq zoning* !5 **no-ed** -d r uc- S4=ndary *effects of the* bLtsinessas on *the community*.

Sires pin, a number of **add entertainment zoning ordira~s have been** irn-l;datffd fbr **faum &the emctlr~** bow **to dcxxrment** *tlje* **nod for =ning ra-gWations. Tnus, one court** inv2lidat **a =nlng ordiii&= because there lids, if any, evidunce of the secondary** effects **cf adutt bookstores . . . befora.t~e City,' Counc~ . . . ."**

(Footnote **10 Cor timed fr== Frevicus Page)**
eviden<~a suggesting neiphbodwod dedire would r ult); Tollls. Inc. y. San Semadiric COu , 527 _2d 132,9 Cir. 1 (rao ead resent®a to e~Iz atrva O S*0ond harMAul eftct3); E v. rona. 7657 .2d 635 (G-th Cir. 1S85) ~s cf affa~vo alignitive lacctian~ ; 111 more ~ulevard na v. Srincn George's Coin of Maryland, upp. . . 198a *lns~ rr ram av arm o secondary a pmen ed to lni;siattve body; speciiQll excapticn prc=ionz zraam *xc*=t>v di ionary au&.art.Y to zonir)g officials ; ar4 ~ooles T a=. irr. Y. Jad~n C~.r isfVur*, 836 F. Srpp. 1345 (W.8. Mc: i s lmproper egrs4avve* ptz — *to pra~rn continued op en of adtilt- ontariairtrrent esmbltslurlern). Zoning crdk — w `upheld* in SOJ Inc, v. City af Houztan. 837 F.2d 1 *(5th* Ctr. 7}88); +l PdS Ire v. Cit< Of at as: r r. . Imo); r'.d S & C News Inc. v, outn ar®, . upp. 1 ((E.D. rrild7. 19'x3$}, a11'd moot au O loan? 1 142 (8th Ccr_ 1987). iiarr.ards Ymm crcaradrn n v. Arbor, 824 F.2d 489 {Sth C r. j987), cart daniod, , — u5, —, 1 101-311 r*mar4 for demrmkLaticn d ss,vs r9==Or4); lrt.!~mariOnai Food & agio S.t.s. v. of Eort Lauderdale, 7~4 F.2d I EM 1 to . 1 rsmand for ra~tazer — 19M ,erifDrl. su , nude bar =Ins), W~d WalntA Proqerties Inc. v. CN of Yltlrttrer, 9=-2d - 1331 pn C r, 1 (mr , in part, for demrrnWw=fi ct and ~al~a.bil lty).**

7 -Soul , supra, ?vC — a al.Sn Tflitts v_ r
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raasanably believed to bO rl~iOvant to ths problem the city addris ." d. at z1,
~. See al-So SZ0J, Ir7c. v_ CW af_hldcjstorT, P,37 F.2d 1218, 1274 (5th Cdr,
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rar'r=*d 'T'- ur4tay r2 d if adLA ~t'taitun zees am
urxe nabiY srr I ana or Y tt'~e nisnitr 0i4cata~sis Lw" ~ y few. -In" i5
r.o sart arrzurt cf i2nd cr nL;rnb r cf ices cnr~ }ally requiems. 7?Ie Fen=

Court r1d ttlat 5,20 a' ibt$ real S'Ztjg, A irlduding land by fMeways' -- rrrcT,-' frve perc-art of the emir-3 I;rrd area in Rer=n -- Waz SufC g,;:. 475 US. at 53> 106 a.CZ. at 93. The YcLn C7UM +clrnd &,e avai%ability cf "rnvriad" lcc3tiors suff;C 8rM 427 U.S. at f n- 5, -96 S.a t 2453 n..35.

Whetther.i;-5$ L'cT tails corl~7iitL'ting .23 of I parcent of the Iand arra +ritl"in B *city's untrue busin g Zone is* $U'~CIsnt ~S *not char.* See *Alexander v. The Cites of* Minneacolis (Alexan~er ln, *No. 3-A-8-8c8,* s ip CP at 22 (D. Minn, May 22, 19) (fess *ttrart* rt% of land aria could be ~ralid if "ample actual ogportunitias' for rfloc;ticn exist); *Christy v- CT~ df Ann for, E24 F'-2-d* , 41-40, , (6101 9W- 198 (rsmandirig *fcr a* determination c+ excassive rsstric:ion). :r- *1so* '11126 8aftim-cra Boulevard, lnc. +r Prlr~ Cecrae's County of Varylar4, F, Supp. l (D. Md. 198S) (20 altarnative lcoticn-4 su cient); A1txwder v. City of MInneapails, '698 F.2d 9,8, 9 n.7 (8th Cir. 1983) (pr-a-Ramon; 12 relocation sits V at l 28 existing adult r blishrnarts net s ~roi~rn),

The sufficiency of sitar available for aduf anwrrainmerrt ups may be measured in relation tc a nurnber of lactrr3. See, , Alexander 11, ~up slip op, at 22-2:3 (irzuffid if ralc cn site m r,2k= to or leasa); lntematicrral Food Severace System,-Inc., 794 F.2d I =, 1426 (11th CIr- IGU) (suggesting number of sites mould be detern* by i enc:e to Community needs, in , l of asttablislhr; in other fifes, gds of city lam); 8asiardanes v. City of Cataeston, X.,,82 *F-2d.12M* 1 *(5th* Car. 1982) ~l agrtqn r striklng zoning r iatian restricting adult theaters to induSVial ar m . Were "larger 2 Patd k of swamps, warehouses, and raUr..~ t-adcs . . , . lacking] access roads znd retail establ"rshment3').

Hcrww, the f tf= lend =ned for addt biishmerds is already ocarpied or not =r, arty fcr sda ;~x t will i -aktate a zoning ordinance. Rentnn, supra, 475 U.S, at Z-fit, f CL a1: 9'?2; bu . Alexar-rd 11, sv slip op, at 22-2.3 freascnabla ralccat— opportunity absent ra owrrer3 refuse to sell or rent). Them is r~0 raquimrnerrt tiat It be r~em t advmtaQeau:s for a saxua11y criented businsss to lC<=a ir1 tMe area rerrrriti— ty [2w.

. :3_ Ofstzmcm Paculirarnantz

A; fair that may be examirae'd by SDd7E =urts i$ to d ^ requirema „ es' bfishad by an adult entertainment =ning drdin a. *In SDj. ine. y. Houston. ;?* F.2d i~ (5th *Clr. 1-988), the Court w;as asked to invalkiata a 7:50- t distari:ng* requirement rrr3 tt~e ground that the City *had rat prtwad* tl 75560 feet, a8 '--Ppc~ to e other dista~, was n ay to srye the c~y's Vfts~,

T~e Cc„~ fund that an adUl eMa r;mer# zoning nc a is "sul1icientiy well taalorad if it effectively prat? tss tea *rmm ' SMtsd nterav." and declined to* "send-cu-esS;' the city counoj. Houstan, sore, 837 F.2d at 127&

Coin i zu ~ned bcth r*qISWanVnt3 t7z't s a* crisnt:~d businesses be l ted at e dLa~cas from each *moo',.* sae Yotmq, SilL7~ , (uptidding die»c~? raquireraent 1 feet be lly crArt9d ~ , and rquVaments s -J)y entk busin be *lcq;atad iat l dLs~ ~ tcrj other* '~ennsitive uses, er~on, sum, (upt'ciding &t~ raquirarn of 1 t between S-axually oriented t essas and rasidanW zones, , single--cr-mr. Wpla ta~ dwellings. Churchez, parks or S&Cds).

The drki ·cup heard testir" Mat wnw an ardnsn estaNL~= disttanc~s been sexuafly criented us as, an add~nal *won nay needed tc* prevent operators & the businesses to dot t giant of reguiaion by concervating - .`rt.zzlty' ~ri rciad kw-psse~s of v tz t **Lrdar one** rte, in a lly orien t mini-malt. 7ne city Of :-L Faui has adopted kiance pzrWWtn9 more than one adult use (q,g, s*~QJiy crkKTtad tlAetar, bcccstc~-ra, ss ga pgrinr) tom Icing wtthin a single buiddsr~ A simt7ar ord€ u ld in *the NcTth ulna case of Hart Scck Stores. Inc. y. Edmi-5,~n, 812 F. 2d 821 (4th Cir. 1 T , art. derifed, 447 U.S.*

*~Iy bz the UnNef·say_*

*wasrsact= V-'g I%at t&Se t &Was have a V'star pctar~ for causing nefghbCT·f^ roI?i s .ngi~- l;?y cxi~rrt . tlo irg Per·rtcn, :t is Vr~;estad tl-~t lawmaksm d=-Tr*rd th* adv'srsQ affZZs whic~) the*

romrnunr kS to pravent prohibiting muitlgle-use busine b-afra arao;ing

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Zoning OrdinancBs can requim sxistrg malry-orieritad .rSinsSS *td Close. their* operaticris prOded th dc not foredosa the o nion of such bt4inesses in new lotions_ Und-ar such provisicr?s, an existing bu:~in~-z is allowed to remain at its pre-<art lotion, even though it is a non-cur;fnrnirg use, for a limii-od period.

' *Minnz~Sota Supr5me C-QLzt has explained the decry this*

T theory behind this legWattfva device is died the Lmoful 1111o c? the r°: r orr'rlin usa =rraspcnds roughly to the amcrtiz4-4tion period* *SO tiat the cwrer is rat deprived of his property the end ct i 3 uzeful* life. *in* addi#c n, the monopoly ;oiticn -grardad duritV the wnotz period th~raticaily provides the over -ans-zdan for t loss of some prcperty r zir= the period spewed rarely corr"porda pracsafy to *tie uzafLA Iffe of any particular zVu=rs* =%MO-g the raoncor ing use.

Naeq6a dccr Advertising Co. v. lags of Mirmetonka, 1 6 N. -2d , 21~3 fMina. *1 a).*

Such prc rfsloris applied to fly crkrftad dus~assas have been said to be 'uniforrnly upheld.a Ourrzas v. ON of Qallas, 648 F_ Supp. 1061, 1071 (N.I3. Tex 1986), afd. *FWIESS.* Irnc. v. of *flaiias*, 837 *i=-2d* 1238 (lath Cdr. 1988) tcitng r. asas)_

Ceded in 5 Of this MPOrt (Pp. 8-13), th*M atz Signmcarrt s ndzzrj impacts upon conunundles related to the location of sexually crierrl:.l~d basin s__ These irnpa= are irrtsnsff*d n sexually oriented business-as are located in resxiarAiat arias' cr rwar ether samitive uses and when "xrralty crerlt~d bus:reszes now "Ch ol r or i aiccrr-i orferted Trt War%rg Cep Ireelite tai sV3dW= st. dW4 aX:il QS t C bOd In tfie f=ar-it d this report and an otai ianca ftcm neighbcrt-,ccd raside= and pclic 3

cars u1~ u to 3uppart the need fr;r Zaning c dira,css w ~ address tmesa

RECOMMENDATIONS

m+munfil ;shouid dactimant ' findings of adveraa as=nd2.ry Vfa of $;0 11y crismad bu*ln prior to anac}.ing zoning ra~guiaavcm to C-:ntrcd #fg all USS-1 so that S=h r'-OGULZUCnS Un be i1phoid it ilsmgad ln ccUM

2- To raduca th-2 advsrza o of ze=a4 'orlantad bLSlna , =MMuniti should adcpt znning Mgwafcrls tc s4a3 dlstan= r~ u3 3s=a11y crisr d bLt11nQ '' an V ludlng hut not limed to r ddsntiaf zz, cc ls, child tub , church&$ and park::,

a. 'To mdu advarza lmpacts torn =nL-antraUan -of sexually Orient d i 3 =m nit Shculd adopt =nlng crdlnani:as whi ' sel dlstar== raqulr* fin liquor szt2blL*hmarts and 3a l cdan d busin g and b*twasn z ally Crianta~d bua ss and should crtsldsr ruiHcting saxualfy ntad b *ua3 to on* tiza per bullding~

C~OM=nlt 3;~cuid M i ning bUSIn a to =MPtY Wfth now =ning or other guia i n pertaining tn s4=a11y orisntad duzin s min a T* "big tlms that prior u3es will ccrfOrM to new ir .

USING AND OTHER AEGULATIONS

Lj~2~7-g zr~d cd-' atcm , a~so l* u to redtra advar-se eects Cf saxuWly cr aniad The t l n*qu"m&nts whi&I =-nrrund ~ mgt keep

mind we i regulaUcras m be na=yiy .d to address adversa sa=ndsry eff , they &,== ba raa-nonably related to reduc ion cy these ef ects and they mu$t be capabie of odjeiw applicator'. If these standards can be met, licsnsir=g and otter re~gui=ry prcvisicns rrz"y play an import2rt role in preventing unwamed exposure to se=ally oriented materials and in reducing the crime problems ~, ~atedd Wrtb sexLually oriented business.

It is dear Wure to = u 2 lioan appliCzilcn for 2 stuffy oriented business cannot take the plan$ od r Wati0n. W ut jttstifc ation, denial car failure to g=t a li rts~ is a prior rsstrairtt in yioiafon of the F,rst Amendment. Parkway I nea-,er Corooration v. City of Minneacolis, No. 716787, slip. op. (Henn. ice. bist Ct., Sect. 24, 1975).

An ordinar == providing for 11c.-rise r~src=tion of an adutt motion picture teZer it the i=mat z ,rctsd i:;f an C n4 offa m a fksiy to be held unccnststuikyial as a prior resz~nt & free sue. Alexander y. tJy of St. Paul, 2.27 N.W.2d 370 (Mine. 1~78j. The Aax ar cm wt stag:

> men t city li a t1cri pf t~eatsr, It is llctrzsing an the R'zt Asr dmwn~ and as a rasugt the power of the city is mom limkad than t ~s l3r acbvkies which do r4t e First Arnendrnerrt prct ion, such as ttv amine c s4lng llquor or running a rr acg~ pafli .

Id. st 373 (i ota omitted); also, QOhen x. City & DaleyiIle, 695 R Supp. 116a. 117'1 N_D. Aa. 1983) sale of o rn&eriai carn ot)ustzfy rsvocztion cri

Howrrer, tj-,e c=t3 have permit&d cornmuniti to deny Iica— to saxuafy orient*d busir — if bjQ person making a iica— nas bean ccnvktad & outer crimes wmdi era cicssiy reia— to the cpe'atic n of s .-au4Iy oriented businewas.

In OU(=.15 v. GI'ly of DalWS, 1G OCurt r ■ ■ a requlrwrterrt th= a -- nsa appllrrt rct have beer, ccmxzed ai cartail c;4=83 within a spacffisd par~cd- Five ol the erutr r i — ayr4s wam id to ce y related to #* p of th8

Ijil mzmt.rt l~:g cr;;inan= beczLm l mada = fir4ings on their The Jid enumerated ft-were corrtroli-ed szu ces act Vio ■ ~ery, rcb y, lkidnapping ar-d itad dimind ntiv~. i-1a aura upheld requirarlentS l the lictr not hZye n oCM~=~?d of prosjti-mor) and se~4- r_-4st d o nss . lc~_ 1074. if a rnmurti ℓ to r uira rsci^is o his; of r crimes b-a denied iic--nsas, char findings must frat be mada wic, jLzt;·y denial of lic~sr-ses on t-caat basi-s.

The Durt~ court, ale idc portianS of te linsing crdinanc:!~ permitting the p-clics "lief to deny a- lls ~ if tv s t t applicant "ts unable t~ operate cr manage a sexu~f ne ed i, prvrrusz~ in a pa wl and later-abiding manner' or is not " v -2 to opera a s ;a1fy QTiarnad › iness.' Neither provision const&=n4 mquwamarit tint "any roquir-amentfor an acvvity related to eon must corgi narrow, OLD' c` ' t . i dtfinite surds to guide tq J; re ~ ,- If ta See also Aiexander II! sVp op at 16 to d ·e r ules bcc.kstum as sa&,g JA Su fal or signi5c Win" of .h 11128 amore Boulevard,- supra eZ4 F. SUpp. zt 8q8-sa- (st Si inm e ~ cffikiais to d permit 3f adult aqtv~v jnt 1.&l-Treat 15 $4 '.'In ham_ wfth =rgg psrt, dcas not oil substandally irnpa''' rrzstar l , doe* nct „adversa1f affect" t at'.ti, safety and were and is nct to r aj~=d s=i rds are "subjei-t ;o bible mariipU2#fcn and arb&=y appl ~j·

A ruunt~sr of courts e *upheld* ord er raquir~ *Mat v~rM~* -is in aduqt theaters be -open to dLwccurage illegal arud Lzis~bry ---e~ actim. Se~e, Lg= Doe Y. Cl of ilnneff~ojjs it3 F. app. 774 (Z). Mir,m I).

Licarzr`,g sio iddirQ n parlcr3 QmPICYef~s torn adrnin*tarr~g ce tO Pers & t'* op t serc h wTth~ oguaf pr y a':d prr;RC, r t dhWl aarnoitt v_ C' of - a.2 F. cupp. 401, -- (N-D. ~r~ °ice) (eqLoi 7cbOct~)-. ± ~51 . ryit'nan. 4a2 it. Supp, 1, 6&G-rA (3,D_ MY. afrd. 628 Fwd 1 i(2d Cir. ~), cart d,-ni~d, 9 1,9,x. , 101 S.C. 122. ~r, R =urt3 have tctrd s.'ur~x r; qe ri ati ,~ ›c be in l d 7rta '4,l of tea rrts of

1-964. StTcT=n Y. Or-Tr y 445 F. "pp. 1305, 131 -T1 (D. CcM 1-978); LIP c,010 . Mern Cf C~tY CCunCff, 375 ~. Supp. 7119, 722-c4 (E.D. 7Qm 1970; Jcs 1 V Housa, F.- Supp. 3157, Z74-75 {SD. Va.), afd =ub r:flrn. .tech v, 8l2ir, 482 0..2d 575 (4th cir.), cart. denied, 418 U.S. 9~55, 94 S. Ct 1 (1974). C-07ttra. Aldn~=! v- . C)uJing, 53B F.2d S37 (Cfr. *76).

,ough ttie Working Group axpras---al stmt;-g =nc;am 2tort the operation of prcz',in.rtfon under the guise of massagO paflorS; th=is tyPe of reguiaticr, is not advisable because legitimate therapeutic rmge blfshmertts =uid flncl th-eir operations curtailed. Prcs6hition rnay be bettar =ntrclled hcugth prosecution and use of post- =Tviction actions such as *forfeiture cr joining 2 pubiic nuisance.*

In 19a Ccurt upheld an Ordirsr rn2king it unlawful to display for commercial *purposes matarizi* "ha~to ruin=" uri c the materiai is in a paled wrapper and it *the cc is ha-mful to* mom, bw an opaque *ire'. Ups Mk~~rest Booksellers* s',n v. Cy of MinneaMlis, 780 *F.2d 1 (CL-, i,9l5). i. = year, the lecgisiaturg* en=&d a 9 *law zimilady proNbiiting display of saxusfy explicit material which is* harmful to minors urzlass iiems kap't in pp gnd. where tie Cover itself wcu3d harmftJ to min=, we.lrl opaque ~ - Mk-m. . 3 617-293 (1988). ThLs lar has the pot d to PMMC ml fCm Qxpesure tO s, Jfy Cnertt&d m"rule. Cammunaies also ve i Z# 7 r LC# 3ign2 eo l e xtarior c; fly ariented_ dusinessas dog ~ unwting cbv~ to s 11Y explicit *messages.*

RECOMMENDATIONS

-l, PTIor to -1r1acfng "C*n3ing rasuWJiOns, C:Cmmunttlsz should *do"mant ffndinV* of -zdyorz* ;3a=nd4rf IffO Of S*Xua4 crisntld at ine s =d th* r1l-TfcMhip batw9gn 1tass sfact3 and prapo30d ragulatcm SC tll~ Sued u r uph~Jd . c.'z. i3 r~g d In court.

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-CONCLUnION

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QUALITY OF LIFE:

A Look At Successful Abatement of Adult Oriented Business Nuisances in Oklahoma City, Oklahoma (1984 -1989)

By

Jon Stephen Gustin, Retired Sergeant

Oklahoma City Police Department

Quality of life is of concern to every community in our country. Researchers from a variety of disciplines publish quality of life statistics for com=mutes based on a variety of issues. Environment, economy, cost of living, employment and crime rate are examined to determine a composite look at overall quality of life.

On a seemingly minute scale, one factor directly effecting quality of life in communities across the nation has been the impact on a community by adult businesses_ Recent attention to these businesses and associated problems have surfaced with the emergence of Moral Majority political activists and ancillary lobbyists. The attention to these groups in the focal limelight of the media has played a major role in the systematic eradication of many adult businesses and changed the way many communities, police departments and prosecutors respond to "victimless crime".

For the purpose of this report, adult oriented businesses include the following:

Prostitution:

Brothels, Escort Serrices, Massage Parlors, Street Prostitution.

_Adult Entertainment Businesses:

Establishments selling, renting or offering for view any pornographic material including: Bookstores, Peep Sows, Theaters, or any other business where a clear intent is appeal to the prurient interest including nude or semi-nude dancing.

Traditionally police departments have assigned personnel to investigate complaints stemming from adult businesses on a reactive rather than proactive basis_ These units have usually been labeled or Morals Details consisting of both overt and covert investigations. In most cases this assignment has been an ancillary duty of officers involved in investigation of illegal drugs, although larger cities have recently realized the need for specialization of this difficult area of law enforcement_

Oklahoma City is a city of over 650 square miles within city limits with an MSA population is nearly 750,000. In the early 1980's Oklahoma City had a disproportionately large number of "Adult Oriented businesses". The economy of the `80s, in Oklahoma, helped pave the way for these businesses to thrive. The oil industry was in peak production and with massive exploration and production and state's population grew with an influx of oil field workers and support personnel. The salaries paid were often far above the national average in like industries and entertainment businesses grew rapidly in a symbiotic relation to the oil boom-

A fair historical comparison is the gold rush era in California and Alaska at the turn of the century. Along side legitimate businesses illegitimate businesses catering to the rapid growth of migrant workers thrived as well. Houses of prostitution, Nude and Semi-Nude bars, Adult theaters, Adult bookstores and all levels of prostitution spread through the city. From an historical perspective Oklahoma City was, in fact, a 20th century wild west during this era.

Pornography entrepreneurs, Pimps, and Adult Business related promoters relocated to Oklahoma City from across the nation to compete for their share of huge profits to be made.

By 1934 There were over 150 adult businesses operating in the city and an estimated population of Z00 street prostitutes. The street offered their wares in half a dozen locations inside city limits and the crime rates in these areas sky rocketed. These areas came to be known as "strolls"_ Competition for a share in the profits to be made from adult businesses lead the owners to become increasingly more blatant with street signs and advertisements. Escort services purchased half and full page ads in South Western Bell Telephone Company's Yellow Pages, advertising for obvious prostitution_ In 1984 Oklahoma City had an epidemic proportion of illicit sex related industries and the crime problems associated with them_

Citizens in the community began to voice concern about the decay of community moral standards and the associated high crime rate while property devaluation in adult oriented business affected home and business owners. In 1984 George Harper, a local grocer, mounted a media assault on these enterprises and his organization, " Oklahomans Against Pornography" began gaining Grass roots support in the community. Other citizen's and church Groups followed Mr. Harper's lead and in a relatively short period of time action group coalesced into a powerful block of local influence.

Robert Macy, the district attorney of Oklahoma County, a well respected local leader, took a clear stand that pornoxaphy and illicit se~cuai oriented business cases presented to his once by law enforcement personnel would be prosecuted 'x%ith an emphasis on Maximum penalties for offenders_ tilr. 'vTacy's eacerness to become involved in an

originally unpopular change of the status quo set stage for police action_ NIr. Macy 's predecessor was considerably more liberal in his approach to prosecution of pornography and illicit sexually oriented enterprises which made them nearly impossible to successfully prosecute. Abolishment of unwritten district attomey's guideline in Oklahoma County; which had been more stringent than Oklahoma State Law, finally made it possible to arrest offenders and seek prosecution in areas that were previously ignored. Assistant district attorneys began to specialize in first amendment issues with respect to pornography prosecution and took a hard stood against powerful national organizations; the foremost of which was the First Amendment Lawyers Association, a group specializing in criminal defense of pornographers across the nation_

Initially there was frustration on the part of the anti-porn special interest groups based on a lack of aggressive police enforcement_ Frustrations escalated and a schism developed between the police administration and these groups_ Local elected officials found themselves barraged with mail and phone calls. City Council chambers filled with supporters of an anti-porn crackdown on numerous occasions.

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Pressure rapidly grerv into demands for action from elected officials who passed their constituents' demands on to tile police adrninistraiion_ Continued demands were made of the city fathers as well as the chief of police to take amrrriauve action_ tilr. Macy, initiated additional pressure for the police to

act aggressively by publicly announcing his position of strict prosecution. The demands were simple and succinct: mount an attack on adult businesses in community with the intent of putting them out of business if they are breaking the law.

Historically the police department had difficulty in successful prosecution of cases of pornography, prostitution and related adult businesses, particularly at the municipal level. With the blessing of the Chief of Police and the City Council and the backing of an enthusiastic District Attorney, street level enforcement began. The battle fell on the shoulders of the Vice Detail to mount an-offensive against all aspects of the problem_

Priorities were established in the initial plan of attack_ Along with street prostitution, which was at epidemic levels; the worst offenders in pornography distribution were selected for strict enforcement. Enforcement measures began, first against the nearly 200 street prostitutes who were the most visible problem. Arrest levels were dramatic and "John Traps" were simultaneously conducted, where the males seeking prostitute's services were arrested by female police decoys.

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Media involvement played an essential role in the plan to decrease the prostitution problems. Published names of arrested customers as'well as prostitutes along with television coverage of persons arrested brought the problem into the living rooms of every home in Oklahoma City. Television media accompanying police on raids and filming from inside surveillance vans, was unprecedented and the media's attention to the situation increased public awareness further. Citizen support trrew from a more enlightened public_ Community tolerance of adult enterprises turned to outrage and unilateral support for police and prosecutors in enforcement of "victimless" crimes for the first time_

After the street prostitute population was diminished through a "no tolerance" enforcement approach coupled with aggressive prosecution at the County level, enforcement efforts were focused on brothels. 1n one raid Vice Officers simultaneously made arrests at 12 houses of prostitution where officers arrested all of the madams, prostitutes and customers_ Again media coverage continued to fan the fire for citizen support.

Adult book stores with peep shows posed a particularly difficult problem for law enforcement as well as prosecution personnel. A variety of arrests from these establishments included males customers offering to engage in sex, acts with undercover officers, sale of and possession of pornography, display of pornography, and health department violations.

In several investigations officers swabbed the walls and floors of peep show booths securing samples of semsral fluids in the evidence seized.

The president of the First _amendment Lawyers Association personally conducted the defense initial prosecution for the sale of pornography to undercover police officers. In

every instance the district attorney's office soundly won every case and informed juries assessed maximum penalties each, time. A precedent was set in the community and adult businesses began closing city wide, some voluntarily and others after conviction of pornography charges_

The growing momentum then focused on nude and semi-nude dance bars involved in prostitution and drink hustling with promises of sexual favors for the purchase of expensive cocktails. In many investigations undercover police officers observed nude dancers seated with customers in dimly lit areas of the bars, known as "kinky corners", fondling customers genitalia or permitting customers to fondle them. Repeated arrests in these bars forced them into compliance with the law forcing them out of business based on a lack of customers' support.

The final arena of the battle became escort services which were no more than illegal organized fronts for prostitution. A year long investigation of escort services began with nearly a 100% conviction rate obtained by the district attorney's office in State Court, including convictions of madams who owned and operated the services.

It quickly became evident that arrest and conviction had little affect on these businesses and that in order to effectively abate this nuisance it would be necessary to eliminate the only link between the prostitutes and their prospective clients. In an attempt to accomplish this, Vice Detail officers operated their own undercover escort service arresting those persons who sought prostitutes in this manner. The investigation drew media attention, but since man clients were travelers visiting Oklahoma City from other areas of the country no noticeable decline was observed.

It was determined that the only solution to the problem was the elimination of phone service to those phone numbers where documented prostitution cases had been made and convictions obtained. This matter was taken before the State Corporation Commission in an effort to obtain an order form the commission to mandate Southwestern Bell Telephone Company to suspend services of phone numbers utilized in the furtherance of criminal conduct. In this instance Vice Officers were not represented by the District Attomey,s offce, but instead by the Oklahoma City Municipal; Counselor's office. The attempt was not successful in that municipal counselors refused to press forward with the issue. It was later learned that the Municipal Counselor himself was employed by Southwestern Bell Telephone Company at the same time he Municipal Counselor. This

action occurred near the end of the examined five year period of 1984 through 1989.

At the beginning of 1990 only a handful of.the original 150 adult business were still in operation and that remained operated within statutory guidelines. Hard core pornography was nearly impossible to openly purchase in Oklahoma City, rarely were prostitutes noticed on the streets and none of the houses of prostitution remained in business.

Documented links between rape and pornography have been made in number of instances including a 1983 study by Murmy Straus Larry Baron of the University of New Hampshire. Ted Bundy, a serial rapist, admitted his use of pornography as a fuel for his murders of 24 young women and children. Bundy is not a select example of this phenomenon, but is more a typical example of the devastation of pornography in the hands of a-dysfunctional individual.

The measure of success of vigorous enforcement and prosecution efforts in a community are only evidenced in changes noted in that community as a result of those efforts. Active enforcement in Oklahoma City began in 1984 and continued into 1989. It has been documented that incidents of reported rape during that period decreased in Oklahoma City while rising in the rest of the state as well as the nation. In 1983, 588 rapes were reported to police and it is estimated that only one third of actual rapes are reported. By the end of 1989, 427 rapes had be reported to police. The 27% reduction in reported rape accounted for 641 women and children who were not raped but would have been had the rape remained unchanged for the five year period.

The rest of State of Oklahoma experienced an increase of reported rape by 16%. Had Oklahoma City's rape incidence increased at the same rate of as the remainder of the state, reported rape in Oklahoma City would have been close to 1,000 more victims between 1984 - 1989. It is also interesting to note that in 1983, nearly half of the rapes in the entire State of Oklahoma occurred in Oklahoma City, while in 1989 only one third of the rapes occurred in the in the same city.

In a proactive policing environment numbers of arrests decrease proportionately to the number of crimes committed. Vice Officers made only 10% as many morals arrests in 1989 as they were required make in 1985 to abate the same nuisances.

Oklahoma City is an example of the benefits of stringent enforcement and prosecution of Adult Oriented Businesses commonly characterized as "victimless crimes". Because of the actions and efforts on the part of citizen"-s groups, District Attorneys and Police Officers working as a team 1,000 potential rape victims are healthy, happy and alive today.

Oklahoma 'kepuried Rapes
1983 - 1989

=Cklahoma County Othr-.f Counties

Reported Rapes

JUn Gusa[

Morals Arrests - OCPD
1985 - 1989

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ADULT ENTERTAINMENT BUSINESSES IN INDIANAPOLIS

AN ANALYSIS

Department of Metropolitan Development
Division of Planning
February, 1584

SUMMARY AND RECOMMENDATIONS

SUMMARY" AND RECOMMENDATIONS

During the past ten years,. Indianapolis has experienced a significant growth in the number and variety of adult entertainment businesses located in its jurisdiction. An adult entertainment business, for the purposes of this study, is an establishment which primarily features sexually stimulating material or performances. As of mid-1983 there were sixty-eight such businesses. operating in this City. They were located at forty-three separate sites.

The proliferation of these businesses heightened the community's awareness of their existence and resulted in numerous requests that the City control their presence_ Beyond the moral objections raised by many citizens, it was also alleged that such businesses had a detrimental effect on property values and contributed to high crime rates where they were located.

The Indianapo.lis Division of Planning undertook this study in July of 1983_ Of the existing adult entertainment sites, the study examined six representative locations (the Study Area) and the presence - or lack thereof - of certain relevant conditions therein. It then compared these sites with six physically similar locations. (the Control Area containing no adult entertainment business. Both groups of sites were compared with the City as a whole.

Because of their importance to the public welfare of the community, the study examined the factors of crime incidence during the period 1978 - 1982 and real estate value appreciation from 1979 - 1982. In support of limited real estate data on a small area level, the City collaborated with Indiana University in a national survey of real estate appraisers to develop a ''best professional opinion" as to the effect of adult entertainment businesses on surrounding real estate values.

As discussed in Appendix III of this report, case law has firmly established the legal and constitutional basis for control of the use of land within their jurisdiction by states and municipalities in order to safeguard "the public health, safety, morals and General welfare of their citizens". The 'public welfare'', in this context, embraces the stabilization of property values and the promotion of desirable home surroundings. On the other hand, case law has also upheld the right of this business sector to operate in the community under the First and Fourteenth Ammendments of the Constitution.

In establishing an empiric base to detcritine whetier Controls were warran-ted in order to ,.irect the location o·f these businesses, analyses of the data showed:

As a result, twice as many houses were placed on the market at substantially lower prices than would be expected had the Study Area's market performance b-een typical for. the period of time in question.

- The great majority of appraisers (75") who responded to a national survey of certified real estate appraisers felt that an adult bookstore -located within one block would have a negative effect on the value of both resi.dentia-1 (80o) and commercial (72%) properties. 50% of these respondents foresaw an immediate, depreciation in excess of 10%.

- At a distance of three blocks, the great majority of respondents (71%) felt that the impact of an adult bookstore fell off sharply so that the impact was. negligible on both residential (640) and commercial (77%). At the same time, it appears that the residual effect of such a use was greater for residential than for commercial properties.

In answer to a survey question regarding the impact of an adult bookstore on property values generally, 50% felt that there would be a substantial-to-moderate negative impact, 30% saw little or no impact, and 20% saw the effect as being dependent on factors such as the predominent values (property and social) existing in the neighborhood, the development standards imposed on the use, and the ability of an existing commercial node to buffer the impact from other uses.

Wdhile the statistics assembled and analyzed in this study should not be construed as proving that adult businesses cause the negative impacts illuminated herein, an obvious variable in each instance of comparison is their presence. Crime rates - particularly those that are sex-related - show substantial deviation from normal rates for this population. Analyses of real estate listings and sales show a negatively abnormal performance of the real estate market in areas where adult entertainment is offered.In this latter case, the best professional judgement available indicates overwhelmingly that adult entertainment businesses - even a relatively passive use such as an adult. bookstore - have a serious. negative effect on their immediate environs.

Consequently, it would seem reasonable and prudent that the City exercise i is zoning power to regulate the location of adult entertainment businesses so. that they operate in areas of the community that, while accessaole tO tihei r patrons, are yet located in districts Lhat are least likely to injure. tie general welfare cf residents.

INTRODUCTION

As is the case in most large cities, Indianapolis has experienced a rapid growth in the number and variety of adult entertainment businesses over the past ten years. As of June, 1983 there were sixty-eight such businesses located singly and in clusters throughout Marion County.

For the purpose of this study, the term "adult entertainment business" is a general term utilized to collectively designate businesses which primarily feature sexually stimulating material and/or performances. These non-exclusively include adult bookstores, adult cabarets, adult drive-in theaters, adult mini motion picture theaters and arcades, adult entertainment arcades and adult service establishments.

These enterprises have posed a particular problem due, in part, to the moral implications attendant upon such businesses in the minds of many members of the community. While this is, perhaps, the view of the majority, case law on the subject has clearly established that the exclusion of such businesses from a community is an infringement of First Amendment rights. The proliferation of such businesses providing various forms of adult entertainment in Marion County has exacerbated this dilemma and given rise to additional charges of negative impacts on neighborhoods in proximity to their location.

Through the use of their zoning power, cities have within the past half century directed the physical growth of communities in order to assure' a harmonious blend of land uses which foster the general welfare of the population. This power has been applied more recently to adult entertainment businesses in many communities and has served as a prime means of controlling possible negative impacts on neighborhoods.

This study was undertaken to examine these alleged negative impacts with the purpose of empirically establishing, to the extent possible, their existence or non-existence as well as their real dimensions in Indianapolis. The possible relationships between these impacts and the land use characteristics of the sites in which they are offered were also examined to ascertain whether certain land use classifications were better suited than others for the location of adult entertainment businesses_

METHODOLOGY

STUDY METHODS

As described below, the study methodology employs the comparison of different land areas in Indianapolis. The two basic areas of comparison are Study Areas and Control Areas. They are distinguished by the existence of adult entertainment establishments within their boundaries (the Study Areas-) or the absence thereof (the Control Areas) .

These two designations are further differentirated as to the genera] purpose or emphasis of the land uses they contain. Those that generally serve the immediately surrounding residential uses are termed "Neighborhood-Related" while those that contain uses meant to serve a broader geographic area are designated "Community-Rel rated",.

STUDY SITE LOCATIONS

At the time of the study's inception, there were a least forty-three possible, distinct sitese in ndianapolis where adult entertainment was offered either singly or in clusters of establishments. For manageability purposes, it was decided to select six of these sites that were representative. In choosing these subject locations (as well as the Control Areas of the study),the determinant characteristics were their zoning mix, population size and the relative age of housing stock_ In each case, adult entertainment was offered during the time span of the study.

The selection process was additionally based on the number of establishments located in a given neighborhood, whether it was residential in nature and therefore neighborhood-related, or contained a significant portion of its land use in regional, commercial uses which made it community-related-The designation "Neighborhood-Related" was applied where a preponderance (75% or more) of the area within 1000 feet of the site was zoned Dl through D12 (residential dwelling district classifications) and the commercial areas were neighborhood-related - principally C3 (a neighborhood commercial classification). Special Use designations were judge'd to be neighborhood-re laced or not on an individual basis. SU1 (church) G SU2 (school), for example, were judged robe generally neighborhood-related.

"Commun i ty-Rel aced" areas were described as areas where a significant proportion (30% or more) of the zoning wit1in the 1000-foot radius was C4 (Communi ,'/-Regional Commercial) or more intens and the Special Uses wit,hin the bcundari as s-jere of a community-'Vide nature. SUb (1-hospi cal) and SU21 (cemetery) were judged, t·er~fore, tc be re l rated to the ccmmun i ty generally.

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"Community-Related" areas were described as areas where a significant proportion (30% or more) of the zoning within the 1000-foot radius was C4 (Community-Regional Commercial) or more intense and the Special Uses within the boundaries were of community-wide nature. Svi; (iiCSpl tal) and SU2 i (Ce!71et r`/) Were judged', t ie;"c'Or-, ~C be related to the Community generally.

Hideaway, 4451)_

Six areas were also selected to serve as control sites for the study. Ti~ese sites were chosen on the basis of their proximate location to the Study Areas (or their location on major thorouchfares in areas physically similar in location and types of development), size of population and zoning characteristics. None contained adult entertainment businesses. Selection was also made so that two of the sites were in predominantly residential areas, two in commercial areas and two in areas that contained a significant mix of residential and regional commercial zoning. These six sites became the Control Areas of the study, (cf. Appendix I.)

AREA ZONING CHARACTERISTICS
CONTROL AREAS

SITE	CHARACTERISTICS			
	Residential	Commercial	Special	Parks
Residential				
1.2300 West 10th St-	D5=82%	C1=40 C3=14%		
2.2500 East 10th St.	D5=800	C2=12°0 C3=80		
Coml./Residential				
3.5420 E. Washington	D5=620 D6=& D8=10%	C3=1°a C4=19%		
4.2600 W. Washington	D5=35% D4=340	C1 - 20 C2=1% C5=130 C7=8%	SU1=30 S U2=3 0	
Commercial				
5.5200 0. Keystone	D2=70 D4=2% D5=150 D7=60	C1=4% C3=90 C5=250 C7=200 CS=2 °	1 1 U=70-0	
6.750 N. Shadeland	D2=30 D3=15% D7=3°s	C4 =49ga C5=100 Cs=S	SU1=150	

CENSUS TRACTS/TRACT CLUSTERS
Study/Control Areas

	1	2	3	4	5	6
Control Areas	3312	3527	3611	3474	3216	3606
	2416	3547	3612	3426	3217	3607
		3548				3608
Study Areas	3310	3526	3411	3414	3607	3216
	3601	3548		3426		3224
		3549		3538		3225
						3226

Sub-Area

The Control Areas and the Study Areas, as described above, formed the smallest geographic group.of the study. These target areas were constituted using the criteria listed in the previous section of this report and data derived for them by aggregating block-level or addressed data within a 1000-foot radius of the area centroid.

GRIME INCIDENCE

The Data Processing Unit of the Indianapolis Peiice Department performed two computer runs of the[r "I'nci dente Files" 1 in August of 1983 at the request of the City Division of Planning. The resultant printouts detailed all reported incidents to which police had been dispatched in the Cc_itrol Areas and the Study Areas during the years 1978, 1979, 1980, 1981 and 1982. Data were assembled from these printouts on a year-by-year, area-by-area basis. They were then grouped by Major Crimes 2 and Sex-Related Crimes. 3

Summary data for the Indianapolis Police District were also assembled for major crimes during the years 1978 through 1982. Unfortunately, sex-related crimes had not- been discreetly assembled for the Police District and study constraints would not allow their tabulation manually.

The purpose of these tabulations was to identify any possible abnormalities that might have occurred in expected frequency and nature of crime between the Indianapolis Police District, the Control Areas which were chosen for their similarity to the Study Areas and the Study Areas themselves in which adult entertainment establishments were in operation.

As was demonstrated in the previous section, the Study Area locations were chosen as being representative of existing adult entertainment si-tes in zoning mix, size of population, age of housi_n9 stock and types of adult entertainment services offered in the area. Excepting the latter, these same criteria were used in the choice of Control sites. Because they were representative, it is possible to compare Control and Study Areas as well as infer findings to other adult entertainment locations in the community.

Based on the summaries of crimes, crime rates were computed f~r each area using 1980 Census data as the population constant. The crime rate statistics portrayed the frequency of crime in each area for each 10,000 of population, and allowed direct comparison of crime impacts between the three areas. The same technique was used to compare the magnitude of sex-related crime in the Control Areas and the Study Areas_

Over the same period of time, the Control Area for this study had 5,170 major crimes committed within its boundaries - the highest number occurring in 1980 when 1,099 crimes were reported. The crime rate for this year was 942.05 in this area. This is compared to the lowest total of 912 and a crime rate of 781.76 for 1978. This represented an absolute difference of 187 total major crimes and a difference of 21% in the crime rate (160.29).

Control Area Major Crimes/Rates* 1978-1982

(Population-11,666)

	1978	1979	1980	1981	1982
Murder	1/0_86	4/3_43	3/2_57	5/4.29	211_71
Rape	8/6.86	12110.29	1511286	8/6.86	13/11_14
Robbery	37/31_72	44/37_72	4-4/37.72	50142_86	36/30_86
Aggravated Assault	19/16_29	35/30_00	29124.86	30/25.72	37131.72
Residence Burglary	151/129_42	229/196.30	262/224_58	272/233.16	198/169_72
Non-Residence Burglary	71/60_86	50/42.86	62/53.15	59150.57	79167.72
Larceny	484/414_88	544/466.31	574/492.03	588/504.03	579/436.31
Vehicle Theft	141/120_86	112196.01	110/94.29	83171.15	90/77.15
Total_	9121781_76	1,0301882.91	1,099/942.05	1,095/938.63	1,034/886.34

Total_ 5,170

Per 10,000 Population

Average: 886_34

During the period 1978 - 1982, 4,657 ma for crimes were committed in the Study Area_ As in the IPD District and the;Control Area, the greatest volume of major crimes (1,103) occurred in 1980 which had a crime rate of 1,291.42. The fewest number of crimes in the study's time frame was 867 in 1978 which represented a differential in the total number of major crimes reported and the rate of crime of -236 and -2/6.32 respectively from 1980

major Crime Rate* 1978-1982

*The numerical instance of Criminal Homicide, Rape, Robbery, Aggravated Assault, Residence Burglary, Non-Residence Burglary, Larceny and Vehicle Theft- Per 10,000 Population.

1978-1982 Annual Average Major Crime Rates; Selected Wrens

*Per 10,000 Population

Sex-Related Crime Rate` 1978-1982

The numerical instance of Rape, Indecent Exposure, Obscene Conduct, Cbild Molestation, Adult Molestation and Commercial Sex- Per 10,000 Population.

1978-1982 Annual Average Sex-Refated Crime Rates: Selected Areas

* Per 10,000 Population

In areas chosen for their similarities otherwise, an oov.ious di Fference lies in the presence of one or more adult entertainment establishments.

CRIME IMPACT 3Y AREA TYPE

IMPACT BY AREA TYPE

As it will be noted, sample size poses a .distinct problem when attempting analysis at the small area level. This is particularly true in the instance of mortgage information. Due to this inadequacy, it is impossible to compare the impact of adult entertainment businesses on residential property value below a certain level of geography.

This is not the case, however, with crime statistics. In this case it is possible to compare sub-areas of the target areas since the comparisons are based on the actual instance of crime in the area (unIike mortgage data where average value is the basis of comparison.)

The sub-area comparisons were based on the nature of the areas in relation to their land use composition as determined by the Comprehensive General Land Use Plan of Marion County. Four sub-areas were of a distinct regional commercial nature, four were residential in nature and four were of a mixed residential-commercial makeup.

The three groupings were compared with each other to determine if crime, from a historical viewpoint, occurred more frequently in areas of one land use configuration than another.

Whether or not cr--ime frequencies, at least in part, are determinf-d by the land use characteristics in which they were committed cannot be definitively answered here. Several striking patterns do emerge from the comparison, however.

CRIME FREQUENCIES BY AREA TYPE

Of the 9,829 major crimes committed in the Control and Study Areas during 1978 - 1982, 27" were perpetrated in regional commercial areas, 31; in mixed commercial-residential areas and 42% in predominantly residential areas. In other words, crime frequencies were 56% higher in residential areas than commercial areas while mixed commercial-residential areas were 370 higher than commercial areas.

The following table displays major crime frequencies for the five year period by type of area, the existence or non-existance of adult entertainment and _specific location.

SEX-RELATED CRIME FREQUENCY

	1978	1979	1980	1981	1982	Tot.	%
District Commercial							
Study Area							
No. Keystone	-	2	2	-	1	5	
E. Washington	-	4	4		7	23	
Control Area							
No. Shadeland				-	2	2	
ao. Keystone	1	3	1	1	1	7	
	1	3	1	1	3	9	
Mixed Res/Coml.						37	110
Study Area							
W'. Washington	5	10	12	8	3	38	
West 16 St_ -	1	4	8	9	10	32	
		1	20	17	13	70	
Control Area							
W. Washington	3	8	11	8	5	35	
E. Washington	4	10	3	8	4	29	
	7			16	9	64	
Residential						134	38%
Study Area							
East 10th St.	12	18	14	17	8	69	
East 38th St.	1	5	4	10	11	31	
	13	23	18	27	19	100	
Control Area							
East 10th St.	11	13	7	7	11	49	
West 10th St.	4	5	6	5	9	29	
	15	1	13	12	20	79	
						178	51%.

These trends_ are not easily explained on the basis that 'tiihere there are more People there will be more crime.'' Community-related commercial areas draw clientele from a broad geographic area and can be expected to attract many times the residential population of the immediately surrounding area. This is the purpose of the district commercial zonina designation. Further, the transient nature of this population could be considered to contribute to the incidence of certain crimes_

Sex-Related Crimes / 1978-1982, Selected Areas

REAL ESTATE (PACT

REAL ESTATE IMPACT

REAL ESTATE IMPACTS

This study also undertook the quantification of possible effects of the proximity of adult entertainment businesses on the value of residential properties within a one thousand foot radius of their location

In examining the potential impacts, three sources of residential property values were investigated; i.e., Indianapolis Residential Multiple Listing Summaries (MLS) of the Metropolitan Indianapolis Board of Realtors, the 198.0 Census (tract and block occupied, single-unit housing valuation data); and, annual lending institution statements under the Federal Home Mortgage Disclosure Act (MDA).

Summary data from the MLS were available over the period 1979 - 1982, while actual mortgage values reported by lending institutions were available for the period 1977 - 1982. The U.S. Bureau of the Census provides homeowner estimates of home value at the time of the 1980 Census (April 1, 1980).

The data available from these.three sources differ in other ways, The 1980 Census, while relying on homeowner estimates of the worth of property, is a 100 percent survey and is described down to the block level. Home Mortgage Disclosure Act data provide a record of actual mortgages processed and reported by local lenders (only a portion of the total volume). The lowest geographic level at which this information is available is the Census Tract and, even at this level; at times poses a difficulty with the available sample size. Multiple Listing Summaries generally reflect an estimate of worth based on current market conditions for the area and can be assembled at virtually any geographic level since they are listed by address. As in the case of the Mortgage Disclosure Act statements, however, there are at times problems with the sufficiency of the sample size at the small area level.

Each of the data sets presents some weaknesses. Although the 1980 Census only reflects an estimate of housing value at one point in time, it has the advantage of being a 100 percent survey of occupied, single-unit housing. The other two sources offer time series data over periods of four and five years_ They have the liability, however,-of sometimes lacking a sufficient sample size at the small area level in any given year to allow an acceptable level of statistical confidence.

Due to these characteristics of the data, certain modifications 4ere made in the study's criginal intent.. Rather than doing annual comparisons of housing value, 1979 was c`Csen as the comparison ;:ear and the 1980 Census data set chosen due to the ability to sUrin.marize iL `.t the county, tract and bicck ievei.

This finding is borne out by an examination of actual mortgages executed within the affected census tracts of the Control and Study Areas, as well as real estate listings at the 1000-foot level.

Using mortgage and real estate listing data we find that, while consistent with the Censu's data findings, the disparities were more acute. Average mortgages at the tract level were $27,872 vs. $21,605 in the Control and Study Area tract clusters respectively. At the 1000-foot level, real estate listing values in the Control Areas *dropped* to $16,038 while Study Area listings increased by approximately 10 percent over the average mortgage value in the tract clusters of the Study Area.

It would appear that, while property values at the tract cluster level are appreciably higher surrounding the Control Areas, housing within the Study Areas themselves is, on the average, of distinctly higher value than housing stock in the Control Areas.

TIME SERIES ANALYSIS RESULTS

During the period 1979 through 1982, mortgages processed in the Control Areas of the study showed an average annual appreciation rate of +24.7 percent. During the same time frame, mortgages appreciated at an average annual rate of only +8.7 percent in the Study Area. In comparison, residential mortgages in Center Township appreciated at a +16.7 percent average annual rate for the period.

AVERAGE MORTGAGE VALUES
1979 - 1982

	1979	1980	1981	1982	1979-1982 Change
Control Area]	516,038	$21,687	$22,650	528,420	+ 770
Study Area]	23,823	27,432	30,964	30,090	+ 26%
Center Township'-	16,100	17,178	18,903	25,099	56i

I. Source: Indianapolis Multiple Listings r^or Residential Prop.
2.Source:dome Mortaace Disclosure Act Statements.

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Center Township[2]	16,100	17,178	18,903	25,099	561

1. Sburce:Indianapolis Multiple Listings for Residential Prop.
2-curce:fome Mortgage Disclosure Act Statements.

The average value of mortgages from 1979 to 1982 in Center Township increased by 56 percent while Control Area values increased by 77 percent and the Study Area by 26 percent.

RESIDENTIAL REAL ESTATE ACTIVITY
1979 - 1982

	1979	1980	1981	1982	% Change
Control Area Listings 1	29	23	15	15	- 520
Study Area Listings 1	28	28	26	29	+ 4%
Center-Township Mortgages 2	898	635	377	182	- 80%

1. Source: Indpls. Multiple Listings, Residential Properties
2. Source: Home Mortgage Disclosure Act Statements.

Both Center Township and the Control Area followed general market trends in the volume of real estate activity, falling by 80 percent and 52 percent, respectively, from 1979 to 1982. Once again, the Study Area performed in an atypical fashion, actually registering a slight increase in volume (4 percent) over the same period.

CONCLUSIONS

While bearing in mind the above-mentioned difficulties in certain cases with the sample size at the sub-area level, the following observations may be made on analysis of the data.

A comparison of residential real estate listings indicates that the areas chosen in this study which have adult entertainment establishments within their boundaries have, on the average, a residential housing base of substantially higher value than that located in the areas chosen as control sites.

Despite the higher value of housing stock in the Study Areas, property values appreciated at only one-half the rate of the Control Area and at one-third the rate of Center Township as - whole.

Another ancraly apparent in analysis of real estate activity within the three areas is tihat market forces w-Ftill in the Study Are-as were present which, cause(] real estate activ!t'y within !ts boundaries t0 run con, plet_ly Contras'! n County , Townsii!P and Control Are.. trcnd~.

AP°RAISE,R SURVEY

PROFESSIONAL APPRAISAL OF IMPACTS

Because of the Great number of variables that have the potential to cause a particular real estate market to perfbrm erratically at a small area level, it was decided to solicit a "best available professional opinion" from real estate appraisers regarding the market effect of adult entertainment businesses on proximate land values.

The Indianapolis Division of Planning approached the Indiana University School of Business' Division of Research for assistance in polling the real estate appraisal community on the subject. The University proposed that the survey be national in scope and offered to design and pretest the survey instrument. Dr. Jeffrey Fisher of the University's School of Real Estate collaborated in drafting the instrument. and conducted the initial test at a workshop in early September. Analysis of this pretest indicated the need for minor adjustments to the form.

In its final format, the instrument (cf. Appendix 11) posited a hypothetical middle income, residential neighborhood in which an adult bookstore was about to locate.. Respondents were asked to numerically rate the impact of this business on both residential and commercial property values within one block and three blocks of the store. They were also asked to rate a number of potential other uses as to whether they would increase or decrease property values_ Finally, survey participants were asked 'to express what they generally felt the effect of adult bookstores was on property values.

The survey sample was drawn at two levels. Using the membership of the American Institute of Real Estate Appraisers as the survey universe, a twenty percent random sample of members was constructed for the entire nation. In addition, MAI (Member Appraisers InstitUte) members who practiced in 22 Metropolitan Statistical Areas' (MSAs - as defined by the U. S_ Bureau of the Census) of a size similar to Indianapolis were surveyed at the one hundred percent level_

In January of 1984, 1527 questionnaries were mailed. As of February 22, SOT (33%) had been returned. These returns were split evenly between the 20 (249 returns) and 100% (258 returns) samples. In the national sample the rate of return by geographic region 2 was ial r ly consistent: East,41 - 27%; Nor I Ccntr al , 56 - 28'; South, 89 - 25%; and, 'lest, 63 - -)!:;.Return rates from the 100% MSA survey varied frcm 14% from Newark, N. J. to 62% from Cleveland, OH.

FIAT I O;IAL SURVEY OF APPRAISERS

I mpact of Adult Bookstores On Property Values

RESIDENTIAL PROPERTY AT ONE BLOCK

| | | |

Respondents were also asked to evaluate the impact on residential property within one block of a number of alternate uses for the hypothetical site described in the survey.

Of the alternate uses proposed a clear majority felt that a medical office or a branch library would increase the value of surroundina residential property. A store-front church, welfare office, tavern, record store, ice cream parlor or video-game parlor were generally felt to neither improve nor decrease residential property values significantly. On the other hand, a substantial majority felt that a pool hall, drug rehabilitation center or a disco would decrease property values - although not as overwhelmingly as an adult bookstore.

NATIONAL SURVEY OF APPRAISERS
Impact On Residential Properties

Land Use	Value				
	Higher			Lower	
	Much	Some	Same	Some	Much
Store-front church	5%	20%	58%	16%	10
Pool hall	1%	8%	45%-	38%	8%
Welfare office	-	12%	46%	33%	8%
Neighborhood tavern	2%	18%	45%	32%	4%
Record store	8%	27	61%	5%	
Medical office	24%	38%	35%	2%	
Drug rehab Center	-	7%	35%	42%	17%
Ice cream parlor	15.a,0	30%	53%d	3%0	
Video-game parlor	1.0	18%	50%	27%	Si
Disco	-	11%	42%	35%	12 0a
Branch library	=,0	3L%	38,0,,	4,0/,	

NATIONAL SURVEY OF APPRAiSEBJ

Impact Of Adult Bookstores on

Property Values

CONTINUE ACT

MPACT OF ADULT BOOKSTORES ON RESIDENTIAL PROPERTY AT ONE BLOCK

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Decrease

No Decrease

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No Decrease

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In response to a question asking appraisers to rate the impact of a number of different commercial uses at the same location on residential properties within one block, the majority felt that a medical office or a branch library would have a favorable impact while a welfare office or drug rehabilitation center would have an undesireable impact. The majority felt that a store-front church, pool hall; neighborhood tavern, record store, ice cream parlor or a video-game parlor would not have much of an impact and were about equally split as to whether the 6f·fect of a disco would be neutral or negative_

MSA SURVEY OF APPRAISERS
Impact On Residential Properties

Land Use	Value				
	Hiaher			Lower	
	Much	Some	Same	Some	Much
Store-front church	4%	24%	52%	20%	1%
Pool hall	1%	12%	480	33-5	6%
Welfare office	1%	13%	41%	37%	7%
Neighborhood tavern	-	17%	52%	25%	6%
Record store	6%	29%	54%	10%	-
Medical office	20%	37%	39%	4%	-
Drug rehab center	-	6%	39%	40%	15%
Ice cream parlor	14%	29%	52%	5%	-
Video-game parlor	1%	17%	51%	28%	3%
Disco	-	13%	44%	33%	10%
8 ranch library	24%	37%	34%	5%	1%

EFFECT OF ADULT BOOKESTORES ON PROPERTY VALUE

MSA SURVEY OF APPRAISERS

Effect

Little

Substantial

Contingent

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EFF'ECT OF ADULT SOOKESTORES *ON PROPERTY* VALUE
MSA SURVEY OF *APPRAISERS*

Effect

Litt]

Substantial

Contingent

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SUMMARY OF FINDINGS

The great majority of appraisers (750) who responded to the national survey of certified real estate appraisers felt that an adult bookstore located within one block would have a negative effect on the value of both residential (80%) and commercial (72%) properties. 50% of these respondents foresaw an immediate depreciation in excess of 100.

At a distance of three blocks,. the great majority of respondents (710) felt that the impact was negligible on both residential (b4%) and commercial (77%) properties_ Even SO, it would appear that this residual effect of such a use was greater for residential than for commercial premises.

In answer to a survey question regarding the impact of an adult bookstore on property values generally, 50% felt that there would be a substantial-to-moderate negative impact, 30.% saw little of no impact, and 20% saw the effect as being dependent on factors such as the predominant values (property and social) existing in the neighborhood, the development standards imposed on the use, and the ability of an existing commercial node to buffer the impact from other uses.

The results of the 20% national sample and the 100% survey of Metropolitan Statistical Areas were virtually identical. The one significant variation that did occur was in the response to the question asked as to the effect of adult bookstores on property values generally_ Respondents in the MSA survey placed more emphasis (32% versus 20 %) on conditional factors at the site.

APPENDIX I

Area Maps

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HIGH SCHOOL
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STUDY AREA LAND USE
2'101 West Washington St_
Residential Character
District Commercial Character
Adult Entertainment Site

S. OR.

6116-6122 East Washington St.

Residential Character

District Commercial Character

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CONTROL AREA LAND USE

750 North Shadeland Ave_

Residential Character

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APPENDIX II

Appraiser Survey

WILLIAM H. HUDNUT, III
MAYOR

DAVID E CARLEY
DIRECTOR

DEPARTMENT OF METROPOLITAN DEVELOPMENT

January 20, 1984

Dear MAI Member:

The City of Indianapolis, Indiana is currently in the process of preparing a new local ordinance that will regulate the locati.on of adult entertainment businesses in relation to residential neighborhoods in our community.

In an effort to provide a basis for the proposed legislation that is equitable and legally defensible, I would like to ask your help in establishing a "best professional opinion" on the matter_ As a real estate professional, the opionions you share with us on the enclosed survey forms would be very valuable to us in the development of a positive legi s.lati ve approach to this difficult- local issue.

Thank you very much for your assistance.

cc. L_ Carroll

550 „ITY-COUNTY3UILDING - INDIANAPOLIS, .ND!ANA 4520 235'''· 41

5) Suppose the available commercial building is used for something other than an adult bookstore. For each of the following potential uses, would the average value of residential. property within one block of the new business

	much higher	
B	somewhat higher	than if an
C	about the same	adult bookstore
D	somewhat lower	occupied the site.
E	much lower	

In the space provided, write the appropriate letter for each potential use-

Store-front church	Drug rehabilitation center
Pool hall	Ice cream parlor
Welfare office	Video-game parlor
Neighborhood tavern	Disco
Record store	Branch library
Medical office	

b) In general, to what degree do-you feel adult bookstores affect property values?

7) Why do you feel this way?

8) Where do you practice?

City State

Your name

(If you prefer not to give your name, please check here)

Thank you for your cooperation. Please return this questionnaire -_! e postage paid envelope provided for your convenience.

APPENDIX III

Land Use Control of Adult Entertainment

APPENDIX. III

LAND USE CONTROL OF ADULT ENTERTAINMENT

LEGAL -BASIS

Zoning has traditionally been defined as a process by which a municipality legally control's the use which may be made of property and the physical configuration of development upon tracts of land within its jurisdiction. This is accomplished by means of zoning ordinances which are locally adopted to divide the land into different districts permitting only certain uses within each district for the protection of public safety, welfare, health and morality. [1]

Zoning regulations not only regulate the use to which buildings or property may be put within designated districts, but also the purpose or object of the use beyond the mere conditions or circumstances of the use-[2]

In a 1920 landmark decision, the New York Court of Appeals upheld New York City's comprehensive zoning legislation,[3] and reaffirmed this legislation as a proper exercise of the city's police powers-.

In 1926, the practice of comprehensive zoning received substantial support when the United States Department of Commerce promulgated the-- Standard State Zoning Enabling Act. This Act became the model for most of the early zoning enabling legislation in the country.

While the courts have reaffirmed th-at municipalities are properly exercising their police powers through zoning regulation, it is generally held that they have no inherent power to zone except (as is the case with the police power itself) as such power is delegated to them by the state legislature through statutory enactment. The right of state legislatures to delegate comprehensive zoning power to municipalities, on the other hand, is uniformly recognized by the courts.[4]

Because municipalities in the state had to be enabled to exercise zoning powers within their jurisdictions, the Indiana State Legi'slacure, by means of enabling legislation, delegated this power to local units of government.[5]

Control of the use of private land inevitably raised a number of constitutional questions_ in the landmark '1926 case of Euclid v. Amber Realty Co-0 the United States Supreme Court upheld the =y Of EucIid, Ohio~s mun;_+pal zoning ordinance which had been claimed tto invcIve an unconstitut;onal deprivation of propery by dec.ding that comprehensive zon;nc ordinances are a proper

attacks grounded in the First and Fourteenth Amendments to the Constitution of the United States, the Court-sustained the ordinance on the dual bases that:

1. The ordinance was a reasonable response to demonstrated adverse land-use and property value effects associated with sexual ly-oriented enterprises; and

2. the ordinance silenced no message or expression but merely placed geographic restrictions upon where such. expression could occur.

While an exhaustive analysis of the Young decision is beyond the scope of this discussion, the following generalized principles may be gleaned from the plurality, concurring and dissenting opinions of the Justices. First, hostility to constitutionally protected speech is an impermissible motive. The more apparent and rational the relationship of the adult use restrictions to recognized zoning objectives, such as the preservation of neighborhoods and the grouping of compatible uses, the greater the likelihood that the restrictions will be upheld.

Second, even a properly motivated ordinance will be invalidated if it unduly burdens first amendment rights.. For example, an ordinance imposing locational restrictions that are so severe.. as to result in an inability to accommodate the present or anticipated number of adult businesses in a municipality will certainly be struck-down- The Young court repeatedly moored its decision upholding the Detroit ordinance upon the finding that numerous sites complying with the zoning requirements were available to adult businesses and that the market for sexually-explicit fare, viewed as an entity, was therefore ''essentially unrestrained".

Third, ordinances which are so vague in wording and definitions that a non-pornographic entrepreneur is unclear whether he falls within its proscriptions may be violative of due process. A vague ordinance may operate to hinder free speech through use of language so uncertain or generalized as to allow the inclusion of protected speech within its prohibitions or leave an individual or law enforcement officers with no specific guidance as to the nature of the acts subject to punishment.

Finally, an ordinance which authorizes the exercise of broad discretionary power by administrative officials to determine which adult business will be allowed to operate, especially if the exercise of such discretion is not grounded en objective, ascertainable Criteria, will probably be disapproved as ccn-Lr-;---,/ t0 the preCep!- that, Iin the first amendment areas "OOVernment may regulate only 'with narrcw specificity".

FOOTNOTES

1. Cf Smith v. Col l ison, 1 19 Cap App 180, 6 P2d (1931) ; Devaney v. B d. o f Zonina ADDea s, 132 Conn. 537, 45 Ad2 828 (1946); Toulouse v. Bd. of Zonina Adiustment, 147 Me 387, 87 Ad2 670 (1952).

2_ Cf American Sian Co. V Fowler, 276 SW2d 651 (Ky 1955)-

3_ Cf Lincoln Trust Co_ v. Williams Blda. Coro., 229 NY 313, 128 NE 209 (1920).

4. Jonas v. Fleming Town Bd_ & Zoning Bd. of Appeals, 51 Ad.2d 473, 382 NYS 2d 394 (4th Dep't 1976).

5. I.C. 36-7-4.

6. Euclid v_ Ambler Realty Co., 272 U.S. 365, 47 S Ct 114, 71 L Ed 303 192

7. Cf Zahn v. Bd_ of Pub. Works, 274 U_S_ 325, 47 S Ct 574, 71 L Ed 1074 (1927; and 6arieb v. Fox, 274 U.S. 603, 47 S. Ct. 675, 71 L Ed 1228 (1927) .

8. CF sup ct in Nectow v. Cambridge (U.S. 183, 48 S_ Ct. 447, 72 L Ed 842 (19228]

9. Cf Scrutt-on v_ County of Sacramento, 275, Cal App 2nd, 79 Cal Rptr 72 (i969); Troiano v_ Zoning Comm'n of Town of No. Branford, 155 Conn 265) 231 A2d 53 (1967) ; and, Trust Co of Chicago v. City of Chicago, 408 Ill 91, 96 NE 2nd 499 1951 .

10.Cf State v. Bessent, 27 Wisc. 2d 537, 135 NW 2d 317 (1965)-

11.Ibid., and J.D- Construction Co. v. Bd. of Adj.., 119 NJ Super 140, 290 A2d 452 (1972).

12. Ibid., and Fischer v_ Bedminster Twp_ 11 NJ 194, 93 A2d 378 (1952) .

13-For a more complete discussion of this subject, see Mathew Bender, Book V, Chapter III, sections 11.01,11.02 and 11.03.

14.Cf 421 US 50, 96 S Ct L440, 49 L Ed 2d 310, reh denied 97 S Ct 191 (1976), rev'd 518 F2d 1014 (6th Cir 1975).

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l N"THE CITY Of l05 ANGELES

DEPARTNTcN T OF CITY PLANNING

E IG77

CITY PLAN CASE NO. 26475-
Council File No. 74-452:_--S."

STUDY OF THE EFFECTS OF. THE CONCENTRATION' OF ADULT EiNTERTAINVENT ESTABLISHMENTS IN THE CITY OF LOS ANGELES

Prepared for:

Planning Committee of
the Los Angeles City Council

Prepared by:.

Los Ar?g= ¡ es City Planning Departmen

June. 1977

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SUMMARY AND RECOMMENDATIONS

A. Types of Ordinances to Control "Adult Entertainment" Uses

Two methods of regulating adult entertainment business via land use regulations have developed in the United.States. Thev are: 1) the concentration of such uses in a single area of the city as in Boston; and. 2) the dispersal of such uses, as in the City of Detroit. The Detroit 'ordinance has been challenged and upheld by the U.S.` Supreme Court (young vs. American Mini-Theaters, 96 S. Ct. 771; 1976).

Effect of "Adult Entertainr;ent" Businesses on the Community

There has been some indication that the concentration *of* "adult entertainment" uses results 1ni increased crime and greater police enforcement problems. In the City of Los Angeles, the Los Angeles Police Department has sound a link between the concentration of such businesses and increased crime in the Hollywood community. (The major portion of a Police Department report on this subject is herein contained.)- While several major cities have ad-opted ordinances similar to the Detroit ordinance, no other major city has, i.c our knowledge, adopted a Boston-type ordinance.'

Testimony received at two public meetings on this subject has revealed that there is serious public concern over the proliferation of adult entertainment businesses-particularly in the Hollywood area. Citizens have testified of being afraid to walk the streets; that some businesses have left the area or have modified t-heir hours *of* operation; and that they- are fearful of children being confronted by unsavory individuals or of :being exposed to sexually explicit naterial. 'A representative of an adult theater chain testified in support of the manner in which this business was run and in support of the type of clientele which attend the theaters. The Planning Department staff is of the opinion that the degree of deleterious effects of adult entertainment businesses depend largely on the particular type of business- and *on how* any such business is operated.

A mail survey questionnaire conducted by the Planning Department has tended to emphasize general public concern over the proliferation of sex-oriented businesses and has indicated further, that appraisers, realtors and representatives. of lending institutions are generally of the opinion that concentration of adult entertainment businesses exerts a negative economic impact on both business and residential properties.. They feel that the degree of negative impact depends upon the degree of concentration and on the specific type of adult entertainment business.

D. Recommendations

1. If the City Council should find it advisable in light of the findings of this report to recommend the preparation of an ordinance to control adult entertainment businesses, such an ordinance should be of a dispersal type rather than a concentration type. (To build a planning policy basis for such regulation, the Council may also wish the Planning Department to consider the development of appropriate policies for incorporation within the Citywide Plan.)

2. If a dispersal type ordinance is recommended by the City Council, the Planning Department: is of the opinion that such an ordinance should be designed for specific application in the City of Los Angeles, rather than the direct adoption of the Detroit model. If such a dispersal type ordinance is recommended for enactment locally; it should consider:

   a_ distance requirements between adult entertainment establishments.. The Planning Department recommends that a separation between establishments greater than 1,000 feet is necessary and desirable.

   b. distance requirements separating adult entertainment establishments *from* churches, schools, parks, and the like. The Planning Department suggests that a separation of at least 500 feet is necessary. A similar distance separating adult entertainment uses from single-family residential development should also be considered.

   the possibility of enacting additional provisions to regulate signs and simil-ar forms of advertising should also be considered.

3. If the City Council should find it advisable to recommend all of the types of "adult entertainment" businesses included in this study, it should consider whether all such uses should be in the same class and subject to the same regulations.

4. Should the City Council recommend- the preparation of a zoning ordinance to regulate adult entertainment businesses, other sections of the Municipal Code relating to the subject, including police permit requirements, should also be amended in order to be consistent with the zoning regulations and to facilitate the administration and enforcement *of* such regulations..

5. The Planning Department recommends that it be instructed to review existing zoning-.reguIations applying to the C4 zone which currently prohibits "strip tease shows" and that the 'Zoning Administrator, the-ouah interpretation, consider expanding the list of prohibited uses in said zone to include additional adult entertainment uses as herein indentified.

To assist in the regulation of "adult entertainment" businesses, the City should continue to vigorously enforce all existing provisidns, of th-e Municipal Code relating to the subject; including Zoning regulations.

7. Responses to questionnaires of the City Planning Department have indicated that:

Apprai.sers, realtors, lenders. etc. believe that the concentration of adult entertainment establishments has had adverse economic effects on both businesses and residential property in respect to market value; rental value and rentabilityfsaleabi?ity; that the adverse ecanomi,c effects diminish with distance but that the effects extend even beyond a 1000-foot radius; ' and that the effects are related to the degree of concentration and to the specific type of adult entertainment business,

Businessmen, residents, etc. believe that the concentration. *of* adult entertainment establishments has adverse effects on both the quality *of* life. and on business and property values. Among the adverse" business effects cited are: difficulty in retaining and attr-acting customers to non- "adult entertainment" businesses; difficulty in recruiting-employees; and difficulty in renting office space and keeping desirable tenants. Among the adverse effects on the quality of life cited are increased crime; the effects on children; neighborhood appearance, litter and graffiti.

8. A review of the percentage changes in the assessed value of commercial and residential property between -970 and 1575 for the study areas containing concentratiens of adult entertainment businesses have indicated that:

The three study areas in Hollywood containing such businesses have increased less than the Hollywood Community, and less than t-he City as a whole. Two of the three study areas, in Hollywood have increased less than their corresponding "control areas"; however; one such study area in"creased by a greater amount than its corresponding control area.

The study area in Studio City has increased by a greater percentage than its corresponding- "control area"- by a slightly lower percentage than the Sherman: Oaks Studio City Community; and by a considerably greater percentage than the entire city.

The study area in North Hollywood has increased by a considerably lower percentage than its.corresponding control area, the North Hollywood Community and the City as a whole.

On the basis of the foregoing it cannot be concluded that adult entertainment businesses have directly influenced changes in the assessed value of commercial and residential properties in the areas analyzed.

There are various existing laws and regulat.ions (other than zoning) available. to effect proper regulation of adult entertainment businesses.

PURPOSE AND SCOPE

On January 12, 1977; the Los Angeles City Council instructed this Department, with the assistance of other City. agencies, to conduct a comprehensive study, to determine whether the concentration of so-called "adult entertainment"" establishments. has a blighting-. or. degrading effect on nea-by properties and/or neighborhoods. The term "adult entertainment" is a general term utilized by the Planning staff to collectively refer to businesses which primary-ly engage in the sale of material depicting sex or in providing certain sexual services. These would include the. following: adult bookstores; X-rated theaters; adult motels with X-rated entertain-ment; massage parlors; sexual therapy establishments (other than those operated by a licensed psychologist, psychiatrist; etc.); and nude, topless or bottomless bars and restaurants.

During the past few years, there has been increasing concern in Los Angeles over the prali_feration of. such sexually oriented businesses. The derivation of such concern is. varied--religious, moral, sociological and.econom-ic- The posJti"ons advocated by the public range from a "laissez. faire" attitude to outright moral indignation and demo-nd for prohibition.

It should be noted at this time that the topic of newsracks, was not dealt with in this study. The primary reason for not considering newsracks is that,-in addition to the absence of a specific Council request for this Department to deal with that subject; this matter has been and conti:nu·es to be a topic of litigation in our -state courts. Additionally, other public agencies, including the City Attorney, Bureau of_Street Maintenance, and Building and Safety; are presently pursuing assignments regarding newsracks, and it is premature to determine whether newsracks could feasibly be studied as "adult entertainment" businesses, from a practical or constitutional standpoint.

In giving the Planning Department this assignment, the City Council essentially called for a fact-finding process to determine whether adult entertainment establishments, where they exis ☛ n concentration; cause blight and deterioration. When this question has been posed to the public, there have frequently been anguished retorts to the effect that "the answer is so obvious it is ridiculous to even ask the questio-n," and "what is the City waiting for before it takes action to eliminate these scourges of society?"

