

Date

MINUTES OF THE HOUSE FEDERAL AND STATE AFFAIRS COMMITTEE

The meeting was called to order by Chairman Melvin Neufeld at 1:30 p.m. on March 18, 2010, in Room 346-S of the Capitol.

All members were present except:

Representative Rocky Fund- excused
Representative Bob Grant- excused
Representative Mike Peterson- excused

Committee staff present:

Mike Heim, Office of the Revisor of Statutes
Jason Long, Office of the Revisor of Statutes
Julian Efird, Kansas Legislative Research Department
Dennis Hodgins, Kansas Legislative Research Department
Nikki Feuerborn, Committee Assistant

Conferees appearing before the Committee:

Representative Lance Kinzer, (Attachment 1)
Philip Cosby, National Coalition (Attachment 2)
Michael Schuttloffel, Kansas Catholic Council (Attachment 3)
Scott Bergthold, Attorney (written only) (Attachment 4)
Representative Anthony Brown, (written only) (Attachment 5)
Judy Smith, Kansas Concerned Women of America (written only) (Attachment 6)
Serena Hein, Women's Liberation Foundation (Attachment 7)
Marisa Jefferis, Women's Liberation Foundation (Attachment 8)
Heather Hein, Women's Liberation Foundation (Attachment 9)
Alaina Lamphear, Student, Kansas State University (Attachment 10)
Anna Lawrence, Women's Liberation Foundation (Attachment 11)
Lauren Hergott, Women's Liberation Foundation (Attachment 12) (written only)
Kathleen Lozano, Women's Liberation Foundation (Attachment 13) (written only)
Philip Bradley, Equal Entertainment Group (Attachment 14)
Danny Aaronson, FALA Attorney (Attachment 15)
Judith Hanna, Ph.D., Researcher (See Attachment 15)
John Samples, Owner, KanBuild (Attachment 16)
Jeff Levy, Executive Director of Association of Club Executives

Others attending:

See attached list.

Hearing on HB 2633 - Establishing the community defense act

Mike Heim, Office of the Revisor of Statutes, explained the bill which would limit activities, hours of operation, require structural changes, installation of cameras, and the hiring of additional personnel in both adult book stores and adult cabarets. Counties would be allowed to restrict zoning for such businesses.

Representative Kinzer assured the Committee that the bill was not an attempt to rid communities of adult entertainment but rather to implement restrictions which would lessen the negative secondary effects to community safety (Attachment 1). Appellate courts have upheld the proposed legislation regarding nude dancing, dancer-patron buffers, no-touch rules, hours of operation, and open booth regulations.

Committee members discussed negative secondary effects and questioned whether kick boxing, wrestling, and boxing could also be considered as having negative secondary effects as they are a form of expressive conduct. They also questioned whether rulings by city and county governments would be required to the minimum state requirements. Representative Kinzer assured the Committee of the gender-neutral style of the bill but it might appear to target women due to societal issues regarding female nudity.

Philip Cosby, Executive Director and Program Director of the National Coalition for the Protection of Children & Families, explained the history of the sexually oriented business (SOB) (book store) in Abilene

3/18

CONTINUATION SHEET

Minutes of the House Federal and State Affairs Committee at 1:30 p.m. on March 18, 2010, in Room 346-S of the Capitol.

and the subsequent law suit (Attachment 2). Small cities cannot afford such litigation and if the Legislature passes **HB 2633**, the statutes would apply to all county and city governments and eliminate the need for litigation in every municipality or county. He presented the deleterious effects of SOB land use studies in various cities and the secondary effects from such businesses. Mr. Cosby testified that it is the responsibility of the government to protect its citizens by regulating SOB's.

Michael M. Schuttloffel, Executive Director of the Kansas Catholic Conference, testified in support of the bill which would be an attempt to discourage pornography and sexually oriented business by regulations on the location and operation of such facilities (Attachment 3). He assured the Committee and the passage of the proposed legislation would not cripple the adult entertainment industry as they net more than the NHL, NBA, and major league baseball combined.

Written testimony was received from:

Scott Bergthold, Attorney (Attachment 4)

Representative Anthony Brown (Attachment 5)

Judy Smith, Kansas Concerned Women of America (Attachment 6)

Serena Hein is Co-Chair of the Kansas State Progressive Caucus, Kansas Legislative Director for the Greater Kansas City Women's Political Caucus, founder of the Women's Liberation Foundation, and serves on the Executive Committee for the Kansas State Democratic Party (Attachment 7). In her statement, Ms. Hein testified that should this legislation be adopted, 4,000 women will be out of work due to the interpretation of moral behavior as used by government. If the citizenry does not approve of her profession, the role of the government is to protect her right to earn her living in a way she wants to as long as it is not illegal. She urged the Committee to remove language regarding exotic dancer regulations. These professional women are financially independent, good citizens, and pay their taxes. No sales tax is charged for stage and lap dances and most of the women are contract employees who set their own hours and keep log books of their own tips for tax purposes.

Marisa Jefferis described her financial independence and success as a college student while being self-employed in the adult entertainment world (Attachment 8). Most of the women who are in the entertainment business are single women who must support themselves and their families and without the opportunity to work at the clubs, they will be forced to seek government assistance and become a liability for taxpaying citizens.

Heather Hein, mother of Serena Hein, testified that the passage of this bill would put clubs featuring exotic dancers out of business (Attachment 9). She pointed out that most people within a community would not be aware that such a club existed in their area and that the closure of these clubs would put many young women out of work.

Alaina Lamphear spoke in opposition to the bill as she described it as too narrow but could be adapted to set state level laws for the health and safety of both the employees and patrons (Attachment 10). The prohibition of semi-nudity especially in art studios and cabarets could be seen as an infringement on the First Amendment rights because substantial evidence is not shown as to the negative crime or health statistics. Allowing communities to establish their own laws and acts would also define community standards for obscenity. It was pointed out that communities could required dancers to have STD testing for health and safety but she pointed out waitresses handling food were not included in this bill. Ms. Lamphear reminded the Committee of the loss of liquor tax revenue the state would suffer with the closure of these clubs. She also questioned the applicability of the new section regarding nudity and that when one attends such clubs, the expectation is nudity whereas there has not been an attempt to regulate nudity in other such venues especially in college towns.

Anna Lawrence gave her background as one of privilege, academic opportunities and achievement (Attachment 11). Her training as a dancer and the need for financial independence led her to become an exotic dancer which she enjoys and finds quite profitable. Her plans include law school and to become an attorney for the sex industry. She was astonished to find out that some legislators considered her a risk to the community and appeared to feel the need to protect her from this environment by legislating laws which

CONTINUATION SHEET

Minutes of the House Federal and State Affairs Committee at 1:30 p.m. on March 18, 2010, in Room 346-S of the Capitol.

would ultimately prevent her from her chosen profession—an exotic dancer. Ms. Lawrence expressed disappointment that legislators who were operating from hearsay were attempting to curtail her rights of self-expression. No legislator had contacted her or any of the other dancers for their opinions regarding safety and environment. Ms. Lawrence pointed out that research presented by the proponents of the bill was from the 1980's and 1990's in midtown Minneapolis which is an entirely different venue than in Kansas. She invited the Committee members to do their own research and not rely on out-of-date and out-of-community resources. In her opinion the bill is an attempt to punish women who do not fit into the stereotypical female gender roles.

Committee members pointed out that the genesis of the bill addresses the cost to communities to patrol the adult entertainment industry i.e. clubs and pornographic book stores and respond to calls when needed.

Written testimony in opposition was presented by:

Lauren Hergott, Women's Liberation Foundation ([Attachment 12](#))

Kathleen Lozano, Women's Liberation Foundation ([Attachment 13](#))

Philip Bradley, representing the Equal Entertainment Group (EEG) and Kansas Licensed Beverage Association (KLBA), testified in opposition to the bill which he described as very complex and an attempt to further expand government regulations ([Attachment 14](#)). His objections included the bill being a proposed solution for a non-existent problem, the proposed hours of operation, requirement of changing of floor plans, interior rebuilds, installation of cameras/spying devices, hiring of additional personnel, and new additional operation procedures and all of these having to be completed within 180 days. Mr. Bradley pointed out that the bill contains two topics which are not related: legal pornographic book stores and adult exotic dance clubs which are not considered part of the sex industry. Mr. Bradley presented a CD and a hard copy of the testimony which was presented by the following persons ([Attachment 15](#)):

Danny Aaronson, FALA attorney, stated he disagreed with almost everything Mr. Cosby told the Committee except that Mr. Cosby wants the State of Kansas to fight the bookstore saga in Abilene because the County could no longer pay for the litigation.

- The case went clear to the 10th Circuit Court which ruled on behalf of Abilene Retail
- The case went to the Supreme Court and they refused to take the case
- The attorney who represented the county was Scott Bergthold who presented written testimony today
- The studies the county relied upon were the same ones presented today.
- The ruling in the case was that "one size does not fit all" and that a study from Minneapolis, Minnesota may not be good for Abilene, that a study for an urban area may not be good for a rural area, and that a study about a book store may not be relevant to a dance club.
- Where the law is passed (the locale) is what makes them constitutional or unconstitutional. The law from the 10th Circuit is that the law must be germane to the local conditions.
- The bill being presented would apply to both the rural and urban areas. It deals with large and small communities and like the studies presented, one size does not fit all.
- The loss of jobs, ancillary businesses, alcohol taxes, and the cost of litigation dollars of tax payers would be huge and the courts would very likely rule against the state. A state-wide study would be required for the litigation for both book stores and dance clubs.
- The Constitution of the United States protects nude dancing in the first amendment. It would be the burden of the Legislature if it goes to the courts to substantiate why you are doing it based upon adverse secondary effects which are germane to your locale.

If this bill is passed it is going to cost a great deal of money at the local level and there will be "as applied challenges" when clubs cannot meet the proposed distance requirements between dancers and customers and room size.

Dr. Judith Hanna, Senior Research scholar in the Department of Dance and a Senior Research Scientist at the University of Maryland, presented testimony "Right to Dance" in opposition to **HB 2633** ([See page 15-6 of Attachment 15](#)). Courts have dismissed the premise that exotic dance clubs cause problems disproportionate of other places of public assembly. This bill restricts the content and expression of exotic dance and denies the patrons a type of expression which has been popular for nearly a century.

CONTINUATION SHEET

Minutes of the House Federal and State Affairs Committee at 1:30 p.m. on March 18, 2010, in Room 346-S of the Capitol.

John Samples, owner of KanBuild and four gentlemen's clubs in Kansas, testified that with all the proposed changes in tobacco taxes and with this bill, it is becoming more difficult to make a living in this state (Attachment 16). His bars in Topeka are the biggest in the area and he is the biggest Budweiser customer in Topeka. The clubs provide a safe and clean environment with both male and female customers including business men, bankers, doctors, lawyers, judges and even a few legislators. Clubs in Topeka have a \$900,000 payroll annually with 60 jobs involved and 70 to 80 entertainers who are not on the payroll. The makeup of the entertainers are students and many single mothers who do not receive child support. The clubs provide more than \$300,000 a year in tax revenue. In the ten years Mr. Samples has been in the business he has never had one complaint from the police or sheriff's departments. There has not been one infraction from the Alcohol Beverage Control agency. The employees have been very generous to the community through their donations to Toys for Tots, Breast Cancer Awareness, and many other worthy causes. He invited the Committee to check with the Sheriff's Department on their opinion of the gentlemen's clubs and what impact they have had on the community. Mr Samples invited the Committee to visit his clubs and see for themselves how the clubs operate and see what they do as a business.

Jeff Levy, Executive Director of Association of Club Executives, which oversees more than 4,000 adult entertainment clubs by training, writing manuals, setting good community standards, and to fight negative challenges which were created by society, government, or the religious right. He has logged 30,000 hours in the clubs and in that time has not seen the deleterious effects or crime which this bill is purported to help negate. He compared the lack of crime in the clubs to crimes of rape and abuse of children, women, and nuns within the Catholic Church and the secondary adverse effects. He stated the industry is safe and always has been. If Kansas gets rid of the industry, it will go underground or to another state. When the industry is allowed to operate, it can be regulated, taxed, and controlled with trained persons who develop good community standards. Mr. Levy asked that the bill not be passed because it will force litigation and that money and time could better be spent in addressing real problems which cause damage to society.

Mr. Bradley thanked the Chair and the Committee for their indulgence and reminded them that thousands of jobs would be lost in Kansas and also the source which generates more than \$2 million in tax revenue each year.

The meeting was adjourned at 3:30 p.m.

FEDERAL AND STATE AFFAIRS COMMITTEE GUEST LIST

DATE: March 18, 2010

NAME	REPRESENTING
Joe Mazur	Prudential of KS
Joe Borne	Cap Lab Corp LLC
Phil Bradley	EEG/KLBA
Anna Lawrence (DBA)	Self (exotic dancer)
JODI L RAOULFE	CAMPAGNI FOLTOBACCO-
Arne Spiess	AMERICAN CANCER SOCIETY
Kevin Keatley	Kansas Assoc. of Counties
Heather Hen	self
Seren Hein	Women's Liberation Foundation
Keith Reavis	The Human Race/ACLU
Jamie Ross	KCSL
John D. Prueger	Prueger & Smith
Chris Masoner	Am. Cancer Soc.
Phillip Case	Self
David Burek	JCSO
Ed Kump	KACP/KPOA/KSA
Zach Snyder	Equal Ent. Group

The two differ in the way each qualifies the definition. The City of St. Cloud relied on the statement:

"...that are characterized by an emphasis on the depiction or description of specified sexual activities or specified anatomical areas."

Although this qualifying statement has been upheld by the courts, the recent trend is to consider this wording "vague". The courts have reasoned that this type of qualifying statement leaves to much room for personal judgement. The model process adopted a qualifying statement based on the State Obscenity Statute. The use of an objective age based qualifying statement avoids the potential for confusion found in the subjective phrase "...characterized by an emphasis on..."

Spacing and Distancing Requirements

The model Process describes two forms of locational restrictions that an adult ordinance may impose to combat the adverse secondary effects associated with an adult use business. The City of St. Cloud chose the dispersal method with specified zoning districts. This method requires the creation of spacing standards and the delineation of specified areas of the city in which an adult use business can open and operate.

The standards set by the St. Cloud ordinance, 1320' between adult uses and 350' between adult uses and sensitive areas, are in line with the standards set by other communities. The standard set for the distance between two adult uses is similar to the distance required between other regulated uses of an identical nature. The standard set for the distance between an adult use and land uses that are considered "sensitive" is 350'. This standard is identical to the standard the city imposes on amusement centers. It also corresponds to the distance that requires notification prior to any change in the land use.

The model process suggests a planning analysis be completed documenting actual negative effects or illustrating a reasonable belief that the negative effects would occur in a proximate relationship to an adult use. Although the City of St. Cloud did not justify their spacing standards on a documented belief that negative effects would occur within the standards chosen, they did base their decision on the ordinances adopted by other communities and the State Attorney General's study.

It is important to remember that the City started to prepare its adult use ordinance immediately after completing its review of high risk sexual activities. Through that process both high risk sexual activities and other adverse secondary effect directly related to the Adult Bookstore & Cinema were thoroughly documented.

454
2-453

Amortization

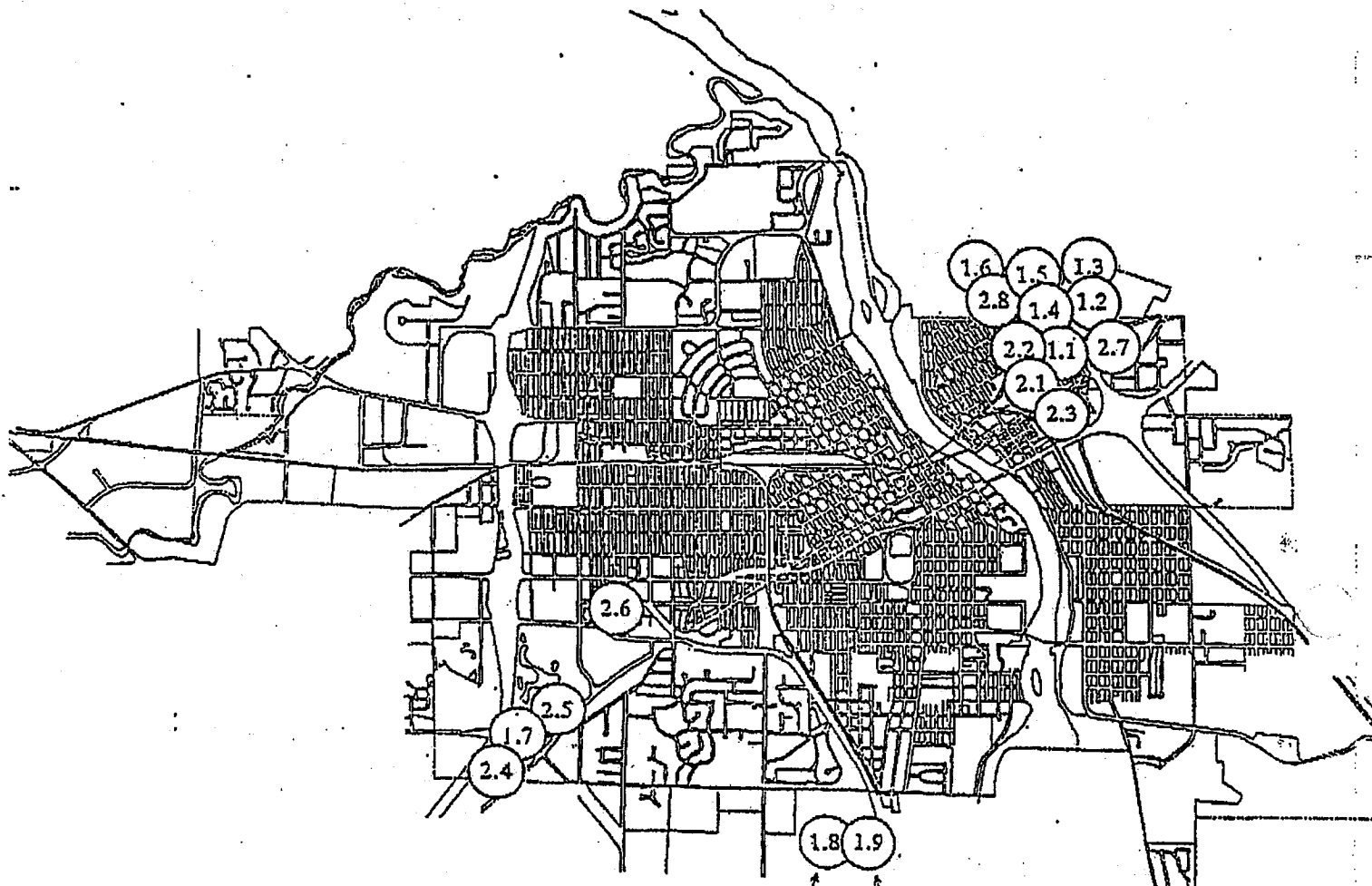
The model process reflects the courts' decisions that amortization is valid when the owner is given a reasonable opportunity to first recoup his or her investment and secondly to relocate with in the city. The City of St. Cloud added an amortization amendment that allows two years for a nonconforming use to cease operation. Based on ordinances, which have been upheld by the courts, the 2 year time frame combined with reasonable access to other areas of the city in which adult uses are permitted, appears to be a valid approach to regulate adult uses.

Reasonable Avenues of Communication

The model process does not specify a percentage of the city's total land area that must be open to the establishment of adult uses, instead it focuses on the city's obligation to provide for reasonable avenues of communication. The courts have reasoned that land with physical characteristics which hinder development or legal characteristics that exclude adult business may not be considered "available" for constitutional purposes. Recent court decisions have looked at potential sites for adult uses in terms of the relevant real estate market, as a test to determine if the city is providing a reasonable avenue of communication or effectively trying to ban adult uses.

The City of St. Cloud approached this issue of providing alternative sites by first looking at the amount of aggregate land that would permit adult uses. This amount was estimated to be 3.35 % of the city. The actual amount of land which, would not be hindered by physical and/or legal restrictions, and is part of the relevant real estate market is less then the original 3.35%. However, examination of the market for adult uses in St. Cloud combined with the number of businesses that would be required to relocate reveals the city meeting its obligation to provide reasonable avenues of communication. A complete analysis of available sites for the establishment of adult use businesses follows this section.

LOCATIONS OF AVAILABLE SITES FOR ADULT USE ESTABLISHMENTS



SITES WITHIN ANNEXED AREA

- 1.1 415 Franklin Avenue N.E.
- 1.2 580 North Highway 10
- 1.3 700 North Highway 10
- 1.4 625 Apollo Avenue N.E.
- 1.5 745 8th Street N.E.
- 1.6 777 Lincoln Avenue N.E.
- 1.7 3720 18th Street South
- 1.8 1203 33rd Street South
- 1.9 1059 33rd Street South

- 2.1 229 Lincoln Avenue N.E.
- 2.2 235 Lincoln Avenue N.E.
- 2.3 607 1st Street S.E.
- 2.4 West St. Germain
- 2.5 West St. Germain
- 2.6 2925 1st Street South
- 2.7 250 North Highway 10
- 2.8 Apollo Avenue N.E.

Summary Review of McLaughlin Report

In addition to the research described above, we have also been provided with a copy of a report prepared by R. Bruce McLaughlin, AICP, which presents his review, analysis, and opinions regarding the St. Cloud Adult Use Regulations. The following is a summary of our review of Mr. McLaughlin's report.

Mr. McLaughlin states that his report sets out to accomplish four objectives:

1. to determine if the City of St. Cloud Adult Use Zoning Regulations are, on their face, a valid exercise of the City's police power, or if they are facially arbitrary and capricious and unrelated to the legitimate exercise of the police power;
2. to determine if the City of St. Cloud Adult Use Zoning Regulations, as applied to one particular site (Adult Bookstore & Cinema, 631 U.S. Highway 10 South), are a valid exercise of the City's police power, or if, as applied to the subject site, they are arbitrary and capricious and unrelated to the valid exercise of the police power;
3. to review, consider and determine the amount of land legally permissible in the City of St. Cloud for Adult Uses in accordance with applicable St. Cloud Zoning requirements and with all other applicable Land Development Regulations; and to present this data as a determination of the number of sites potentially available; as well as a gross acreage and as a percentage of the entire City;
4. to determine if, based on the previous three analysis, the City of St. Cloud Adult Use regulations appear to comply with the Constitutional requirements for such regulations.

To accomplish these objectives he presents a review of portions of relevant State Statute, sections of the St. Cloud Comprehensive Plan, its Zoning Ordinance and other reports and documents. Mr. McLaughlin concludes in his report that not only did St. Cloud fail to identify any adverse secondary uses associated with the subject adult use establishment, but further that through his own independent analysis, he has concluded that not a single one of the many studies that have been prepared to document the adverse secondary effects of adult uses are "statistically or scientifically valid".

It follows logically therefore, that he goes on to conclude that any ordinance that is justified based upon findings and conclusions about adverse secondary effects is also invalid. In preparing his report, Mr. McLaughlin chose to include extensive, photocopied sections from State statute, the 1993 St. Cloud Comprehensive Plan, and City ordinances. In my opinion, extensive portions of the copied documents are of virtually no relevance to the central issues in this case.

Both I and members of my staff have completed a line by line review of the McLaughlin report and I would be happy to comment on specific examples of the numerous mistakes in interpretation and unsupported conclusions that we noted in our review. However, in the interest of brevity, I believe that when one wades through all of the padding, Mr. McLaughlin's report advances four principal conclusions. I strongly disagree with all four of these conclusions.

Again, as previously noted, his first principle conclusion is that there are no adverse secondary effects associated with adult use businesses. In support of this conclusion he states that his own independent analysis has determined that not one of the studies prepared throughout the country, documenting the adverse secondary effects of adult uses, are scientifically or statistically valid.

The studies prepared to document adverse secondary effects of adult uses vary significantly, both with respect to the nature of the uses involved and to the methodologies applied. While I would agree that several of the studies that I reviewed could be improved upon from an esoteric professional perspective, I believe that the fact that there are adverse secondary effects associated with adult uses has been irrefutably established. More significantly, courts throughout the United States, including the United States Supreme Court have concluded that many of these studies have adequately documented the adverse secondary effects associated with adult uses. Numerous cases that I have reviewed have concluded that the regulation of adult uses supports a substantial public interest. All of these ordinances are supported by studies completed either by that community, or other communities.