On the, other side of the spectrum, certain parties who are against the adoption of my regulations regarding "adult entertainment" question the legitimacy of the government 's int2rEst in the subject; and they have noted that magazines as "scurrilous" as those sold in adult bookstores are also available in the markets and drugstores where the likelihood of perusal by youngsters is obviouslJ greater than within the confines of an adult bookstore (where mo- p-crson under 18 years of a.ge is al 1 owed}

METHODS CURRENTLY USED TO REGULATE "ADULT ENTERTAINMENT" BUSINESSES

A. APPROACHES TO THE REGULATION OF ADULT ENTERTAINMENT BY LAND USE REGULATION

Two primary methods of regulating "adult entertainment" businesses via land u·se regulations have developed in the United States: the concentration approach;-as evidenced by the "Comb a-t Zone" in Boston, and the dispersal- approach, initially developed by.Detroit.

1. Boston Approach

In Boston the "Combat Zone" was officially established by designation of an overlay Adult Entertainment District in November of :974. The purpose of the overla- district was to create an area in which additional special uses would be permitted in designated Commercial Zones which were not permitted in these zones on a citywide basis.

The "Combat Zone" had existed unofficially for many years in Boston, as the area in question contained a majority of the "adult entertainment" facilities in the City- The ordinance was adopted in response to concern over the spreading of such uses to neighborhoods w,h2re they were deemed to be inappropriate. Other considerations included facilitating the policing of such activities and allowing those per.s-ons who do not care to be subjected to such businesses to- avoid them.

Under the Boston ordinance, adult bookstores and "commercial entertainment businesses" are considered conditional or forbiddzn uses except in the Business Entertainment District. Existing "-adult entertainment" *businesses* are permitted to continue as non-conforming uses, but, if discontinued for a period. of two years_ may not bo re-established. Establishment of uses in areas of the city other than the "Combat Zone" requires a public hearing before the Zoning Board of Appeals.

The effectiveness and appropriateness of the Boston app-roach is a subject of controversy. There has been some indication that it has resulted in an increase in crime within the district and that there is an increased vacancy rate in the surrounding office- bu7·l dings. Due to complaints of serious criminal incidents, Taw enforcement activities have been increased and a numbLr of liquor licenses in the area have been revaked. Since the "Combat Zone" and most of the surrounding area are part of various redevelopment projects, however; the change in character of the area cannot be attributed solely to the existence o€ "adult entertainment" businesses.

TABLE · I

Number of Zoning Ordinances Regulating Specified
Adult ;Entertainmen.t · Uses

(11 Ordinaices Reviewed-! ri ot adopted}.

USE	XD_ of C M&S. Re WOOO :
Adult 7heaters-	
Adult Bookstores	9
Mini-theaters and coin operated faciAties	5
Massage Parlors (includes "physical culture establishments)	
Modeling Studios/Bady Painting	2
Pool/BiTliard Halls	2
Topless Entertainment	2
NewsraCks	
Adult Motels	G

(Numbers' have inOrpoxa-te0whare appropriatl-uses. entitled "physical culture e5ta4lishgents" and · "lusiRessea to · which-pdrsons under ja· could not be adjlitteV.)

Exterior controls affect the aspects 6f- adult businesses which are most offensive to some citizens. The basis for such controls stems from the recognition of privacy as a constitutional riaht and ~he right to be "left alone" as a part of that right. (See Paris Adult Theatre I v Slayton, 93 S.Ct. 2628 1973.)

Table II, following,-provides a comparison and description of ordinances from various cities which are regulating "adult entertainment" businesses by dispersal.

The theory that. there should be no first amendment bar to sign. controls is discussed by Charles Rembar, in "Obscenity--Forget. It", Atlantic Month, May 1977, pgs. 37-41,

ORDINANCES *REGULATING* ADULT ENTERTAINMENT USES BY DISPERSAL

USES CONTROLLED	DISTANCE FROM- RESIDENTIAL	DISTANCE FROM CHURCHES SCHOOLS	CONCEN- TRATION	AMORTI-- ZATION	APPEALS	OTHER
Adult thexiters				yes-90 days		Allow only in BM, CIA,'·& Zones; terminate such uses in 41.1 other zones
Entertainment to which persons under 18 could not be lawfully admitted	500'					
Adult shows or theaters'	1.000'	1.000'				
Adult bookstores, adult movies and mini-motion picture tlieaters, pool or billiard *halls*			1./1000'			
Adult bookstQrpp, adult motion picture theater, mini-motion picture theators, cabarets, hotels, motels, 'pawilshops, pool: or *billiard* halls, public lodging houses, secondhand atones, 0hoeshine parlors, taxi-dance halls	500'		2/x000'		waiver by. petition of 51% of persons. ownlng/. residing or; doing business within 500.'	ordinance.prohibiting promo- *tion of pornog- raphy*

ORDINANCES REGULATING ADULT ENTERTAINMENT
USES BY DISPERSAL

USES CONTROLLED	DISTANCE FROM RESIDENTIAL	DISTANCE FROM CHURCHES SCHOOLS	CONCEN-TRATION	AMORTI-ZATION	APPEALS PROCEDURE	OTHER CONTROLS
Adult theaters				yes-90 days		Allow only in BM, CM, & Zones; terminate such uses in ell other zones
Entertainment to which persons under 18 could not be lawfully admitted	500'					
Adult shows or theaters	1000	1000'				
Adult bookstores, adult movies and mini--motion picture theaters, pool or billiard *halls*			1/1000'			
Adult bookstQros., adult motion; picture theater, mini-motion picture theaters, cabarets, hotels, motels, pawTIshops, pool: or *billiard* halls, public lodging houses, secondhand storepi, s.hoeahine parlors,'taxi-dance halls	500'		2/1000'		*Waiver by,, 51.% of per-sons. owning/* residing or doing busi--nese withtn 50Q.	*hibiting promo tion of pornog-rophy*

ii (cont'd.)

USES CONTROLLED	DISTANCE FROM RESIDENTIAL	DISTANCE FROM CHURCHES SCHOOLS	CONCEN-- TRATION	AMORTI-RATION	APPEALS PROCEDURES	OTHER CONTROLS
Adult motion picture theaters,,min~-theater, adult bookstores	500'		2/1000'		Waiver of 500' from residential with petitions signed by 51% of parties. within 500'	Requires public hearing prior to grant of permit 1aicensing. of mapsage parlors no treatment of a person of the opposite..seu

Z. Police Permit Requirements

Section 103 of the. LasAngeles Municipal Cade~ provides fur the regulation and control of a variety" of businesses by permits issued by the Board of Oolice- Commisaioiers. Permittees are subject to such additional requir. ements as may. be imposed by law or by.. the rules and reguNtions of the Board.

Those businesses for which the City of Los Angeles- reou.ires- a.po-lice permit and which may also be or? ented towards adult entertainment include:

Arcades (Sec. 103.101)

Bath and~Massage (103.-205)

Cafe Entertainment and Shows (10i.102'

Dancing Academies,. Clubs, Halls (KV105, 106.. 106.1)

Motion Picture Shows.(103.108):

In some, cases, the specific regulations applied to c. business, if enforced; preclude adult entertainment activities as a part: of, the operation of the- buyi nesp, with revocatian of Vh-e operating. permit an aTailable remedy for violation of the regulation.

The most detailed regulations are applied to ca?e entertainment__(Sec. 103.1.02 LAMC) and are summarized as follows:

a. Businesses Su4-ject to the Regulations

Operation of cafe entertainment or show for profit, and. the operation of public places where food ar beverages are : sold ox gaiven- away and cafe entertainment, shcos, still or motion. pictures are firn i shed, allowed or shown, The. rigulat i.on does not apply to bands or orchestras gravi-dinq muvic for dancing.

b. Cafe Entertainment Defined-

"Evejy form of live entertainment, KVc sol o band or orcnastra, act, play, bu-r-lesque show,- revue. parjtomQe,, scenes, song ar 6anoe a.ct". TH poesence o 7 any -waitress, hostess, female attendart' or feral patron or guest attired in a costume of clothing that expose_ to put l is view any- portion of e i they br oast t or bedgw the areQTa i s included w1th the purview o f the crdinance.

(3) re4ui cement o a pub is hearing prior to issuance of a permit for the operation .of, a_ massage business.

Operating requirements.for massage businesses include°

a permit for each massage technician;

regulation of the hours- of operatior_;

posted ?. i-st of avaii.ab?e sarv ces anci the cost;

al record of each treatment, the name ane address of *the* patron, nam-e of emp °yea and type of treatment administered.

So-called "private" ci.uhs or "consenting a.d.ult which have ostensibly been. formed as- an ai ternative to mzissage pari.ors had until recently been regulate c via the requirement of a social' club- permit. - In *JaIn* '.977, hok7ever, the' ordinance estabj.Ashinct requirement was declared unconstitutiona_I by Lcs Angeles Muncipal Court due to unreasonab? restrictions on the freedom of association. To, Gate, it is unknown whether the City wi1i appeai the r u? in-g or amend the ordinance.

Beginning in 1974,. several Council motions were made generally calling for an. in.vestl,g_ati.o.n._ and preparation- o.f- an ordinan.ce regulating adult theaters" *and* bookstores. The advice o-f the City Attorney was sought, and- at the suggestion of . that Office, action was delayed pending the Supreme Court- decisiorT regarding the Detroit Ordin anon. That deci.s.ion. was hand-e-d dowry in June of 1976. On July 13, .1976,. a. Co-uncil- motion. was. introduced by Councilman Eli lkfns6n requesti..ng a study. of con centr. ations of adult enterta in.ment; s i.mi l ar.. to that of. Detrait.

Table III prov'ides a **generalized** summary of the m.aJor Counci1 files and actions rel.ati.n.g to adult enteirtain'ment..

While not part of this; study: 4 recently. enacted ordinance controlling on=si-te sale. of a1.coho Iic beverag.eS shou.H be recognized as an attempt to control. another adult-type use: Effective M-ar. ch 1., 197`7., the La.s Ang.ele.s: hiun.cipal Code was amended to require a conditi.o_-nal use p-ermi.t,fo:r'th e on-site sal`. of alcoholic beverages. (Council Fi-1 e N-o. 70-2GO City. Plan:' Case Ri o. 22878): AIthoug:h-. aimed: at th_e: reguI atio-n of anti-social activities in all esta.brishmen.ts serving alcoholic beverages, the subject ordinance would; o-f' cours-e., a Ts o. have a "spillover" effect with rega-rd to thos.e b.u.sJ.n.ess:es wfic.h. have adult entextain.ment as. well as alcoholic beverages..

Generally, the ordinance wou.l.d, in a-1-1 cases;. req.ui;-a is.suanc, of a conditional .u.-se pe;rm--it for any Lusi.n_ess. so-T l i.:rr.g- a.Tcoha:.li.c.- beverag-es for on-site cons.um-ption; rather than.. th.e previous practice of permi.tti ng them as. a m.«tter of. right i n c.erta i n zones. The advantage of the new procedure is that as a prerequisite of approval' of an ind- i v idu.al. ap-pIica-ti.o.n,- there must be a public hearing to dete-rm.ine- whether the proposed use will have a detrimental effect upon nearby properties and the neighborhood in which it is b-.ein:g. pro_pos.ed. In the Tang run_ the ordinance may prove to be an effective device to regulate us.e s (dispensing; alcoholic beverages) which tend to ha-ve a deteriorating effect on an area, some of which may, colnri-- dentally, aIs o be. adult `.nter,ta.inment businesses.

TABLE III (cont'd.)

FILE NO.	SPONSORS	RECOMMENDATION	DISPOSITION
C.F.,72-374 S--1 5--2	Stevenson and Wilkinson	Study of'the need and feasibility of regulating hours of operation, minimum requirement for practitioners..- and health and safety conditions in massage parlors.	1./9/75 Hoard of Police Commissioners approved ordi- *nance and* adopted agreement *with County-to-provide inspection of massage parlors,*

TABLE III (cont'd.)

DATE	FILE NO.	SPONSOR	RECOMMENDATION	DISPOSITION
/25/76	C.F. 74-4521	Wilkinson, Gibson, Nowell, Braude, Russell, Wachs, Stevenson, Bernardi, Farrell, Lorenzen	Request City Attorney to...draft, an ordinance following Young vs. American Mini Theaters guidelines.	Referred to Police, Fire and Civil Defense Committees.
/28/76	C.F. 74-521	Stevenson, Wachs	Preparation of zoning ordinance to prohibit sexual scam joints, adult bookstores and theaters, nude live entertainment within 500' from a private dwelling, church, school, public *building,* park or recreation center, of within 1000' of each other, to be retroactive, priority to the oldest establishments. '	Referred to Police, Fire and Civil Defense Committees.
/11/'76	C.F. 74-4.521	Wilkinson	Instruct the City Planning Department to;prepare a report to the City Council regarding the extent of any possible degradation of neighborhoods in Los Angeles, due to concentration of-adult.entertainment establishments.	Consolidation of above cases. After approval of full Council assigned to Planning Department with the-cooperation of other involved agencies.
1/15/77	C.F. 74-1969		Police, Fire .and Civil Defense Committee.recommendation.to amend *Sections.103:101;. 103.101.* 1 of.the Municipal Code - (A revised ordinance to regulate... arcades)..	Adopted by full council.
/5/77	C.F. 77-860 S-49	File not available for review.	Support state,legislation providing specific penalties'-.for.'. use of minors for pornography:	
5/11/77	C.,F. 77-1997	File not available for review.	Regarding prostitution, enforcement laws.....	

3. Review of available data"rom the U.S..cepsuses of 1060":and 1970, including the results of a "cluster - analysis" and description of Hollywood based on such analysis prepared by the City `s Community Analysis Bureau;

4. An analysis of verbal and written testimony obtained at two public meetings on this subject conducted on April 27 and 28, 1977 by representatives of the City Planning Commission;

5. A review of various approaches to the reguiztion of "adul.t entertainment" businesses. includ-ing-legislation enacted- by other jurisdictions;

6. An analysis of alternate forms of control,, including existing Municipal Code. provisions relative to this general subject.,-

A discussion of earlier efforts of the City- to control adult entertainment in-Los Angeles; and

8. A presentation of the Los Angeles C.ity Police Department'-s report dealing with crime statistics and their relation to. "adult entertainment" businesses in Hollywood.

9. The actual "last sales price" of commercial and residentj.al properties in areas containing concentrations of "adult entertainment" businesses were compared with. the assessed values of property in such areas. The: results were then compared with "control areas"- containing no concentration of such 'businesses. (It was found that the- actual sales prices tended to parallel assessed Values and that-in other cases the comparison was inconclusive: No further -discussion of this aspect of the study is contained.-herein.)

10. In an attempt to determine any possible effects of "adult entertainment establishments" on ,business sales volume, the Department reviewed sales data from- a Dun and Bradstreet computer tape file for the years 1970 end 3.976. However, this source of date could not be used since- it did not contain directly comparable information for the two years indicated. (A substantial change in-the number of member firms listed apparently occurred after 1970.) In addition., the Department requested sales information from the City Clerk'.s.Business License File. The City Clerk advised that the generation of the information requested would require 100 man-days of work; consequently their information could not be obtained within the time constraints for completion of the study.

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Although Main Street in downtown Los Angeles contains a relatively high concentration .of . sex-oriented -businesses (primarily theaters, arcades and bookstores)-, this area was not selected for analysis since no residential. properties are located in proximity thereto. In addition, Main Street-. has traditionally contained :burlesque theaters, arcades, bars and similar types of establishments, and there has been no significant change in this generalized pattern of land use during the past ten years.

Iii the Hollywood area., the focal points . of 'concentration are. at the following three intersections: Santa Monica Boulevard and. Western Avenue (containing 12 ' such businesses)-; Hollywood Boulevard and Western Avenue'.(9' such busi-nesses);. and Selmna Avenue- and Cahauenga Boulevard (containing 7 such businesses)° In Studio City, the focal point IS east of the main intersection of Tujunga Avenue and Vineland Avenue (at Eureka Drive) which contains six adult entertainment businesses and in *North* Hollywood the focus of concentration IS at Lankershim Boulevard. and Vineland Avenue (containing 4-such businesses) :

In the Hollywood arez,: property within an approximate 1,000-foot radius of the--above named intesections was included for purposes of.. analysis. In Studio City it was appropriate to include those properties situated within an approximate 1,500 foot radius of the intersection of Eureka Drive; in North Hollywood, property within an approximate 1,500 foot radius of the.' intersection of Lankershim Boulevard and Vineland Avenue was selected for analysis...

TABLE IV

1970-75 Changes in Assessed.Valuation of Commercial and Residential Land and Improvements for Five Areas Containing Concentration of Adult Entertainment Businesses, as Compared With "Control". Areas, Surrounding Community, and City of Los Angeles.

Property Within Approximate 1,000 to 1,800 foot Radius of Intersection of Streets Shown:	No. of Entertainment "Sites" 1969-70	June 1977	Percentage Change in Assessed Valuation 1970-76 Land	Improvements	Total
Santa Monipa Boulevard and Western Avenue (Hollywood)	6	12	-0.22	5.81	2.79
Santa Monica Boulevard and Vermont Avenue (Hollywood Control Area)	N.A.	0	-4.84	32.66	12.53
Hollywood Boulevard and Western Avenue (Hollywood)	6	9	3.51	13.21	8.71
Hollywood Boulevard and Highland Avenue (Hollywood Control Area)	N.A.	0	19.32	--7.83	3..94
Selma Avenue and.Cahuenga Boulevard (Hollywood)	4	7	21.12	--12.54	3.41
Hollywood Boulevard and Gower Street (Hollywood Control Area)	N.A.	1	3.7.76	-8.61	5..09
Hollywood Community	N.A.	31	21.20	32.72	27.00
City of Los Angeles	N.A.	N.A.	35.08	38.92	37.15
Tujunga Avenue and Ventures Boulevard (Studio City)	1	6	67.11	63:3/0	64.93
Lankershim Boulevard .and Vin.eland Avenue (North' Hollywood)	2	4		9. 65	12. 61,

TADLE IV-A

1970-76 Changes in Assessed Valuation of Commercially Zoned Land and Improvements for Five Areas Containing Concentration of Adult Entertainment Businesses as Compared With Conunercially Zoned-Land in "Control Areas", Surrounding Community, and City of Los Angeles.

Property Within Approximate 1,000 to 1,800 Foot Radius of Intersection of Streets Shown.:	No. of Entertainment "sites" 1969-70	June 1977	Percentage Change in Assessed Valuation 1970-76 Land-	Improvements	Total
Santa Monica.Boulevard and Western Avenue (Hollywood)	*6*	*12*	*-0.47*	*8.53*	*3.4*
Santa Monica Boulevard and Vermont Avenue (Hollywood Control Area)	N.A.	0	--12.53	4.13	6.38
Hollywood Boulevard and Western Avenue (Hollywood)	6	9	-2.52	--0.95	-1.77
Hollywood Boulevard and Highland Avenue (Hollywood Control Area)	N. A.	0	25.01	--11.19	4.06
Selma Avenue and CaAuenga Boulevard (Hollywood)	*4*	*7*	21.93	*-18.79*	*0.54*
Hollywood Boulevard and Gower Street (Hollywood Control Area)	N. A.		17.07	-17.22	1.09
Hollywood-Community	N.A..	31	13.43	-1.51	6.70
City of.Los Angeles	N.A.	212	12.27	13.52	12.93
Tujunga Avenue and Ventura Boulevard (Studio C1.ty)	*1*	*6*	*7.9.24*	*25.83*	*21.9*
Lankershim.Boulevard and Vineland Avenue (North'Hollywood)	2		0.76.	3.91	1.92

The pea centage increase i.n-. assesse"d Yal,ues.. within the -.three study areas... as well as the cont.~dl. areas was. Considerably less in each case than.percentage gains registered by, the HoIlywood.Community' or the City as* a whole.

In the case of the study area nodes located in- the San Fernando Valley; the pattern appears to be somewhat more spurious. The study area node containing adult entertainment businesses Tocated in Studio City (centered east of the intersection of Tujunga Avenue and Ventura Boulevard) increased *by 64.93* percent---the largest increase cf any of the areas analyzed. In direct contrast, the "adult entertainment node" located at Lankershim Boulevard and Vineland Avenue increased by only 1.2.6' percent. The one "control area" associated with these two San Fernando Valley nodes increased by 42.76 percent --- a substantially greater gain than the North Hollywood node... 22 percent ?ess than the Studio City node. (Whether the sharp percentage increase shown_ for the Studio City node was the direct result of a recent reassessment cannot be readily determined.)

The increase in *assessed* value within the Studio City study area was *virtually* the same as that of the entire Sherman Oaks-Studio City Community *b*ut almost twice the percentage gain for commercial and residential properties in the entire City. The North Hollywood study area increased by a considerably lower percentage than' the North Hollywood Community and the City as a whole.

With regard to commercial- properties considered separately, Table IV--A rev-eats that the percentage change- in assessed values of land and' improvements combined was generally lower in ail study areas than in their corresponding control are,~s. One notable exception, however, is the Santa Monica Boulevard and Western Avenue node which increased by 3.4 percent while its corresponding control area (Santa Monica, and Vermont) decreased by 6.38 percent. In Hollywood the change in assessed values of all study and control areas was l,ss than in th-e entire Hollywood Community. In the San Fernando Valley the two study areas both increased less than the entire communities within which they are situated.

2. Conclusion -- Chance in Assessed Valuation

On th-e basis o.f the foregoing. there would seem to be sonic-basis to conclude that:the assessed valuation cf property within the study areas containing concentrations of. adult entertainment businesses have geneii-a11y t-nded to increase to lesser degree than similar. areas without such concentrations. However: in the staff's opinion there rvould appear to be insufficient evidence to support the contention that concentrations of sex--oriented businesses have been the primary cause.. of these patterns of change.In

S. **PUBLIC MEETINGS**

Two public meetings were conducted by- representatives of. the City Planning Commission in order to receive 'citizen .input regarding the effects,. if any, of concentrations of "adult entertainment"- establishments on nearby properties- and surrounding neighborhoods. Notice of .the hearings. was published in local newspapers: aired *on. radio;* mailed-: to owners. of commercial-and multiple residential property : within 500 ft. radius of the study areas and also to persons' who had previously responded to the Department's questionnaire_

The first meeting was held in Hollywood an April'.27', 1977. at Le Cante Junior High School. The second meeting was conducted in Northridge on April 28, 1977 at Northridge- Junior High School. Both meetings were conducted by Plann-ing.Commission President Suzette Heiman and Planning Commissio,n.e-r Daniel Garcia, with Deputy City Attorney Chris Funk also in- a-ttendan.ce..

Questionnair.es were available at the meetings for the convenience of those wishing to.. submit their comments in. writing.

Attendance was approximately 20'0 persons at the Hollywood meeting and 300 persons at the Northridge meeting. A c.ombined total of 60. persons addressed the C.ommi-ssion. The following is a summary of the comments received by the Commission. (Tape recordings of the hearings are available for review under City Plan Case Number 26475, in the Planning Commission Office, Room-561--K; Los Angeles, City Hal l, telephone (213.) 4:85-5:071.)

The most prevalent type of comme-nt at the Hollywood meeting was an expression of fear of walking in areas where "adult entertainment" and related business. are concentrated. This concern was expressed both by parents, reluctant to allow their children to be exposed to offensive- signs and wares, and by women and elderly persons who feared walking. in *the* areas either in the day or evening; because of the incidence of crime in the area. Specific instances of solicitation and other crimes were recited. Some proprietors testified that they felt their businesses have suffered, due to fear on the: part of their customers. Other common statements concerned:

Physical or economic deterioration of the area resulting from the influx of adult bus.ines-se.s..

An increase in street crime.

Offensive signs and displays..

A need to use existing enforcement tools__ such as "re:d light abatement" to control. "adult entertainment" businesses.

Several persons indicated' that they had not walked in the area for -years due to. Muggings" solid tations, etc.

.The City shou?,d make greater use. of the Red: Light Abatement Law.

A homeowners' associati-on representative talked? cf bSei_ng acccst.'~:c! bv..a gar on Foil ywood Boulevard; that crime ;Jas a f1-0 i-CUt" Of adult entertainment; and ti3at this was a mocca for crimps, such as burglary, muagi.ngs, thefts, and *the* like.

Some persons were personally offended, and stated- that the sex businesses` Mve affzcted resieents economically and aestheti cally

Art Dialers (fine art dealers; antique businesses operators; proprietors of legitimate. book -stores) on La: Cienega BouleN~ard were concerned over the proliferation of adult entertainment businesses; there are' vacant stores . in this afea that they fear may go :into use for adui t . entertainment busincs's. They are concerned that La Cienega _ will no l on.ger be a cu? tur_ al. center.

Representatives of tht_ Screen Actor's Guild and Actors, Equity indicated they had demonstrated against an adu'.t bookstore :and appealed tc the entertainment industry to help with this prob?-em,

A represent; tivc- of the Hot.]ywood Chamber - of Commerce indicated there had been ~4 C. 70 surveys cf the area, but lack of City support. He sai.' the City should modify. its C4 Zone regu at?ors and e? _mi na.te movie arcades.:

A Studio City <u>real</u>tor indicated he had sent 11,000 replicas of the Planning Department's questionnaires (under his letterhead) to residents of Studio City. n indicated there were 6 du? t motels near Universal Studios and that more were coming.

A former non-adult material bookstore ' owner in Hollywood (past tenant of ?.(Dcat:Lon picketee or, April 25, 1977) indicated. that when his building was sold, his rent doubled; that ether tenants got three day notices (to move out) , that everybody was getting *cut--h* c?_QimCnd something was going on in that. blochi. He also indicated that radio *station KFWB* had movecf from the area_,

It was indicated that K7(M.-m.c.ved because women employees were afro; c. *It was* a'.so utat d that rEStc~t2runt in that building went out of business.

The Miller vs. Californ.ia court case was discussed: it was contended that this case. established that "a community can-set its own standards".

Questions were posed as to whether economic.. and. financial impact should be facts neede.d to develop an ordinance to control adult entertainment.

Claims were made that adult entertainment bus ines"s bring crimes and violence to the area.

A speaker stated that both the Boston and the Detroit ordinances are unacceptable. "You cannot control pornography by zoning"., and opposition to- the zoning approach to obscenity was expressed.

"California is the pornographic capital of the world."

People are offended by pornographic material in department stores, drug stores, supermarkets, etc. The recent Los Angeles County newsrack ordinance was discussed.

One person posed the question "why don't we have an Environmental Impact Report for pornographic businesses?"

Church representatives and a teacher at the Christian School were concerned about their members and children being exposed to porncgraphic'advertising displayed at the Lankershim Theater and Pussycat Theater_ They are afraid to let their children out on the streets.

It was stated that "we should use civil, public nuisance and red light abatement to control adult entertainment businesses."

Conclusion

In summary, the overwhelming majority of speakers felt that the concentration of "adult entertainment" businesses in their neighborhood was detrimental, either physically by creating blight or economically by decreasing patronage of traditional businesses; or socially by attracting crime. As a result of increased crime, nearby residents have become fearful and have been forced to constrain their customary living habits in the community.

Although the testimony obtained at the public hearings would from a subjective point of view, substantiate the conclusion that "adult entertainment" businesses have a deleterious effect on the surrounding community, the staff is of the opinion that legitimate questions may have been posed by the Pussycat Theater representative regarding a single classification for all "adult entertainment" uses. There would appear to be some basis- to support the contention that certain types of such uses are more "objectionable" than others, and that negative effects of a particular type of business might be minimized, depending on how the business is operated and advertised.

Between February 10 and.-Apri1'30, 1977, a total of approximately 4,.000 questionnaires - were mailed (with return envelopes provided) or otherw.i se d.i stributed businessmen, real estate appraisers,. r.e'aJtors. representatives of banks and savings and loan . institutions.; the owners of muA t i p-l e=un i t_ residential p r operty; an,d others.% Of this number, 69' questionnaires were completed and returned- to the Department (dn ov.era11 77.4 percent rate of'return)..

In addition, the Department r.ecei-ved 97 non- so Iic'ite d= completed ques.tiannaire_s from property owners in Studio` City. These questionnaires were distributed in a p ivate mailing. by a private individual. The subject mailing included a - replica . *of* - the Department's appraiser questionnaire, together with written mAterial'alleging_ Cit intent to create an- adult entertainment=zone in-Studio City (copy included as Appendi.x D-2-)... According to the subject individual's testimony at the.public hearing on April 27., 977; 11.000 replica questionnaires were mailed. Due to the prejudicial nature *of* the, mailing;'these questionnaires are not included in the study- However-; the staff did tabulate the subject responses and-the tabulation: and summary are included --in Appendix D--3. All persons responding to the above mailing. were sent a memo from the Department, cor-recting the misinformation (copy included in Appe,n.d ix D -I)-.

2. Results of Surv ey Q ue sti onnaires

A tabula tion of the responses to the specific questions solicited in the objective portion i1i each of. the two types of questionnaries is presented below. A summary of the comments follows:

6 ENERAL QUESTIONNAIRE .

RESPONSES

Tota l no. of respons es = 581 = 16% return
Total no.- of cquesti onnafres 3600-

uestion

What overall effect do you feel that *adult* entertainment establishments have *had* on a neighborhood:

	Positive	Negative	No effect
Effect on the business condition (sales & profits) in the at:ea:	43(7.4%)	492.(84.7%)	36(6.2%)

Fffprt nn hrnmoc l v=lam- 2- ,---,,---,---1

The Miller vs. California court case was discussed: it was contended that this case. established that "a community can set its own standards".

Questions were posed as to whether economic-..and. financial impact should be facts neede.d to develop an ordinance to control adult-entertainment.-

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6. What types of adult entertainment esta_b i s,hments are there in you"r area (plea'se check' ap_pro.pr i ate boxes

		bookstores			topless dancing
310	(63:.4%)	massage parlors	389	(67.0%)	adu_lt theatres
190	(32.7%)	peeQ shows,	240	041.3")	adu.l t mote-1.s
237	(40.8%)	bars with X-rated entertainment			
3		other sex shops			

How far from your business is the nearest adult entertainment establishment?

(Not tabulated due to limited response.) -

A high percentage of jespondeks rommehted on their-, concern. for the effects of AM entertainment envirAm''Int on the mardy and AQ of children.

A high percentage of respohdents Wiehtb&,bn th6:_:dqWh'eXics.:cf adult entertainment, establ t1hynts! garish, 0 Maazy;_:i shabby blightlb, tasteTess; etc. Also, many comAnted on 0§7"VOeSed incidence of fitter and graffiti.

7. What effect does the concentration of adult entertainment establishments have on the market value of :private residences located within the following distances from such establishments?

	Increase	Decrease	No effect	Total
Less than 500 feet	2 (3.8%)	48 (9(f.6%)	3 (5 .7%)	53
500 - 1000 feet	2 (3 :6%)	51 (91.1%)	3 (5.4%)	56
More than 1000 feet	.1 (3%)	29 (87.9%)	3 (9~1%)	33

8. What effect does the concentration of.adult entertainment establishments have on the rental value of residential income property located within the following distances from such. establishments?

	Increase	Decrease	No effect	Total
Less than 500 feet	2 (3.4%)	51 (87.9%)	5 (8.6%)	58
500 -.1000 feet	1 (2.6%)	33 (86.8%)	4 (7.0.5%)	38
More than 1000 feet	1 (2.8%)	27 (75%)-	8 (22.2%)	36

9. What effect does the concentration of adult entertainment establishments have on the ren_tability/saleability of residential property located within the following distances from such establishments?

	Increase	Decrease	No effect	Total
Less than 500 feet	1 (2_5%)	37 (92.5%)	2 (5%)	40
500 - 1000 feet	1 (2.6%)	35 (89.7%)	3 (7.7%)	39
More than 1000 feet	1 (2.8%)	28 (77_8%)	7 (19.1%)	36

10. In regard to the questions setforth above, please- describe the effects which you believe the concentration of adult entertainment business has on each of the following:

Property values of surroundin_q:

	Decrease	Unknown	No effect-	Increase
Commercial property	45 (56.8%)	32 (39.5%)	1	2 (2.5%)
Residential property	42 (51.9%)	38 (46.9%)	-	1
General	16 (19.8%)	5J (80_2%)	-	-

Several respondents commented, that the: adverse :;effects are related to the degree of concentration an"d that o'ne 'free-standing business may have no effect; also, that the effect is related to the type of adult entertainment business (unspecif-ied-)..._-:

A few respondents indicated that - the praperty value and dollar business volume for any given property would increase for businesses compatible with adult entertainment businesses, e.g. other adult entertainment_ businesses, bars, etc.:

A very high percentage of appraisers. and real'tors oImmented. on the adve.rse effects of the subject :-businesses on ne-ighborhood appearance, litter and graffiti.

30 (94%)- deteriorated neighborhood appearance

27 (84%) more Ittter

Other (please spec-ify)

3. (Not applicable for tally.)

4. Have you seriously considered moving your business elsewhere because of nearby concentrations of adult entertainment businesses?

10 (31.3%) Yes 15 (46.-9%) No

5. Would you consider expanding in your current location?

10 (31:3%) Yes 12 (37.51va) No

6. What types of adult entertainment estab-li.shments are there in your area? (Please check appropriate boxes.)

27 (84.4%) adult bookstores

17 (53.1%) massage parlors

15 (46.,..9.%) peep shows

12 (37.5%) bars with X-rated entertainment

13 (40.6%) nude or topless dancing

24 (75%) adult theatres

15 (46.9%.) adult motels

How far from your business is the nearest adult entertainment establishment?

(Not tabulated due to limited response.)

Description of-Hollywood Area

Th three study areas- in Hollywood-. containing c-oneentrations of adult entertainment businesses are included- within portions of 11 census t-racts. T-heir_ - three associated "_control areas" are partially cohtai.ned within nine census tracts. These 20 tracts are all, included vii th i n -a- larger area identified in the CAS' s report as _"Ouster. 15"; entitled "The Apart.ment Dwellers", -consisting of 34 tracts, A -description of this area, as quoted from the previously cited CAB report, is` set . forth bel-Q:w. The fact that this description is based on data which is now seven years old may not be disadvantageous, for the purposes of this study, inasmuch as adult entertainment businesses_began tc flourish in the 1969-70 period:

" Cluster 15 is a lower -income, predominately old apart-ment area located west *of* the Civic Center..."

"The cluster represents a total population of .174,000, 46: male and 54% female. The median age is--40. The area is mostly White, but -does have an above average ethnic mix--19% Spanish-American, 3% Japanese, 2% Chinese, 3% Black. It is- a cluster of workers and senior citizens. One in five residents is over 65. Female participation in the labor force is the highest of the 30 clusters_ The. population under 18 is small. Many *of* the families are headed by women..."

"...Close to seven out of ten labor active residents are white collar employed. Most completed high school and.15% completed college. At $8,700, median family income i$ below the average for the City. This lever income does not translate into an abnormally high poverty distribution. One in ten families and a smaller proportion ofi_ unrelated individuals are welfare recipients..."

"..:Residents of the cluster-are centrally located to both the Downtown and its commercial-financial strip extension, Wilshire Boulevard. Many public transit routes service the area. Close to 40% of the households have no automobile. The presence of two or more cars is not ccmmon. Of the older apartment complexes many have no'garage facil-ities..."

Use of 1970- Census Data to Describe Studio City - and North Rio lywood Areas

There are four cet~sus :tracts whjch'*_com_pris -the=.Studio Caty study area; two such tracts in North Hollywood; and three census tracts representing . the_."control area" for the San_: Fernanda 4al ley. (One of,Ahe "contro-I --area" tracts also forms part of the Studio_ Ci t,y: study area:)

The.' CAB's 'cluster analysis reveals '".that. these eight different. census tracts are all quite:- dissimilar,,-. inasmuch. as the seuen. tracts are contained within nix different "clusters". A detail*ed* description of.- each of these; six: clusters woul-d no-t be practical for purposes of °. this study. However, a summary of certain key variables attributable to the two study areas-':In Studio Ci:ty and North Ho.1lywocd, and :- the one corresponding control -area. might be instructive, and IS therefore presented in Table V *following. For* purposes of'comparison, the data is also shown for the City as a whole.

TABLE V _(cant d-)
Comparlsen of 24 Variables from 1970 Census
Describing Studio City and North-Hollywood Nodes.
and Corresponding Contro.1 Area

VARIABLES .- Crime Rates	studio Cit;° (Tujunga & Ventura)	North Hollywood (Lankershim & Vi'neland)	-'-AND------ Control.-, (Lankershfm.. & Whipple)	-NALUES Entire City
Assaults. per. 100' popu.fation.	465	374	478	857
Robberies per 100 population	172	267	17.0.'	454
Burglary per 100 improved parcels	13,86	0.94	13.5	14.96
Total Arrests per 100 population	4_23	4.26	4.10.	8.26
Narcotic Arrests per 100 population aged 14-44	2.66	1..39	1.60	2.04'

On the basis of th;= for;:going 1970 Census *data,.* it is possible to dc-relop a general cescripti.cn of the two . study area modes containing adult entertainment businesses in the Valley. As indicated above, such a description must necessarily be based on data ?pplyin9 to entire census tracts, even through the study areas may encompass only portions of tracts.

Residents of the Studio City study area node in 1970. were. predominantly an up-per middle income group, with - a relatively f·igh percentage of college graduates.:- High school dropouts were considerably blow the citywide norm_ Eight out of ten employed persons were in uwhi.te co) lar° jobs. The percentage of families receiving welfare or in poverty statu·s was considerably below the citywide percentage. The unempIoyment-rate was slightly higher-.,than that of the entire city.

The-median value of owner occupied homes in the Studio City area was more than.$12,400 higher than the City median: About one-half of the - housing units were . one-unit structures: Apartment- rental rates were also higher than the city as a whole. The percentage, of one-unit,:: owner occupied housing units built before 1940 (24_1 percent) approached the citywide median of 28.5 percent.

With regard to crime statistics (as of 1970), robberies pe.r 100 population in the Studio City area were below-.. the rate. for the city as a whole 0.172 and .454,. respectively), although the number of burglaries per. 100 improved pa.rc:21s (13.86) was close to the €itytgide rate of. 14.96..: Total arrests per 100 population (4.23)- were about. one-half of' the 8.26 rate which prevailed citywide.

V

POLICE DEPARTMENT STUDY OF HOLLYWOOD

Th i-s section of the report considers the -number and -. percentages of adult entertainment. businesses in the City,- changes in t·hese businesses since 1975, and more specifically, ..crime rF-.tes in the Hollywood area as compared to crime rates, citywide.

The foIIowing.information was compiled by'' .the Los Angeles Police Department and shows the incidence of certain adult entertainment establishments as of two different time periods--- November cf 1975 and December 31, 1976. The statistics show a decrease in massage parlors, bookstores, arcades and theaters a_nd a slight rise in adult motels. This was during the same period of time that. there was: stepped-up surveillance and deployment of- officers. in areas- where concentrations of adult entertainment establishments existed. (The Hollywood community is within the West Bureau.)

This information and that which follows involving the incidence of - crime in the Hoalywood area provides what may be a positive correlation between crime and the pr2s.ence of adult entertainment facilities.

TYPE OF ACTIVITY	Nov. 3_1975	Dec. 1976	Percent of Change
Adult Motels		38	2%
Massage Parlors	147	80	-45%
Bookstores/.Arcades	57	45	-21%
Theaters	47	44	-6%
TOTAL	288	207	-28%

DECEMBER 31, 1976
LOS ANGELES CITY POLICE DEPARTMENT
BUREAU OF ACTIVITY AND PERCENTAGE

TYPE OF ACTIVITY	CENTRAL BUREAU	SOUTH BUREAU	WEST BUREAU	VALL EY BUREAU
Adult Motels	5(13%)	23(60%)	5(13%)	5(13%)
Massage Parlors	6 (7%)	4 (5%)	42(53%)	28(35%)
Bookstores/Arcades	6(20%)	1 (2%)	24(53%)	11(24%)
Theaters	7(16%)	1 (21%)	28(64%)	8 18%
TOTAL	27(23%)	29(14%)	99(48%)	52(25%)

Table VI

'961 THROUGH 1975 SURVEY PERIOD.-
REPORTED CRIMES AND ARRESTS

	Hollywoed Arta			Citywide		
Part' I Offenses	1969--	1975	% Change	1969	1975	% Change
Homicide	19	37-	+94.7	377	574	+52.3
Rape	214	199	-7-0	211.5.	1794 .	-15.2
Agrav. Assault	605	886	+46.5	14798	14994	+1.3
Robbery	905	1591.-	+75.8	11909	14667	+23.2
Burglary	5695	5551.	-2.5	65546	69489	+6.0
Larceny	7852	8396	+6.9	89862	9347.8	±4.0
Auto Theft	2621	2608-	-0-5	32149	30861	4.0
TOTAL	17911	19268	+7.6	218756	225857	+4.2
St. Robberies	381	738	+93.7	5321	6684 -	425.6
484 Purse Snatches	185	280	+51_.4 -	1951	2668	+36.8

ARRESTS

	Hollywood Area			Citywide		
Part I Offenses	1969	1975	% Change	1969	1975	% Change
Homicide	21	26	+23.8	475	573	+20.6
Rape.	6 7	47	-29.9	858	552	-35.7
Agrav- Assault	239	348	+45.6	6250	3163	-49.4
Robbery	3·68	Z85	-22,6	4855	5132	+5.7
Burglary	86-4	5-14	-40.5	7823	6032	-22,5
Larceny	546	1371	+151.1	6877	11706	+.70.2
Auto Theft	319	226	-29.2	4820	312I	-5.3
TOTAL	242.4	2·817	+16-.2	31958	30279	-5 .3

	H.oI Tyw-cod Area			Citywide		
*Part II Offenses	1969	1975	% Change	19.69	1975	% Ch.ange
TOTAL	10660	15503	+45.4 .	179233	185417	+3.4

*(Part II arrests 1rcIud'e: other assaults, forgery and counter-feit1ng, embezzIe-myent and fraud, stolen property, prostit.ution, narcotics,_. Liquor laws, gambling, an.d other misceIlan.eous-misd-emeancr-s.)

F·rostit.utton Arrests	1969	1975	% Ch-ange
Hollywood. Area	433	2045	'-372.3
Cit-ywide	2864	3564	+24.5

HOLLYWOOD AREA

484 , PURSE SNATCHES.

350
325
300
275
25.0
225
200
175
150
125
100

69 '70 '71 72 73 74 '75

STREET ROBBERIES

800
750
700
650
600
550
500
450
400
350
300

069 '70

ALL ROBBERIES,

700
600
500
400
300
200
1100
1000
900
800

69 '70

ADULT ENTERTAINMENT ESTABLISHMENTS

100
90
80
70
60
50
40
30
20
10
0

69 70 171 72 X73 '~4 __"75

During the period included .in this report, the Citywide deployment of pol1·ce personnel rose by 21.2 percent. However, with the surge ·of crime in the Hollywood Area, deployment there increased by 30.'6 percent; 9,4 percent higher than the rest of the City: Included in this figure is a 29.4 percent hike in uniformed officers and 35.6 percent- rise in investigators to cope with the criminal elements.

This survey reflects a seven-year span during which time the Adult Entertainment Establishment in the Hollywood Area proliferated from a mere 11 establishments to an astonishing number of 88 such locations. The overall deleterious effect to `the entire community is evident in .the statistics provided. The overwhelming- increase in prostitution, robberies, assaults, thefts and the proportionate growth in police personnel deployed throughout Hollywood, are all representative of blighting results that the clustering of Adult Entertainment Establishments has on the entire community. These adverse social effects net only infect the environs immediately adjacent to the parlors but creates a malignant atmosphere in which crime spreads- to epidemic proportions.

The remaining sections of the Police Department report are letters and- signature petitions from concerned businessmen, clergy, merchants, citizens and police n.fficers and are in the file and available for inspection upon request. The following paragraph summarizes this section of the Police Department report.

The police officer reports can be summarized as follows: all officers felt the sex-oriented businesses either contributed to or were directly responsible for the crime problems in the Hollywood area. The officers felt the sex shops were an open invitation to undesirables and thereby directly caused the deterioration of neighborhoods_ Also, it was suggested that these businesses purpcsel,y-cluster in order to establish a "strength in numbers" type effect, once they establish a foothold in a neighborhood they drive the legitimate businesses out.

The letters from the businessmen, clubs, churches and. concerned citizens were all in support of police efforts to close adult entertainment_ facilities. The letters all expressed the feeling that the sex shops attracted homosexuals, perverts, prostitutes and other undesirables and directly contributed to the decline of the Hollywood area.

HOLLYWOOD AREA

+372.3%

ED 1969

1975

PROSTITUTION
ARRESTS

Los Angeles City Planning Department

Calvin S. Hamilton, Director
Frank P. Lombardi, Executive Officer
Glenn F. Blossom, City Planning Officer.

Citywide Planning and Development Division

Glenn 0. Johnson, Division Head

Code Studies Section

Jack C. Sedwick, Senior City Planner
Robert Janovici, City Planner
Charles S. R'ozzelle, City Planner
Marcia Scully, Planning Assistant, Project Coordinator
Evelyn Garfinkle, City Planning Associate
Fred Hand, City Planning Associate
Ronald Lewis, City Planning Associate (former project staff member)
Charles Zeman, City Planning Associate

Staff Support

Donald S. Jacobs, Data Analysis
Fred Ige, Planning Assistant
Joyce O-dell, Cartog-rapher
Gilbert Castro, Cartographer
Barbara Reilly, Typi-st
Corrine Gluck, Typist
Mary Volz, Typist
Mewland Watanabe, Typist
Jeanne Crain, Typist
Audrey Jones, Typist
Mason Dooley, Photographer

TM

APPENDIX A
(Sheet 1)

Changes in Assessed "Market" Value of Residential and Co;suercial Property 1970-761 Areas of Concentration o u t Entertain~rent.eusinessesl Corresponding Control *Areas*, and City of Los Angeles

Areas of Concentration. *"Nodes")* and Control Areas	Assessed "Market" Values					
	Land		Iwprovexrents		Total	
	1970	197.6	1970	1976.	1970	1976',
Banta Monica i Western	12,955,100	12,926,800	12,945,620	13,691,620	25,900,900	26,624,420
Control Area - Santa Konica' and Vermont	11,549,300	10,990,500	9,971,400	13,227,900	21,520,700	24,218,400''
Hollywood 6 *Western*	17,618,700	18,237,710	20,361,040	23,015,660	37,979,740	41,289,370
Control Area - tfoalywooa i Highland	21,956,500	26,197,880	39,051,920	35,992,140	61,008,420	62,190,020
Selma Ti Cahuenga	28,720,280	34,785,080	31,852,740	27,8561660	60,573,020	62 ,6,1,740
Control Aran - Hollywood i Gower	14,502,880	17,078,900	13,411,880	12,256,520	27,914,760	29,335,420
Tujunga 6 Venture (Studio City)	7,115,460	11,890,900	8,493,260	13,852,800	15,608,720	25,743,700
T.ankerphiat 6 Vineland (North Hollywood)	13,789,200	15,979,300	15,287,'340	16,763,160	29,076,540	32,742,460
Control Area - Lankersh'is-; Whipple	11,168,200	18,169,000	14,744,280	18,623,200	25,912,480	36,992,200,
	Land		inprove-ments.		-Total	
City of L.A.	8,303,456,720	11,216,558,900	9,692,014,680	13;464,660,940	17,995',471,400	24,681,219,84

CITY OF LOS ANGELES
CALIFORNIA

CITY PLANNING COMMISSION

SUZETTE NEIMAN
PRESIDENT

FRED E. CASE
VICZ.PRESIDENT

DANIEL P. GARCIA
LESTER B. KING
LEONARD LEVY

RAYMOND 1. NORMAN
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DEPARTMENT OF
CITY PLANNING
oar CITY HALL
LOS ANGELES. CALIF. 20012

CALVIN S. HAMILTON
DIRECTOR.

FRANK P. LOMBARt?I
EXECUTIYX OFFICaR

TOM BRADLEY
MAYOR

APPENDIX B

March 14, 1977

REQUEST FOR YOUR ASSISTANCE IN OBTATNING !NFORMATION REGARDII\TG "ADULT ENTERTAINMENT ESTABLISTR93ENTS"

The Los Angeles City Council has recently requested the Department of City Planning, in cooperation with the Police Department and other City agencies, to conduct a study concerning "adult entertainment" businesses.

Because of your particular knowledge of the businesses in the vicinity of your adresa, we are requesting that you answer the questions ,on the attached questionnaire. These questions relate to the effect. of adult entertainment establishments on other businesses and neighborhoods in the surrounding area. The results of the questionnaire will be of great value to us in conducting this study.

Please return your completed questionnaire in the stamped envelope provided before April 1, 1977.

if you have any questions about the study or wish to discuss this matter with Planning Department staff members, please call 485-3508.

We greatly appreciate your cooperation in assisting us in this survey.

Original signed by Calvin S. Hamilton

-ALVIN S. HAMILTON
)ir ector of Planning

SH:CSR: cd
417B/OQ29A

ADULT ENTERTAIN T QUESMONNAIRE

Los Angeles City Planning Department

May 9,.1977

Please answer the seven questions below by checking the appropriate spaces-, Feel free to write comments in the *space* provided or `"on a separate sheet.

For.the purposes of this study, an adult entertainment establishment includes businesses such as: adult bookstores; nude or topless dancing establishments; massage parlors; adult theatres showing X-rated movies; "peep shows"; so-called adult motels, and - bars with X-rated entertainment.

1. What overall effect do -you feel that adult entertainment establishments have on..a neighborhood:

   Effect on the businesses condition (sales & profits) in the area:

   positive negative *no* effect..

   Comments/Examples:

   Effect.on homes (value & appearance) in the area immediately adjacent to adult entertainment businesses:

   positive negative no effect

   Effect on homes (values & appearance) in the area located 500 feet or more from adult entertainment businesses:

   positive negative no effect

   Comments/Examples:

(OVER)

CITY OF Los ANGELES
CALIFORNIA

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SUZETTE NEIMAN
PRESIDENT

FRED E. CASE
VICE-PRESIDENT

DANIEL P. GARCIA
LESTER B_ KING
LEONARD LEVY

RAYMOND l. NORMAN
SECRETARY

DEPARTMENT OF
CITE PLANNING
36T CITY HALL
LOS ANGELES, CALIF. 20012

CALVIN S. HAMILTON
DIRECTOR

FRANK P. LOMHARDI
EXECUTIYZ Orria'zR

TOM BRADLEY
MAYOR

APPENDIX B

March 14, 1977

REQUEST FOR YOUR ASSISTANCE IN OBTAINING 1NFORIr1ATI0N REGARDING "ADULT ENTERTAINDENT ESTABLISHIy1ENTS"

The Los Angeles City Council has recently requested the Department of City Planning, in cooperation with the, Police Department and other City agencies, to conduct a study concerning "adult entertainment" businesses.

Because of your particular knowledge of the businesses in the vicinity of your adres s, we are requesting that you answer the questions oD.the attached questionnaire. These questions relate to the effect. of adult entertainment establishments on other businesses and neighborhoods in the surrounding area. The results of the questionnaire will be of great value to us in conducting this study.

Please return your completed questionnaire in the stamped envelope provided before April 1, 1977.

If you have any questions about the study or wish to discuss this matter with Planning Department staff members, please call 485-3508.

We greatly appreciate your cooperation in assisting us in this

Original signed by Calvin S. Hamilton

ALVIN S. HAHILTON
7ir ector of Planning

SH: CSR: cd
417B/0629A

ADULT ENTERTAIN T QUES.TIOIVWAIRE

Los Angeles City Planning Department

May 9, 1977

Please answer the seven questions below by checking the appropriate spaces. Feel free to write comments in the space provided or on a separate sheet.

For-the purposes of this study, an adult entertainment establishment includes businesses such as.: adult bookstores; nude- or topless dancing establishments; massage parlors; adult --theatres showing X-rated movies; "peep shows"; so-called adult motels, and bar s with X-rated entertainment.

1. What overall effect do -you feel that adult entertainment establisbments have on a neighborhood:

Effect on the businesses condition (sales & profits) in the area:

positive negative no effect.

Comments/Examples:

Effect-on homes (value & appearance) in the area immediately - adjacent to adult entertainment businesses:

positive negative no effect

Effect on homes (values & appearance) in the area located 500 feet or more- from adult entertainment businesses:

positive negative no effect

Comments/Examples:

(OVER)

6. What types of adult entertainment establishments are there in your.area? (Please check all appropriate boxes.)

adult bookstores

nude or topless dancing

massage parlors

adult theatres

peep shows

adult motels

bars with X-rated entertainment

How far from your business is the nearest adult entertainment establishment?

Thank you for your cooperation. Please return this questionnaire to:

City of Los Angeles
Department of City Planning
200 North Spring Street
Room 513, City Hall
Los Angeles, CA 90012

Name

(Business)

Address

ADULT ENTERTAINMENT QUESTIONNAIRE.

Los Angeles City Planning Department

May **9,.1977**

Please answer the seven **questions below by checking the appropriate spaces. Feel free** to write **comments in the** space provided or *on* **a separate sheet.**

For, the purposes of this study, an adult entertainment establishment *includes* businesses **such** as: **adult bookstores; nude or topless dancing establishments;,.. massage parlors;** adult **theatres** showing X-rated movies; **"peep shows"; so-called** adult motels, **and 'bars with** X-rated **entertainment.**

1. **What overall effect do -you feel** that **adult entertainment establishments have** on a. **neighborhood:**

   Effect on the businesses condition (sales & **profits) in** the area:

   positive **negative** no effect..-

   Comments/Examples:

   Effect on homes (value & **appearance)** in the area **immediately** adjacent to **adult entertainment businesses:**

   positive **negative** no **effect**

   Effect **on homes (values & appearance)** in the **area located 500 feet or more.from adult entertainment businesses:**

   positive **negative** no **effect**

   Comments/Examples:

(OVER)

CITY OF Los ANGELES
CALIFORNIA

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.PPENDIX C

March 14, 1977

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The Los Angeles pity Council has recently requested the Department City Planning, in cooperation with the –o~ice repartment. and other City agencies, to conduct a study concerning "adult entertainment" businesses.

Because of your particular lmciviedge of thJ businesses in the vicinity of your address, we are. requesting that you answer the questions on the attached questionnaire. These questions he=at- to the effect of adult entertainment establishments on other businesses and neighborhoods in the surroufding area. The results of the questionnaire will be of great value to us in conducting this study.

lease return your completed questionnaire in the stamped envelope provided before April l, 1977.

If :/ou have any questions about the study or wish to discuss this matter with Manning Department staff members, please call. 4c5-359 .

We gr°atly appreciate your cooperation in assisting us in this survey.

CALVIN S.= HA3j1ILTCN
Director of Manning

CSII: CS.#i:Imc

ADULT ENTERTAIN~ T QUE5T20NrL RL,

Los Angeles City Punning Department

march 14, 1977

Please give your opinion regarding questions set forth below by checking the approp-3 ate spaces and providing comments in the -space provided or on *i aparate sheet.*

For the purposes of this study; "adult entertainment establishments" include businesses such as: adult bookstores, nude or topless dancing establishments; massage parlors; adult theatres showing X-rated movies; "peep ahowa"; so-called adult motels and b a---s with X-rated entertainment.

EFFECT ON SURROUNDING BUSINESSES

1. What effect does the concentration of adult entertainment establishments have on the market value of business property (land, structures, fixtures, etc.) located in the vicinity of such establishments?

increase in value : decrease in value : no 'effect

Comments /examples: (Please cite specific examples, including available data.)

2. What effect does the concentration of adult entertainment establishments have on-the rental value of business property located in the vicinity of such establishments?

increase in value decrease in value zio effect

Comments/examples: (Please cite specific examples, including available data.)

3. What effect does the concentration of adult entertainment establishments have on the rentability/saleability of business property located *in the* vicinity *(length* of time required to rent or sell property; rate of lessee/buyer turnover; types of businesses of prospective lessees/buyers; conditions of sale or lease, etc.)?

increase in rentability/saleability

decrease in rentabillty/s ale ability

no effect

Comments/examp ies : (Please cite specific examples, including available data.)

CITY OF LOS ANGELES

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CEPARTMErrT of
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LOS ANGELES, CAL17r. 30OM

CALVIN S_ NAMILTOtl
DIkIC7Dit

FRANK P. LOMDARDI
SXYClmvx Olrpicx1t

Tom BRADLEY
MJ1YOR

APPENDIX C

March 14, 1977

REQUEST FOE YCUI · · .~SSIS?'~~TdC . DT. XCBTPIFIIT RTECR.IL17-_TICI1T
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Because of your particular l~no~uledge of thJ businesses in the vicinity af your address, we are. requesting that you answer the questions on the attached questionnaire. These questions re=at_ to the effect of adult ehter-tainm eat establishments lon other businesses and neighborhoods in the surrounding area. The results of the questionnaire will be of great value to US in conducting this study.

lease return your completed questionnaire -in the stamped envelope provided before April I, 1977.

If 1ou have any questions about the study or wish to discuss this matter with '_Planning Department staff members, please call 4'5-359 .

We greatly appreciate your cooperation in assisting us in this survey.

CALVIN S.=HA11AI_r_,TCrr
Director of.-I-Il anning

CSH;CSR;Lmc

EFFECT ON SURROUNDING RESIDENTIAL PROPERTIES

7, 'what effect :does the concentration of -adult entertainment_ establishzent3 have on 'the market value of private residences located within the following distances from such establishments?'::

	Increase'.."	Decrease	No Effect
Lesa than 500 feet			
50o r IOOE3_ feet			
More than 1000 feet			

Comments/examples: (Please cite specific examples, including available (data.)

8. What effect does the concentration of adult entertainment establishments have_ on the reintal value of residential income property located within the following distances from such establishments?

	Increase	Decrease	No Effect
Less than 500 feet			
500 - 1000 feet			
More than 1000 feet			

Comments/examples:. (Please cite specific examples, including available data.)

9. What effect does the concentration of adult entertainment establishments have on the rentability/saleability of residential property located -within the following distances from such establishments?

	Increase	Decrease :-	No Effect
Lea3:than.500 feet			
500 - 1000 feet			
More than 1000 feet			

Comments/examples; (Please cite specific examples, . including available data.)

APPENDIX D-1

May- :3, 1977

Concerned *Members of the Public*

ADULT ENTERTAINMENT STUDY

We wish to thank you for your interest *in the* above matter. Recently, residents of the Studio City area have. received erroneous information regarding the activities of this Department. Spec fically, they have been informed that it is our intent to create an "adult entertainment zone" on *Ventura* Boulevard. This information_ is not correct.

In January of this year, the Los Angeles City Council instructed the Planning Department to *conduct* a study to determine whether so-called "adult entertainment" establishments, where they exist in concentration, tend to have a deteriorating or -blighting effect on adjacent properties and areas. Since that time, the Department staff has been evaluating data from the public and - governmental agencies to. determine whether evidence of such effects exists.

Within the next two months, the analysis of the information gathered will be presented to the Los Angeles City Council which will make a decision as to whether adoption of regulations is appropriate..

We regret that you were sent alarming erroneous information; if you have any further questions, please call my staff at 485-3508 or 485-3868.

(Original signed by).

CALVIN S. HAMILTON
Director of Planning

CSH:RJ:mw

PRIVATELY DISTRIBUTED QUESTIONNAIRE
(Note: Not a portion of Planning Department Study)

S -

no. of responses = 197

Question	Resporise		
1. What effect does the con.centratiori of adult entertainment establishments have on the market value of business property (land, structures, fixtures', etc.) located in the vicinity of such establishments?	increase in value	2	
	decrease in value	178	(90:4%)
	no effect	2	
2. What effect does the concentration of adult entertainment establishments have on the rental value of business property located in the vicinity of such establishments?	increase in value	2	
	decrease in value	16.9	(85.8%)
	no effect	3	
3. What effect does the concentration of adult entertainment establishments h.ave on the rentability/saleability of business property located in -the vicinity (length of time required to rent or sell property; rate of lessees/ buyer turnover;___ conditions of sale or lease, etc.)?	increase in rentability/ saleability	2	
	decrease in rentability/ saleability	161	- (81.7%)
	no effect	3	
4. What effect does the concentration of adult entertainment establishments have on the annual income of'businesses located in the vicinity of such establishments?	increased income	2	
	decreased income	149	(75.6%)
	no effect	5	
Have any business owners or proprietors considered relocating or not expanding their businesses because of the nearby concentration of adult entertainment establishments?	yes	71	(36.9%)
	no	4	(4.9%)
	not known	96	(48.7%)
6. In recent years, has the commercial vitality (sales, profi.ts, etc.) of any area in the City of Los Angeles been affected in any way by the 'nearby concentration of adult entertainment establishments?	yes	1 0	(50.8%):
	no.	57	(28.9%).
	not known		)

PRIVATELY DISTRIBUTED QUESTIONNAIRE
(Note: Not a portion of Planning Department Study)

-.RESPONSES -

Total no. of responses = 197

Question	Resporise		
1. What effect does the concentration of adult entertainment establishments have on the market value of business property (land, structures, fixtures, etc.) located in the vicinity of such establishments?	increase in value	2	
	decrease in value	178	(90.4%)
	no effect	2	
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	decrease in rentability/ saleability	161	(81_7%)
	no effect		
4. What *effect* does the concentration of adult entertainment establishments have on the annual income of'businesses located in the vicinity of such establishments?	increased income		
	decreased income	149	(75.6%)
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5. Have any business owners or proprietors considered relocating or not 'expanding their businesses because of the nearby concentration of adult entertainment	yes	71	(36.9%)
	no	4	(4.9%)
	not known	96	(48.7%)
In recent years, has the (sales, profits, etc.') of any area in the City of Los Angeles been affected in any way by the nearby concentration of adult entertainment establishments?	yes	100	(50.8%):
	no.	57	(28.9%).
	not known		(35.8%)

Comments indicate concern for:

1. personal safety, e.g. assaults

2. moral effect on children

3. safety of property, e.g. vandalism, robbery, etc.

4. neighborhood appearance. Adult entertainment establishments were described variously as tawdry, tacky, garish, seedy, messy, neglected, untidy, blighted, unkempt.

5. litter, e.g. cans, bottles, newpapers,.etc., strewn about public and private property, especially heavy after Saturday night.

6. spillover parking into residential areas. on-site parking is often inadequate. Customers seeking anonymity park at a distance away from any given establishment, on residential streets.

7. graffiti on public and private property.

APPENDIX.E

SANTA MONICA BOULEVARD & WESTERN AVENUE

	NODE		CITYWIDE	
POPULATION	1960	1970 -=	1960 ..	1970
-Total Population	18,484	19,033 -	2,.479,015	2,811;80.1
B Tack	38	340	334; 916	503,606
Percentage	0.2.	1.8-,	13.5	17.9
Spanish	540	3,833	260,399	518,791
Percentage	3.7	20.1m	10.5	18.5
Median Age	42.1	38.0	33.2	30.6
Persons 0-17	2,190	3,126	756,64Q	849,246
Percentage	11.8	16.4	30.5	30.2
Persons 65+	2,437	3,334	253,993	283,395
Percentage	13.1	17.5	10.2	10.1
No. of Husband & Wife Families	3,153	3,380	545,109	553,564
No. of Unrelated - Individuals	3,833	6,190	329,977	421,701
Average Household Size	1.95	1.90	2.77	2_68
HOUSING				
Total Units	9,859	10,667	935,507	1,074,173
Singles	2,938	1,919	559,745	560,378
Percentage	30.0	18.0	59.0	52.0
Multiples	6,921.	8,748	375,762-	510,261
Percentage	70_0	82.0	40.0	47.4.
Built P-r,e-1939	7,039	5,736	481,797	328,988
All Occupied Units	9,226	9,962	876,010	1,024,835
Owner	1,330	1,078	404,652	419,801
Percentage	14.0	11.0	50.0	39:0.
Renter	7,896	8,986	471,358	607,573
Percentage	86.0	89.0	43.0	56,4
ECONOMICS				
Median Family Income	5,699	7,713	6,896	10,535
Median School Years Completed	12.1	12_3	12.1	12.4
Median Value Owner Occupied in	16,450	25,825	17,300 -	26,700
Median Rent in $	77	105	78	114
Total Employed	9,370	9,113	126,276	1,150;796
Unemployed	900	91.2	6,914	86,802
Percentage	9_.6	10,0	5.5	7.5

HOLLYWOOD & WESTERN

	NODE		CITYWIDE	
POPULATION	1960	1970	1960	1970
Total Population	6,860.1	8,438	2,479,015	2;811 801
Black	3	72	334,916	503; 606
Percentage	-	1	13.5	17.9
Spanish	183	009	260,399	518,791
Percentage	2.6	10.7	10.5	18.5
Median Age	43.9	41.3	33.2	30.6
Persons 0-17	576	803	756,640	849,246
Percentage	8.3	9.4	30.5	30.2
Persons 65+	1,158	1,644	253,993	283,395
Percentage	16.8	15.4	10.2	10.1
No. of Husband & Wife Farriies	1,306	1,408	545,109	553,564
No. o.f Unrelated Individuals	2,805	3,602	329,977	421;701
Average Household Size	1.76	1.62	2.77	2.68
HOUSING				
Total Units	6,773	8,044	935,507	1,074,173
Singles	764	702	559,745	560,378
Percentage	11.3	8.7	55.0	52.0
Multiples	5,818	7,559	375,762	510,261
Percentage	85.9	94.0	40.0	47.4
Built Pre-1939	3,731	3;037	481,797	328,988
All Occupie-d Units	5,.996	7,506	876,010	1;024,835
Owner	394	420	404,652	419,801
Percentage	5.6	5.6	50.0	39_0
Renter.	5,602	7,137	471,358	607,573
Percentage	93.4	94.4	43_0	56.4
ECONOMICS				
Median Family Income	6,429	8,537	6,896	10,535
Median School Years Completed	12.5	12.6	12,1	12.4
Median Value Owner Occupied in $	22,200	87,333	17,300	26,7001
Median Rent in $	92	123	78	114
Tota? Emplbyed	6,-535	6=745	126,276	1,150,7.96
Unemployed	481	575	6,914	8,6;802
Percentage	7.4	8.5	5.5	7.5

SELMA AVEYU.,ECAH'1ENU.A BOULEVARC

	NODE		CITYWIDE	
POPULATION	1560	-470	1950	1970-
Total-Population	14,886	13,827	2,479,015	2,811,801
Black	43	342	334,916	503,606
Percentage	3	2.5	13.5	?7.9
Spanish	840	1,822	260,399	518,7S1
Percentage-	5.6	13.2	10.5	18.5
Median Age	43.3	39.8	33.2	30.6
Persons O-17	1,309	1,248	75',6";0	84S,246
P~-rcentzge	8.8	9.0	30.5	30.2.
Persons E5+	2,896	2,712	253,993	283,395
Percentage	15.5	19.6	10.2	10.1
No. of Husband & Wife Families	2,406	1 876	45,109	553,554
N oi- UnrT~ Ind iv duz I s	G=-631	5:95?.	32 977	421,701
Average Household S;ze	1-68	1.60	2.77	2.68
HOUSING				
Total Units	10,022	9,680	935,507	1,074,173
Singles	1,714	1,9140	559,745	560,378
Percentage	17.1	11.8	59'.0	52_0
Multiples	8,110	8,533	375,762	510,261.
Percentage	80.9	88.2	40.0	47.4
Built Pre-1939	7,197	5,161	481,797	328,988
All-Occ:upied Units	8,558	8,658	876,010	1,024,835
Owner	812	683	404,652	415,801
Percentage	°..l	7.9	5D.0	39.0
Rente·r	8,764	7,965	X71,358	507,573
Percentage	S°.?	92.1	43.0	56.4
ECON0P1ICS				
Median Family Income	5_.535	7,584	5,896	10,533
M-dian School Years Completed	12.2	12.5	12.1	12.4
Median V~1ue Owner Occupied in $	20,125	30,925	17,300	26,700
Median-Rent in $	80	111	78	114
Total Employed	8;112	E,990	126,276	1,150;796
Unemployed	998	943	6,914-	85,802
Percentage	12.3	13.5	5.5	7.5

HOLLYWOOD BOULEVARD AND HIGHLAND AVENUE

	NODE		CITYWIDE	
POPULATION	1960	1970	1960	1970
Total Population	11,438	12,016	2,479,015	2,811,801
Black	38	326	334,916	508,606
Percentage	.3	2.7	13.5	17.9
Spanish	357	1,509	260,399	518,791
Percentage	3.1	12.6	10.5	18.5
Median Age	44.5	41.0	33.2	30.6
Persons 0-17	832	970	756,640	849,246
Percentage	7.3	8.1	30.5	30.2
Persons 65+	2,281	2,379	253,993	283,395
Percentage	19.9	19.8	10.2	10.1
No. of Husband & Wife Families	1,718	1,606	545,109	553,564
No. of Unrelated Individuals	5,768	6,408	329,977	421,701
Average Household Size	1.57	1.56	2.77	2.68
HOUSING				
Total Units	8,261	8,835	935,507	1,074,173
Singles	1,169	858	559,745	560,378
Percentage	14.2	9.7	59.0	52.0
Multiples	7,067	7,958	375,762	510,261
Percentage	85.5	90.1	40.0	47.4
Built Pre-1939	5,768	4,344	481,797	328,588
All Occupied Units	7,322	7,756	876,010	1,024,835
Owner	559	559	404,652	419,801
Percentage	7.6	7.2	50.0	39.0
Renter	6,781	7,197	471,358	607,573
Percentage	92.4	92.8	43.0	56.4
ECONOMICS				
Median Family Income	5,792	7,510	6,896	10,535
Median School Years Completed	12.3	12.6	12.1	12.4
Median Value Owner Occupied in $	23,000	33,300	17,300	26,700
Median Rent in $	85	117	78	114
Total Employed	6,469	6,177	126,276	1,150,796
Unemployed	861	878	6,914	86,802
Percentage	13.3	14.2	5.5	7.5

LANKERSHIM BOULEVARD & VINLAND AVENUE

	NODE		CITYWIDE	
POPULATION	1960	1970	1960	1970
Total Population	7,600	9,344	2,479,015	2,811,8-01-
Black	1	0	334,916	503,606
Percentage	0	0	13.5	17.9
Spanish	263	146	260,399	518,791
Percentage	3.5	1.6	10.5	18.5
Median Age	41.9	38.7	33.2	30:6..
Persons 0-17	1,551	1,697	756,640	849,246
Percentage	20,4	18.2	30:5	30.2
Persons 65+	1,268	1,674	253,993	283,395
Percentage	16.7	17.9	10.2	10.1
No. of Husband & Wife Families	1,833	1,963	545 109	553,564
No. of Unrelated Individuals	1,325	2,521	329,577	421,701
Average Household Size	2.35	1.70	2.77	2.68
HOUSING				
Total Units	3,558	4,897	935,507	1,074,173
Singles	1,705	1,359	559,745	560,378
Percentage	47.9	27.8	59.0	52.0
Multiples	1,853	3,538	375,762	510,261
Percentage	52.1	72.2	40.0	47.4
Built Pre-1939	1,501	1,369	481,797	328,988
All Occupied Un-its	2,711	4,677	876,010	1,024,835
Owner	1,213	1,143	404,652	419,801
Percentage	44.7	24.4	50.0	39.0
Renter	2,098	3,534	471,358	607,573
Percentage	55.3	75.6	43.0	56.4
ECONOMICS				
Median Family Income	6,690	9,471	6,896	10,535
Median School Years Completed,	11.9	12.4	12.1	12.4
Median Value Owner Occupied in $	17,800	25,450	17,300	26 700
Median Rent in $	86	118	78	114
Total Employed	3,483	4,452	126,276	1,150,-796
Unemployed	267	291	6,914	86,-802
Percentage	7.7	6.5	5.5	7.5

Sexually Transmitted Disease Surveillance 1995

Division of STD Prevention

September 1996

U.S. Department of Health and Human Services
Public Health Service
Centers for Disease Control and Prevention
National Center for HIV, STD, and TB Prevention
Division of STD Prevention
Atlanta, Georgia 30333

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Gonorrhea

Infections due to Neisseria gonorrhoeae, like those due to Chlamydia trachomatis, remain a major cause of pelvic inflammatory disease, tubal infertility, ectopi.c pregnancy, and chronic pelvic pain in the United States_ Epidemiologic studies provide strong evidence that gonococcal infections facilitate HIV transmission, and biological studies have begun to elucidate the specific mechanisms through which this facilitation may occur. Reporting of gonococcal infections has likely been biased towards reporting of infections among persons of minority race/ethnicity who attend public STD clinics. This bias may partially explain the large reported race differentials among persons with this disease.

In 1995, 392,848 cases of gonorrhea were reported in the United States. The rate of gonorrhea has continued its overall decline since 1975. Be twee? 1994 and 1995 the rate decreased from 165.1 cases per 100,000 population to 149.5 (Table 1 and Eicaure 6).

In 1995, 27 states/areas reported gonorrhea rates below the revised Healthy People 2000 (HP2000) national objective of 100 cases per 100,000 population (Figure 7 and Table 10). Gonorrhea rates increased between 1994 and 1995 in of 36 states reporting more than 1,000 cases in 1995, down from 20 of the 35 states with more than 1,000 cases in 199^4 (Table 11).

Gonorrhea rates decreased in all regions in 1995. The South continued to have a higher rate than other regions (Figure 8).

Although the overall gonorrhea rate for large cities (selected cities with >200,000 population) continued to decline in 1995 (Figure 9), 55 (866) of 64 large cities had rates exceeding the revised HP2000 objective (Table 14).

The gonorrhea rate in men continued to decline in 1995, and the rate in women decreased after a one-year increase from 1993 to 1994. Rates in men remained above the HP2000 objective in 28 states and rates in women remained above the HP2000 objective in 26 states (Figure 10; Table 12 and Table 13).

In 1995, gonorrhea rates decreased for all racial and ethnic groups except Hispanics (Figure 11 and Table 9B). However, the rates for Hispanics and all other racial and ethnic groups except non-Hispanic blacks remained below the HP2000 objective (Figure 11 and Table 9B). The gonorrhea rate for blacks decreased by 9%, from 1,200.7 cases per 100,000 population in 1994 to 1,086_9 in 1995 (Table 9B), but remained almost 40 times greater than the rate for non-Hispanic whites.

Between 1994 and 1995, the gonorrhea rate for 15- to 19-_Year-old adolescents decreased by 10%, from 739.2 to 664.6 cases per 100,000 population, after increasing slightly from 1993 to 1994. Overall, 15- to 19-year-olds had higher rates than any other age group (Table 9B). In most minority. populations, 20- to 24-year-olds had the highest age-specific rates.

Antimicrobial resistance remains an important consideration in the treatment of gonorrhea. Overall, 31.6% of isolates collected in 1995 by the Gonococcal Isolate Surveillance Project (LISP) were resistant to penicillin, tetracycline, or both (Table 18). Between 1991 and 1995, the percentage of GISP isolates that were penicillinase producing Neisseria gonorrhoeae (PPNG) declined from 13.1% to 6.8% (Ei(Ture 14). In contrast, isolates with chromosomally mediated resistance to penicillin increased from 6.4% in 1991 to 7.0% in 1995 (Figure 15). Chromosomally mediated tetracycline resistance increased from 1994 (13.5%) to 1995 (15.4%) after several years of stable prevalence (Figure 15). A growing number of GISP isolates have demonstrated decreased susceptibility to ciprofloxacin, one of the currently recommended treatments for gonorrhea. Resistance to ciprofloxacin was first identified in GISP in 1991 but remains rare (Figure 16). Reduced susceptibility and resistance to ciprofloxacin correlate with reduced susceptibility and resistance to other fluorocuinolone antibiotics.