I personally have had extensive involvement with the neighborhoods surrounding the 40 acre study completed by the City of St. Paul. I served as the project manager for the University Avenue Corridor Study and worked very closely with six neighborhood groups and business organizations along the corridor. Among these groups were the three neighborhood groups and businesses most involved with and affected by the concentration of adult uses that used to be located at the intersection of Dale Street and University Avenue.

I observed the conditions in this neighborhood first hand and heard extensive testimony from property owners, teachers, clergy, and business owners about the adverse effects of these adult uses. It is easy for Mr. McLaughlin to sit down in Indian Rocks Florida and conclude that nobody would discard sexually explicit materials in a surrounding neighborhood, because this material is expensive. In fact, I heard of numerous situations in which small children walking home from school found very explicit materials. I also heard from people who owned property adjacent to these uses who told of finding similar material discarded on their property. I also heard testimony about street prostitution, cruising "johns", and discarded prophylactics, as well as neighborhood residents encountering people in the alley and on their property engaged in various sexual acts.

A related conclusion that Mr. McLaughlin makes is that since there are no adverse secondary effects in existence surrounding the Adult Bookstore and Cinema, the St. Cloud ordinance is specifically unjustified. He also advances his own standard for the establishment of an adult use ordinance. That standard is that the community has to identify actual adverse secondary effects before they can regulate adult uses. From my reading of the case law this is clearly not what the courts are saying. Rather, I believe it is generally accepted that communities can rely on the documentatin of adverse secondary effects in other communities in advancing their ordinances.

More importantly, from my review of the public record, including affidavits, minutes, police records and many other documents provided to me by the City of St. Cloud, I believe that the adverse secondary effects surrounding this specific establishment were extensively documented. Furthermore, despite McLaughlin's statements to the contrary, the City Council reviewed this and other relevant studies before it adopted the adult use ordinances.

The third conclusion that Mr. McLaughlin advances is that adult oriented businesses are fundamentally commercial in nature and they, therefore, belong in commercial zoning districts. Inherent in this conclusion is the predicate conclusion that there are no adverse secondary effects, or any other characteristics associated with these uses that distinguish them from other commercial uses. In fact, studies have clearly established why adult uses need to be regulated more stringently than general commercial uses.

Mr. McLaughlin's fourth conclusion is the most serious. Here he states that there are an unreasonably limited number of sites available for adult use businesses, after applying the St. Cloud ordinance. I do not know if he failed to measure correctly, or misinterpreted the ordinance, or exactly what the problem is here. The bottom line is that we know there are numerous sites that meet the ordinance that are available on the market. There are others that were available during the amortization period for Adult Bookstore & Cinema that have since been sold. Please refer to the section of this report that identifies all of the sites available for the establishment of adult uses in St. Cloud, under the current ordinance. It is also relevant to point out that the City of St. Cloud is only a part of a much larger metropolitan area and that area includes many more available sites within the same market area.

In summary, Mr. McLaughlin advances basically four principal conclusions in his report. I disagree with all four of his conclusions, including most importantly his conclusion that the ordinance results in too few available sites for adult use businesses. There are definately adverse secondary effects associated with adult use businesses. Adverse secondary effects associated with the Adult Bookstore & Cinema are significant, and they have been well documented. The St. Cloud City Council had this information and more available to it when they adopted their adult use ordinance.

LITTLETON POLICE DEPARTMENT INCLUSIVE CASE REPORT

Case 20040

Page 1

Date/Time: 9/2/2004 7:59:02 PM

Report Title: KIDNAPPING

Occur. Location: 6502 S BROADWAY

Apt: City: LITTLETON

State: CO

Category: OFFENSE

Location Type: PARKING LOT/GARAGE

Business: CRYSTALS

Off. Code: 18-3-302

Off. Code Desc: SECOND DEGREE KIDNAPPING

Category: PERSON

Involvement: SUSPECT

SSN: _____

First Name: _____

Middle Name: _____

Last Name: UNKNOWN

Person Type: _____

Race: WHITE

Sex: MALE

DOB: _____

DL Number/St: _____

Name Type: LEGAL

Category: PERSON

Involvement: VICTIM

SSN: _____

First Name: REBECCA

Middle Name: SUZANNE

Last Name: MCPHERSON

Person Type: _____

Race: WHITE

Sex: FEMALE

DOB: 8/12/1982

DL Number/St: 980721041 CO

Name Type: LEGAL

H: 10058 KEENAN ST HIGHLANDS RANCH CO 80130

Phone: (303)263-7778

W: STUDENT LITTLETON

Category: PERSON

Involvement: ADDL. PER.

SSN: _____

First Name: JOE

Middle Name: _____

Last Name: WARD

Person Type: POLICE OFFICER

Race: _____

Sex: _____

DOB: _____

DL Number/St: _____

Name Type: LEGAL

BUSINESS: 2255 W BERRY AVE LITTLETON CO 80165

Phone: (303)734-8235

Case Number: 04005441

Page: 1

Reporting Officer: WARD, J

Officer In Charge: _____

Date Printed: 9/7/2004 Time Printed: 11:42:22

Report Review: _____

Referred to: _____

Case Status: _____ Date Cleared: _____

2-460

LITTLETON POLICE DEPARTMENT INCLUSIVE CASE REPORT

Case 2004() 1

Page 2

Begin Date/Time: 9/2/2004 7:59:02 PM

Report Title: KIDNAPPING

Occur. Location: 6502 S BROADWAY

Apt: _____ City: LITTLETON

State: CO

Category	<u>PERSON</u>	Involvement	<u>ADDL PER.</u>	SSN	<u>532964424</u>
First Name	<u>CHRISTINA</u>	Middle Name	<u>LUCILLE</u>	Last Name	<u>ERVIN</u>
Person Type	<u>MENTIONED PERSON</u>				
Race	<u>WHITE</u>	Sex	<u>FEMALE</u>	DOB	<u>12/29/1979</u>
DL Number/St	_____	Name Type	<u>LEGAL</u>	_____	
H	<u>122 S JOLIET ST APT 205 AURORA CO 80111</u>			Phone	<u>(720)404-0926</u>
W	<u>6502 S BROADWAY LITTLETON CO 80120</u>			Phone	<u>(303)347-1576</u>

Category	<u>PERSON</u>	Involvement	<u>SUSPECT</u>	SSN	<u>522432196</u>
First Name	<u>WOODROW</u>	Middle Name	<u>WILSON</u>	Last Name	<u>CARR III</u>
Person Type	_____				
Race	<u>WHITE</u>	Sex	<u>MALE</u>	DOB	<u>8/29/1974</u>
DL Number/St	<u>952340926 CO</u>	Name Type	<u>LEGAL</u>	_____	
HOME	<u>5605 S BANNOCK ST #308 LTN CO 80120</u>			Phone	<u>(000)347-9461</u>

Category	<u>VEHICLE</u>	Vehicle Class	<u>AUTOMOBILE</u>	License	_____
Year	<u>-1</u>	VIN	_____	Style	_____
Make	<u>HONDA</u>	Model	<u>ACCORD</u>	Color	<u>MAROON</u>
Lic. Year/St	<u>-1</u>	_____			
Description	_____				

Case Number 04005441

Page 2

Reporting Officer WARD, J

Officer in Charge _____

Date Printed 9/7/2004 Time Printed 11:42:22

Report Review _____

Referred to _____

Case Status _____ Date Cleared _____

2-461

LITTLETON PD
SUPPLEMENTAL CASE REPORT # 1

Case 20040054

Page 1

Date/Time: 9/2/2004 7:59:02 PM

Report Title: SUPPLEMENTAL REPORT

Occur. Location: 6502 S BROADWAY

Apt: _____

City: LITTLETON

State: CO

Category OFFENSE

Location Type PARKING LOT/GARAGE

Business CRYSTALS

Off. Type ASSAULT/HOMICIDE

Off. Code Desc 18-3-302 SECOND DEGREE KIDNAPPING

Category PERSON Person Type SUSPECT SSN _____

First Name _____ Middle Name _____ Last Name UNKNOWN

Race WHITE Sex MALE DOB _____

DL Number/St _____ Name Type LEGAL

Category PERSON Person Type VICTIM SSN _____

First Name REBECCA Middle Name SUZANNE Last Name MCPHERSON

Race WHITE Sex FEMALE DOB 8/12/1982

DL Number/St 980721041 CO Name Type LEGAL

HOME ADDRESS 10058 KEENAN ST HIGHLANDS RANCH CO 80130 Phone (303)263-7778

WORK ADDRESS STUDENT LITTLETON

Category PERSON Person Type ADDL. PER. SSN _____

First Name JOE Middle Name _____ Last Name WARD

Race _____ Sex _____ DOB _____

DL Number/St _____ Name Type LEGAL

BUSINESS 2255 W BERRY AVE LITTLETON CO 80165 Phone (303)734-8235

Case Number 2004005441-1Page 1Reporting Officer BACA, D

Officer in Charge _____

Date Printed 9/7/2004 Time Printed 11:42:42

Report Review _____

Referred to _____

Case Status _____ Date Cleared _____

2-462

LITTLETON PD
SUPPLEMENTAL CASE REPORT # 1

Case 2004005

Page 2

Begin Date/Time: 9/2/2004 7:59:02 PM Report Title: SUPPLEMENTAL REPORT
Occur. Location: 6502 S BROADWAY Apt: _____ City: LITTLETON State: CO

Category PERSON Person Type ADDL. PER. SSN 532964424
First Name CHRISTINA Middle Name LUCILLE Last Name ERVIN
Race WHITE Sex FEMALE DOB 12/29/1979
DL Number/St _____ Name Type LEGAL
HOME ADDRESS 122 S JOLIET ST APT 205 AURORA CO 80111 Phone (720)404-0926
WORK ADDRESS 6502 S BROADWAY LITTLETON CO 80120 Phone (303)347-1576

Category PERSON Person Type SUSPECT SSN 522432196
First Name WOODROW Middle Name WILSON Last Name CARR III
Race WHITE Sex MALE DOB 8/29/1974
DL Number/St 952340926 CO Name Type LEGAL
HOME ADDRESS 5605 S BANNOCK ST #308 LTN CO 80120 Phone (000)347-9461

Category VEHICLE Vehicle Class AUTOMOBILE License _____
Year _____ VIN _____ Style _____
Make HONDA Model ACCORD Color MAROON
Lic. Year/St _____
Description _____

Category NARRATIVE
ASSIGNMENT:

On 090204 at approximately 1959 hrs I responded to an attempted abduction at 6052 S. Broadway.

INVESTIGATION BY OFFICER WARD:

Upon arrival I contacted Rebecca McPherson in the store. Mcpherson, a customer of Crystals, was visibly upset and stated that as she was walking out to her car on the south side of the building, she had been approached by a white male in his thirties.
She stated that the suspect was parked in his vehicle which, when she exited Crystals, was in the lot between two buildings located to the southeast of Crystal's. McPherson described the vehicle he was in as a

Case Number 2004005441-1 Page 2
Reporting Officer BACA, D Officer in Charge _____
Date Printed 9/7/2004 Time Printed 11:42:42 Report Review _____
Referred to _____ Case Status _____ Date Cleared _____

2-463

LITTLETON PD

SUPPLEMENTAL CASE REPORT # 1

Case 20040054

Page 3

E Date/Time: 9/2/2004 7:59:02 PM Report Title: SUPPLEMENTAL REPORT
 Occur. Location: 6502 S BROADWAY Apt: _____ City: LITTLETON State: CO

dark older model Honda Accord. She stated that as she walked to her car she saw him drive up at a high rate of speed and park directly behind her car in what seemed to be an attempt to block her in. She stated that it appeared to her that he was writing down her license plate number but that when he got out of his car she did not see him put anything down.

She stated that he then approached her as she was opening the driver's side door of her vehicle and stated something like, "You're going home with me" or "I'm taking you to my home." McPherson wasn't sure exactly what was said, but the content was something like what is stated above. She stated at this point she hurriedly opened her car door and sat down in her car. She reported that she immediately closed the door and locked the door. She stated that as she was getting into her car he attempted to grab her. She stated that he lunged at her as she was getting in the car and she was in fear for her life thinking he was going to abduct her. She stated that she then sped off in an attempt to get away from the suspect.

After she left she returned to Crystal's a couple of minutes later to contact the police.

I was then contacted by a Crystal's employee who had his manager on the phone. He handed the phone to me and I then spoke with her (Ervin, Christina) over the phone. Ervin stated to me that they had previously had a problem with a guy named "Woody" who use to work at Crystals. She stated that "Woody" had been arrested in the past for indecent exposure and that she was going to get additional information about him for me and call me on 090304.

Mcpherson was unsure if the suspect got out of the passengers side of the vehicle or the driver's side.

I will follow up with the manager of Crystal's on 090304.

Detective Baca was notified of the attempted abduction.

NEIGHBORHOOD CANVASS:

N/A

PROPERTY/EVIDENCE:

N/A

ATTACHMENTS:

Statement from McPherson.

DISPOSITION:

Referred to detective division.

JPWard/0104 090204

Case Number 2004005441-1
 Reporting Officer BACA, D
 Date Printed 9/7/2004 Time Printed 11:42:42
 Referred to _____

Page 3
 Officer in Charge _____
 Report Review _____
 Case Status _____ Date Cleared _____

2-464

LITTLETON PD
SUPPLEMENTAL CASE REPORT # 1

Case 2004005

Page 4

Begin Date/Time: 9/2/2004 7:59:02 PM Report Title: SUPPLEMENTAL REPORT
Occur. Location: 6502 S BROADWAY Apt: _____ City: LITTLETON State: CO

Category NARRATIVE
Supplemental Report by Detective D. A. BACA 8402

I was assigned this case on Friday September 3, 2004. I contacted the victim and advised her that I would be investigating her case. She stated that she did not think that she could identify the person who attacked her.

Category NARRATIVE
INFORMATION REPORT BY OFFICER WARD:

On 090304 I contacted Christina Ervin who is the manager at Crystal's. She stated that she had a problem with a former employee she named as Woodrow Wilson Carr. She stated that Carr had been observed on about four occasions in the parking lot masturbating and that he was previously in a late model maroon car, possibly a Honda Accord. She stated that he had harassed some of the employee's in the past. I cleared Carr and determined that his physical information matches the description of the suspect described by McPherson in this case. From previous contact records I determined that Carr may reside at 5606 S. Bannock St., # 308. Carr was terminated from Crystal's.

Nothing further at this time.

JPWARD 0104 090304

Case Number 2004005441-1
Reporting Officer BACA, D
Date Printed 9/7/2004 Time Printed 11:42:42
Referred to _____

Page 4
Officer In Charge _____
Report Review _____
Case Status _____ Date Cleared _____

3-765

LITTLETON POLICE DEPARTMENT CASE REPORT

Case 2004C

Page 1

Date/Time: 1/27/2004 10:30:00 PM

Report Title: INDECENT EXPOSURE

Occur. Location: 6502 S BROADWAY

Apt: City: ACSO

State:

Category OFFENSE

Location Type PARKING LOT/GARAGE

Business CHRISTALS

Off. Code 18-7-302

Off. Code Desc INDECENT EXPOSURE

Category PERSON Involvement SUSPECT SSN _____

First Name _____ Middle Name _____ Last Name _____

Person Type _____

Race WHITE Sex MALE DOB _____

DL Number/St _____ Name Type LEGAL

Category PERSON Involvement ADDL. PER. SSN _____

First Name HILARY Middle Name NICHOLE Last Name HANCOCK

Person Type INVOLVED PARTY

Race WHITE Sex FEMALE DOB 11/3/1984

DL Number/St _____ Name Type LEGAL

H LITTLETON

W 6502 S BROADWAY LITTLETON CO 80120 Phone (303)347-1576

Category PERSON Involvement ADDL. PER. SSN _____

First Name THOMAS Middle Name _____ Last Name HOAK

Person Type POLICE OFFICER

Race WHITE Sex MALE DOB _____

DL Number/St _____ CO Name Type LEGAL

BUSINESS 2255 W BERRY AVE LITTLETON CO 80165 Phone (303)734-8266

Category VEHICLE Vehicle Class AUTOMOBILE License _____

Year _____ -1 VIN _____ Style _____

Make FORD Model TEMPO Color RED

Lic. Year/St _____ -1

Description _____

Case Number 04000526

Page 1

Reporting Officer HOAK, T

Officer in Charge _____

Date Printed 2/10/2004 Time Printed 14:00:01

Report Review _____

Referred to _____

Case Status _____ Date Cleared _____

2-466

**LITTLETON POLICE DEPARTMENT
CASE REPORT**

Case 20040

Page 2

Begin Date/Time: 1/27/2004 10:30:00 PM

Report Title: INDECENT EXPOSURE

Occur. Location: 6502 S BROADWAY

Apt: City: ACSO

State:

Case Number 04000526

Reporting Officer HOAK, T

Date Printed 2/10/2004 Time Printed 14:00:01

Referred to

Page 2

Officer in Charge

Report Review

Case Status Date Cleared

2-467

**LITTLETON POLICE DEPARTMENT
NARRATIVE SHEET FOR CASE 2004000526**

Date 2/10/2004

Page 1

INDECENT EXPOSURE**IR REPORT****HOAK, T****ASSIGNMENT:**

On 1-27-04, at approximately 2230 hours, I was dispatched to Christal's at 6502 S. Broadway reference a party exposing himself to a customer that had occurred nearly 30 minutes prior to call.

INVESTIGATION BY OFFICER HOAK:

I arrived on scene and contacted the clerk on duty, Hilary Nichole Hancock. Hancock stated that a male party, described as a white male, approximately 5'8" in height with dark brown hair and brown eyes, with a goatee, and wearing a complete Brakes Plus uniform including the hat, came into the store, flirted with her, then left. While he was in the parking lot in a red Ford Tempo style vehicle, he approached a female store customer asking her if she "wanted to go with him". At this time, the suspect was completely naked. The female victim then fled from the north side of the store to the south side where she pounded on the south door windows. The suspect apparently left the area after other customers told him to get out of there. None of the customers wanted to get involved and at this point, we have no victim. The license plate obtained by Hancock did not come back on any known vehicle.

I advised Hancock to contact us promptly if she sees anything or anyone suspicious around her store, to print a copy of the surveillance photo if it shows this suspect (unknown at this time, requires managerial review) and show this to other clerks and provide me with a copy as well, and that we would have additional patrols in the area.

NEIGHBORHOOD CANVASS:

NONE

PROPERTY/EVIDENCE:

NONE

ATTACHMENTS:

NONE

DISPOSITION:

VICTIM DECLINED PROSECUTION, HEAVY PATROL REQUEST.
OFC. HOAK, 2007, 1-28-04.

2-468

City of Oklahoma City
COMMUNITY DEVELOPMENT DEPARTMENT
Planning Division

ADULT ENTERTAINMENT BUSINESSES IN OKLAHOMA CITY

A SURVEY OF REAL ESTATE APPRAISERS

March 3, 1986

2-470 469

The City of
Oklahoma City

Community Development
200 N Walker
Oklahoma City, Okla. 73102



February 3, 1986

Dear Oklahoma City Appraiser,

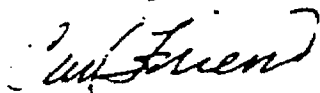
The City of Oklahoma City has recently adopted a new ordinance that will regulate the location of adult entertainment businesses.

Adult entertainment businesses are defined in our ordinance as those which emphasize acts or materials depicting or portraying sexual conduct. These businesses include "Adult Bookstores," clubs with nude dancers, theatres which show sexually explicit movies, etc.

In an effort to more completely analyze the impact of adult businesses on surrounding properties, Planning Division asks for your help in establishing a "best professional opinion" on the matter. As a real estate professional, the opinions you share with us on the enclosed survey forms would be very valuable to us in the development of a local data base for this sensitive land use issue.

Thank you very much for your assistance.

Sincerely,


Carl Friend
Principal Planner

CF:SK:dar

cc: Pat Downes
H. D. Heiser

2-470
~~2-472~~

COMMUNITY DEVELOPMENT DEPARTMENT
Planning Division
CITY OF OKLAHOMA CITY

TO: Professional Real Estate Appraisers

Please help us in this brief Oklahoma City survey. The information provided will help us establish an important data base regarding adult entertainment businesses.

The first four questions relate to the hypothetical situation presented below. The last three questions refer to actual situations in Oklahoma City that you might be aware of.

A middle income residential neighborhood borders an arterial street that contains various commercial activities serving the neighborhood. There is a building that was vacated by a hardware store 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 neighborhood.

Please indicate your answers to questions 1 through 4 in the blanks provided, using the scale A through G.

- SCALE: A Decrease 20% or more
B Decrease more than 10% 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 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 you expect the average values of RESIDENTIAL property located THREE blocks from the bookstore to be affected? _____
- 4) How would you expect the average values of COMMERCIAL property located THREE blocks from the bookstore to be affected? _____
- 5) Are you aware of the existence of adult entertainment businesses in Oklahoma City? _____
- 6) What is your opinion as to the effect of these businesses on surrounding properties? _____

7) Specifically, how do you think these businesses affect the surrounding property?

Are you a member of:

MAI _____

ASA _____

SREA _____

other _____

Your name or agency _____

(If you prefer not to give your name, please check here _____)

Thank you for your cooperation. Please return this questionnaire in the postage paid envelope provided for your convenience.

472
2-473

METHODOLOGY

On February 7, 1986, 100 questionnaires were mailed. All real estate appraisers in Oklahoma City listed in the Yellow Pages were included in the survey. As of March 1, 1986, 34 (34%) of the questionnaires had been completed and returned. Real estate appraisers do not receive certification from the State of Oklahoma; however, 26 of the respondents (76%) belonged to a professional organization. The table below summarizes the objective part of the questionnaire. Subjective comments are discussed in a separate section of this report.

SCALE	QUESTIONS			
	1	2	3	4
A Decrease 20% or more	11 (32%)	7 (21%)	4 (12%)	4 (12%)
B Decrease 10% - 20%	8 (24%)	9 (26%)	3 (9%)	3 (9%)
C Decrease 0 - 10%	6 (18%)	10 (29%)	10 (29%)	7 (21%)
D No change in value	9 (26%)	8 (24%)	17 (50%)	20 (59%)

E, F, and G
were positive
values--not checked by anyone

473
2-474

OKLAHOMA CITY REAL ESTATE APPRAISER SURVEY RESULTS

The 100% survey of real estate appraisers in Oklahoma City produced results that were consistent in virtually all respects with the result of the national survey of appraisers carried out by the city of Indianapolis.

Respondents overwhelmingly (74%) indicated that an adult bookstore would have a negative effect on residential property values in the hypothetical neighborhood described if they were within one block of the premises. 32% felt that this depreciation would be in excess of 20%, whereas 42% foresaw a decrease in value of from 1% to 20%. (Comparative national figures are 78%, 19% and 59% respectively.)

Seventy-six percent (76%) saw a similar decrease in commercial property values within one block of the adult bookstore. As in the national survey, fewer (21%) felt that a devaluation of over 20% would occur. The majority, (55%) saw the depreciation as being in the 1% to 20% range. (Comparative national figures are 69%, 10% and 59% respectively.)

The negative impact fell off sharply when the distance was increased to three blocks. As in the national survey, there appears to be more of a residual effect on residential properties than on commercial properties.

50% of the appraisers felt that a negative impact on residential properties would still obtain at three blocks from the site. Only 12% felt that this impact would be in excess of 20%. The remaining 38% felt that depreciation would be somewhere in the 1% to 20% range. 50% saw no appreciable effect at all at three blocks. (Comparative national figures are 39%, 3% and 61%.)

Commercial property was judged to be negatively impacted at three blocks by 41% of the survey. 59% saw no change in value as a result of the bookstore. (Comparative national figures are 23% and 76% respectively.)

In summary:

- The great majority of appraisers (about 75%) who responded to this survey felt that there is a negative impact on residential and commercial property values within one block of an adult bookstore.
- This negative impact dissipates as the distance from the site increases, so that at three blocks, half of the appraisers felt that there is a negative impact on residential property and less than half felt that there is a negative impact on commercial property.