- Additional information about gonorrhea in racial and ethnic minority populations and adolescents can be found in the Special Focus Profiles section_.

Figure 6. Gonorrhea -- Reported rates: United States, 1970-1995 and

the Healthy People year 2000 objective
Figure 7. Gonorrhea -- Rates by state: United States, 1995
=inure 8. Gonorrhea -- Rates by region: United States, 1981-1995 and the Healthy People year 2000 objective
Figure 9. Gonorrhea -- Rates in U.S. cities of >200,000 population, 1981-1995 and the Healthy People year 2000 objective
Figure 10. Gonorrhea -- Rates by gender: United States, 1981-1995 and the Healthy People year 2000 objective
Figure 11. Gonorrhea -- Rates by race and ethnicity: United States, 1981 1995 and the Healthy People year 2000 objective
Figure 12. Gonorrhea -- Age- and gender-specific rates: United States, 1995
Figure 13. Gonococcal Isolate Surveillance Project (LISP) -- Location of participating clinics and regional laboratories: United States, 1995
Figure 14. Gonococcal Isolate Surveillance Project (GISP) -- Trends in pl-asmid-mediated resistance to penicillin and tetracycline, 1988-1995
Figure 15. Gonococcal Isolate Surveillance Project (GISP) -- Trends in chromosomally mediated resistance to penicillin and tetracycline, 1988-1995
Figure 1G. Gonococcal Isolate Surveillance Project (GISP) -- Prevalence of Neisseria gonorrhoeae with decreased susceptibility or resistance to ciprofloxacin, 1990-1995

Information about this file

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Table 1. Cases of sexually transmitted diseases reported by state health departments and rates per 10©, civilian population: united States, 1941-1999

	All Stapes		Primary and Secondary		SV hills Early Latent		Late and Late Latent		Congenital		Chlam die'		Gonorrhea		I Chancroidl		Granuloma Inguinale	
Year'	Cases	Rate	Cases	Rate	Cases	Rate	Cases	Rate	Cases	Rate	Cases	Rate	Cases	Rate	Cases	Rate	Cases	Rate
1941	=185,560	3682	68,231	51,7	109,018	82810.6	- 202,984	153_9	17,600	13.4	NR		193,468	Q31:6.Q	46.7	3,384	2.5	639
1942	4		5,312							12:8							1.278	
1943	575,593	447.0	82,204	63.8	149,390	116.0	251,958	195_7	16 ,164	12.6	NR		275,070	213.6	8,354	6.4	1,748_	1.3
1944	46	1.55	7	61.6	2		202'848:	1					0x.676=:23.				1-759	
1945	359,114	282.3	77,007	60.5	101,719	79.9	142,187	111,8	12,339	9.7	NR		287,181	225.8	5,515	4.3	1,857	1.4
946	* 363	6.4	94`957;	70'9				3,	6, 121.06								2,232	
1947	355,592	252.3	93,545	66.4	104,124	73.9	122,089	86_6	12,200	8.7	NR		380,666	270.0	9,515	6.7	2,330_	1.7
1948	31	182		174	4=7 -		62:.,, 1	3			NR		345,.50:9	238.8			2,409	
1949	256,463	175.3	41,942	28.7	75,045	51.3	116,397	79_5	13,952	9.5	NR		317,950	217.3	6,707	4.6	2,402	1.6
1950	21T'S58.1	6.0	23' 939	1'6	`59•x56	39"	1:13;.509		~i77	9:0	N R i•		286;740	192	5.4;97	3:3	1,783	1.2
951	174,924	116.1	14,485	9.6	43,31,556	28_7	98,311	65.2	11,094	7.4	NR		254,470	168.9	4,233	2.8	1,352	0.9
952							052		53 " 5				24.,557	16Q	8.3;738'		99.1	:0 6'
953	148,573	.95.9	8,637	5,6	28,295	18.3	98,870	63_8	7,675	5.0	NR		238,340	153.9	3,338	2.2		0.4
			7,:147		23,N1	15_7	89-123		6676				242;050	5	13	1:9	61	
955	122,392	76.2	6,454	4.0	20,054	12_5 -	86,526	53.8	5,354	3.3	NR		236,197	147.0	2,649	1.7	490	0.3
956	=1=30°2Q1	.78-7	39		1.9783		950						224,346	1:35	135.	1.3	35.7:	.0'2
1957	123,758	73.5	6,576	3,9	17,796	10.6	91,309	54.2	5,288	3.1	NR		214,496	121.4	1,637	1.0	348	0.2
1958	1.1^3,884	.66-4			6,556	9:7	83027				NR,		2 2,386'	1356	1,595	0-	3:1:4	0:2
59	120,824	69.2	9,799	5.6	17,025	9.8	86,740	49.7	5,130	2.9	NR		240,254	137.6	1,537	0,9	265	0.2
1960	125:38	68_8		.14'	18 Q1		8,17			4.1			~°256,R33	4	t1: 680	0.9	2.96	
1961	124,658	68.8	19,851	11.0	19,486	10.8	79,304	43.8	4,163	2.3	NR		264,158	145.8	1,438	0.8	241	0.1
1962	126;246	68.	21067	11'5	19;589	1 Q =:7	7<9		4,,6	2			263,21:4;	1'43.6	1;344;	0.7	207	0'_9
1963	124,137	66.6	22,251	11.9	18,235	9.8	78,076	41.9	4,031	2.2	NR		278,289	149.2	1,220	0.7	173	0.1
1964	174325	60,4	22,9Q9	12.1	1-7 787-	9:4				1	N		300666'	159.0	247	0:7:	135	01
1965	112,842	58.9	23,338	12.2	17,458	9.1	67,317	35.1	3,564	1.9	NR		324,925	169.6	,982	0.5	155	0.1
1966	108,159												35.1,738	18:1:9	838	0.4	148	0-_1
1967	102,581	52.5	21,053	10.8	15,554	8.0	61,975	31.7	2,894	1.5	NR		404,836	207.3	784	0.4	154	0.1
1968	96' 71'	48.8	19 Q:1:9	9:6	15 7.5 0	7 . 58					NR		4:64':543	235:7	84			
1969	92,162	46,3	19,130	9.6	15,402	7.7	b4,587	27.4	2,074	1,0	NR		534,872_	268_6	1,104	0.6	154	0.1
1970	91,32	45;3	,98	_9	16 311	8 fi -50	348		2				600' Q72	2972	1 416	0.•7	124	0,1
1971	95,997	46.9	23,783	11.6	19,417	9.5	49,993	24.4	2,052	1.0	NR		670,268	327.2	1,320	0.6	89	0.0
197,	1	3.9	24 429	1.8	20 784	1,0_Q	43	45,6	=20 9	1 = 58	0. 8							0
1973	87,469	41.7	24,825	11.8	23,584	11.3	37,054	17.7	E 1,527	0.7	T	NR	842,621	402.0	1,165	0.6	62	0.0
9.9.7;4	83 77	38.6	25 385	12.0	3,124	11.:9	31 654	15	1,138	0:5		NR		906' 121	428:2	:945	0:4	47
1975	80,356	37.6	25,561	12.0	26,569	12.4	27,096	12.7	916	0.4	NR		999,937	467.7	700	0.3	60	0.0
6	71'161	33:2	23 731'	11.0	,25'363	7	21 9 05	10,1	626	0_3	NR		1,001;994	464:1	628:0	3	71	0.0
1977	64,621	29.6	20,399	9.4	21,329	9.8	22,313	102	463	0.2	NR		1,002,219	459.5	455	0.2	75	0.0
1978	648:75	29:4	21 656'	9:8	19 628		23 038	X10.4					x13:436	9.7	521	02'.	72-	0.0
1979	67,049	30.1	24,874	11.2	20,459	9,2	21,301	9_6	332	0_1	NR		1,004,058	450.3	840	0.4	76	0.0
1980	68-,832	5. 27	204 12	1-	20,297;	9:0	20;979	9 3	$77	t !	NR		1,004 ,029.4	45.-1	788:	0.	51-	0:0'
1981	72,799	32.0	31,266	13.7	21,033	9.2	20,168	8.9	287	0.1	NR		990,864	435_2	850	0.4	66	0.0
1982	25;579	32'9.	33 "0	1.3 14'	21-8~4	9:5	-99*799	8`6	259"	0:1'	NFt		960,633'	417.9	1;392	0.6	17	0:0
1983	74,637	32.1	32,698	14.1	23,738	10.2	17,896	7.Z	239	0.1	NR		900.435	387.6	847	0_4	24	0.0
1984	0"9;873'	29:8'	28;607.	12.2	23,t32:	9:9	;1.7;829:	T.:6	305	0:1'	7594		878,556:	374.8	665	0.3	30	0:.0
1985	67,5663	28.5	27,131	11.5	21,689	9.2	18,414	7.8	329	0.1	25,848	17.4	911,419	384.3	2.0671	0.9	44	0.0

Table 1. Cases of sexually transmitted diseases reported by state health departments and rates per '100,000= civilian population: United States, 1941-1999 (continued)

	All Ste es		Syphilis: Primary and Secondary		Syphilis: Early Latent		Syphilis: Late and Late Latent		Congenital		Chlamydia'		Gonorrhea' .		Chancroid		Granuloma Ingu Whale		Lyml., granq,..: Venet	
Year	Cases	Rate	Cases	Rate	Cases	Rate	Cases	Rate	Cases	Rate-	Cases	Rate	Cases	Rate	Case	Rate	Cases	Rate	Casas	
9.86 ;...'		8 3 Z fib,			·1165							2								
·1165 1987	87,278	35_9	35,585	14.6	28,233	11.6	22,988	9.4	480	0.2	97,973	50_8	787,532	323.6	4,986	2.0	22	0.0	30	
y„ 0			4 ...7_	5	:35;96'8		2 ..:7x63		4-1			8...	Z38 T -							
1989	115,.067	46.6	45,826	18.6	45,3.,4	18_4	22,032	8..,	1,837	0.7	200,90.	102.5	733,294	297.1	4,697	1.9	7	0.0	18 -	..:c.,..
79 0	=1-35~DA3	3 ,56 5 r8 : 20:3			5~%	x 22:3				'•3eSfi0=	.1.'.6x-3~3~6.o3			:2 >!1	~4=2:1					
1991	128,637	51.0	4;2, 950	170	53,855	21.4	27,490	10.9	4,424	1.8	381,228	180.3	621,918	246.7	3,476	1.4	29	0.0	47 i	:Aw.
19. 2.		55	44.. 3	3 : 'd 6 .2	9 9 3		5 099::		890		63	83.4	'Sa2; 785	19.7:7=						:'".x:
993	101,335	39.3	26,497	10. 3	41,902	16.3	29,675	11.5	3,261	7. 3	405,275	179.5	444,578	172.5	1,237	0.5	19	0.0	28'	~;7(
9'94 ; 82-33 _4			45	7 9'	32"020		-'27'45	....:Q ....:			58	•.19 .5 •	_4'19 577	1 6'a 7	779	'0!3				
995	69,353	26.4	16,543	6.3	26,657	10.1	24,296	9.2	1,857	0.7	478,577	190.4	392,651	149.4	607	0.2	0	0.0	18~	
996	'53 2f8...	0_1	1(388 .	4'3	,,2 0 7 87	T6'	•.20•364		27.9	0:5	4.9D"8:1	•=.92' 9	'=326805.	7.2 32	.386	'0::7.				qrgq
997	46,708	17:5	8,556	3.2	16,631	6.2	20,446	7.6	1,075	0.4	531,744	207.0	326,564	122.0	24	0.1	8	0.0	11	
99 :_	38 66		7. 3M		.;12 74'1	:.4 7	1 `. '`			=0	fi0 752	=23#:2	:35 0 '7 28							
999	35,628	13.2	6 657	2.5	11,677	'4.3	16 738	6.2	556	0.2	659,441	254.1	360,076	133.2			0			

'NR = No report

'For 1941-1946, data were reported for the federal fiscal year ending June 30 of the year indicated. From 1947 to the present, data were reported fl,.` calendar year ending December 31. For 1941-1958, data for Alaska and Hawaii were not included.

2 For 1941-1994, rates include all cases of congenitally acquired syphilis per 100,000 population. As of 1995, rates of congenital syphilis <1 year of a: per 100,000 population are reported. For rates of congenital syphilis <1 year of age per 100,000 live births see Tables 37, 38 and 39. As of 19[cases of congenital syphilis <1 year of age are obtained in hardcopy and electronic format based on case reporting form CDC 73.126.

Note: Adjustments to the number of cases reported from state health departments were made for hardcopy forms and for electronic data submissior?j, through August 4, 2000 (see Appendix). The number of cases and the rates shown here supersede those published in previous reports. Cases and 4ai shown in this table exclude the outlying areas of Guam, Puerto Rico and Virgin Islands.

Gonorrhea

Infections due to *Neisseria gonorrhoeae,* like those resulting from *Chlamydia trachornaffs,* area major cause of pelvic inflammatory disease (PID) in the United States. Occurrence of PID can lead to serious outcomes such as tubal infertility, ectopic pregnancy, and chronic pelvic pain. In addition, epidemiologic and biological studies provide strong evidence that gonococcal infections facilitate the transmission of HIV infection.'

Following a 72% decline in the reported rate of gonorrhea from 1975 to 1997, in 1999 the gonorrhea rate increased for the second year in a row. Although increased screening (usually associated with simultaneous testing for chlamydial infection), use of more sensitive diagnostic tests, and improved reporting may account for a portion of the recent increase, true increases in disease in some populations and geographic areas also appear to have occurred.'

As with chlamydial infection, reporting of gonorrhea cases to CDC is incomplete. In addition, reporting practices for gonococcal infections have likely been biased towards reporting of infections in persons of minority race or ethnicity who attend public STD clinics.'' As a result, for most areas, the number of gonorrhea cases reported to CDC reflects many factors, only one of which is the occurrence of the infection among the population. For this reason, new data on gonorrhea prevalence in persons screened in a variety of different settings are useful in assessing disease burden in selected populations.

- In 1999, 360, 076 cases of gonorrhea were reported in the United States (Table 1).
- In 1999, the reported rate of gonococcal infections in the United States (133.2 cases per 100,000 persons) increased by 1.2% compared with the rate reported in 1998 (131.6 cases per 100,000 persons) and 9.2% compared with 1997 (122.0 cases per 100,000 persons) (Table 14). Prior to this increase, in the period from 1977 to 1997, the national gonorrhea rate had been declining following the implementation of the national gonorrhea control program in the mid-1970s (Table 1).

  In 1999, 26 states and three outlying areas reported gonorrhea rates below the Healthy People 2000 (HP2000) national objective of 100 cases per 100,000 persons. Eight states and one outlying area had reported rates below the provisional Healthy People 2010 (HP2010) objective of 19 cases per 100,000 persons' (Figure 11 and Table 13).
- The gonorrhea rates in all of the four Census regions of the United States (Northeast, West, Midwest, and South) either increased or stayed approximately constant between 1998 and 1999. All regions, however, had experienced declining rates from 1995 through 1997. As in previous reporting years, the South had the highest rate in 1999 (202.9 cases per 100,000 persons) among-the four regions of the country (Figure 12, Table 14).

- The overall gonorrhea rate reported from selected large cities, those with populations over 200,000 persons, was 230.8 cases per 100,000 persons, in 1999. This rate is slightly lower than that reported for these cities in 1998-(238.0 cases per 100,000 persons) (Figure 13, Table 18). Fifty-three (83%) of these 64 cities had rates exceeding the HP2000 objective of 100 cases per 100,000 persons. All cities, with the exception of San Juan, Puerto Rico, had reported rates higher than the HP2010 provisional objective of 19 cases per 100,000 persons (Table 17).
- There was no meaningful change in the reported gonorrhea rate among women between 1998 and 1999 (130.0 and 129.9 cases per 100,000 females respectively). The gonorrhea rate in men, however, increased by 2.5% from 132.7 to 136.0 cases per 100,000 males from 1998 to 1999. Reported rates in 1999 among men were greater than the HP2000 objective in 23 states while 1999 rates among women exceeded the objective in 24 states. State-specific reported rates for both men and women were higher than the provisional HP2010 objective of 19 cases per 100,000 persons in 42 states (Figure 14, Tables 15 and 16).
- Changes in the reported 1999 gonorrhea rates, relative to those reported in 1998, differed depending on racial/ethnic group. For example, the rates among Hispanics and Asian/Pacific Islanders were 4% and 6% higher respectively in 1999 than the corresponding group-specific rates in 1998. The 1999 rate among American Indians/Alaska Natives, however, was 7% lower than the rate reported in 1998. Rates among non-Hispanic whites and blacks were similar in 1998 and 1999 (Figure 15 and Table 12B). The 1999 gonorrhea rates for non-Hispanic blacks and American Indians/Alaska Natives were above the HP2000 objective. In 1999, the reported gonorrhea rate among non-Hispanic blacks was about 30 times greater than the rate for non-Hispanic whites.

  Between 1998 and 1999, the reported gonorrhea rates among 15- to 19-year-old adolescents decreased from 547.0 to 534.0 cases per 100,000 persons. For 20-to 24-year-old young adults, the reported rate increased from 605.2 to 614.7 cases per 100,000 persons between 1998 and 1999 (Table 12B).
- Among women in 1999, 15- to 19-year-olds had the highest reported rate of gonorrhea, while among men, 20- to 24-year-olds had the highest rate (Table 12B and Figure 16).
- In 1999, the median state-specific gonorrhea test positivity among 15 to 24-year old women screened in selected family planning clinics in 32 states was 1.0% (range, 0% to 5.2%) (Figure 17).
- Antimicrobial resistance remains an important consideration in the treatment of gonorrhea.[5,6] Overall, 28.1% of isolates collected in 1999 by the Gonococcal Isolate Surveillance Project (GISP) were resistant to penicillin, tetracycline, or both (Figure 19).
- The proportion of GISP isolates demonstrating decreased susceptibility to ciprofloxacin, one of the currently recommended treatments for gonorrhea, decreased from a high of 1.3% in 1994 to 0.5% in 1996 and 1997, but increased to 0.9% in 1998 and to 1.1% in 1999 (Figure 20). Resistance to ciprofloxacin was first identified in GISP in 1991. From 1991 to 1998, less than 9 ciprofloxacin-resistant isolates were identified each year and such isolates were

identified in only a few LISP clinics. However, in 1999, 19 (0.4%) ciprofloxacin-resistant LISP isolates were identified in 10 of the 26 GISP clinics. Notably, in Honolulu, 14.30 of GISP isolates were ciprofloxacin-resistant prompting CDC and the Hawaii Department of Health to no longer recommend the use of fluoroquinolone antibiotics for treatment of gonorrhea in that state.

- In 1999, all GISP isolates were susceptible to ceftriaxone and to cefixime. The proportion of GISP isolates demonstrating decreased susceptibility to ceftriaxone or cefixime has remained very low over time. To date, no cephalosporin resistance has been identified in GISP.
- The proportion of GISP isolates demonstrating elevated minimum inhibitory concentrations (MICs) to azithromycin has been increasing since GISP began monitoring azithromycin susceptibility in 1992. In 1992, 0.9 0 of GISP isolates had azithromycin MIC _> 0.5 ug/ml compared with 2.9% in 1999. In 1992, there were no isolates with azithromycin MIC >_ 1.0 ug/ml but in 1999, there were 25 such isolates.
- The percentage of men with gonorrhea who were reported to have had a gonorrhea infection in the previous year, as measured by the GISP, decreased from 21.5% in 1992 to 17.2% in 1999 (Figure 21), approaching the HP2000 objective of 15%.
- GISP also reports the percentage of Neisseria *gonorrhoeae* isolates obtained from men who have sex with men' (MSM).',' The proportion of isolates from MSM increased from 12.0% in 1998 to 13.10 in 1999; in 1988, only 4.0% of GISP isolates were from MSM. Among the nine GISP clinics reporting the majority of MSM cases in 1999, the percentage of cases that were in MSM ranged from 11.3% to 56.80, with a median of 25.00 (Figure 22).
- Additional information about gonorrhea in racial and ethnic minority populations and adolescents can be found in the Special Focus Profiles section.

'Cohen MS, Hoffman IF, Royce RA, et al. Reduction of concentration of HIV-1 in semen after treatment of urethritis: implications for prevention of sexual transmission of HIV-1. Lancet 1997;349:1868-73.

'Centers forDisease Control and Prevention. Gonorrhea -UnitedStates,1998.MMWR 1999;49:538-42.

'Fox KK, Whittington W, Levine WC, Moran JS, Zaidi AA, Nakashima AN. Gonorrhea in the United States, 1981-1996: demographic and geographic trends. Sex Transm *Dis* 1998;25(7):386-93.

'U.S. Department of Health and Human Services. Healthy People 2010 (Conference *Edition,* in Two Volumes). U.S. Government Printing Office, Washington, DC, 2000.

'Fox KK, Knapp JS, Holmes KK, et al. Antimicrobial resistance in Neisseria gonorrhoeae in the United States, 1988-1994: the emergence of decreased susceptibility to the fluoroquinolones. J Infect *Dis* 1997;175:1396-1403.

'Centers for Disease Control and Prevention. Sexually Transmitted Disease Surueillance 1999 Supplement: Gonococcal Isolate Surueillance *Project* (GISP) Annual Report -1999. U.S. Department of Health and Human Services_ Atlanta: Centers for Disease Control and Prevention, 1999 (in press).

'Centers for Disease Control and Prevention. Gonorrhea among men who have sex with men - selected sexually transmitted disease clinics, 1993-1996. *iVINIWR* 1997;46:889-92.

Figure 10. Gonorrhea - Reported rates: United States, 1970-1999 and the Healthy People year 2000 objective

Figure 11. Gonorrhea - Rates by state: United States and outlying areas, 1999

Note: The total rate of gonorrhea for the United States and outlying areas (including Guam, Puerto Rico and Virgin Islands) was 131.4 per 100,000 population. The Healthy People year 2000 objective is 100 per 100,000 population.

Figure 10. Gonorrhea - Reported rates: United States, 1970-1999 and the Healthy People year 2000 objective

Figure 11. Gonorrhea - Rates by state: United States and outlying areas, 1999

Note: The total rate of gonorrhea for the United States and outlying areas (including Guam, Puerto Rico and Virain Islands) was 131_4 per 100,000 population. The Healthy People year 2000 objective is 100 per 100,000 population.

Figure 12. Gonorrhea - Rates by region: **United States, 1981-1999** and the Healthy People year 2000 objective

Figure 13. Gonorrhea - Rates in selected U.S. cities of >**200,000** population, **1981-1999 and the Healthy People year 2000 objective**

Figure 14. Gonorrhea - Rates by gender: United States, 198'1-1999 and the Healthy People year 2000 objective

Figure 15. Gonorrhea - Rates by race and ethnicity: United States, 198'1-'1999 and the Healthy People year 2000 objective

Note: Other" includes Asian/Pacific Islander and American Indian/Alaska Native populations. Black, White, and Other are non-Hispanic-

Figure 16. Gonorrhea -Age- and gender-specific rates: United States, 1999

Figure 17. Gonorrhea - Positivity among 15-24 year old women tested in family planning clinics by state, 1999

*States reported gonorrhea positivity data on less than 500 women aged 15-24 years during 1999 except for New Jersey and Virgin Islands submitting gonorrhea positivity data for July-December only.

SOURCE: Regional Infertility Prevention Programs; Office of Population Affairs; Local and State STD Control Programs; Centers for Disease Control and Prevention

Figure 18. Gonococcal Isolate Surveillance Project (LISP) - Location of participating clinics and regional laboratories: United States, 1999

Figure 19. Gonococcal Isolate Surveillance Project (GISP) - Penicillin and tetracycline resistance among GISP isolates, 1999

Note: PPNG=penicillinase-producing *N. gonorrhoeae;* TRNG=plasmid-mediated tetracycline resistant N. *gonorrhoeae*, PPNG-TRNG=plasmid-mediated penicillin and tetracycline resistant *N. gonorrhoeae;* PenR=chromosomally mediated penicillin resistant N. *gonorrhoeae;* TetR= chromosomally mediated tetracycline resistant *N. gonorrhoeae;* CMRNG=chromosomally mediated penicillin and tetracycline resistant *N. gonorrhoeae.*

Figure 20. Gonococcal Isolate Surveillance Project (GISP) - Percent of *Neisserfa* gonorrhoeae isolates with decreased susceptibility or resistance to ciprofloxacin, 1990-1999

Percent

1990 91 92 93 94 95 96 97 98 99

Note: Resistant isolates have ciprofloxacin MICs >_ 1 ug/mL. Isolates with decreased susceptibility have ciprofloxacin MICs of 0.125 - 0.5 Ilg/mL. There were forty two (42) resistant isolates: one in 1991, one in 1993, two in 1994, eight in 1995, two in 1996, five in 1997, four in 1998, and nineteen in 1999. Susceptibility to ciprofloxacin was first measured in GISP in 1990.

Figure 21. Gonococcal Isolate Surveillance Project (GISP) - Percent of men with gonorrhea who had a previous gonorrhea Infection within the past year, 1991-1.999

Percent

50

40

30

20

10

0

Ever'

Last 12 months"

1991 92 93 94 95 96 97 98 99

*Data first collected in 1991.

*Data first collected in 1992.

Figure 22. Gonococcal Isolate Surveillance Project.(GISP) - Percent of Neisseria gonorrhoeae isolates obtained from men who have sex with men for STD clinics in nine cities, 1995, 1997 and 1999

Note: In 1999, these nine clinics reported 83.4% (511/613) of LISP gonorrhea cases in men who have sex with men. Chicago first participated in 1996. Clinics include: CHI=Chicago, IL; DEN=Denver, CO; HON=Honolulu, HI; LBC=Long Beach, CA; ORA=Orange County, CA; POR=Portland, OR; SDG=San Diego, CA; SEA=Seatle, WA; and SFO=San Francisco, CA.

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Wisconsin AIDS/HIV Proqram Outcome Measures

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Last Revised_ July 13, 2009

Technical notes:

a. This report is compiled by the Wisconsin AIDS/HIV Program and is based on AIDS and HIV infection case surveillance data collected by the Wisconsin Division of Public Health (DPH). It does not include data from the Counseling and Testing Site Program. In Wisconsin, state statutes require health care providers to report cases of AIDS and HIV infection to the DPH_ For information about reporting requirements or procedures contact the
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b. In this report, data are tabulated by the date of report to the DPH and includes data received and entered through the end of the previous quarter. Data in this report are provisional. Completeness of reporting for AIDS cases in Wisconsin is estimated to be over 85% but may vary by geographic region, risk exposure categories, and demographic groups. Completeness of reporting may be somewhat less for persons with HIV infection who do not meet the Centers for Disease Control and Prevention (CDC) surveillance case definition for AIDS. Thus, at any time, reported cases of HIV infection represent only part of the total number of diagnosed cases. Because cases remain undiagnosed, reported HIV infection

c. Over time, persons with HIV infection may be diagnosed and reported with AIDS. HIV infection cases later reported with AIDS are added to the "AIDS" category in the tables_

d. In 1993, the CDC AIDS case surveillance definition for adults and adolescents was changed to include, as AIDS cases, persons with severe HIV-related immunosuppression. In Wisconsin, the revised case_ definition resulted in the reclassification as AIDS cases of a significant number of persons who had been previously reported with HIV infection. This reclassification was a
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Footnotes:

1. "HIV infection" includes cases which meet the CDC surveillance case definition for AIDS and/or have Western blot confirmed HIV infection. "AIDS" includes only cases of HIV infection which meet the CDC surveillance case definition for AIDS.

2_ For cases of HIV infection, "age" is the age when HIV infection was first diagnosed. For AIDS cases, "age" is the age when the case first met the CDC surveillance AIDS case definition.

3. Not included in this table are 34 Asian/Pacific Islanders, and 68 American Indians reported with HIV infection.

4. In Wisconsin reporting of risk exposure is only required for AIDS cases. For surveillance purposes, AIDS cases are counted only once in a hierarchy of exposure categories. Persons with more than one reported mode of exposure to HIV are classified in the first category in the hierarchy, except for men with a history of both sexual contact with other men and injecting drug use which
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5. "Heterosexual contact" cases include persons who report specific heterosexual contact with persons with, or at increased risk for, HIV infection.

6. "Mother at risk" cases include children who were born to mothers with, or at risk of, HIV infection.

7- "Risk not identified" cases include those currently under investigation; cases with incomplete exposure history because the patients refused interview, died before they could be interviewed, or were lost to follow-up; and cases for whom follow-up exposure history is available but no exposure made was identified. "Other" cases include persons who report modes of exposure not listed in the
hipramhv

8. For HIV infection, the county of residence is the Wisconsin county of residence at the time HIV infection was first reported in Wisconsin. For AIDS cases, the county of residence is the Wisconsin county of residence at the time the AIDS case was first reported in Wisconsin. This table does not include AIDS and HIV infection cases among persons incarcerated in a state or federal prison in
Wisr.nrLcin at time of dinnnnsis

Table 6. Cumulative AIDS and HIV infection(1) among children less than 13 years of age by racelethnicity and county(8)

	Milwaukee County				Other Counties				Total			
	AIDS		HIV infection		AIDS		HIV infection		AIDS		HIV infection	
Racelethnicity	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
White	1	5.0%	3	8.1%	15	75.0%	27	62.8%	16	40.0%	30	37.5%
Black	13	65.0%	22	59_5%	2	10.0%	8	18.6%	15	37.5%	30	37.5%
Hispanic	6	30.0%	11	29.7%	2	10.0%'	4	9.3%	8	20.0%	15	18.8%
Asian	0	0.0%	0	0.0%	0	0.0%	0	0_0%	0	0.0%	0	0_0%
Am. Indian	0	0.0%	1	2.7%	1	5.0%	4	9_3%	1	25%	5	6.3%
Unknown	0	0.0%	0	0.0%	0	0.0%	0	0.0%	0	0.0%	0	0.0%
	20	100.0%	37	100.0%	20	100.0%	43	100.0%	40	100.0%	80	100.0%

Table 6a. AIDS cases(1) among children less than 13 years of age by exposure category(4)

Pediatric (<13 years of age) risk category	No.	
Hemophilia/Coagulation disorder	2	5.0%
Mother with/at risk	36	90,0%
Injecting drug use	8	
Sex with injecting drug user	19	
Sex *with* other *high risk* partner	2	
Sex *with HIV-infected* person, *risk not* specified	4	
HIV-infection, risk not specified	3	
Receipt of blood, blood components or tissue	1	2.5%
Risk not identifiedlother	1	2.5%
Total	40	100.0%

Table 7. Deaths among persons reported with HIV infection, by year of death

Year	Deaths
1982	1
1983	6
1984	14
1985	30
1986	64
1987	85
1988	102
1989	150
1990	192
1991	233
1992	277
1993	370
1994	333
1995	354
199"0	234
1997	134
1998	122
1999	89
2000	103
2001	a9
Total	2,935

Table 8. Cumulative AIDS cases(1) and deaths in the U.S. through June 30, 2000

AIDS cases	753,907
AIDS deaths	438,795

For more information:

To request a free copy of the national biannual HIVIAIDS Surveillance Summary Report, call 1-800-458-5231.

Questions regarding Wisconsin data may be directed to Neil Hoxie, AIDS/HIV Program Epidemiologist at (608) 266-0998.

Table 5. Cumulative AIDS cases and HIV infection(l) by county of residence(8)

County	AIDS	HIV Infection	County	AIDS	HIV Infection	County	AIDS	HIV Infection
Adams	14	21	Iowa	8	10	Polk	14	18
Ashland	<5	7	Iron	5	6	Portage	27	39
Barron	18	27	Jackson	6	6	Price	6	6
Bavnekl	6	9	Jefferson	23	32	Racine	142	226
Brown	155	24'3	Juneau	5	8	Richland	6	7
Buffalo	<5	<5	Kenosha	143	205	Rock	114	178
Bumett	<5	8	Kewaunee	<5	~-5	Rusk	<5	5
Calumet	5	8	La Crosse	74	127	Sauk	23	34
Chiooewa	11	21	Lafavette	<5	6	Sawver	<5	6
Clark	5	6	Lanalade	5	6	Shawano	22	23
Columbia	22	28	Lincoln	6	5	Shebovaan	36	56
Crawford	15	17	Manitowoc	26	32	St. Croix	21	33
Dane	611	889	Marathon	47	66	Tavlor	<5	<5
Dodge	22	33	Marinette	21	25	Tremoealeau	8	10
Door	11	14	Marouette	7	9	Vernon	<5	7
Douglas	33	47	Menominee	11	14	Alas	5	13
Dunn	8	12	Milwaukee	2311	3801	Walworth	44	55
Eau Claire	51	72	Monroe	16	19	Washburn	7	6
Florence	<5	<5	Oconto	10	16	Washinaton	30	43
Fond du Lac	23	34	Oneida	9	16	Waukesha	118	156
Forest	<5	8	Outaaamie	52	T7	Wauoaca	6	8
Grant	16	25	Ozaukee	23	30	Waushara	<5	5
Green	19	27	Peoin	<5	<5	Winnebaao	82	119
Green Lake	<5	<5	Pierce	12	20	Wood	33	45

Table 5a. AIDS cases and HIV infection(1) by county and year of report

	Milwaukee Coun		Dane Coun		Other Counties	
Year	AIDS	HIV Infection	AIDS	HIV Infection	AIDS	HN Infection
1983	1	1	2	2	3	3
1984	9	10	3	4	10	10
1985	15	17	4	5	14	17
1986	32	65	11	16	28	70
1987	64	145	10	30	46	148
1988	69	202	16	59	62	155
1989	88	286	19	75	68	164
1990	131	367	35	88	92	217
1991	113	349	46	83	92	224
1992	153	398	42	76	105	209
1993	348	325	101	63	331	262
1994	241	273	66	56	153	185
1995	220	272	50	59	168	231
1996	159	206	52	51	122	169
1997	187	234	33	49	110	163
1998	137	186	33	47	94	148
1999	110	188	25	47	88	139
2000	180	198	42	47	105	145
2001	54	79	21	32	36	55
Total	2.311	3.801	611	889	1.727	2.714

Total	4,197	6,273	579	1,134

Table 4. Cumulative AIDS cases(1) by exposure category(4) and sex

	Male		Female		_Total	
	No.	%	No.	%	No.	
Men who have sex with men	2877	68.5%	-	-	2,877	60.2%
Injecting drug use	532	127%	186	32_1%	718	15.0%
Men who have sex with men and inject drugs	339	8.1%	-	-	339	7.1%
Hemophilia/Coagulation disorder	89	2.1% - -	0	0.0%	89	1_9%
Heterosexual contact:(5)	128	3.0%	289	49.9%	417	8.7%
Sex with injecting drug user	*64*		*164*		228	
Sex *with* other ***high*** risk partner	-/		*44*		45	
Sex *with* HIV infected person risk not specified	63		81		144	
Receipt of blood, blood components or tissue	32	0.8%	23	4_0%	55	1.2%
Mother with/at risk(6)	24	0.6%	13	2.2%	37	0.8%
Risk not identified/other(7)	176	4.2%	68	11.7%	244	5.1%
Total	4,197	100.0%	579	100.0%	4,776	100.0%

Table 4a. Cumulative AIDS cases(1) by exposure category(4) and racelethnicity(3)

	White		Black		Hispanic	
	No.		No.		*No.*	
Men who have sex with men	2,1.34	72_0%	555	42.1%	118	32.1%
Injecting drug use	211	7.0%	366	27.8%	129	35.1%
Men who have sex with men and inject drugs	205	6.8%	107	8.1%	22	6.0%
Hemophilia/Coagulation disorder	84	2.8%	2	0.2%	1	0.3%
Heterosexual contact: (5)	172	5.7%	176	19.4%	60	16.3%
Sex *with* injecting drug user	72		110		40	
Sex *with* other ***high risk*** partner	33		10		2	
Sex with *HIV* infected person ***risk*** not specified	67		56		18	
Receipt of blood, blood components or tissue	49	1.6%	3	0.2%	2	0.5%
Mother with/at risk(6)	13	0.4%	15	1.1%	7	1.9%
Risk not identifiedlother(7)	114	3.8%	94	7.1%	29	7.9%
Total	3,032	100.0%	1,318	100.0%	368	100.0%

Table 4b. Cumulative AIDS cases(1) among persons 13-24 by exposure category(4) and sex

	_Male		Female		_Total	
	No.	*%*	No.	%	No.	%
Men who have sex with men	111	63.4%	-	-	111	47.8%
Injecting drug use	16	9.1%	10	- 17.5%	26	11.2%
Men who have sex with men and inject drugs	11	6.3%	-	-	11	4.7%
Hemophilia/Coagulation disorder	24	13_7%	0	0.0%	24	10.3%
Heterosexual contact:(5)	7	4.0%	34	59.6%	41	17.7%
Sex *with* injecting drug user	3		19		22	
Sex *with* other ***high risk*** partner	0		7		7	
Sex with HIV infected person risk notspecifred	*4*		8		12	
Receipt of blood, blood components or tissue	1	0.6%	1	1.8%	2	0.9%
Mother wirhlatrisk(6)	0	0.0%	1	1_8%	1	0.4%
Risk not identi5ed/other(7)	5	29%	11	19.3%	16	6.9%
Total	175	100.0%	57	100.0%	232	100.0%

Table 3. Cumulative AIDS and HIV infection(1) cases by sex and race/ethnicity

	Males				Females				Total			
	AIDS		HIV infection		AIDS		HIV infection		AIDS		HIV infection	
Race)ethnicity	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
White	2,791	66.5%	3,889	62.0%	241	41.6%	420	37.0%	3,032	63.5%	4,309	582%
Black	1,069	25.5%	1,864	29.7%	249	43.0%	541	47.7%	1,318	27.6%	2,405	32.5%
Hispanic	294	7.0%	445	7.1%	74	12.8%	139	12.3%	368	7.7%	584	7.9%
Asian	15	0.4%	28	0.4%	3	0.5%	6	0.5%	18	0.4%	34	0.5%
Am. Indian	28	0.7%	41	0.7%	12	2.1%	27	24%	40	0.8%	68	0.9%
Unknown	0	0.0%	6	0.1%	0	0.0%	1	0_1%	0	0.0%	7	0.1%
Total	4,197	100.0%	6,273	100.0%	579	100.0%	1,134	100.0%	4,776	100.0%	7,407	100.0%

Table 3a. AIDS cases and HIV infection(1) by race/ethnicity(3) and year of report

	White		Black		Hispanic	
YEAR	AIDS	HIV Infection	AIDS	HIV Infection	AIDS	HIV Infection
1983	5	5	1	1	0	0
1984	20	22	2	2	0	0
1985	26	32	6	6	1	1
1986	61	117	10	27	1	4
1987	97	217	18	85	3	14
1988	117	286	21	97	10	28
1989	133	324	32	159	10	35
1990	198	443	44	181	17	39
1991	182	434	47	175	21	43
1992	219	386	57	230	26	58
1993	557	386	187	202	50	53
1994	295	272	146	200	34	37
1995	273	317	141	183	34	56
1996	198	228	113	158	34	36
1997	181	225	118	161	36	45
1998	139	201	109	139	24	36
1999	119	178	81	159	25	31
2000	165	169	132	170	31	42
2001	47	67	53	70	11	26
Total	3,032	4,309	1,318	2,405.	368	584

Table 3b. AIDS cases and HIV infection(1) by sex and year of report

	Male		Female	
YEAR	AIDS	H[V Infection	AIDS	HIV Infection
1983	5	5	1	1
1984	21	23	1	1
1985	33	39	0	0
1986	67	138	5	14
1987	115	295	5	28
1988	144	374	4	43
1989	163	467	13	58
1990	241	598	18	74
1991	228	574	24	82
1992	283	571	21	112
1993	719	543	9Q	107
1994	422	436	61	78
1995	396	476	7	86
1996	300	350	48	76
1997	293	356	47	91
1998	227	312	46	69
1999	188	296	40	78
2000	266	293	70	97
2001	86	127	28	39

Table 2. Cumulative AIDS cases(1) and HIV infection by aae arouD(2)

Ace group	AIDS' No.	AIDS' %	HIV Infection No-	HIV Infection %
Pediatric (less than 13 years of age)	40	0-8%	80	1.1%
Adolescent (13 to 19 years of age)	36	0.8%	163	2.2%
Adult (more than 19 years of age)	4,70D	98.4%	7,164	96.7%
Total	4,776	100.0%	7,407	100.0%

Figure 2. Age(2) at time of first diagnosis of HIV infection(1)

Table 22.

AIDS cases and HIV infection(1) by aqe group(2) and year of report

YEAR	Pediatric (<13 yrs) AIDS	Pediatric (<13 yrs) HIV Infection	Adolescent (13-19 yrs) AIDS	Adolescent (13-19 yrs) HIV Infection	Adult (>19 yrs) AIDS	Adult (>19 yrs) HIV Infection
1983	0	0	0	0	6	6
1984	0	0	0	0	22	24
1985	0	0	0	0	33	39
1986	0	1	1	5	71	146
1987	1	2	0	8	119	313
1988	1	2	0	1	147	414
1989	3	8	1	7	172	510
1990	2	6	2	15	255	651
1991	5	8	2	14	245	6,34
1992	2	10	1	19	301	654
1993	11	11	11	10	787	629
1994	2	6	3	12	478	496
1995	3	10	5	20	445	532
1996	1	2	3	14	344	410
1997	2	3	1	7	337	437
1998	2	2	2	7	269	372
1999	1	2	1	15	226	357
2000	3	4	2	5	331	381
2001	1	3	1	4	112	159
Total	40	80	36	163	4,700	7,164

WISCONSIN HIVIAIDS QUARTERLY SURVEILLANCE *SUMMARY*

Cases Reported 1932 through June 30; 2001

Table 1. Cumulative AIDS and HIV infection(1) in Wisconsin

AIDS	(Cases meeting the 1993 CDCAIDS case definition)	4,776,
HIV Infection	(AIDS and Western blot confirmed HIV cases)	7,407

Table 1a. AIDS case(1) by year

Year	Diaqnosed	Reported
1982	4	0
1983	14	6
1984	30	22
1985	48	33
1986	109	72
1987	164	120
1988	231	148
1989	273	176
1990	386	259
1991	377	252
1992	515	304
1993	501	809
1994	449	483
1995	441	453
1996	346	348
1997	256	340
1998	214	273
1999	161	228
2000	193	336
2001	64	114
Total	4,776.	4,776

Table 1b. HIV infection(1) by year

Year	Diagnosed	Reported
1982	9	0
1983	23	6
1984	51	24
1985	239	39
1986	337	152
1987	510	323
1988	585	417
1989	588	525
1990	741	672
1991	613	656
1992	617	683
1993	522	650
1994	423	514
1995	483	562
1996	388	426
1997	336	447
1998	302	381
1999	238	374
2000	296	390
2001	-106	166
Total	7,407	7,407

Figure 1. HIV infection(1) by quarter of first report

National Center for HIV, STD and TB Prevention

Divisions of HIV/AIDS Prevention

Notice to Readers: This issue of the *HIV/AIDS* Surveillance Report includes two items that will be discontinued in future issues. Surveillance for HIV/AIDS among health care workers is now conducted by the Hospital Infections Program (HIP) in the National Center for Infectious Diseases. Therefore, Table 17: Health care workers with documented and possible occupationally acquired AIDS/HIV infection will no longer be presented in this report. However, information on occupationally acquired AIDS/HIV infection will continue to be collected and made available by HIP. Inquiries regarding occupationally acquired HIV infection should be directed to the Hospital Infections Program, HIV Infection Branch, 1600 Clifton Road, MS E-68, Atlanta, GA 30333, telephone 404-639-6425. Surveillance methods for identifying the distribution of modes of HIV transmission in the population have evolved from ascertaining risk for all persons reported with a risk to population-based sampling and statistical modeling to estimate risk distributions. Therefore, Figure 6: Results of investigations of adult/adolescent AIDS cases ever classified as risk not reported or identified will no longer be presented. Data in Tables 20-22, 25 and 28 and Figures 9 and 10 present mode of transmission based on statistical estimation procedures_ See technical notes.

Suggested Citation: Centers for Disease.Control and Prevention. HIWAIDS Surveillance Report, 2000;12 (No. 1):[inclusive page numbers].

Center for Disease Control and Prevention	Jeffrey P. Koplan, M.D., M.P.H. Director
National Center for HIV, STD, and TB Prevention	Helene D. Gayle, M.D., M.P.H. Director
Division of HIWAIDS Prevention-Surveillance and Epidemiology	Robert S. Janssen, M.D. Director
Surveillance Branch	Patricia L. Fleming, Ph.D-, M.S. Chief Shari C. Steinberg,M.S.,M.P.H Surveillance Report Coordinator
Statistics and Data Management Branch	W. Meade Morgan, Ph.D. Acting Chief Xenophon M. Santas Deputy *Chief*

Single copies of the *HIV/AIDS* Surveillance Report are available from the CDC National Prevention Information Network, P.O. Box 6003, Rockville, MD 20849-6003; telephone 1-800-458-5231 or 1-301-562-1098. Individuals or organizations can be added to the mailing list by writing to CDC, MASO/MSB/IDS, Mailstop F-07, 4770 Buford Hwy., Atlanta, GA 30341-3717. Internet users may view an electronic copy of the Report by visiting CDC's home page (www.cdc.gov) and selecting the topic "Publications, Software, & Products." Confidential information, referrals, and educational material on AIDS are available from the CDC National AIDS Hotline: 1-800-342-2437, 1-800-344-7432 (Spanish access), and 1- 800-243-7889 (TTY, deaf access).

The HIV/AIDS Surveillance Report is accessible via Internet:
www. c d c. g o v/hiv/slats/h as riin k. htm

Errata: In Volume 11, Number 2 of the HIV/AIDS Surveillance Report, the proportion of cumulative AIDS cases among adult/adolescent men and women was reported incorrectly; the correct proportions are 83% men and 17% women. Table 22 on page 31 reported 176 deaths in children for 1989; the correct number is 371.

Added on: December 6, 2000
Centers for Disease Control &Prevention
National Center for HIT, STD, and TB Prevention
Divisions of Ill Prevention
Please send comments/suggestions/requests to: hivmail@cdc.aov

Commentary

The mid-year edition of the HIV/AIDS Surveillance Report presents the first opportunity to examine trends in the estimated incidence of AIDS during 1999 compared to earlier years. Sufficient time has elapsed to allow statistical adjustments for delays in reporting of AIDS cases that were diagnosed during 1999 (Figures 7 - 10). Likewise, trends in estimated deaths among persons with AIDS, and in the prevalence of AIDS, that is the-number of persons who are living with AIDS, are presented (Tables 23 - 28). In recent years, marked declines in AIDS incidence and deaths began in 1996 and continued into 1998 in association with the widespread use of potent combination antiretroviral therapies. However, the rates of decline in AIDS incidence and deaths slowed during the latter.part of 1998 and 1999. In 1999, the numbers of cases and deaths each quarter have stabilized or are fluctuating slightly in most populations and geographic areas. AIDS prevalence continues to rise with approximately 320,000 persons living with AIDS at the end of 1999, although the rate of increase has slowed.

There are undoubtedly multiple reasons for these changing trends. These may include: reaching the limits of therapy in extending survival; failing therapies due to treatment-resistant viral strains; late HIV testing; inadequate access to and adherence to treatment in some populations; or recent increases in HIV incidence in some risk groups. **Which among these factors contributes to the observed trends cannot be discerned from case reports of AIDS or deaths alone. CDC supports several supplemental surveillance projects that collect data on barriers to preventing AIDS cases and deaths. It appears that each of these factors may be partially contributing to the stalling in trends. To achieve further declines in AIDS incidence and deaths, HIV-infected persons must seek testing earlier in the course of their disease, receive and ad-here to treatment, and new HIV infections must be prevented. Figure 11 highlights continued declines in pediatric AIDS incidence, principally among perinatally- acquired infections, as a result of effective perinatal treatment to reduce HIV transmission.**

In addition to trend data, the report presents the activity in reporting AIDS cases and HIV cases (persons diagnosed with HIV infection but who do not have an AIDS diagnosis) to CDC from state and local health departments (Tables 2-5)- The number of reported cases is not only affected by trends in the epidemic but also by artifactual factors that can cause increases or decreases in case-finding independent of underlying trends in HIV incidence. For example, CDC published a revised HIV case definition in December 1999 which includes HIV RNA detection tests (i.e. viral load test results). As states have begun to implement laboratory-initiated reporting of viral load tests, they have identified additional prevalent HIV or AIDS cases. Further, more states are implementing HIV case re-porting in response to the changing epidemic and the need for information on persons with HIV infection. As states implement these revised reporting practices, the number of reported cases is likely to fluctuate (Tables 2-4). The identification and reporting of HIV and AIDS cases and deaths is important to enable state and local areas to estimate the minimum size of the population known to be living with HIV/AIDS and to forecast needed resources and services (Table 1)-

Surveillance data provide the scientific underpinning for HIV prevention efforts at the state and local levels- Identifying populations with high risks of exposure to HIV **has mostly**

been based on the demographic and geographic distribution of persons with AIDS, taking into account the percentage of AIDS cases in different exposure categories- In recent years, a growing proportion of AIDS cases,' and an even larger proportion of HIV cases, have been reported without HIV risk/exposure data. This reflects the large volume of cases reported, especially in the years after the expansion of the AIDS case definition in 1993; increasing reliance on laboratory-initiated reporting, and growth in the proportion of cases infected as a result of transmission from an infected partner with unrecognized or unreported behavioral risks. During the 1990's, case reporting and follow-up activities of state and local health department surveillance personnel increased dramatically as the epidemic peaked, and resources were not available to obtain complete behavioral risk data on all cases. As a result, it is no longer possible to track trends in HIV exposure categories from case report data alone in most areas.

To monitor trends by risk/exposure categories, it is now necessary to examine trends using statistical adjustments that take into account how cases initially reported without risk/exposure data are reclassified after follow up with providers or patient interviews. Adjusted trends in estimated AIDS incidence by exposure category are presented in Tables 20 and 21 and Figures 9 and 10 for adult/adolescent men and women, respectively. The basis for these adjustments is shown in Figure 6. CDC and state health departments are adopting new, efficient strategies for obtaining accurate estimates of the distribution of risk/exposures in the population, such as investigating a sample of reported HIV and AIDS cases. In future editions of the Report, Figure 6 will be discontinued and new tables will be added to present adjusted risk/exposure categories for HIV cases, as newer, more representative strategies for risk ascertainment are implemented.

Because of changes in the epidemic, CDC has ad-vised all states to implement reporting of HIV cases and to integrate HIV/AIDS case surveillance activities to promote efficiency. It is anticipated that all states will be reporting HIV cases to CDC within the next one to two years. Some states are adopting a variety of coded-identifiers for HIV case reporting, necessitating the development of new statistical methods to account for duplicate cases, reporting delays, and incomplete risk/exposure data for these states. During this tran-sition period, CDC will use HIV/AIDS Surveillance Supplemental Reports to present HIV case rpport da-ta, highlighting methods for analysis and interpreta-tion, and explaining the uses and limitations of these data. CDC and state health departments will also'be working together to ensure that supplemental surveil-lance efforts, such as studies of HIV incidence, sur-veys in at-risk and infected populations, and investigations of the determinants of the epidemic, are conducted more widely to supplement HIV/AIDS case reporting so as to better inform our understanding of current HIV epidemiology and enhance the effective-ness of public health efforts to prevent and control HIV.

Suggested reading:

CDC. HIV/AIDS Surveillance Report, 1999;11 (No.2):1-44.

CDC. National HIV Prevalence Surveys, 1997 Summary. Atlanta, GA: CDC; 1998:1-25.

CDC. Guidelines for national human immunodefi-ciency virus case surveillance, including monitoring for human immunodeficiency virus infection and ac-quired immunodeficiency syndrome. MMWR 1999;48 (No-RR-13):1-3.

Added on: December 6, 2000
Centers for Disease Control & Prevention
!National Center forHITI STD, and TB Prevention
Divisions ofHIV1,41DS Prevention
Please send comments/suhbestions/requests to: hivmaiY dcdc-gov

A GLANCE AT THE HIV EPIDEMIC

New HIV Infections

There are an estimated 800,000 to 900,000 people currently living with HIV in the U.S., with approximately 40,000 new HIV infections occurring in the U.S. every year.

® By gender, 70% of new HIV infections each year occur among men, although women are also significantly affected.

MEN 70%

WOMEN 30%

ESTIMATES OF ANNUAL NEW INFECTIONS BY GENDER, (N=40,000)

By **risk,** men who have sex with men (msm) represent the largest proportion of new infections, followed by men and women infected through heterosexual sex and injection drug use.

MSM 42%

HETEROSEXUAL 33%

IDU 25%

ESTIMATES OF ANNUAL NEW INFECTIONS BY RISK, (N= 40,000)

By race, more than half of new HIV infections occur among blacks, though they only represent 13% of the U.S. population. Hispanics, who make up about 12% of the U.S. population, are also disproportionately affected.

BLACK 54%

WHITE 20%

HISPANIC 19%

OTHER 1%

ESTIMATES OF ANNUAL NEW INFECTIONS BY RACE, (N=40,000)

To better understand how the I-IIV/AIDS epidemic is affecting men and women, it *is* critical we look at race and risk by gender.

BLACK 64%

HISPANIC 18%

WHITE 18%

HETEROSEXUAL IO%

IOU 25%

ESTIMATES OF ANNUAL. NEW INFECTIONS IN WOMEN, U.S., BY RACE AND RISK

BLACK 00%

HISPANIC 20%

30%

I~1SI 00°D

HETEROSEXUAL 15%

ESTIMATES OF ANNUAL NEW INFECTIONS IN MEN, U.S., BY RACE AND RISK

Cumulative Toll: AIDS Cases and Deaths through December 2000

AIDS Cases

As of December 2000, 774,467 AIDS cases have been reported in the U.S., including 640,022 cases reported among men and 234,441 among women. A total of 8,908 AIDS cases have been reported among children (ages 12 and under).

By race/ethnicity, 330,i6o A=s cases have been reported among whites, 292,522 among Blacks, and 141,694 among Hispanics_

AIDS Deaths

Since the beginning of the epidemic, 448,o6o deaths were reported through December 2000, including 381,611 among men and 66,448 among women.

Of these, 206,909 whites, 158,892 Blacks, and 77,698 Hispanics have died from HI-J-related causes.

Slowing Decline in AIDS uses and Deaths

During the mid-to-late 19go's, advances in xiv treatments led to dramatic declines in Ams deaths and slowed the progression from Nrv to AiDs. However, in recent years, the rate of decline for both cases and deaths began to slow, and in iggg, the annual number of Ams cases appears to be leveling, while the decline in AIDS deaths has slowed considerably.

	1997	1998	1999	% Decline 1997-1998	% Decline 1998-1999
AIDS Cases	49,999	43,183	41,849	13%	3%
AIDS Deaths	22,067	18,214	16,765	17%	8%

More People are Living with AIDS in the U.S. than Ever Before

Better treatments have also led to an-increasing number of people living with AIDS in this country. This growing population represents an increasing need for continued HIV prevention services for xiv-infected individuals and for treatment and care services.

1998	1999	2000
274,624	299,944	322,865

National Center for HIV, STD and TB Prevention

Divisions of HIV/AIDS Prevention

Table 1. Persons reported to be living with HIV infection' and with AIDS, by state and age group, reported through June 2000 1

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LIncludes only persons reported with HIV infection who have not developed AIDS.
2.Persons reported with vital status 'alive' as of the last update. Excludes persons whose vital status is unknown.
3.Indudes only persons reported from areas with confidential HIV reporting- Excludes 2,038 adults/adolescents and 57 children reported from areas with confidential HIV infection reporting whose area of residence is unknown or are residents of other areas.
4.Includes 360 adults/adolescents and 6 children whose area of residence is unknown.

5.Connecticut has confidential HIV infection reporting for pediatric cases only; Oregon has confidential infection reporting for children less than 6 years old; Texas reported only pediatric HIV infection cases from February 1994 until January 1999.

Added on: December 6, 2000
Centers for Disease Control &Prevention
Xational Center for HHl STD, and TB Prevention
Divisions ofHIVIAIDSPrevention
Please send comments/suggestions/requests to: hivmail@cdc.gov

National Center for HIV, STD **and TB Prevention**

Divisions of HIV'/AIDS Prevention

Table 2. AIDS cases and annual rates per 100,000 population, by area and age group, reported through June 2000, United States

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1. U.S. totals presented in this report include data from the United States (50 states and the District of Columbia), and from U.S. dependencies, possessions, and independent nations in free association with the United States. See Technical Notes. Totals include 632 persons whose area of residence is unknown.

Added on: December 27, 2000
Centers for Disease Control &Prevention
National Center for HILT STD, and TB Prevention
Divisions of HIV IA IDS Prevention
Please send comments/suggestions/requests to: hivmail(acdc.gov

National center for HIV, STD and TB Prevention

Divisions of HIV/AIDS Prevention

Table 3. HIV infection cases' by area and age group, reported through June 2000, from areas with confidential HIV infection reporting

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1_ Includes only persons reported with HIV infection who have not developed AIDS.
2. Connecticut has confidential HIV infection reporting for pediatric cases only; Oregon has confidential HIV infection reporting for children less than 0 years old; Texas reported only pediatric HIV infection cases from February 1994 until January 1999.
3. Includes 578 persons reported from areas with confidential HIV infection reporting, but whose area of residence is unknown. See Technical Notes.

Added on: December 6, 2000
Centers fdr Disease Control & Prevention
1Vational Center for HIV STD, and TB Prevention
Divisions ofHITIIAIDSPrevention
Please send comments/suggestions/requests to: hivmail(a_cdc.Zov

National Center for HIV. STD and TB Prevention

Divisions ®f HIV/AIDS Prevention

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Table 4. AIDS cases and annual rates per 100,000 population, by metropolitan area and age group, reported through June 2000, United States

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AIDS cases and annual rates per 100,000 population, by metropolitan area and age group,

reported through June 2000, United States (continued)

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Added on: December 6, 2000
Centers for Disease Control & Prevention
National Center for HIT! STD, and TB Prevention
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lease send comment3lsuggestionslrequests to: hivmail(-@cdC.g-wOv

Seattle, WA

Department of Construction and Laud Use

March 24, 1989

Dear Citizen_

The Department of Construction and Land Use has prepared the attached Director's Report and Recommendation on a proposed Land Use Code amendment regulating the location of topless dance halls. ·

The Department proposes to define topless dance halls as "adult cabarets" and establish them as a new category of use under entertainment uses. The proposal would limit the location of adult cabarets to three downtown zones where adult motion picture theaters and adult pahorams are also now permitted. These zones are the Downtown Office Core 1 (DOCI), the Downtown Office Core 2/400' (DOC2/400') and the Downtown Retail Core (DRC). The removal of the Downtown Office Core 2/240' (DOC2/240') zone is a major change from the Draft Report published February 14, 1989.

A public hearing on the amendment will be held before the City Council's Public Safety Committee on Monday, April 10, 1969, at 7:00 F.M., Council Chamber, 11th floor, Municipal Building, 600 4th Avenue.

If you have questions about the proposed amendment or the public hearing, please contact Ikuno Masterson at the Department of Construction and Land Use, 400 Municipal

Building, Seattle, WA 96104, or by calling 684-6880_

Sincerely,

DENNIS J_ MCLERRAN

Director

Seattle, WA

Department of Construction and Land Use

March 24, 1989

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Sincerely,

DENIMS J. MCLERRAN

Director

permit the location of adult cabarets in the non-residentially oriented downtown zones where adult motion picture theaters and adult panorams are now permitted. These zones are: Downtown Office Core 1 (DOCL), Downtown Office Core 2/400' (DOC2/400'), and Downtown Retail Core (DRC).

Topless dance halls, bars, and/or nightclubs have been regulated as performing arts theaters since the adoption of the Neighborhood Commercial Code in 1986. Historically, they have been treated as restaurants, dance halls, theaters or indoor places of public assembly, depending on the type of operation. They have been prohibited in residential zones and permitted in commercial, industrial and downtown zones, as they are today_

Of the eight known adult cabarets now in operation, one is located in the Downtown iv.lixed Commercial zone (DIM 125). Some form of adult entertainment use has existed at this location intermittently for many years. Another, located in a Neighborhood Commercial 2 (NC2) zone, has been at the same location for over 20 years. There is one located in a Downtown Office Core 2/400' (DOC2/400') zone. Three adult cabarets are located in Neighborhood Commercial 3 (NC3) zones, and two are in Commercial 1 (Cl) zones. The latter six have been newly established within the last two years.

This recent increase in the establishment of adult cabarets in Seattle's neighborhood commercial areas brought about a considerable number of citizen complaints_ The Public Safety Committee of the Seattle City Council received numerous phone calls and letters, including many from northend community councils and merchants associations and several petitions with hundred of signatures. These citizens expressed their concerns about the decline in property values, increases in insurance rates and fears about burglary, vandalism, rape, assaults, drugs, prostitution and the overall detrimental influence on their neighborhoods.

This citizen concern prompted the City Council to adopt legislation which requires both new and existing adult entertainment businesses to be licensed (Ordinance 114225) and places a moratorium on the establishment of any new business until the Land Use Code is amended (Ordinance 114254 and Resolution 27905). This-report is part of that Land Use Code amendment process, examining how best to-.regulate the location of adult cabarets_

Regulation of adult entertainment uses is a constant challenge for communities_ Regulating these uses is different from regulating other uses like grocery stores or restaurants because arts and entertainment uses involve protected forms of expression, such as dancing. Local governments must be cautious in regulating adult entertainment uses because of the constitutional issues involved. The First and Fourteenth Amendments to the United States Constitution are often cited in case law as the standards against which regulations affecting adult entertainment must be measured. The First Amendment protects the right of citizens to freedom of speech or expression, and this federal-right extends to the states under the Fourteenth Amendment.

One traditional method used by local governments to regulate adult entertainment uses has been through licensing_ This approach often requires owners, operators, and/or employees to provide detailed business information and specifies facility and operational standards. The City's recently adopted legislation which requires adult entertainment businesses to be licensed with the Department of Licenses and Consumer Affairs is an effective method for addressing performance-oriented

standards. Standards which regulate the planning effects of different uses are best incorporated into zoning or land use legislation. As a general rule these are more effective at addressing locational issues_

In the 1976 landmark decision of Young v_- American Mini Theaters_1 the U.S. Supreme Court declared- that as a land use, adult entertainment uses are subject to carefully tailored regulation to imize adverse land use impacts. In order for a land use regulation of such uses to be valid, several conditions must first be satisfied. One condition is that the local government must provide opportunities for this type of expression. In other words, zoning cannot be used directly or effectively to ban adult motion picture theaters, bookstores, or dancing. Another condition requires that limits not be placed on the number of establishments or on the accessibility of such facilities to those who wish to patronize them. The Court determined that zoning can legitimately be used to regulate such uses by establishing zones where adult entertainment uses are most compatible with other uses or the surrounding neighborhood, or by requiring minimum distances to be maintained between adult uses and other uses. Another more recent U.S. Supreme Court case, City of Renton v. Pla ime Theaters, 2 reaffirmed these concepts. It also verified that a city is entitled to rely on the experience of other cities in enacting legislation to regulate adult entertainment uses. Both of these decisions have been used in many cities to support local government zoning regulation of adult entertainment uses.

Seattle, like many other jurisdictions, relied on the Young decision to locate adult motion picture theaters only in the central business district. Citing Young again in 1979, the City limited the areas where adult panorams could be located_ In 1985, reflecting a decisive policy in the newly adopted Downtown Plan to encourage downtown residential development, adult motion picture theaters and adult panorams were authorized only in the Downtown Office Core 1 (DOC1), Downtown Office Core 2 (DC02) and the Downtown Retail Core (DRC) zones. To date, these are the only two forms of adult entertainment uses identified specifically in Seattle's land use regulations.

ANALYSIS AND RECOMENDATION

Land use regulation is based on the concept of compatibility_ Generally, the City's commercial and downtown policies encourage a variety of businesses which are compatible 'with each other and the residential areas they serve. However, some commercial uses have impacts which are not compatible with the nature of some business areas or create unavoidable impacts on surrounding residential areas. Anim al shelters, towing services, and construction yards, to name a few, are examples of commercial uses which may have objectionable impacts near residential areas and are identified and regulated

accordingly in the Land Use Code_ In a study entitled

"Zoning Controls for Adults-Only Theaters" prepared by the City in 1976, it was determined that adult motion picture theaters were not compatible near residential neighborhoods. (This study was cited by the City of Rmton in their U. S. Supreme Court case with Playtime Theaters, Inc.) In order to determine in what zones adult cabarets should be permitted, it is necessary to survey their impacts and determine with what other uses they are compatible.

During the review of Seattle's licensing ordinance, the Public safety Committee of the City Council held a public hearing. Many citizens spoke of their concerns and fears about these businesses in their neighborhoods. Problems with, parking and traffic, deteriorating property values, attraction of undesirable transients, increases in crime, hazards for children and personal safety, once again were some of the impacts expressed about adult- cabarets on the overall quality of neighborhoods- A recent rezone application proposed by an adult entertainment business has generated many letters opposing this rezone. Citizens have complained that this business interferes with their ability to raise their children in a healthy family environment.

A decision by the City in 1976, to allow adult motion picture theaters only in the downtown area ·was upheld by the Washington State Supreme Court based on findings that these same impacts, mentioned above, were indeed detrimental to residential areas- 3 In another case, Village *of Belle Terre v. Borass* the U.S. Supreme Court recognized that local governments have the right to use zoning based on impacts on family values to protect the public welfare. 4 Studies undertaken in other communities have verified that these same impacts are associated with adult entertainment uses in those communities as well.

Of these impacts, this study found that impacts on public safety and property values had the most quantifiable documentation-

In the law and planning literature on adult entertainment uses, public safety hazards are the most often cited adverse impacts on surrounding communities. New York city police have found that serious crime complaints ran almost 70% higher on police posts that contained adult uses. 5 The cities of Cleveland, Ohio; 6 Indianapolis Indiana·7 Los Angeles, California; $ and Austin, Texas· among others have documented that crime rates were any where from 15% to 77% higher in areas containing adult businesses than those areas containing no adult businesses. A study in Phoenix, Arizona lo concluded that not only was there a higher rate of sex-related crimes in areas where adult businesses were located, but that rate was significantly higher where there was a concentration of adult businesses. Boston is one of the few cities that has taken the concentrated zoning approach, limiting adult-only uses to one, seven-acre area in their downtown. Their "red light" district, commonly referred to as the "Combat Zone" also has a higher incidence of crimes than other business districts in the city. 11

To date, no analyses or comparative studies have been conducted in Seattle to verify correlation between adult cabarets and criminal activity. It is assumed that adult cabarets in Seattle are not unlike those in other cities. While not every adult business is predisposed to be involved with criminal activity there is enough documentation, as evidenced above, to demonstrate a direct link between the potential for increased criminal activity and adult cabarets.

Like adult motion picture theaters and panorams, adult cabarets are auto-oriented or destination-type uses attracting a regional clientele- Trade characteristics studies in Bothell, Washington 12 and Austin,

Texas, confirmed that at least one half of all customers frequenting adult businesses were located outside the city limits (one investigation in Bothell found that of 321 vehicles checked, only 8 were registered in their city). And in Austin, less than 5% were located. within a one-mile radius of the establishment. While there are many businesses which may have regional attraction, the fact that adult cabarets also have an increased potential for crime make them more of a public safety risk on a neighborhood. People who patronize these establishments may have no sense of identity with or regard for the neighborhood in which these businesses may be located and therefore less inhibited in their personal-behavior than if they were in their own community. Secondary effects of police calls to a business are also created. Noise from sirens and flashing lights and traffic hazards from police and emergency vehicles are disturbances not conducive to healthy business or residential environments. The increased potential for crime, together with these secondary effects, result in impacts which are more substantial than those of other neighborhood commercial uses which are intended to serve the needs of surrounding residents.

Decline of property values is another impact that can have serious effects on residential, commercial and industrial areas. Many jurisdictions have indicated property values are likely to decline as a result of an adult cabaret locating in the vicinity. In 1984, an analysis of adult entertainment businesses in Indianapolis was conducted by that city's Department of Metropolitan Development.? With the assistance of the Indiana university School of Business, they conducted a national survey of members from the Member Appraisers Institute and the American Institute of Real Estate Appraisers regarding the market effect of adult entertainment businesses on nearby land values. It was concluded that "adult entertainment businesses - even a relatively passive one such as an adult bookstore - have serious negative effects on their immediate environment." While respondent felt that both residential and commercial properties were affected, residential properties were more severely impacted. The cities of Kent, Washington, [13] Los Angeles, California [8], and Oklahoma City, Oklahoma, [14] also conducted analyses with similar conclusions. Detroit, Michigan is well known for basing their dispersion requirement for adult uses on protecting property value_ Their zoning ordinance was designed to protect business districts from the blighting influences and the "skid row" effect caused by the concentration of adult businesses. [15] Rental rates and occupancy of office-retail space in Washington, D.C.'s Franklin Square have nearly doubled since adult-only businesses have relocated out of the area. [16] Seattle has very little land devoted to neighborhood commercial use. Such zones represent only about 6% of the City's land area_ The City's industrial lands are similarly scarce. Allowing the location of adult cabarets with the potential for negatively impacting property values would be detrimental to these areas and contrary to the adopted policy to promote healthy industrial and business climates.

Within the scope of adopted City policy, the following changes to the Land Use Code are proposed to provide compatible locations for adult cabarets with other commercial enterprises in the community_ Major changes are discussed under the topics of Definitions, Nonconforming Uses, commercial Zones, Downtown Zones and Industrial Zones_

DEFINITIONS

Currently, there is no terminology in the Land Use Code which specifically describes an establishment where live entertainment is almost exclusively provided by nude and/or semi-nude performers_ With the adoption of the Neighborhood commercial Code in 1986, these types of uses have fallen under the category of performing arts theaters_ The major impacts associated with most performing arts theaters focus around parking and traffic. However, public safety and welfare is the major area of concern associated with adult cabarets_ Since the impacts associated with adult cabarets are significantly

different than those of other performing arts theaters, DCLU recommends that the use 'adult cabaret"' be specifically defined.

An adult cabaret is an entertainment use proposed to be defined as:

> a place of public assembly, where licensing as an "adult entertainment premises" is required by SMC 6270_

NONCONFOR11VILNG USES

There are eight known adult cabarets currently in operation" n Seattle. Seven are located in zones, which as a result of this amendment would make them nonconforming uses. They would be allowed to continue but would be subject to the provisions for nonconforming uses in the zones in which they are located.

COMMERCIAL ZONES

The commercial area use policies generally encourage business by promoting flexibility of business activity compatible with the neighborhood-serving character of business districts and with the residential character of the surrounding residential neighborhood.

The function of the Neighborhood Commercial 1, 2, and 3 zones (NCI, NC2, NC3) specifically emphasize pedestrian-oriented shopping, serving adjoining or surrounding residential neighborhoods_ Single purpose residential structures are allowed through the conditional use process and residential uses mixed with commercial uses are permitted outright. These zones are typically nodal areas in residentially zoned neighborhoods or along arterials adjacent to residential areas.

The commercial I (CI) zone begins to provide for more of a city-wide clientele, with auto-oriented retail sales and services. The CI zone also allows residential development on the same basis as NCI, NC2 and NC3 zones. These zones are generally located along arterial streets abutting residentially zoned land.

The Commercial 2 (C2) zone is also auto-oriented providing land for city-Wide business support and light manufacturing. Residential development is allowed on a case by case basis through conditional use review_ This review is intended primarily to preserve scarce commercially zoned land for preferred commercial uses, prevent displacement of commercial uses, and to ensure the compatibility of commercial and residential uses in the zone. These zones are generally strips of land along major arterial streets which often abut residentially zoned or less intensively zoned land..

Because these commercial zones are oriented towards the needs of nearby residential users and either allow some residential development or are located very near residential zoned it is proposed that adult cabarets not be allowed to locate in the NCI, NC2, NC'), Cl, and C2 zones. Adjacent residential neighborhoods and residents in 'business districts will then be protected from the adverse impacts often associated with adult cabarets. This will also assure that the business districts -will be protected from declining property values and remain able to provide services to a residential clientele in a healthy and safe environment_

DOWNTOWN ZONES

Residential development is also encouraged inmost downtown zones, the exceptions being the Downtown Office Core 1 (DOC1) zone, the Downtown Office Core 2 (DOC2) zone, and the Downtown Retail Core (DRC) zone. In order to promote residential neighborhoods in the downtown, adult motion picture theaters and adult panorama were prohibited in all but those three zones when the downtown chapter of the Land Use Code was adopted in 1985.

Having comparable impacts and being entertainment uses, adult cabarets are similar in use to adult motion picture theaters. And because downtown Seattle is a regional urban center where cultural diversity is more widely accepted, it is proposed that adult cabarets continue to be permitted in the same three zones as adult motion picture theaters:

DOC 1, DOC2, with the exception of DOC2/240', and DRC. These three zones total approximately 130 acres of land area.

The southern portion of the DOC2 zone, (the DOC2/240') zone, is proposed as an exception because of the highly sensitive public safety issues surrounding this area. The zone is located- south of the DOC 1 zone and north of the Pioneer Square area. There are several correctional facilities near or in this zone. The King County Jail (located in DOC1) borders this zone, and two large work-release facilities (with a total of approximately 300 residents) are located here. Individuals associated with these facilities are often serviced by the many programs provided by human service agencies located in the Pioneer Square area. These include programs for shelter, food, health, employment, substance abuse and sex therapy. Given the statistic that nearly 30% of the inmates in Washington's prison system are serving time for sex-related offenses, the siting of adult cabarets in this area poses a substantial threat to public safety. Adult cabarets are proposed to be prohibited from locating in the DOC2/240' zone.

Adult cabarets would also be prohibited from locating in the remaining downtown mixed commercial and residential zones and in the Special Review Districts (Pioneer Square and the International District), Pike Market and the Downtown Harborfront_

INDUSTRIAL ZONES

Industrial land in the City is a scarce resource. The intent of the Industrial Land Use Policies is to provide some measure of protection to viable industries from uses competing for this resource. With a limited supply of land in the City zoned for industrial use, care must be taken to protect it from the potential blighting influences which often accompany adult cabarets. While most entertainment uses are permitted in the Industrial zones, adult motion picture theaters and adult panorama are prohibited, based on a 1976 decision that they be concentrated downtown. Adult cabarets would similarly be prohibited in the industrial zones under this recommendation.

CONCLUSION

The most compelling argument for limiting adult cabarets is to reduce the potential public safety impacts. These impacts make adult cabarets incompatible in areas where residential development is promoted in combination with or adjacent to commercial development_ Additionally, adult cabarets are incompatible in the neighborhood commercial and industrial areas because there is a potential for a decrease in adjacent property values. In order to protect the health, safety and general welfare of the

residential, commercial and industrial neighborhoods adult cabarets are most compatible in areas where other adult entertainment uses are located and where their impacts on the surrounding area can be more closely monitored_

The Department of Construction and Land Use recommends the attached Land Use Code amendment be adopted for adult cabarets in the downtown;, commercial and industrial zones. By adopting the proposed amendment, the City will be providing adequate locational opportunities for adult cabarets while assuring that the residential and business environment of the City's neighborhoods and industrial areas will be protected from the impacts of these establishments.