474
2-475

RESULTS FROM SUBJECTIVE QUESTIONS

Oklahoma City real estate appraisers were also asked for their opinions as to the effect of adult entertainment businesses on surrounding properties. Most of the respondents discussed a variety of negative effects. Only five respondents (14%) said that adult entertainment business had very little effect on surrounding properties. Of these, three appraiser felt that these types of businesses located in commercial areas that were already blighted. All respondents indicated their awareness of the existence of adult entertainment businesses in Oklahoma City; many referred to the 10th and MacArthur location as a prime example of an undesirable cluster situation.

Opinions are summarized below:

Not good: attracts undesirables, threat to residents feeling of safety & security.

- acts as a deterrent to home sales

Would you want your home or business next door?

-forces good businesses out

-tends to have a snowball effect

-an immediate transition begins, with the better quality businesses moving out and a lower class business moving in (pawn shops, bingo parlors)

-embarrassment to other businesses and clientele - late hours, parking-trash and debris - vandalism

-children in the area in danger of adverse influence or by actual molestation by perverted people drawn to such establishments

Typical shoppers and residents go elsewhere to shop, and, if they're able to live.

If there is a large concentration of this type of business, there can be a very large loss in property value.

-tends to prevent economic improvement in the area, effects the community as to attracting other businesses

-detrimental impact on rental rates

**AN ANALYSIS OF
THE EFFECTS OF SOB_s ON
THE SURROUNDING NEIGHBORHOODS
IN DALLAS, TEXAS**

AS OF APRIL 1997

Prepared for:

**Ms. Sangeeta Kuruppillei
Assistant City Attorney
CITY OF DALLAS
Office of the City Attorney
City Hall 7BN
Dallas, Texas 75201**

Prepared by:

PETER MALIN, MAI



THE MALIN GROUP

10000 North Central Expressway
Suite 1000
Dallas, Texas 75243
Tel: 972-250-1000
Fax: 972-250-1001

THE MALIN GROUP
10000 North Central Expressway
Suite 1000
Dallas, Texas 75243
Tel: 972-250-1000
Fax: 972-250-1001

April 29 1997

Ms. Sangeeta Kuruppillai
Assistant City Attorney
CITY OF DALLAS
Office of the City Attorney
City Hall 7BN
Dallas, Texas 75201

RE: The analysis of the effects of Sexually Oriented Businesses (SOBs), specifically those which offer or advertise live entertainment and operate as an adult cabaret, on the property values in the surrounding neighborhoods. The findings below update and incorporate the report prepared by The Malin Group dated December 14, 1994.

Dear Ms. Kuruppillai:

In accordance with our engagement letter dated August 2, 1994, as amended on March 21, 1997, we have completed the study referenced above. Below is a summary of our findings and the reasoning behind our conclusions.

CONCLUSIONS

Sexually oriented businesses, specifically those that offer or advertise live entertainment and operate as an adult cabarets, currently exist in the city of Dallas. Many of these businesses are located by themselves away from other SOBs while in some areas of the city they can be found concentrated in one area.

In our December 14, 1994 Report ("The Report"), we found that SOBs have both a real and a perceived negative impact on surrounding properties. In such areas, crime rates are higher and property values are lower and/or the properties take longer to lease or sell. Our study has found that the higher the concentration of these businesses in one locale, the greater their impact on the neighborhood.

477
2-478

Ms. Sangeeta Kurupillai

April 29, 1997

Page 2

There are two primary ways in which SOB's affect the neighborhood: one is by their presence, including signage and advertising, and the other is by the hours they keep and the type of people they attract.

Their presence influences the public's perception of the neighborhood in which they are located. SOB's "can create 'dead zones' in commercial areas where shoppers do not want to be associated in any way with adult uses, or have their children walk by adult uses". This influence appears to be the same whether the dancers are appearing in a state of nudity or semi-nudity. The public perception is that it is a place to be avoided by families with women and children.

The second major influence is the hours of operation and the type of people which SOB's attract. This appears to lead to higher crime in the area, loitering by unsavory people, including prostitutes, and parking problems which can negatively affect the surrounding businesses. Additionally, there is frequently parking lot noise and disturbances which often turn violent. The SOB's keep late hours which can also become a nuisance to nearby residents.

We studied police calls for service emanating from 10 different SOB's over a four year period from 1993 through 1996 and found that SOB's were a major source of such calls. The seven SOB's along West Northwest Highway near Bachman Lake averaged more than one call to the police everyday. We also studied sex-related arrests for the four year period ending March 1997. The number of sex crime arrests which include rape, prostitution/commercial vice and other sex offenses, was 396 in the area along West Northwest Highway which includes the seven SOB's. This compares to 77 and 133 sex crime arrests respectively in two similar areas along Northwest Highway, the second of which contained two SOB's spaced more than a 1/2 mile from the other. From this evidence, it appears that there is increased sex crime arrests and disturbances requiring police presence around SOB's and significantly more crime when there is a concentration of SOB's in one area.

We reviewed studies completed in numerous other cities including: Austin, Los Angeles, Indianapolis, New York, and Phoenix on the effects of adult entertainment on the surrounding properties. In addition, we reviewed summaries of similar studies completed in Islip, New York; St. Paul, Minnesota; Whittier, California; Manatee County, Florida and New Hanover County, North Carolina. Finally, we did extensive research regarding the SOB's in Dallas.

Adult Entertainment Study, Department of City Planning, City of New York, 1994.

2-478

Ms Sangeeta Kurucillar
April 29, 1997
Page 3

All of these localities, after completing their own independent study of the issue, and reviewing the work of the others, decided to enact controls on SOBs which would prohibit them from concentrating in one area in the community and limit the areas in which they could locate to those away from residential, religious, educational and recreational uses.

In most cases, the localities limited SOBs from locating in all but a few zoning districts. They set minimum distances between other SOBs as well as residential, religious, educational and recreational uses. These distances were generally 500 or 1,000 feet. Most localities established amortization periods after the enactment of the ordinance in which SOBs became non-conforming. Generally, local authorities could grandfather certain SOBs through a public hearing process. Most of the clubs that were grandfathered were isolated establishments which advertised discretely and were buffered from residential uses.

In several instances, State and Federal Courts have found that legislation controlling SOBs was constitutional and did not abridge First Amendment rights. As long as the locality provided for a sufficient number of relocation sites, these restrictions were found to be constitutional.

We reviewed these studies to determine whether the other cities used sound principles in reaching their conclusions. After reviewing the studies completed by New York, Phoenix, Indianapolis, Austin and Los Angeles, we determined that their methodology was appropriate and their conclusions were sound. We have no reason to believe that these findings would be any different in Dallas.

These studies in the "other localities found that adult entertainment uses have negative secondary impacts such as increased crime rates, depreciation of property values, deterioration of community character and the quality of urban life."²

In other cities' studies, as well as the study that we completed in Dallas, "Where respondents indicated that their businesses or neighborhoods had not yet been adversely affected by adult uses, this typically occurred in Study Areas with isolated adult uses. Moreover, these same respondents typically stated that an increase in such uses would negatively impact them. Community residents fear the consequences of potential proliferation and concentration of adult uses in traditionally neighborhood-

²IBID. p. vii

Ms. Sangeeta Kurupilla

April 29, 1997

Page 4

oriented shopping areas and view the appearance of one (emphasis added) or more of these uses as a deterioration in the quality of urban life."³

In Dallas, we interviewed a number of real estate brokers active in an area punctuated by SOB's who reported that SOB's "are perceived to negatively affect nearby property values and decrease market values". Eighty percent of the brokers responding to a NYC survey indicated that an adult use would have a negative impact on nearby property values. This is consistent with the responses from a similar national survey of real estate appraisers⁴ completed by Indianapolis and a survey completed in Los Angeles of real estate professionals.

"Adult use accessory business signs are generally larger, more often illuminated, and graphic (sexually-oriented) compared with the signs of other nearby commercial uses. Community residents view this signage as out of keeping with neighborhood character and are concerned about the exposure of minors to sexual images."⁵ This was a major complaint in our interviews in Dallas and the findings of the New York City report as well as the other localities.

We have prepared a video tape to accompany this report that shows typical SOB signage in Dallas. The newer clubs that stand-alone and meet the requirements of Chapter 14 Section 41A of the Dallas zoning code, generally have more discrete on-site signage while those that must compete for customers from nearby or adjacent SOB's have more obvious on-site signage intended to draw the public's attention.

SUMMARY

We found from our study of three Dallas neighborhoods and the findings of numerous other localities, that one isolated SOB has much less direct impact on the neighborhood than a concentration of SOB's. It does, however, impact the properties immediately surrounding it. The more visible it is, the more impact it has.

Concentration Effect

Our study shows that the location of multiple SOB's in one neighborhood can have a major impact on the neighborhood by contributing to crime, driving away

¹IBID. p. viii

⁴IBID. p. viii

⁵IBID. p. viii

Ms. Sangeeta Kurupillai

April 29, 1997

Page 5

family-oriented businesses and impacting the nearby residential neighborhoods. When concentrated, SOBs typically compete with one another for customers through larger, more visible signs, and graphic advertising. They tend to be a magnet for certain types of businesses such as pawn shops, gun stores, liquor stores, check cashing storefronts and late-night restaurants.

Impact on Surrounding Properties

The highest and best use of nearby property becomes limited under the principle of conformity as few other tenants wish to be near the SOB-dominated area. Investors and lenders are unwilling to invest in new improvements in these areas and the vacant land sits idle for years. Single-family homes in the area frequently end-up as rentals because the families move away from the SOB-dominated area and it becomes exceedingly difficult to sell such houses.

Attitudinal Impact:

As the recent New York City study states: "The experience of urban planners and real estate appraisers indicates that negative perceptions associated with an area can lead to disinvestment in residential neighborhoods and a tendency to shun shopping streets where unsavory activities are occurring, leading to economic decline."⁶ The forces that influence real estate value are described as follows: "The market value of real property reflects and is affected by the interplay of basic forces that motivate the activities of human beings. These forces, which produce the variables in real estate market values, may be considered in four major categories: **social ideals and standards** (emphasis added), economic changes and adjustments, governmental controls and regulation, and physical or environmental changes."⁷ The attitudinal data in the survey is thus significant even in those instances where the current negative impacts of adult entertainment establishments are difficult to measure.⁸

⁶IBID, page vi

⁷*The Appraisal of Real Property*, seventh edition, by The American Institute of Real Estate Appraisers, Page 3.

⁸*Adult Entertainment Study*, Department of City Planning, City of New York, 1994, Page vi.

481
2-482

Ms. Sangeeta Kurupillai
April 29, 1997
Page 5

SCOPE OF WORK

Our study was conducted in the following manner:

We reviewed similar studies of adult entertainment completed by five major cities.

As part of our research, we identified a Study Area which included seven SOBs operating as Cabarets (The "Study Area"). We then proceeded to compare and contrast this area with two other areas of Dallas with similar land uses and traffic patterns (the "Control Areas"), one of which did not include any SOBs and one that included two that were a 1/2 mile apart. These were compared on the basis of sex-crime rates and calls for police over a four year period. Additionally, we interviewed property owners or their real estate brokers and agents who are actively leasing, listing, managing, buying or selling properties in the Study and Control Areas.

We collected and analyzed crime statistics within the Study Area and the two control areas known as Control Area East and West. These crime statistics included the four years ending December 1996. Both the number of sex-crime arrests and number of police calls at the specific SOBs were analyzed (See Exhibit C). The number of sex crime arrests, in the Study Area which includes the concentrations of SOBs was five times higher than the Control Area with no SOBs and nearly three times higher than the Control Area with two isolated SOBs.

We then contacted owners or their real estate representatives at properties in each area that were either trying to sell or lease land or improvements. This interview process included talking to people involved with single family residences, strip shopping centers, community shopping centers, apartments, free standing retail stores, vacant restaurant buildings, vacant autopart stores and vacant commercially zoned land.

We surveyed this group regarding the length of time the property had been on the market, their experience with that property with respect to its pricing and what observations they could offer about trends in the neighborhood. If it was a real estate agent, we asked them to compare this property in this neighborhood to similar properties in other neighborhoods. Finally, we asked these agents if the presence of SOBs in the neighborhood had any impact on their property or the surrounding neighborhood.

The Study Area is a neighborhood located near Bachman Lake on West Northwest Highway, a major gateway to the city where seven SOBs are located. There are three other locations of concentrated SOBs; Greenville Avenue near Lovers Lane; Harry Hines Boulevard near Royal Lane and Spur 342 east of California Crossing where smaller concentrations of SOBs are congregated. We did not study these areas.

482
2-483

Ms. Sangeeta Kurupillai
April 29, 1997
Page 7

Generally, most other live entertainment SOBs are dispersed and located individually throughout many neighborhoods in the city.

The Control Areas, East and West were chosen due to their similar land uses and traffic patterns to those of the Study Area. Control Area West is an area along West Northwest Highway just to the east of the Study Area which does not contain any SOBs. It is located along the same highway as the Study Area and predominately consists of highway commercial and residential uses. Control Area East consists of another part of the same highway, East Northwest Highway. This Control Area however, contains two SOBs one of which, PT's, is at Lawther Lane at the east end of the Control Area and a second SOB, Doll's House, is located at the west end of the Control Area. This area contains both highway commercial and residential uses. The two SOBs are approximately one-half a mile apart but are within 1,000 feet of residential uses.

The boundaries of the three areas were chosen to coincide with the Police Department beats. It is through the beats that crime data is collected and analyzed.

ANALYSIS OF DATA

A summary of other localities' findings regarding SOBs:

CALLAS, TEXAS

Property Owner/Agent Interviews

Between September and November, 1994 The Malin Group interviewed 30 people who were either the owners of commercial property or their agents in the one Study Area and two Control Areas. During March and April 1997, we conducted further interviews with some of the same and many additional owners and agents in the areas.

All of the people interviewed in the Study Area believed that their property values (or those of the owner that they represented) were lower due, in part, to the presence of the seven SOBs operating as Adult Cabarets along West Northwest Highway. This loss of value manifested itself in a variety of ways including: increased operating costs, such as, additional security patrols, burglar alarms, trash cleanup; income property selling at much lower sales prices than comparable properties in similar areas, extreme difficulty leasing in certain shopping centers and a lack of demand for commercial land.

We examined three sales of retail zoned land in the Study Area which sold for but a fraction of what similar properties along the same highway in the Control Area brought. The land sales in the Control Area ranged between \$10.00/SF and \$12.00/SF while

483
2-484

Ms. Sangeeta Kurupillai
April 29, 1997
Page 8

four sales along the same highway just a mile away in the Study Area sold for prices between \$1.20/SF and \$7.00/SF respectively.

Two tracts with income-generating retail buildings show similar results. The one in the Study Area sold on a 16.5% capitalization rate (cap rate) while the one in the Control Area sold on a 12.5% cap rate (the higher the rate the lower the value). This difference in rates can be directly attributed to the additional risk factors reflected by the area. The difference between the two yields reflects a 25% drop in property prices near the concentration of SOBs.

In our interviews with real estate professionals, we learned that some properties had been on the market next to or across the street from SOBs for over 10 years. Interest in these sites historically has come from the same small group of users which includes: other SOBs, pawn shops, liquor stores, night clubs, tanning salons, and certain restaurants. These users have found that the SOBs clientele will patronize their businesses; therefore, they tend to congregate near SOBs. We learned that retail space near SOBs is more difficult to lease because the type of tenant who will locate there tends to be limited to those listed above. As a result, these properties take much longer to market. Also, a comparison of lease rates between the Study Area and the Control Area showed lower asking rates near the SOBs operating as adult cabarets.

Most owners and agents that we interviewed who have holdings in either the Study Area or Control Area West believe that should the Study Area be rid of the SOBs, more investment in new restaurant and retail properties would quickly follow. This is due to the high traffic count along Northwest Highway, the density of surrounding developments and the demand generated from the surrounding business and residential neighborhoods. Many others we talked to echoed these sentiments and believed that owners would make significant investments in nearby apartments if the SOBs were gone.

Crime

As part of our comparison of these areas, we collected crime statistics for the Study Area and compared them to the two Control Areas. We found that sex-related crimes were over five times higher in the Study Area than in Control Area West and nearly three times higher than in Control Area East. Sex Crimes, as defined by the FBI, include: rape, prostitution/commercial vice and sex offenses. (See Exhibit attached). The results of this comparison show crime in three similar commercial corridors along Northwest Highway. The Study Area had 396 sex crime arrests during the 50 month period thru March 1997 while Control Area East and West had 133 and 17 respectively. Control Area West is less than a mile from the Study Area along the same highway; yet, it had five times fewer sex crime arrests.

484
2-485

Ms. Sangeeta Kurupillai

April 29, 1997

Page 9

Location	# of Sex Crime Arrests 1/93 - 3/97
Study Area	368
Control Area East	133
Control Area West	77

These results cannot be solely attributed to the SOB's because of the differences in demographics other factors may be contributing to the crime in the Study Area. However, the data clearly suggests that the SOB's are one of major causes of crime and confirms the results of similar studies in Austin, Los Angeles, Indianapolis, etc. This is true especially with respect to the sex crimes where the same result has been found in nearly all the other localities studied.

Police Calls

We analyzed Dallas Police Department call logs where such calls were made from the SOB's in the three areas (See Exhibit B). A review of these calls from the four year period 1993 thru 1996 shows a repetitive series of complaints coming from these SOB's which includes assaults and unruly behavior both inside and outside of the clubs. The Police Reports show numerous situations where weapons were present and prostitution was occurring. In the Study Area during this four year period, there was more than one call per day for the Dallas Police from these seven locations.

DALLAS - SUMMARY

In all of our interviews in both 1994 and 1997, we found that only one person thought they benefitted from the presence of the SOB's. The SOB's were largely responsible for the Study Area's negative perception by the public and many people interviewed believe that the SOB's are largely responsible for the high crime in the area.

The Control Areas, where crime was lower, were also impacted by the nearby presence of SOB's. The two SOB's reported 275 calls for Police during the last four years. The Control Area with the two SOB's also had significantly more sex crime arrests than the Control Area with no SOB's.

We found that properties in Dallas are negatively impacted by the presence of SOB's. This is more evident when they concentrate in one area, but can be seen elsewhere through the dining and shopping patterns in the neighborhood. We found that crime is significantly higher in the Study Area where seven establishments are located. Contributing to this is competition for customers requiring larger, more obtrusive and

485
2-486

Ms. Sangeeta Kurupillai

April 29, 1997

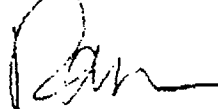
Page 10

graphically suggestive signage. Little investment in the area is being made because there are a limited number of users who wish to be near such establishments. What investment is occurring requires much higher returns to offset the risks apparent in the neighborhood.

Our findings here in Dallas are reinforced by the numerous studies done in other localities, all showing higher crime in areas where SOBs are concentrated (especially sex crimes). The general negative feelings towards these areas and avoidance of the area by those who live in the surrounding community, both in our study and those from around the country, show how the public perceives such areas. This is reinforced by numerous newspaper articles on the subject, both in Dallas and the other localities and national press. The presence of the SOBs in the Dallas Study Area has resulted in a general disinvestment in the surrounding properties.