REFERENCES

I Young v_ American Mini Theaters, Inc., 427 U.s. 50, 49 L.Ed. 2d.310, 96 S.Ct2440 (1976).

2 City of Renton v. Playtime Theaters, Inc., 415 U.S. 41,

89 L.Ed. 2d.29, 106 S.Ct.925 (1966).

3 Northend Cinema, Inc. V_ City of Seattle, 90 Wn.2nd

709.585 P2nd 1153. (1978).

4 Village of Belle Terre v. Borass, 416'U.S. 1, 39 L.Ed.

2d.797, 94 s.Ct.1536 (1974).

5 Toner, William. -U.S. Cities Face Combat in the Erogenous Zone," Planning, Vol.43. Chicago_ American Society of Planning Officials, September 1977.

6.City of Cleveland, Ohio, Police Department_ Special Investigation Unit Report, August 1977-

7 City of Indianapolis, Indiana, Department of Metropolitan Development, Division of Planning. "Adult Entertainment Businesses in Indianapolis. An Analysis." 1984.

8 City of Los Angeles, California, Department of City

Planning. "Study of the Effects of the Concentration of

Adult Entertainment Establishments in the City of Los

Angeles." June 1977.

9 City of Austin, Texas, Office of Land Development Services_ "Report on Adult Oriented Businesses in Austin." May 1986.

10 City of Phoenix, Arizona, Planning Department: "Adult Business Study_" May 1979.

1I Pratter, Jerome and Connie Hager, "Zoning Laws, Not

Obscenity Laws, Offer the Way to Control Adult

Entertainment," Nation's Cities Weekly; vol.3, April 21,1980.

12 City of Bothell, Police Department Investigations. 1984.

13 City of Kent, Planning Department. "Adult Use Zoning study." November 1982.

14 City of Oklahoma City, Community Development, Planning Division. "Adult Entertainment Businesses in Oklahoma

City: A Survey of Real Estate Appraisers. March 1986.

15 Toner, William.__ Regulating Sex Businesses, Planning Advisory Service, Report No.7_ Chicago: American Society of Planning Officials, May 1977.

16 Schultz, Arthur J. III. "Franklin Square: Porn Free and Booming, Urban Land. Urban Land Institute, August 1977.

PROPOSED AMENDMENT

SEATTLE ICIPAL CODE

CHAPTER 23

CONIIvERCIAL LAND USE CODE

23.84.006 "C"

" Cabaret_ adult see Places of Public Assembly "

1. Cabaret, adult means a place of public assembly, Where licensing as an "Adult entertainment premises" is required by SMC 6.270.

2_ "Motion picture theater" means a place of public assembly intended and expressly designed for the presentation of motion pictures, other than an adult motion picture theater.

3. "Motion picture theater, adult" means- a place of public assembly in which, in an enclosed building, motion picture films are presented which are distinguished or characterized by an emphasis on matter depicting, describing or relating to "specific sexual activities" or " specified anatomical areas." As defined in this subsection, for observation by patron therein

a. "Specified sexual activities"

1. Human genitals in a state of sexual stimulation or arousal_

2. Acts of human masturbation, sexual intercourse or sodomy;

3. Fondling or other erotic touching of human genitals, pubic region, buttock or female breast

b. "Specified anatomical Areas".

I- Less than completely and opaquely covered:

(a) Human Genitals, pubic region,

(b) Buttock, or

(c) Female breast below a point immediately above the top of the areola; or

2. Human male genital in a discernibly turgid state, even if completely and opaquely covered_

4_ Panoram, adult," means a device which exhibits or displays for observation by a patron a picture or view from film or videotape or similar means which is distinguished or characterized by an emphasis on matter depicting, describing, or relating to " Specified Sexual Activities" or Specified anatomical areas" as defined in subsection 3.

Appendix

Analysis of Adult Business studies in Indianapolis. Indiana and Los Angeles. California.

A INDIANAPOLIS, INDIANA

In February, 1984, the Division of Planning in Indianapolis published a report entitled Adult Entertainment Businesses in Indianapolis: An Ana . This report contained the results of an evaluation of the impact of adult business upon the surrounding area in terms of crime rates and real estate values.

Incidence of Crime

Methodology. The Indianapolis study assessed the impact of adult entertainment businesses on crime rates by researching six areas containing adult businesses and six similar areas containing rib adult businesses. The six study Areas were selected from among the forty three adult business locations. The criteria used to select the Study Areas were their zoning mix, population size, and the relative age of their housing stock. The Control Areas (having no adult businesses) were chosen on the basis of their approximate location to the Study Areas and their similarity in terms of population size and zoning mix. Of the six study Areas, two consisted primarily of residential zoning, two consisted primarily of commercial zoning, and two contained a mix of both residential and commercial zoning. All Study and Control Areas were circular in shape with a 1000 foot radius_

The Indianapolis study evaluated crimes in the Study and Control Areas for the years 1978 through 1982. The study compiled all reported incidents to which police were dispatched. This data were assembled into two groups: Major Crimes and Sex-Related Crimes_ Major Crimes included Cr~minal Homicide, Rape, Robbery, Aggravated Assault, Residence and Non-Residence burglary, Larceny, and vehicle Theft_ Sex-Related Cremes included Rape; Indecent Exposure, obscene Conduct, Child Molestation, Adult Molestation, and Commercial Sex_

Results. The evaluation found that for both the Study and Control Areas, the'rate of major cries was higher than the corresponding rate for the Indianapolis Police District as a whole. The average annual rate for major crimes in the Study Areas was 23 percent higher than the corresponding rate in the Control Areas. Comparison of the rates for sex-related crimes indicated a considerably larger difference between the Study and Control Areas. The average annual rate for sex-related crimes in the study Area was 77 percent higher than, the corresponding rate in the Control Area. The study also found a strong correlation between the crime frequency and the residential character of be study areas. Crime rates were 56 percent higher in predonnantly residential areas than in predominantly commercial areas_ The study found a more acute difference regarding sex-related crimes. Sex-related crimes occurred four times more frequently in predominantly residential areas than in areas that were substantially commercial in nature.

Appendix B

Real Estate Impacts

Methodolow. The Indianapolis report also evaluated the impact of adult businesses on property values. The report approached the evaluation from two perspectives. The first approach compared the residential property appreciation rates of the study Areas to those of the control Areas and to a larger geographical area that included the study and Control Areas_ The second approach surveyed professional

real estate appraisers to establish a "best professional opinion" regarding the market effect of adult businesses on surrounding land values.

The first part of the evaluation examined three sources in the assessment of residential property appreciation_ These sources were: the Indianapolis Residential Multiple Listing Summaries of the Metropolitan Indianapolis Board of Realtors; 1980 Census Data; and the annual lending institution statements required by the Federal Home Mortgage Disclosure Act. The second part of the evaluation solicited the opinions of members of the American Institute of Real Estate Appraisers (AIREA)_ The survey sample was drawn at two levels. A 20 percent random sample of AIREA members from across the nation was constructed. A 100 percent sample of professional appraisers with the 1vLAI (Member Appraisal Institute) designation, who practiced in the 22 Metropolitan statistical Areas similar in size to Indianapolis; was complied. The survey questionnaire was formulated to solicit information concerning the effect of adult businesses on residential and commercial property located within one to three blocks of the business site-

Results. The report adopted the following conclusions regarding the appreciation of residential properties. First, residential properties within the study Areas appreciated at only one-half the rate of the Control Areas and one-third the rate of Center Township (representing the performance of the market at a broader scale). Second, while residential listing activity declined 52 percent in the Control Areas and 80 percent in Canter Township in the study Area listings increased 4 percent. The report found that "twice the expected number of houses were placed on the market at substantially lower prices than would be expected had the Study Area real estate market performed typically for the period of time in question."

The tabulated results of the professional appraiser survey are depicted in Table 1. From these results, the report concluded that_

1. The large majority of appraisers felt that there is a negative impact on residential and commercial property values within one block of an adult bookstore.

2. The negative impact decreased markedly with distance from the adult bookstore. At a distance of three blocks the negative impact was judged by appraisers to be less than half that when compared to a distance of one block_

3. The majority felt that the negative impact was greater for residential properties than for commercial properties.

Table I

Effect of Adult Businesses on Properly values in Indianapolis, Indiana

Decrease Decrease Decrease No change increase increase 20% or 10 to I to I to 1 to more 20% 10% 10%20% -

Residential Property

One Block Radius

20% National

Survey 21.3 24.5 34.1 20.1 0.0 0.0

100% MSA

Survey 19.0 25.4 33.6 21.1 0.9 0.0

a

Commercial Property

One Block Radius

20% National --

Survey 10.0 19.3 42.6 28.1 0:0 0.0

100% MSA

Survey 9.5 20.3 39.9 29.9 0.9 0.4

Residential Property

Three Block Radius

20% National

Survey 1.6 9.3 25.4 63.3 0.4 0.0

100% MSA

Survey 2.6 7.8 25.9 60.3 0.4 0.0

Commercial Property

Three Block Radius

20% National

Survey 0.8 5.2 16.5 76.6 0.8 0.0

100% MSA

Survey 2.2 3_9 16_8 75.9 1.3 0.0

The Indianapolis appraiser survey included a question designed to help establish the basis for their opinions regarding the degree to which adult businesses a ect property values in general. Almost 90 percent of those

responding to the survey provided responses to this question. In the national survey, 29 percent., saw little ,or no effect on surrounding property values resulting from adult businesses. They listed as a basis their professional experience; the observation that this use generally occurs in already deteriorated neighborhoods; and the feeling that the effect of only one adult business would be inconsequential.

One half of the respondents projected a substantial to moderate negative impact on surrounding property values_ Their responses were based on the feeling: that adult businesses attract "undesirables" to the neighborhood, that adult businesses create a bad image of the area, and that this type of use offends the prevailing community attitudes thus discouraging homebuyers and customers from frequenting the area. Twenty percent of the respondents indicated that the potential impact on surrounding property values was contingent on other variables. Many felt the impact would be contingent on the existing property values in the area and the subjective value of area residents. Some felt that development standards controlling facade and signage would determine the degree of impact, `while others indicated that the nature of the existing commercial area and its buffering capacity as the most important factor influencing the impact on surrounding property values_

The MSA survey results closely paralleled those of the national survey. Two additional responses are noteworthy_ First, some respondents indicating a substantial to moderate negative impact based their opinion on the feeling that such uses precipitate decline and discourage improvements in the area. second, some respondents felt that the impact on property values was contingent on whether or not it was likely that other adult businesses would be attracted to the area.

B. LOS ANGELES, CALIFORNIA

In June, 1977 the Department of City Planning of the City of Los Angeles published a report entitled Study of the Effects of the Concentration of Adult Entertainment establishments in the City of Los Angeles. The study includes an evaluation of the impact of adult businesses on both crime rates and property values.

Incidence of Crime

Methodology. The City's study evaluated the impact of adult businesses on criminal activity by comparing crime rates in Hollywood to crime rates for the city. Hollywood was selected as a study area because of its high concentration of adult businesses: The study focused on the years 1969 to 1975; during which time adult businesses in Hollywood proliferated from ii to 88 establishments.

Results. The City's study monitored trends in Part 1 crimes. Part 1 crimes include homicide, rape, aggravated assault, robbery, burglary, larceny, and vehicle theft. The number of reported incidents of Part 1 crimes in the Hollywood area increased 7.6 percent from 1969 to 1975. This was nearly double the citywide average increase of 4.2 percent for the same time period_ This report also monitored Part I crimes committed against a person (as opposed to those committed against property) and found that they increased at a higher than average rate in brie Hollywood Area. Street robberies and purse snatchings, where in the victims were directly accosted by their assailant, increased by 93_7 percent and 51.4 percent. respectively; compared to the city wide average increase of 25.6 percent and 36.8 percent.

The increase in arrests for part II crimes indicated an alarming differential between the Hollywood area and the city as a whole. Arrests for these crimes increased 45.5 percent in the Hollywood area but only 3.4 percent city wide. prostitution arrests in the Hollywood area ¡ncreased at a rate 15 times greater than the city average. While the city showed a 24.5 percent increase, prostitution arrests in Hollywood increased 372.3 percent_ in 1969, arrests for prostitution in the Hollywood area announced for only 15 percent of the city total; however, by 1975 they accounted for over 57 percent of the total. In the Hollywood area pandering arrests increased by 475 percent, which was 3 1/2 times greater than the city wide average. In 1969 pandering arrests in the Hollywood area accounted for 19 percent of the city total_ By 1975, the share had increased to 46.9 percent.

The Los Angeles police Department increased their deployment of police personnel at a substantially higher rate in the Hollywood area in response to the surge in crime. The report emphasized that sexually-oriented business either contributed to or were directly responsible for the crime problems in the Hollywood area.

Real Estate !M-oats

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Real Estate IM·oacts

lulethodolo-v_ The study prepared by the City of Los Angeles utilized a two point approch in evaluating the impact of adult businesses on surrounding property values. The primary approach sought to establish the impact on property values by monitoring changes in assessed value from 1970 to 1976 for selected areas having concentrations of adult businesses and for appropriate control areas_ The report selected five study areas containing 4 to 12 adult entertainment businesses. Three study areas were in Hollywood and the other two were in the San Fernando valley. Four control areas; having no adult businesses were selected_ The study examined property assessment data, U.S. census data, and other pertinent information to determine the rate of appreciation over the six year study period. The rates for the Study Areas were compared to the rates for the Control Areas to gauge the impact of adult businesses on property values.

The second approach of the study used survey questionnaires to subjectively establish the impact of adult businesses on surrounding residential and commercial properties. Two questionnaires were prepared. The first questionnaire was distributed to all members of the American Institute of Real Estate Appraisers having a Los Angeles address and to members of the California Association of Realtors having offices in the vicinity of the study Areas. The second questionnaire was distributed to all property owners (other than singe family residential) within 600 feet of the Study Areas. The results of these surveys were supplemented wZih input from the general public obtained at two public meetings held in the area.

Results. The evaluation found that there was some basis to conclude that the assessed valuation of property within the Study Areas had generally tended to increase at a lesser rate than similar areas having no adult businesses. However, the report noted that in the opinion of the planning staff there was insufficient evidence to support the contention that concentrations of adult businesses have been the primary cause of these patterns of change in assessed valuation.

The appraiser questionnaire was distributed to 400 real estate professionals with 20 percent responding. The results can be summarized as follows:

1. 87.7% felt that the concentration of adult businesses would decrease the market value of business property located in the vicinity of such establishments.

2. 67.9% felt that the concentration of adult businesses would decrease the rental value of business property located in the vicinity of such establishments.

3. 59.3% felt that the concentration of adult businesses would decrease the rent ability/salability of business property located in the vicinity of such establishments.

4. 72.8% felt that the concentration of adult businesses would decrease the annual income of businesses located in the vicinity of such establishments.

5. Over 90% felt that the concentration of adult businesses would decrease the market value of private residences located within 1000 feet.

6. Over 30% felt than the concentration of adult businesses would decrease the rental value of residential income proper y

located within 1000 feet_

7. Almost 90% felt that the concentration of adult businesses would decrease the rentability/salability of residential property located within 1000 feet_

Respondents to the appraisers' survey cornYmented that the adverse effects are related to the degree of concentration and the type of adult business. They indicated that one free standing adult business may have no effect_ A few comments indicated that property values and business volume might increase for businesses that are compatible ~.vith adult entertainment businesses (e.g.: other adult businesses, bars). A high percentage of appraisers and realtors commented on the adverse effect of adult businesses on neighborhood appearance, litter, and graffiti_

The survey of property owners indicated that almost 85 percent felt tl-at adult entertainment establishments had a negative effect on the sales and profits of businesses in the area. Over 80 percent felt that adult businesses had a negative affect on the value and appearance of homes in the area immediately adjacent to such businesses. Area property owners and businessmen cited the following adverse effects resulting from adult entertainment establishments.

1_ Difficulty in renting office space.

2. Difficulty in keeping desirable tenants.

3. Difficulty in recruiting employees_

4. Limits hours of operation (evening hours).

S. Deters patronage from women and families.

6. Generally reduces business patronage.

Respondents emphasized their concerns about the high incidence of crime. A high percentage of respondents commented that the aesthetics of adult businesses are garish I sleazy, shabby, blighted, tasteless, and tend to increase the incidence of litter and graffiti.

Testimony received at the two public meeting on this subject revealed that there was serious public concern over the proliferation of adult entertainment businesses particularly in the Hollywood area. Citizens testified that they are afraid to walk the streets, particularly at night. They expressed concern that children might be confronted by unsavory characters or exposed to sexually explicit material.

Appendix B

TYPES OF CRIIYIES

Part I Crimes

Murder

Capital Murder

Criminal Negligent Homicide/Non-Traffic

Criminal Negligent Homicide/Traffic

Involuntary Manslaughter/Traffic Justified Homicide

Sexual Assault

Attempted Sexual Assault

AQ-ravated Sexual Assault

Attempted Aggravated Sexual Assault

Rape of a Child

Respondents emphasized their concerns about the high incidence of crime. A high percentage of respondents commented that the aesthetics of adult businesses are garish sleazy, shabby, blighted, tasteless, and tend to increase the incidence of litter and graffiti.

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Capital Murder

Criminal Negligent Homicide/iNon-Traffic

Criminal Negligent Homicide/Traffic

Involuntary Manslaughter/Traffic justified Homicide

Sexual Assault

Attempted Sexual Assault

Aggravated Sexual Assault

Attempted Aggravated Sexual Assault

Rape α' a Child

Pocket Picking

Purse Snatching

Shoplifting

Theft of ServIce

Theft of Bicycle

Theft from Person

Attempted Theft

Theft of Heavy Equipment

Theft of vehicle/Other

Auto Theft

Attempted Auto Theft

Unauthorized use of a vehicle

Sex Related Crimes

Sexual Assault

Attempted Sexual Assault

Aggravated sexual Assault

Attempted Aggravated sexual Assault

Rape of a Child

Attempted Rape of a Child

Prostitution

Promotion of Prostitution

Atrgravated Prostitution of Prostitution

Compelling prostitution

Sexual Abuse

Ao-ravated Sexual Abuse

Attempted Aggravated sexual Abuse

Public Lewdness

Indecent Exposure

sexual Abuse of a Child

Attempted Sexual Abuse of a Child

Indecency with a Child

Incest

Solicitation

Appendix C

COZv1POSITION OF STUDY & CONTROL AREAS

BY ZONZN-G DISTRICT

	Aria one		„.area TM Ω		Area Three		Area Four	
	Studv	Control	Study	Control	Studv..	control	~dy	Control
I-SF-3	j		f 2.92					
						4719		
' 11N								
				1 1.17	2.72			
CS			2654 j 13.06 il		10.31			
CS-1		78						
CS-H								
GR				I 1 7.40	2.27			
LR				I 1 37				
LI								
AVIATION j		3.05						
IJNZ								
Q ROAM ROW	1 22.59	1 2233	1 17,65	1 20.53	1 14.51	1 1234	1 17.51	1 14,34

Appendix D

QUESTIONNAIRE

Please complete this brief survey and return it to the office of Land Development Services by December 4, 1985. Read the following information about a hypothetical neighborhood and respond to a few questions in terms of your professional experience and judgement.

A middle-income, single-family residential neighborhood borders a main street that contains various commercial activities that serve the neighborhood_ There is a building that recently has become vacant and will open shortly as an adult bookstore. There are no other adult bookstores or similar activities in the area. There is no other vacant commercial space presently available in the area.

Please indicate your answers to questions 1 through 4 in the blanks provided using scale A through G.

scale: (A) Decrease 20‰ or·more

(B) Decrease more than 10 °/0 but less than 20%

(C) Decrease from 0 to 10%

(D) No change in value

(E) Increase from 0 to 10%

(F) Increase more than 10% but less than 20%

(G) Increase 20% or more

1) How would you expect the average values of the single-family residential property within one block of the bookstore to be affected?

2) How would you expect the average values of the commercial property 'within one block of

the bookstore to be affected?

3) How would expect the average values of the simle-family residential property within three blocks of the bookstore to be affected?

4) How would you expect the average values of commercial property within three blocks to affected?

5) Suppose the available commercial building is used for something other than an adult bookstore. For each of the following potential uses, would the average value of the residential property within one block of the new business be:

(A) much higher;

(B) somewhat higher,

(C) about the same,

(D) somewhat lower; or

(E) much lower;

than if an adult bookstore occupied the site.

Store-1'rom· Church

Pool Mall

Welfare ofEce

Neighborhood Tavern

Record Store

Medical Of%

Branch Library

Drag Rehabilitation Cente'r

Ice Cneana parlor

Video game parlor

Adult Video Arcade

--p.----Bar

Massage pahor

Adult theater

6) In general, to businesses affect what de,DTee do property values?

7) Why do you feel this ·way?

8\ Are you affiliated v~th a professional real estate appraisal

organization? If so, please spec

OPTIONAL_ Name and Name of Firm

City of Bellevue

MEMORANDUM

Date: **January 11, 1988**

To: City Council Members

From: **Bruce Freeland, Planning Director**

Subject: **Location of Adult Entertainment Uses - Background Material**

Attached please find the background materials described in the agenda memo for the ordinance to regulate the location of adult entertainment uses. Each of the attached items is labeled as follows:

A. Part One of the study which provided background material on regulating the location of adult entertainment uses.

B. The staff to Planning Commission memo of 9/22/87 which responded to defnitional issues raised at the Planning Commission's Public Meeting of 9/16/87. Also included are minutes for that meeting.

C. The staff to Planning Commission memo of 10/9/87 which responded to Planning Commission questions raised as a result of Part One of the study and the public meeting. Also included is Part Two of the study which contains staffs conclusions and recommendations.

B. The staff to Planning Commission memo of 10/29/87 which related to conditional use permit requirements as well as the segregation , of adult materials.

E. A bibliography which lists all the materials made available for review by the Planning Commission_ (The material listed in the file is also available for your review and is located in the Council office.)

Should you have any questions, please contact me or Rob Odle at 455-6880.

BF: j b

Attachments

cc: Adult Entertainment File

TABLE OF CONTENTS

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THE CURRENT SITUATION IN BELLEVUE

PART Il

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APPENDIX I

MINUTES FROM PUBLIC MEETINGS - JUNE 1987

INTRODUCTION

The purpose of this study is to provide an information base on adult entertainment uses to aid the Planning Commission in their deliberations on the need to regulate the location of adult entertainment uses. Part 1 of this study, which is composed of background information, will be presented to the Planning Commission prior to their September 16th public meeting. At this public meeting, the public will provide their comments on the need and type of regulations that may be adopted for adult entertainment uses. At a subsequent Planning Commission meeting, staff will present Part 11 of the study, which will include an analysis and recommendation as to the need for regulation and form that any necessary

regulation should take.

The United States Supreme Court in The City of Renton v. Playtime Theatres _Inc. (U.S_ 89 L.Ed.29, S.Ct. (1986)) recently upheld the City's authority to develop zoning regulations specifically for the location of adult entertainment uses. In addition to this determination that a regulation can not effectively ban such uses, the Court identified three factors which are critical in the preparation or such a regulation that the regulation deal with only the secondary effects of adult entertainment uses: that the experiences of other cities can be used in developing this regulation; and that cities can choose the form of regulation which is appropriate for that particular city, even if the city cited used a different regulatory approach. In order to provide the appropriate information in a logical manner to the Planning Commission, this study will follow a format of responding to each of these factors.

Part I of this study will provide a general background on the issue of regulating the location of adult entertainment uses and then will discuss the secondary impacts of such uses_ Next, the experiences of other communities will be discussed. Part I will conclude with a description of the current situation in Bellevue. Part 11 (to be presented at a later date) will address the third factor, the appropriate form of regulation within Bellevue (if necessary)_

Included with Part I is a bibliography listing studies, articles, correspondence and reference materials from adjacent municipalities_ All materials listed in the bibliography are available on file at the City of Bellevue Planning Department. Also included in Part 1, as Appendix I, are the minutes from two public hearings, conducted by City of Bellevue staff, concerned with regulating the location of adult entertainment uses.

SCOPE AND DEFINITIONS

Generally adult entertainment uses are those uses which cater to adults' interest in sex_ Adult entertainment uses generally are grouped into three categories: adult theatre (which includes movie theatres, drive-ins, peep shows and panorams as well as live entertainment and dance halls cabarets); adult retail stores such as bookstores, video rentals and novelty stores, and adult services such as massage parlors, bathhouses and saunas. Currently in Bellevue, with the exceptions listed below, adult uses are treated no differently than all other uses. Such uses are currently permitted or conditionally permitted in the following zones.

USE ZONES PERMITTED WITHIN

Adult Theatre Office - Limited Business, Community Business and all CBD zones (drive-ins. only in Light Industrial, General Commercial and Community Business)

Adult Retail Office - Limited Business, Community Business and all CBD zones

Adult Services Office - Limited Business, Light Industrial, General Commercial, Neighborhood Business, Community Business and all CBD zones

Certain of the above described adult uses or their possible effects are regulated in Bellevue through either the Bellevue City Code (BCC) or the Revised Code of Washington (RCW). These regulations and their effects are described below_

RCW 7.48 A, entitled Moral Nuisances, provides a right of civil action for the exhibition of non-protected adult materials. For constitutional purposes, "adult materials" can be divided into two categories, protected and non-protected materials_ Non-protected materials can be regulated to the extent desired, even banned completely. Protected materials, however, even though objectionable, may be only regulated as to the time, manner, or place of their dissemination. In order to lose constitutional protection, adult material must: (1) depict or describe patently offensive explicit sexual acts, (2) which an average person, when applying contemporary community standards, would find appeal to the prurient interest and (3) lack any serious literary, artistic, political or scientific value. This chapter represents the enforcement vehicle for the regulation of non-protected adult material in the State of Washington.

RCW 9.68, entitled Obscenity and Pornography, addresses the sale of protected adult material to minors. It is a criminal statute. The statute defines such "erotic material" as.

> Printed material, photographs, pictures, motion pictures, and other material the dominant theme of which taken as a whole appeals to the prurient interest of minors in sex; which is patently offensive because it affronts contemporary community standards relating to description or representation of sexual matters or sadomasochistic abuse; and is utterly without redeeming social value.

regulates exhibition of "sexually explicit material" upon a viewing screen, that is easily visible from public areas (e.g., drive-ins).

BCC 5.28, entitled Massaae Parlors and Public Bathhouses, licenses the use of such establishments in the City of Bellevue. However, the ordinance makes no distinction between "adult" and other such establishments, but merely sets forth licensing requirements.. The ordinance, however, does address problems associated with "adult" massage parlors and bathhouses. First, the ordinance requires that anyone applying for issuance or renewal of a license for such an establishment must submit to a police record investigation and fingerprinting, a license can be suspended, revoked, or refused to be renewed on the basis of conviction of any crime involving moral turpitude, or a conviction of violating a federal, state or local law relating to sex offenses. Secondly, the ordinance prohibits admitting any prostitute, lewd or dissolute person upon the premises.

BCC 5.44, entitled Panoram Devices, addresses problems associated with "peep shows." The ordinance provides for licensing of such facilities and includes regulations which address problems associated with them: (1) all panoram booths must be visible from one continuous hall, (2) any door or curtain on the booths must be at least 42 inches from the floor, (3) no doors may be locked during operating hours, and (4) premises must be adequately illuminated. The ordinance is not content oriented and is not limited to facilities exhibiting adult material.

BCC 10A.88, entitled Offenses Against Public Morals, addresses public physical acts which are obscene. it is a criminal ordinance. Covered under this ordinance are such things, as public nudity and lewd behavior, erotic dancing, and prostitution_

BCC 5.06 and BCC 5.08 deal with the licensing of Public Dances and Dance Halls (5_06) and Cabarets (5.08). Both regulations provide mechanisms for the suspension or revocation of the licenses for similar activities as those described for Massage Parlors and Public Bathhouses. BCC 5_06 also deals with teenage dance halls.

RCVV 67.12, entitled Dancing and Dance Halls – Billiards. Pool and Bowling, regulates public dance halls. Entrants' ages are restricted to eighteen or above without the escort of a parent or guardian. Hours of operation are limited and immoral, indecent, suggestive or obscene dance is prohibited.

As the permissible content of and activities within adult uses are defined on _the federal and state level and since certain adult uses (massage parlors and dance halls) are already

sufficiently regulated (to mitigate their secondary impacts) on the state and local level, staff recommends that this study deal only ,with the location of adult theatres and adult retail uses. Therefore, for the purposes anal scope of this study and review, staff recommends that the uses to be considered for regulation be limited to Adult Motion Picture Theatres and Adult Retail Establishments. Further, for this study the following definitions will be utilized:

ADULT MOTION PICTURE THEATER:

An enclosed building or drive-in facility used for the commercial presentation of motion picture films, video cassettes, cable television, or any other such visual material, whose content is characterized by an emphasis on matter depicting, describing, or relating to "specified sexual activities" or "specified anatomical areas" for observation by patrons therein. Panoramas, picture arcades, and peep shows are included in this definition.

ADULT RETAIL ESTABLISHMENT:

An establishment engaged in the sale of goods in which ten percent or more of the "stock in trade" is characterized by an emphasis on matter depicting, describing, or relating to "specified sexual activities" or specified anatomical areas." Items that are part of the stock in trade may include all_ or some of the following: books, magazines, posters, pictures, periodicals, or other printed matter; prerecorded video tapes, discs, or other such medium; instruments, devices or paraphernalia.

STOCK 1N TRADE

A commercial establishment's total merchandise kept on hand which is openly displayed_

SPECIFIED SEXUAL ACTIVITIES:

1. Acts of human masturbation; sexual intercourse or sodomy;

2. **Fondling or other erotic touching of human genitals, pubic region, buttock or female breast; and**

3. **Human genitals in a state of sexual stimulation or arousal.**

SPECIFIED ANATOMICAL AREAS:

1. *Less* **than completely and/or opaquely covered human genitals, pubic region, buttock, or female breast** below a point **immediately above** the top of the **areola; and**

2_ **Human male genitals in a discernibly turgid state, even if completely or opaquely covered.**

Having now described the type or uses that this study will review, it is appropriate to describe the legal basis for regulating the location of adult **entertainment** uses.

LEGAL BASIS FOR REGULATION

Cities in Washington State have the authority to regulate land. use impacts and development through the state constitution and the Revised Code of Washington. While this authority allows cities to regulate the location of adult land uses (as upheld in City of Renton w. Playtime Theatres Inc. , the federal constitution prevails in the regulation of the content of adult entertainment publications, films and personal conduct. Many materials or activities which may be considered to be pornographic are within the protection of the First Amendment, which prohibits laws "abridging freedom of speech, or of the press." This protection prevents the regulation of the content of such materials or activities as protected speech. However, this protection does not extend to materials which are determined by the appropriate court to be obscene.

Although the City cannot regulate the content of printed or visual materials, or **performances; it may make reasonable regulations concerning the time, place or manner of their exhibition. In addition, as free speech is guaranteed by the federal constitution, land**

use regulations cannot have the effect of excluding certain adult materials. However, regulations which seek to mitigate the secondary effects of adult entertainment uses have been held to be valid. Such secondary effects include: increased crime, reduction in property values, deterioration of the quality of the environment of neighborhoods, lessening of the suitability of certain areas for children, seniors or other groups, or increased municipal expenses such as for police services. In Northend Cinema, Inc. v. City of Seattle, 90 Wn.2d.709, .585 p.2d 1153 (1978), the Washington State Supreme Court upheld an ordinance restricting adult theaters to a certain area of the city (and putting two in other locations out of business). This regulation was based on the determination that the motion pictures were not harmful, but their secondary impacts on the surrounding neighborhoods were. In Schad V. Mt. Ephraim (452 U.S. 61, 68 L.Ed. 671, 101A. Ct 2176 (1981)), three tests were established to measure the constitutionality of adult land use regulations:

1. The regulation must be no greater than the minimum necessary to further the governmental interest; and

2. The City must use the least intrusive method found to regulate this conduct; and

3_ The regulation cannot be so restrictive as to constitute an actual ban on the activity.

However, it is the City of Renton _v. Playtime Theaters decision which most clearly gives authority to, cities to regulate the location of adult uses.

In Playtime, supra, the Supreme Court upheld a Renton zoning ordinance which prohibited adult motion picture theatres from locating within 1,000 feet of any residential zone, single or multifamily dwelling, church, park or school. The ordinance was upheld as a valid form of "content-neutral" regulation of time, place, and manner of expression_ However, the court did identify factors that were critical to their favorable review: 1) that the ordinance did not ban adult theatres totally within the area, 2) that the City Council's predominant concern was with the secondary effects on the surrounding community and not with the content of the films themselves, 3) that the City was entitled to rely on the experience of other cities (e.g. a Seattle study) in enacting the ordinance, and finally, 4) that the City's choice of a different method of adult theatre zoning to combat the secondary effects of adult theatres did not call into question either the City's identification or those secondary effects or the relevance of the other city's experience.

Therefore, it is permissible; as long as the various tests are met, for the City of Bellevue to enact regulations concerning the location of adult entertainment uses. Further, the City can

utilize the experiences of other communities as a basis for enacting such legislation even if there are no secondary effects currently being created by any adult entertainment uses now in the, city. In other words, the legislation can be preventive and not just corrective.

SECONDARY EFFECTS

As was mentioned earlier, adult entertainment regulations -must seek to mitigate the secondary impacts of the uses. The purpose of this section is to examine the experience of other communities and the literature on the subject in order to ascertain these secondary impacts_ Although much of the data and experience with adult uses is taken from other jurisdictions, their implications to Bellevue are significant.

Incidence of Crime

While it can be debated whether exposure to pornography causes delinquent or criminal behavior (please see the bibliography for research studies), police research, as described below, shows a linkage between crime rates and areas which contain concentrations of adult entertainment uses (also see the bibliography for further research).

For example, between 1969 and 1972, the number of adult theaters in the City of Detroit increased from 2 to 18 and the number of adult bookstores rose from 2 to 21. During the same period, the incidence of crime in and around these establishments increased dramatically, although hard data on the actual numbers is hidden in gross criminal statistics. The high incidence of crime together with the blighting or skid row effect of proliferating adult businesses led Detroit in 1972 to adopt stringent locational regulations for adult uses_

Similar to Detroit, the City of Cleveland experienced a rapid increase of adult uses during the early 1970's. Unlike Detroit, Cleveland kept detailed crime statistics by census tract and by location of adult businesses. In 1976, 26 adult businesses (8 theaters and 18 bookstores) were located in Cleveland's 204 census tracts. The same year, the two census tracts having the highest rates of crime had a total of 8 pornography outlets. Cleveland Police statistics showed that during 1976 there was an average of 20.5 robberies per census tract. In the 15 census tracts which contained adult businesses, the average was nearly double at 40.5 robberies_ A single census tract which contained 5 pornography outlets and a population of only 730 persons had a total of 136 robberies. The statistics for

rape echoed the same pattern as for robbery. The citywide average of rape in Cleveland in 1976 was 2.4 per census tract. In the 15 census tracts containing pornography outlets, the rate was double that.

The City of Kent, Washington had similar experiences with the Roadside Inn Tavern. Prior to its forced closing, the Roadside Inn offered topless dancing and table dancing in conjunction with its selling of alcoholic beverages. Kent police investigations conducted in the summer of 1981 revealed a very high incidence of criminal activity at the Roadside, related primarily to sex crimes (prostitution) and drug related offenses. As a result of 57 hours of on-premise investigation, 162 charges were brought against 21 persons by the Kent Police Department_ The report filed by the police stated: "The total time involved, and the number of charges, break down to a time expenditure of slightly more than 20 minutes per charge, attesting to the relative ease by which the subject of prostitution arises within an environment such as the Roadside." In September, 1981, the Roadside Inn Tavern was closed by the City of Kent.

Bothell's experiences with Mama Hoopah's in 1982 demonstrated similar association between the use (an adult dance hall) and the occurrence of crime. Research by the Bothell Police Department also demonstrated the regional attraction that such an establishment can have. In one investigation of the 321 vehicles checked, 8 were registered in Bothell with most of the remainder from the Puget Sound region, though others had out of state registration_ This is potentially significant in that nonresidents of an area may be less inhibited in their personal behavior when away from their community. Nonresidents may also be unaware of the needs or concerns of residentslowpers of areas adjacent to the adult entertainment use.

Although crime statistics and police records seem to point to a connection between adult (primarily pornographic) uses and illicit behavior, psychological and behavioral studies attempting to link the two are more guarded. In 1970, the Presidential Commission on Obscenity and Pornography issued its final report which found no evidence to support the theory that exposure to explicit sexual materials plays a major role in causing delinquent or criminal behavior. Since then, there has been a significant debate as to the linkage with the Meese Commission's concluding that there is a linkage. This debate leads to the conclusion that while police records identify a clear linkage between the incidence of criminal activity near and in association with some adult uses, there is no clear consensus that exposure to pornography causes people to become criminals.

Impacts to Property Values

Many times adult uses are incompatible and inappropriate when adjacent to certain other land uses. A predictable result of such a situation is a reduction in property values in certain cases. This expectation was borne out in a recent telephone survey of real estate appraisers conducted by the Kent Planning Department. In this survey, all appraisers cautioned that each case must be evaluated individually and according to its particular circumstances. Nevertheless, the majority of appraisers agreed that the impact of adult uses on residential property values is probably negative although no general rule can be applied. One appraiser estimated that the adverse effect could be as much as one to three percent of the property's total value. The total effect on property value depended on several factors including proximity to the adult use, exterior building appearance and condition of the adult business, neighborhood characteristics, among other, factors. This survey also stated that there was also a consensus among appraisers on the effects of adult uses on commercial properties. As a general rule, most appraisers felt that in cases where an adult use located in a commercial environment, little or no adverse impact would be expected either to surrounding businesses or property values_ No appraiser surveyed expected that the impact on property values would be detrimental while one ventured that in a depressed commercial area the impact could be potentially favorable. This research can lead to the conclusion that in order to protect property values, adult uses should only be located in commercial areas and not adjacent to any residential uses.

Within Bellevue, where there are currently three adult uses (Love Pantry, Love Works and R&R Adult toys), there appears to be no inability to lease adjacent store spaces nor deterioration to surrounding structures and areas. Please note, however, that these uses are widely dispersed and centrally located in established commercial areas.

Land Use Incompatibilities

Nationwide, the proliferation of adult uses has occurred primarily within the last 10-15 years_ In the suburban Puget Sound area, the trend has been even more recent_ As a result, comprehensive studies dealing with the compatibility of adult uses with other specific land uses are nonexistent. The reports and studies which have been prepared are essentially confined to the individual experiences of communities where adult uses have located. The following examples demonstrate these impacts.

Based on the experience of certain Puget Sound communities, it has been demonstrated in the past that adult uses are incompatible with residential, educational, and religious uses. This fact was best demonstrated in the Greenwood area of Seattle in the mid-1970's when a local theater began showing X-rated films. Residents of Greenwood complained loudly about increased traffic, undesirable patrons, lowered property values and other adverse

impacts. Residents argued that theirs was an area of residences, churches, schools, and social gathering places, a closely-kn,it neighborhood unaccustomed to adult theaters and the disruptive impacts associated with such uses. In order to safeguard the character and quality of residential life in the Greenwood neighborhood, the City of Seattle adopted zoning regulations which, in effect, forced the closure of the adult theater. The owner then sued the City. In the litigation which ensued, Seattle was able to demonstrate in the record that the location of the adult theater in the Greenwood area had a harmful effect on that area and contributed to neighborhood blight. In upholding the City of Seattle, the Washington State Supreme Court (Northend Cinema V. City of Seattle) agreed that the goal of preserving the quality of residential neighborhoods by prohibiting disruptive adult uses was a valid and substantial public interest_

The Greenwood example also points out that residents'lowners' perceptions may be major factors in siting adult uses. While there may be no tangible reasons that an adult use may negatively affect the property values of a neighborhood, if enough owners believe this to be the case, their actions or inactions may cause their perceptions to become reality.

Likewise, a "topless" tavern disrupted the quality of life for some Kent residents. The incident involved the Roadside Inn Tavern - a tavern offering topless table dancing - and the residents of an adjacent mobile home court. In July 1981, the residents of Bonel Mobile Home Court submitted a petition requesting the Kent City Council to revoke the business license of the Roadside. At the public hearing on the license revocation, residents complained about the Roadside's excessive noise and litter impacts which spilled over onto adjacent residential properties. As a result of public complaints and a police investigation of criminal activity at_ the tavern, the license for the Roadside was revoked by the City in September 1981.

To conclude, research has shown that there may be negative secondary effects which occur when adult entertainment uses (or a concentration of such uses) are located in a neighborhood. Such factors as higher crime rates, lowered property values, or neighborhood deterioration may be associated with adult uses. However, each situation is different and it is not possible to state that adult uses will lead to the identified secondary effects, only that there is a possibility that the secondary effects may occur_. It also is reasonable to conclude that as the numbers and concentration of adult uses increase. (particularly if adjacent to residential or other sensitive areas), there is a greater potential for the secondary effects associated with adult uses to occur. With the potential secondary impacts described, it is now appropriate to review the types of provisions that other cities have utilized to regulate the location of adult uses.

IY PFS OF REGULATION

Because zoning regulations are an expression of local public policy, they differ widely from one community to another. This is certainly true for adult use zoning ordinances which have been adopted in the past 10-15 years_ Some communities, such as Detroit, require adult uses to disperse throughout the commercial areas of the City. Other communities have chosen different paths. Boston, for example, concentrates adult businesses in a seven-acre zoning district located in the commercial core. Seattle follows a similar scheme of concentrating adult uses but allows them in a much larger area of the downtown. Norwalk, California designates certain adult uses as.conditional uses and requires them to obtain a conditional use permit.

The nature of adult use zoning regulations is inextricably related to a city's unique local circumstances. As the above examples demonstrate, there is no standard formula which can be applied to all communities. Regulations reflect local development policy, existing development patterns, local zoning practice, and methods of impact mitigation. But while the specific requirements of adult use zoning ordinances vary greatly, there appear to be four generalized approaches to land use regulations which are commonly used.

1. Dispersion Ordinances;

2. Concentration Ordinances

3. Modified Dispersion/Concentration Ordinances, and

4. Special Ordinances (includes licensing approaches).

Dispersion Approaches

Dispersion-Type ordinances seek to spread adult uses throughout a city as opposed to concentrating them.

Dispersion regulations commonly require that adult uses locate in designated commercial or industrial zone districts while maintaining specified minimum distances from such uses as schools, churches, public parks and residences. 1n addition, dispersion ordinances (also called "anti-clustering" ordinances) usually require that adult uses maintain certain distances between themselves.

Perhaps the best known example of a dispersal approach is the City of Detroit ordinance mentioned earlier. Detroit's regulations prohibit adult uses from locating within 500 feet of a residential zone, and require that a minimum distance *of 1,000* feet be maintained between any two adult uses. The result *of* these restrictions is a dispersed pattern of location.

Concentration Approaches

The concentration approach seeks to cluster or concentrate adult uses in certain areas, the opposite effect of a dispersion approach_ The most common way to concentrate adult uses is by restricting them to a certain zone or district of the City.

Boston's "adult entertainment zone" is the most prominent example of a concentration approach: Boston zoning regulations restrict adult uses to a special "overlay" district that applies to the City's downtown area_ Called the "combat zone," this is the only area in the city where adult bookstores, theaters and peep shows may locate. The ordinance simply defines certain adult uses and adds them to the list of permitted uses in a specific part of downtown Boston. The City of Seattle ordinance is also a good example of a concentration policy. According to Seattle's regulations, adult theaters are restricted to two commercial zoning districts located only in the downtown core area.

Modified Dispersion/Concentration Approaches

In many instances, the regulatory approach of a local government is neither purely a dispersion nor a concentration policy_ Regulations often times are borrowed from both types of approaches. In order to reduce adverse impacts while assimilating adult uses, it may be necessary to use a combination of regulations. The courts have allowed a variety *of* regulatory approaches for adult use zoning as long as the purposes of such regulations

are valid.

The City of Renton employs a modified dispersion approach for adult theaters. Renton's ordinance allows adult motion picture theaters in certain commercial zoning districts as long as minimum distances are maintained from schools, churches, residences, and public parks. The ordinance both concentrates adult theaters in certain zones and disperses them away from residences and social and educational institutions. It is not a pure dispersion ordinance, however, since it does not require a minimum distance between like uses.

Special Approaches

A number of regulatory approaches do not fall neatly under either of the approaches previously mentioned. Some of these "special" approaches still involve zoning, however, while others deal with licensing procedures and regulations.

An example of a special type of zoning approach is that of Norwalk, California. The Nor/valk ordinance classifies adult bookstores as conditional uses, subject to the terms and procedures of a conditional use permit.

Licensing of businesses or operators is a very common method of controlling or regulating the location of adult businesses. Most licensing ordinances relate only to such adult uses as massage parlors, panorams, and the like where the activity is not necessarily protected under the First Amendment and where local officials may exercise greater discretion in their decision making. Adult theaters and adult bookstores, whose content is protected under the First Amendment, generally are not included in adult use licensing or ordinances. In ordinances where they do appear, regulations and procedures must be sensitive to the constitutional issues associated with the control of speech. In Bellevue, such uses as public dances/dance halls, cabarets, massage parlors, bathhouses and panoram devices are all licensed uses.

In conclusion, various cities have approached the problem of regulating the location of adult entertainment uses differently but successfully. The courts have also been quite specific in allowing cities to choose the course most suitable to their conditions. The next section will describe how various adjacent cities have chosen to regulate the location of adult entertainment issues.

Having described the various approaches that can be taken by other cities to regulate the location of adult entertainment uses, it is now appropriate to focus on cities adjacent to Bellevue.

Seattle

As was described earlier, Seattle initiated a change to their zoning code to restrict and concentrate adult entertainment uses to the downtown core area. This amendment caused the closure of an adult theatre in the Greenwood area for which there was a court challenge. The Washington State Supreme Court upheld the City's ordinance and adult theatres continue to be restricted as to location in Seattle. In Seattle, however, adult retail uses are not specifically regulated as to location. The current regulations are viewed by Seattle staff as effective as they removed the adult theatre from the Greenwood neighborhood and no new theatres have opened outside of the downtown core.

Redmond

Redmond regulates adult uses by a dispersal approach. No adult entertainment use can be located within 1,000 feet of a similar use and no closer than 1,000 feet from any zone permitting residential uses, a public park, a public library, day-care homes or centers, preschools, nursery schools, primary or secondary schools or churches_ These listed zones or uses can either be located within or outside the city limits. Adult theatres, adult retail uses and adult services are all regulated in a like manner. The impetus for these regulations was the 1982 conversion of a movie theatre in Redmond to an adult movie theatre. This resulted in the current regulations which were adopted in April of 1983. Currently, there are no adult **entertainment uses located.** in Redmond-

Renton

Renton utilizes a modified dispersal approach to regulating the location of adult motion picture theatres. This use is prohibited from locating within one thousand feet of any residential zone, any single or multiple family residential use., any school, church, park or a P-1 zone. However, separation of adult theatres is not required. Renton's regulations were enacted in April of 1981 in order to prevent the secondary impacts of adult theatres from occurring in Renton. The regulation was challenged in 1982 when Playtime Theatres purchased two community movie theatres to convert to adult movie theatres. As has been described earlier, the Renton ordinance was eventually upheld by the United States Supreme Court. There are no adult-movie theatres currently in Renton. There is, however, one adult retail use in Renton. In Renton, adult retail uses are not regulated differently than other similar retail uses.

Kirkland

Kirkland regulates the location of adult theatres, bookstores and cabarets by a. combination of the modified dispersal approach and the special regulation approach. Within Kirkland, adult uses can only be located in an Adult Activities Overlay Zone. This special zone can only occur where the underlying zoning is community business, central business district or in a planned area where commercial or theatre uses are permitted. Once the overlay zone is created by City Council action, an applicant for an individual use may apply for a permit with a hearing before the Planning Commission_ No adult use can be located closer than 1,500 feet to any school, public park, athletic or recreation center, or any use which caters substantially to minors. Signage is also restricted. Kirkland enacted their regulations in 1983 to prevent the secondary effect of adult entertainment uses from occurring in Kirkland. To date, no applications for adult uses have been received by the City of Kirkland.

Mercer Island

In February; 1987, the City of Mercer Island adopted regulations concerning the location of all adult theatres and retail stores in the city. This. regulation uses a dispersal approach in regulating the location of any adult use. Under Mercer Island's regulations; the entrance to any adult use cannot be located within 800 feet from any R-zoned property, the proposed landscape area for 1-90, any single or multiple family dwelling, rest or retirement home; preschool, nursery school or day-care, publicly owned park or open space, recreational

area, primary or secondary school, religious institution, government building or establishment which primarily caters to. minors. Further, no adult use can locate closer than 400 feet to any other adult use. Signa-ge is also limited. Regulation of adult uses in Mercer lsland was adopted in order to have regulations in place (to mitigate secondary impacts) prior to any uses locating within the city. Since enactment, there have been no applications for adult uses, nor are there any adult uses located within the city.

lssaquah

lssaquah, in February of 1985, adopted a dispersal approach to regulating the location of adult entertainment uses. All adult uses (theatre, retail and service) are similarly regulated in Issaquah, Under the regulation, the adult use cannot be located within 500 feet of any primary or secondary school or school facility, day-care or preschools, public parks, churches, public facilities, facilities oriented to the disabled, senior centers, historic landmarks, other facilities which are oriented towards children or families, any residential zones, any residential use, and certain street frontages. Also, adult uses cannot be located within 200 feet of lssaquah Creek. Adult uses must be separated by 500 feet. Also, the following uses cannot in the future locate within 500 feet of any adult entertainment facility: primary or secondary school; day-care 'or preschool, public parks, churches, public facilities, facilities oriented to the disabled, senior centers, historic landmarks, or facilities oriented to children or families. These regulations were adopted to prevent the secondary effects of adult entertainment uses from occurring within the city. Since enactment, one adult retail store was_ opened for three weeks and then closed for no known reason. There are currently no adult uses in lssaquah.

King County

King County currently does not allow any adult facility within 2,000 feet of a school. Uses regulated by this requirement include cabarets and dance halls which feature "nude" dancing, panorams and peep shows.

While these are brief descriptions of each municipality's regulations, complete ordinances and background materials and minutes for the Cities of Kirkland, Redmond, Mercer Island, Renton and lssaquah are available for review in the Planning Department. This brief summary does show how each of the municipalities have created regulations to meet the specific needs of their community.

THE CURRENT SITUATION IN BELLEVUE

Presently, there are three adult entertainment uses in Belleviue (see Map 1). Love Works and Love Pantry are strictly adult retail stores. R and R Adult Toys is an adult retail store which also contains an on-premises panoram. Both R and R Adult Toys and Love Pantry have video cassettes for rental.

An analysis of police reports for areas in which these uses are located show no higher incidence of crime than in adjacent areas without adult uses. All properties are centrally located in established commercial areas and all structures in which these uses are located are all in excellent condition as are the adjacent structures. Recently, R and R Adult Toys moved into a newly refurbished structure. These adult entertainment uses are not located adjacent to any schools, parks or facilities oriented primarily to children. All three sites are not adjacent to predominantly residential areas although there is a multifamily structure located across 120th NE from Love Works. However, please note that this residential use is separated from the Love Works site by a major street, by a restaurant facility and the surrounding area is also primarily commercial.

While there are no major secondary effects presently attributable to the adult uses located in Bellevue, a greater concentration of such uses or changes in location may cause secondary impacts to occur. The City of Bellevue Comprehensive Plan provides guidance for decision makers in evaluating various strategies for regulation.

Within the Comprehensive Plan there are many policies which are important in describing the residential and economic goals for the City and are pertinent in reviewing the suitable locations for adult entertainment uses:

21.B.005 (General Land Use Policy)

The City shall offer a harmonious blend of opportunities for living, working, recreation and culture to its residents through planned retention of its natural amenities and balanced

development of appropriate services, by judicious control of residential and commercial development and by recognition of its regional role.

21.B.040 (General Land Use Policy)

Decisions in land use should be made only after consideration of the interests of the community. Each type of land use shall be located in designated districts. Any change in zoning must be justified_ The hearing body may take into consideration, but not be limited to, the following.

- the effect upon the physical environment;

- the effect on the economic environment;

- the effect on the social environment;

- the effect upon open space, streams and lakes;

- compatibility with the impact on the adjacent land uses and surrounding neighborhoods,

- adequacy of the impact on community facilities including utilities, roads, public transportation, parks, recreation facilities and schools.

- benefit to the neighborhood, city or region;

- quantity and location of vacant land zoned for this use in the city,

- current and projected population density in the general area;

- and general conformance with the comprehensive plan.

21.F.070 (Economic Element)

Growth : The City shall foster a positive economic_ climate which. facilitates responsible business growth in the community.

21.F.110 (Economic Element)

The City shall encourage the availability of local employment opportunities by fostering development of long-term working or trading activities which create or add value to the community.

21.F.150 (Economic Element)

Goal: To establish and maintain economic activities in carefully delineated areas which are properly separated from incompatible uses and appropriately served by community facilities_

To implement the above goals and policies, the City has emphasized the careful consideration of land use compatibility and land use impacts upon the community.

In conclusion, while the three existing adult uses do not have any secondary effects associated with them, this situation may change in the future. Presently, all three are widely dispersed from each other as well as from residences and other sensitive uses (parks, schools or areas frequented by children). However, since there is no regulation preventing adult uses from locating near sensitive uses, there is no guarantee that adult uses will not locate adjacent to sensitive uses. Further, there is no guarantee that greater concentrations of adult uses will not occur in the future_ The Comprehensive Plan clearly states that adjacent land uses should be compatible. Therefore, it may be appropriate to consider that certain sensitive uses are not compatible with adult entertainment uses.

http://www.commumtydeiense.org/cccclocs/landuse/
himYwabellevue.ci-n

ADULT ENTERTAINMENT FACILITIES

MAP I

PART 11.

Subsequent to the public meeting scheduled for September 16th and based on the information contained in Part I of this study, as well as public comments, staff will prepare an analysis of the need for greater regulation, respond to any Planning commission research requests and provide a recommended course of action. This information and recommendation will be contained in Part Il of this study.

BIBLIOGRAPHY

Reference Materials On Hand For Review

Studies

Effects On Surrounding Area Of Adult Entertainment Businesses In St. Paul. Division of Planning, Department of Planning and Economic Development, St. Paul, Minn. **June 1978.**

Regulatina Sex **Businesses. William Toner, Planning Advisory** Services, 1977.

Stud Of The Effects Of The Concentration Of Adult Entertainment Establishment In The Citv of Los Angeles. Department of City Planning, City of Los Angeles, CA. June 1977.

Articles

"Aggressive Erotica And Violence Against Women", Edward Donnerstein, Journal of Personality and Social Psychology, Volume 39 Number 2.

"Cities Are Turning To Zoning To Regulate pornographic Uses", The Building Official And Code Administrator, Feb/March 1978.

"The Effects Of Aggressive - Pornographic Mass Media Stimuli", Neil M. Malamuth and Ed Donnerstein, Advances in Experimental Social Psychology, Volume 15.

"Is One Women's Sexuality Another Women's Pornography", MaryKay Blakely, Ms., April 1985.

"New Rules For Zoning Adult Uses: The Supreme Court's Renton Decision", Alan Weinstein, Land Use Law, August 1986.

"Pines, Funk Offer Guidance, Based on Young Decision, for Regulating Adult Entertainment Establishments", Burt Pines and John Funk, The Municipal Attorney, December 1976.

"Regulation Of Adult "Theaters By Zoning"; Howard Dobbins, Virginia Town and City, Nov/Dec 1976.

"Regulating Pornography: Recent Legal Trends", Alan Weinstein, Land Use Law, February 1982.

"Sex And Aggression: Proving The Link", Seymour Feshbach and Neal Malamuth, Psychology Today, Volume 12 Number 6.

"The War Against Pornography", Newsweek, March 18, 1985.

"Why People Don't Fight Porn", Harry Genet, Chronicle News, January 1, 1982.

"Zoning For Adults Only", Bruce McClendan, Zoning News, August 1985.

Other Resources

Bothell Police Department, Material On Police Experience With Adult Entertainment Establishment, 1984.

"City of Renton v. Playtime theatres, Inc., The U_S_ Supreme Court Revitalizes The Regulation Of Adult Entertainment Land Uses Through Zoning", Daniel Kellogg_

Cleveland Ohio Police Department, Effect of Smut Shops On Increased Crime Rates, 1977.

"Community Impact Statements Required Of Certain Businesses", James H_ Allendoerfer, City Attorney of Marysville.

Shirley Feldman-Summers letter to Nick Gallow.

"Local Government's Control on Pornography", League Of Women Voters Of Lake Washington East, 1985_

"Pornography Effects: Empirical Evidence", Victor Cline Ph.D.

Text of Talk Given *By* John L. Harmer, President Of Citizens For Decency Through Law, on Tuesday, December 1, 1981 at Phoenix, Arizona.

Existinq Statutes And Requlations In Effect In Bellevue

RCW 7.48A -Moral Nuisances

RCW 9.68 - Obscenity And Pornography

RCW 9.68A - Sexual Exploitation Of Children

BCC 5.06 - Public Dances And Dance Halls

BCC 5.08 - Cabarets

BCC 5.28 - Massage Parlors And Public Bath Houses

BCC 5..44 - Panoram Devices

Resources From Adjacent Municipalities

Bothell - Ordinance 1170 (Adult Entertainment Uses) and Zoning Code Chapter 5.18 (Adult Entertainment Studios).

lssaa,uah - Ordinance 1701 (Adult Entertainment Uses) and all minutes of public meetings and staff reports relating to the Ordinance.

Kent - Adult Use Zoning Study, November 1982.

King County - Ordinance 7216 (Business Licenses And Adult Entertainment Uses).

Kirkland - Ordinance 2877 (Adult Activities Overlay Area) and all minutes of public meetings, staff reports and correspondence relating to the ordinance.

Mercer Island - Ordinance A-51 (Adult Entertainment Uses) and all minutes of public meetings, staff reports and correspondence relating to the ordinance.

Redmond - Ordinance 1120 (Adult Entertainment Uses) and all minutes of public meetings and staff reports relating to the ordinance.

Renton - Ordinances 3526, 3629 and 3637 and Resolution 2368, Legal Briefs to the U.S. Supreme Court, and various analyses of the Renton v. Playtime Theatres decision, Zoning. Code for Renton.

Seattle - Zoning Code Chapters 6.280 (Adult Entertainment Studios), 6.42 (Panorams and Peepshows), 24.46 (Metropolitan Business Zone) and 24.48 (Metropolitan Commercial Zone).

Also, there are copies of Adult Entertainment Use Regulations from the following cities: Detroit, Michigan, Duluth, Minnesota, Inkster, Michigan, Melvindale, Michigan, Oak Park Michigan; Peoria, Illinois; San Bernardino, California; Tucson; Arizona; Wayne, Michigan and Wyoming, Michigan.

Correspondence

Monique Roggenkamp to the Bellevue City Council - April 14, 1987

Monique Roggenkamp to the Bellevue City Council - May 13, 1987

Gerald John Sheehan to Sandra Korbelik (Planning) - June 9, 1987

Concerned Citizen to Sandra Korbelik (Planning) - June 16, 1987

Darrell Hines to Sandra Korbelik (Planning) - June 18, 1987

Andrea K. Vangor to Sandra Korbelik (Planning) - June 18, 1987

J. R. Copitzley to Cary Bozeman - July 5, 1987

Chief Harris to Terence P. Lukens - September 10, 1 087

Other References

The current file also contains numerous newspaper articles on Adult Entertainment regulations in the region_ There are also many summaries of recent court decisions as concerns adult entertainment.

APPENDIX [

MINUTES FROM THE PUBLIC MEETINGS OF

JUNE 18 AND JUNE 25, 1987

ADULT ZONING

MINUTES

June 18, 1987

1. Introduction

Rob Beem, principal planner, with the Planning Department and staff contact for this project, introduced himself and other members of the planning staff: Sandra Korbelik, senior planner with the Planning Department; and Lt. Bourgette of the Police Department.

II. Objective

The objective of this meeting was to get the benefit of Bellevue citizens' experience, understanding, and studies of the impacts of adult land uses. The City is in the process of developing regulations which will use zoning to locate adult businesses appropriately within the City of Bellevue. This is one of the City Council's high priorities for the year. A schedule of events was made available to participants. It is hoped that regulations will be enacted by the latter part of 1987.

The meeting this week is focused on input from citizens on what they understand to be the effects of adult land uses located within the City of Bellevue. Next week's meeting will focus on a number of approaches taken by other municipalities in the nation, particularly in the Northwest, to their zoning regulations for adult land use, with the end goal of deciding which method would be best for Bellevue.

Tonight participants are encouraged to submit their views and give the planning staff the benefit of the information learned by research, experience or opinions on the effects of adult entertainment businesses on the community that they may want to control through the use of zoning power. Written comments are also invited.

III_ Comments by Citizens

Moni ue Roagencam

12140 S.E. 15th

Bellevue

Ms. **Roggencamp read a letter from Andrea VanGore of Washington Together Against Pornography, commending the City of Bellevue** for **their efforts to protect the community from the adverse effects of adult businesses. She cited three distinct adverse affects: decreased property values of neighboring businesses; increased local incidents of sexual and other crimes; provision of a base of operation for organized crime. She, called** on the **City of Bellevue to do all that lies within their power to do, to make the laws as strict as possible consistent with constitutional freedom.**

Ms. **Roggencamp gave an example of a business forced to relocate because their customers did not want to be seen in the same parking lot as an adult business. Ms_ Roggencamp supports dispersed zoning_**

Louise Woodward

East King County Chapter of American Civil Liberties Union

Ms. **Woodward was chiefly concerned about the potential for First Amendment rights to be violated. She submitted a letter refuting claims made by Ms. VanGore about the negative effects of adult businesses. The letter was addressed to Nick Gallo from Shirley Feldman Sommers.**

From Ms. **Woodward's personal analysis, she has read a lot of studies and found little evidence of adult businesses being harmful to the community. She felt that putting adult businesses in one location tends to enhance an unhealthy stigma toward sexuality, and favored dispersement, the least restrictive method of zoning.**

Mr. Ullery

R &R Adult Toys

Mr. Ullery informed the group that the printing business referred to by Ms. Roggencamp went out of business and left that location because they were unable to make the rent payment, fact which can be verified by the landlord. The problem existed before the adult business rented there.

Mr. Ullery described his business in Bellevue, now in existence for four years, doubling in size each year. His new store will be triple the size,.based on the demand of the people of Bellevue. He described his clientele as professional people, 55-60% men, the rest ladies, 40% couples, 95% located within a 10 mile radius of the store. Mr. Ullery offered his services as an advisor as a representative of adult businesses.

Jeff_ Spencer

13457 - 92nd Pl. N.E.

Kirkland

Mr. Spencer gave a personal testimony of the negative effects of adult entertainment business, stating that an X-rated movie had very significantly affected his own life. He felt we should make the laws as strong as legally possible in order to restrict adult businesses.

IV. Closing Comments by Rob Beem

Rob reviewed the coming agenda, with last week's meeting on approaches to developing zoning ordinances, followed shortly thereafter by a study session with the City Council, and then work with the Planning Commission over the balance of the summer. Attendees on the sign up sheet will be on the mailing list. Participants were invited to contact the Planning Department if they have further questions or comments.

ADULT ZONING

MINUTES

June 25, 1987

1. Introduction

Rob Beem introduced himself and explained the function of the Planning Staff= to assist the City Council and the Planning Commission in investigating the wisdom of developing regulations for the location of adult land uses and advising them of what these regulations may be.

11. Purpose

The purpose of this meeting, Rob Beem explained, was to provide information regarding methods used nationwide to develop zoning regulations, and to seek comments regarding their appropriateness to--the City of Bellevue, in an effort to gain a better understanding of the specific effects of adult businesses on the city, which is primarily a residential community.

Adult businesses were defined as those businesses relating to sexual matter which restrict entrance to individuals over the age of 18.

Rob Beem clarified that the City has the authority to regulate, but cannot legally prohibit legitimate land uses from existing within the City of Bellevue. They should have a reasonable opportunity to pursue their business within the city.

111. Three Approaches to Take

Rob reviewed the three approaches the committee can take·

1) No action - leave as is

2) Dispersal approach - locate the business so it is one of a number of businesses in an area, thus reducing its impact

3) Concentration approach - limit adult businesses to one single area

Difficulties involved with the dispersion approach would be mainly administrative, and the need to insure that there are reasonable opportunities throughout the community to locate the businesses-

The disadvantage of the concentration approach is that it would create an adult zone detrimentally affecting the area.

A fourth option, conditional use, was considered to be more burdensome than the dispersion approach.

IV. Comments by Attendees

Pat O'Connor

15401 N. E. 10th, E 106

Bellevue 98007

Pat favors the conditional use approach in zoning, to assure that enough conditions are

given to help prevent mistakes, and to give opportunity for those affected to give their input to the City Council.

Louise Woodward

East King County Chapter of American Civil Liberties Union

Louise was more concerned about preserving freedom of speech for herself and her children than any harmful effects of adult business in the community, and wanted no more restrictions than are presently in effect. She referred to the Technical Report of U.S. Government Commission on Obscenity and Pornography.

Mr. Ullery

11101 N.E_ 4th, Bellevue

Owner of R & R Adult Toys

His business has existed in the city for four years without any problems. He believes there is a need for his product as shown by its steady growth, and the city allows it under the rights of the City and the Constitution.

Jeff Spencer

13457 - 92nd PI. N.E.

Kirkland

Jeff stated that all laws are by definition moral, based on the distinction between right and wrong, and he wants to legislate by the original Judean Christian morality this nation was founded on as one nation under God.

Len Smolen

12119 S. E. 10th

Bellevue 98005

limp://www.commumtyaetense.or-a/cacaoes/lanause/
iltmvwauellewe_c,

As a counselor and ordained Christian minister, Mr. Smolen spoke against the previous definition of morality, feeling that it inferred that sex was directly immoral, when God authored sex. There is a distinction between erotica and pornography.

Pat O' Connor

(see above)

Feels the personal conditional approach is needed in line with the previous speaker's comments.

Len Smolen

(see above)

Against the conditional approach as too broad to be legally viable. Supports the dispersion approach based on the history of adult businesses operating in the area.

Mitch Lopez

4045 - 134th Ave.

Bellevue 98006

Supports the dispersion approach, not the conditional. We should establish exact policies and perimeters based on good choices and decisions to begin with, and coordinate from within that basis.

IV. FINAL COMMENTS

Those-on the sign-up sheet will be aferted to further public meetings on this process, and are encouraged to submit written comments until the hearing sometime in September. The next meeting will be on July 8 at 7 p.m. in this same room, to select an approach to be submitted to the City Council on July 27.

Written comments should be addressed to Rob Beem, Planning Department, P.O. Box 90012, Bellevue, WA 98102.

City of Bellevue

MEMORANDUM

Date: January 11, 1988

To: City Council Members

From: Bruce Freeland, Planning Director

Subject: Location of Adult Entertainment Uses - Background Material

Attached please find the background materials described in the agenda memo for the ordinance to regulate the location of adult entertainment uses_ Each of the attached items is labeled as follows:

A. Part One of the study which provided background material on regulating the location of adult entertainment uses.

B. The staff to Planning Commission memo of 9/22/87 which responded to definitional issues raised at the Planning Commission's Public Meeting of 9/16/87. Also included are minutes for that meeting.

C. The staff to Planning Commission memo of 10/9/87 which responded to Planning Commission's questions raised as a result of Part One of the study and the public meeting. Also included is Part Two of the study which contains staffs conclusions and recommendations.

D. The staff to Planning Commission memo of 10/29/87 which related to conditional use permit requirements as well as the **segregation of adult materials.**

E. A bibliography which lists all the materials made available for review by the Planning Commission. (The material listed in the file is also available for your review and is located in the Council office.)

Should you have any questions, **please contact** me or Rob **Odle** at 455-6880.

BF: j b

Attachments

cc: **Adult Entertainment File**

City of Bellevue

Date: September 22, 1987

To: Planning Commission Members

From: Rob Odle, Planning

Subject: Adult Entertainment Regulations Requested Information

Enclosed, as requested, are the draft minutes of last week's public meeting on regulating the location of adult entertainment uses. These draft minutes should be particularly useful to those members who could not attend the public meeting.

We have also enclosed a response to the obscenity statute concerns raised by Andrea Vangor. However, it is important at this point, to not focus on the issue of obscenity as that issue is handled on the state and federal level_ Our reason for discussing it in the study was only to briefly describe what is regulated elsewhere (and out of the local purview) and then focus the study on the issue that can potentially be regulated locally - the location of adult entertainment uses.

This evening, we have planned a discussion in which staff (Stephanie Brod, Steve Bourgette and myself) will focus on questions and issues that you have from reading the study and listening to the public comments. Following this discussion, at your direction, staff will either conduct further research on issues you raise or will begin to prepare a recommendation to bring back for.your action. Should you have any questions before tonight's meeting, please contact me at 455-6880.

Attachments

cc: Bruce Freeland, Panning Director

Adult Entertainment Task Force Members

Adult Entertainment File

City of Bellevue

MEMORANDUM

Date: September 21, 1967--

To: Planning Commission

From: Stephanie D. Brod and Jim Turner,

Adult Entertainment Task Force

Subject: Clarifications to Adult Entertainment Study

The purpose of this memo is to clarify certain points of the Adult Entertainment Study

presented by the City of Bellevue staff last week. At the public meeting on. September 16, 1987, the Adult Entertainment Study was criticized for (1) misstating the United States Supreme Court's definition of obscenity, (2) incorrectly citing Washington's Moral Nuisance Statute and (3) misleading the Commission and public with regard to the effectiveness of present regulations concerning pornography. Each is addressed in turn below.

. The definition of obscenity presently used by the United States Supreme Court was originally set forth in the case of Miller v. California, 413 US 15, 37 L.Ed.2d 419, 93 S.Ct. 2607 (1973). The questions before the court in determining whether a work is considered obscene and not worthy of constitutional protection is

> (a) whether the average person, applying contemporary community standards would find that the work, taken as a whole, appeals to the prurient interest; (b) whether the work depicts or describes, in a patently offensive way, sexual conduct specifically defined in the applicable state law; and (c) whether the work, taken as a whole, lacks serious literary, artistic, political, or scientific value.

Miller, 413 US at 24 (citations omitted). Consistent with that constitutional definition, RCW Chanter 7.43A, entitled Moral Nuisance, identifies the following:

"Lewd matter" is synonymous with "obscene matter" and means any matter:

> (a) Which the average person, applying contemporary standards, would find, when considered as a whole, appeals to the prurient interests; and
>
> (b) Which explicitly depicts or describes patently offensive representations or descriptions of.
>
> > (i) Ultimate sex acts, normal or perverted, actual or simulated; or
> >
> > (ii) Masturbation, fellatio, cunnilingus, bestiality, excretory functions; or lewd exhibition of the genitals or genital area; or
> >
> > (iii) Violent or destructive sexual acts, including but not limited to

human or animal mutilation, dismemberment, rape or torture; and

(c) Which, when considered as a whole, and in the context in which it is used, lacks serious literary, artistic, political, or scientific value.

RC-VV 7.48A.010(2).

In the general attempt to keep the background material in study brief and readily understandable, the definitions above were summarized. In doing so, the language specifically describing sexual conduct was omitted, as well as the language in the third clause of the definitions, "when considered as a whole," and in the context in which it is used." The Definitions above are set forth in their complete individual forms.

B. With regard to the possible incorrect citation of RCW 7.48A, a review of the study and the statutes indicate that the statutory cite was correct. Washington's moral nuisance statute, which provides for a civil action for the dissemination of lewd or obscene matter, is Chapter 7.48A of the Revised Code of Washington:

C. The Adult Entertainment Study attempted to identify each of the statutes and city code provisions relevant to control of sexually oriented enterprises in the City of Bellevue. In identifying each of the statutes and code provisions a description was provided summarizing the purported application of each of the regulations. At the public meeting, the Planning Comm ssion was informed that RCW 9.68, Obscenity and Pornography, has never been enforced. It was pointed out that without communicating the failure of officials to enforce the statute the Planning Commission and the public are susceptible to a false impression as to the statute's efficacy. The point is well taken. Likewise, to avoid any further misconception it should be noted that the summary of regulation provided in the Adult Entertainment Study as it presently exists identifies only the purported effect of the individual regulations as written.

I hope the -above successfully addresses the points raised at the public meetings. If you have any. further questions, please direct them to Rob Odle, who heads the task force, at 455-6880.

CITY OF BELLEVUE

BELLEY-UE PLA_NNLZVG CO-Vaf[SSION

TUDY SESSI

September 16,1987 Bellevue City Hall

7:00 p.m. City Council Conference Room

COMIYIISSIONERS PRESENT
Chairman Lukens, Commissioners Blacker, Conger, Ferris

COMMISSIONERS ABSENT Commissioners Gilkinson, Chandler, Hague

STAFF PRESENT: Jim Williams, Robert Odle, Planning; Jim Turner, DDD; Richard Kirkby, Legal; Lt. Steve Bourgette, Police

GUEST SPEAKERS: None

RECORDING SECRETARY: Gerry Lindsay

1. CALL TO ORDER

The meeting was called to order at 7:03 p.m. by Chairman Lukens who presided.

2. ROLL CALL

Upon the call of the roll, all Commissioners were present except Commissioner Gilkinson and Commissioner Hague, who were excused, and Commissioner Chandler, who was expected (but not did arrive)..

3. STAFF REPORTS

Jim Williams distributed several items to the Commission, including: a copy of the Daily Journal of Commerce issue on Downtown Bellevue; a 1987-88 calendar for planning of meetings; the most recent Planning Commission Schedule; and the agenda for the Storm and Surface Water Advisory Commission Meeting for September 17. Mr. Williams also confirmed the walking tour of downtown for the 24th of this month and explained that it would be preceded by a briefing on the FAR Transfer issue for new Commissioners.

4. PETITIONS AND COMMUNICATIONS

Mr. Tom Delery. 16230 N.E. 28th, Bellevue, Vice president of the Sherwood Forest Community Club, thanked the Commission for the extension of time to allow the polling of their residents concerning the proposed Land Use Code amendment. Mr. Delery presented to the Commission a list of signatures and read a letter representing the residents of Sherwood Forest, Sherwood Gardens, and the Peachtree Communities. The letter stated that members of these communities are opposed to the proposed amendment to allow for medium density multifamily dwellings in Evergreen Highlands Area D. The club has voted unanimously to oppose the change. They do not feel that the proposed amendment meets any of the seven decision criteria outlined on page seven of the Staff Report. There was no technical error in the Comprehensive Plan, nor has the applicant carried the burden of proof that shows that multifamily is warranted. There are no changing needs of the City that warrant this request. They also feel that the amendment is not in keeping with the guidelines that were outlined several years ago when Performance Area D was adopted.

Additional reasons expressed for opposing the amendment were:

Increased traffic on a daily basis, including weekends.

Adverse impact on services such as police, fire, and especially schools.

The site is one of the few remaining tracts left that could be attractive to a large national company for its headquarters.

The area is currently designated and the use should remain the same.

The letter concluded with a plea to reject any change in the Comprehensive Plan.

Commissioner Blacker asked Mr. Delrey if his Community Club residents were aware that the proposed change would still allow Office to exist. Mr. Delery replied that they do not feel that multifamily is a proper designation for that area.

Mr. Jim Bergman, 15911 N.E. 27th place, Bellevue, Washington, and a member of the Sherwood Gardens area, stated that when he purchased the property he researched the zoning and felt that it favored his family. If the Land Use Code amendment is adopted he will be living on the edge of an apartment complex, which he feels will not be in line with what his goals for his family are. He feels that this will affect at least 40 households in a similar way and appealed to the Commission to reject the amendment on the basis of fairness to those who live in the area.

Mr. Harold Dagner of 15807 N.E. 27th Place stated that before purchasing his property he queried the City on the proposed land use of the area. He said that he attempts to structure things around his seven children and raised concerns about noise and crime (from minor kid-pranks on up). He also appealed to the Commission on the basis of fairness to those who thought they knew what the zoning was in the area.

Mr. Brian Woller, 15938 N.E. 28th; Bellevue, Washington, a Peachtree resident; also purchased his home on the basis that an office complex would be across the road from him and not

apartments. His concern was the impact to school facilities in the area, *Highland*, Overlake, and Ardmore.

Mr. Roger Hilly 15929 N.E. 27 th Place, Bellevue; stated his objection to the proposed amendment on the basis that an apartment complex with possibly 500 units would increase noise, crime, and traffic_in the area.

Mr. Curt Helner of 16243 N.E. 30 th, Bellevue, Washington, a resident of this address for 21 years, stated that he has seen much change in the area over the years. In the formation of the Comprehensive Plan for that area there was much time and effort and study involved, including hearing from the residents that would be affected. He feels that the Land Use Code for that area was proper and that no changes need to be made to it. He said he agrees with all of the individuals who spoke before him.

5. PUBLIC MEETING - Adult Entertainment

Mr. Rob Odle was introduced to give a brief introduction to the subject. Mr. Odle referred to fart One of the study on the potential need to regulate locations of adult entertainment within the City which had been distributed to the Commission. He stressed that the discussion was on the potential need for regulation of the location of adult entertainment and not the content of any materials offered by such establishments.

Mr. Odle discussed the decision rendered in the 1986 Renton v. Playtime case, which said that adult entertainment uses cannot be banned. The decision also stated that regulations to mitigate secondary effects are permitted, and a city can rely on the experiences of other cities in formulating regulations for adult entertainment. The bottom line is that cities can regulate the locations of adult entertainment if there is need to mitiate the secondary effects-

Currently, adult entertainment uses are not regulated in the City of Bellevue as to location; anywhere a similar non-adult use is permitted there may be an adult use. Certain uses are currently regulated through. either City or State regulations. These include massage parlors, bath houses, panorams, public dances, dance halls and cabarets. In reviewing these regulations, Staff found that they are sufficient to initiate the secondary effects of those uses. For those reasons, Staff recommended that the Commission only consider potential regulations for adult theater and adult retail. By definition, adult theaters are enclosed buildings or drive-in facilities used for the commercial presentation of motion picture films, video cassettes, cable television or any other visual material whose matter is characterized by depicting, describing, or relating to specified sexual activities or specified anatomical' areas. Adult retail is defined as an establishment engaged in the sale of goods in which ten percent or more of the stock in trade is characterized by an emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas.

The three tests that any regulation has to meet are:

The regulation chosen can be no greater than necessary, i.e. the minimum' regulation necessary to regulate the secondary impacts.

It must be the least intrusive regulation into the activity that is occurring.

It cannot be an outright ban on the use.

Secondary effects relating to adult entertainment uses include:

The incidence of crime.

Impacts to property values in the area.

Land incompatibilities between adult uses and other non-adult uses in the area.

Types of regulations that other municipalities have chosen include:

Dispersion Ordinances. This is where adult entertainment uses are dispersed throughout the community with minimum dimensions separating adult entertainment uses from other adult entertainment uses as well as minimum distances from sensitive uses such as public parks, churches, day care centers, areas frequented by children.

Concentration Ordinances. This is the opposite of dispersion with the classic example being the Combat Zone in Boston. Seattle uses a similar approach.

Modified dispersion concentration approach. Here aspects are chosen from both

dispersion and concentration. The best example of this is Renton where there are dispersion requirements of at least a thousand feet- between adult entertainment facilities and churches, parks and residences. However, Renton does not have any limitations on how far adult entertainment uses must be from other adult entertainment uses.

Special Ordinances include Conditional Use Permits or other types of administrative review required for adult entertainment uses. The licensing of such establishments brings up First Amendment issues. Certain adult entertainment uses are now licensed in Bellevue, including panorams and bath houses.

Other cities in the area use varying approaches. Seattle uses the concentration approach, Redmond uses dispersal. Kirkland uses a combination special use and combination dispersion concentration approach in that there must be an adult activities overlay zone created, then there must be a Conditional Use Permit to locate within that zone and finally they cannot locate closer than 1500 feet from churches, parks, schools, et cetera. Mercer Island and Issaquah use a dispersal approach, Bothell uses a dispersion approach but requires that all such businesses be located on Bothell Way N.E. King County requires that adult entertainment uses must be located no closer than 2000 feet from a school.

Currently there are three adult entertainment uses located in Bellevue, one in the Overlake area, one in Be]-Red/Wilburton, and one in the CBD; all are primarily retail establishments. To date, it has not been established that any of the secondary effects are occurring in Bellevue. These .three uses are all actually located in commercial areas. However, there are not regulations to prevent them or others from locating near sensitive areas (houses, churches, schools, parks).

Staff recommends that this issue of the need for further regulations be studied by the Planning Commission.

Mr. Odle then introduced Lt. Steve Bourgette of the Bellevue Police Department, who serves on the Task Force on Adult Entertainment. Acting on the request of the Planning Commission, Lt. Bourgette invited representatives from surrounding cities to relate how adult entertainment uses have been regulated and received in their cities.

Bellevue Chief of Police Smith was introduced first. Chief Smith explained that he has been with the City of Bellevue for a year and a half having previously served with the police force in

Kansas for a period of 29 years. This included the time during the earh 1970s when adult. entertainment use as we know them came,to the fore.

· Chief Smith explained that when adult entertainment uses first began appearing, several cities hastily passed ordinances to regulate these uses. Many of these ordinances were ill advised and were in many cases struck down for being unconstitutional.

Chairman Lukens asked Chief Smith what some of the secondary effects of adult entertainment uses he had encountered. Chief Smith cited the congregating of individuals he termed undesirable around these businesses. As a case in point, Chief Smith described an area of Kansas City that had been a run-down section of town and was revitalized and specialized in family-oriented businesses. Adult entertainment uses began to come into that area and over the course of time the family-oriented businesses began to close down and the area was eventually abandoned altogether.

Commissioner Conger wanted to know if uses of this type would draw mainly from the residents of Bellevue or would it pull patrons from other areas as well. Chief Smith shared that his experience had shown people drawn to these businesses from as far away as 40 or 50 miles. He felt that it would be fair to characterize it as a regional type market.

Commissioner Ferris wanted to know if Chief Smith had had experience with the dispersion type of regulations. Chief Smith said that Kansas City had areas of concentration as well as dispersal throughout the city with regulations as to how far they could be located to sensitive areas.

Introduced next was the Deputy Chief of the Bothell Police Department, Rudy J. Plancich. He provided for the Commission a copy of the ordinances covering adult entertainment in Bothell. In 1982, prior to Bothell adopting any controls over adult entertainment uses within the city, a business applied for a license to operate an 18 and over non-alcoholic entertainment and amusement games establishment. Shortly after opening it was found that topless dancing was occurring there. An emergency ordinance was passed; the ordinance was modeled after a Seattle ordinance which controlled activities inside the establishment. In court, this ordinance was overturned and the business began operating in the same fashion again. The regulations were rewritten.and were eventually upheld.

During the time that the business was in operation, the Police Department conducted a six-week investigation of it. Among the results were arrests on drug charges, illegal sale of alcoholic beverages, offering and agreeing to acts of prostitution and entertaining illegally in a

public place.

Deputy Chief Plancich agreed with Chief Smith about the attraction of a certain crowd to the area by the establishment of these types of businesses. Monitoring these places reveals that the same customers are there on a steady basis.

Commissioner Conger questioned whether criminal activities extended beyond the immediate facility. Deputy Chief Plancich said that there were hit and runs in the parking lots, disturbances, disputes between the male and female patrons which occur on and around the premises. Commissioner Conger wanted to know also if the State and Federal statutes were sufficient to regulate these uses from the standpoint of the Bothell experience. The reply was yes, but that they need to work in conjunction with local laws.

Lt. Lee Bartley, Vice 'Unit, Seattle Police Department, was introduced nest. Lt. Bartley said that adult entertainment exists in Seattle in many different forms and it has been found to be quite lucrative for the business owner. Many times these businesses are corporations that are controlled by people behind the scenes: Their experience has been that many times these establishments will operate for a while, run up a considerable number of bills, including tax bills, and then will fold up and leave. Often they reappear as a different corporation.

Currently, Seattle has about three of the soft drink topless establishments and a number of pan rooms located mostly downtown_ In addition, Seattle has adult bookstores, often combined with pan rooms in the back, and several adult theaters.

Lt. Bartley said that there are also sexual paraphernalia stores in Seattle and there have been no problems associated with them.

Problems that have arisen with the other establishments include offering and agreeing to acts of prostitution, drug possession, "tease-and-rip" charges stemming from patrons being enticed to pay for certain privileges and not receiving them, and stronb arm robbery.

When these businesses are in residential areas. problems include parking problems; drug deals in the parking lots and minors either working in or patronizing the establishments.

Seattle's Ordinances covering the pan room establishments are new and at best shaky. Basically they cover the heights of the pan room doors to allow inspection from a public area or hall to be sure there is only one person in the booth. Seattle's Lewd Activities ordinance which governed activities inside these places was found to be unconstitutional. Currently, their Lewd ordinance covers activities outside of these establishments. They also have an ordinance which forbids the displaying of erotic material in the windows of adult bookstores.

In the past when the city would attempt to regulate these businesses, the owner would simply call it something else and go on operating.

Many of the adult entertainment businesses in Seattle were operating prior to any.zoning regulations being enacted. With many of them being located in the First Avenue area of Seattle, which is an area that Seattle would like to upgrade through Urban Renewal, and since they constitutionally protected businesses, the problem of where to relocate them arises; placing them in an area having well-established family-oriented businesses could have a deleterious effect on those places. The same would be true in residential areas.

Lt. Bartley suggested that the City of Bellevue consider adopting regulations that would limit the distance that live dancers could get from the patrons and the stage height in such establishments.

Commissioner Conger asked if the soft drink establishments tended to attract juveniles and become points of congregation for juveniles. Lt. Bartley felt that they do, both with males using fake I.D. and female runaways working as dancers in them, also with fake I.D.

Chairman Lukens said that he had received a letter from the Chief of Police in Renton and that copies would be made available to the Commissioners.

Chairman Lukens then opened the meeting to receive public comment. He made it clear that the commission is not seeking to regulate content, but rather location of adult entertainment uses. He said that the Commission would be looking at only three issues in regards to this issue:

1. The secondary impacts to the community which may result from these adult entertainment businesses.

2. Whether location of adult entertainment businesses should be regulated.

3. If regulation of location is necessary, the approach the regulation should take.

It was asked that speakers limit themselves if possible to five minutes to allow others time as well.

Mr. Jack Burns of 500 IOSth Avenue N.E., Bellevue, Washington, informed the Commission that he is an attorney who lives and practices in Bellevue and represents several adult entertainment businesses in the State and throughout the nation.

Mr. Burns noted that most of what the law enforcement officers had talked about were activities that went on inside the establishments and which are clearly out of the jurisdiction of the Planning Commission.

He stressed that the Staff report states that Bellevue currently is not experiencing any secondary effects from adult entertainment uses. This is true also of the panoram location in Bellevue. He suggested- that the Commission go slowly in deciding just what the secondary effects that they will have to deal with will be. He said that parking as a secondary effect will probably not be a problem.

Mr. Burns questioned what the adverse secondary effect would be on a church from a zoning standpoint resulting from an adult entertainment usage in the area. He has never heard of anyone refusing to attend a church because there was an adult entertainment establishment in the vicinity. He felt that any impact to the church would probably be visual resulting from signs or window displays. This is covered pretty well by Bellevue's sign ordinances now, which are very stringent.

If restrictions such as requiring two thousand feet between sensitive uses and adult entertainment uses are adopted, there may in fact be no place in the City of Bellevue that these businesses could operate.

The Planning Commission should be concerned with zones, not with uses. Adult business

should be separated from residential zone rather than from residential uses.

He also questioned what the impact is on school children who must walk past these businesses on their way to school. If the concern is visual then regulations are probably appropriate. If the concern is of kids going into these places, there are already laws that deal with that. If the concern of availability of materials to minors, the fault might lie with those adults who are buying the material and making it available to children. Isolating adult entertainment uses from schools will probably not solve all these problems.

Mr. Burns said he is not opposed to the dispersion approach to safeguard the quality of residential areas but that this approach must be tempered with the distances available in Bellevue so that a zone-out effect is not created. A zone-out would be unconstitutional.

It has been his experience that the problems associated with adult entertainment have come when they are concentrated into a particular area. This affects property values in those areas as well and in general is deleterious. Here is also where the law enforcement problems arise from all the people congregating in one area.

Since the businesses which are now operating within the City of Bellevue are not causing any secondary effects; his recommendation to the Commission was to grandfather those businesses in should there be any-- zoning ordinances passed that made the uses non-conforming.

In conclusion, Mr. Burns reiterated that the Commission should study just what the secondary effects might be and target very narrowly a response to them to have a minimum impact on the business and the maximum effect to solve the problem.

Mr. Peter Rutherford of 14522 S.E. Street, Bellevue, Washington, stated that he would not want any of his nine children to have to walk past an adult entertainment business to get to or from school. He feels the location of such a business near a school would be deleterious to quality of life in the area. He also pointed out that the Study shows that there appear to be no major secondary effects here in Bellevue, not that there are no secondary effects at all. He urged the Commission to study the effects on the economic environment, the social environment, and the effects on the city and the region.

He does not like the thought that a single adult entertainment business can and does attract customers from as far away as fifty miles. He is also concerned with the number of so-called

undesirables that frequent such places.

He pointed out that the Staff report says the regulations can be preventative and not just corrective and urged the Commission to consider regulations that would be preventative in nature.

His personal recommendation would be to follow the Kirkland guidelines of a dispersal approach along with a conditional use approach.

Referring to page 28 of the Study, he stated that the fourth option of conditional use, which is stated to be more burdensome than the dispersal approach, is perhaps a burden that the City should carry.

Andrea Vangor, 148 13oren Avenue, Seattle, Washington, informed the Commission that she is the Executive Director of Washington Together Against Pornography. She pointed out what she considered to be inaccurate citations of law in the Staff' report and stated that the Commission should be aware of the current tools of law in order to make correct decisions.

Since the 1979 ruling by the State Supreme Court, all cases regulating matter of adult entertainment have been assigned to the State Legislature. This applies to all three legally definable areas of pornography: obscene matter; harmful to minors matter; and child pornography. The city may not regulate content, only activities that take place on premises.

RCW 7.48 along with RCW 9.68 constitute the State obscenity law, which has a civil and a criminal portion. The criminal portion is enforceable by an officer of the state, and the civil portion may be enforced by the City Attorney's Office. This latter would probably not happen because of the great costs that go along with it. A city could look to a cooperative effort with the Attorney General's office in line with racketeering legislation. Currently the State obscenity laws are in the hands of the State Supreme Court awaiting a ruling on the constitutionality of the law.

Without proper zoning laws, a city will not be able to deal effectively with the operating of adult businesses.

Ms. Vangor encouraged the Commission to check with Christine Gregoire who is the state's expert on obscenity and pornography and is also an Assistant Attorney General for the State of Washington.

Commissioner Blacker asked for Ms. Vangor's opinion concerning Staffs recommendation that the state's regulations of dance halls, bath parlors, et cetera are sufficiently regulated as to not require any further locational regulations. Ms. Vangor said that she did not think the current regulations were enough and that the city of Seattle should not be the model for Bellevue.

The next person was Beth Woodward of 14624 S.E. 42nd Street in Bellevue. Washington, representing the East King County Chapter of the American Civil Liberties Union. Her primary concern with the regulation of adult entertainment uses is that it will impact freedom of expression in Bellevue, both for the owners of the businesses and those who may wish to begin them. She stated that each small loss of freedom of free citizens diminishes society.

The use of the conditional use approach to zoning would provide an opportunity for discrimination each time a use was considered.

Laws and regulations should only be imposed by government when compromise cannot be achieved through other peaceful means. Most businesses are regulated by the market place and adult businesses should be treated the same.

It is important to allow for diversity within the community and not allow the views of one group to restrict the expression of other groups.

The formation of regulations of certain types of businesses may be based on incorrect assumptions and may lead to effects other than those anticipated.

Chris Lyndon, 2011 76th in Bellevue, Washington, expressed her concern for what she termed the weak in a community -- women and children -- and sexual abuse that results from emotions that result from using the products or viewing the products sold by these businesses. This is viewed by her to be the most serious sec.ondary effect of adult entertainment.

These establishments should not be treated as just another business because they are not just

another business. Where they are congregated together, serious crime results. The same does not take place with stationery stores or computer software outlets.

There should be as much regulation as possible.

Mr. Colin Radford of 3663 Fairweather Lane. Medina, Washington, explained that he manages a property occupied by an adult toy store in downtown Bellevue. As a property manager, he has certainly kept up on the opinions of the building owner, the surrounding tenants, and the community at large as they regard the adult entertainment business that is in the building. He said that opinions about any store vary in relation to who is running the store. He doesn't feel that there has been anything happen in with the store he oversees that would warrant zoning changes for the city as a whole. Probably visual control, which for the most part is undertaken by the tenants themselves, would be enough keep the businesses in favor with local residents. He felt it would be helpful for the City to have a checklist so that these businesses would take into consideration some of the concerns that other people may have.

Commissioner Conger asked Mr. Radford to put himself in a hypothetical position and asked how he would feel if he were the owner of a retail establishment which caters to children or families, which has been profitable to him, and have a topless place open next to him. Mr. Radford states that he would appreciate having as much space between them as possible. He felt that guidelines of this sort should be developed by the Commission but in cooperation with those business owners who would be directly affected.

Mr. Ullery, owner of R&R Adult Toys, 210 - 106th Place N.F. Bellevue, Washington, pointed out that adult entertainment establishments have been operating in Bellevue for the past fifteen years. During this time, there has been no increase in prostitution, child pornography, or other crimes usually associated with adult entertainment. These businesses have generated tax revenue for the City and judging from the sales, there is a need for the product. Mr. Ullery feels that most of his customers live within ten miles of his store.

Mr. Hal Woosley, P.O. Box 3325, Bellevue, Washington stated that he is the owner of the building housing the Love Works store. As a property owner, he is very careful in choosing the businesses which will occupy his spaces. Mr. Woosley said that he as an individual is strongly against what he called hard-core pornography, calling it a cancer in our society. If he felt that there were anything wrong with the Love Works store and the merchandise they carry, he would not have allowed them into his building. They do not sell any hard-core equipment or magazines. Shops of this type do not pose any hazard. From his off-ice window. Mr. Woosley can see the people who shop there and they include people from all walks of life. He urged the Commission to be cautious in formulating regulations in the area of adult entertainment.

Commissioner Conger asked what the reaction of the other tenants had been when the Love Works store set up. Mr. Woosley said that there had never been any problems with the other shop owners.

With no further speakers, the public meeting was closed at 9:06 by Chairman Lukens who then left to attend another meeting. Commissioner Blacker chaired the remainder of the meeting.

7. STUD' SESSION -- Adult Entertainment

Commissioner Conger felt that there seems to be many differing opinions as to what comprises adult entertainment uses and that perhaps Staff should spend a little time in focusing on what the different uses may be.

Rob Odle informed Commission that he is scheduled to come back next week to discuss further the public input and address any inquiries that the Commissioners may have regarding adult entertainment uses. He asked if the Commission had any further research tasks for Staff to focus on during the intervening week. Staff will be working on Part 2 of their recommendation to the Planning Commission and will include those concerns that were raised by public input. He pointed out that the S_ taff study is a joint effort of the Planning Department, the Police Department, and the City Attorney's Office.

Commissioner Ferris wanted to know whether neighboring communities have found the existing regulations to be adequate and wondered if Bellevue's should be broadened.

Mr. Jim Turner, legal counsel for DDD, explained somewhat further the legal considerations set forth in the Study. He agreed with Ms. Vangor who spoke to the issue of keeping minors out of these establishments. He feels that these places have a history of being self-regulating. He agreed that the laws aimed at keeping minors out have never been enforced. He also reminded the Commission that they are not to attempt to regulate content but location -and secondary effects only. Placing flat restrictions on such places as massage parlors will place undo strain on such places as fitness gyms and health clubs.

YIr. Turner clarified the report which states that any new development is subject to sign review. A new tenant moving into an existing development may put up a sign which would not

be subject to sign review.

Commissioner Conger asked how the sign regulations would apply to adult entertainment establishments. NIr. Turner said the regulations would involve the size and location of the signs. The regulations do not relate to content and he sees potential constitutional problems in attempting any sort at regulation of content.

The Commission delayed a general discussion on adult entertainment uses until next week after having time to digest the public's comments and the Staff report.

Commissioner Blacker wanted the Commission members who were absent at tonight's meeting to have a copy of the public's comments as soon as possible. These will be provided to Staff by 9-21-87.

8. OLD BUSINESS

Approval of Minutes of August 12, 1987 and August 26, 1987.

Because of a lack of quorum, approval of the minutes was delayed to the next meeting.

9. NEW BUSINESS

Commissioner Blacker handed out reprints and articles concerning the recent Supreme Court decisions rearding Land *Use* Codes-

10. PETITIONS AND COiti1TIVIUNICATIONS -None

11. ADJOURNMENT

Motion to adjourn was made by Commissioner Conger and seconded by Commissioner Ferris. The meeting adjourned at 9:24 p.m.

Secretary to the -Planning Commission Date

Chairman of the Planning Commission Date

PART If

ANALYSIS AND RECOMMENDATIONS

ALTERNATIVE ANALYSLS

The following chart reviews the advantages and disadvantages of the various regulatory approaches described earlier and applies them to Bellevue. This range of alternatives varies from the No-Action Alternative (#1), which would not specifically regulate the location of adult entertainment uses, to that of an outright prohibition (Alternative 5). Alternative 2 looks at the impact and applicability of the widely used dispersal/modified dispersal approach. At this 'Lime, in the analysis of Alternative 2, no distance standard was utilized. Alternative 3 reviews the concentration approach. In this case, LI (Light Industrial) zoning was selected as it is the one zone that was least likely to contain or be adjacent to

sensitive uses. Alternative d analyzes the applicability of a Conditional Use Permit (CUF) for adult entertainment uses.

EVALUAT70N OFADULT USE ZONING ALTERNATIVES

1. NO ACTION

The "No Action" alternative would maintain the existing zoning policy of allowing adult uses in designated commercial zones thought the city. Accordingly, adult business could locate in all or some of the following zones: L1, GC, NB, CB, OLB, and CBD zones, depending on the nature of the specific use. This zoning policy does not distinguish between business activities based on the "adult" characteristic of certain uses.

Advantages : Maintaining existing regulations represents the least cost option in that no resources would be required to draft and implement new regulations.

Disadvantages . Present zoning policy does not specifically seek to protect residential, educational, religious, and recreational uses from the land use incompatibilities of adult businesses_ Some schools, churches, and residential areas are currently located near commercial zones which may allow adult businesses under existing zoning regulations. As a result, the "No Action" alternative does not appear to mitigate the adverse secondary land use impacts commonly associated with adult businesses_

2. MODIFIED DISPERSION IN COMMERCIAL ZONES

Under this alternative, certain adult businesses would be permitted' in designated commercial zones which are not located within a specified distance of any school; public park, church, or residential area_ Depending on the dimensions selected, this would restrict locations to portions of the CBD, Bel-Red Crossroads, Eastgate and North Bellevue areas. A dispersal requirement which would require a specified minimum distance between adult uses could be included as part of this alternative to avoid clustering of such uses in one area of the city.

Advantages: **This alternative would seek to maintain the integrity of the city's residential, educational, religious,** and **recreational environments by ensuring separation from incompatible adult uses.** A **dispersal requirement may also help to mitigate against any negative economic influences which adult uses may have on the business environment.**

Disadvantages: **The specific dimension selected will determine whether an adequate amount of land is available for adult uses to locate. Some administrative time will need to be spent administering any distance requirement.**

3. CONCENTRATION APPROACH

This approach would allow adult businesses in a specific zone such as Ll. Amendments to present zoning policy' to allow commercial uses in industrial zones would have to be implemented. This alternative could be'modified by requiring a minimum distance between adult uses in industrial zones, in effect promoting dispersal of such uses but only within that zone_

Advantages: **This approach specifically defines a specific area of the city as suitable for adult uses.**

Disadvantages: **To allow adult businesses in industrial zones would probably require a significant change in zoning policy. Allowing adult businesses may also involve allowing other general business activities; hence, a significant change in policy. A traditional concentration policy would not afford any protection to sensitive uses such as residences or schools should they be located in or near the zone selected. Higher incidence of crime is also associated with the concentration of adult uses.**

4. CONDITIONAL USE PERMIT

Under this alternative, certain adult uses would be permitted in specified commercial zones by Conditional Use Permit (CUP) only. Therefore, approval would be made by the H. Ex. &

City Council. Special criteria or guidelines relating to operational and/or locational characteristics could be included in the CUP approval process in order to make the proposed use compatible with its surrounding environment_ (The CUP process could also be combined with either alternative #2 or #3, above.)

Advantages: Depending on the particular guidelines or criteria developed, this alternative represents a flexible zoning device which is able to respond to varying circumstances. Through the adopted guidelines, protection of residential, educational, religious, and recreational uses could be preserved.

Disadvantages: This alternative would likely involve higher administrative costs since each application would have to be specifically processed by the Hearing Examiner and City Council. New CUP criteria specific to adult uses would need to be added to the Land Use Code_ Because there is no assurance that any adult uses would be approved, such a regulation may be unconstitutional (prior restraint).

PROHIBITION

This alternative would prohibit certain adult uses altogether. As anticipated, specific adult uses would be defined and regulations would be developed which prohibited them from locating within the city.

Advantages: Under this alternative, the total community would be protected from any adverse impacts of adult uses.

Disadvantages: Outright prohibition of all or certain adult uses, especially those which may be protected under the First Amendment would be unconstitutional_

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EVALUATION OF ADULT USE ZONING ALTEZHATIVES

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The above analysis shows strongly that should the Planning Commission conclude that regulation of the location of adult entertainment uses is necessary, that the modified dispersal approach was the type of regulation most likely to mitigate the secondary effects with the least intrusive regulation. As a major issue regarding the modified dispersal approach is appropriateness of a selected radius, the following chart was developed. This chart displays the land available for locating adult entertainment uses using various radii and utilizing the following assumptions:

1. Sensitive uses (those areas that adult uses are to be dispersed from) include: all non-CBD residential zones, all single and multi-family uses, day cares and preschools, primary/middle/secondary schools, religious institutions and public parks.

2. Uses and zones include all areas within the City as well as adjacent to the City.

3. Adult uses potentially could locate in all CBD, CB and OLB zones. The total of these zones equals 855.67 acres.

4. Radius is measured from the perimeter of the property and not a central point.

5. Only that portion of a parcel which is within the radius area is subtracted from the available acres, and,

6. Radii selected were in 500 foot increments except for 600 which corresponds to an average block length in Bellevue.

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In reviewing the available acreage it should also be noted that uses could be dispersed within the available areas which would limit the potential number of sites once an adult entertainment use was located in the zone_ It should also be noted, that two of the current uses (R & R Adult Toys and Love Pantry) could become non conforming with any of the radii analyzed_ Love Works is already a legally non-conforming use, as already a legally non-conforming use, as it currently is not a permitted use in the GC zone.

Having analyzed the available options, the next section will describe the conclusion to be drawn from this study and present the staff recommendations.

CONCLUSIONS AND RECOMMENDATIONS

CONCLUSIONS

The previous sections of this study have presented basic information and analysis on the question of the need for the City of Bellevue to regulate the location of adult entertainment uses. This section will present the conclusions that can be drawn from the previous sections and present the staff recommendation_

Based on the information contained in this study and the public meeting of June 18, June 25 and September 16, and the study session land its concomitant research) of September 23; 1987, staff concludes the following:

1. **Cities have the ability to regulate the location of adult entertainment uses in order to mitigate the secondary impacts associated with such uses. This ability rests on a series of constitutional tests to ensure that free speech is not restricted and that the regulation does not create an outright ban on adult entertainment uses.**

2. **The City** *of* **Bellevue can rely on the experiences** *of* **other cities in assessing the need for and the type of regulation selected.**

3 **There is evidence** *of* **a linkage between the incidence of criminal activities near and in association with some adult uses (especially if they are concentrated). There is no clear consensus that exposure to pornography causes people to develop criminal behaviors.**

4. **Evidence suggest adjacency of residential uses to adult entertainment uses reduces the value of the residential property. Concentration of adult entertainment uses in commercial areas may also adversely effect property values_**

5. **Adult entertainment uses are perceived to negatively impact the character of established neighborhoods and potentially be disruptive influences (depending on the type of use).**

6. **Adult entertainment uses do not always create negative secondary effects but many cities have experienced negative secondary impacts from adult entertainment uses.**

7. **Presently, there are** no **known negative secondary effects associated with the three adult entertainment uses located in Bellevue. This situation could change in the future should new uses be created or the nature or the establishments change.**

8. **Each municipality in the area has chosen to regulate the location of various adult entertainment uses.**

9. **Adult entertainment uses can be incompatible with certain sensitive uses such as: residences, schools,** day **cares;** religious **institutions** and public **parks.**

10. The City of Bellevue Comprehensive Plan strongly supports that adjacent land uses be compatible.

11. Given the current system of land use regulation in the City of Bell evue; the modified dispersal/concentration approach would be the most effective type of regulation to mitigate and prevent the negative secondary impacts of adult entertainment uses from occurring. This type of regulation would also be the least intrusive form of regulation.

12. Adult entertainment uses should be confined to those zones in which all the adult entertainment uses are currently permitted in. These zones would be CB, OLB and all the CBD zones.

13. Utilizing a distance of 500 feet between adult entertainment uses and sensitive uses would correspond to the length of a normal city block. Such a radius would also permit a reasonable amount of land to be available for adult entertainment uses to locate within.

14. Utilizing a distance of 600 feet between adult uses would provide an adequate separation in order to avoid a concentration of such uses.

1 5. A$ the current adult entertainment uses are not known to be creating any negative secondary impacts, these uses should be allowed to continue in their present location even if the selected regulation should make them non-conforming-

RECOMMENDATIONS

Based on the facts and conclusions contained within this study, as well as those sources listed in the bibliography, and on ail communications received by staff during public meetings; staff recommends to the Planning Commission the following for the regulation of the location of adult entertainment uses:

1. Adult entertainment uses shall.. be restricted to CB, OLB and all CBD zones.

2. Adult entertainment uses shall include adult retail, adult theatre and massage services.

3. Adult entertainment uses cannot locate within 600 feet from the following whether within the City. or not: all residential zones (R-1 through R-30); all single and multi-family uses; all daycare and preschool uses; all primary, middle and high schools; all public parks; and religious institutions.

4. Adult entertainment uses shall not locate within 600 feet from any other adult entertainment use.

5. All existing adult entertainment uses made non-conforming by this regulation would continue as legally non-conforming uses.

City of Bellevue

MEMORANDUM

DATE: October 6, 1987

TO: Rob Odle

FROM: Jim Turner

1. **Adult entertainment uses shall** be **restricted to CB, OLB and all CBD zones.**

2. **Adult entertainment uses shall include adult retail, adult theatre and massage services.**

3. **Adult entertainment uses cannot locate within 600 feet from the following whether within the City or not: all residential zones (R-1 through R-30), all single and multi-family uses; all daycare and preschool uses; all primary, middle and high schools; all public parks; and religious institutions.**

4. **Adult entertainment uses shall not locate within 600 feet from any other adult entertainment use.**

5. **All existing adult entertainment uses made non-conforming by this regulation would continue as legally non-conforming uses.**

City of Bellevue

MEMORANDUM

DATE: October 6, 1987

TO: Rob Odle

FROM: Jim Turner

RE: Feasibility of Adult Material Display'Regulation

The Planning Commission expressed an interest in regulating the display of "adult materials" so as to prevent view by minors. For the reasons stated below, it is almost certain that the City is precluded from enactincr any such regulation.

A. Pre-Emotion : RCW 9.68, discussed in earlier memoranda, addresses dissemination of adult materials to minors. As we have seen, it provides a framework for labeling such materials. and once labeled, such materials may not be sold or exhibited to minors or displayed in public. RCW 9.68.050-120. Also found within that statute is the statement, "the provisions of RCW 9.68.050 through 9.68.120 shall be exclusive." RCW 9.58.120. Construing that language, the Washington Appellate Court has struck down a city ordinance addressing dissemination of erotic materials to minors, concluding the city preempted by the state legislation. Tacoma v. Naubert, 5 Wn.App. 856, 491 P.2d 552 (1971); see also. State v. Smith, 14 Wn.App. 9, 538 P.2d 1235 (1.975). The court in Tacoma v. Naubert stated:

> "We can only conclude that in using the words 'shall be exclusive' the legislature intended to occupy the legislative field in the distribution of indecent materials to minors, to the exclusion of counties or cities."

Tacoma v. Naubert, 5 Wn.App. at 862.

In a more recent case, the Washington Supreme Court struck down a Spokane ordinance making it unlawful to sell or distribute obscene (non-constitutionally-protected) material. Spokane v. Portch, 92 Wn.2d 342, 596 P.2d 1044 (1979). At. the time the ordinance was enforced, RCW Chapter 9.68 contained a similar, though less restrictive, criminal prohibition of the dissemination of obscene material. RCW 9.65.010 (repealed by 1982 c 184 section 11). Although RCW 9.68.120, the "exclusive" provision relied on by the court in Tacoma v. Naubert, did not apply to RCW 9.68.010, the court in Spokane v. Portch nevertheless determined Spokane preempted by the statute. The court discussed the doctrine of preemption, considered the scope of RCW 9.68, and concluded:

> "We believe that the comprehensive major of this chapter indicates an intent on the part of the legislature to preempt that area of obscenity control included within the statute."

Spokane v. Portch. 92 Wn.2d at 348.

Integral to the decisions reached by the courts in both Tacoma v. Naubert and Spokane v. Portch, is the- constitutional sensitivity of regulating adult materials. Noting the chilling effect on the exercise of free speech of such regulation, the confusion and practical problems attended to a "legal thicket" of varying local regulations and the fact that the proper "community" for judging whether a material was obscene or harmful to minors is the state as a whole. the courts considered regulation properly centralized at the state level.

Importantly, in Spokane v. Portch, the court cited cases involving zoning regulating the location of adult uses and stated that the preemption doctrine did not restrict such regulation. Spokane v. Portch, 92 Wn.2d at 349. Implicit in the court's statement was the conclusion that such regulation did not fall within the purview of RCW 9.68. However, with respect to the display regulation presently under consideration by the City of Bellevue, it should be kept in mind that the court characterized "the sale, distribution and exhibition of erotic materials to minors" and "public display of 'sexually explicit material"' as within the purview of RCW 9.68. Spokane v. Portch, 92 Wn.2d at 348. Although the argument might be made that the regulation of interior display of materials which are harmful to minors is not squarely addressed by RCNV 9.68 and. thus within Bellevue's regulatory purview, successfully forwarding such an argument in court would be highly unlikely. RCW 9.68 does deal with interior display in that it requires the 48 point type "adults only" label, and it prohibits public display of such materials. That fact coupled with the court's characterization of RCW 9.68 as "comprehensive" in its control of obscenity leads to the conclusion that the court would consider Bellevue preempted with regard to regulating interior display of adult materials.

B. Constitutionality: Disregarding for a moment the fact that Bellevue is probably preempted by the state legislature, any attempt at display regulation would face certain constitutional challenge. The Federal Circuit courts that have dealt with the issue squarely are split with regard to the constitutional permissibility of such regulation. American Booksellers Association v. Commonwealth of Virginia 792 F.2d 1261 (4th Cir. 1986) (struck down); Upper Midwest Booksellers v. City of Minneapolis, 780 F.2d 1389 (8th Cir. 1985) (upheld); M.S. News Company v. Casado, 721 F.2d 1281 (10th Cir. 1983) (upheld). The issue is whether such regulation is "overbroad" in its attempt to shield minors from adult materials and thus unduly restricts adults' access to materials protected as to them. To this date, neither the United States Supreme Court nor the 9th Circuit Court of Appeals has addressed the issue, and for our jurisdiction, the permissibility of such regulation remains unresolved.

City of Bellevue

MEMORANDUM

Date: **October 9, 1987**

To: **Planning Commission Members**

From: Robert G. Odle, Planning

Subject: **Regulation of the Location of Adult Entertainment Uses**

Attached are the materials for your study session regulating the location of adult entertainment uses. The first attachment is the staff response to the research requests made at the last study session. The second attachment is Part H of the adult entertainment study and contains the-Analysis and Staff Recommendations.

At your meeting Wednesday evening (October 14th) Stephanie Brod and I will start by reviewing the first attachment and respond to any questions you may have on it. We will then review Part II of the study and present the staff recommendations. Following that discussion, staff requests that you provide precise direction on the drafting of an ordinance to regulate the location of adult **entertainment** uses (should you be **prepared** to give direction).

I look forward to our discussion on the fourteenth and should you have any questions in the interim please contact me at 455-6880.

RGO:jb

Attachments

cc: Bruce Freeland, Planning Director

Rob Beem, Principal Planner

Adult Entertainment File

Adult Entertainment Task Force

City of Bellevue

MEMORANDUM

Date: October 7, 1987

To: Planning Commission Members

From: Robert G. Odle, Planning

Subject: Adult Entertainment Study - Further Research

At your direction, staff has researched various topics which relate to the regulation of the location of adult entertainment uses. In this memo, I will respond to inquiries which relate to the planning aspects of such a regulation. Attached are memos from Stephanie Brod and Jim

Turner which relate to the legal aspects of such regulations.

CRITERIA FOR D NSIONAL STANDARDS

Various cities in the area using the dispersal or modified dispersal approach have utilized different dimensional standards for the separation between adult uses and sensitive uses (residences, parks, etc.) as well as between adult uses and other adult uses. The following chart describes the standard and the reason for the dimensions selected.

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MULTI-TENANT STRUCTURES

The Planning Commission wanted staff to review the issue of requiring adult uses to locate only in multi-tenant commercial structures. While currently all three adult uses are in multi-tenant structures, staff believes this would be an unnecessary level of regulation. Such a requirement could be considered an undue restraint on locating adult uses. Further, the mitigation of secondary effects would seem to be no greater in a multi-tenant versus a single tenant structure. The argument put forth was that multi-tenant structures are surrounded by parking lots (hence de-facto dispersion). While some of these structures do have larger parking areas surrounding them, others do not. Therefore. dispersal from and buffering to sensitive uses is not inherent with multi-tenant structures. Staff believes such a requirement would be

cumbersome, unnecessary and not achieve any greater level of mitigation.

MASSAGE SERVICES

Staff has reviewed the occupational location of the twenty-eight licensed masseuses in the City. The type of establishment and the number of masseuses working at each type are described

Establishment	(Number of) Masseuses
Athletic Club	(1) 5
Health Clubs	(4) 7
Beauty Salon	(4) 4
Independents	(10) 10

Essentially, there are no "massage parlors" currently located ,in Bellevue but massage is associated with other uses such as: athletic clubs or beauty salons. Because of the secondary effects that may be associated with "adult massage parlors" and because of the inability to readily differentiate between an "adult" and a "non-adult" establishment without defeating the purpose differentiating adult uses; staff recommends that an establishment whose sole use is massage be treated as an "adult" use and be required to follow any regulations determined to be appropriate for adult uses. However, any massage service associated with an athletic club, medical facility; health club, beauty salon, approved home occupations or which solely provides massage oft' premise, should be excluded from such, a requirement. While such a requirement restricts non-adult massage parlors, this regulation would not effect any current uses and the regulation would provide the necessary level of protection from the possible secondary effects of "adult massage parlors."

LIVE ENTERTAEII,IENT

While the Bellevue Lewd Conduct Code prohibits public lewdness and nudity, artistic dance is permitted. In order to prevent the possibility that topless dance establishments could be permitted and yet not be subject to regulation of location, staff proposes the following revised definition in lieu of the definition for Adult Motion Picture Theatre:

Adult Theatre

An enclosed building or drive-in facility used for live entertainment, dancing, or the commercial presentation of motion picture films, video cassettes, cable television, or any other such visual material, performance or activity, whose content is characterized by an emphasis on matter depicting, describing, or relating to "specified sexual activities" or "specified anatomical areas" for observation by patrons therein. Panorams, picture arcades, peep shows and "topless" establishments are included in this definition.

SCHOOL DISTRICT - WALKING BOUNDARIES

Currently, the Bellevue School District provides bus service to elementary school children who live farther than one mile "walking distance" from the school. "Walking distance" is defined as the actual distance that a student would need to realistically walk to reach the school. Middle and high school students receive bus service if they are greater than two miles walking distance from their school. In reviewing the various dimensional standards with you that an adult regulation may utilize, staff' will highlight the location of schools and their relationship to the nearby commercial areas. However, it should be noted that using a dimensional standard of one mile (elementary school standard) would preclude all land in the City and would be found to be unconstitutional.

I hope the preceding responses and the attached memo answer your questions regarding the location of adult entertainment uses. At your October 14th meeting, staff will review each of these responses with you. Should you have any questions in the interim please contact me at 45-5-6680.

ROO:j b

cc: Karli Jorgensen, Legal

Rick Kirkby, Legal

Stephanie Brod, Design & Development

Jim Turner, Design & Development

Steve Bourgette, Police

Adult Entertainment File

City of Bellevue

MEMORANDUM

DATE: October 6,1987

TO: Rob Odle, Senior Planner

Stephanie Brod, Legal Planner

SUBJECT: Adult Entertainment Issues .

AMORTIZATION O STING ADULT USES

Although zoning regulations cannot be applied retroactively, the Courts have upheld amortization provisions for uses or structures which become non-conforming. These provisions permit the property owner to amortize for Federal income tax purposes the non-conforming, use or structure for a specific period of time. At the end off that period, conformance with, current codes or removal is required. The City of Bellevue initiated a nine year sign amortization program for signs over 14 years ago.

Some local jurisdictions have developed amortization programs for existing adult uses. These ordinances have been upheld by State and Federal Courts so long as the time requirements for conformance with new regulations are reasonable. See City of Valleio Y.. Adult Books 213 Cal. Rptr. 143 (1935) (Ordinance requiring compliance with distance requirements within one year upheld) People Tags, Inc. v. Jackson Coun Legislature. 636 F. Supp. 1345 (W.D. Mo. 1986) (Court held that 120 day compliance period for meeting distance requirements is not reasonable regulation.)

Although an amortization program is a viable option, staff does not recommend initiating such a program. The existing adult uses in ellevue are not located such that they create adverse ¡mpacts to surrounding uses. It is important to note that an amortization program would not eliminate these uses but merely require them to relocate to a location which meets the zoning and distance and other land use requirements. In addition, the City staff have had difficulty in administering the sign amortization program_ Although an amortization program for adult uses would not be as administratively burdensome as the sign program, the Planning Commission needs to determine whether such a program will accomplish the desired results.

CONDITIONAL USE REQUIREMENTS FOR ADULT USES

An alternative approach to outright permitting adult uses with specific distance and other dimensional requirements could involve conditional use approval. This approval requires a public hearing before the Hearing Examiner and City Council Action. However, the current standards and decision criteria for conditional use approval (harmonious in character; not detrimental to neighboring uses or property, etc.) may be unconstitutionally vague when applied to Adult uses which have certain First Amendment protections.

A recent decision by the Maryland State Supreme Court upheld an ordinance which required a

conditional use permit for adult bookstores and establishments 5297 Pulaski Hiahwav, Inc. v. Town of Perryville, 519 A.2d 246 (1937). The specific decision criteria in the ordinance at issue included the following: nature of site, traffic impairment of surrounding development, proximity of sensitive uses and possible deterioration of areas and neighborhoods. Other courts have rejected conditional use approval where the standards are too vague. See Zabulon Enterprises, Inc. v. County of DuPage, 496 NE 2d 1256 (1986).

Staff does not recommend a conditional use approach which would involve the creation of new decision criteria. Distance and other dimensional requirements can be imposed without a cumbersome discretionary process. Design & Development Dept. currently reviews all business registration applications, tenant improvements, and building permits for compliance with land use regulations. Specific distance requirements could be imposed through various channels if adult uses are permitted outright.

SB: lab

City of Bellevue

MEMORANDUM

PHONE: 2751

DATE: October 6, 1987

TO: Rob Odle, Planning

FROM: Jim Turner, DDD

SUBJECT: Regulations of Adult Entertainment Signs

The Planning Commission expressed interest in specific regulation of signs associated with adult entertainment uses. The following is a discussion of the constitutionality of regulation exceeding present regulation of Bellevue applicable to all uses.

At present, City of Bellevue does regulate to a certain extent the information which businesses may place on their signs. Building mounted signs in commercial districts are "limited in content and message to identifying the building and the name of the firm, or the major enterprise, and the principal product and/or service information." E.g., BCC 22D.10.030.E.2.b. Freestanding signs are somewhat more restricted, "A freestanding sign located between the property line and the building line shall be limited in content and message to identification information only." E.g., BCC *22D.10.030.E.Ld.* **Even under these regulations, and under design review when applicable, an adult entertainment use could theoretically display text, symbols or pictures considered lurid. The code sections identified above would only limit the type of information provided to a certain extent, while design review would only limit to an extent the colors used in the sign or the materials used for the sign.**

A **few of our neighboring jurisdictions, Mercer Island, Bothell and Kirldand, specifically regulate signs for adult entertainment uses to "words only." For the reasons stated below, however, such regulation raises serious constitutional issues and are subject to invalidation.**

A. Commercial Speech

All the signs of the type we are concerned with here are commercial in nature. Nevertheless, they are still protected by the same First Amendment guarantees as any other speech. Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council, 425 US 748, 48 L.Ed.2d 346, 96 S.Ct. 1817. (Commercial speech only loses its constitutional protection if it is misleading, false, or proposes an illegal transaction.) Consequently, the fact that Bellevue is contemplating the regulation of advertisement for adult entertainment does not exempt the City from constitutional limitation on such regulation.

B. Regulation of Speech

The general constitutional restriction applicable to "content-neutral" regulation of speech is stated as follows:

[A] government regulation is sufficiently justified if it is within the constitutional power of the government; it furthers an important or substantial governmental interest; if a governmental interest is unrelated to the suppression of free expression; and if the incidental restriction on alleged First Amendment freedoms is no greater than is essential to the furtherance of that interest_

United States v. O'Brien, 391 US 367, 377, 20 *L.Ed.2d* 672, 82 S.Ct. 1673 (1968). Thus, even if Bellevue desired to restrict all signs within the city to words only,. the City would have to exhibit: (1) a substantial government interest in doing so, (2) that its reason for doing so was not to suppress free expression, and (3) that restriction of signs to words only was no greater regulation than necessary to further the substantial interest sought to be obtained.

That same limitation applies to Bellevue's Sign Code as it exists presently, and although our present sign code has yet to be tested, it would probably withstand constitutional scrutiny. The real issue here is one of degree: How important is the governmental. interest, and how restrictive is the regulation? Or, stated another way: Are there adequate alternative modes of communication? See e.g:;-City Council v. Taxpayers For Vincent, 466 US 789, 80 L.Ed.2d 772, 134 S.,Ct.-2118 (1984). The Supreme Court has answered the latter question in the affirmative when it upheld the prohibition of certain types of billboards, Metro Media, Inc. v- San Diego, 453 US 490, 69 L.Ed.2d 800, 101 S.Ct. 2882 (1981), and a prohibition of a posting of signs on public property, City Council v. Taxpayers For Vincent, supra. My sense is that in our case, a general restriction of signs to words only could go either way.

C. E qual Protection

Unfortunately, constitutional protection of free speech is not the only. hurdle facing the regulation of adult entertainment signage. If. as some of our neighboring jurisdictions have done, Bellevue applied a words only regulation to adult entertainment enterprises alone, the regulation could be effectively challenged under the doctrine of equal protection. The courts have always recognized that governments must necessarily involve themselves with line drawing when enacting regulations. Consequently, the Fourteenth Amendment Equal Protection Clause generally requires only that governments have a rational reason for

differentiating some of the public difTierent from the rest. However, when "fundamental rights" are subject to dissimilar regulation, the courts subject such regulation to "strict scrutiny." Under that strict- scrutiny, the Court requires that (1) the government have a compelling interest in discriminating in its regulation, (2) that compelling interest must be directly advanced by the regulation, and (3) that regulation must be the least restrictive means available for accomplishing that compelling interest. See e:g. Dunn w. Blumstein, 405 US 330, 31 L.Ed.2d 274,92 S.Ct. 995.

In the present situation, the fundamental right impinged upon by the proposed regulation is freedom of speech. Consequently, by singling out adult entertainment enterprises for special treatment with regard to signage, the City of Bellevue subjects itself to strict scrutiny. Thus, the City will be required to exhibit a compelling government interest for limiting adult entertainment signs to words only. Similarly, the City will be required to justify how restricting signs to words will directly advance that compelling interest in the least restrictive means possible.

Although the courts have been reasonably tolerant in their attitude towards restrictions of the time, manner or place of speech when generally applied, restrictions discriminating between types of speech are viewed with suspicion. According to the Court, in the case of Erznoznik v. City of Jacksonville, 422 US 205, 45 L.Ed.2d 125, 95 S.Ct. 2268 (1975), "Such selective restrictions have been upheld only when the speaker intrudes on the privacy of the home, or the degree of captivity makes it impractical for the unwilling viewer or auditor to avoid exposure." Id, 422 US at 209 (citations omitted). At issue in Erznoznik, was an ordinance prohibiting exhibition of movies displaying nudity within public view (i.e., drive-ins). The Court struck down the ordinance. Likewise, in the case of Police Department of Chicano v. Mosley., 408 US 92, 33 L.Ed.2d 212 92 S.Ct. 2286 (1972), the Court struck down an ordinance which prohibited picketing for any purpose other than for a labor dispute. The Court held the ordinance to be an impermissible discriminatory restriction of free speech.

Contrastingly, in a case involving adult entertainment sign regulation, the Fifth Circuit Appellate Court implied that a Bellevue ordinance more restrictively regulating adult entertainment signage might receive favorable treatment in the courts. In the case of Basiardanes v. City of Galveston, 682 F.2d 1203 (Fifth Circuit 1982), the Court considered an ordinance totally banning any signage for adult entertainment uses. As could be expected, the Courts struck down that portion of the ordinance. However, in its discussion the Court indicated that the city's interest in restricting such signage was "both strong and legitimate." but that the regulation failed to serve that interest narrowly. Id at 219. It should be noted, however, that in its reference to the city's legitimate interest, the Court cited two cases which stand for the proposition that materials which are unprotected as to minors may be regulated. In my opinion, although the City of Bellevue (were it not for Washington's preemption doctrine) could easily prohibit signage considered harmful to minors under a test similar to that found in RCW 9.63.050, there have been no cases which establish legitimacy at a general restriction on adult entertainment signage which does not sink to the level of "harmful to minors." Consequently, I do not feel that the cases cited in the Basiardanes case justify the

Court's conclusion therein that the city had a legitimate interest in broadly regulating the signage of adult entertainment facilities.

D. Conclusion

Despite adult entertainment signs commercial nature, as long as such signs are neither false, misleading nor proposing an illegal transaction, they are privy to the same constitutional protection as any other speech. Under that protection, any regulation of such signage would have to directly advance a substantial legitimate interest of the City of Bellevue. More importantly, in singling out adult entertainment uses for more restrictive signage regulations, the City would have to show a compelling legitimate governmental interest for doing so that is directly advanced by the most least restrictive means available. Given the Courts' very strict view of such discriminatory regulations of speech, it is my opinion that such regulation would be struck down as inviolative of the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution.

City of Bellevue

MEMORANDUM

Date: October 29, 1987

To: Planning Commission Members

From: Robert G. Odle, Senior Planner

Subject: Regulations for the Location of Adult Entertainment Uses

In preparing the draft ordinance for the Adult Entertainment Location regulations, staff became concerned over two primary issues which we felt warranted further discussion by the Planning Commission before completing the draft ordinance. While this discussion will cause a delay to the hearing schedule, we felt that a further discussion would produce a significantly better ordinance for the public hearing.

The first concern involves the Conditional Use Permit provision. The decisional criteria for a Conditional Use Permit are as follows:

20.30B.140 Decision Criteria: The City may approve or approve with modification an application for a Conditional Use Permit if..

A. The conditional use is harmonious and appropriate in design, character and appearance with the existing or intended character and quality of development in the immediate vicinity of the subject property and with the physical characteristics of the subject property; and

B. The conditional use will be served by adequate public facilities including streets, fire protection, water, storm water control and sanitary sewer; and

C. The conditional use will not be materially detrimental to uses or property in the immediate vicinity of the subject property; and

D. The conditional use has merit and value for the community as a whole; and

E. The conditional use is in accord with the Comprehensive Plan; and

P'. The conditional use complies with the Land Use Code requirements of the underlying use district; and

G. The conditional use complies with all other applicable criteria and standards of,the Bellevue City Code.

REVISED

BIBLIOGRAPHY

ON

REGULATING THE LOCATION OF

ADULT ENTERTAINMENT USES

CITY OF BELLEVUE

NOVEMBER 1987

Staff is concerned that these criteria could not specifically address the secondary effects that you wish to mitigate. Two solutions to this situation exist: 1) to write a new- set of specific decisional criteria just for adult entertainment uses, or 2) incorporate the specific criteria standards into specific requirements for all adult uses and dispense with the Conditional Use Permit process. Staff seeks directions from you as to specific secondary effects and the types of specific regulations that you wish to include (i.e., to mitigate crime, hours of operation may be limited or parking lots lighted).

The second issue concerns the provisions that would classify any video store as adult retail if the tapes were not segregated. The questions that we need answers to are:

1. What is considered segregation?

2. Are just video stores to be regulated or any store that rents videos, (i.e., Safeway or 7-II)?

3. Are video tapes the only article to be regulated in this manner (i.e., periodicals or books)?

4. 'Shat are the secondary effects that would be mitigated by such a regulation?

As you review each of the above questions, I believe you will see the complexity that such a regulation creates.

At next Wednesday's meeting (November 4th) Stephanie Brod, Rick Kirkby and I will be present to review these issues as well as the overall regulations with you. Should you have any concerns or questions in the interim please contact me at 455-5880.

RGO:jb

cc: Karlie Jorgensen, Legal

Rick Kirkby, Legal

Stephanie Brod, Design & Development

Jim Turner, Design & Development

Steve Bourgette, Police

Adult Entertainment File

BIBLIOGRAPHY

Reference Materials On Hand For Review

Studies

Effects On Surrounding Area Of Adult Entertainment Businesses In _St Paul . Division of Planning, Department of Planning and Economic Development. St. Paul, Minn. June 1978.

Pornography – Its Effects On The Family. Communitv And Culture , David Alexander Scott, Free Congress Foundation, 1985.

ReyulatinQ Sex Businesses . William Toner; Planning . Advisory Services, 1977.

Study Of The Effects Of The Concentration Of Adult Entertainment Establishment In The ity Or Los Anizeles . Department of City Planning, City of Los Angeles, CA. June 1977.

Articles

"Aggressive Erotica And Violence Against Women", Edward Donnerstein, Journal of Personality and Social Psychology, Volume 39 Number 2.

"Cities Are Turning To Zoning To Regulate. Pornographic Uses", The Building Official And Code A dministrator, Feb/IYlarch 1978.

"The Effects Of Aggressive - Pornographic Mass Media Stimuli"; Neil M. Malamuth and Ed Donnerstein, Advances In Experimental Social Psychology, Volume 15.

"Franklin Square: Porn Free And Booming": Arthur J. Schultz M, Urban Land August 1936.

"Justifying Personal Violence: A Comparison Of Rapists And The General Public", Martha R. Burt. S%ictimolow: An International Journal, Volume 8, 1983.

"Is One ,Women's Sexuality Another Women's Pornography", Mary Kay Blakely, Ms., April 1985.

"New Rules For Zoning Adult Uses: The Supreme Court's Renton Decision", Alan Weinstein, Land Use Law, August 1986.

"Pines, Funk Offer Guidance, Based on Young Decision, for Regulating Adult Entertainment Establishments"; Burt Pines and John Funk, The Municipal Attorney, December 1976.

"Pornography: A Reason For Concern?", Andrea Vangor, Northwest Business and Entertainment, June 1:986

"Pornography, Sexual Callousness, and the Trivialization of Rape"; Dolf Zillman and Jennings Bryant, Journal of Communications, Autumn 1984.

"Regulation Of Adult Theaters By Zoning", Howard Dobbins, Virginia Town And City, Nov/Dee 1976.

"Regulating Pornography: Recent Legal Trends", Alan Weinstein, Land Use Law, February 1982.

"The Scientists vs. Pornography: An Untold Story", Victor B. Cline; Intellect Magazine, May-June 1976.

"Sex And Aggression: Proving The Link", Seymour Feshbach and Neal Malamuth, Psycholoa·v Today, Volume 12 Number 6.

"Sexual Arousal And Aggression: Recent Experients and Theoretical Issues", Neal Malamuth, Seymour Feshbach and Yoran Jaffe, Journal of Social Issues, Volume 33, Number 2, 1977.

"Sexual Stratification, Pornography and Rape in American States", Larry Brown and Murray A. Stans, from Pornography and Sexual Ag~ression. N. Malamuth and E. Donnerstein, eds. Academic Press 1983.

"The Shame of America", People, June 3D, 1986.

"U.S. Cities Face Combat In The Erogenous Zone", Bill Toner, Planning, September 1977.

"The War Against Pornography", Newsweek, March 18, 1985.

"Why People Don't Fight Porn", ;Harry Genet, Chronicle News, January 1, 1982.

"Zoning For Adults Only", Bruce McClendon,. Zoning News, August 1985.

Other Resources

Bothell Police Department, Material On Police Experience With Adult Entertainment Establishment, 1984.

"City of Renton v. Playtime Theatres, Inc., The U.S. Supreme Court Revitalizes The Regulation Of Adult Entertainment Land Uses Through Zoning". Daniel Kellogg.

Cleveland Ohio Police Department, Effect of Smut Shops On Increased Crime Rates, 1977.

"Community Impact Statements Required Of Certain Businesses", James H. Allendoerfer, City Attorney of Marysville.

Shirley Feldmau-Summers letter to Nick Gallow.

"Local Government's Control on Pornography", League of Women Voters Of Lake Washington East, 1985.

"Pornography: An Update On Recent Published And Unpublished Research, A Preliminary Draft", David Scott, Washington D.C. 1984.

"Pornography Effects: Empirical Evidence", Victor Cline Ph.D.

"Report Of Charles Lt. Keating, Jr. - Commissioner, Commission On Obscenity And Pornography", September 1970.

"Summary Of The Report Of The Attorney General's Pornography Commission", Morality In Media, July 1986.

Test of Talk Given By John L. Harmer, President of Citizens For Decency Through Law; on Tuesday, December 1, 1981 at Phoenix Arizona.

"Zoning For the Pornographic Arts", Technical Bulletin No. 1, City Development Department - Kansas City, Missouri 1976.

Existina Statues And Regulations In Effect In Bellevue

RCW 7.48A - Moral Nuisances

RCW 9.68 - Obscenity and Pornography

RCW 9.68A - Sexual Exploitation Of Children

RCW 67.12 - Dancing And Dance Halls - Billiards, Pool and Bowling

BCC 5.06 - Public Dances And Dance Halls

BCC 5.08 - Cabarets

BCC 5.28 - Massage Parlors And Public Bath Houses

BCC 5.44 - Panoram Devices

Resources From Adjacent Municipalities

Bothel - Ordinance 1170 (Adult Entertainment Uses) and Zoning Code Chapter 5.18 (Adult Entertainment Studios).

Everett - Recommendations. on regulating mechanisms available to deal with the issue of Adult Uses, Planning Commission minutes, November 13, 1984.

Issaquah - Ordinance 1701 (Adult Entertainment Uses) and all minutes of public meetings and staff reports relating to the Ordinance.

Kent - Adult Use Zoning Study , November 1982.

King County - Ordinance 7216 (Business Licenses And Adult Entertainment Uses).

Kirkland - Ordinance 2877 (Adult Activities Overlay Area) and all minutes of public meetings. staff reports and correspondence relating to the ordinance.

Mercer Island - Ordinance A-51 (Adult Entertainment Uses) and all minutes of public meetings, staff reports and correspondence relating to the ordinance.

Redmond - Ordinance 1120 (Adult Entertainment Uses) and all minutes of public meetings and staff reports relating to the ordinance.

Renton - Ordinances 3526, 3629 and 3637 and Resolution 2368, **Legal Briefs to the U.S. Supreme Court, and various analyses of the Renton v. Playtime Theatres decision, Zoning Code for Renton.**

Seattle - Zoning Code Chapters 6.280 (Adult Entertainment Studios), 6.42 (Panorams and **Peepshows),** 24.46 **(Metropolitan Business Zone)** and 24.48 (**Metropolitan Commercial Zone).**

Also, there are copies of Adult Entertainment Use Regulations from the following cities: Detroit, Michigan; Duluth, Minnesota; Inkster, Michigan; Melvindale, Michigan; Oak Park, Michigan; Peoria, Illinois; San Bernardino, California; Tucson, Arizona; Wayne, Michigan and Wyoming, Michigan.

Correspondence

Monique Roggenkamp to the Belle-vue City Council - April 14, 1987

Monique Roggenkamp to the Bellevue City Council - May 13, 1987

Gerald John Sheehan to Sandra Korbelik (Planning) - June 9, 1987

Concerned Citizen to Sandra Korbelik (Planning) - June 16, 1987

Barrel Hines to Sandra Korbelik (Planning) - June 18, 1987

Andrea K. Vangor to Sandra Korbelik (Planning) - June 18, 1987

J. R. Copitzley to Cary Bozeman - July 5, 1987

Chief Harris to Terence P. Lukens - September 10, 1987

Chief Wallis to Terence P. Lukens - September 9, 1987

Andrea K. Van-or to Robert G. Odle (Planning) - October 14, 1987

David Schooler to 'ferry Lukens - October 23, 1987

Other References

The current file also contains numerous newspaper articles on Adult Entertainment regulations in the region. There are also many summaries of recent court decisions as concerns adult entertainment.

CITY OF BELLEVUE

CITY COUNCIL

SZ'N1MARY MD-UTES OF STUDY SESSION

February 8, 1988 Council Conference Room

6:00 p.m. Bellevue. Washington

PRESENT : Mayor Campbell, Mayor pro tem MacKenzie, ABSENT : Mr. Bozeman

Councilmembers Carpenter, Davidson, Lukens,

and Van Blaricom

The meeting was called to order at 6:07 p.m. by Mayor Campbell, who presided.

1. Study Session Items

(a) Easy Ride Program

Bruce Freeland. Planning Director, noted this is one element of the City's efforts to deal with transportation and traffic problems. He introduced Kay Kenyon, Planning Department, who provided an overview of the Easy Ride Program, a two-year ride-sharing and transit marketing project targeted at suburban office buildings. It focuses on the Bellefield/City Hall area and the I-90 corridor area.

Ms. Kenyon described the program features that have been added to METRO's basic program, including the hiring of transportation coordinators, provision of incentives and Guaranteed Ride Home program (which has only been used once to date), marketing efforts, and evaluation procedures. The evaluation component will be handled by an outside consultant. Continuing, she outlined the goals of the program, including a 5% improvement in commuter use of carpools, vanpools and transit and described the activity that has occurred to date.

Responding to Mrs. Carpenter, Ms. Kenyon said the two-year budget for the program is 5220,000.

Responding to Mr. Lukens, Ms. Kenyon described the events of the Transportation Fair, with X00 people attending over a three-day period.

Responding again to Mr. Lukens, Ms. Kenyon explained that the vanpool discounts have not been offered in the Bellefield area, which seems to make a difference in the *success of the* programs, although it is too *early to* draw firm conclusions.

iY1s. Kenyon explained why the performance objectives at City Hall were set quite high and why implementation of the incentive program has taken longer than expected.

Mr. MacKenzie commented he will want to see figures on the cost-effectiveness of the program at its conclusion. He also raised the issue of the flextime approach, which Ms. Kenyon said has not been marketed extensively at this point but will be an area of emphasis in the next quarter.

Mr. Freeland concluded the discussion by noting the Planning Commission had asked staff to investigate the possibility of an ordinance requiring transportation management programs at existing firms. He said staff has done some research, but it appears there is probably not a legal way to put requirements on existing businesses to mandate such programs. He responded to Mayor pro tem MacKenzie by noting that staff is also interested in the cost-effectiveness of this experimental program, and this will be .analyzed carefully when the program is completed.

Mayor Campbell commented that METRO is working on the same issues, and Mr. Freeland stated the City is using materials from all sources, and Bellevue should be on the forefront of research on ride-sharing.-

(b) Proposal A: Ordinance relating to the zoning of adult entertainment land uses; amending sections 20_10.440, 20.50.010, 20.50.044 and 20.50.046 of the Bellevue City Code (Land Use Code); and adding a new section 20.20.127 to chapter 20.20 of the Bellevue City Code (Land Use Code).

Proposal B: Ordinance relating to the zoning of adult entertainment land uses; amending sections 20.10.440, 20.50.010, 20.50.044 and 20.50.046 of the Bellevue City Code (Land Use Code); and adding a new section 20.20.127 to chapter 20.20 of the Bellevue City Code (Land Use Code).

Proposal C: Ordinance relating to the zoning of adult entertainment land uses; amending sections 20.10.440, 20.50.010. 20.50.034; 20.50.044 and 20.50.046 of the Bellevue City Code (Land Use Code); and adding a new section 20.20.127 to chapter 20.20 of the Bellevue City Code (Land Use Code).

Mr. Freeland explained that staff believes that Proposal C addresses the concerns raised earlier

by the Council. It creates a distance requirement between massage parlors and adult uses rather than treating massage parlors as if they were adult uses. He said the Planning Commission feels this is a good compromise, but wishes to drop the word "motels" from the list of exceptions.. Staff recommends that motels be retained in the ordinance.

Mr. Freeland explained the distinction between. the three proposals, noting that Proposal "C" would not restrict the location of massage parlors, except that a new massage parlor could not locate within 600 feet of an adult use. thereby preventing the clustering of massage parlors in association with an adult use.

Mr. Van Blaricom commented this is a good compromise and moved Proposal "C" be brought forward for Council action nest week. Mrs. Carpenter seconded the motion, which carried 6 - 0.

(c) Civic Center Discussion

Pam Bissonnette, Assistant City Manager, introduced Ken Johnson, the project manager, who explained that staff needs Council direction on what should be in the project, what the phasing should be, and what public process should be implemented. He briefly recapped the evolution of the project, noting the technical work done to date was structured so that if the arena component was dropped the information would still be valid.

Continuing, Mr. Johnson emphasized that the site under consideration was identified in the Comprehensive Plan in 1979, as an area of opportunity for a civic center. He explained how the performing arts center was added to the concept of a convention center and parking. He described the studies done to identify the market for a convention center, including a survey of meeting planners. He reviewed the projections for 1990 and 1995 for four main types of markets for a convention center: 1) typical conventions; 2) trade shows; 3) consumer shows; and 4) local community (and School District) activities.

Mr. Johnson noted that without the arena, the question of management options for the convention center remains to be discussed, but staff feels it is appropriate to move forward on a preliminary design. He added the parking garage would not operate in the black for quite some time. In addition, there are still questions about th.e financing of a performing arts center. He commented the idea of a City Hall at the civic center came up at the end of last year. However, the City has an approved space plan so this would have to be reworked to consider this option.

Continuing, N1r. Johnson described a potential first phase: convention center, parking and a small theatre. Eater phases would need more technical work, municipal garage, full performing arts center, city hall or library. NIr. Johnson used overlays to demonstrate how the elements might fit together and how the phasing might occur. He emphasized the importance of a capability for growth and noted this is only a generic layout, depending on property availability.

INIr. Johnson then outlined the three options in public process, which can address either the first phase project proposal and/or future elements. He said staff recommends the following:

1) reaffirm the site on the east end of 6th St.;

2) approve a phased approach;

3) preliminary approval of Phase 1 (convention center, parking and small theatre) with EIS to start in April:

4) public input on future phases before final action on Phase 1;

5) schedule public hearing in March;

6) approve budget to carry out work through April.

He said the staff would define the project in more detail; prepare public information materials; hold community meetings; arrange for a public hearing; appoint a technical advisory committee reporting to the City Manager; prepare a refined budget; and continue property negotiations.

Ms. Pissonnette reviewed the budget as outlined in the materials, noting that in August, 1987 the Council approved a budget of S500,000. She said this budget is a reorientation of the previous budget_ She outlined the figures as follows:

Public Process S 8,000

Project Management 26,000

Financial Studies 15,000

Architectural 10,000

Prop. negotiations 25,000

Travel 5A0

Perf. Arts Consulting 10.000

Parking 7,000

Env. Review 150,000

Outst. Encumberances 19,000

Expended 1/4/88 164,000

Contingency 60,000

TOTAL 5500,000

Ms. Bissonnette noted that 560,000 had been approved in 1986 to fund the majority of the Eastside Performing Arts Center Study. She said the Environmental Review would wait until after the public hearing and Council approval to proceed, but other information is needed to prepare for the public hearing, necessitating certain expenditures now.

After Mrs. Carpenter emphasized that this money comes from the hotel/motel tax, not general funds, Mr. Kushlan explained the two sources of funding, the 2% tax which comes from the State sales tax and can be spent for convention centers, promotion of tourism, performing arts center, stadiums, etc., and the authorization under the State Trade and Convention Center funding which has a maximum levy of 3%. This must be spent. solely for construction of trade and convention facilities. A performing arts center cannot be funded through this source. Council levied 2.8% of this 3% authority as of January 1, 1988.

Responding to Mayor Campbell, Mr. Kushlan said these sources cannot "go away overnight, but they can go away." The 2% authority would disappear upon paying off the current outstanding bonds for the purchase of the convention center site north of City Hall. The State could also legislate away the other funding source.

Mr. Van Blaricom commented the 2.8% tax was enacted at the request of the hotel/motel industry. Furthermore, the people who pay these taxes are not Bellevue residents but visitors to the City.

Mayor pro tem MacKenzie observed that he opposed the taxation of others as much as the taxation of local citizens. He felt "we should always be guilty about taxing the public."

Mrs. Carpenter thanked the Ad Hoc Committee for its emphasis on the public process and noted her concern that the public needs to be heard from on this issue.

Responding to Mrs. Carpenter, Mr. Kushlan explained the land currently an asset to the convention center fund is not appropriate for a convention center because it is lacking in proximity to hotels and freeways. and is significantly impacted by wetlands. Therefore, it is not suitable for the construction of a facility with a large flat floor space. This property was purchased in 1977 and in 1979 the Comprehensive Plan identified the current site as an appropriate location for a civic center.

Mr. Van Blaricom noted the property was not purchased as a convention site but in order to encumber the 2% tax before the Legislature took it away.

Responding to Mrs. Carpenter's question about how the City Hall was folded into the proposal, Ms. Bissonnette noted the-Facilities Study projected the need for City Hall space. Buying the Whirlpool Building acknowledged the necessity for a new City Hall, or additional space for City offices. He pointed out that this is a special opportunity area set aside for government offices, among other things.

Mrs. Carpenter said adding the City Hall "muddies the waters" and adds_ another dimension to an already controversial topic.

Mayor pro tem MacKenzie commented that the Municipal Facilities Study had never been accepted by the Council and there is no formal financial plan for Municipal Facilities. He felt this would be necessary before a decision about a City Hall could be made.

Mr. Van Blaricom added that the current City Hall was built as a "spec building" which the City was going to sell. He noted he had commented on the possibility of a City Hall at the civic center site to a reporter and the information was reported the next day in the newspaper.

iVIrs. Carpenter recommended that the City Manager's advisory group have some citizens on it, to bring a different perspective to the project. and the City Manager agreed, noting the School District could also be represented on such a committee.

Mrs. Carpenter expressed the general concern that this project will generate new jobs, but the increase in this industry will include many minimum wage jobs, which can increase human service needs in the long run.

Mayor pro tem MacKenzie said the State of Washington does need jobs, but Bellevue is a net importer of workers and does not need more jobs.

Mayor Campbell shared the concern about jobs and wages, but noted part of the revenues will be brought in by attendees and the money generated by the sales tax supports the Capital Improvement Program.

Mr. Lukens asked how the projections on convention center usage were obtained and how realistic they are.

Mr. Johnson explained how the market was surveyed and growth projections were made based on the consultants' professional judgment. The figures came out that about 15% of the market share per year in Washington would go to a Bellevue convention center. He said this is a conservative estimate in his view, but Mr. Lukens stated that the figures should be refined as the process proceeds.

Responding to Mr. Lukens, Ms. Bissonnette said about 5100,000 would have to be spent before April. Mr. Johnson added this is a potential figure which provides staff with the flexibility to get the necessary information.

Mr. Lukens recommended that only as much money be spent as needed to give the public a good idea about the proposal and so the Council can make a meaningful decision. He added that he had heard comments that a 500-seat theatre would be too small. He felt this should be analyzed further.

Ms. Bissonnette said the performing arts consultant would provide information on what size of theatre would be usable, and Mr. Kushlan said this size was chosen as what could be built with convention center fund resources. A bigger theatre would require additional funding sources.

Mr. Lukens commented that he felt it was the Council's intent to "carry out a public process to review all phases of the Civic Center," rather than "additional" phases as stated on page 47 of the packet.

Mayor Campbell stated that the public and the advisory committee input will help Council determine a viable size for the theatre. She added.that perhaps the City can work with the School District to serve the public's needs in terms of a community theatre.

Responding to Mayor pro tem MacKenzie, Mr. Kushlan said this budget is developed to provide the public and the Council with the necessary baseline information. He listed the following elements as necessary: public information, project management, financial studies, architectural work to develop a design, property negotiations, and performing arts information.

Ms: Bissonnette noted that 5100,000 would not be spent in the few weeks before the public information is sent out,__ but many allocations would be encumbered through contracts.

Mayor pro tem MacKenzie felt the only things needed for the hearing would be items that could be finished prior to the hearing.

Mrs. Carpenter emphasized that staff time should not be involved, and she was pleased at the use of Mr. Johnson as the outside project manager.

Mayor pro tem MacKenzie noted that last year it was put forward that the arena was necessary to the project, but Mr. Johnson responded the earlier proposal contained a municipal parking garage. This new one is scaled down to accommodate the loss of the arena. The financial study is needed to verify the viability of the new project.

Mrs. Carpenter also emphasized the importance of the financial study. because she opposed

funding this project from operating budget funds.