Respectfully submitted,

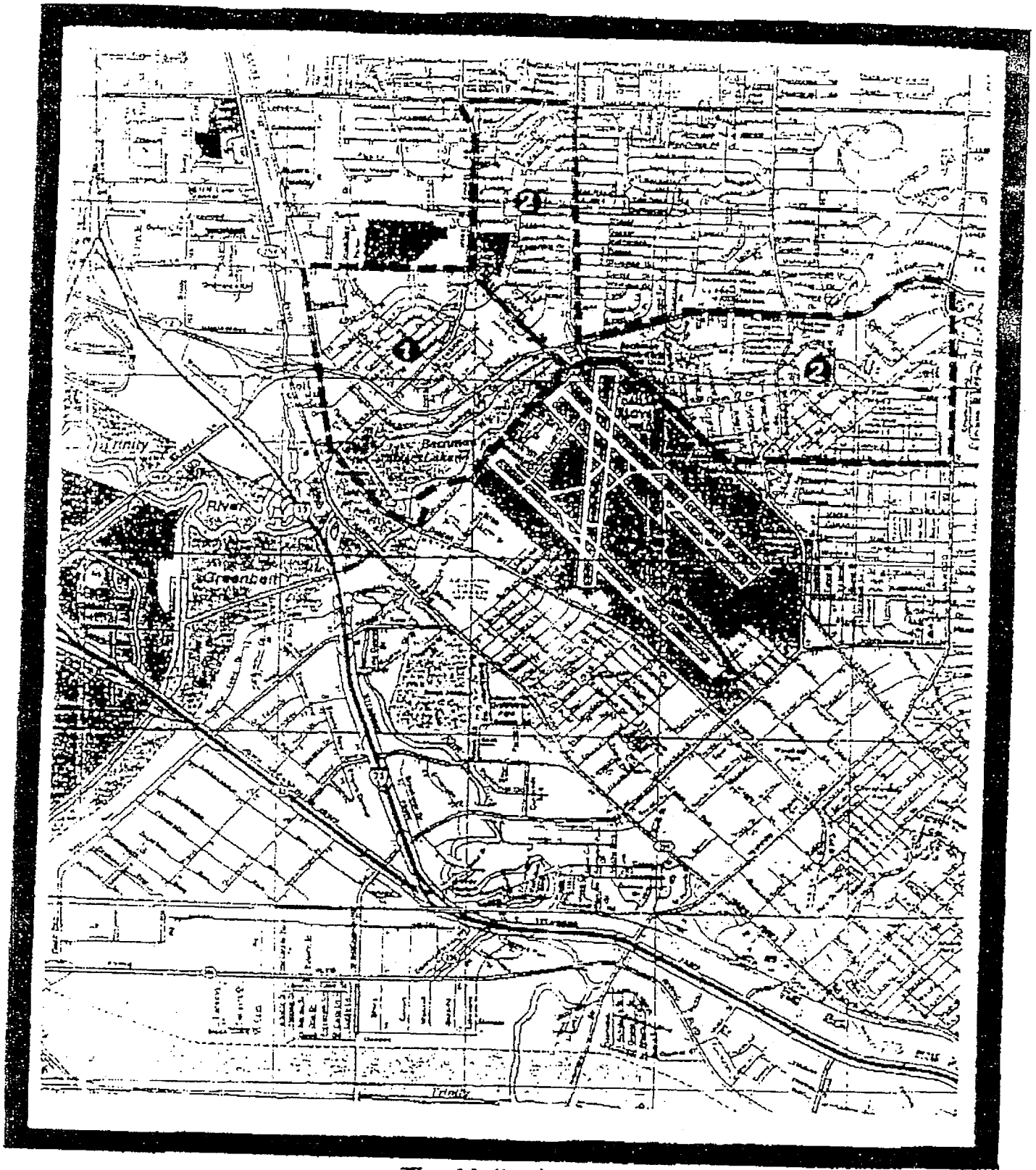
THE MALIN GROUP



Peter Malin, MAI
Managing Director

FM/kn

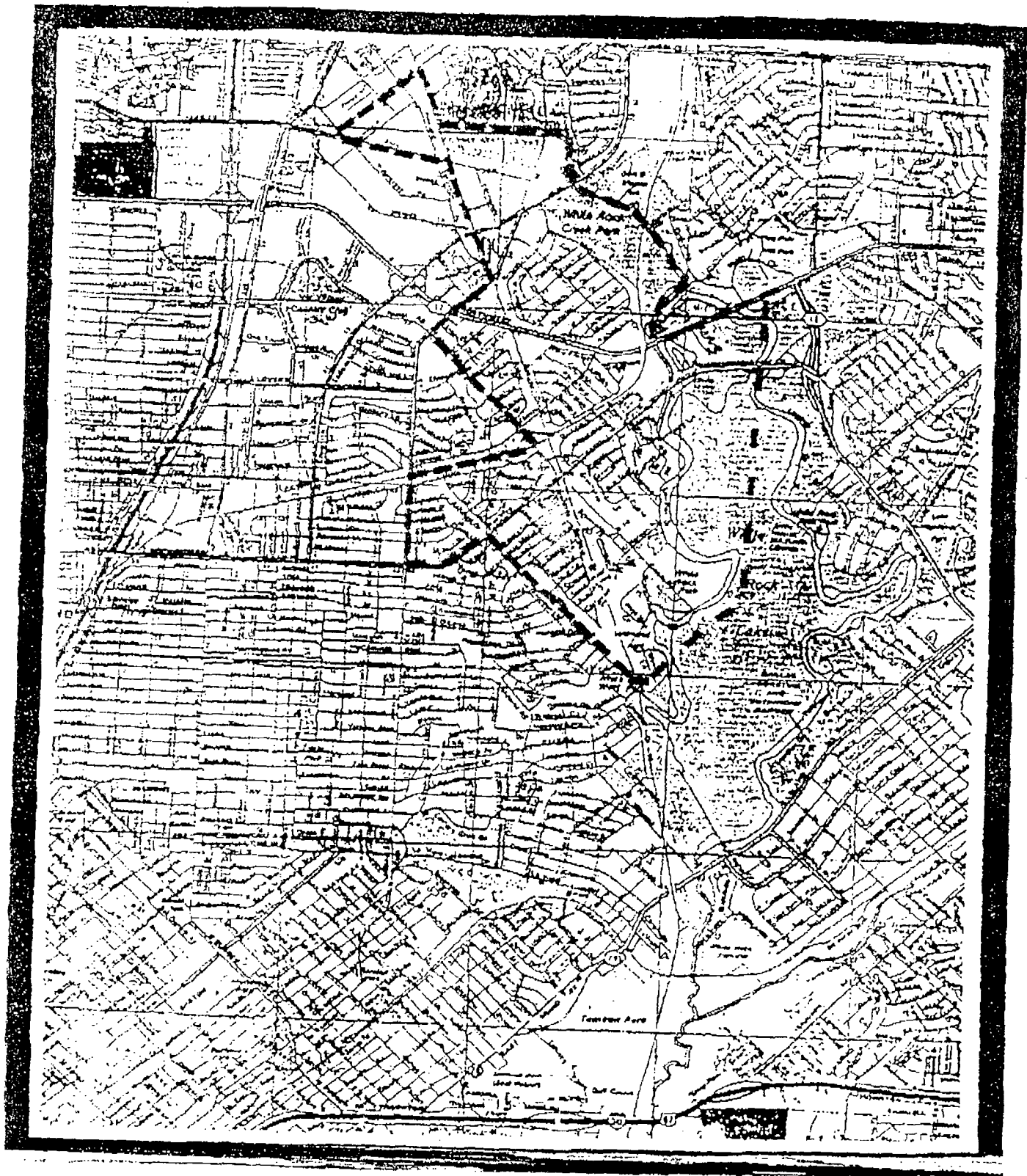
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2-487



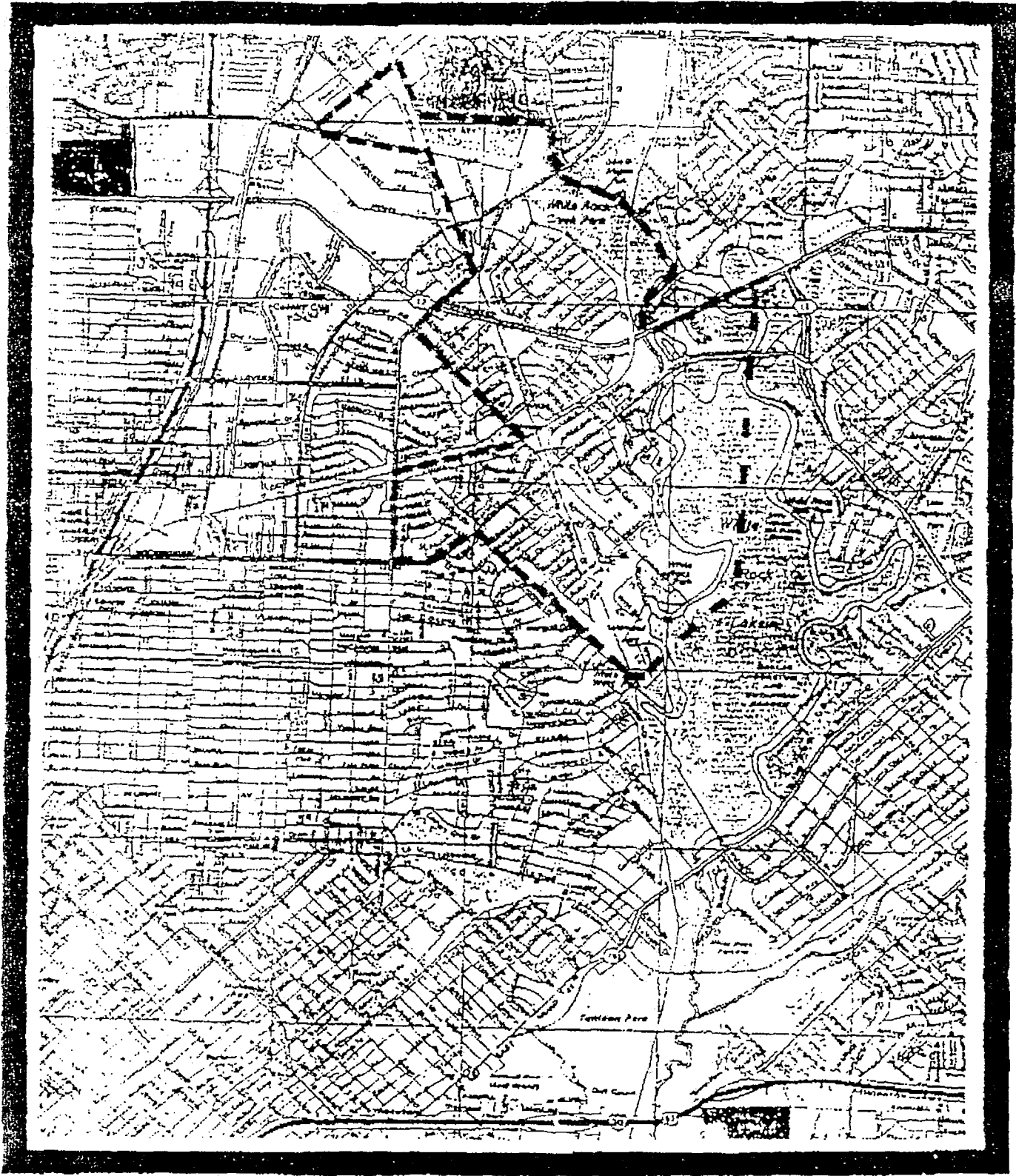
The Malin Group

1. Study Area 2. Control Area- West

481
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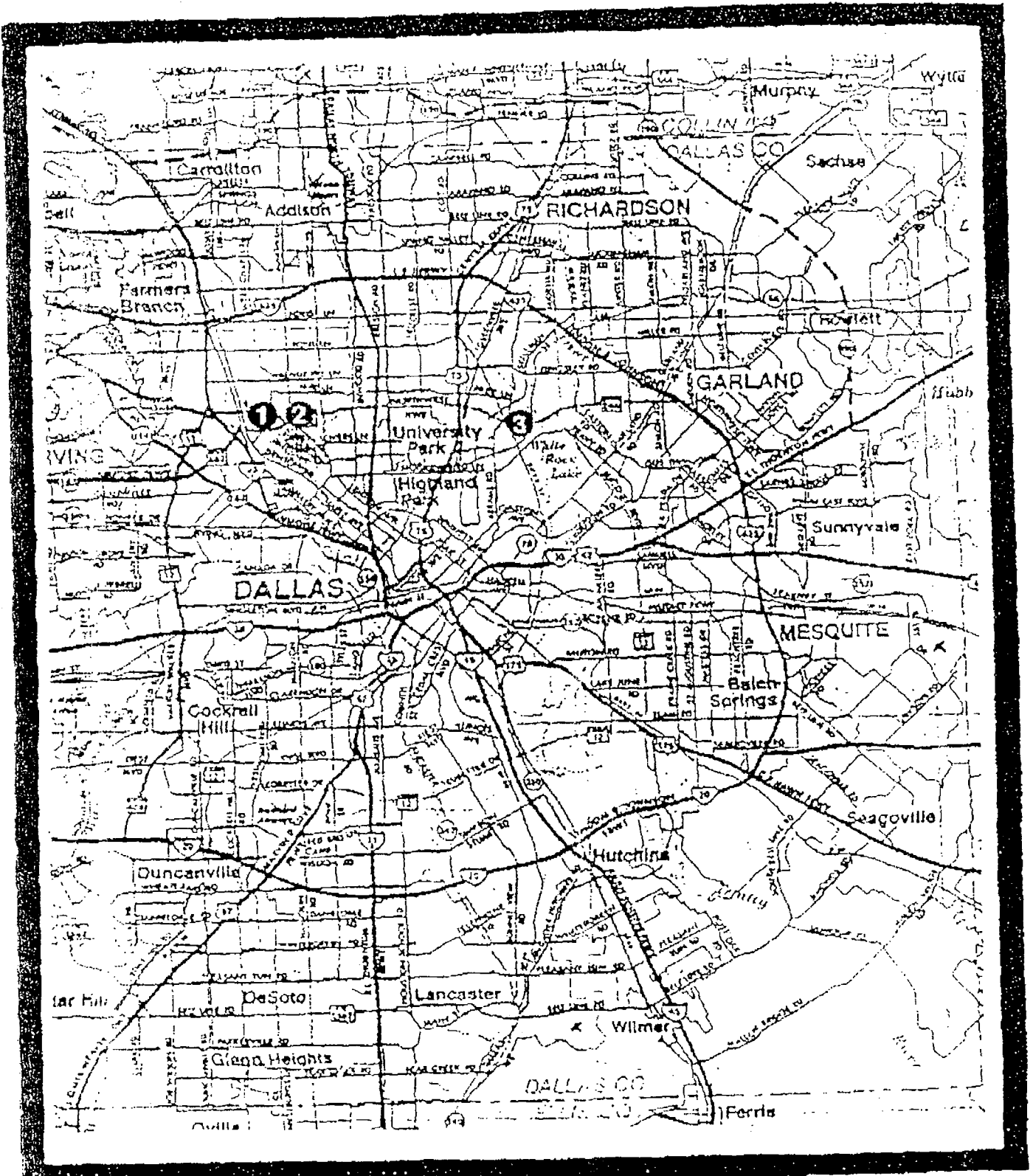


2-488



The Mallin Group
Control Area- East





The Malin Group

1. Study Area 2. Control Area- West 3. Control Area-East

EXHIBITS

06/12/97 5:30

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491
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EXHIBIT A

Comparison of Sex-Related Arrests for 50 months ending 03/31/97		
Study Area	No. of Sex Crimes ¹	No. of SOB ²
Police Beat 536	148	7 ³
Police Beat 537	41	0 ⁴
Police Beat 538	208	0 ⁴
Total	396 Sex Crimes	7 SOB²
Control Area-West	No. of Sex Crimes	No. of SOB ²
Police Beat 546	0	0
Police Beat 552	0	0
Total	0 Sex Crimes	0 SOB²
Control Area-East	No. of Sex Crimes	No. of SOB ²
Police Beat 215	20	1
Police Beat 244	52	1
Police Beat 241	58	1
Total	133 Sex Crimes	3 SOB²

¹ Sex crimes are defined as Part I and Part II sex crime arrests. These include Rape, Prostitution/Commercial Vice and other Sex Offenses.
² These include SOB² as defined in the proposed amendment to Chapter 41A dated 03/10/97.
³ This is a concentration of SOB²s along several blocks of West Northwest Highway.
⁴ These beats are immediately adjacent to the seven SOB²s in Beat 538.

Source: Dallas Police Department

2-492



EXHIBIT B
(Page 1 of 2)

2-493

SUMMARY OF POLICE CALLS FOR SERVICE 01/93 THRU 12/96						
Names/Addresses	1993	1994	1995	1996	Total	Avg. Per Year
Chez Pussycat 3217 W Northwest Hwy, Dallas, Texas 75220	43	13	18	13	87	22
Crystal Field 3211 W Northwest Hwy, Dallas, Texas 75220	18	14	11	4	47	12
Baby Dots Topless Saloon/Deja Vu 3038 W Northwest Hwy, Dallas, Texas 75220	142	165	128	179	614	153
Fantasy Ranch/Diamond's/Billionaire Boys Club 3027 W Northwest Hwy, Dallas, Texas 75220	28	76	64 ¹	44 ¹	212	53
The Fare West 3021 W Northwest Hwy, Dallas, Texas 75220	108	85	70	73	337	84
Caligula XXI 2828 W Northwest Hwy, Dallas, Texas 75220	35	58	29	53	175	44
Totals for Study Area-Which includes a concentration of SOB's.					1,472	368
¹ This club was closed for six months during 1995 and 1996 and these totals were annualized.						