Mr. Johnson said he would also like the preliminary cost estimates to be rechecked, but Mayor pro tem MacKenzie felt this proposal shows the "de-economy of de-scaling." He said the capital costs were not included in the original proposal, and the project will ultimately be a drain on the general funding. He opposed any option other than Option C.

Continuing, Mayor pro tem MacKenzie expressed his view that decisions are being made incrementally and the City is moving forward beyond what the process indicates. He commented on discussions in Executive Session and Council comments on these discussions as reported in the Journal American. He said he would vote against taking an option on the property because the City is guilty of "incrementalism." He hoped that logic and the public interest prevails, as it did with the arena proposal.

Mr. Van Blaricom shared a concern about the appropriate size of the theatre. He felt the public process will show enthusiasm or lack of enthusiasm for various components of the project. He mentioned a dual-use facility in Pasadena and hoped this option would.be examined. He favored Option B in order to be ready for a regional entertainment bond, and emphasized the 5500,000 has already been collected and set aside and _cannot be used for any other purpose.

Mr. Van Blaricorn moved staff recommendation of Option B that "allows Phase 1 reviews to be completed in 1988. In addition, the review of potential future phases is set in time to facilitate coordination and adjustment to Phase 1 actions as appropriate." Dr. Davidson seconded the motion.

Mayor Campbell noted a lack of enthusiasm for this project in 1982, when there was no support by the hotel/motel industry. She felt now the time may be right, but more information is necessary to make a decision. Therefore, she supported the motion.

Mayor pro tem MacKenzie said in his view the hotel/motel industry representatives support the project because they know it won't make a profit or break-even. Otherwise, they would work together and do it themselves.

flavor pro tem MacKenzie made a substitute motion to adopt Option C, which would put all elements on the table. including initial phasing and future phasing. Mrs. Carpenter seconded the motion.

Mayor pro tem MacKenzie said they would only have to wait two months to hear from the public. He agreed some money could be spent to do what is necessary to bring the public up to speed.

Mr. Johnson clarified both options have the same process, but the difference is with the full menu of options under discussion, the issue may be too broad. He felt there is enough technical work completed to propose Phase 1, so the public can be focused.

IM r. Kushlan added the Phase 1 recommendation focuses on the elements which can be paid for through the convention center funds. Other phases have no resources at this point for funding.

Mrs. Carpenter said she is uncomfortable with giving the perception Council is "on a path." She clarified that public hearing input could convince the Council not to proceed on this project. She reiterated that she wants to hear from the public.

Mr. Lukens agreed it is important to proceed quickly with the public process. He said Option B brings forward a tangible proposal for discussion, but he felt the less money spent, the better. He questioned the timing of the public hearing and felt perhaps it should be moved back to allow staff time to provide meaningful information.

Mayor Campbell supported Option B because these components have the most possible chance of success.

There was Council concurrence that staff should evaluate the timeline for the public hearing.

A vote was taken on the substitute motion to support Option C. It failed by a vote of 1 - 5, with Mayor pro tem MacKenzie voting in the affirmative.

A vote was taken on the original motion to support Option B; which carried 5 - 1, with Mayor pro tem MacKenzie dissenting.

Mr. Tan Blaricom moved to approve staffs recommended budget with the caveat that no more be spent unnecessarily up front than that which is necessary to allow the public to be well-informed on the options. Mr. Lukens seconded the motion, which carried 6 - 0. Mayor pro tem MacKenzie noted he always . votes to implement Council policies once decided.

2. Discussion of IJpcomina Items

(a) Ordinance approving and confirming the final assessment roll of Local Improvement District No. 269 which has been created and established for the purpose of widening 116th Avenue N.E. from four to five lanes from N. E. 8th Street to N.E. 12th Street; PW-R-15.

(b) Ordinance approving and confirming the final assessment roll of Local Improvement District No. 279 which has been created and established for the purpose of widening N.E. 33rd Place from two to three lanes from . Northup Way to N.E. 33rd Street; PW-R-42.

Clark Douglas, Assistant Director of Public Works, noted communications from five property owners on LID 269. The objections of three of them require additional research. If the property owners are right, the hearing will need to be continued, he reported.

ADJOURNMENT

At 8:00 p.m. Mayor Campbell declared the Study Session adjourned.

Sharon Mattioli

Deputy City Clerk

CITY OF BELLEVITE

CITY COUNCIL

SUM1MARY 1ML UTES OF REGUTAR SESSION

Tuesday, February 16, 1988 Council Chambers

8:00 p.m. Bellevue, Washington

PRESENT : Mayor Campbell, Mayor pro tem MacKenzie, ABSENT : Councilman Councilmembers Bozeman, Carpenter, Van Blaricom Davidson, and Lukens

1. Call to Order

Mayor Campbell opened the meeting and called it to order at 8:00 p.m.

2. Roll Call and Flap_Salute

Upon roll call by the City Clerk, all Councilmembers were present except for Councilman Van Blaricom.

Dr. Davidson led the flag salute.

Mayor Campbell presented awards to citizens who were the primary organizers of the annexations in their respective neighborhoods:

Stephen Critchlow - Horizon Heights Neighborhood

Joseph Brown- Collingwood Neighborhood

Carole Ann Milton - The Heights Neighborhood

Judith Louisell - Whispering Heights Neighborhood

Mayor Campbell expressed the Council's **appreciation** of citizens' support.

3. Communications: **Written and Oral**

(a) **Bonnie Buzell, 4479 - 141st Avenue SE, Bellevue, stated her position against Bellevue's proposed begging laws.** Ms. **Buzell said,-in her opinion, the law is aggressive and could invite harassment of or by police officers. Councilman MacKenzie asked for a. staff report on the City of Seattle's recent ordinance addressing begging laws.**

(b) Ted Youngs, 10014 SE 16th Street, Bellevue, also stated his opposition to the proposed begging laws. He proposed that the City pursue the begging problem, e.g., more social services or shelters.

(c) Lowell Erickson, 112 - 111th SE, Bellevue, supported the acquisition of sports facilities for the 13 - 17 year old age group. Mr. **Erickson presented a report to the Council outlining a facilities study. He thought quality programs for teens could prevent community problems and are a critical need.**

(d) Joe Velikonja, 9713 NE 13th street, Bellevue, inquired about the location of a power box near the elm trees at the Downtown Park. He also requested the City to respond in writing regarding the status of the Downtown Park financing.

4. Reports of Community Councils, Boards and Commissions

(a) Bill Halgren, Chairman of the East Bellevue Community Council, thanked the Council for their support to the Community Council on issues of concern.

5. Report of Citv Mana6r

Pam Bissonette, Assistant City Manager, requested the Council amend its rules in order to consider the Forest Park Estate project at the February 22, 1988 Council meeting with action to be taken at the February 29 meeting, because of a hardship to the applicant.

Mr. MacKenzie requested a response to Mr. Velikonja's request.

6. Approval of the Aizenda

Dr. Davidson moved for the approval of the agenda. Mrs. Carpenter seconded the motion.

Mayor Campbell requested the addition under "New Business" of "Appointments to Planning Commission and Park Board" as Agenda Item 14(a), and "Council Liaison Assignments" as 14(b).

Dr. Davidson moved to approve the agenda and Mrs. Carpenter seconded the motion.

At the City Manager's request, there was a Council consensus to add the following items, in addition to Mayor Campbell's request: a) closure of 153rd Avenue NE under "Unfinished Business," and b) natural determinants regulations under "New Business." A vote was taken on the motion, as amended, which carried 6 - 0.

7. Consent Calendar

Dr. Davidson moved approval of the Consent Calendar. Mr. Lukens seconded the motion. Mr.

Lukens requested that Agenda Item 7(b) be postponed. A vote was taken to adopt the Consent Calendar, as amended, which carried 6 - t?. The following Consent Calendar items were approved:

Minutes of February 5 and 6 Council Retreat

Minutes of February 8, 1988, Study Session

Minutes of February 8, 1988, Regular Session

Resolution No. 4973, authorizing execution of a Service Contract between the City of Bellevue and Youth Eastside Services for counseling and other services at Crossroads Center.

Resolution No. 4974, authorizing the acquisition of Parcel No. PW-S 1929 in fee simple from C. Allen Benedict as part of the N.E. 4th Street project.

Resolution No. 4975, authorizing the execution of a Real Estate Contract between the City of Bellevue and Basil and Ruth Denaxas for the sale of a portion of City property known as Parcel No. PW-S 1945 on the N.E. 4th Street project.

Resolution No. 4976, authorizing approval and acceptance of a Deed of Dedication for Right-of-Way from Bannerwood Investors to the City of Bellevue for the development of Bannerwood Office Park.

8. Public Efearin

(a) C.I.P. No. PW-R-15: Public hearing on ordinance approving and confirming the final assessment roll of Local Improvement District No. 269 which has been created and established for street improvements to 116th Avenue N.E. from N.E. 8th Street to N.E. 12th Street.

Ordinance No. 3882, approving and confirming the final assessment roll for street improvements to 116th Avenue N.E. from N.E. 8th Street to N.E. 12th Street for L.I.D. 269.

Dr. Davidson disqualified himself from participating in discussion of this issue due to his previous position on the Board of Trustees at Overlake Memorial Hospital. At this point Dr. Davidson left the Council table.

Clark Douglas, Assistant Public Works Director, explained the background and summarized the content of the assessment roll. He said changes to the assessment roll would be made at another hearing, tentatively scheduled for March 21, 1988.

Mr. Douglas then outlined the six written protests received and gave the staff recommendations for each:

(1) Best Products Co., Inc. took issue with the City's traffic counts, stating that their counts were lower than the City's. They also stated they have a secondary access onto NF 8th Street which does not show on the map and should receive recognition. Mr. Douglas agreed that their issue needs further exploration by the staff.

(2) In response to the question of parcel size for the Dana Martin parcels, 99 and #11, Mr. Douglas stated that the building size and land size were entered incorrectly and an appropriate correction would be made to the assessment roll.

(3) Referring to the handout, Mr. Douglas pointed to the Family Medical Center parcel and explained it is assessed at the general medical rate of approximately 54 trips per 1,000 square feet. The Family Medical Center asserted that the calculation should be reassessed and Mr. Douglas agreed to review the issue.

(4) Referring to the Robert Hall parcel, Mr. Douglas agreed there is need for adjustment of the assessment, though the building is located in a medical community.

(5) In response to the Overlake Hospital Medical Center parcel, Mr. Douglas explained that the triangle being assessed is actually a parking lot rather than a vacant lot as originally assessed. Trips coming off a parking lot should not be assessed, he continued, and therefore a correction would be made.

(6) Regarding parcel #39, Mr. Douglas said the trip count would be reassessed due to the building size being smaller than originally calculated.

Mr. Douglas recommended that the money be redistributed. as all the uses on the site are benefited by the work being done.

In answer to a question from Mr. MacKenzie regarding trip generation rates, Mr. Douglas said the average trip rate for the existing use of the property was used. He continued that the rates assessed for 116th Avenue NE were different than those that would be used for the downtown area. In response to another question from Mr. MacKenzie regarding assessments to undeveloped property, Mr. Douglas said the zoning code lot coverage would be applied to determine what kind of uses were in the area.

Upon motion by Mr. MacKenzie, seconded by Mr. Lukens, and carried 6 - 0, Mayor Campbell opened the public hearing.

(1) Ken Smith, District Operations Manager of Best Products Co., Inc., Bellevue, thanked the City for acknowledging the secondary access onto NE Sth Street. He requested reconsideration of the trip count and the amount of assessment. He urged the re-review of the documentation provided by 'transportation, Planning and Engineering and requested that their reassessment of the trip generation be stated in the public record.

(2) Lynn Hall, 1406 - 116th Avenue NE, Bellevue, spoke regarding parcel #24. She said that parcel #24 owns no property on 116th Avenue NE, yet the property is being assessed as if the access is solely from 116th. Parcel #24 fronts NE 12th Street, its main entrance is on NE 12th, and the building is situated to face NE 12th.

Mrs. Hall also gave background on the reciprocal agreement with the Bellevue Clinic to share access onto NE 12th. She further stated that her property is being assessed at a rate close to that of the Bellevue Clinic, though they maintain primary access. She has requested a reassessment from the Public Works Department and has not received it to date.

In follow-up correspondence, the City claimed their primary access is onto 116th.. which is false, she stated. Mrs. Hall said the building and its usage were incorrectly assessed due to its low occupancy and type of usage.

In conclusion, Mrs. Hall stated that the parcel's property value has decreased because of limited access to Overtake Hospital.

(3) Victor Albino, representing Overlake Hospital, concurred with remarks made earlier by Mr. Douglas. He reemphasized that parcel #27 is a parking lot and needs to be maintained as such. He further stated that a 48,000 square foot building would not be constructed on the lot, because of the critical need for parking space.

Clark Douglas commented on Mrs. Hall's parcel assessment and clarified that it was a difficult one to evaluate.

Mrs. Hall commented on the access to NE 12th Street and the granting of an easement with the Bellevue Clinic, for the purpose of a parking garage addition and access to NE 12th from their property.

Mayor Campbell reaffirmed Mr. Douglas' recommendation to recalculate the assessment figures and notify the property owners. Mr. Douglas stated that there would be a second hearing on March 21, 1988 and notices would be sent.

Mr. Lukens moved to continue the hearing to the March 21, 1988 City Council meeting. Mr. Bozeman seconded the motion, which carried 5 - 0. Dr. Davidson returned to the Council table.

(b) C.I.P. No. PW-12-42: Public hearing on ordinance approving and confirming the final assessment roll of Local Improvement District No. 279 which has been created and established for street improvements to N.E. 33rd Place from Northup Way to N.E. 33rd Street.

Ordinance No. 3883, approving and confirming the final assessment roll for street improvements to N.E. 33rd Place from Northup Nay to N.F. 33rd Street for L.I.D. ,279.

Mr. Douglas requested the hearing be continued for two weeks due to a request from the largest. developer being assessed. Mr. Douglas had advised the developer to recalculate their assessments, thus the need for continuing the hearing.

l'In Bozeman moved to open the public hearing. Mrs. Carpenter seconded the motion, which carried 6 - 0.

Mr. Bozeman moved to continue the hearing for two weeks. Dr. Davidson seconded the motion. which carried 6 - 0.

9. Other Land Use Reports: None.

10. Other Ordinances, Resolutions and Motions

(a) Ordinance No. 3884, relating to the zoning of adult entertainment land uses; amending Sections 20.10.440, 20.50.010, 20.50.034,. 20.50.044 and 20.50.046 of the Bellevue City Code (Land Use Code); and adding a new section 20.20.127 to Chapter 20.20 of the Bellevue City Code (Land Use Code).

Mrs. Carpenter moved for the adoption of Ordinance No. 3884 and Mr. Lukens seconded the motion,, which carried ·6 - 0 and Ordinance No. 3884 was adopted.

11. Reports of Councilmembers : Mayor Campbell reported a recommendation of the Metro Transit Committee for chairman and committee appointments.

12. Unfinished Business

(a) 1988 Council priorities

Dr. Davidson moved for the adoption of 1988 council priorities established at the Council retreat as outlined in the packet. -VIrs. Carpenter seconded the motion, which carried 6 - 0.

(b) **Closure of 153rd Avenue NE.**

Mr. **MacKenzie moved in support of the closure and** Mr. **Bozeman seconded the motion, which carried 6 - 0.**

13. Continued Oral Communications: None.

14. New Business

(a) **Planning Commission Appointment**

Dr. **Davidson moved to appoint Harry Andresen to the Planning Commission.** Mr. **Lukens seconded the motion, which carried 6 - 0. Mayor Campbell confirmed Mr. Andresen's appointment.**

(b) Park Board Appointment

Mr. **Bozeman moved to appoint Lee Somerstein to fill the vacancy on the Park Board. The motion was seconded by Dr. Davidson, which carried 6 - 0. Mayor Campbell confirmed Mr. Somerstein's appointment.**

(c) Council Liaison Appointments

Upon motion by Mrs. Carpenter, seconded by Dr. Davidson, and carried 6 - 0. the following Council Committee Liaison Appointments were **confirmed** by the **Mayor:**

Regional Issues Committee : **Chair Don Davidson. Jean Carpenter, Nan Campbell.**

Solid Waste Committee : **Chair Bon MacKenzie, Cary Bozeman, Jean Carpenter.**

Civic Center Committee : Chair Don **Van Blaricom, 'Ferry Lukens. Nan Campbell.**

Library Board: **Jean Carpenter.**

-Tannin-Department, Planning Commission. and Human Services Commission: 'Ferry Lukens.

Parks Department, Park Board, and Arts Commission: **Cary Bozeman.**

Finance Department: Don MacKenzie.

Design and Development Department: **Don Van Blaricom.**

Public Works and Utilities Department. Drainage Department, and SSWAC:

Jean Carpenter.

Public Safety (Fire and Police): **Don Davidson.**

(d) Natural Determinants Regulations

Mr. **MacKenzie moved to refer this issue to the Planning Commission to review the issues raised by the East Bellevue Community Council regarding the density allowed in some open use zones. He further requested changes to the code and a report back to the City Council as to whether or not the code as it is now drafted is appropriate.** Mrs. **Carpenter seconded the motion.**

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Dr. **Davidson requested a review of the, minutes and moved to table the discussion for one ·week.** Mr. **Bozeman seconded the motion, which tailed 3 -3, with Mayor Campbell.** Mrs. **Carpenter, and Mr. Lukens dissenting.**

Mr. **Lukens then moved a substitute motion to refer the matter to the Planning Commission to review the history of the change to the code, consult with the Community Council, and report back to the Council on whether the Planning Commission thinks the code as it is now drafted is appropriate.** Mr. **Bozeman seconded the motion, which carried 5 - 1, with Dr. Davidson dissenting.**

15. Executive Session

At 9:12 p.m. Mayor Campbell announced that the Council would recess into Executive Session to discuss two matters of litigation and of property acquisition for 40 minutes. At 9:44 p.m. the Executive Session concluded and the regular session reconvened.

16. **Adiournment**

At 9:45 p.m. Mayor Campbell declared the meeting adjourned.

Marie K. O'Connell, CMC

City Clerk.

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AMENDMENT TO ZONNG REGULATIONS

ADULT Businesses IN C-2 ZONE WITH CONDITIONAL USE PERMIT

CASE NO. 353_015

JANUARY 9, 1978

Since 1969, beginning on Whittier Boulevard, easterly of the 605 Freeway, the community has experienced a rapid growth of adult businesses_ Beginning in the unincorporated County area with an adult bookstore, the uses have expanded to include a theater, massage parlors, and model studios, and now stretch to the central business district of Whittier. Fifteen adult businesses now exist, thirteen of which are located in the city of Whittier.

On June 21, 1977, the city Council adopted Ordinance 2116, as an urgency measure, defining and regulating certain adult businesses through the conditional use permit process. The Council in the adoption of said ordinance declared that such uses have operational characteristics which may have a deleterious effect on immediately adjacent residential and commercial areas. The purpose of the urgency measure was to. attempt to keep the situation status quo so that the issue could be studied and appropriate regulations, if necessary be adopted in order to protect such commercial and residential areas within the City from the possible blighting or downgrading effect of adult business. Ordinance 2116 was amended on December 7, 1977 by Ordinance 2128 which added two uses to those regulated_

The urgency ordinance was modeled after an ordinance of Detroit, Michigan, which was upheld by the U. S. Supreme Court in June of 1976. Said ordinance dispersed such uses by use of separation distances from one. another and from residential districts. Extensive discussion of the Detroit Ordinance and others appears in the American society of Planning officials Report No. 327, "Regulating Sex Businesses," a copy of which is enclosed. (Copies furnished only to the City Council, planning commission, and the file. The file copy may be reviewed in the office of the Planning Department.)

ENSTING USES

Currently, there are adult businesses at the following locations:

Address Tvne of Business

10529 Whittier Blvd. Model studio

10555 Whittier Blvd_ Model studio

10619 Whittier Blvd. Model studio

10703 Whittler Blvd. Model studio

10705 Whittier Blvd. Book store

10711 Whittier Blvd. Model studio

10713 Whittier Blvd. Massage parlor

10824 Whittier Blvd. Massage parlor

11205 Whittier Blvd. Massage parlor

11527 & 29 Whittier Blvd. Model studio

11531 Whittler Blvd. Book store

11729 Hadley Massage parlor

7038 Greenleaf Theater

The first of these, at 11729 Hadley Street, took out permits for partitions in January of 1969. The use of the building was stated as "physio-massage." Another massage parlor opened in 1976, at 11625 Hadley, but closed-shortly thereafter. Several of the businesses have in these few years, changed hands and locations_ At 10510 Dorland, a permit has been requested to convert an existing residence to a model studio, and is currently awaiting dedication of street right-of-way for issuance of permit_

STAFF STUDY

Since June 21, staff has been collecting and analyzing data and reviewing testimonies and contacting other agencies in efforts to determine what effect adult businesses have on adjacent properties. The one major factor to keep in mind in reviewing the data, however, is that not all of it can be isolated as being directly related only to the presence of adult businesses because of the variety of the factors influencing the study areas over the last ten rears.

The study compared two areas on Whittler Boulevard over a ten-year period. Said areas are shown on the attached map. Area One. between Redman Avenue and Norwalk Boulevard, contains the largest concentration of adult businesses, the other, Area Four, easterly of painter Avenue, between Jacmar and Watson Avenues, had no commercial frontage on Whittler Boulevard, and was used as a control. Area Four, was selected because of its similar street patterns, lot sizes, and number of hones; to those of the first, where the adult businesses were concentrated.

The ten rears compared were 1968 through 1977 (including some 1967 date where 1966 was not available). The first adult business on Whittler Boulevard was licensed on November 29, 1971, but the first in the study area appeared in 1973, and by late 1974, more than half ofthe current businesses

were in operation. Therefore, the end of 1973 was selected as the date to be used to compare before and after affects_

The following is a summary of the results of the study, and indicates the factors considered_

	Study Area One		Study Area F	
	Numbor	Per cent	Number	Per e
1. Number of homes			1- 75	
2. Number of businesses				
19£7	17			
1976	19		0	
3. (a) Numbex of changes of occupant				
Homes	15=1	96	170	97
Business	37	205	0	
(b) Changes since 1973				
Homes .	88	57	32	19
Business	17	46	0	
(Adult businesses)	(7)	(19)		
4_ Number not changed				
tloraus	67	41	79	45
Business	5	28	0	
5, Number of homes sold				
(a) At least once	46	28	79	45
(b) Since 1973	26	57	58	61

Average sale price

19GR	S10,100	7	ž113,750	5
1969	17,01D0	2	13,000	G
197o	21,oa0	2	20,500	
1971	25,400	5	20,000	3
1972	20,500	4	20,G50	7
1973	21,500	2	20,500	n
1974	28,300	4	:. 2,125	7
1975	26,100	7	26,000	9
1976	31,100	9	3q,9f)O	14
1977'	3G, 500	F)	37, 227	1t:

'ProIccted from 6, month data

6. Median Home Value
(19700) $18,214 Sia,280

7. *Per cent owner occupied*

1970	*64*	*02*
1977	*84*	*85*

8. Aar•s *or* li ousina 3`3 velars

further breakdown of the study area one, into the first and second blocks northerly of WWhittier Boulevard reveals that the percentages in items 3, and 5 above, are slightly higher in the first blocks than in the second blocks by 5 to 15 percent_

item 3 (b), above. shows a major difference between study areas one and four of 36% (57 - 19) in number of changes in occupancy. Item 5 shows that the rate of sales of housing is about the same (57% - 61%), but item 7 shows that the owner occupancy rate has increased from 64% to 84% in study area one_ This trend is supported by testimony at a recent public meeting, soliciting such information_

For business properties. the picture is more conclusive than for residential. Expanding items 3 and 4, above, in the business category, we find the following:

Number of changes in occupancy since 1967 37

since 1973 17

Number changing more than once since 1967 12

since 1973 4

Number not changing since 1967 5

since 1973 10

Number of changes to

adult businesses 7

In addition to the above data, the annual vacancy rate dropped in 1976 to the level in 1966, having increased, to a peak of three and one-half times that level in 1972. It must be noted, however, that this apparent stability is due to the fact that adult businesses now occupy previously vacant buildings_

The Whinier police Department has, during the last few years, been collecting evidence in efforts to eliminate alleged illegal activities from the adult businesses_ As a result of these efforts, seven of the existing businesses are presently the subject of "red light abatement_" action. The initial investigation and evidence gathering documented that all of the nude model studios and three of the massage parlors were actively involved in prostitution. Other problems created by the presence of these businesses are in the form of assault and battery and aggravated assault incidents. There have also been several thefts reported by the customers (johns) who are victimized by the employees. These individuals usually do not file complaints on the incidents, however; fearing that their spouses will become aware of their activities_ Therefore, these incidents always do not appear on the police logs-

Poor several years; the police Department has received complaints of excessive noise, pornographic material left laying about and in some instances sexual offenders such as. exhibitionists, venting their sexual Tustrations in the adjoining neighborhood. Another problem posed by the patrons of these adult businesses is the influx of drunk drivers and intoxicated persons. The majority of customers equenting the business after 4:00 p.m., and until the early morning hours are males who have been

drinking and are seeking sexual release. The police Department has compiled from the daily logs for the two, four-year periods, 1970-1973 and 1974-1977, the number of incidents of 3 8 types of criminal activity and the data compared with the Cify as a whole.

This comparison revealed the following numbers of incidents in the given years:

1970 - 23 1974 - 57

1971 - 29 1975 - 73

1972 - 52 1976 90

1973 - 29 1977 - 49

1970-73 - 133 1974-77 269

The comparison of the totals of each four-year time period shows an increase of 102% in incidents of crime in the period 1974-77 over the period 1970-73, whereas, the City as a whole for the same period, experienced only an 8_3% increase in incidents of crime.

Some specific crimes increased in greater proportions as indicated in the following figures for selected crimes:

CR /JE	1970-1973	1974-1977	%increase
All Assaults	8	3 9	367
Theft (petty)	13	29	123
Robbery	8	13	63
Burglary (Residential)	15	23	53
Malicious IVlischief	3	24	700
Prostitution	3	12	300
Grand Theft Auto	5	14	180
Theft (Grand)	4	9	125
Arson	0	5	
Displaying a Weapon	0	S	
Prowlinz	0	5	

Some crimes, on the other hand, decreased in frequency, such as felony narcotics, which decreased from 16 to 9, but due prirnanly to changes in narcotics laws. Eight other crimes decreased from one or two incidents in four years to zero to one incident in four years. Nineteen of the remaining types of crimes increased, while-ten types were reported for the first time during the time period of 1974-1977.

At various public meetings, over the last several years, citizens have testified of being afraid to walk the streets, that some businesses have left the area or have modified their hours of operation, and that they are fearful of children being confronted by individuals of offensive character or of being exposed to sexually explicit material.

At a recent meeting, several of those who spoke, but lived distance from the adult businesses, spoke on behalf of those who lived closer, but feared reprisals if they testified.

At one time, there was a general complaint from parents in the neighborhood that their minor children had been in possession of the negative portion of Polaroid film packs and although this image was not as clear as the positive portion, it clearly showed the lewd poses of the models working in the studios. Young males would rummage through the trash receptacles of the various businesses and pick up these items. It was noted during Police Department investigation of the alleged prostitution activities at these nude model studios, that they had become aware of the complaints and refused to allow Polaroid cameras in the businesses. This did not, however, stop the problem of adult newspapers obtained at the book store being left strewn in the parking areas and alleys adjacent to the businesses.

Rates and numbers of changes of occupancy of residences and increases in complaints to the police Department are the only measurable indicators of the moral and emotional impact of adult businesses on the surrounding neighborhood_ This impact is, however, the most difficult to assess and is probably the most significant as it relates to the mental and physical well-being of the neighborhood and the City as a whole.

The health, welfare, and general prosperity of the community are some of those things which facts and figures cannot adequately describe, but the protection and furtherance of which is part of the stated purpose for the development of land use regulations.

An indication of the intensity of the moral and emotional impact is the unity of the residents and their willingness through organizations, such as Citizens for Decency Through Law, to work for improvement of their neighborhood. This organization has been successful in eliciting support of other organizations to help in said efforts.

Aesthetics are a matter of personal preference, but plays an important role in effecting peoples' attitudes. Regulations, such as the sign ordinances, may not control content or colors of buildings or signs. Typically, the adult businesses are painted in garish, high contrast colors, utilizing flashing or moving lights to attract attention to the businesses. This technique is not, however; unique to such businesses. but is quite common in marginal, strip commercial areas. it is noted that one other major strip commercial use, fast food restaurants; are begirding to change their images from the bright roofs-big signs and giant logos, to the so L,r, more contemporary, brick, wood, and tile. Finding that their success does not depend entirely on their visibility. They have found that those who wish to avail

themselves of the services offered will leek them out. The same philosophy could also be applied to adult businesses, allowing them to blend into other commercial neighborhoods.

Dispersion or Concentration

Two basic types of ordinances have been enacted by cities across the United States; dispersing or concentrating. In contrast to the Detroit ordinance, Boston created an "adult entertainment" district, concentrating adult businesses into what became known as the "combat zone." The purpose was to concentrate adult businesses into a single small area to prevent them from spreading into other areas of the City.

The Boston experience failed, however, because, according to Boston police and redevelopment spokesmen, "they (the property owners) killed the goose that laid the golden egg," by not policing themselves.

In Detroit, as in Boston, the problem was primarily in large downtown commercial districts and "skid rows. In these areas, adult entertainment businesses mingled with pawnshops. cheap hotels, bars, strip joints, etc. a as well as the "non-porno" businesses. Property owners, attracted by the high rents, willingly paid by the adult businesses, eventually forced many legitimate businesses to close, move, or go broke by increasing rents-

In the Hollywood area, as reported in several articles appearing in the Los Angeles Times, owners have stated that they don't particularly care for the type of business, but like the rent that will be paid by these businesses. This could be a major factor in low rent commercial areas- In the Hollywood area, the influx of adult businesses appears to have been followed by .a higher vacancy rate. In West Whittier, however, the commercial area between Redman Avenue and Norwalk Boulevard, suffered from a higher vacancy rate before the commencement of adult businesses than after, but largely because adult businesses occupy those buildings which were most frequently found vacant. It could be expected that an owner of a vacant building would accept the high offers for rent with a good chance that the-building would stay rented.

For the purpose of determining impact of concentration of adult businesses, four areas were compared. using Polk directories from 1967 to 1977 (1966 thru 76 information), to determine the rate of change of occupancy in adjacent residential neighborhoods before and after the introduction of adult businesses. Three of the surveyed areas contained adult businesses, the fourth, the control area, used for the entire study, included no commercial- Area one has six adult businesses, area two has one, and area three has three. The following map shows the areas studied. The results are as follows·

changes Per Year Changes Per Year

Before A-B. 's After A.B. `s

Area 1 9.4 22 (1974-)

Area 2 .1 .1 (1972-)

Area 3 5.3 11 (1974=)

Area ^-, (Control) 20 1 i (1974=)

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Area 1, with a concentration of adult businesses by 1974, experienced a 134% increase in annual turnover rate, Area 2 experienced no measurable change, Area 3, with three businesses at one location, experienced a 107% increase. The control area, with no commercial and no adult businesses, experienced a 45% decrease in turnover rate for similar periods.

If dispersion is determined to be the most effective type of control (short of prohibition) to impose on such uses to protect adjacent properties, the question then becomes how much dispersion --how much separation between related uses and from adjacent residential uses.

The Supreme Court in the Detroit case found no objection to the 1,000 ft. separation of "regulated businesses" and 500 feet from residential districts. As mentioned earlier, Detroit's ordinance was developed for a large downtown, with a skid row area. With the exception of Whittwood, the Quad, Uptown Whittier, and the industrial area, Whittier's commercial areas are strips of shallow commercial lots along Whittler Boulevard and intersections of major streets_ Almost any separation between residential districts and adult businesses eliminates these businesses from the strip commercial areas forcing them into Uptown or the shopping centers_

The issue of separation of adult businesses from schools, churches, parks, and similar public assembly areas, has also been raised and dealt with in ordinances of other municipalities. Currently, the closest adult businesses to any of these public uses is 470 ft. from a church, 300 ft, from a park, and 1,100 ft. from a school.

Any distance requirement must, however, be based on the relationship between distance and degree of impact. Brief discussion with the principal of Franklin school and a representative of Whittier Presbyterian Church, revealed that neither had seen any evidence of direct impacts on their institution by the adult businesses. Bothwere very much aware of their presence, however, and the principal at Franklin School stated that several families who have moved from the area cited the presence of said businesses. One businessman who relocated to another area in the City, stated that the businesses were not a factor but that his clients now comment on the improvement.

The park referred to is Mcitiees park, at ~;V-Iuttier and Hadley, in the unincorporated County area_ Whinier police Department indicates that while the park is the scene of many arrests and source of many problems, no definite correlation can be made between the problems and its proximity to adult businesses.

Only one church is within the areas where the current urgency ordinanc°would allow adult

businesses. Other churches are within 250 feet of the area uptown where such businesses could be located. Whittler High School is also within 250 $. of allowable location in the TYI zoned area and St. Mary's parochial school is within 500 feet. Central park (Bailey and Was.hington). is also within 250 feet of property eligible for the location of adult businesses.

Police records show that complaints of public drunkenness are more frequent in the areas around adult businesses where they are also in close proximity to bars and taverns which are not." bonafide eating places." There may, therefore, be reason to separate adult businesses from businesses with certain types of on-sale alcoholic beverage permits issued by the Alcoholic Beverage Control Board.

Churches. schools, and other public facilities are closed much of the time and do not present the opportunities which the parks do. The peak use hours of adult businesses are evenings when schools, churches, and most public facilities are closed_ Therefore, the effect on these uses would naturally be less than on uses which were all day uses, such as parks, or which, like residences, have evening and weekend "peak use' or enjoyment times. For these reasons, it may be in the community interest to require separation between adult businesses and parks_ Five hundred feet should be considered a minimum separation; as this distance can be easily walked in less than five minutes_ A thousand feet would require an individual to purposely set out to walk whereas 500 feet or under can be "wandered into."

Based solely on the study of one adult business, located almost in the midst of a residential neighborhood (area 2) , and its effect on that neighborhood, it would appear that a 500 ft. separation from residential areas is adequate so long as the adult businesses are separated from one another to avoid concentration.

Adequate separation between adult businesses would also lessen the visual or aesthetic impact of concentrations such as businesses caused by their usual garish colors and flashing signs.

In addition to adult businesses, the Detroit ordinance included, when originally adopted as a skid row ordinance in 1962, as "regulated uses," Group "D" cabaret, establishments for the sate of beer or intoxicating liquor for consumption on the premises, hotels or motels, pawnshops, pool or billiard halls, public lodging houses, secondhand stores, shoeshine parlors, and taxi dance halls. Adult bookstores and adult theaters were added to this ordinance in 1972.

The Group "D"' cabaret mentioned above is a topless or nude cabaret. Cabarets in the City of Whittler are currently regulated through a permit processed through the City Council. Other establishments for on-premise consumption of alcoholic beverages are currently regulated through the conditional use permit process. Pool or billiard halls, secondhand stores, and pawn shops; are permitted uses in the C-2 zones and by themselves present no evidence of any deleterious effect on adjacent properties. Shoeshine parlors and taxi dance halls are more or less unique to the skid row areas of the larae cities and do not exist in Whittler nor are they expected to.

None of these uses are inherenily attracted to one another_ but all seem to be common to skid row areas. The skid row aspect of the Detroit ordinance has no bearing on W-hittier's situation and staff

cannot substantiate the need for any further reg,ilation Of those uses which are not classified as adult businesses.

In some areas, adult only motels and hotels have been established, featuring closed circuit TV showing pornographic movies as well as providing other "services," similar to the adult businesses discussed above. Staff feels that the likelihood of this type of business occurring in Whittier is not too great as these are more prevalent in areas of high transient traffic. Rather than attempt to define such a use in anticipation of its occurring, the proposed definition of adult businesses should provide adequate control aver such a use.

Definitions

Defining an "adult business" is difficult, particularly when trying to separate them from other uses with similar names. The current urgency ordinance uses as its base, the definitions which appear in the Detroit ordinance with minor modifications.

The key to the Detroit definitions is the "specified anatomical areas.' and "sexual activities." However, such terminology is not immediately applicable to such uses as modeling studios, massage parlors, body painting studios; escort service, rap centers, and similar uses which utilize live humans for providing services_ These uses differ from theaters and bookstores in that the latter uses reproductions of humans and the "specified anatomical areas" can be easily applied.

In defining individual adult businesses, the following have been used:

"Adult Book Store" shall mean an establishment having as a substantial or significant portion of its stock in trade, material which is distinguished or characterized by its emphasis on matter depicting, describing, or relating to specified sexual activity or specified anatomical areas, or an establishment with a segment or section thereof devoted to the sale or display of such material

"Adult Business" shall mean and include an adult book store, adult theater, massage parlor, or modeling studio.

"Adult Theater" shall mean a theater which presents live entertainment or motion pictures or slide photographs, which are distinguished or characterized by their emphasis on matter depicting, describing, or relating to specified sexual activity, or specified anatomical areas.

"1~Iassage Parlor" shall mean an establishment or business which is required to be licensed pursuant to Section 6280 et seq of the Whittler Municipal Code.

"Material" shall mean, and include, but not be limited to, books, magazines, photographs, prints, drawings, or paintings, motion pictures, and pamphlets, or any combination thereof.

"Adult Modeling Studio" shall mean an establishment or business which provides the services of modeling for the purpose of reproducing the human body wholly or partially in the nude by means of photography, painting, sketching, drawing, or'otherwise.

"Specified Anatomical Areas" shall mean:

(a) less than completely and opaquely covered:

(1) human genitals, pubic region:

(ii) buttock, and

(iii) female breast below a point immediately above the top of the areola, and

(b) human male genitals in a discernibly turgid state, even if completely and opaquely covered.

"Specified sexual Activities" shall mean

(a) human genitals in a state of sexual stimulation or arousal, and/or

(b) acts of human masturbation, sexual stimulation or arousal, and/or

(c) fondling or other erotic touching of human genitals, pubic region; buttock. or female breast.

In the Detroit case, the phrase "distinguished or characterized by an emphasis on matter depicting...

was attached as vague. But, since there was no question in the Detroit case as to whether the material was "distinguished or characterized by an emphasis on matter depicting," the court did not rule on the vagueness of such a definition. A similar vagueness is found in the definition of adult bookstore where the phrase reads. "an establishment with a segment or section devoted to the sale or display of such material." The City's urgency ordinance narrows the vagueness some by using the phrase. "substantial or significant portion of its stock in trade ... depicting...." such words as substantial significant. distinguished by. segment and section usually require the courts to provide the narrowing.

A number of cities define adult businesses as ,

"... any business which is conducted exclusively for the patronage of adults, from the premises of which minors are specifically excluded. either by law or by the operation of such business_"

Such a definition will generally encompass any use which the City is attempting to regulate and gets around the touchy question of content of material. relying on existing state and local regulations. These regulations are briefly discussed below.

The Whittier ylunicipal Code. Section 6288, prohibits giving a massage to or admitting any person under 18 years of age into a massage parlor unless parent or guardian has consented thereto in writing-

Minors are currently excluded specifically from adult bookstores and adult theaters by Section 313.1 of the Penal Code of the State of California because of the "harmful" Content of the material available.

Section 309 of the Penal Code prohibits admitting minors into places of prostitution. but the law does not prohibit admitting a minor to view the physical body and photograph it for his own use. In this case, the exclusion is imposed by the management of the business who is not required by law to do so but does so out of fear of the possibility of being found guilty of contributing to the delinquency of a minor pursuant to section 272 of the Penal Code.

The dIEculty at this point in time with a general definition is that litigation is still pending one such ordinance whereas the court has sanctioned. though on a ; - =' vote, the definitions contained in the Detroit ordinance.

The two types of definitions can, however, be used together. The severability clause (Section 9105) of the zoning regulations would protect one definition it the other was ruled against by the court.

If the courts should rule in favor of the general definition, then the ordinance is that much stronger and accomplishes the overall goal of regulating existing and future adult business uses and eliminates the need for defining every possible business which might be conjured up.

Control

Assuming the dispersion approach is the most acceptable. two methods are available as alternatives to determining where adult businesses can be located. The first is to permit them by right in given zones, with the location criteria_ The second is to require approval through a permit process of some kind. The conditional use permit is the only tool available to the City for this type of control_

By allowing the use to be established by right, the City relinquishes control over the use other than through enforcement of criteria which sight be established_ Such regulation fails to take into account special circumstances relative to a specific location, on which adult businesses might have impact. The conditional use permit process allows staff and Planning Commission to review each request and requires the applicant to show that the use will not have an adverse impact on the area and that there is a demonstrated need for the use at that location_

The question remaining then is which zone is appropriate. Being a commercial use, an adult business would be limited to one of the C zones or the M zone_ The C-0 zone is intended for offices and uses which service offices or employees of office type uses, such as beauty and barber shops. The C-0 tone, as well as the C-I zone, act somewhat as transitional or buffer zones, often separating heavier C-2 zones from residential zones and allowing residential uses as as well. Adult businesses in the C-0 and C-I zones would not be able to meet any reasonable separation criteria_ The C-2 zones, though often separated from residential districts by C-C and C-I zones are not ideal either because of their proximity to residential uses and the shallow depths of most C-2 zoning which makes meeting separation criteria difficult.

The courts have said that restrictions on a legal business cannot be such that the effect is elimination or prohibition of such uses. First permitting adult businesses in the C-2 zone would provide reasonable flexibility through the conditional use permit process for the approval of a limited number of adult businesses in several areas of the City.

Abatement of vonconformina Uses

It is quite obvious that any requirement for separation from residential areas and between businesses will have the effect of Making all of existing adult businesses, with the exception of the theater Uptown, nonconforming uses, subject to abatement.

The courts have held that reasonable time must be given in the amortization of nonconforming uses. Such time limits must commensurate with investment involved and based on the nature of the use.

The improvement made to structures in which existing adult businesses are located were basically partitioning and signs. The valuation listed on the permits ranged from (total of all permits on property) $1,000 to $12,450, averaging $3,105 per adult business. Three locations apparently had no modifications which required building permits. The.permit fees amounted to a total of $572.95, averaging $47.75 per business. One case of high valuation and permits resulted from the repair to a structure after extensive fire damage. These amounts are not, in staffs opinion, significant investments for the use, and on the high rate of return on adult business investments any costs should have been amortized several times.

The courts in 1974 upheld an 18-month amortization of a use declared a public nuisance, where users had no investment in any permanent improvements on the property and where users had adequate time to make plans to move and where there was substantial evidence that there was adequate properties favorably zoned in the county which could be used to locate the business.

A reasonable amortization should not be less than 18 months nor need be longer than two or three years. -Where the conformity only requires a change in the stock in trade, such as books or a change in the material presented as in a theater, the amortization period can be shorter. The proposed ordinance would provide 90 days in this case_

Conclusion

The information obtained and reviewed during the conduct of this study has definitely shown that concentration of adult businesses in the City of Whittier have had an adverse impact on the adjacent neighborhoods. The increases in crime and residential occupancy turnover are two of the key indications of neighborhoods beginning to decline and deteriorate. The City's intent in regulating such businesses is to prevent them from causing deterioration in adjacent neighborhoods. Assuming that such regulation, now pending is timely that is, not too late, some of the more physical evidences of deterioration are not blatantly evident. however, experiences of municipalities and of individuals support the impact of prolonged concentration of such businesses.

Inasmuch as the courts have prevented the outright prohibition of adult businesses regulation is the only control left to the cities. It is evident from the study that indivridual, isolated businesses do not

have nearly as great an impact as concentrations.

Therefore. the dispersion of adult business in certain areas of the city is the most appropriate form of regulation, using the conditional use permit process to review each application.

The Supreme Court has upheld 1,000 toot and 500 foot separations in the Detroit case. These separations are adequate for Whittier's situation. In certain-circumstances, lesser separation would accomplish the same end. but structuring an ordinance with specific areas complicates its enforcement.

The effect of such separation would make portions of the industrial areas and shopping centers eligible locations for adult businesses subject to conditional use permit approval.

All of the existing locations of adult businesses would nonconforming under the provision of the proposed ordinance required to conform within the prescribed abatement periods_

Recommendation

Staff recommends that the planning Commission recommend that the city council.find that the regulation of adult businesses is required for the preservation of the integrity of existing commercial area and residential areas in close proximity thereto and is in the public interest and would promote the general welfare of the community and that the attached draft ordinance regulating such businesses be adopted.

(Considered by Whittler City Planning Commission. January 9, 1978 and Whittler City Council January 24, 1978)

The lateste-stiimates ¡pdicate_'i<th._a -th ere are 15 million new STDs in the United States~"e~tA·'y~g (ASHA, 1998). And while some STDs, such as syphilis and gonorrhea, have been brought to all time lows, others, like herpes and chlamydia, continue to spread widely . throughout the population.

Because there is no single STD epidemic, but rather multiple epidemics, discussions about trends over time and populations affected must focus on each specific STD. There are over 20 diseases that are sexually transmitted, and the trends for each disease vary considerably. More is known about the frequency and trends of some STDs than others. This document presents the best available information on the most common STDs. The most common STDs other than HIV include:

Incidence

(Estimated ndrni;er of new cases every year) (Estimated number r- people currently ¡nfected)

'No recent surveys on national prevalence for gonorrhea, syphilis, trichomoniasis, or bacterial vaginosis have been conducted.

Bacterial vaginosis is a genital infection that is not sexually transmitted, but is associated with sexual intercourse.

Note; 1"i re ds'.taliedanNde[:S and i3ppJi$1Ilt . rovided in. tits Trends b~ ~kc-ase section.

Are ST increasing ^:..a.. .. .i ·O U.S.?

It depends on the disease. The latest scientific data suggests that chlamydia is declining in areas with screening and treatment programs, but remains at very high levels. Syphilis and gonorrhea are declining and have reached all time lows. Hepatitis B is declining, as is. trichomoniasis and chancroid. Herpes is believed to be increasing, with dramatic increases documented through the early 1990s. Human papillomavirus (HPV) and bacterial vaginosis are both extremely widespread, but researchers are unsure if they are increasing.

at are the most sesious STDs in women?

By far, women bear the greatest burden of STDs. The most serious STDs among women are chlamydia, gonorrhea, and HPV. Millions of women are infected with these diseases every year in the U.S. Untreated, both chlamydia and gonorrhea can lead to infertility, potentially fatal tubal pregnancies, and chronic pelvic pain. If not diagnosed and treated in time, during pregnancy, gonorrhea and chlamydia can result in serious health problems for infants. Moreover, women infected with chlamydia or gonorrhea are much more likely to be infected with HIV, if exposed.

HPV can also result in severe consequences for women. Long term infection with certain types of of HPV is the single most important risk factor for cervical cancer. Additionally, many women, particularly in the South, still experience significant rates of syphilis, and an estimated one in four women nationwide is infected with herpes. Both syphilis and herpes can significantly increase a woman's chances of becoming infected with HIV and can be fatal in infants.

Teens are at high behavioral risk for acquiring most STDs. Teenagers and young adults are more likely than other age groups to have multiple sex partners, to engage in unprotected sex, and for young women, to choose sexual partners older than themselves. Moreover, young women are biologically more susceptible to chlamydia, gonorrhea, and HIV .

Chlamydia and gonorrhea are the most common curable STDs among teens. Curable S-Ds are typically caused by a bacteria that can be killed with antibiotics. However, if these diseases remain undetected and untreated, they can result in severe health **consequences later in life. Among teens, it is not uncommon to see over 5% of young boys and 5°10-10% of young girls infected with chlamydia (Mertz, CDC, 1998). Rates of gonorrhea are highest in adolescent females 15-19 years of age and in young-men 20-24 years of age.**

The prevalence of viral STDs that can not be cured, like herpes and HPV, increases with age. Since these diseases stay with you once acquired, the older you are, the more likely you are to have been infected. The rate of new infections for herpes and HPV is typically highest during the late teens and early twenties. Among women under the age of 25, studies have found that from 28% to 46% are typically infected with HPV Between 15% to 20% of young men and women have become infected with herpes by the time they reach young adulthood.

Are STDs in res in f an decreasing?

Gonorrhea, syphilis, hepatitis B, and chancroid are declining among teens and other age groups. Chlamydia is likely going down in areas where there is screening and treatment among teens (i.e., family planning clinics and school-based screening programs), but may be stable or increasing where these services are not available. Herpes was increasing among teens through the early 1990s. Currently, the data are not available to tell us whether HPV, trichomoniasis, or bacterial vaginosis are increasing, but they are extremely widespread.

What areas of the country have the greatest problems with STDO

Herpes and HPV are widespread throughout the nation. Chlamydia is also extremely common across geographic boundaries, but is on the decline in regions where effective screening and treatment programs are in place. Chlamydia remains most widespread among women in the Southern region of the country The South also faces the highest rates of both gonorrhea and syphilis. The high rates of STDs in the South may be due to high rates of poverty and the availability of quality **of health care.**

Which STDs thmaten infants?

Most STDs can be transmitted from a mother to her fetus or infant and can result in fetal death, premature birth, or severe long-term problems for the baby. Many of these consequences can be prevented through proper screening and treatment during pregnancy. Untreated syphilis and herpes can result in severe mental disorders and death in infants. Gonorrhea and chlamydia, if not properly diagnosed and treated in time, can cause prematurity, eye disease, and pneumonia in infants.

Other STDs and related syndromes (like bacterial vaginosis) may cause harm to infants through their association with premature delivery. Preterm birth is the leading cause of infant death and disability in the U.S. and has been increasing in recent years, particularly among African Americans. It is estimated that 40%-50% of excess preterm births and infant deaths in this population are due to STDs and bacterial vaginosis (Goldenberg, 1996).

While STDs, like chlamydia, HPV, and herpes, are widespread across racial groups, STD rates have traditionally been higher among African Americans than white Americans. Reported rates of some STDs, like gonorrhea and syphilis, are as much as 40 times higher for African Americans than for whites. This disparity, in part, is due to the fact that African Americans are more likely to seek care in public clinics that report STDs more completely than private providers. However, this reporting bias does not fully explain these differences. Other important factors include the distribution of poverty, access to quality healthcare, health-seeking behaviors, the level of illicit drug use, and social networks with high STD prevalence.

Moreover, the level of prevention education may vary widely across communities. In some areas, community-based efforts may be widespread across social, educational, and religious organizations, but in others, STD prevention may not yet be a high priority. Efforts to increase both public and private sector HIV and STD prevention efforts in communities at risk throughout the nation are underway. Yet, research demonstrates that some groups at very high risk still lack even basic information about STD prevention (Bunnel, CDC, 1998).

Why don't we have more exaa data on the number of STDs?

For any disease, data on the number of new infections are only reliable when 1) all infected people are diagnosed and 2) all people who are diagnosed are reported. People are diagnosed only when they seek treatment for symptoms, or are offered screening by a health care provider or public health worker. Since most STDs do not cause symptoms, and there is not widespread screening for all STDs, many people do not know they are infected.

Additionally, not all diseases are reportable. Each state's laws specify which STDs have to be reported to state health departments. These laws are typically based on recommendations from the Council of State and Territorial Epidemiologists (CSTE). CSTE's recommendations consider a number of factors, including the availability of practical tests to detect the disease, availability of effective treatment, and the severity of the disease. Chlamydia, gonorrhea, syphilis, hepatitis B, and chancroid are reportable STDs in the majority of states.

Chlamydia is the most commonly reported infectious disease in the United States and may be one of the most dangerous STDs among women today. While the disease can easily be cured with antibiotics, millions of cases go unrecognized and untreated. If left untreated, Chlamydia can have severe consequences, particularly for women. Up to 40% of women with untreated Chlamydia will develop pelvic inflammatory disease (PID), and one in five women with PID becomes infertile. Chlamydia can also cause prematurity, eye disease, and pneumonia in infants. Moreover, women infected with Chlamydia are three to five times more likely to become infected with HIV, if exposed.

Seventy-five percent of women and 50% of men with Chlamydia have no symptoms. The majority of cases therefore go undiagnosed and unreported. The number of reported cases (just over one-half million in 1997) is merely the tip of the iceburg.

- **An estimated 3 million people contract Chlamydia each year (Groseclose, CDC, 1996).**

- **While there are very few data on the prevalence of chiamydia among men, it is assumed that half of new cases (1.5 million) occur among women, and half occur among men. This assumption is based on the fact that Chlamydia is believed to be spread primarily through heterosexual intercourse (ASHA, 1998).**

- **Chlamydia is believed to be declining overall in the U.S., primarily because of increased efforts to screen and treat women for chiamydia. Chlamydia is estimated to have declined from well over 4 million annual infections in the early 1980s to the current level of 3.million annual infections (Groseclose, CDC, 1996).**

- **Since 1994, there has been increased funding available for Chlamydia screening in publicly funded family planning and STD clinics. The greatest declines in chiamydia have been seen in areas of the country with the most effective and prolonged screening programs.**

- From 1988 to 1997, the Pacific Northwest (Washington, Oregon, Idaho, and Alaska) witnessed a 67% decline in the percent of women infected.
- In the Mid-Atlantic (Delaware, Washington, D.C., Maryland, Pennsylvania, Virginia, and West Virginia) and the Mountain States (Colorado, Montana, North and South Dakota, Utah, and Wyoming), similar trends are occurring, with declines of 15% and 23%, respectively, since 1994 (DSTDP, CDC, 1998).

Chiamydia
Trends in positivity among 15- to 44-year-old women tested in family planning clinics by HHS regions

The percent of women testing positive for chlamydia (chlamydia positivity) in family planning clinics by state provides a good indication of where the disease remains most widespread. The highest level of infection is seen in areas where screening and treatment have not been as widely implemented.

Chiamydia
Positivity among
15- to 24-year-old women
tested in family planning
clinics by state, 1997

Note: States reported chlamydia positivity data on at least 500 women ages 15-24 years screened from January- Cecember 1997 except for: Rhode Island - no chlamydia positivity data reported (NR); Puerm Rico - chlamydia positivity data reported for August-December only; and North Carolina - chlamydia positivity data reported for 1amary-April only.

Source: Regional Irdertility Prevention .Programs; Office of Population Affairs; Local and State Control Programs; Centers for Disease Control and prevention

Reducing the level of disease will also require that screening be expanded'to men. While men experience symptoms and seek treatment on their own more often than women, half of men with chlamydia are asymptomatic. Reaching these men with treatment is critical to stem the spread of chlamydia and its severe consequences.

In addition to increased efforts to screen and treat disease, efforts to reduce the risk of infection through safer sexual behaviors must be targeted to those at greatest risk for STDs, primarily adolescents and young adults..

Chlamydia is widespread among sexually active Americans, regardless of race, age, or gender. Like the majority of STDs, chlamydia is most common among adolescents, with the highest rates seen among female adolescents. Data among young male adolescents also demonstrates an alarming level of infection (prevalence).

By gender and age, reported prevalence among sexually active women is consistently over 5%, with prevalence among teenage girls often exceeding 10% (more than 1 in 10 young girls infected). And while data are more limited among men, studies.of men tested in high schools and other settings have also found prevalence of over 5% (Cohen, 1998; Ku, 1997). Recent studies throughout the country come to the same conclusion: chlamydia continues to exact a devastating toll among our nation's young people.

By race, the disease is common among all races, but prevalence is somewhat higher among racial and ethnic minorities., This is likely due in part to the lack of access to screening and treatment in some communities.

Data from a pilot household survey of prevalence in ten U.S. counties (three in the Midwest, four in the West, and three in the South) suggests that chlamydia is widespread in the general population. And while prevalence was somewhat higher among young minority women, high levels of chlamydia were detected among all groups of adolescents.

The prevalence of chlamydia was higher in women than in men among non-Hispanic blacks (7% vs. 6%), Mexican-Americans (5% vs. 2%), and non-Hispanic whites (2% vs. 1%).

- Among 15- to 19-year-olds, prevalence was more than 12% for non-Hispanic blacks, 6% for Mexican-Americans, and nearly 4% for non-Hispanic whites.

A 1997 study of over 13,000 female military recruits from 50 states found an overall prevalence of chlamydia of 9.2°10, with a peak of 12.2% among 17-year-old recruits. Prevalence fell sharply with increased age. Among 17- to 25-year-olds, 10% were infected, and among 26- to 39-year-olds, 3.6% were infected. Prevalence was 5.5% for whites, 14.9% for blacks, and 8.1% for other races (Gaydos, 1998).

A 1998 school-based screening program among high school students in New Orleans found that nearly 13% of girls and 6% of boys 15-19 years of age were infected with chlamydia (Cohen, 1998).

A 1994 household sample of young men 18-19 years of age in three Maryland counties found that 6% were infected with chlamydia (Ku, 1996).

An innovative program in Denver took screening to high-risk youth through outreach to young people in field (i.e., alleys, parking lots, parks, and residences) and non-clinical settings (i.e., high schools, recreation centers). The study found an extremely high prevalence of chlamydia among young men (12%) screened in the field, compared to young men screened in the facilities in which screening was offered (4.4°10). The study suggests that the prevalence of chlamydia may be much higher among high-risk youth who are not likely to access STD treatment in traditional health care settings (Rietmeijer, 1997).

These studies combined point to the need to reach all sexually active youth with prevention and treatment services through traditional (family, school, and community) and non-traditional (street outreach, drug-treatment centers, correctional facilities) avenues.

By region, chlamydia prevalence remains higher in areas without longstanding screening and treatment programs. Hopefully, if the level of screening and treatment continues to increase, the disease will decline in women across the nation.

In the study of female military recruits, prevalence of chlamydia was more than 15% for recruits in South Carolina, Georgia,

Alabama, Louisiana, and Mississippi. For New Jersey, North Carolina, Kentucky, Texas, Oklahoma, and Arkansas, the prevalence was 10% to 15%, and for the other 17 states and Puerto Rico, the prevalence was 5% to 10%. For five states, (Washington, Oregon, Minnesota, Arizona, and Massachusetts), prevalence was less than 5% (Gaydos, 1998).

PILLO

HPV is likely the most common STD among young, sexually active populations. While there is no way to know for sure if HPV is increasing, there are no signs of a significant decline. With improved testing technology, researchers have been able to get a much clearer picture of the true extent of HPV in certain groups in recent years, and the disease is even more common than originally believed.

There are more than 80 distinct types of HPV Some cause genital warts, and others cause subclinical infection with no symptoms. Genital warts are extremely common, but can be treated and cured. Subclinical HPV infection is both more common and much more serious than genital warts. There is currently no treatment for subclinical HPV and the disease can lead to cervical, penile, and anal cancer. Persistent cervical infection with certain types of HPV is the single most important risk factor for cervical cancer. HPV type 16 accounts for over 50% of cervical cancers and high-grade dysplasia (abnormal cell growth). HPV types 16, 18, 31, and 45 account for 80% of cervical cancers (Bosch, 1995; Shah, 1997).

Genital Wad

Estimates indicate that 1% of sexually active adults in the U.S. have genital warts. These estimates are based on select studies demonstrating levels of infection ranging from 1.5% among female college students treated in student health centers to 13% in some STD clinics (Koutsky, 1997).

su fi i l HPV In

An estimated 5.5 million people become infected with HPV each year in the United States, and an estimated 20 million Americans are currently living with HPV (ASHA, 1998).

An estimated 75% of the reproductive-age population has been infected with HPV (Koutsky, 1997).

Clflamydia

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Source: Regional Infertility Prevention Programs; Offlce of Population AFairs; Local and State STD Control Programs; Centers for Usease Control and Prevention

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A r Look at Chlamydla

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While few data are available on men, studies repeatedly show high levels of HPV infection in women, with. the highest levels among young women:

A recent U.S. study among female college students found that an average of 14% were infected each year. About 43% of the women in the study were infected with HPV during the three-year study period, revealing an extremely high risk among both heterosexual men and women in a college environment (Ho, 1998).

- High levels of **HPV have been found among some high-risk teens. One study of inner-city teenagers found that 24%** of **young women were infected with HPV (Martinez, 1988).**

- **The highest rates** of **infection have. been found among sexually active women less than 25 years of age.** *Of* **nearly 450,000 premenopausal women screened in one study, women less than 30 had about twice the rate** *of* **HPV, when compared with older patients (Meisels, 1992).**

Typical prevalence *of* **HPV for women under the age** *of 25* **is 28%-46% (Burk, 1996; Bauer, 1991).**

HPV may be an even greater concern for HIV-positive women and men. HIV-positive individuals have a higher prevalence *of* **HPV infection and precancerous lesions in the cervix and anus than HIV-negative individuals. "Co-infection with HIV and HPV is most likely due to shared risk behaviors for both diseases, as well as increased susceptibility to HPV because** of **a compromised immune system.**

A San Francisco study *of* **gay and bisexual men found that 60%** *of* **HIV-negative men had HPV, with almost universal HPV infection among HIV-positive individuals with severely compromised immune systems (Palefsky, unpublished data). Similarly, a six-city study among high-risk and infected women found a 26% prevalence** *of* **HPV among HIV-negative women and a 70% prevalence among HIV-positive women with severely compromised immune systems (Palefsky, 1998).**

HERPES

Genital herpes (HSV-2) **is extremely common in the United States and has increased dramatically over the past few decades. Herpes continues to spread across all social, economic, and racial boundaries, and it is spreading fastest among teens (Fleming, 1997). Herpes causes recurrent painful ulcers in many people and is potentially fatal in infants. The disease can be particularly severe in people with HIV infection.**

Symptoms of herpes can be treated, but the disease cannot be cured. With or without visible symptoms, the disease can be transmitted between sex partners, from mothers to newborn babies, and can greatly increase a person's risk of becoming infected with HIV Herpes is believed to play a major role in the heterosexual spread of HIV in this country. Herpes can make people more susceptible to HIV infection and make HIV-infected individuals more infectious. Preventing the spread of herpes can help slow both epidemics.

45 million Americans (more than one in five) are infected with genital herpes (Fleming, CDC, 1997).

As many as 1 million new herpes infections are estimated to occur each year (ASHA, 1998).

From the late 1970s to the early 1990s, herpes prevalence increased 30% (Fleming, CDC, 1997).

Most people with herpes have no symptoms and are unaware of their infection. Less than 10% of people with herpes in a national household survey knew they were infected (Fleming, CDC, 1997).

Studies have demonstrated a high level of co-infection with herpes and HIV A 1996 ten-city study demonstrated a high level of HIV infection in patients with herpes. Among the 316 patients with herpes, 7% were infected with HIV (Mertz, CDC, 1998).

A Closer Look at Herpes

By gender, herpes is slightly more common among women (approximately one out of four) than men (almost one out of five). This may be related to the higher efficiency of transmission from men to women.

age, the number of people infected with herpes increases with age because, once infected, people remain infected throughout their lives. Herpes infection is believed to occur most commonly during adolescence and young adulthood, as individuals become sexually active and may have multiple partners.

Herpes is increasing fastest among white teens ages 12-19. White teens are nearly five times more likely to have herpes today than they were in the 1970s. Young whites 20-29 years of age are twice as likely to have herpes.

Herpes
Changes in herpes prevalence among teens and young adults by race
NHANES 11(1976-1980) and NHANES 111(1988-1994)*

*Seroprevalence has been adjusted to the 1980 census.

**Rounded to the nearest tenth.

By race, herpes is more common among blacks (more. than 45%) than among whites (approximately 17%), although the disease is increasing fastest among young whites. Herpes has increased among men and women in all racial groups.

Herpes
Changes in age-adjusted HSV-2 seroprevalence between NHANES 11(1976-1980) and NHANES 111(1988-1994)*

'seroprevalence has been adjusted to the 1— census. The age range is >]2 years_

'*totals differ from the numbers for whites and blacks because other races and ethnic groups are included in the category of all races and ethnic groups

By region, herpes is common in all regions of the country and in both urban and rural areas. There are no significant differences in prevalence by geographic location.

Gonorrhea has declined steadily since the mid-1970s, following the introduction of a national control program. However, 1997 data on reported cases of gonorrhea indicate that declines may be slowing. Since 1985, decreases have been nearly 10% each year fox, CDC, 1998). Yet, the U.S. gonorrhea rate remained roughly stable from 1996 to 1997 (DSTDP, CDC, 1998). This stabilization, combined with signs of an increase in gonorrhea among gay and bisexual men, is reason for concern.

Moreover, despite overall declines in gonorrhea during the past few decades, rates of infection remain high among adolescents, young adults, and African Americans. Gonorrhea remains a major cause of pelvic inflammatory disease and subsequent infertility and tubal pregnancies in women. Additionally, gonorrhea may facilitate HIV transmission and may be contributing significantly to the spread of HIV in the South. There is a critical need to reach populations that remain at high risk for gonorrhea with intensified prevention and treatment efforts. Gonorrhea can be easily cured, if detected early, and the long-term consequences can be prevented.

- An estimated 650,000 cases of gonorrhea occur each year in the United States (ASHA, 1998).

- Cases reported to CDC are believed to represent about half of all annual infections. While an underestimate of actual cases, these reports provide a good indication of trends in the disease.

- From 1987 to 1997, reported rates of gonorrhea declined an average of 9% each year. Yet from 1996 to 1997, the rate of reported cases remained roughly stable (123.1 per 100,000 to 122.5 per 100,000).

Gonorrhea
Reported rates: United States, 1987-1997

Rate (per 100,000 population)

Note: Georgia *did* not report gonorrhea statistics in 1994.

1987 **88** **89** **90** 91 92 93 94 95 96 97

Although the 1997 gonorrhea rate is the lowest in history, it remains well above the goal for the nation by the year 2000 (100 per 100,000). Moreover, the reported gonorrhea rate in the U,S: remains the highest of any industrialized country and is roughly 50 times that of Sweden and 8 times that of Canada.

While cases of gonorrhea have declined in almost all groups in recent years, researchers have seen alarming indications that gonorrhea may be on the rise among gay and bisexual men (men who have sex with men or MSM). In the mid-19806, reports of increased condom use and reduced risky sexual practices accompanied dramatic decreases in rectal gonorrhea among MSM in several cities (Fox, CDC, 1998). Yet, data from STD clinics in 26 cities suggests that this trend may be reversing, and that gonorrhea may be facilitating the spread of HIV in the gay community.

The proportion of gonorrhea cases diagnosed among MSM in STD clinics in 26 cities increased 74% between 1993 and 1996. From 1994 to 1995, gonorrhea cases among MSM in one Seattle STD clinic increased 125%, and between 1995 and 1996, the number of MSM with gonorrhea increased 124% in one Portland clinic (CDC, 1997).

a In these two sites, one quarter of the MSM with gonorrhea were also infected with HIV

These data should serve as a wake-up call to all populations at risk, including gay and bisexual men, that high-risk sexual behaviors continue to have very real consequences.

Closer l at na

By gender, while reported rates of gonorrhea were once substantially higher among men than among women, that gap has narrowed. This is most likely due to increased screening in women. Because women are more likely to be asymptomatic than men, cases in women are less likely to be reported. From 1996 to 1997:

the gonorrhea rate decreased slightly among men from 127.3 to 125.4 per 100,000.

the gonorrhea rate increased slightly in females from 118.8 to 119.3 per 100,000 (DSDP, CDC, 1998).

Gonorrhea
Rates by gender:
United States, 1987-1997

NO"www-110ó"

Note: Georgia did not report gonorrhea statistics in 1994.

1987 88 89 90 91 92 93 94 95 97

By **region, gonorrhea rates** declined in three regions (West, Midwest, and Northeast), although these declines slowed from 1996 to 1997, compared to earlier years. In the South, the gonorrhea rate has decreased over the decade, but increased slightly from 1996 to 1997 (187.6 to 187.9 per 100,00). The Southern states continue to have the highest gonorrhea rates of any region. The reasons for this may include the level of poverty and access to quality health care and preventive services.

Gonorrhea
Rates by state:
United States and
outlying areas, 1997

VT	9.0
NH	83
MA	36.5
RI	92.6
CT	92.9
NJ	95.0
DE	175.6'
MD	228.1

Note: The total rate or gonorrhea for the United States and outlying areas (including Guam, Puerto Rico, and Virgin Islands) was 120.9 per 100,000 population.

Rate per 100,000 population

5 100 (n=32)
0100.1-200 (n=13)
> 200 (n=8)

Gonorrhea

age, gonorrhea most dramatically affects teens and young adults. Gonorrhea rtes are highest among females between the ages of 15 and 19 and among males between the ages of 20 and 24. This is true regardless of race.

By race, Over the past few decades, gonorrhea has declined among all races (Fox, CDC, 1998). However, reported rates of gonorrhea among African Americans remain more than 30 times higher than rates among whites and more than 10 times higher than rates among Hispanics. This trend most likely reflects differences in access to prevention and treatment services. From 1996 to 1997:

the gonorrhea rate among African Americans decreased slightly from 826.5 to 807.9 per 100,000.

the gonorrhea rate among whites remained stable at 26.0 per 100,000.

the gonorrhea rate among Hispanics remained stable at 69.4 per 100,000.

the gonorrhea rate decreased for American Indian/Alaska Natives from 105.8 to 99.7 per 100,000.

the gonorrhea rate increased slightly for Asian and Pacific Islanders from 18.7 to 19.8 per 100,000.

Among adolescents of all races, gonorrhea rates are declining, but young African-American women and men remain at extremely high risk.

Gonorrhea
Reported rates for 15- to 19-year-ofd females by race and ethnicity: United States, 1987-1997

Rate (per **100,000** population)
7,GQU

Black

White

other

Gonorrhea
Reported rates for 15- to 19-year-old males by race and ethnicity: United States, 1987-1997

SYPHILIS

While once a major cause of cardiovascular disease, neurologic disease, and blindness, syphilis is now virtually non-existent in most parts of the United States. In 1997, 31 counties (1% of U.S. counties) reported half of all syphilis cases. With intensified efforts, particularly in the Southern region of the country, CDC is. committed to the elimination of syphilis in the U.S. (St. Louis, CDC, 1998).

Syphilis elimination efforts are critical to prevent the continuing health consequences of this disease. Principle among these consequences is the acceleration of the HIV epidemic, especially among young African-American women in the South. Syphilis causes genital ulcers which dramatically increase the likelihood of sexual HIV transmission. Syphilis can also result in severe neurological problems among HIV-infected individuals who are immunosuppressed, and can be fatal in infants. Untreated early syphilis during pregnancy results in infant death in up to 40% of cases (DS-FD, CDC, 1998).

An estimated 70,000 cases of syphilis (all stages) are diagnosed each year in the U.S. (ASHA, 1998).

Since the introduction of penicillin and the organization. of a national STD control program in the 1940s, the initial near elimination of syphilis in 1957 has been followed by cyclic national epidemics every 7 to 10 years (St. Louis, CDC, 1998).

The most recent epidemic peaked in 1990 at 20.3 per 100,000. Since 1990, syphilis rates have declined 84% to 3.2 per 100,000, in 1997 (DSTDP, CDC, 1998).

In 1997; 8,551 cases of primary and secondary (P&S) syphilis were reported. P&S syphilis cases represent recent infections (DSTDP, CDC, 1998).. Cases of P&S syphilis reported to CDC are believed to represent about 80% of all cases (ASHA, 1998).

Syphilis
Primary and secondary syphilis - Reported rates: United States 1987-1991

A Cllr Look Syphilis

By gender, the overall male-to-female ratio of P&S syphilis is 1.2 (20% more cases among men than among women). This ratio varies by race however, with a higher male-to-female ratio among Hispanics (2.1) than for blacks (1.3) and whites (1.2) (CDC, 1998).

Since 1990, P&S syphilis rates have declined 85% among men and 83% among women.

By race, syphilis continues to disproportionately affect African Americans. Syphilis has been called one of the "most glaring examples of existing gaps in minority health status." Despite the fact that the disease can be easily treated and cured with basic medical care, reported rates of P&S syphilis are 44 times higher among blacks than among whites (St. Louis, CDC, 1998). With increased awareness and access to acceptable health care, this health disparity could be largely eliminated.

Rates of P&S syphilis have.declined for all racial and ethnic groups since 1990, with the largest declines among Hispanics (90%), followed by blacks (85%), and whites (81%).

By age, syphilis rates are highest overall among women ages 20-24 and men ages 25-29. However, the age groups at highest risk vary by race.

Primary and Secondary Syphilis- Race, Age, and Gender Specific United States, 1997

White, Non-Hispanic

Primary and Secondary ***Syphilis-*** Race, Age, and Gender Specific United States 1997

Black, Non-Hispanic

Primary **and Secondary** ***Syphilis-*** Race, Age, and Gender Specific United States, 1997

Hispanic

Over 1,000 cases of congenital (infants infected by their mother during prgnancy or delivery) syphilis were reported in 1997. Rates of congenital syphilis closely follow trends in P&S syphilis in women. Peaks in congenital syphilis usually occur one year after peaks in P&S syphilis in women. The congenital syphilis rate in the U.S. peaked in 1991 at 107.3 cases per. 100,000 live births and declined 75% to 26.9 by 1997.

By region, syphilis is concentrated in the South and in a small number of counties. In 1997, no cases of syphilis were reported in 75°l0 of counties in the U.S. Fifty percent of cases were reported from the 1% of U.S. counties shown below.

Primary and secondary syphilis
Counties with rates above and counties with rates below the Healthy People Year 2000 objective: United States, 1997

Primary and secondary syphilis
Rates by state: United States and outlying areas, 1997

Note: The total rate or primary and secondary syphilis nor the United States and outlying areas(including Guam, Puerto Rico, and Virgin Islands) was 3.3 per 100,000 population.

HEPAMIS

The acute and chronic consequences of hepatitis B virus (HBV) infection are major public health problems in the United States. According to data from the Third National Health and Nutrition Examination Survey (NHANES III), approximately 5% of the population has been infected with HBV, with an. estimated 200,000 infections occurring each year (Coleman, 1998). Of these, it is believed that 120,000 infections are acquired through sexual transmission annually, mostly among young adults. An estimated 417,000 people are currently living with sexually-acquired HBV

An acute HBV infection is a newly acquired, symptomatic infection. In some people, the infection resolves and the virus is cleared. However, many will remain chronically infected with the virus after the symptoms associated with their new infection have abated. People chronically infected with HBV face an increased risk of developing chronic liver disease, including cirrhosis and liver cancer.

Infants and young children have the highest risk of chronic infection. An estimated 5,000-6,000 deaths occur each year from chronic hepatitis B-related liver disease.

Hepatitis B vaccination has been recommended for people with risk factors for HBV infection since the vaccine became available in 1981. However, many teens and young adults at risk through sexual or drug-related behavior have not been vaccinated for HBV Intensified efforts-to vaccinate-high risk groups are urgently needed.

10,416 cases of acute hepatitis B were reported to the CDC in 1997. However, reported cases dramatically underestimate the actual number of people who are infected with hepatitis B virus each year (an estimated 200,000).

A recent study demonstrates the high degree of under-vaccination among those at high risk. Among acute hepatitis B cases reported by sentinel counties in 1996, 70% had a missed opportunity for vaccination in the past. Of these, 42% had been treated for an STD in the past, 31% had been in prison or jail at some time in their lifetime, and 25% reported sexual or household contact with an HBV-infected person (Mast, CDC, 1998).

By Gender, the incidence of acute hepatitis B is higher among men than women. This difference is believed to reflect a higher prevalence of behavioral risk factors among males.

By Age, in the United States, adults and adolescents account for the majority of reported cases of acute hepatitis B, with the highest incidence rates observed among ·25-39 year olds. Sexual transmission is.the most common mode of transmission of HBV among adults and adolescents. According to data reported by sentinel counties in 1996, 40% of acute hepatitis B were attributed to high-risk heterosexual practices (>1 partner in the prior 6 months, history of other STDs) and 18% were associated with homosexual activity. Other risk factors associated with acute hepatitis B include injecting drug use (15%), household contact with another person infected with HBV (3%), and health care employment (2%) (Mast, CDC, 1998).

An estimated 20,000 infants are born to mothers with HBV each year. These infants are given post-exposure treatment to prevent infection. The treatment is 90%-95% effective in preventing infection in infants. Pregnant women should be screened for HBV to detect infection and ensure the best treatment for themselves and their infants.

Hepatitis B Distribution Reported Acute Hepatitis Hepatitis B by Age, Sex, Race/Ethnicity, United States, 1996 (N=10,637)

Characteristic	Number	Cases/100,000
Age ,.`'ears		
<5	93	1.65
5_14	186	0.49
15-24	55	5.31
25-39	314	7.46
40-64	1,403	4.06
65+	1,326	1.61
Sex		
Male	6243	4.87
Female	4091	3.04

Race

According to seroprevalence data for the general U.S. population from NHANES III, the prevalence of HBV infection is higher among blacks (12%) than among whites (3%) or Mexican Americans (4.4%).

TRICHOMONIASIS AND BACTERIAL VAGINOSIS

There are virtually no national data available on trichomoniasis, bacterial vaginosis, and other vaginal infections, but these infections are among the most common conditions found in women in health care settings. While these diseases are treatable, untreated bacterial vaginosis may lead to pelvic inflammatory disease and may increase the risk of HIV infection. In pregnant women, these diseases may also cause babies to be born prematurely or with low birth weights. However, the biomedical mechanisms for these outcomes are just beginning to be understood.

40 The latest estimates suggest that as many as 5 million cases of *Trichomonas vaginalis (T. vaginalis)* occur each year in the United States (ASHA, 1998).

The diagnosis of trichomonal infections in doctors' offices has declined in recent years, but remains common. In 1997, at least 175,000 of women were diagnosed with trichomoniasis in these settings.

Diagnoses of other vaginal infections (of which bacterial vaginosis is the most common cause) increased dramatically over the decade, but have now begun to decline. In 1997, more than three million women were diagnosed with vaginitis in private doctors' offices. Because these cases do not include women diagnosed in public health care settings or who are not diagnosed at all, these are minimum numbers of infection.

The prevalence of bacterial vaginosis varies from 17% among women in family planning settings, to 37% among some groups of pregnant women (ASHA, 1998).

CHANCROID

Over the last decade, reported cases of chancroid have declined steadily in the United States from 4,986 cases in 1987 to 243 cases in 1997 (DSTDP, CDC, 1997). While chancroid is not widespread, it is believed to be substantially under diagnosed and underreported. Moreover, chancroid has the potential to cause large outbreaks. It is difficult to diagnose without a laboratory test, which most health care providers do not have the capability to perform. Even large outbreaks may go unrecognized despite a large burden of disease in the community (Beck-Sague, CDC, 1996). The disease causes

genital ulcers and is of concern because it may contribute to increased HIV transmission in some communities.

Chancroid Reported cases: United States, 1981-1997

Cases (in thousands)

1987 **89** **91** **93** 9s 97

In 1997, four states-(California, New York, South Carolina, and Texas) accounted for 85% of reported chancroid cases.

40 The cities with the largest number of reported cases include New York City (119 cases), Houston (23 cases), Dallas (13 cases), and Los Angeles (12 cases).

While not consistently seen inmost communities, the disease occurs in outbreaks, resulting in occasional surges in cases.

A 1996 ten-city study demonstrated the substantial level of unrecognized chancroid that exists in some cities. In both Chicago and Memphis, a significant percentage of patients with genital ulcers in STD clinics had evidence of chancroid (12% and 20%, respectively). In Memphis, none of the patients had been diagnosed with chancroid, and few had received the appropriate treatment. In Chicago, the disease had been suspected, but not confirmed. Fortunately, most of these patients were treated appropriately f6r chancroid (Mertz, CDC, 1998).

In this ten-city study, a higher percentage of men were infected than women (4% vs. 1%) (Mertz, CDC, 1998). This is consistent with trends seen in reported cases. In 1997, 65%. of cases of chancroid were reported among men.

Sixty percent of chancroid cases in this study were diagnosed in people over 35 years of age, showing that STD risk is not limited to young people (Mertz, CDC, 1998).

The study also found a high prevalence of HIV infection (6%) in patients with genital ulcers (Mertz, CDC, 1998).

·iled"national data. by city and state are only available for reportable STDs..._.Afd while chlamydia became nationally reportablle. 4, the data are currently more representative of trends iri .~creening than of trends in disease. Because chlamydia often has no symptoms, cases are frequently identified only through widespread screening. Therefore, high rates of chlamydia may indicate more effective screening programs, rather than higher incidence of disease. This section will therefore present the status of gonorrhea and syphilis by city and state. To provide an indication *of* where chlamydia is currently the most common, data on the percentage of women who test positive for chlamydia in family planning clinics are also provided on the overview maps.

Other STDs, like genital herpes and HPV, are known to be widespread across all states and communities. There is very little regional variation in the prevalence *of* these diseases.

Amas CurrenUy Facing the Greatest Rates of Common ST

While national rates *of* gonorrhea and syphilis have reached all-time lows, rates remain high in many areas, mainly in the South and Northeast. Fifteen cities share the grim distinction of leading the nation in reported rates of both diseases.

City	Cases	Ray- per 100,000 Population	City	Cas°S	Rate per 100,000 populat-orl
1. Baltimore, MD	669	99.1	1. Baltimore, MD	6,693	991.0
2. Memphis, TN	343	39.5	2. Washington, DC	4,557	838.9
3. Nashville, TN	203	37.9	3. St. Louis, MO	2,901	825.2
4. Atlanta, GA	204	28.4	4. Rochester, NY	1,867	769.6
5, New Orleans, LA	132	27.7	5. Atlanta, GA	5,468	761.2
6. Richmond, VA	49	24.7	6. Detroit, MI	7,887	755.2
7. Washington, DC	117	21.5	7. Richmond, VA	1,466	739.4
8. Norfolk, VA	44	18,8	8, Newark, NJ	1,967	688.6
9. St. Louis, MO	60	17.1	9. Norfolk, VA	1,462	626.3
10. Oklahoma City, OK	73	16,6	10. New Orleans, LA	2,743	575.5
11. Birmingham, AL	107	16.2	11. Memphis, TN	4,876	562.1
12. Louisville, KY	107	15.9	12. Oklahoma City, OK	2,080	471.9
13. Chicago, IL	346	11.8	13. Birmingham, AL	3,104	468.9
14. San Juan, PR	99	11.4	14. Kansas City, MO	2,000	448.5
15. Detroit, M I	101	9.7	15. Philadelphia, PA	6,504	440.1
16. Boston, MA	52	9.3	16. Chicago, IL	11,498	393.0
17. Milwaukee, WI	84	9.1	17. Nashville, TN	2,050	383.2
18. Newark, NJ	26	9.1	18. Minneapolis, MN	1,430	371.1
19. Indianapolis, IN	71	8.7	19. Buffalo, NY	1,172	362.4
20. Charlotte, NC	48	8:0	20. Milwaukee, WI	3,303	358.1

*Rate for U.S.: 3.2

*fete for U.S.: 122.5

Gonorrhea and Syphilis
Cities* on the top 20
list for rates of
gonorrhea and syphilis

* over 200,000 population

Many of these communities also face a significant threat from chlamydia, which remains widespread across much of the United States. The highest levels of chlamydia remain in areas where screening and treatment have not been widely implemented.

Gonorrhea, Syphilis, and thlamydia
Cities* on the top 20
list for rates of
gonorrhea and syphilis
and states with positivity
levels over 5% among
15-to 24-year-old
women tested in family
planning clinics, 1997

Boston, MA

N-K. NI

Beni motlChMDPA

Washington, O.C.

Norfolk.VA

States with Highest Rates of *Gonorrhea and Syphilis*

Twenty-one states now have rates of gonorrhea that exceed the goals for the nation. From last year, gonorrhea increased in six of these states (Illinois, Louisiana, Michigan, Mississippi, New York, arid Texas).

Syphilis now exceeds the goals for the nation in nine states and Puerto Rico. Last year, cases increasedin two of these areas, Maryland and Puerto Rico, with Maryland, Mississippi, and Tennessee facing the worst levels of syphilis in the country.

Gonorrhea
States with rates above the Healthy People Year 2000 Objective; United States, 1997

Syphilis
States and territories with rates above the Healthy People Year 2000 Objective; United States, 1997

ibliography

American Social Health Association Panel to Estimate STD Incidence and Cost. Estimates of Incidence and Prevalence of STDs in the United States, 1996. Special Supplement for *Sex* Transm *Dis,* in press.

Baur HM, Ting Y, Greer CE, et al. Genital Human Papillomavirus Infection in Female University Students as Determined by a PCR-Based Method. JAMA 1991 Jan 23-30;265(4):472-7.

Beck-Sague CM, Cordts JR, Brown K, et al. Laboratory Diagnosis of Sexually Transmitted Diseases in Facilities within the United States. Results of a National Survey. *Sex* Transm *Dis* 1996 Jul-Aug;23(4):342-9.

Bosch FX, et al. Prevalence of Human Papillomavirus in Cervical Cancer: A Worldwide Perspective. J Nat! Cancer Inst 1995;87:796-802.

Bunnell R, Dahlberg L, Stone K, et al. Misconceptions about STD Prevention and Associations with STD Prevalence and Incidence in Adolescent Females in a Southeastern City [abstract]. In: Program and Abstracts of the 1998 National STD Prevention Conference; December 1998.

Burk RD, Ho GY, Beardsley L, Lempa M, et al. Sexual Behavior and Partner Characteristics are the Predominant Risk Factors for Genital Human Papillomavirus Infection in Young Women. J Infect *Dis* 1996 Oct;174(4):679-89.

CDC. Gonorrhea Among Men Who Have Sex with Men -Selected Sexually Transmitted Diseases Clinics, 1993-1996. *MMWR* 1997;46(No. 38):889-92.

CDC. Primary and Secondary Syphilis -United States, 1997. *MMWR* 1998;47(24):493-7.

Cohen DA, Nsuami M, Bedimo Etame R, et al. A School-Based Chlamydia Control Program Using DNA Amplification Technology. Pediatrics 1998 January: 101(1).

Coleman PJ, McQuillan GM, Moyer LA, et al. Incidence of Hepatitis B Virus Infection in the United States, 1976-1994: Estimates from the National Health and Nutrition Examination Surveys. J *Infect Dis* 1998;178:954-9.

Division of STD Prevention. *Division of STD/HIV Prevention* Annual Report, 7994. U.S. Department of Health and Human Services, Atlanta: Centers for Disease Control and Prevention (CDC), 1994. Mertz KJ, McQuillan GM, Levine WC, et al. A Pilot Study of the Prevalence of Chlamydial Infection in a National Household Survey. Sex Transm *Dis* 1998 May:225-8.

Division of STD Prevention. Sexually *Transmitted Disease Surveillance,* 1997. U.S. Department of Health and Human Services, Atlanta: Centers for Disease Control and Prevention (CDC), September 1998.

Fleming DT McQuillan GM, Johnson RE, et al. Herpes Simplex Virus Type 2 in the United States, 1976 to 1994. *N Engl J Med* 1997;337(16):1105-11.

Fox KK, Whittington WL, Levine WC, et al. Gonorrhea in the United States, 1981-1996. Demographic and Geographic Trends. Sex Transm *Dis* 1998. August;26(7):386-93.

Gaydos CA, Howell MR, Pare B, et al. Chlamydia trachomatis Infections in Female Military Recruits. N Engl J Med 1998;339:739-41.

Goldenberg RL, Andrews WW, Yuan AC, et al. Sexually Transmitted Diseases and Adverse Outcomes of Pregnancy. *Clin* Perinatol 1997 March;24(1):23-41.

Groseclose SL, Zaidi AA, DeLisle SJ, et al. An Approach to Estimation of Chlamydia Incidence and Prevalence in the United States [abstract 0'158]. International Congress of Sexually Transmitted Diseases; October 19-22, 1997; Seville, Spain.

Ho GYF, Bierman R, Beardsley L, et al. Natural History of Cervicovaginal Pap illomavirus Infection in Young Women. *NEng1JMed* 1998;338(7):423-8.

Kaiser Family Foundation/ Glamour. STDs Still a Hidden Epidemic: Men and Women Unaware of How Common They Are -- And Don t Think They Are At Risk. The Kaiser Family Foundation/ Glamour 1998 Survey of Men and. Women on Sexually Transmitted Diseases.

Koutsky L. Epidemiology of Genital Human Papillomavirus Infection. Am J *Med* 1997;102(5A):3-8.

Ku L, Sonenstein FL, Turner CF, et al. The Promise of Integrated Representative Surveys About Sexually Transmitted Diseases and Behavior. Sex Transm Dis 1997 May:299-309.

Martinez J, Smith R, Farmer M, et al. High Prevalence of Genital Tract Papillomavirus Infection in Female Adolescents. *Pediatrics* 1988;82:604-8.

Mast E. Vaccine, 1998, in press.

Meisels A. Cytologic Diagnosis of Human Papillomavirus. Influence of Age and Pregnancy Stage. Acta Cytol1992;36:480-2.

Mertz KJ, Trees D, Levine WC, et al. Etiology of Genital Ulcers and Prevalence of Human Immunodeficiency Virus Coinfection in 10 U.S. Cities. *J* Infect *Dis* 1998;178.

Mertz KJ, McQuillan GM, Levine WC, et al. A Pilot Study of the Prevalence of Chlamydial Infection in a National Household Survey. Sex Transm Dis 1998 May:225-8.

Palefsky JM. Human Papillomavirus Infection and Anogenital Neoplasia in Human Immunodeficiency Virus-Positive Men and Women. *Monogr* Natl Cancer Inst 1998;23:15-20.

Rietmeljer CA, Yamaguchi KJ, Ortiz CG, et al. Feasibility and Yield of Screening Urine for *Chlamydia* trachomatis by Polymerase Chain Reaction Among High-Risk Male Youth in Field-Based and Other Nonclinic Settings. A New Strategy for Sexually Transmitted Disease Control. Sex Transm *Dis* 1997 August;24(7):429-35.

Shah KV Human Papillomaviruses and Genital Cancers. *N Engl J Med* 1997;337:1386-8.

St. Louis ME and Wasserheit JN. Elimination of Syphilis in the United States. *Science* 1998 July 17,281:353-4.

Conducted by:

PLANNING DEPARTMENT

CITY OF PHOENTLY May 25, 1979

ADULT BUSINESS STUDY

INTRODUCTION

A necessary premise for regulating adult businesses by zoning is that a land use relation or impact results from this form of business. Many zoning ordinances throughout the nation now have provisions based on one of two basic approaches control the location. of adult businesses. One approach, sometimes known as the Detroit Model, divides or prevents the concentration of adult businesses in an area. A certain distance from residential neighborhoods, churches, and schools is also maintained. Another approach, or the Boston Model, fosters the concentration or- adult businesses in one area of the City_

The Latter approach has resulted in the mart noteworthy problems. For instance, in Boston's concentrated adult business area there is control of signs, upgrading of streets and sidewalks, renovation of storefronts, and even the construction of a new park. This scheme has not affected the high number of stabbing, murders, and muggings that take place in the district.

Also, at one time, New York City had concentrated adult business districts_ However,

the police department reported that crime complaints were almost 70% higher on police posts with adult businesses, as opposed to posts without them. The reports showed higher rates of rape, robbery, and assault. In one adult business concentration around Times Square, sales taxes dropped by 43% in a two-year period, due to the loss of 2.5 times as many retail jobs as the rest of the City.

New York soon dropped its original adult business ordinance and adopted an amendment that was patterned after the Detroit model. The new ordinance also went one step further

than any other in the nation when suggestion was made to amortize all nonconforming adult businesses within one year. Thus, up to 80% of the existing sex businesses were terminated.

In the Phoenix Zoning Ordinance an amendment concerning adult business became effective on November 8, 1977. It too is patterned after the Detroit model.

Briefly, the amendment in Section 417 states that:

1. No adult business is to be within 1;000 feet of any use in the same category.

2. An adult business is not permitted within 500 feet of a school or a residential zone unless approved by City Council and area residents. A petition which is signed by 51 % of the residents in the 500-foot radius who do not object must be filed and be verified by the Planning Director. After the petition is completed the City Council may consider waivfrlg the 500-foot requirement-

Adult businesses are being treated as a land use issue by their relationship to impacts on their surrounding properties and on adjacent neighborhoods. Are the crime impacts noted La Boston and New York's districts directly related to the adult business being there, or to same other societal variables in, the neighborhood? Are they identifiable and thus a probable cause rot negative neighborhood reactions to nearby adult businesses?

The Phoenix Ordinance was based on two hypotheses: first, that there are direct impacts which uniquely relate to this class of land use, and second, that there are indirect, but equally potent, attitudinal concerns which-result from proximity to an adult business. Examples of the former are possible traffic congestion, unusual hours of operation, litter, noise, and criminal activity. illustrating the latter is substantial testimony that has indicated that many neighborhood residents dislike living near an aria containing an adult business. Also, financial institutions take nearby adult businesses into account when financing residential properties. Finally, people's perception o£ criminal activity is reinforced by a greater incidence of sexual cries in areas or commercial districts containing adult businesses.

In this study a Wilt show chat chars is a relationship between arrests for sexual crimes and locations of adult businesses_ This relation will correlate with concerns which have been expressed by residents. of nearby residential neighbor-hoods at the nature of crimes associated with adult businesses. Sex crimes appear to generate substantial fears for the safety at children, women, and neighborhoods in general.

Their association with adult businesses generates negative images (as welt as real, or potential hazards) and results in a lowering of the desirability and livability of an impacted neighborhood.

This study specifically shows that there is a higher amount of sex offenses committed in neighborhoods in phoenix containing adult businesses as opposed to neighborhoods without them. In

this project three study areas were chosen - neighborhoods with adult businesses, and three control areas -- neighborhoods without adult businesses which were paired to certain population and land use characteristics. The amount at property crimes, violent crimes, and sex offenses from the year 1978 are compared in each study and control area

THE STUDY AND CONTROLS AREAS

Three different study areas containing adult businesses were selected to collect crime data_ The east side of Central Avenue was chosen for the location of two study areas, while the vest side has the third study area. Appendix I describes a more detailed process of how each study area was derived.

A control area has no adult business, but generally speaking, has similar population characteristics of a matched study area in terms of

1. Number of residents
2. Median family income
3. Percentage of non-white population
4. Median age of the population
5. Percentage of dwelling units built since 1950
6. Percentage of acreage used residentially and non-residentially

Appendix II states a more detailed process of how each control area
Adult business locations are

based on information furnished by the Department and verified by the

Planning Department.

TABLE I

THE STUDY AND CONTROL AREA LOCATIONS

STUDY AREA I CONTROL AREA I

Roosevelt Street - Oak Street Starting at 75th Ave, east on Osborn Road

16th Street - 32nd Street South on 35th Ave, west on Thomas Road,

South on 39th Ave, west on Roosevelt Street,

North on 43rd Avenue, west on McDowell Rd, and North on 47th Ave, to the point of Beginning.

STUDY AREA II CONTROL AREA U

Oak Street. - Osborn Road Osborn Road - Campbell Avenue

32nd Street - 40th Street 32nd Street - 40th Street

STUDY AREA III CONTROL AREA III

Missouri Avenue - Campbell Aven

Missouri Avenue - Campbell Avenue

19th Avenue - 27th Avenue 27t' Avenue – ;35~ Avenue

Figure: 1, shows the boundaries of the three study and control areas.

Study Area I contains two square miles and one of the City's larger concentrations of adult businesses. These locations are: 1702 E- McDowell Road; 2339 E- McDowell Road; 2438 E- McDowell Road, and 3155 E- McDowell Road.

The matching population characteristics of Study and Control Area I are listed below in Table II_ (Appendix III provides a more detailed process of how this data was derived.)

TABLE II

POPULATION CHARACTERISTICS OF STUDY AMD

CONTROL AREA I

	% Non-White	Building/ 1950-1970	Income	Media Age	Land Use Commercia	Resident
Study 1	24%	57%	$'7, 675	29	31%	69%
Control I	24%	93%	$9,885	26	38%	62%

. The only substantial population characteristic differences.in these two areas are in the age of homes built between 1950 and .1970. The concentrated adult business district has a little over half of its homes built after 1950. Whereas the control area has almost 93% of its housing built altar 1950.

Study Area II is one square mile on the east side of the city, and contains only one adult business within the square mile, at 3640 East Thomas Road. Its control area is to the north side at the Study Area.

The comparison of population characteristics are shown in Table R1-

TABLE III

POPULATION CHARACTERISTICS OF STUDY AND

CONTROL AREA II'

	Non-Wh te	Building/ 1950-1970	Income	Media Age	Land Use Commercial/Resident	
	74	88.0	$10,779	36	18%	82%
Study II Control II	4.4	92.5	$12,013	38	11%	89%

Study **Area III also contains one adult business** at 2103 W. Camelback Road. It is one square mile

located on the west side of the City. Its Control Area is directly to the west. The comparison of

population characteristics are shown below:

TABLE IV

POPULATION CHARACTERISTICS OF STUDY AND

CONTROL AREA III

	Non-Whi e	Building/ 1950-1970	Income	Media Age	Land Use Comrnerclal/	Resldent
Study 111	8.2	83%	$9,829	29	29%	71%
Control 111	8_8	93%	$10,559	28	28%	72%

TA a rE V

PROPERTY, VIOLENT, AND SEX CRIEES IN ADULT BUSINESS AREAS AND THEIR C-ONTROI. AREAS 197a

	STUDY I a	l(3000 *	CDNIiA0L I 911000 up.fr		STUDY II f VIDDO POE *		comoL II #/1000 op.*		STUDY I'1; # .411000 a.*		C08rROL III 411000 o	
PFppcrty Criaas	1614	130.05	476	Be I "a	753	107.5	363	62.2	78a	125.;	575	116.4
vialant Crima~	89	7.16	66	4.96	21	3.0	21	3.6	]9	6.19	3fi	7.3
'Sax OfIensaa	127_	10.22	12	.90	43	6.1	13	2.2	71	11.5	14	2.84
RA"	14	1.13	5	.38	5	. 71	1	.17	.5		2	.41
Indecaor Exposura	107	8.61	¢	.45	37	5.3	10	1.7	60	9.7		1_83
l.avd 1 1pltiYiall•	2	.16		0	1	.14	1	.17	4	.64	1	.20
chl rd llo)unt	4	.32	}	.08	D	0	1	.17	2	.32	2	.41

1'YUpcFty Crls+es - purgl'lry, lsrcany, Auto 'Shaft

vinlrpt trim.. - ilurdar, Rnpa, Robbery; &oz^ulr

:irx ullcuaz:s - uipai, inuccanc txpoxura, Law snu LAxcivtaua, Gn1id HDIANC

* 1978 knrlmntan of population at tha enumergtlon district lcval vara darivad by tha 1'Innntur Itepnrt~ant Rtsanreh Section.

CONCLUSIONS

Table V Property. Violent_ and Sex Crime in Selected Study Areas - 1978 is a tabulation of the number of crimes committed and the rate of chose crimes per 1,000 people living in each area_ This table is on the following page.

There appears to be a significantly greater difference between the study and control areas for sex climes than for either property or violent crimes_ The following table illustrates a comparison of the ratio of the crime rate off the study area to the control area:

TABLE VI

CRIME RATES AS A PERCENTAGE OF STUDY AREA TO CONTROL AREA

Study Area	Property Crime	Violent Crimes	Sex Crimes	Sex Crimes - (Less Indecent Exposure)
1	**147%**	144%	1135%	358%
II	173	83	277	160
III	108	86	**405**	**178**
Average	**143%**	104%	**606%**	**232%**

It is observed that there are about 40% more property crimes and about the same rate of violent crimes per 1,000 persons in the study Areas as compared to the Control Areas.

On the other hand there is an average of six times the sex crime rates in the Study Areas as compared with the Control Areas. Although the majority of sex

Table V Property. Violent and Sex Crimes in Selected Study Area-1978[1]

was derived from information provided by the City of Phoenix Police Department a Crime Anal unit and Planning and Research Bureau. The data from these two sections is compiled by adding the number type of crimes committed in police grids, which are quarter mile neighborhoods. Crimes are based on arrest records and do not reflect ultimate convictions. It has been assumed that conviction rates will be proportional to arrest rates

crimes are Indecent Exposure, the fourth column illustrates that the remainder of the sex crimes also exhibit a significantly higher rates in the study areas. A detective from the police department stated that most indecent exposure crimes were committed on adult business premises. An example of this finding is in Study Area 1. In that location, 89% of the reported indecent exposure crimes were committed at the addresses of adult businesses.

Where there is a concentration of adult businesses, such as in Study Area I, the difference in sex offense rates is most significant_ As stated earlier in the report this location has four adult businesses which are less than 1000 feet away from each other and less than 500 feet away from a residential district. There is also a higher number of sex offenses committed - 84 more crimes than in Study Area II, and 56 more crimes than in Study Area III. Similarly, when compared to its Control Area, the sex crime rate, per 1,000 residences is over 11 times as great in Study Area I. In the remaining study areas, which each contain a single adult business, their rates are four and almost three times as great.

APPENDIX I

ESTABLISI'-YIENT OF STUDY AREA BOUNDARIES

The process of defining the Study Area Boundaries was conducted in the following manner:

1. Locations of adult businesses in Phoenix were plotted.

2. The primary concentration of adult businesses an identified.

3. Preliminary decision was made to choose three study areas based on concentration and geographic isolation from each ocher.

4. Establishment of boundaries for each Study Area so that the adult businesses were approximately centered in each study area, and so that each study Area had an area of at. least one square mile, but not more than two square miles.

APPENDIX II

ESTABLISHMENT OF CONTROL AREA BOUNDARIES

The process of defining the Control Area boundaries was conducted in the following manner. -

I. Identification of potential control areas based on the absence of adult businesses.

2. Delineation of possible Control Areas equal: in size to the Study Areas.

3. Determinative of population and. land use characteristics of each possible control area using the same weighted proportionality method used for the Study Areas (See Appendix III for Population Characteristics and methodology).

4. Selection of a Control Area to match each Study Area as closely as possible in size, number

of residents, and_ all other selected characteristics listed in Appendix III-

APPENDIX III

METHODOLOGY OF WEIGHTING POPULATION CHARACTERISTICS OF STUDY AND CONTROL AREA

The characteristics used in weighting the similarities between the Study and control areas were:

1. **Percentage non-white population**
2. **Percentage of dwelling units built since 1950**
3. **Median income**
4. **Median age of the population**
5. **Percentage of acreage used residentially**

Information about the above characteristics was available at the Census Tract Level. Since the study Area boundaries did not always align with Census Tract boundaries, it was necessary to "average" Census Tract values to simulate the characteristics of the Study Areas_ The contribution of each Census Tract characteristic value was mathematically weighted, proportional to the amount of population chat the Census Tract contributed en the Study Area population_ Number 5, or the percentage of acreage used residentially, was attributed proportionally to the geographic area rather than the population.

The weighting of each Study and Control Area is tabulated in the following table: (see next page)

NEIGIII'ING OF POFULATIOH CIIARACTERISTIC3 IrY MSDS TRACT
FOR STUDY AND CONTROL ARF-kS

Conzua Tract	Z 11011-I1htCa Population	Z Duelling UnICx o111lt Since 1950	?Median Flaml.ly Incoma	Hedirn Age 11E Population	'. 0f Acrtage Used eaidsntially
Study I					
1115	e_3	67	,58,74 1	32	82
1116	14.2	54	8,191	30	80
1133	45.0	50	5,451	27	58
1135	25.0	61	B,990	27	57
Control I					
1100	13.0	98	10,992	24	88
1131	18	100	11,202	26	45
1122	25	90	B,751	27	74
1123	30	99	10,179	22	52
1126	3S	72	8,361	29	68
Study 11					
1114	7,9	85	11,119	33	79
1109	6,9	91	10,469	38	85
Control li					
1109	6.9	91	10,469	38	92
1083	2,3	94	13,345	38	85
study III					
1073	7.8	82	9,996	32	74
1090	8.7	83	9,609	26	68
ConlroI III					
1072	9.2	90	111,570	27	66
1091.	8.5	96	10,550	29	78

Table_I

Table 1. Cases of sexually transmitted diseases reported by state health depart,;,- civilian population: United States, 1941-1996*

	Syphilis								
	All Stages		Primary and Secondary		Early Latent		Late and Late Latent		
Year(1)	Cases	Rate	Cases	Rate	Cases	Rate	Cases	Rate	Cas7.i
1941	485,560	368.2	68,231	51.7	109,018	82.6	202,984	153.9	
1942	479,601	363.4	75,312	57.0	116,245	88.0	202,064	153.1	
1943	575,593	447.0	82,204	63.8	149,390	116.0	251,958	195.7	
1944	467,755	367.9	78,443	61.6	123,038	96.7	202,848	159.6	
1945	359,114	282.3	77,007	60.5	101,719	79.9	142,187	111.8	
1946	363,647	271.7	94,957	70.9	924	806	248	936	
1947	355,592	252.3	93,545	66.4	104,124	73.9	122,089	86.6	12,-.-
1948	314,313	218_2	68,174	47.3	90,598	62.9	123,312	85•6	13„r
1949	256,463	175.3	41,942	28.7	75,045	51.3	116,397-	79.5	
1950	217,558	146.0	23,939	16.7	59,256	39.7	113,569	70_2	
1951	174,924	116.1	14,485	9.6	43,316	28.7	98,311	65.2	
1952	167,762	110.2	10,449	6.9	36,454	24.0	105,238	69.1	
1953	573	959	637	56	295	183	870	638	7 t
1954	130,687	82.9	7,147	4.5	861	151	123	565	6 b
1955	122,392	76.2	6,454	4.0	20,054	125	526	538	
1956	130,201	78.7	6,392	3.9	19,783	12.0	95,097	57.5	
1957	123,758	73.5	6,576	3.9	17,796	10.6	91,309	54.2	
1958	113,884	66.4	7,176	4.2	16,556	9.7	83,027	48.4	
1959	120,824	69.2	9,799	5.6	17,025	9.8	86,740	49.7	
1960	122,538	68.8	16,145	9.1	18,017	10.1	81,798	45.9	
1961	124,658	68.8	19,851	11.0	19,486	10.8	79,304	43.8	
1962	126,245	68.7	21,067	11.5	19,585	10.7	79,533	43.3	
1963	124,137	66.6	22,251	11.9	18,235	9.8	78,076	41.9	
1964	114,325	60.4	22,969	12.1	17,781	9.4	68,629	36.3	
1965	112,842	58.9	23,338	12.2	17,458	9.1	67,317	35.1	
1966	105,159	54..4	21,414	11.1	15,950	8.2	63,541	32.9	
1967	102,581	52.5	21,053	10.8	15,554	8.0	61,975	31.7	
1968	96,271	48.8	19,019	9.6	15,150	7.7	58,564	29.7	
1969	92,162	46.3	19,130	9.6	15,402	7.7	54,587	27.4	
1970	91,382	45.3	21,982	10.9	16,311	8.1	50,348	24.9	
1971	95,997	46.9	23,783	11.6	19,417.	9.5	49,993	24.4	
1972	91,149	43.9	24,429	11.8	20,784	10.0	43,456	20._9	
1973	87,4_69	41.7	24,825	11.8	23,584	11.3	37,054	17.7	
1971	83,771	39.6	25,385	12.0	25,124	11.9	31,854	15.1	
1975	80,356	37.6	25,561	12.0	26,569	12.4-_	27,096	12.7	

Table 1

1976	71,761	33.2	23,731	11.0	25,363	11.7	21,905	10.1
1977	64,621	29.6	20,399	9.4	21,329	9.8	22,313	10.2
1978	64,875	29.4,	21,656	9.8	19,628	8.9	23,038	10.4
1979	67,049	30.1	24,874	11.2	20,459	9.2	21,301	9.6
1980	68,832	30.5	27,204	12.1	20,297	9.0	20,979	9.3
1981	72,799	32.0	31,266	13.7	21,033	9.2	20,168	8.9
1982	75,579	32.9	33,613	14.6	21,894	9.5	19,779	8.6
1983	74,637	32.1	32,698	14.1	23,738	10.2	17,896	7.7
1984	69,873	29.8	28,607	12.2	23,132	9.9	17,829	7.6
985	67,563	28.5	27,131	11.5	21,689	9.2	18,414	7.8
986	67,771	28.3	27,667	11.6	21,65 6	9.0	18,046	7.5
987	87,278	35.9	35,585	14.6	28,233	11.6	22,988	9.4
988	104,546	42.5	40,474	16.5	35,968	14.6	27,363	il.1
989	115,067	46.6	45,826	18.6	45,394	18.4	22,032	8.9
990	135,043	54.3	50,578	20.3	55,397	22.3	25,750	10.4
991	128,637	51.0	42,950	17.0	53,855	21.4	27,490	10.9
992	112,855	44.3	33,962	13.3	49,903	19.6	25,099	9.8
993	101,335	39.3	26,497	10.3	41,902	16.3	29,675	11.5
994	81,696	31_4	20,627	7.9	32,012	12.3	26,840	10.3
995	69,320	26.4	16,542	6.3	26,655	10.1	24,272	9.2
996	52,995	20.2	11,387	4.3	20,187	7.7	20,240	7.7

NR = No report

(1)For 1941-1946, data were reported for the federal fiscal year ending June 30 calendar year ending December 31. For 1941-1958, data for Alaska and Hawaii

(2) For 1941-1994, rates include all cases of congenitally acquired syphilis per per 100,000 population are reported. For rates of congenital syphilis <1 year of of congenital syphilis <1 year of age are obtained using case reporting form (CEI

NOTE: Adjustments to the number of cases reported from state health departments cases and the rates shown here supersede those published in previous reports. civilian cases. Georgia did not report Gonorrhea statistics for 1994 (see a- end l; areas of Guam, Puerto Rico and Virgin Islands.

WONDER | Centers for Disease Control and Prevention
WONDER User Support (cw-us acdcZoy)

Table 1

Table 1. Cases of sexually transmitted diseases reported by state health departT,' n ,-,vili an **populat** L7,41--d States, 1941-1995

	All Stages		Primary and Secondary		Early Latent		Late and Late Latent		Ccro
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1946	363,647	271.7	94,957	70.9	107,924	80.6	125,248	93.6	12,
1947	355,592	252.3	93,545	66.4	104,124	73.9	122,089	86.6	12,
1948	314,313	218.2	68,174	47.3	90,598	62.9	123,312	85_6	13,
1949	256,463	175.3	41,942	28.7	75,045	51.3	116,397	79.5	13
1950	217,558	146.0	23,939	16.7	59,256	39.7	113,569	70.2	13,
1951	174,924	116.1	14,485	9.6	43,316	28_7	98,311	65.2	
1952	167,762	110.2	10,449	6.9	36,454	24_0	105,238	69.1	
1953	148,573	95.9	8,637	5.6	28,295	18.3	98,870	63.8	
1954	130,687	82.9	7,147	4.5	23,861	15.1	89,123	56.5	
1955	122,392	76.-2	6,454	4.0	20,054	12.5	86,526	53.8	
1956	:1.30,201	78.7	6,392	3.9	19,783	12.0	95,097	57.5	
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1987	87,278	35.9	35,585	14.6	28,233	11.6	22,988	9.4
1988	104,546	42_5	40,474	16.5	35,968	14.6	27,363	11.1
1989	115,067	46.6	45,826	18.6	45,394	18.4	22,032	8.9
1990	135,043	54.3	50,578	20.3	55,397	22.3	25,750	10.4
1991	128,637	51.0	42,950	17.0	53,855			
1992	112,816	44.2	33,962	13.3	49,903			
1993	101,333	39.3	26,496	10.3	41,902			
1994	81,696	31.4	20,627	7.9	32,012			
1995	68,953	26.2	16,500	6.3	26,604			

= No report

(1)For 1941-1946, data were reported for the federal fiscal year ending June 30 calendar year ending December 31. For 1941-1958, data for Alaska and Hawaii

(2)For 1941-1994, rates include all cases of congenitally acquired syphilis per per 100,000 population are reported. For rates of congenital syphilis <1 of congenital syphilis <1 year of age per 100,000 live births are obtained

NOTE: Adjustments to the number of cases reported from state health departments of cases and the rates shown here supersede those published in previous reports with civilian cases. Georgia has been excluded from Gonorrhea numbers for 1994

A REPORT PREPARED Bi' CITY OF *BEAUMONTT, TEXAS*

CITY OF BEAUMONT, TEXAS

TO: Planning Comm-ission and City Council

FROM: Planning Department

SUBJECT: Regulation of Adult Uses, Revised September 14, 1982

Issues and Analysis

At present, the Zoning Ordinance of the City of B eaumont regulates certain adult uses by establishing a set of "special conditions" that must be net'before such uses may be approved. By adult uses, the ordinance refers to "adult bookstores," " adult motion picture theaters," and other adult uses such as Massage parlors or nude modeling or photography studios_ The definition of an adult use is tied to situations where minors, by virtue of age, are excluded from the premises. This approach was used to eliminate the need to make individual subjective judgements and to take advantage of Texas Statutes concerning the sale, distribution or display of harmful material to minors. The special conditions which must be met before an adult "use"- can be permitted are:

1) An adult use shall not be located within five hundred (500) feet of the district boundary line of any residential zoning district.

2) An adult use shall not be established or expanded within three hundred (300) feet of any other adult bookstore, adult theater, bar, pool hall, or liquor store.

3) **An adult use shall not be established or expanded within one thousand (1000) feet of the property line of a church, school, public park or other recreational facility-where minors congregate.**

unfortunately, these special conditions do not apply to eating and drinking places which offer live entertainment fat would normally be considered as an adult use. It is the position of the planing staff

. that eating or drinking places which have entertainment such at exotic dancers, strippers, go-go girls, and other similar activities from which minors are excluded by virtue of age under the laws of Texas unless accompanied by a consenting parent; guardian or spouse should be considered and classified as adult uses. This should necessitate amending the zoning ordinance.

Currently, all adult uses recognized in the zoning ordinance are allowed in the General Commercial - Multiple Dwelling Districts (G·C-MD) only with a specific use permit. They are permitted in the C-1W, LI_ and Hl Districts as a use of right. If and only if all of the following conditions are found then the City Council Is rewired to Issue a specific use permit for adult uses in a GC-!M9 District:

1) That the specific use will be compatible with and not injurious to the use and enjoyment of other property, nor significantly diminish or impair property values within vicinity,

2) That the establishment of the specific use will not impede the normal and orderly development and improvement of surrounding vacant property;

3) That adequate utilities, access roads, drainage and other necessary supporting facilities have been or will be provided;

4) The design, location and arrangement of all driveways and parking Spaces provides for the safe and convenient movement of vehicular and pedestrian traffic without adversely affecting the general public or adjacent developments;

5) That adequate nuisance prevention Measures have been or will be taken to prevent or control offensive odor, fumes, dust, noise and vibration;

6) That directional lighting will be provided so as not to disturb or adversely affect neighboring properties,

7) That there are sufficient landscaping and screening to insure harmony and compatibility with adjacent property; and

8) That the proposed use is in accordance,with the comprehensive plan.

From a planning perspective, the key conditions to the analysis of a request for a specific use permit ire conditions #1 and #2. As a general rule, uses which are permitted in a zoning district only with a specific use permit have unusual nuisance characteristics which oflen are incompatible or injurious to the uses that are permitted as a right in the same zoning district. If unregulated, these incompatible uses may significantly diminish or impair area property values and impede the normal and orderly development of surrounding areas.

The requirement that adult uses rust qualify for a specific use permit in a GC MD District is justified on the basis of local analysis and reference to the studies on the subject prepared by the City Development of Kansas City Missouri., the Planning Department of the City of Amarillo, the City of Detroit, and the Planning Advisory Service of the American Planning Association.

The City of Detroit adopted adult use regulations in 1972 as part of an "Anti-Skid Row Ordinance" that prohibited locating adult uses within 500--feet of a residential area or within 1000 feet of any two other "regulated" uses. The term "regulated uses" applied to 10 different kinds of establishments including adult theaters, adult bookstores, cabarets, bars, taxi dance halls and hotels. Detroit subsequently amended its ordinance as a result of a District Court ruling by prohibiting the location of adult uses within 500-feet of a residential 2omng district instead of any residential area.

Adult enntertainment establishments were added to the "Anti-Skid Row Ordinance" by the City of Detroit because of evidence of the adverse socioeconomic and blighting impact that such uses have_

"That evidence consisted of reports and affidavits from sociologists and urban planning experts, as well as some laymen, on the cycle of decay that had been started in areas of other cities, and that could be expected In Detroit, from the influx and concentration of such establishments." 1

In Texas, the Planning Department of the City of Amarillo has prepared and published a study entitled "A Report on Zoning and Other Methods of Regulating Adult Entertainment Uses in Amarillo." The essence of the report has that adult entertainment uses have impacts upon surrounding land uses that are distinguished from other businesses permitted in the same zoning districts. The following are two of the causal factors identified in their analysis of adult entertainment uses_

1) The Amarillo Police Department's statistical survey of street crime in the vicinity of adult-only

8) That the proposed use is in accordance,,with the comprehensive plan.

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1) The Anla.i"illo Police Department's statistical survey of street crime in the vicinity of adult-only

business Indicates that crime rates are considerably above the City average immediately surrounding the adult-only businesses analyzed.

2) Concentrations of these adult-only activities have detrimental effects upon surrounding residential and commercial activities. These effects are caused by (a) the noise, lighting and traffc generated by the pedestrian and vehicular traffic frequenting these businesses whose primary hours of operation are from late evening to late night, (b) the increased opportunity for "street crimes" in areas with high pedestrian traffic, and (c) the tendency to avoid areas where adult businesses (especially pornographic) are established. This avoidance and other factors can lead to the deterioration of surrounding commercial and residential activities.2

The analysis of the adverse impact of adult entertainment uses provided for the City of Amarillo is consistent with local experiences here in Beaurnont. The local consequences of the concentration of adult entertainment uses were clearly illustrated in the "Commercial Revitalization Plan for the Charlton-Pollard Neighborhood" which was prepared by the Planning Department in May of 1981. This plan was prepared as a "demonstration project" under a grant from the Economic Development Administration and was developed to be used as a model or prototype far the revitalization of other areas that have experienced commercial deterioration, neglect and disinvestment. The major points of the plan which have bearing on this report are as follows:

-The concentration of bars, lounges, and package stores on Irving Street represents a semi-developed adult entertainment zone. Adult entertainment uses tend to have a "skid-row effect" on adjoining properties and, when concentrated, often result In deteriorating residential and commercial property values, higher crime rates and depressed neighborhood living conditions.

-Between 1970 and 1980 the total number of businesses located on Irving declined from 23 to 19. At the same time the number of package stores and lounges increased from 6 to 9. Neighborhood commercial uses such as washatenas, restaurants, and grocery stores left the area and were partially replaced by lounges, body shops and' car washes.

- The character of commercial development along Irving has changed in recent years from neighborhood commercial to highway or nuisance commercial with a high degree of incompatibility-

- The high incidence of lounges and package stores on Irving actually discourages the retention or new development of neighborhood commercial uses and is not conducive to neighborhood commercial revitalization. "3

The plan described in detail the downhill economic decline in this neighborhood which was caused by the presence and concentration of adult entertainment uses. Neighborhood convenience commercial establishments which were needed to meet the market demands of the residents in the area were driven away by the growing presence of these incompatible uses. Many residents in the area who were former shoppers testified that they and their children were threatened and verbally abused by the customers of the various adult entertainment uses and they feared far their safety and well-being. This e~dstence is consistent with the evidence used by the City of Detroit in deciding to disperse and regulate the locational aspects of adult entertainment uses..This local experience also was the basis for the recommendation by the Planning Department that...

- The adult nuisance uses in the area which are not compatible with either residential or convenience commercial development and which diminish the chances for local economic revitalization should be amortized out and removed at the earliest opportunity_

The Police Department of the City of Beaumont has concluded that adult uses such as bars, lounges or taverns, and especially those featuring such sexually-oriented activities as exotic dancers and go-go girls, are the frequent scene of illegal sexual activities such as prostitution and the sale and use of narcotics_ Criminal activity in an area with adult uses is above average and is often attributable to the need of drug users to obtain money to finance the purchase of narcotics. Crimes against persons, such as mugging, are also above average in such areas_

The bunching or grouping of adult uses has an even greater adverse impact_ The character of the area attracts a distinct class of people and a criminal element_ It results in a reinforcing multiplier effect on criminal behavior and leads to a higher incidence of crime.

The preservation of residential neighborhoods and business districts against the deteriorating influence of crime and blight ranks among the highest functions that city dwellers expect its planners, commissioners and elected officials to perform. Current zoning regulations in Beaumont are not adequate to control the adverse impact of sexually oriented adult uses on surrounding residential areas or to prevent commercial deterioration and blight_

In deciding what additional mi=_um regulations of adult uses are needed to protect the residents of the City of Beaumont, it is significant to note the recent efforts of the City of Galveston to regulate adult uses. The City of Galveston permits adult motion picture theaters and adult book stores in commercial and industrial zoning districts but only with a specific use permit_ In addition, these adult

uses are not permitted within 500 feet of any residential zoning district or within 1000 feet of the property line of a church, school public park or recreational facility where minors congregate. The legal validity of the Galveston Ordinance which has some similarities with the Beaumont Zoning Ordinance was upheld in District Court_ However, upon subsequent appeal, the decision of the District Court was reversed. It was the opinion of the Fifth Circuit of the United States Court of Appeals that the Galveston Ordinance went too far in that, under the guise of regulation, it banned theaters. from showing motion pictures for adult audiences. s The decision of the Fifth Circuit Court is a clear warning to local governments that they cannot adopt regulations which have the affect of banning adult uses.

Summation and Recommendations

There is clear, and convincing documented evidence that adult entertainment uses, because of their very nature, have serious objectionable operational characteristics, particularly when several of them are concentrated, that produce or result in a deleterious effect upon adjacent areas and the surrounding neighborhood. Special regulation of these uses is necessary to ensure that these adverse affects are minimized and controlled so as not to contribute to the blighting or downgrading of adjacent property and the surrounding neighborhood.

At present, Section 30-33.B.2) of the Beaumont Zoning Ordinance establishes special conditions for adult bookstores, adult motion picture theaters and other adult uses such as massage parlors, nude modeling of photography studios. The planning staff recommends that these special conditions should also be applied to eating or drinking places which offer live entertainment from which minors are excluded under the laws of Texas unless accompanied by a consenting parent, guardian or spouse.

In addition, the planning staff recommends that a specific use permit should be required for all adult entertainment uses in the GC-NID District_ 7n particular Section 30-33.B.2) would be amended by adding the following condition:

d) Because adult uses generally have unusual nuisance characteristics which can be incompatible and injurious to other commercial or residential uses and which may significantly diminish or impair area property values and impede the normal and orderly development. of surrounding areas, a specific use permit shall be required when the proposed use is to be located in a GC iD, General Commercial - Multiple Family Dwelling district_

The planning start would also recommend that condition "c" in Section 30-33.B.2 which prohibits an adult use being established or expanded within 1000 feet of the property line of a church, school, public park or other recreational facility where minors congregate be reduced to 750. The reduction is recommended after consultation with the Legal Department concerning the impact of the decision of the Fifth Circuit Appeal Court on the Galveston Zoning Ordinance. The planning staff has prepared a series of maps which will be presented at the public hearing which demonstrate that with this proposed reduction in separation between uses that there are numerous commercially viable locations for adult entertainment uses. These text amendments do not represent an attempt to ban adult entertainment uses from the City of Beaumont.

FOOTNOTES

'Young v. American Mini Theaters, Inc., 96S.Ct. 2440 (1976)

2 "A Report on Zoning and Other Methods of Regulating Adult Entertainment in Amarillo". Planning Department - City of Amarillo, Texas (1977), pp. 14-15.

3 "Commercial Revitalization Plan for the Charlton-Pollard Neighborhood," Planning Department - City Of Beaumont, Texas (1981)-

4„ Memo on Neighborhood Commercial Revitalization Plan for the CharltonPollard Neighborhood," Planning Department - City of Beaumont (June 23 . 1982).

'. Basiardines v. City of Galveston- 682 F.2d 1203 (1982).

MEMORANDUM

DATZ: Xay 1, 1990.

To: MX, William call
city Prosecutor

YRnX: Michael S. Lavezanb.
Assistant clue- of Pot c-e
Invcstigat.~va Sar~ricas
Ext. 44S 0

SUW$CT3 ADULT :TI"ERT.s_I3 EN'r CRDXNXN=

Per your request, the following information descri}aes some of the events and activities that were occurring in adult entsartainment backstores and establishments that clearly denarzded the need for a stronger ordinance.

HACIGROUND

In late 1985, the Policz Departm2rit re<~i7Qd numerous ccmplaintzs of. illegal sexual activity, and unvanitary conditions Occurring in many of the adult enteztainment bookstores and establishaents. Initial reports indicated that sexual activity was occurring on the premises between customers and prostitutes, customers and the entertainers and between the customers themxelve:%~ Through covert invastigatian.s it was soon discovered that many of these allegations were in fact tx·ua.

Investigating cfficerr found that many of the dancers were gzostitutxs who were o=faring private. shows adhere customers could, far a price, absrxr~r2 them performing live sex acts. Qns of these acts was the ,double long" show. This show consisted of two females using a double bQaded dildo simultanacusly.' In a similar act dancers would perform oral sex on eaah other. Many times the dancers would require customers ;.0 expose themselves before they would perfa--=. At several of the husinasses, customers vere allowed inside the booths with the dancer and aware encouraged to undress and masturbate. For a little more money, the dancers would help the customer snasturbata. Nearly all of the dancers engaged in sexually explicit ccnverzationz with the customers, For the right price cz:stcmers would be allowed to touch t`-Ze dancer in every place tbat bikini panties chid not cover and if enough money was paid the customers would be- allowed to insert heir fingers into the vaeina

of the dancer. Undez cnver offlcErs also learned that custo tern could hire the dancers to engage in acts of. prostituticn.- Confidential sources indicated that, in some instances, these acts actually occurred ere the premises With the knowledge of the manaaQment.

Investigating officers also discovered that underage females were being hired tc dance nude. The youngest_ parson known to have been Varkirna in one of these businesset was a fifteen year old female. The business that she was working at required that she dance several times an hour and perform what are known as spread shows_ In theses type of shows A female masturbat8s either zaanually or with a vibrator in front,of a customer, rn most cases these roinars sere in pcsaassion of false identification which they were assisted in obtaining by the older dancerm and, in one case, allegedly by the business manager.

"Glory hales" were discovered in the walls cf adjoining booths in some of the bookstores and adult entertainment estahlishncents. These holes gaze used by -tale custo=ers to facilitate sexual acts with the occupant of the neighboring booth. Additionally, certain back stores ware found to be frsquentad by homosexuals and it was not unusual to have -men standing around the booth areas attempting to pick each other up. It was also obvious to anyone who went into these businesses that there vas a problem with the sanitary conditions. Upon enta;ing the irieving booths, investigators often found puddles of semen an the floorz and/or hanging on the walls. If. the customer did use a tissue theme were also usually found on the floor of the booth and in soma cases in the hallwayr.

In order to verify the accuracy of their. observations, investigating officers collactad saMpl e<s on two saparata cccazions, Between April and Augurt of 1987, investigators collected 26 random samples at eight saparata adult entertainment bookstores and establishments. Of these 26 samples the T2D Crime Lab reported that 2j. (81-t) tasted positive for semen. T,he second callecticr. occurred between. October and December of 1988. This time investigators callectad 27 random zamplas at tare separate adult entertair=Qnt bookstores and establishments. Of these 27 samples, 26 (9-6-1) tested positive for se=en.

At virtually aver;r adult entQr`3inm$nt bookstore and establis ent ~~employees were arrestad for prostitution or obscene sex Shows.~~ oy theses businesses a nationally known pc:-n etar was seen on

stage in front of approximately twenty people inserting her tongue and finger into the vagina and anus of another gerfcrner. At another business, a dancer was arrested after she pgrz:crmed cralranal sax on another female. At the end of her shoo she blew air out of her vagina in order to makes nais,e. Az a result of arrangements that vara easily =ode at thest businesses, dancers were also arrested fc.: performing sex shows and other acts of prostitution at other locations.

NMZD YOR A BTRONQZR CRDIXANC°

During the time that we were conducting these criminal investigations, the Health Department began investigating the sanitary conditions in these burinQssas. The Health Department recognized, as we did, that many of the activities that. wary. occurring were made possible by the doors fln the boot.Ils. When it was sucgvsted that their remaval would substantially reduce the opportunity far people to. have anonymous sex, the Adult Entertainment Industry quickly joined farces with a common goal in mind. That goal was to keep the doors on the booths.

In order to demonstrate that a hsalth ordinance was not needed thase business-a3 began cleaning the booths and, in some instances, the entire prods". Whole businesses suddenly were painted and in zone cases remodeled. Signs started being displayed discouraging loitering and asking customers to places their tissues in trash cans. Thu Whole industry began changing dude to the fact that they were trying to convince th$ Health Department and Line public that they could police themsvlves and that the dears did not have to cams off. In an attempt to diffuse the cry for the removal of the doors the bottom par, of the doors were cwt off.

Shortly thsruafter, City Ordinance 7299 was ezzactnd which provided for the licensing of employees and established regulations regarding these operation and location of adult entertainment entQrpris-es. On November 1, 1989, Mr. Michael J. Bloom, attorney far several of the enterprises affected by the ordizzanca, filed a law suit in the United States District Ccu-t chall8nging th. z ordinance. Since then a series of meetings occurred between Mr. Bloom, the Police Denartment, and the City A7~tornaylm office to determ:{ne if comprcmis-. was possibls. As,a result, we found that a major issue of contanticn was whether the doors should toms of_ or be allowed to stay on. During an cr.-site Inspection of these booths :alt: ?4.r. -Bloom, he ad;7ised 123 t'jat.h4z clients position. was

The bottom of the door must be a **atinimum of 30 inches from** *the* floor, so that the occupant of the booth is visible irotn the vast down when seated.

Z. The booth can not be -modified nor can a chain be used that wi11 circumvent the intent of condition 41

We feel that this compromise answers the pz-vacy issues raised by *Mr. Bloom and his clients, as veil as, providing a datas-rznt effect against the type of* **behavior that 'we originally cited for the doors** coating off vtntirely. Additionally, 'ie believe that.the proposed **ordinance will also henef-it the businesses that it regulates because:**

1_Eatployee licensing obligates. the Policv **Department to conduct background investigations on all applicants. This will ultimately result in the aalection of better employees.**

If **the denial or rzvocation of a license is zeco=ended a h-Qaring is require-d ba:ferQ any action is taken.**

3. The presenca of partial doors should not reducQ business.

The presence of partial doors will assist the businesses in maintaining a cleaner environment and meoting the regulation set forth---in th+* ardinancs.

It~Yz for these ziasans and the haliat that the ordinance -rill not adverzely affect thasz busin$ss establishments that the Pclica Dapartment_recommQnda the ordinanc$ be adopted in its presant form.

Facts and Figures: Pornography

Pornography and the Economy

- In 1993, the pornography industry grew to the astronomical figure of eight to ten billion dolla. a. a year. This is more than Hollywood's domestic box office receipts and more than twice as much as major league baseball. (Federal Bureau of investigation, reported in Hancock, Sharo??: "Women Fight Back Against Abuse," *Citizen*, Focus On the Family,, p.S 20, 1993 7) Pornography is the third largest revenue for organized crime in the United States just behind drugs and gambling. (Federal Bureau of Investigation; reported in "Talking Points: Important Facts About Pornography, *Take Action ,11fanuaZ,* National Coalition for the Protection of Children and Families, p. 8.)
- 85% of revenue from pornographic magazines and videos goes into the pockets of or-anized crime, much of it untaxed. ("Outreach: Facts About Pornography," American Family Association.)
- In 1986, four areas with a concentration of sexually oriented business were studied in Austin, Texas. Sexually related crimes were found to be between 177% to 482% higher than the city'!'; average. In tracing 81 license plates at sexually oriented business, 44% were from outside Austin. (Adult businesses tend to attract outsiders; law enforcement in cities with sexually oriented business are often burdened with enforcing laws on non-residents, with the expense incurred by the city.) (National Law Center for Children and Families, 1997.)
- A 1979 study in Phoenix, Arizona, found that neighborhoods with a pornography business experienced 40% more property crime and 500% more sexual offense than similar neighborhoods without a pornography outlet. (U.S. Department of Justice, "Child Pomograph::~ Obscenity and Organized Crime," February 1988.)
- Some estimate that as many as 80% of video stores now_ rent pornography. Many "mom and pop" stores are drawing revenues from pornography in order to compete with the larger video.. chains. (CLEAN UP Project Survey, 1992-1993.)
- According to *Adult Video News,* a hard-core pornography industry magazine, adult video rentals increased from 75 million in 1985 to 490 million in 1992. The total climbed to 665 million in 1996, an all-time high. The United States is the world's leading producer of pornography, churning out about 150 new titles a week or about 8,000 titles a year. Most videos cost just a few thousand dollars to produce. (Schlosser, Eric, "Business of Pornography," U.S. *News & YVorld Report,* February 10, 1997.)
- There are now more outlets for hard-core pornography than there are McDonald's restaurants.: ("Pornography's Relationship to Sexual Violence and Exploitation," National Coalition for th Protection of Children & Families.)

Pornography and Rape

- Based on U.S. Census estimates of the number of adult women in America; one out of every .. eight adult women, or at least 12.1 million American women, has been or will be the victim o°, forcible rape in her lifetime. (National Victim Center, 1992, reported in "Pornography's Link f Rape, Crime and Child Molestation." National Coalition for the Protection of Children and Families.)
- In one study, 86% of rapists admitted to regular use of pornography, with 57% admitting actu - imitation of pornography scenes in commission of sex crimes. (Dr. William Marshall, Use of :: Sexually Explicit Stimuli by Rapists; Child Molesters and Non-Offenders, 25 Journal of Sex °' Research 267, 1988.)
- Rape has risen by 500% in the United States since in 1960, which is a higher rate than non-sexual crimes has increased. This increase directly parallels the increase in availability ar=,

the severity of pornography. At the. present time, a rape is reported every 46 seconds in the United States. (National Victim Center, reported in "Pornography as a Public Health and Safe= Issue, *Take Action Manual,* National Coalition for the Protection of Women and Families, p. 10.)

- One study showed that states with a high circulation rate of pornography had a higher rape ratd;~: than states with lower circulation rates. In 1983, Alaska and Nevada had the highest per capit. readership of pornography and the highest rape rate. (Baron and Straus, University of New Hampshire, "Sexual Stratification, Pornography, and Rape," 1984.)
- 82% of rape victims knew the person who assaulted them. (Cachman and Saltzman, *Violence Against Women: Estimates from the Redesigned Survey,* Bureau of Justice Statistics Special Report, August 1995, p. 3.)
- In a 1991 survey, 33% of high school boys said that they think they have the right to rape then:_':' date when she is drunk, 40% believe they have the right to rape after dating six months, and 60% think they can rape the girl they plan to marry. (Coalition Against Pornography, Kansas City, 1991 survey of high school boys, reported in "The Harm of Illegal Hard-Core.and Child' Pornography," National Coalition Against Pornography.)
- 33% of rape victims contemplate or-attempt suicide. (Kilpatrick et. Al., *Rape in America: A Report to the Nation,* April 23, 1992, p. 7.)

Pornography and Children

- The largest consumers of pornography are boys from ages 12 to 17. One in five boys and one in ten girls have had their first exposure to pornography by age 12. (Attorney General's Commission of Pornography, 1986.)
- At least 27% of girls and 16% of boys will be sexually abused before the age of 18. In most cases, the child will know the sex offender. Of the molesters of girls, 38% were relatives and 41 % were acquaintances. Of molesters of boys, 16% were relatives and 44% were acquaintances. (Finkelhor, et_ al., "Sexual Abuse in a national Survey of Adult Men and Women," *Child Abuse & Neglect,* (1990) Vol. 14 p. 19.)
- There are about four million child molesters in the United States, that is about twice the population of Arkansas. (U.S. Department of Justice, 1985.)
- Female adults who are sexually abused as children reported that their abuse lasted 7.6 years oli average and began at age six. (Roesler and Wind, "Telling the Secret: Adult Women Describe Their Disclosures of Incest," *Journal ofInterpersonal Violence* (1994) Vol- 9, No. 3: 327-238_:'
- No single characteristic of pedophilia is more pervasive that the obsession with child pornography. (Child Pornography and Pedophilia, Permanent Subcommittee on Investigation,(,, U.S. Senate, 1986, reported in "The Harm of Illegal Hard-Core and Child Pornography," National Coalition Against Pornography.)
- 87% of molesters of girls, and 77% of the molesters of boys admitted to regular use of hard-core pornography. (Dr. William Marshall, Use of Sexually Explicit Stimuli by Rapists, Child Molesters and Non-Offenders, 25 Journal of Sex Research 267, 1988.)
- U.S. Postal Inspectors have found that 80% of the child pornography collectors they investiga abuse children sexually. (NBC News, "Special Report: The Silent Shame," 1986.)
- The all-time most popular hard-core video series is "Taboo," whose primary theme is incest. *(Adult Video News.)*
- 80% of male survivors of childhood sexual abuse reported a history of substance abuse; 50% had suicidal thoughts, 23% attempted suicide, and almost 70% received psychological treatment. (Lisak, "The Psychological Impact of Sexual Abuse, Content Analysis of Interview:,; with Male Survivors," *Journal of Traumatic Stress,* Vol. 7, no. 4: 525-5^^-.8.)
- Sexually victimized children appear to have a nearly fourfold increased lifetime risk for any psychiatric disorder and at a threefold risk for substance abuse. (Finkelhor and

rUT71U,V1Up11y

Dzinba-Leatherman, "Victimization of Children," American Psychologist, March 1994, Vol. 49, No. 3, p. 181.)

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Strip Club Study
Kelly Holsopple

INTRODUCTION

The purpose of this paper is to investigate women's experiences in stripclubs and to describe the activities in stripclubs from the women's point of view. The format approach is collective story narrative with the author as part of the collective voice. The research was inspired by the author's experiences in stripping over the course of thirteen years. The author's intention is to examine the conditions of stripclubs by describing the fundamental way stripclubs are organized_ The description features bar activities focused on stripper-customer interactions; survey data on sexual violence in stripclubs; and women's thoughts on stripping.

THEORETIC4L FOUNDATION

Stripclubs are popularly promoted as providing harmless entertainment and as places where respectful men go to watch and talk to women (Reed 1997). Stripclub customers are described as normal men who use stripclubs to avoid adultery and therefor find a safe outlet for their sexual desires in balance with their marital commitments (Reed 1997)_ In contrast, stripclubs are criticized for being environments where men exercise their social, sexual, and economic authority over women who are dependent on them and as places where women are treated as things to perform sex acts and take commands from men (Ciriello 1993).

Stnpclubs are organized according to gender and reflect gender power dynamics in greater society. "Gendered spaces are social arenas in which a person's gender shapes the roles, statuses, and interpersonal dynamics and generates differential political and economic outcomes and interaction expectations and practices" (Ronai, Zsembik, and Feagin 1997:6). Stripclubs are more specifically organized according to gender inequality, which is perpetuated by gendered spaces and consequently sexualized (Ronal, et al 1997). The typical stripclub scenario displays young, nude or partially nude women for fully clothed male customers (Thompson and Haired 1992).

The entire analysis of stripclubs is located within the context of men's domination over women. When organizations are produced in the context of the structural relations of domination, control, and violence, they reproduce those relations (Hearn 1994)_ These organizations may also make explicit use of gendered forms of authority with unaccountable and unjustifiable authority belonging to men (Hearn I994). The stripclub elicits and requires direct expressions of male domination and control over women (Prewitt 1989).

In order to dominate or control and secure men's domestic, emotional and sexual service interests, male dominated institutions and individual men utilize violence (Hanmer 1989). Violence against women is identified as physical, sexual, emotional, verbal, and representational, but all violence from men against women should be understood as sexual violence (Hearn 1994). The concept of a continuum is useful when discussing sexual violence, especially in stripclubs_ Continuum is defined as a basic characteristic underlying many different events and as a series of elements or events that pass into one another (Kelly 1987). The common underlying element in stripclubs is that male customers, managers, staff, and owners use diverse methods of harassment, manipulation, exploitation, and abuse to control female strippers. .

LI'T'ERATURE REVIEW

Despite a substantial amount of research on the topic of strippers, stripping, and stripclubs, none focuses on sexual violence in stripclubs perpetrated against strippers. Instead the studies focus on sociological and psychological profiles of the women (Forsyth and Deshotels 1997; Peretti and O' Connor 1989; Raid, Epstein, and Benson 1994; McCaghy and Skipper 1970; Thompson and Harred 1992) and their strategies for interaction with customers

find out about stripping from girlfriends already in stripping, male associates, the media,- and some from prior involvement in prostitution. One woman told how she loitered in and around urban stripclubs to pick up customers when she was fifteen and how her pimp eventually drove her to small tower. strip bars because those bars admitted her and hired her. Someone else got involved in stripping through an escort service for bachelor parties. Another young woman who went to a gentlemen's club to pick up her friend recounted her recruitment as an eighteenyear-old. She waited at the bar, was served alcohol, and the owner asked to check her I.D. Instead of censuring her for drinking, he told her she would make $1000 per week and pressured her to enter the amateur contest that night_ She won the contest, $300, and worked there three weeks before being recruited into an escort service by a patron pimp.

In a typical hiring scenario women respond in person to a newspaper ad promising big money, flexible hours, no experience necessary. As an audition the club manager asks the applicants to perform on amateur night or bikini night, both of which are particularly popular with customers who hope to see girl-next-door types rather than seasoned strippers. The manager will make a job offer based on physical attributes and number of women already on the schedule. Clubs portray the job requirements as very flexible. Women are told that they will not be *forced* to do anything they do not want to do, but clubs overbook women so they are forced to compete with each other, often gradually engaging in more explicit activities in order to earn tips (Cooke 1987).

B. Working Conditions

Women in stripping are denied legal protection relating to the terms and conditions under which they earn their livings (Fischer 523). Most strippers are hired to work as independent contractors rather than employees. Most strippers are not paid a wage (Mattson 1995), therefor their income is totally dependent on their compliance with customer demands in order to earn tips. More often than not, the strippers have to pay for the privilege of working at a club (Cooke *1987;* Forsyth and Deshotels *1997;* Prewitt *1989).* The majority of clubs demand that women turn over 40 to 50 percent of their income for stage or couch rental and enforce a mandatory. tip out to bouncers and disc jockeys (Enck and Preston *1988;* Forsyth and Deshotels *1997)_* Usually a minimum shift quota is set and the women must turn over at least that quota amount. If a woman does not earn the quota and wants to continue working at the establishment, she owes the club and must pay off that shift's quota by adding it to the quota for the next shift she will work. The stnpclubs may also derive income from promotional novelty items, kickbacks, door cover charges, beverage sales, prostitution, and capricious fines imposed on the women. As independent contractors, strippers are not entitled to file discrimination claims, receive workers' compensation, or unemployment benefits (Fischer 1996, Mattson 1995). Club owners are free from tax obligations and tort liability. Owners pay no Social Security, no health insurance, and no sick pay. Some club owners require strippers to sign agreements indicating that they are working as independent contractors and many clubs require women to sign a waiver of their right to sue the club for any reason.

Although strippers are classified as independent contractors, the reality of their relationship to their supervisors is an employee-employer relationship. Regardless of the agreements claiming independent contractor status, clubs maintain enormous control over the women_ The club controls the schedule and hours, requires strippers to pay rental fees, tip support staff large amounts, and even sets the price of table dances and private dances_ Clubs have specific rules about costuming and even dictate the sequence of stripping and nudity. For example; by the middle of the first song the woman must remove her top, she must be entirely nude by the end of the second song, and must perform a nude floorshow. All this regardless of whether customers are tipping her or not. A club may further influence dancers' appearances by pressuring them to shave off all their pubic hair, maintain a year-long tan, or undergo surgery for

breast augmentation. At nude clubs, it is,common for the performers to be shaved clean, giving them an adolescent and even childlike appearance.

Clubs also exert significant control over the strippers' behavior during their shifts by regulating when women may use the bathroom and how many of them can be in the dressing room at one time. Some clubs do not provide seating in the dressing room and forbid smoking in that room, thus preventing strippers from taking a break. When a woman wants to sit down or smoke a cigarette, she must do so on the main floor with a customer. Clubs enforce these rules through fines (Cooke 1987; Enck and Preston 1988; Ronai 1992). Women are fined heavily by club management: $1 per minute for being late, as much as $100 for calling in sick, and other arbitrary amounts for "talking back" to customers or staff, using the telephone without permission, and touching stage minors. Women are fined for flashing, prostitution (Enck and Preston 1988), taking off their shoes, fighting with a customer, being late on stage, leaving the main floor before the DJ calls her off, not cashing in one dollar bills, profanity in music, being sick, not cleaning the dressing room, using baby oil on stage, dancing with her back to a customer (Enck and Preston 1988) and being touched by a customer.

Despite the stripclub.'s representation of a dancing job as flexible, strippers attest that their relationship with the club becomes all consuming and everything associated with being a stripper interferes with living a normal life. And despite the common perception that a woman can dance her way through school, many strippers report that their jobs take over their lives. Long and late hours, fatigue, drug and alcohol problems, and out of town bookings make it difficult to switch gears. Not only do the women spend a significant amount of their time in stripclubs, the activities and influences from the club environment permeate their personal lives and detrimentally effect their well-being. Although stripclubs are considered legal forms of entertainment, people unassociated with the industry are unaware of the emotional (Peretti and O'Connor 1989; Ronai 1992), verbal (Mattson 1995; Ronai 1992), physical (Boles and Garbin 1974), and sexual abuse (Ciriello 1993; Ronai 1992) inherent in the industry. Despite claims from management that customers are prohibited from touching the women, this rule is consistently violated (Enck and Preston 1988; Forsyth and Deshotels 1997; Ronai and Ellis 1989; Thompson and Harred 1992). Furthermore, stripping usually involves prostitution (Boles and Garbin 1974, Forsyth and Deshotels 1997, Prewitt 1989; Ronai and Ellis 1989; Thompson and Harrod 1992).

C. Stripper-Customer Interactions

Main Floor

Stripclub activities are offered in public spaces or private rooms or other isolated parts o£ clubs (Forsyth and Deshotels 1997). The typical stripclub scenario presents young, nude or partially nude women mingling with fully clothed male customers. They circulate through the crowd, encouraging men to buy liquor, drinking and talking with men, and soliciting and performing a variety of private dances (Prewitt 1989; Ronai and Ellis 1989). Women describe their role in the stnpclub as hostess, object, prostitute, therapist, and temporary girlfriend and say they are there to entertain and attract men and business for the owners.

Women who work at small strip joints say they can hang out, order in food, and play pool during their shifts. On the other hand, women who work at gentlemen's clubs have to hustle photographs and drinks and are required to sell promotional T-shirts, calendars, and videos. They can be mandated to sell the items with private dances. For example, the dancers buy T-shirts from the house mom for $8 and sell them for $15. So for $15, the customer receives a T-shirt and 2 $10 table dances. Strippers at gentlemen's clubs are further informed by management that they are not allowed to buy their own drinks, that they have to be sitting with customers, and can never turn down a drink, even when their drinks are full.

Stage

Women report dancing on stages as cheaply constructed by laying plywood on the benches of restaurant booths to stages covered with kitchen linoleum to wood parquet or marble stages in a few upscale clubs. Some stages are elevated runways so narrow that strippers say that cannot get away from customers on each side touching them, especially when they are kneeling down to accept a tip in the side of their g-strings/t-bars or when they have their backs turned. Stages can also be sunken pits with a rail around it and a bar for the customers' beverages. During a set, a stripper may do striptease, acrobatics, dance, walk, or squat to display her genitals. Generally the progression for striptease begins during the first song with the woman wearing a dress or costume covering her breasts and buttocks. Over the course of a set of 2 or 3 songs she will remove her bra and in nude clubs, her g-string/t-bar. Some clubs feature floorshows in which women crawl or move around on the floor posing in sexual positions and spread their legs at the customers' eye level. During a floorshow, a dancer changes her movements from upright to positions on her knees and squatting in a crabwalk in order to `flash' tipping customers. "Flashing" is pulling the g-stnng/t-bar aside, revealing the pubic area and/or the genitals_ Dancers describe this as "doing a show" for paying customers. Ordinarily, a dancer only positions herself in front of tipping patrons (Prewitt 145). Customers who fail to tip are ignored. Audience response can be expressed by clapping, hooting, barking, whistling, amount of money tipped, or complete silence depending upon time of day, state of inebriation, excitement over the musical selection, or the appearance and abilities of the stripper.

On stage, some women's thoughts wander, while others' focus on angry desperation_ "I *daydream about nothing in particular to pass_ the time of 12 minutes." "I'm thinking about how good l look in the mirrors and holy good I feel in dance movements." "I tell myself to smile." "I think about getting high and that I am making money to get high." "I am giving these guys every chance to be decent, so that I don't have to be afraid of them." "I am filled with disdain for the customers who do not tip, but sit and watch and direct you to do things for no money." "I think of how cheap these fuckers are, what bills I need to pay."*

Private Dance Activities

Private dances are usually performed in areas shielded from the larger club view (Forsyth and Deshotels 1997, Prewitt 1989). As a rule, the private dance involves one female dancer and one male customer. Private dances are situations where women are often forced into acts of prostitution in order to earn tips (Forsyth and Deshotels 1997; Prewitt 1989, Ronai and Ellis 1989). Men masturbate openly (Peretti and O'Connor 1989), get hand jobs (Forsyth and Deshotels 1997), and stick their fingers inside women (Ronai and Ellis 1989). Men with foot fetishes have been known to suck on dancers' toes.

A variety of private dances are promoted in strip clubs. Table dancing is performed on a low coffee table or on a small portable platform near the customer's seat. The woman's breasts and genitals are eye level to the customer. Couch dancing for a customer entails the dancer standing over him on the couch, dangling her breasts or bopping him in the face with her pubic area_ Lap dancing requires the woman to straddle the man's lap and grind against him until he ejaculates in his pants. A variation involves the woman dancing between his legs while he slides down in his chair so that the dancer's thighs are rubbing his crotch as she moves. Bed dancing is offered in a private room and requires a woman to lay on top of a fully clothed man and simulate sexual intercourse until he ejaculates. Shower dancing is offered in upscale clubs and allows a clothed patron to get into a shower stall with one or more women and massage their bodies with soap. Wall dancing requires a stripper to carry alcohol swabs to wash the customer's fingers before he inserts them into her vagina_ His back is stationary against the wall and she is pressed against him with one leg lifted. Peep shows feature simulated or actual acts directed by openly masturbating customers_ Customers sit in a private booth and view the women through a glass

window. Live *sex shows* **involve 2 or more individuals engaging in simulated or sexual activity performed behind glass or on a stage. 'Customers openly masturbate while watching the show from the audience or through an opening in a private booth.**

During private dances women are conscientious about their boundaries and safety. "I *don't -want him to touch me; but I am af-aid he will say something violent if I tell him `no':" "I was thinking about doingprostitution because that's when customers wouldproposition me." "I could only think about how bad these* guys *smell and try to hold my breath." "I spent the dance hyper vigilant to avoiding their hands, mouths, and crotches." "Y3Te were allowed to place towels on the gigs' laps, so it wasn't so bad." "I don't remember because it was so embarrassing."*

D. Dressing Room

Women describe a range of types and qualities of dressing rooms. Strippers are expected to change clothing in beer coolers, broom closets, and public restrooms. Some stripclub dressing rooms are nice with lights, mirrors, vanities, and chairs, and are equipped with lockers, and tanning beds. Other clubs have make-up mirrors but no chairs or ashtrays to prevent dancers from lingering. Women complain that too many dressing rooms are down isolated halls or in the basements of establishments and that they have to scream for help when customers intrude. Some are so damp or filthy that the women cannot take their shoes off. Other dressing rooms are so frigid that dancers carry small space heaters to and from work. The dressing rooms are used to change costumes, drink, do drugs, do hair and make-up, iron costumes, do homework, bitch about customers, avoid customers, talk about problems, hang out. In strip joints and rural bars, women lay on blankets or inside sleeping bags between sets and nap and read.

The greatest response to questions regarding preparation for work was "drink". Women drink while getting ready to go to work and they drink while doing their hair and make-up once in the dressing room. Women who work at nude juice bars that do not serve alcohol or at bars that do not allow women to buy their own drinks report that they stop at another bar on their way in and "get loaded". Between stage sets and private dances, women drink some more, clean themselves with washcloths or babywipes after performing on a dirty stage or being touched by a lot of men, apply deodorant, and perfume their breasts and genitals.

PART 2: **SURVEY DATA**

One hundred percent of the eighteen women in the survey report being physically abused in the stripclub. The physical abuse ranged from three to fifteen times with a mean of 7.7 occurrences over the course of their involvement in stripping. One hundred percent of the eighteen women in this study report sexual abuse in the stripclub. The sexual abuse ranged from two to nine occurrences with a mean of 4.4 occurrences over the course of their involvement in stripping. One hundred percent of the women report verbal harassment in the stripclub. The verbal abuse ranged from one to seven occurrences with a mean of 4.8 occurrences over the course of their involvement in stripping. One hundred percent of the women report being propositioned for prostitution_ Seventy eight percent of the women were stalked by someone associated with the stripclub with a range of one to seven incidents_ Sixty one percent of the women report that someone associated with the stripclub has attempted to sexually assault her with a range of one to eleven attempts. Not only do women suffer the abuse they experience, all of women in the survey witnessed these things happen to other strippers in the clubs. The overwhelming trend for violence against women in stripclubs was committed by customers of the establishments. Stripclub owners, managers, assistant managers, and the staff of bartenders; music programsmers or disc jockeys, bouncers, security guards, Eoorwalkers, doormen, and valet were signiEcantly less involved in violence against the women. According to the women in this study, almost all of the perpetrators suffered no consequence whatsoever for their actions.

Physical Abuse

Customers spit on women, spray beer, and flick cigarettes at them. Strippers are pelted with ice, coins, trash, condoms, room keys, pornography, and golf balls. Men pitched a live guinea pig and a dead squirrel at two women in the survey. Some women have been hit with cans and bottles thrown from the audience. Customers pull women's hair, yank them by the arm or ankle, rip their costumes, and try to pull their costumes off. Women are commonly bitten, licked, slapped, punched, and pinched.

Table 1 - Physical Abuse

Abusive Action	Ever (by men in stripclub)	At Least Once Every Day	At Least Once Every Week	At Least Once Every Month	At Least Once Every Year
Grabbed by arm	78	44 C 6 IM 11S	17 C 60 6M 11S	11 C 60 6M	6 M
Grabbed by ankle	56	28 C		6 C 6 M	11 C
Grabbed by waist	94	50 C 6 M 11 S	33 C 11 M 11 S	6 M	11 C
Bitten	56	6 C	11 C		11C
Licked	78	28 C	17 C	11 C 60 6 NI 11S	22 C
Slapped	39	6 C	11C		17 C
Hair Pulled	39	6 C	6 C	11 C	
Punched	72	6 C			
Pinched	72	17 C	17 C	6 C 6 M 6S	22 C 6S
Kicked	11	6 C			
Sit on	61	6C			28C
Pulled costume off	83	22 C		6 C 60 6 NI	22 C 6S
Ripped costume	44	6 C		6 C	17 C
Flicked cigarette	33	6 C	6 C		11 C
Sprayed beer	39	6 C	6 C	6 C	6 C
Threw ice	61	6 C	11 C	6 C	6 C
Threw coins	83	17 C	11 C	11 C 6S	28 C
Threw cans/;Masses	22	6 C			
Threw , arba	39	17 C	11 C		
Threw other	28	11 C			

N=18 Key: C = customers, 0 = owners, M = managers, S = staff

Sexual Abuse.

Stripclub customers frequently grab women's breasts, buttocks, and genitals. Customers o$en attempt and succeed at penetrating strippers vaginally and anally with their fingers, dollar bills, and bottles. Customers expose their penises, rub their penises on women, and masturbate in front of the women. Women in this study consistently' connected lap dances to the sexual abuse they suffered in the club. "That's *the* first *thing men try* to do *-when they get close to you and* always in a *lap dance."* Stripclub owners, managers, and staff also expect women to masturbate them and some have forced intercourse on strippers.

Table 2 - Sexual Abbse

Abusive Action	**Ever (by men in stripclub) (%)**	**At Least Once Every Day (%)**	**At Least Once Every Week (%)**	**At Least Once Every Month (%)**	**At Least Once Every Year (%)**
Grabbed breasts	94	28 C 6 NJ	17 C	17 C 6M	17 C 60
Grabbed buttocks	89	39 C	11 C	39 C 6 M 6S	6 0 6 S
Grabbed genitals	67	17 C		11 C 6M	17 C
Exposed penis to her	67	11 C	6 C	6 C 60 6M	33 C
Rubbed penis on her	78	39 C 6 M	22 C 60 6M 6S	6 C	22 C 60
Masturbated in **front of her**	78	33 C 6 M	11 C	28C	6 C

N=18 **Key: C = customers, O = owners, 1V1= managers, S = staff**

Table 3 - Sexual Abuse

Abusive Action	**Experienced Attempted Abuse %)**	**Experienced Successfully Completed Abuse**
Penetrate her vaginally with fingers	61 C 6 M	39
Penetrate her anall with fin ers	33 C	17
Penetrate her with object	33 C 60	11
Force her to masturbate him	28 C 60 6M	17
Force intercourse on her	17 C 60 6M	11

N=18 **Key:** C = **customers, O = owners, M = managers, S = staff**

Verbal Abuse

Customers, owners, managers, and staff alike engage in harassing namecalling. Women are continually called "cunt, "whore", "pussy", "slut", and "bitch". Women in this study charge that men in the stnpclub called them other demeaning or degrading names like ugly, looser; fat,

pregnant, boy, stupid, crack, slash, snatch, beaver, dog, dyke, lezzie, brown eye, hooters, junkie, crackhead, and shit.

Forty four percent of the women report that men associated with the stripclub have threatened to hurt them physically. These women report from three to 150 threats during their involvement in stripping_ Threats range from verbal threats of slaps, ass whippings, and rapes to physical postures of punching and backhand slapping. *"When I -wouldn't let a customer grab on me, he would call me a bitch and threaten to kick my ass or rape me." "When a customer grabs and the woman and the girl takes action, they threaten*

Table 4 Verbal Abuse - Namecalling

Abusive Action	Ever (by men in stripclub)	At Least Once Every Day	At Least Once Every Week	At Least Once Every Month	At Least Once Every Year
Called "cunt"	61	28 C 6M	6 C --	17 C	11 C 6M
Called "slut	61	28 C 6S	6 C	17 C 60 6 M 6S	11 C
Called "whore"	78	28 C 6S	6 C	17 C 60 6M 6S	22 C
Called "pussy"	72	39 C 6S	11 C	11 C	11 C
Called "bitch"	89 _	39C 6S	11 C 60 6M 6-S	6 C	22 C 6M
Called other	56	17 C	6 C	17 C 6M	6 C

N=18 **Key: C = customers, 0 = owners, M = managers, S = staff**

Stalking

Men associated with stnpclubs repeatedly attempt to contact the women against their wishes. Strippers are followed home and stalked by stripclub customers. Customers telephone, write letters, send gifts, and follow the women around against their wishes. Women recount stories of catching customers following them to fitness clubs, parks and lakes, day care centers, and even lesbian bars. They describe times when customers have broken into their homes and taken underwear, hairbrushes, and family photographs. Women say that other customers have used their jobs at the telephone company or within the criminal justice system to target the women. The women complain that customers also have followed them home masturbating while driving in the next lane. Women who travel the strip circuit to rural areas report that customers and stripclub owners, managers, and staff alike follow women from city to city and state to state. Furthermore, local men in small towns harass the visiting women by calling and knocking on the doors of the motel rooms and have been caught peeping in the windows of strippers' motel rooms.

Twelve percent of the women who reported being followed to their cars further reported that they were robbed (5.6 %), beaten (11.1%), threatened with a weapon (5.6%), verbally sexually harassed (66.7%), and sexually assaulted (16_7%) by customers. A customer who

claimed he was in love with the woman followed her to her car, called her a "fucking cunt" and strangled her hard enough to cause blood to squirt from her neck.

Table 5 - Stalking

Abusive Action	Ever (by men in stripclub)	Range of occurrences
Sent her letters against her wishes	28	3-100 times
Sent her i s against her wishes	22	2-100 times
Called her home against her wishes	39	2-360 times
Followed her home against her wishes	56	2-500 times
Followed her to her car against her wishes	67	12-500 times
Followed her around on her private time	28	1-150 times
Followed her from club to club, city, and state	28	6-360 times
Other	28	1-360 times

Sexual Exploitation

Only a minority of women report that they were asked to perform sexual acts on men associated with the stripclub in order to return to work (1 I% by owners); as a condition of being hired (1 I % by managers, 11 % by owners); in order to continue working there (17% by owners); in order to get a better schedule (6% by owners); or for drugs (17% by customers, I I% by managers, 22% by owners, 11 % by staff).

A majority of the women, however, report they were asked to perform sexual acts on men associated with the stnpclub for money (100% by customers, 6% by managers, 17% by owners, 11% by staff). Customers and pimps constantly proposition women (Boles and Garbin 1974; Forsyth and Deshotels 1997, Ronai 1992, Ronai and Ellis 1989). Fourteen (78%) women from the survey report they are propositioned for prostitution every day by customers, three (17%) every week, one (6 %) every year. Women comment that customers ask them "Do you date?" all night long. "Infinite.._ too many too count." Women say that prostitution is influenced and suggested by management. One woman new to stripping was dumbfounded at how little money she was making taking her clothes off, so she asked the manager for his advice on increasing tips_ He suggested turning tricks and said he could help her set up dates. Management sets up tricks, says it is good for business, and obligates women to turn over money from prostitution to the club. Women say prostitution is promoted even though owners tell women they would be punished if they turn tricks_ Some stripclubs are notorious for promoting prostitution. "You *have* to *be a `ho* to Yvork *there"*.

Women disclosed that they were recruited into prostitution through stripping. Although the strip industry markets stripping as something other than prostitution, some women consider prostitution an extension of stripping and stripping a form of prostitution_ Pimps season women first with stripping and then turn them out into brothels or escort services for more money. Tricks; sugar daddies, pimps, and drug dealers in the stripclub seek to engage women in prostitution. Another young woman said that soon after she became involved in stripping, a pimp who posed as a customer in the stripclub manipulated her into an escort service by promising that she could make more money in less time simply by accompanying businessmen to dinner. She

agreed in order to feed her crack addiction and as her addiction increased she slid down from gentlemen's clubs to escort service to brothel to street and crack house prostitution.

Not only are women in stripping pressured by customers to perform sexual acts on them, owners, managers, and staff pressure the women to perform sexual acts on them, their relatives and associates, on vice officers and police officers. Women explain the pressure could range from being coerced into dancing for the intended with an expectation to put on a real good show with special treatment, extra time, and sexual contact, to engaging in prostitution. Strippers, like other subordinates in worker-management relationships, respond with obedience to directives from management and others with authority (McMahon 1989).

Table 6 -Sexual Exploitation

Recipient	Pressured by customer	Pressured by owner	Pressured by manager	Pressured by staff	Pressured by vice officer (%)	Pressured by police officer (%)
Owner's friend		39				
Owner's relative		11				
Owner's business associate		33				
Nlanager's friend			17			
Manager's relative			6			
Manager's business associate			11			
Customer	72	22	17	6		
Vice officer		17	11	6	11	
Police officer		17	11	6		22

N=18

PART 3: WOMEN'S THOUGHTS ON STRIPPING

Women in stripping are overwhelmingly motivated by the promise of wealth or a will to survive (McCaghy and Skipper 1970; Ronai 1992; Thompson and Haired 1992). Stripclub owners, managers, pimps and the media portray stripping as a glamorous way to earn big money fast and use this strategy to lure young women into stripping_ Women in this study report the best part of stripping to be the money. *"The only part that keeps me there is the money".* At the same time, women are trapped and disappointed by the money. *"I hated it... but glad l had it at the time for the income." "Women are reduced to exposing genitals for $1 bills." "It pays the bills... if we could pay bills another way we would." "The bar owners and management are exploitative, they steal money." "It's hard to get out because of the money."* With respect to the money strippers seek to earn, they in turn must pay out fines, kickbacks, 100% of their social security insurance and taxes, travel and hotel expenses, and the costs for costumes, tanning, and plastic surgery. Women report that they have to haye the right attitude to make money (Ronai 1992). This ordinarily was described as being drunk high or numb (Forsyth and Deshotels 1997). Others feel it required tolerance. *'-Yhe ability to ignore customers for just being there."* Most women say it is easier when the men are tipping regularly and when they do not have to interact with men intimately. Women acknowledge that strippers measure their worth according

to the amount of tips they earn and that they want attention, acceptance, and approval from the customers because it brings money (Futterman 1992).

Women in stripping feel it doesn't take much skill to be a stripper (Forsyth and Deshotels 1997;_ McCaghy and Skipper 1970). *`It would be nice to say women need dance talent but it's not true." "Tits, pussy, and blonde hair is all it takes."* Instead they referred to dissociation to abuse. *"It takes a willingness to do it ... anybody can do it." "It takes somebody who can shut themselves off and be really fake." "-.-the ability to take a lot of abuse_"* They state a stripper needs a good head on her shoulders, an open mind, guts, strength, and survival skills. They believe they need abuse counseling, a lifeline from the "outside world", and education about what's really going on_ *"Need to know they have options, that they aren't always going to be a 'ho'."* Women in stripping want a union to protect strippers, decent working conditions, fair treatment, and an end to cruelty by management. Lastly, strippers think that women and girls don't know what they are getting into when they first start dancing. *"It's really harmful because it is so benign, so accepted." "Girls think they -will have fun dancing and get paid, they have no idea they have to fight men's hands, and dicks, and tong-lies, and then fight for every fucking dollar bill you earn." "It was a lot different than I originally thought."*

The women in this study condemn the men associated with stripping and the impact stripping has on them as the worst parts of stripping. Women do not like the way customers treat them (Thompson and Harred 1992). Furthermore they say they do not like talking to customers, asking men for money, and resent having to have to deal with them at all_ They find customers irritating because they are drunk and have negative attitudes towards women. Women characterize customers as scum, psycho mama'"s boys, rapists and child molesters, old perverted men, idiots, assholes, and pigs. Strippers are largely disgusted by customers and describe them as pitiful and pathetic, stupid and ignorant, sick, controlling and abusive. *"They smell so sour, they breathe very heavy and kind of -wheeze -when women are near." "They are weak abusers who have to subordinate women and girls to feel like a man." "I see my dad They're old enough to be my father." "Yuck. I am repulsed by the sight, sound, smell, and touch of them." "I'm embarrassed for them."-* The women offer insightful evaluations of stripclub customers. They say that these men do not know how to communicate. Moreover, they perceive that customers are out of control, have power and abuse problems, and will do anything to degrade women because they hate women. Strippers also state that customers want a free show and think women are cheap. In contrast, a few women positively perceived some customers as nice and added they are thankful to those who tip well.

Women in this study undoubtedly denounce stripclub owners as pimps and "glorified pimps" and maintain that owners misuse power and are sick. The women also label managers as pimps citing that they mistreat women, that they make every attempt to take money from the women, and that they are sick because they are affiliated with the industry and know the harm they do. Strippers accuse managers of being threatened and jealous of the money women make and that women are just a dollar to management. Finally, women refer to staff music programmers, doormen, bartenders,' bouncers, floorwalkers, and valet as wanna-be pimps because they always want to be tipped. The women see staff as derelicts who can't get a job anywhere else and who think they are cool for working in a stripclub. Strippers perceive staff as creepy and disrespectful and as "looky-lous" who just want to look at naked women for free_ Women criticize staff by pointing out that at least owners are making big money. Few women had positive responses, but those that did felt they got along well with staff and had no real hard feelings.

Clearly strippers' attitudes about men are impacted by the activities in stripclubs. Women say they don't like men and men are worthless. Likewise women believe stripping inhibits their ability to be involved in a normal relationship. *"It affiects your lovelife and feelings about men."*

"Nice boyfriends can't handle it." "Top large a percentage of men fit into category of customer and l do not want to hate men_"

Women in this study expressed mostly negativism regarding their experiences in stripping with themes of abuse, deception, drugs, and low self-esteem. "I *Yvould never do it again. It was degrading." "No doubt that it _led me to prostitution and my pimp." "Taught me how to control men and gave me a false illusion of control. Takes a long time to, regain sell control." "Don't do it. Once you do it it is hard to get out_" "If there is any way you can avoid it..-it is hard to get out once you start." "I wouldn't recommend it. It is too stressful artd I am always comparing myself to other women on the outside." "I wish I had put more money away and had more education by the time I quit. Ijust didn't know it wasn't about success for us, it was about using us. " "I spent my entire young adulthood being abused. It is hard to undo all this." "Drugs destroyed beautiful, healthy women." "I blame the men... it is all had I didn't think highly of myself while I was in stripping, but I am glad l got out of it by standing up for myself."' "It is hard to view myself for who I am and my accomplishments rather than how I look and attention from men. I got this from stripping."*

Some women expressed fascination with stripping. *"It has been an experience of a lifetime. I've seen everything... some crazy shit." "I have never seen things like I have seen in stripping It is weird." Still* **others felt positively about their experience.** "If *it wasn't for the money I made at it, I would have nothing right now. "It has its ups and downs, but I always enjoy the music and dancing and the attention." "I have been extremely fortunate as far as what happened in stripping. It provides a good life, but I look at it as a job, work day shifts and ivork a straight job at the same time."* A **few women also determined positive outcomes for themselves from their involvement in stripping_** *"It served its purpose as a group for a sense of belonging." "Helped me recognize what is right and wrong, and what is right and wrong for me." "After surviving it Ifelt strong." "Stripping distracted me from my personal problems that led me into stripping... no way could l have held normal job with the problems* I *had "*

Above all, women in stripping reject the- popular image of stripping and clarify the common misperceptions about stripclubs: *"That no one touches you, women enjoy it, and it's okay.for men to go there." "That women actually get to wear a costume and actually get to dance." "That we get sexually aroused doing this." "That men are thereto have harmless fun, when they are really there* to *abuse women." "That it is a big party and that the women want to be there for some reason other than money, like sex or to meet men or because they are nudists or exhibitionists." "That you are doing things you want to be doing." "That they are not degrading us because girls always are justifying it with college." "That it is not prostitution." "That it is glamorous, fast money, easy work, way to get ahead."*

DISCUSSIONS AND CONCLUSIONS

Men associated with stripclubs use force and coercion to establish sexual contact with women in stripping, proposition women for prostitution, intentionally, inflict bodily harm upon the women, and expose themselves to the women. These actions are prohibited by law, yet when these crimes are committed against women in stripclubs, the general attitude that strippers deserve what they get prevails. Women's complaints of abuse are met with contempt and are dismissed by owners, managers; and staff. Women are customarily told to ignore abuse and have been rebuffed with "Go bend over and do your job" and "You have to expect a certain amount of that_" In the case of women in stripping, enduring sexual violence is part of her job description Women in stripping are expected to endure these abuses, degradations, and humiliations with a smile and a "Thank You".

The degree of sexual violence perpetrated against strippers explodes the myths about stripping as harmless entertainment. The verbal harassment; physical and sexual abuse, and financial exploitation women suffer in stripclubs is unparalleled in any other legitimate

workplace. Women in stripping are subject to actions that would be perceived as assaultive or a least unwanted in any other context or were directed against other women. Stripclubs allow men to use and abuse women in a manner that is not tolerated in any other business_

The organization and conditions of stripclubs not only produce and reproduce gender inequality, but facilitate and normalize men's violence against women. Sexual violence has been normalized, institutionalized, and legalized'in the stripclub industry as socially sanctioned male behavior. Stripclubs and the men associated with stripclubs have turned acts of violence into entertainment and tied male sexual pleasure to victimizing and exploiting. Stripclubs are structured according to male domination and control, and are inherently violent. It is impossible to set up stripclubs without sexual violence and that is reason to challenge the legitimacy of stripclubs.

Future research should address men associated with stripclubs and their views on women in stripping and stripclub activities. An exploration of why stripclubs exist, an explanation of why men go to stripclubs, and a description of how stripclub owners and government policy establish the tone and culture of stripclubs are also in order. Future research should explore gender role socialization and female strippers' perceptions of sexual harassment and violence. The definition of sexual harassment should be tested with strippers to learn if they perceive actions differently than women in other workplaces. In turn, strippers' rights in the workplace must be considered. Studies focused on women's emotional and psychological response, including drug and alcohol abuse, to violence in stripclubs should be conducted.

REFERENCES

Boles, Jacqueline and A.P. Garbin. 1974. "The Strip Club and Stripper-Customer Patterns of Interaction." Sociology *and Social Research* 58:136-144.

Ciriello, Sarah. 1993. "Co=odification of Women: Morning, Noon, and Night." Pp. 264-281 in *TransformzngA Rape Culture,* eds. Emille Buchwald, Pamela Fletcher, and Martha Roth. Minneapolis NEV, Milkweed Editions.

Cooke, Amber. 1987. "Stripping: Who Calls the Tune?" Pp. 92-99 in Good *Girls, Bad Girls: Feminists and Sex Trade Workers Face to Face,* ed. Laurie B ell_ Toronto: Seal Press, pp. 92-99.

Enck, Graves E. and James D. Preston_ 1988. "Counterfeit Intimacy: A Dramaturgical Analysis of an Erotic Performance." *Deviant Behavior* 9:369-381_

Fischer, Came Benson. 1996. "Employee Rights in Sex Work: The Struggle for Dancers' Rights as Employees." *Law & Inequality: A Journal of Theory and Practice,* 14, pp. 521-554.

Forsyth, Craig and Tina Deshotels. 1997. "The Occupational Milieu of the Nude Dancer." *Deviant Behavior* 18:125-142.

Futterman, Marilyn- 1992. *Dancing Naked in the Material World.* Buffalo, NY: Prometheus Books.

Hamel, Jacques. 1993. *Case StudyMethods.* Newbury Park, CA: Sage Publications.

Hanmer, Jalna, Jill Radford and Elizabeth Stanko. 1989. *Women, Policing, andMale Violence.* International Perspectives. London: Routledge.

Hearn, Jeff. 1994. "The Organization(s) of Violence: Men, Gender Relations, Organizations, and Violences." *Human Relations* 47:731-754.

Kelly, Liz. 1987. "The Continum of Sexual Violence". Pp 46-60 in *Women, Violence, and Social Control,* eds. Jalna Hanmer and Mary Maynard. Atlantic Highlands, NJ: Humanities Press International.

Mattson, Heidi. 1995. Ivy *League Stripper.* New York, NY: Arcade Publishing.

McCaghy, Charles and James K. Skipper. 1970. "Stripteasers: The Anatomy and Career Contingencies of a Deviant Occupation." *Social Problems* 17:391-405.

McMahon, Christopher. 1989. "Managerial Authority_" *Ethics 100:33-53.*

Peretti, Peter. 0. and Patrick O'Connor. 1989. "Effects of Incongruence Between The Perceived Self and the Ideal.Self on Emotional Stability of Stripteasers." *Social Behavior and Personality* 17:81-92.

Prewitt, Terry J. 1989. "Like a Virgin: The Semiotics of Illusion in Erotic Performance." *The American Journal of Semiotics 6:137-152.*

Reed, Stacy. 1997. "All Stripped Off" Pp. 179-188 in *Whores and Other Feminists,* ed. Jill Nagle. New York, NY: Routledge.

Reid, Scott A_, Jonathon A. Epstein and D. E. Benson. 1994. "Role Identity in a Devalued Occupation: The Case of Female Exotic Dancers_" *Sociological* Focus 27:1-27.

Ronai, Carol Rambo and Carolyn Ellis. 1989. "Turn-ons for Money: Interactional Strategies of the Table Dancer." *Journal of Contemporary Ethnography* 18:271-298.

Ronai, Carol Rambo. 1992. "The Reflective Self Through Narrative: A Night in the Life of an Exotic Dancer Researcher", n *Investigating Subjectivity: Research on Lived Experience,* eds. Carolyn Ellis and Michael Flaherty. Newbury Park, CA: Sage, pp. 102-24.

Ronai, Carol Rambo, Barbara A. Zsembik, and Joe R. Feagin. 1997. *Everyday Sexism in the Third Millenium*. New York, NY: Routledge.

Thompson, William E. and Jackie L. Harred. 1992. "Topless Dancers: Managing Stigma in a Deviant Occupation." *Deviant Behavior 13* :291 i 11.

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SEXUALLY ORIENTED BUSINESSES

Small Town; Big Problem

Controversy surrounding the opening of a strip bar in small Northwest Alabama community serves as a reminder that the time to act against sexually oriented businesses is before they are planned.

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Find Your Pepf>

By Jason Collum
AFA Journal Staff Writer
AFA Journal, May 2001 Edition

Some Colbert County, Alabama, residents have seen the peace of their communit shattered in the wake of the opening of the region's first topless strip bar, Club 43. Local officials, with state laws on their side, are working to make sure a bad situatic doesn't get any worse.

When the owners of Club 43 announced they planned to open the bar just south o Muscle Shoals, local residents were limited in what they could do to prevent the business from entering their community as the county has no zoning ordinances in effect and the bar wasn't within any city limits.

|t has just ruined a real nice, Christian neighborhood," Jessie Peters, who lives ne the club, told the local newspaper, *TimesDaily*. She said she didn't believe the bar would open in the face of opposition. "We fought it tooth and nail."

Despite protests the bar's owners, Rodney and Van Trawick, were able to obtain a business license. County commissioners told the TimesDailythey were unable to |egally deny the business license. However, the Alabama Alcoholic Beverage Coni [ABC] board did deny a permit to sell alcohol at the establishment.

The Trawicks opened the business January 9 and within two hours of its opening authorities with the sheriffs department and ABC raided the establishment, arrestir the Trawicks and 10 employees of the club, including dancers and drink servers [tl club operates on a bring-your-own-beverage basis]. The Trawicks and their employees were charged with displaying materials harmful to minors, a misdemeanor under Alabama's anti-obscenity laws, dubbed by supporters and cril as being among the nation's toughest.

Since then the Trawicks have filed suit against Sheriff Ronnie May and his department, alleging the officers are harassing the club and patrons by the officers constant presence. Deputies have been called several times on complaints from nearby residences.

Marshall Gardner, an attorney for the Trawicks and Club 43, was very pointed in hi

criticism to the TimesDaily of law enforcement's activities, which have included hez patrolling of the club, and with the community's disdain for the establishment. "TN, a legitimate business, and they have been up front from day one about what their plans were. I'm just sorry that we haven't moved beyond where we obviously are. I would hope the commission would not pander to one religious group and appease one religious belief."

While religious beliefs do play a role in the community's disapproval of the club, fe; of increased crime in the neighborhood is also a concern. Studies have shown whE sexually oriented businesses [SOB] are located crime tends to increase while surrounding property values do the opposite.

Betty Alsbrooks, who lives in Russellville, just a few miles south of Club 43, said sh understands why neighbors, some of whom live only a few yards from the facility, upset.

"Along here they have a lot of young children," Alsbrooks said as she purchased g from a small convenience store across the highway from the club. "[I understand tl concerns] because I've got grandchildren, and I wouldn't want it around mine. I wouldn't want that club close to where l live. I don't see how it could do any good fE the community"

Secondary ***effects***

The National Law Center for Children and Families has compiled a crime impact study of municipal and state governments on harmful secondary effects of SOBS. The study, conducted from 1978 to 2000, focused on 32 cities and locations, large and small, across the United States and how they have been affected by the introduction of sexually oriented businesses. Among the findings:

In Tucson, Arizona, officers found a wide variety of illegal sexual conduct at all adL businesses. At virtually every business, employees were arrested for prostitution, or obscene sex shows. Dancers were usually prostitutes and, for a price, customers could observe them performing live sex acts. Underage dancers were found, the youngest being a 15-year-old female.

Crime increased significantly in Garden Grove, California, with the opening of an adult business, or with the expansion of an existing business or the addition of a ba nearby. The rise was greatest in serious offenses [homicide, rape, robbery, assaull burglary, theft and auto theft.]

Beaumont, Texas, police verified that bars, taverns, and lounges [especially those with sexually-oriented entertainment] are frequent scenes of prostitution and the sale/use of narcotics. On the whole, all criminal activity was higher at SOBs.

Some refuse to admit the obvious, though, and insist there is nothing wrong with th type of business.

"This has always been the Bible Belt, so you've got to expect that," Club 43 head bartender Krista Stokes, who moved to the area from Chicago eight months earlier was quoted as saying about the controversy. "They're not hurting anyone. All they'l doing is just dancing. The girls know what to do and not do. This is just something make money and have fun."

Ask a former stripper who was able to escape the lifestyle, though, and a different picture emerges into view. Victoria Teague, founder of Victoria's Friends in-Atlanta, ministry that helps women leave the adult entertainment industry, says there is ven little fun in being in the business.

"At first it was a glamorous ride," Teague said, "with the money and lights. I though was a celebrity. I was told I'd be famous and there would be movie producers corn around making me film offers. I was totally used."

l eague turned to drugs, as she said many dancers do, to cope with the job. The downward spiral' almost led her to suicide.

"[The industry] is destroying the girls in there. Most of the girls are sexually abused, she said. "It's degrading. My last year, I felt like an animal in a cage with men jeerir and pawing at me. At the end of the shift a lot of girls would be crying. It's God's grace that I got out."

As a result of Club 43's opening, officials in nearby Muscle Shoals and Tuscumbia enacted strict zoning regulations in order to keep these adult businesses out of tow

Other cities around the nation are also moving to. prevent these types of businesse including Starkville, Mississippi, where officials earlier this year restricted adult businesses to industrial zones, away from families and churches.

RESOURCE AVAILABLE-AFA has compiled a booklet, *A Guide to What One Person Can Do About Pornography*, which gives details about why citizens should take action against pornography and SOBS and how they can do it. The guide can found on AFA Online at www.afa.net/pornography, or can be ordered by phone by calling 662-844-5036, option 4.

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Strip Club Study
Kelly Holsopple

LNTRODUCTION

The purpose of this paper is to investigate women's experiences in stripclubs and to describe the activities in stripclubs from the women's point of view. The format approach is collective story narrative with the author as part of the collective voice. The research was inspired by the author's experiences-in stripping over the course of thirteen years. The author's intention is to examine the conditions of strpclubs by describing the fundamental way stripclubs are organized_ The description features bar activities focused on stripper-customer. interactions; survey data on sexual violence in stripclubs; and women's thoughts on stripping.

THEORETICAL, FOUNDATION

Stripclubs are popularly promoted as providing harmless entertainment and as places where respectful men go to watch and talk to women (Reed 1997). Stripclub customers are described as normal men who use stripclubs to avoid adultery and therefor find a safe outlet for their sexual desires in balance with their marital commitments (Reed 1997)_ In contrast, stripclubs are criticized for being environments where men exercise their social, sexual, and economic authority over women who are dependent on them and as places where women are treated as things to perform sex acts and take commands from men (Ciriello 1993).

Stripclubs are organized according to gender and reflect gender power dynamics in greater society. "Gendered spaces are social arenas in which a person's gender shapes the roles, statuses, and interpersonal dynamics and generates differential political and economic outcomes and interaction expectations and practices" (Ronal, Zsembik, and Feagin 1997:6).- Stripclubs are more specifically organized according to gender inequality, which is perpetuated by gendered spaces and consequently sexualized (Ronal, et al 1997). The typical stripclub scenario displays young, nude or partially nude women for fully clothed male customers (Thompson and Harred 1992).

The entire analysis of stripclubs is located within the context of men's domination over women. When organizations are produced in the context of the structural relations of domination, control, and violence, they reproduce those relations (Hearn 1994)_ These organizations may also make explicit use of gendered forms of authority with unaccountable and unjustifiable authority belonging to men (Hearn 1994). The stripclub elicits and requires direct expressions of male domination and control over women (Prewitt 1989).

In order to dominate or control and secure men's domestic, emotional and sexual service interests, male dominated institutions and individual men utilize violence (Hammer 1989). Violence against women is identified as physical, sexual, emotional, verbal, and representational, but all violence from men against women should be understood as sexual violence (Ream 1994). The concept of a continuum is useful when discussing sexual violence, especially in stripclubs. Continuum is defined as a basic characteristic underlying many different events and as a series of elements or events that pass into one another (Kelly 1987). The common underlying element in stripclubs is that male customers, managers, staff and owners use diverse methods of harassment, manipulation, exploitation, and abuse to control female strippers. .

LITERATURE REVIEW

Despite a substantial amount of research on the topic of strippers, stripping, and stripclubs, none focuses on sexual violence in stripclubs perpetrated against strippers. Instead the studies focus on sociological and psychological profiles of the women (Forsyth and Deshotels 1997; Peretti and O' Connor 1989; Reid, Epstein, and Benson 1994; McCaghy and Skipper 1970; Thompson and Harred 1992) and their strategies for interaction with customers

(Boles and Garbin 1974, Enck and Preston 1988, Ronai 1989). Although most studies mention male sexual violence and exploitation, the research regarding stripping fails to investigate and account for the problem of sexual violence in establishments that feature female strippers. The gap is the rationale for my study.

IMYETHOD Data for this research was obtained through interviews, a survey, and the researcher's participant observation while involved in stripping (Hanner 1993). Women in this study stripped in the local stripclubs in the Midwest metropolitan area where the researcher lives, in local nightclubs in the same area, in metropolitan and rural stripclubs and nightclubs across the United States, at private parties, in peep shows, and. in saunas.
The stripclubs featured a variety of
attractions including topless dancing, nude dancing, table dancing, couch dancing, lap dancing, wall dancing, shower dancing, and bed dancing. In addition, some peep shows and clubs hosted female boxing and wrestling with customers, offered photographs of the dancers, or hired pornography models and actresses as headliners.

The study was conducted in two phases. In 1994, I conducted free-flowing qualitative interviews for one to four hours each with forty-one women while I was still involved in stripping and compiled participant observer notes about the activities in stripclubs. The women ranged in age from nineteen to forty years old and were involved in stripping from three months to eighteen years. All of the women identified themselves as Caucasian.

In 1996, I proceeded to design a twenty-six question survey according to themes derived from the interviews to investigate sexual violence in stripclubs. My long time involvement in the strip industry allowed an association with strippers that was invaluable for administering in-depth surveys regarding sensitive issues. The surveys were administered face-to-face to insure the information was indeed from the women in stripping. Again, the surveys and consequent discussions lasted from one to four hours. Many women explained that they had never talked about their experiences so extensively because no one had ever asked them the right questions. Participants were asked _ to say whether they had experienced different abusive and violent actions in the stripclub, to estimate how often each action happened, and then to identify which men associated with the stnpclub perpetrated the action. The categories of men were defined as customer, owner, staff, and manager. Since I exited stripping, snowball sampling was employed to recruit the eighteen participants for the survey. Participants in the survey were asked to pass on postcards to other women_ The range of ages was eighteen to thirty-five years old. The age of entry into stripping ranged from fiffeen to twenty-three years old, with a mean age of eighteen years and ten months. The length of time the women in this study were involved in stripping ranged from three months to eighteen years with an average length of six years and seven months. Women predominantly identified themselves as Caucasian. Only one woman identified herself as Hispanic. Twelve of the women described their sexual orientation as heterosexual, two as lesbian, and four as bisexual. The survey data was analyzed on the Statistical Program for Social Sciences.

After the data was compiled, a focus group of 4 women currently in stripping and with no prior association with the study positively evaluated the relevancy of the study and approved the collective story.

Statements in quotations throughout this paper are derived from the 41 interviews and discussions that often followed the administration of the 18 surveys.

PART 1: TYPICAL STRIPCLUB ACTIVITIES

A. Recruitment

Women find out about stripping from a variety of sources. Upscale stripclub franchises recruit in new cities by having managers and imported dancers scout in nightclubs. Most women

find out about stripping from girlfriends already in stripping, male associates, the media,. and some from prior involvement in prostitution. One woman told how she loitered in and around urban stripclubs to pick up customers when she was fifteen and how her pimp eventually drove her to small town strip bars because those bars admitted her and hired her. Someone else got involved in stripping through an escort service for bachelor parties. Another young woman who went to a gentlemen's club to pick up her friend recounted her recruitment as an eighteen-year-old. She waited at the bar, was served alcohol, and the owner asked to check her I.D. Instead of censuring her for drinking, he told her she would make $1000 per week and pressured her to enter the amateur contest that night. She won the contest, $300, and worked there three weeks before being recruited into an escort service by a patron pimp.

In a typical hiring scenario women respond in person to a newspaper ad promising big money, flexible hours, no experience- necessary. As an audition the club manager asks the applicants to perform on amateur night or bikini night, both of which are particularly popular with customers who hope to see girl-next-door types rather than seasoned strippers. The manager will make a job offer based on physical attributes and number of women already on the schedule. Clubs portray the job requirements as very flexible. Women are told that they will not be forced to do anything they do not want to do, but clubs overbook women so they are forced to compete with each other, often gradually engaging in more explicit activities in order to earn tips (Cooke 1987).

B. Working Conditions

Women in stripping are denied legal protection relating to the terms and conditions under which they earn their livings (Fischer 523). Most strippers are hired to work as independent contractors rather than employees. Most strippers are not paid a wage (Mattson 1995), therefor their income is totally dependent on their compliance with customer demands in order to earn tips. More often than not, the strippers have to pay for the privilege of working at a club (Cooke 1987; Forsyth and Deshotels 1997; Prewitt 1989). The majority of clubs demand that women turnover 40 to 50 percent of their income for stage or couch rental and enforce a mandatory- tip out to bouncers and disc jockeys (Enck and Preston 1988; Forsyth and Deshotels 1997)_ Usually a minimum shift quota is set and the women must turn over at least that quota amount. If a woman does not earn the quota and wants to continue working at the establishment, she owes the club and must pay off that shift's quota by adding it to the quota for the next shift she will work. The stripclubs may also derive income from promotional novelty items, kickbacks, door cover charges, beverage sales, prostitution, and capricious fines imposed on the women. As independent contractors, strippers are not entitled to file discrimination claims, receive workers' compensation, or unemployment benefits (Fischer 1996; Mattson 1995). Club owners are free from tax obligations and tort liability. Owners pay no Social Security, no health insurance, and no sick pay. Some club owners require strippers to sign agreements indicating that they are working as independent contractors and many clubs require women to sign a waiver of their right to sue the club for any reason.

Although strippers are classified as independent contractors, the reality of their relationship to their supervisors is an employee-employer relationship. Regardless of the agreements claiming independent contractor status, clubs maintain enormous control over the women_ The club controls the schedule and hours, requires strippers to pay rental fees, tip support staff large amounts, and even sets the price of table dances and private dances. Clubs have specific rules about costuming and even dictate the sequence of stripping and nudity. For example; by the middle of the first song the woman must remove her top, she must be entirely nude by the end of the second song, and must perform a nude floorshow. All this regardless of whether customers are tipping her or not. A club may further influence dancers' appearances by pressuring them to shave off all their pubic hair, maintain a year-long tan, or undergo surgery for

breast augmentation. At nude clubs, it is,common for the performers to be shaved clean, giving them an adolescent and even childlike appearance.

Clubs also exert significant control over the strippers' behavior during their shifts by regulating when women may use the bathroom and how many of them can be in the dressing room at one time. Some clubs do not provide seating in the dressing room and forbid smoking in that room, thus preventing strippers from taking a break_ When a woman wants to sit down or smoke a cigarette, she must do so on the main floor with a customer. Clubs enforce these rules through fines (Cooke 1987; Enck and Preston 1988; Ronai 1992)_ Women are fined heavily by club management: $1 per minute for being late, as much as $100 for calling in sick, and other arbitrary amounts for "talking back" to customers or staff, using the telephone without permission, and touching stage mirrors. Women are fined for flashing, prostitution (Enck and Preston 1988), taking off their shoes, fighting with a customer, being late on stage, leaving the main floor before the DJ calls her off, not cashing in one dollar bills, profanity in music, being sick, not cleaning the dressing room, using baby oil on stage, dancing with her back to a customer (Enck and Preston 1988) and being touched by a customer.

Despite the stripclub's representation of a dancing job as flexible, strippers attest that their relationship with the club becomes all consuming and everything associated with being a stripper interferes with living a normal life. And despite the common perception that a woman can dance her way through school, many strippers report that their jobs take over their lives. Long and late hours, fatigue, drug and alcohol problems, and out of town bookings make it difficult to switch gears. Not only do the women spend a significant amount of their time in stripclubs, the activities and influences from the club environment permeate their personal lives and detrimentally effect their well-being. Although stripclubs are considered legal forms of entertainment, people unassociated with the industry are unaware of the emotional (Peretti and O'Connor 1989, Ronai 1992), verbal (Mattson 1995; Rbnai 1992), physical (Boles and Garbin 1974), and sexual abuse (Ciriello 1993; Ronai 1992) inherent in the industry. Despite claims from management that customers are prohibited from touching the women, this rule is consistently violated (Enck and Preston 1988; Forsyth and Deshotels 1997; Ronai and Ellis 1989; Thompson and Hared 1992). Furthermore, stripping usually involves prostitution (Boles and 'Garbin 1974; Forsyth and Deshotels 1997; Prewitt 1989; Ronai and Ellis 1989; Thompson and Harrod 1992).

C. Stripper-Customer Interactions

Main Floor

Stripclub activities are offered in public spaces or private rooms or other isolated parts of clubs (Forsyth and Deshotels 1997). The typical stnpclub scenario presents young, nude or partially nude women mingling with fully clothed male customers. They circulate through the crowd, encouraging men to buy liquor, drinking and talking with men, and soliciting and performing a variety of private dances (Prewitt 1989; Ronai and Ellis 1989). Women describe their role in the stripclub as hostess, object, prostitute, therapist, and temporary girlfriend and say they are there to entertain and attract men and business for the owners.

Women who work at small strip joints say they can hang out, order in food, and play pool during their shifts. On the other hand, women who work at gentlemen's clubs have to hustle photographs and drinks and are required to sell promotional T-shirts, calendars, and videos. They can be mandated to sell the items with private dances. For example, the dancers buy T-shirts from the house mom for $8 and sell them for $15. So for $15, the customer receives a T-shirt and 2 $10 table dances. Strippers at gentlemen's clubs are further informed by management that they are not allowed to buy their own drinks, that they have to be sitting with customers, and can never turn down a drink, even when their drinks are full.

Stage

Women report dancing on stages as cheaply constructed by laying plywood on the benches of restaurant booths to stages covered with kitchen linoleum to wood parquet or marble stages in a few upscale clubs. Some stages are elevated runways so narrow that strippers say that cannot get away from customers on each side touching them, especially when they are kneeling down to accept a tip in the side of their g-strings/t-bars or when they have their backs turned. Stages can also be sunken pits with a rail around it and a bar for the customers' beverages. During a set, a stripper may do striptease, acrobatics, dance, walk, or squat to display her genitals. Generally the progression for striptease begins during the first song with the woman wearing a dress or costume covering her breasts and buttocks. Over the course of a set of 2 or 3 songs she will remove her bra and in nude clubs, her g-stnngf-bar. Some clubs feature floorshows in which women crawl or move around on the floor posing in sexual positions and spread their legs at the customers' eye level. During a floorshow, a dancer changes her movements from upright to positions on her knees and squatting in a crabwalk in order to `flash' tipping customers. "Flashing" is pulling the —stnng/t-bar aside, revealing the pubic area and/or the genitals. Dancers describe this as "doing a show" for paying customers. Ordinarily, a dancer only positions herself in front of tipping patrons (Prewitt 145). Customers who fail to tip are ignored. Audience response can be expressed by clapping, hooting, barking, whistling, amount of money tipped, or complete silence depending upon time of day, state of inebriation, excitement over the musical selection, or the appearance and abilities of the stripper.

On stage, some women's thoughts wander, while others' focus on angry desperation. "I *daydream about nothing in particular to pass_ the time of 12 minutes." "I'm thinking about how good I look in the mirrors and how good I feel in dance movements." "I tell myself to smile." "I think about getting high and that I am making money to get high." "I am giving these guys every chance to be decent, so that I don't have to be afraid of them." "I am filled with disdain for the customers who do not tip, but sit and watch and direct you to do things for no money." "I think of how cheap these fuckers are, what bills I need to pay."*

Private Dance Activities

Private dances are usually performed in areas shielded from the larger club view (Forsyth and Deshotels 1997, Prewitt 1989). As a rule, the private dance involves one female dancer and one male customer. Private dances are situations where women are often forced into acts of prostitution in order to earn tips (Forsyth and Deshotels 1997; Prewitt 1989; Ronai and Ellis 1989). Men masturbate openly (Peretti and O'Connor 1989), get hand jobs (Forsyth and Deshotels 1997), and stick their fingers inside women (Ronai and Ellis 1989). Men with foot fetishes have been known to suck on dancers' toes.

A **variety of private dances are promoted in strip clubs. 'Fable dancing is performed on a low coffee table or on a small portable platform near the customer's seat. The woman's breasts and genitals are eye level to the customer. Couch dancing for** a **customer entails the dancer standing over him on the couch, dangling her breasts or bopping him in the face with her pubic area. Lap dancing requires the woman to straddle the man's lap and grind against him until he ejaculates in his pants.** A **variation involves the woman dancing between his legs while he slides down in his chair so that the dancer's thighs are rubbing his crotch as she movies. Bed dancing is offered in a private room and requires a woman to lay on top of a fully clothed man and simulate sexual intercourse until he ejaculates. Shower dancing is offered in upscale clubs and allows a clothed patron to get into a shower stall with one or more women and massage their bodies with soap. Wall dancing requires a stripper to carry alcohol swabs to wash the customer's fingers before he inserts them into her vagina. His back is stationary against the wall and she is pressed against him with one leg lifted. Peep shows feature simulated or actual acts directed by openly masturbating customers. Customers sit in a private booth and view the women through a glass**

Sexual Abuse

Stripclub customers frequently grab women's breasts, buttocks, and genitals. Customers often attempt and succeed at penetrating strippers vaginally and anally with their fingers, dollar bills, and bottles. Customers expose their penises, rub their penises on women, and masturbate in front of the women. Women in this study consistently connected lap dances to the sexual abuse they suffered in the club. "That's *the first thing men try to do -when they get* close to you and always *in* a *lap dance."* Stripclub owners, managers, and staff also expect women to masturbate them and some have forced intercourse on strippers.

Table 2 - Sexual Abuse

Abusive Action	**Ever (by men in strip club) (%)**	**At Least Once Every Day (%)**	**At Least Once Every Week (%)**	**At Least Once Every Month**	**At Least Once Every Year**
Grabbed breasts	94	28C 6 M	17 C	17 C 6M	17 C 60
Grabbed buttocks	89	39 C	11 C	39 C 61vi 6S	6 0 6 S
Grabbed genitals	67	17 C		11 C 6M	17 C
Exposed penis to her	67	11 C	6 C	6 C 6 0 6M	33 C
Rubbed penis on her	78	39 C 6 M	22 C 60 6M 6S	6 C	22 C 60
Masturbated in front of her	78	33 C **6 M**	11 C	28 C	6 C

N=18 **Key:** C = **customers, O = owners, M = managers, S = staff**

Table 3 - Sexual Abuse

Abusive Action	**Experienced Attempted Abuse %)**	**Experienced Successfully Completed Abuse**
Penetrate her vaginally with fingers	**61 C** **6 M**	39
Penetrate her anall with fingers	33 C	17
Penetrate her with object	**33 C** **60**	**11**
Force her to masturbate him	28 C 60 6M	17
Force intercourse on her	17 C 60 6M	11

N=18 **Key: C = customers, O = owners, M = managers, S = staff**

Verbal Abuse

Customers, owners, managers, and staff alike engage in harassing namecalling. Women are continually called "cunt, "whore", "pussy", "slut", and "bitch". Women in this study charge that men in the stnnclub called them other demeaning or degrading names like ugly, looser, tat,

window. Live sex shows involve 2 or more individuals engaging in simulated or sexual activity performed behind glass or on a stage. 'Customers openly masturbate while watching the show from the audience or through an opening in a private booth.

During private dances women are conscientious about their boundaries and safety. "I *don't want hire to touch me; but I am afraid he will say something violent if I tell him `no':" "I was thinking about doing prostitution because that's when customers wouldproposition me." "I could only think about how bad these guys smell and try to hold my breath." "'I spent the dance hyper vigilant to avoiding their hands, mouths, and crotches." "We were allowed to place towels on the guys' Zaps, so it wasn't so bad." "I don't remember because it tivas so embarrassing."*

D. Dressing Room

Women describe a range of types and qualities of dressing rooms. Strippers are expected to change clothing in beer coolers, broom closets, and public rest-rooms. Some stripclub dressing rooms are nice with lights, minors, vanities, and chairs, and are equipped with lockers, and tanning beds. Other clubs have make-up minors but no chairs or ashtrays to prevent dancers from lingering. Women complain that too many dressing rooms are down isolated halls or in the basements of establishments and that they have to scream for help when customers intrude. Some are so damp or filthy that the women cannot take their shoes off. Other dressing rooms are so frigid that dancers carry small space heaters to and from work. The dressing rooms are used to change costumes, drink, do drugs, do hair and make-up, iron costumes, do homework, 'bitch about customers, avoid customers, talk about problems, hang out. In strip joints and rural bars, women lay on blankets or inside sleeping bags between sets and nap and read.

The greatest response to questions regarding preparation for work was "drink". Women drink while getting ready to go to work and they drink while doing their hair and make-up once in the dressing room. Women who work at nude juice bars that do not serve alcohol or at bars that do not allow women to buy their own drinks report that they stop at another bar on their way in and "get loaded". Between stage sets and private dances, women drink some more, clean themselves with washcloths or babywipes after performing on a dirty stage or being touched by a lot of men, apply deodorant, and perfume their breasts and genitals.

PART 2: **SURVEY DATA**

One hundred percent of the eighteen women in the survey report being physically abused in the stripclub. The physical abuse ranged from three to fifteen times with a mean of 7.7 occurrences over the course of their involvement in stripping. One hundred percent of the eighteen women in this study report sexual abuse in the stripclub. The sexual abuse ranged from two to nine occurrences with a mean of 4.4 occurrences over the course of their involvement in stripping. One hundred percent of the women report verbal harassment in the stripclub. The verbal abuse ranged from one to seven occurrences with a mean of 4.8 occurrences over the course of their involvement in stripping. One hundred percent of the women report being propositioned for prostitution. Seventy eight percent of the women were stalked by someone associated with the stripclub with a range of one to seven incidents. Sixty one percent of the women report that someone associated with the stripclub has attempted to sexually assault her with a range of one to eleven attempts. Not only do women suffer the abuse they experience, all of women in the survey witnessed these things happen to other strippers in the clubs. The overwhelming trend for violence against women in stripclubs was committed by customers of the establishments. STripclub owners, managers, assistant managers, and the staff of bartenders, music programmers or disc jockeys, bouncers, security guards, floorwalkers, doormen, and valet were significantly less involved in violence against the women. According to the women in this study, almost all of the perpetrators suffered no consequence whatsoever for their actions.

Physical Abuse

Customers spit on women, spray beer, and flick cigarettes at them. Strippers are pelted with ice, coins, trash, condoms, room keys, pornography, and golf balls. Men pitched a live guinea pig and a dead squirrel at two women in the survey. Some women have been hit with cans and bottles thrown from the audience. Customers pull women's hair, yank them by the arm or ankle, rip their costumes, and try to pull their costumes off. Women are commonly bitten, licked, slapped, punched, and pinched.

Table 1 - Physical Abuse

Abusive Action	Ever (by men in stripclub) M)	At Least Once Every Day %	At Least Once Every Week %	At Least Once Every Month %	At Least Once Every Year
Grabbed by arm	78	44 C 6Nl 11 S	17 C 60 6 M 11S	11 C 60 6M	6 M
Grabbed by ankle	56	28 C		6 C 6 M	11 C
Grabbed by waist	94	50 C 6 lei 11 S	33 C 11 M 11 S	6 M	11 C
Bitten	56	6 C	11 C		11 C
Licked	78	28C	17 C	11 C 60 6 N1 11S	22 C
Slapped	39	6 C	11 C		17 C
Hair pulled	39	6 C	6 C	11 C	
Punched	72	6C			
Pinched	72	17 C	17 C	6 C 6 M 6S	22 C 6S
Kicked	11	6 C			
Sit on	61	6 C			28 C
Pulled costume off	83	22 C		6 C 60 6M	22 C 6S
Ripped costume	44	6 C		6 C	17 C
Flicked cigarette	33	6 C	6 C		11 C
Sprayed beer	39	6C	6C	6C	6C
Threw ice	61	6C	11C	6C	6C
Threw coins	83	17 C 6 C	11 C	11 C 6S	28 C
Threw cans/;Masses	22				
Threw arba re	3 9	17 C	11 C		
Threw other	2 8	11 C			

N=18 Key: C = customers, 0 = owners, M = managers, S = staff

Sexual Abuse.

Stripclub customers frequently grab women's breasts, buttocks, and genitals. Customers omen attempt and succeed at penetrating strippers vaginally and anally with their fingers, dollar bills, and bottles. Customers expose their penises, rub their penises on women, and masturbate in front of the women. Women in this study consistently connected lap dances to the sexual abuse they suffered in the club_ "That's *the* first *thing men try to do -when they get close to you and* always *in a lap dance_"* Stripclub owners, managers, and staff also expect women to masturbate them and some have forced intercourse on strippers.

Table 2 - Sexual Abuse

Abusive Action	Ever (by men in strip club)	At Least Once Every Day	At Least Once Every Week	At Least Once Every Month	At Least Once Every Year
Grabbed breasts	94	28C 6 Ni	17 C	17 C 6M	17 C 60
Grabbed buttocks	89	39 C	11 C	39 C 6 NI 6S	6 0 6 S
Grabbed genitals	67	17 C		11 C 6M	17 C
Exposed penis to her	67	11 C	6 C	6 C 6 0 6M	33 C
Rubbed penis on her	78	39 C 6 M	22 C 60 6M 6S	6 C	22 C 60
Masturbated in front of her	78	33 C 6 M	11 C	28C	6 C

N=18 Key: C = customers, 0 = owners, M = managers, S = staff

Table 3 - Sexual Abuse

Abusive Action	Experienced Attempted Abuse %)	Experienced Successfully Completed Abuse
Penetrate her vaginally with fingers	61 C 6M	39
Penetrate her anall with fn ers	33 C	17
Penetrate her with object	33 C 60	11
Force her to masturbate him	28 C 60 6\/Y	17
Force intercourse on her	17 C 60 6M	11

N=18 Key: C = customers, O = owners, M = managers, S = staff

Verbal Abuse

Customers, owners, managers, and staff alike engage in harassing namecalling. Women are continually called "cunt, "whore", "pussy", "slut", and "bitch". Women in this study charge that men in the stnpclub called them other demeaning or degrading names like ugly, looser, fat,

pregnant, boy, stupid, crack, slash, snatch, beaver, dog, dyke, lezzie, brown eye, hooters, junkie; crackhead, and shit.

Forty four percent of the women report that men associated with the stripclub have threatened to hurt them physically. These women report from three to 150 threats during their involvement in stripping. Threats range from verbal threats of slaps, ass whippings, and rapes to physical postures of punching and back hand slapping. *"When I wouldn't let a customer grab on me, he would call me a bitch and threaten to kick my ass or rape me." "When a customer grabs and the woman and the girl takes action, they threaten".*

Table 4 Verbal Abuse - Namecalling

Abusive Action	Ever (by men in stripclub)	At Least Once Every Day	At Least Once Every Week	At Least Once Every Month	At Least Once Every Year
Called "cant"	61	28 C 6M	6 C	17 C	11 C 6M
Called "slut"	61	28 C 6S	6 C	17 C 60 6M 6S	11C
Called "whore"	78	28 C 6S	6 C	17 C 60 6M 6S	22 C
Called "pussy"	72	39 C 6S	11 C	11C	11 C
Called "bitch"	89 --	39C 6 S	11 C 60 6M 6-S	6 C	22 C 61v1
Called other	66	17 C	6 C	17 C 6 Ivi	6 C

N=18 Key: C = customers, O = owners, M = managers, S = staff

Stalking

Men associated with stripclubs repeatedly attempt to contact the women against their wishes. Strippers are followed home and stalked by stripclub customers. Customers telephone, write letters, send gifts, and follow the women around against their wishes. Women recount stories of catching customers following them to fitness clubs, parks and lakes, day care centers, and even lesbian bars. They describe times when customers have broken into their homes and taken underwear, hairbrushes, and family photographs. Women say that other customers have used their jobs at the telephone company or within the criminal justice system to target the women. The women complain that customers also have followed them home masturbating while driving in the next lane. Women who travel the strip circuit to rural areas report that customers and stripclub owners, managers, and staff alike follow women from city to city and state to state. Furthermore, local men in small towns harass the visiting women by calling and knocking on the doors of the motel rooms and have been caught peeping in the windows of strippers' motel rooms.

Twelve percent of the women who reported being followed to their cars further reported that they were robbed (5.6 %), beaten (11.1%), threatened with a weapon (5.6%), verbally sexually harassed (66.7%), and sexually assaulted (16_7%) by customers. A customer who

claimed he was in love with the woman followed her to her car, called her a "fucking cunt" and strangled her hard enough to cause blood to squirt from her neck.

Table 5 - Stalling

Abusive Action	Ever (by men in stripclub)	Range of occurrences
Sent her letters against her wishes	28	3-100 times
Sent her gifts against her wishes	22	2-100 times
Called her home against her wishes	39	2-360 times
Followed her home against her wishes	56	2-500 times
Followed her to her car against her wishes	67	12-500 times
Followed her around on her private time	28	1-150 tunes
Followed her from club to club, city, and state	28	6-360 times
Other	28	1-360 times

Sexual Exploitation

Only a minority of women report that they were asked to perform sexual acts on men associated with the stripclub in order to return to work (11% by owners); as a condition of being hired (I 1 % by managers, 11 % by owners); in order to continue working there (17% by owners); in order to get a better schedule (6% by owners); or for drugs (17% by customers, I I% by managers, 22% by owners, I I % by staff).

A majority of the women, however, report they were asked to perform sexual acts on men associated with the stripclub for money (100% by customers, 6% by managers, 17% by owners, 11% by staff). Customers and pimps constantly proposition women (Boles and Garbin 1974; Forsyth and Deshotels 1997, Ronai 1992, Ronai and Ellis 1989). Fourteen (78%) women from the survey report they are propositioned for prostitution every day by customers, three (17%) every week, one (6 %) every year. Women comment that customers ask them "Do you date?" all night long. "Infinite... too many too count." Women say that prostitution is influenced and suggested by management. One woman new to stripping was dumbfounded at how little money she was making taking her clothes off, so she asked the manager for his advice on increasing tips. He suggested turning tricks and said he could help her set up dates. Management sets up tricks, says it is good for business, and obligates women to turn over money from prostitution to the club. Women say prostitution is promoted even though owners tell women they would be punished if they turn tricks_ Some stripclubs are notorious for promoting prostitution. "You *have* to *be* a `ho to ·work *there"*.

Women disclosed that they were recruited into prostitution through **stripping. Although the strip industry markets stripping as something other than prostitution, some women consider prostitution an extension of stripping and stripping a form. of prostitution. Pimps season women first with stripping and then turn them out into brothels or escort services for more money. Tricks; sugar daddies, pimps, and drug dealers in the stripclub seek to engage women in prostitution. Another young woman said that soon after she became involved in stripping, a pimp who posed as a customer in the strip club manipulated her into an escort service by promising that she could make more money in less time simply by accompanying businessmen to dinner.** She

agreed in order to feed her crack addiction and as her addiction increased she slid down from gentlemen's clubs to escort service to brothel to street and crack house prostitution.

Not only are women in stripping pressured by customers to perform sexual acts on them, owners, managers, and staff pressure the women to perform sexual acts on them, their relatives and associates, on vice officers and police officers. Women explain the pressure could range from being coerced into dancing for the intended with an expectation to put on a real good show with special treatment, extra time, and sexual contact, to engaging in prostitution. Strippers, like other subordinates in worker-management relationships, respond with obedience to directives from management and others with authority N1cMahon 1989).

Table b - Sexual Exploitation

Recipient	Pressured by customer (%)	Pressured by owner (%)	Pressured by manager (%)	Pressured by staff (%)	Pressured by vice officer (%)	Pressured by police officer (%)
Owner's friend		39				
Owner's relative		11				
Owner's business associate		33				
Manager's friend			17			
Manager's relative			6			
Manager's business associate			11			
Customer	72	22	17	6		
Vice officer		17	11	6	11	
Police officer		17	11	6		22

N=18

PART 3: WONfEN'S THOUGHTS ON STRIPPING

Women in stripping are overwhelmingly motivated by the promise of wealth or a will to survive (McCaghy and Skipper 1970; Ronai 1992; Thompson and Haired 1992). Stripclub owners, managers, pimps and the media portray stripping as a glamorous way to earn big money fast and use this strategy to lure young women into stripping. Women in this study report the best part of stripping to be the money. *"The only part that keeps me there is the money".* At the same time, women are trapped and disappointed by the money. "I *hated it ... but glad I had it at the time for the income." "Women are reduced to exposing genitals for $1 bills." "It pays the bills... if we could pay bills another way we would." "The bar owners and management are exploitative, they steal money." "It's hard to get out because of the money."* With respect to the money strippers seek to earn, they in turn must pay out fines, kickbacks, 100% of their social security insurance and taxes, travel and hotel expenses, and the costs for costumes, tanning, and plastic surgery. Women report that they have to haye the right attitude to make money (Ronai 1992). This ordinarily was described as being drunk, high or numb (Forsyth and Deshotels 1997). Others feel it required tolerance. *"The ability to ignore customers f r just being there_"* Most women say it is easier when the men are tipping regularly and when they do not have to interact with men intimately. Women acknowledge that strippers measure their worth according

to_ the amount of tips they earn and that they want attention, acceptance, and approval from the customers because it brings money (Futterman 1992).

Women in stripping feel it doesn't take much skill to be a stripper (Forsyth and Deshotels T997;_ McCaghy and Skipper 1970). *"It would be nice to say women need dance talent but its not true." "Tits, pussy, and blonde hair is all it takes."* Instead they referred to dissociation to abuse. "It *takes a willingness to do it .._ anybody can do it." "It takes somebody who can shut themselves off and be really fake." "...the ability to take a lot of abuse_"* They state a stripper needs a good head on her shoulders, an open mind, guts, strength, and survival skills. They believe they need abuse counseling, a lifeline from the "outside world", and education about what's really going on. *"Need to know they have options, that they aren't always going to be a 'ho'."* Women in stripping want a union to protect strippers, decent working conditions, fair treatment, and an end to cruelty by management. Lastly, strippers think that women and girls don't know what they are getting into when they first start dancing. *"It's really harmful because it is so benign, so accepted." "Girls think they will have fun dancing and get paid, they have no idea they have to fight men's hands, and dicks, and tongues, and then fight for every fucking dollar bill you earn." "It was a lot dfferent than I originally thought."*

The women in this study condemn the men associated with stripping and the impact stripping has on them as the worst parts of stripping. Women do not like the way customers treat them (Thompson and Harred 1992). Furthermore they say they do not like talking to customers, asking men for money, and resent having to have to deal with them at all_ They find customers irritating because they are drunk and have negative attitudes towards women. Women characterize customers as scum, psycho mama's boys, rapists and child molesters, old perverted men, idiots, assholes, and pigs. Strippers are largely disgusted by customers and describe them as pitiful and pathetic, stupid and ignorant, sick, controlling and abusive. *"they smell so sour, they breathe very heavy and kind of wheeze when women are near_" "They are weak abusers who have to subordinate women and girls to feel like a man." "I see my dad. Yhey're old enough to be my father." "Yuck. I am repulsed by the sight, sound smell, and touch of them." "I'm embarrassed for them."-* The women offer insightful evaluations of stnpclub customers. They say,that these men *do* not know how to communicate. Moreover, they perceive that customers are out of control, have power and abuse problems, and will do anything to degrade women because they hate women. Strippers also state that customers want a free show and think women are cheap. In contrast, a few women positively perceived some customers as nice and added they are thankful to those who tip well.

Women in this study undoubtedly denounce stnpclub owners as pimps and "glorified pimps" and maintain that owners misuse power and are sick. The women also label managers as pimps citing that they mistreat women, that they make every attempt to take money from the women, and that they are sick because they are affiliated with the industry and know the harm they do. Strippers accuse managers of being threatened and jealous of the money women make and that women are just- a dollar to management. Finally, women refer to staff music programmers, doormen, bartenders,' bouncers, floorwalkers, and valet as wanna-be pimps because they always want to be tipped. The women see staff as derelicts who can't get a job anywhere else and who think they are cool for working in a stripclub. Strippers perceive staff as creepy and disrespectful and as "looky-lous" who just want to look at naked women for free_ Women criticize staff by pointing out that at least owners are making big money. Few women had positive responses, but those that did felt they got along well with staff and had no real hard feelings.

Clearly strippers' attitudes about men are impacted by the activities in stripclubs. Women say they don't like men and men are worthless. Likewise women believe stripping inhibits their ability to be involved in a normal relationship_ *"It qffiects your lovelJe and feelings about men."*

"Nice boyfriends can't handle it." "Too large a percentage of men fit into category of customer and l do not want to hate men_"

Women in this study expressed mostly negativism regarding their experiences in stripping with themes of abuse, deception, drugs, and low self-esteem. "I *-would never do it again. It was degrading." "No doubt that it led me to prostitution and my pimp." "Taught me how to control men and gave me a false illusion of control. Takes a long time to,regain self-control." "Don't do it. Once you do it, it* is *hard to get out." "If there is any -way you can avoid it_. it is hard to get out once you start." "I wouldn't recommend it. It is too stressful and l am always comparing myself to other -women on the outside_" "I -wish I had pact more money away and had more education by the time I quit. Ijust didn't know it wasn't about success for us, it was about using us. " "I spent my entire young adulthood being abused. It is hard to undo all this." "Drugs destroyed beautiful, healthy women." "I blame the men... it is all had I didn't think highly of myself while I was in stripping, but I am glad I got out of it by standing up for myself." "It is hard to view myself for* who I *am and my accomplishments rather than how I look and attention from men. I got this from stripping."*

Some women expressed fascination with stripping. *"It has been an experience of a lifetime. I've seen everything ... some crazy shit." "I have never seen things like I have seen in stripping. It is weird."* **Still others felt positively about their experience.** "If *it wasn't for the money I made at it, I would have nothing right now. "It has its zips and downs, but I always enjoy the music and dancing and the attention." "I have been extremely fortunate as far as what happened in stripping. It provides a good life, but I look at it as a job, -work day shifts and -work a straight job at the same time."* A few **women also determined positive outcomes for themselves from their involvement in stripping.** *"It served its purpose as a group for a sense of belonging." "Helped me recognize what is right and wrong, and what is right and wrong for me. " "After surviving it I felt strong." "Stripping distracted me from my personal problems that led me into stripping... no way could I have held normal job with the problems I had."*

Above all, women in stripping reject the- popular image of stripping and clarify the common misperceptions about stripclubs. *"That no one touches you, -women enjoy it, and it's okay.for men to go there." "That women actually get to wear a costume and actually get to dance_" "That we get sexually aroused doing this." "That men are thereto have harmless Jun, when they are really there* to *abuse women." "That it is a big party and that the women want to be therefor some reason other than money, like sex or to meet men or because they are nudists or exhibitionists." "That you are doing things you want to be doing_" "That they are not degrading us because girls always are justifying it with college." "That it is not prostitution." "That it is glamorous, fast money, easy work, way to get ahead."*

DISCUSSIONS AND CONCLUSIONS

Men associated with stripclubs use force and coercion to establish sexual contact with women in stripping, proposition women for prostitution, intentionally inflict bodily harm upon the women, and expose themselves to the women. These actions are prohibited by law, yet when these crimes are committed against women in stripclubs, the general attitude that strippers deserve what they get prevails. Women's complaints of abuse are met with contempt and are dismissed by owners, managers, and staff. Women are customarily told to ignore abuse and have been rebuffed with "Go bend over and do your job" and "You have to expect a certain amount of that_" In the case of women in stripping, enduring sexual violence is part of her job description_ Women in stripping are expected to endure these abuses, degradations, and humiliations with a smile. and a "Thank You".

The degree of sexual violence perpetrated against strippers explodes the myths about stripping as harmless entertainment. The verbal harassment; physical and sexual abuse, and financial exploitation women suffer in stripciubs is unparalleled in any other legitimate

workplace. Women in stripping are subject to actions that would be perceived as assaultive or a least unwanted in any other context or were directed against other women. Stripclubs allow men to use and abuse women in a manner that is not tolerated in any other business.

The organization and conditions of stripclubs not only produce and reproduce gender inequality, but facilitate and normalize men's violence against women. Sexual violence has been normalized, institutionalized, and legalized'in the stripclub industry as socially sanctioned male behavior. Stripclubs and the men associated with stripclubs have turned acts of violence into entertainment and tied male sexual pleasure to victimizing and .exploiting. Stripclubs are structured according to male domination and control, and are inherently violent. It is impossible to set up stripclubs without sexual violence and that is reason to challenge the legitimacy of stripclubs.

Future research should address men associated with stripclubs and their views on women in stripping and stripclub activities. An exploration of why stripclubs exist, an explanation of why men go to stripclubs, and a description of how stripclub owners and government policy establish the tone and culture of stripclubs are also in order. Future research should explore gender role socialization and female strippers' perceptions of sexual harassment and violence. The definition of sexual harassment should be tested with strippers to learn if they perceive actions differently than women in other workplaces. In turn, strippers' rights in the workplace must be considered. Studies focused on women's emotional and psychological response, including drug and alcohol abuse, to violence in stripclubs should be conducted.

„ REFERENCES

Boles, Jacqueline and A.P. Garbin. 1974. "The Strip Club and Stripper-Customer Patterns of Interaction." Sociology *and Social Research* 58:136-144.

Ciriello, Sarah. 1993. "Commodification of Women: Morning, Noon, and Night." Pp. 264-281 in *TransformingA Rape Culture;* eds. Emille Buchwald, Pamela Fletcher, and Martha Roth. Minneapolis _T/L1, Milkweed Edilions.

Cooke, Amber. 1987. "Stripping: Who Calls the Tune?" Pp. 92-99 in *Good Girls, Bad Girls: Feminists and Sex Trade Workers Face to Face,* ed. Laurie Bell. Toronto: Seal Press, pp. 92-99.

Enck~ Graves E. and James D. Preston. 1988. "Counterfeit Intimacy: A Dramaturgical Analysis of an Erotic Performance." *Deviant Behavior* 9:369-381.

Fischer, Came Benson. 1996. "Employee Rights in Sex Work: The Struggle for Dancers' Rights as Employees." *Law & Inequality: A Journal of Theory and Practice,* 14, pp. 521-554.

Forsyth, Craig and Tina Deshotels. 1997. "The Occupational lvJilieu of the Nude Dancer." *Deviant Behavior* 18:125-142.

Futterman, Marilyn. 1992. *Dancing Naked in the Material World.* Buffalo, NY: Prometheus Books.

Hamel, Jacques. 1993. *Case StudyMethods.* Newbury Park, CA: Sage Publications.

Hanmer, Jalna, Jill Radford and Elizabeth Stanko. 1989. *Women, Policing, andMale Violence.* International Perspectives. London: Routledge.

Heam, Jeff. 1994. "The Orgamzation(s) of Violence: Men, Gender Relations, Organizations, and Violences." *Human Relations* 47:731-754.

Kelly, Liz. 1987. "The Continum of Sexual Violence". Pp 46-60 in *Women, Violence, and Social Control,* eds. Jalna Hanmer and Mary Maynard. Atlantic Highlands, NJ: Humanities Press International.

Mattson, Heidi. 1995. Ivy *League Stripper.* New York, NY: Arcade Publishing.

McCaghy, Charles and James K. Skipper. 1970. "Stripteasers: The Anatomy and Career Contingencies of a Deviant Occupation." *Social Problems* 17:391-405.

McMahon, Christopher. 1989. "Managerial Authority_" *Ethics 100:33-53.*

Peretti, Peter. O. and Patrick O' Connor. 1989. "Effects of Incongruence Between The Perceived Self and the Ideal.Self on Emotional Stability of Stripteasers_" *Social Behavior and Personality* 17:81-92.

Prewitt, Terry J. 1989. "Like a Virgin: The Semiotics of Illusion in Erotic Performance." *The American Journal of Semiotics 6:137-152.*

Reed, Stacy. 1997. "All Stripped Off" Pp. 179-188 in *Whores and Other Feminists,* ed. Jill Nagle. New York, NY: Routledge.

Reid, Scott A., Jonathon A. Epstein and D. E. Benson. 1994. "Role Identity in a Devalued Occupation: The Case of Female Exotic Dancers." *Sociological* Focus 27:1-27.

Ronai, Carol Rambo and Carolyn Ellis. 1989. "Turn-ons for 1vIoney: Interactional Strategies of the Table Dancer." *Journal of Contemporary Ethnography* 18:271-298.

Ronai, Carol Rambo. 1992. "The Reflective Self Through Narrative: A Night in the Life of an Exotic Dancer Researcher', in *Investigating Subjectivity: Research on Lived Experience,* eds. Carolyn Ellis and ivfchael Flaherty. Newbury Park, CA: Sage, pp. 102-24.

Ronai, Carol Rambo, Barbara A. Zsembik, and Joe R. Feagin. 1997. *Everyday Sexism in the Third Millenium*. New York, NY: Routledge.

Thompson, William E_ and Jackie L. Harred_ 1992. "Topless Dancers: Managing Stigma in a Deviant Occupation." *Deviant Behavior* 13:291-311.