SUMMARY OF POLICE CALLS FOR SERVICE 01/93 THRU 12/96						
Names/Addresses	1993	1994	1995	1996	Total	Avg. Per Year
PT's Gentlemen Club 4875 W Lawther Drive, Dallas, Texas 75220	40	45	21	48	154	39
Doll's House 6509 E Northwest Hwy, Dallas, Texas 75231	0	40	43	38	121	30
Totals for Control Area-Which includes two isolated SOB's.					275	35

06/12/97 15:30

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EXHIBIT C

SOBs in the Study and Control Areas
by Type of License

Study Area	
Chaz Pussycat	Class A Dance Hall
Crystal Pistol	Class A Dance Hall
Baby Dolls Topless Saloon	Class A Dance Hall
De Ja Vu	Class A Dance Hall
Fantasy Ranch/Diamonds	Class A Dance Hall
The Fare West	Class A Dance Hall
Caligula XXI	SOB-Cabaret
Control Area East	
P.T.'s	SOB Cabaret
Doll's House	Class A Dance Hall
Control Area West	
None	
This license was denied and status is pending litigation.	

494
2-

EXHIBIT B
(Page 2 of 2)

SUMMARY OF POLICE CALLS FOR SERVICE #1/93 THRU 12/86						
Names/Addresses	1993	1994	1995	1996	Total	Avg. Per Year
Million Dollar Saloon 8826 Greenville Avenue, Dallas, Texas 75231	37	15	11	19	82	21

2-495



EXHIBIT D

SOURCES

Study of the Effects of the Concentration of Adult Entertainment Establishments in the City of Los Angeles. Prepared by Los Angeles City Planning Department, June, 1977.

Adult Business Study - Impacts in Late Evening/Early Morning Hours. Prepared by Phoenix Planning Department, June, 1994.

1986 Staff Study in Support of S.O.B. Ordinance. Prepared by the City of Austin, Texas, 1986.

Adult Entertainment Businesses in Indianapolis - An Analysis. Prepared by Department of Metropolitan Development Division of Planning, February, 1984.

Adult Entertainment Study. Prepared by Department of City Planning, City of New York, November, 1994.

EXHIBIT E

PETER MALIN, MAI QUALIFICATIONS IN REAL ESTATE COUNSELING, VALUATION AND EXPERT SERVICES

Peter Malin, a third generation real estate professional, has 19 years experience in the field. His experience ranges from being a Land Use Manager for the nation's largest private landowner (IPCO) to being a founder of Dallas' fourth largest Commercial Real Estate firm.

Today, as Managing Director of **The Malin Group**, he oversees a small group of real estate economists in Dallas, Texas, providing advice and counsel to a national client base. His writings on issues in Real Estate have been published in a wide range of international journals, magazines and newspapers. He is the editor and publisher of a widely recognized newsletter, *Capital and Investment Trends*, reporting on real estate trends in the Texas markets.

For four years Mr. Malin worked for International Paper Company, the nation's largest private landholder, in their development, land management and real estate divisions. He was involved in the valuation of timberlands as well as the development of recreational real estate such as ski areas and waterfront property.

After spending four years as a commercial appraiser in Dallas, Texas, Mr. Malin became the Director of Real Estate Valuation for Laventhol and Horwath in their Dallas office. In this capacity, he directed a national practice which specialized in property valuation and counseling. He received the MAI designation in 1986 from the Appraisal Institute, and has testified in numerous courts during the past eleven years as an expert in real estate values.

Mr. Malin's other experience includes appraisal, market research and counseling on commercial properties throughout the U.S., including:

- Major urban developments including urban land, hotels, office buildings, parking garages and regional malls.
- Major recreational developments including hotels, resorts, conference centers, golf courses and residential communities.
- Special use properties such as computer and telecommunication centers with clean rooms, marinas, NASCAR sanctioned racetracks, airplane hangers and school campuses.

After leaving Laventhol and Horwath, he founded Newmarket Consulting Group and the parent firm, Newmarket Group Southwest, a full service commercial real estate firm.

While at Newmarket, he established a national practice comprised of valuation, consulting and litigation services performed in over 35 states.

Currently Mr. Malin is licensed and certified as a general appraiser in California, Massachusetts and Texas. He has held appraisal licenses in over 20 states during the past five years. Mr. Malin is also a licensed real estate broker in the state of Texas.

Mr. Malin is a graduate of the Kent School in Kent, Connecticut. He received his Bachelor of Arts degree in American Studies from the University of Denver in 1973. Later, he completed graduate level courses at New York University's Real Estate Institute, followed by study in Real Estate Investments and Taxation at a graduate level at North Texas State University.

In 1988-1990, Mr. Malin developed and hosted the Annual Real Estate Education Conference sponsored by the Appraisal Institute in Dallas. He has lectured on international appraisal issues and developed and taught the first Appraisal Course on "International Appraising" for the Appraisal Institute. In 1993, he lectured at the 20th World Congress of Fédération Internationale de Géometrie as well as the 6th Annual Valuation of Assets in Bankruptcy Conference sponsored by the University of Texas Law School. Mr. Malin continues to lecture on real estate topics for *The Dallas Bar Association* and the *American Society of Appraisers*.

Mr. Malin has been hired as an expert witness in numerous cases involving real estate issues and valuation. He has testified or been admitted as an expert in local, state, and Federal courts in Texas, Florida, Alabama, and Louisiana.

Today, *The Malin Group Real Estate Economists* continues to serve a national client base and provides real estate research, advice and counsel to its clients. Mr. Malin continues to publish timely articles on industry trends in national forums such as *Urban Land Magazine* and *The Mortgage Banker*. He also continues to publish the firm's newsletter, *Capital and Investment Trends* which covers the Texas real estate markets.

**A METHODOLOGICAL CRITIQUE OF THE LINZ-YAO REPORT:
REPORT TO THE GREENSBORO CITY ATTORNEY**

Richard McCleary, Ph.D.

December 15, 2003

Antonio Ohe, B.A. and Joanne Christopherson, M.A. provided research assistance for this report, including library searches and data management, and analyses.

499
2-500

EXECUTIVE SUMMARY

Analyzing calls-for-service to the Greensboro Police Department between 1999 and 2003, the plaintiffs' experts, Daniel Linz and Mike Yao, conclude:

“... that there is no support for the City of Greensboro’s theory that adult businesses produce adverse secondary effects. The results of our study show that adult businesses are not associated with crime events (p. 3).”

The detailed numerical results supporting this conclusion are scattered over 18 pages of computer output in an appendix of the Linz-Yao Report. When the actual numbers are examined, however, it is clear that Linz and Yao overstated the empirical basis of their strongly-worded conclusion. Put simply, their numbers contradict their words.

Table 1: The Linz-Yao Secondary Effect Estimates

	Controls	Books/Videos		Cabarets	
Crimes against persons	180.1	386.0	146.7%	258.3	143.4%
Crimes against property	1557.6	2455.3	157.6%	2028.7	130.2%
Drug-related crimes	84.7	112.1	132.3%	119.1	140.6%
Sex-related crimes	19.4	27.0	139.1%	29.3	151.0%
Disorderly conduct	121.1	181.3	149.7%	164.9	136.2%
Other minor crimes	596.3	1191.2	199.8%	878.2	147.3%

Table 1 summarizes the Linz-Yao secondary effect estimates. Each row of Table 1 (in green) corresponds to one of six crime-categories. The three shaded groups of columns in Table 1 report the estimated numbers of crimes for three neighborhood-types: those with no adult-oriented businesses (“Controls” in blue); those with adult-oriented bookstores or video arcades (“Books/Videos” in red), and those with adult-oriented cabarets (“Cabarets” in red). Percentages to the right of an effect expresses

the estimated secondary effect as a proportion of the control mean; percentages larger than 100 imply adverse secondary effects. Contrary to their strongly-worded conclusion, Table 1 reveals that *the results reported by Linz and Yao amount to a consistent pattern of adverse secondary effects.*

After correcting for the effects of thirteen neighborhood-level crime risk factors, e.g., Linz and Yao find that, compared to neighborhoods with no adult-oriented businesses, neighborhoods with adult-oriented bookstores and video arcades had, on average, 46.7 percent more crimes against persons (assault, homicide, robbery, and rape); 57.6 percent more property crimes (arson, auto theft, burglary, and theft); 32.3 percent more drug crimes; 39.1 percent more sex crimes; 49.7 percent more disorder crimes; and 99.8 percent more other minor crimes. Secondary effects estimates for neighborhoods with adult-oriented cabarets are similar.

Although the large adverse secondary effects summarized in Table 1 seem to contradict their conclusion, Linz and Yao are able to resolve the apparent contradiction with formal hypothesis tests. Only two of the effect estimates in Table 1 are statistically significant at the .05 level; ten estimates are not statistically significant and, thus, in the opinion of Linz and Yao, *not different than zero*. The two significant effect estimates, in their opinion, are aberrations, not to be trusted. Since twelve statistical analyses yield effect estimates that are either aberrant (in two cases) or not different than zero (in ten cases), Linz and Yao feel confident in their conclusion that "... adult businesses are not associated with crime events." This logic is flawed in two respects, however.

First, the outcome of a hypothesis test is sensitive to the elements of the quasi-

experimental design. The Linz-Yao design is idiosyncratic in many respects, even compared to their prior work. Beginning with the crime indicator (calls-for-service) and ending with the statistical model (six independent multiple regressions), all key elements of the Linz-Yao design favor a null finding. The fact that large adverse secondary effect estimates persist in the presence of so many methodological challenges demonstrates the true strength of the effects.

Second, the several independent hypothesis tests conducted by Linz and Yao ignore the *pattern* of effects. Whereas twelve identically zero effect estimates are expected to yield random runs of small positive and negative numbers, what one sees instead is a run of twelve large, positive numbers. Tested one-by-one, none of the Linz-Yao effect estimates may achieve statistical significance – although two do. But tested jointly, the pattern of effect estimates may be highly significant.

Based on my critical analysis of the Linz-Yao design, including the choice of crime indicators (calls-for-service), choice of impact and control areas (Census Block Groups), choice of statistical model (co-variate adjustment by multiple regression), and choice of hypothesis test (six independent tests), the null finding reported by Linz and Yao underestimates the secondary effects of adult-oriented businesses in Greensboro. The true secondary effect estimates are on the order of those summarized in Table 1 – adverse and substantively large.

Given the constraints of time and resources, an independent study of secondary effects in Greensboro, based on a more conventional design, is unfeasible. Taking the Linz-Yao secondary effect estimates at face value, however, the debate reduces to the

issue of statistical significance. If the pattern of effects in Table 1 is significant, the Linz-Yao conclusion is incorrect. In fact, a joint significance test of all six crime categories yields effect estimates that are statistically significant at the .05 level for crimes against persons and property – the so-called “serious” crimes – across both classes of adult-oriented businesses. *Even accepting their weak design, the analyses by Linz and Yao provide convincing evidence that adult-oriented businesses in Greensboro generate adverse secondary effects.*

Aside from conclusions based on analyses of Greensboro calls-for-service, Linz and Yao review the secondary effects literature used by the City in formulating adult-oriented business regulations. They conclude that:

... All of the studies that claim to show adverse secondary effects are lacking in methodological rigor. The studies that have been done either by government agencies or by private individuals that have employed the proper methodological rigor have universally concluded that there are no adverse secondary effects (p. 10).

This characterization of the empirical secondary effects literature is overly negative, in my opinion. Whereas some of the studies cited by the City may be weak, in terms of methodological rigor, others are quite strong. Overall, the Greensboro’s adult-oriented business regulations are based on a solid empirical foundation.

I. Introduction

Analyzing a subset of calls-for-service (CFSs) made to the Greensboro Police Department (GPD) between January 1st, 1999 and September 30th, 2003, the plaintiffs' expert witnesses, Daniel Linz and Mike Yao, found that:

... The presence of adult cabarets and adult video/bookstores in "neighborhoods" was unrelated to sex crimes in the area. We found that several of an adult video/bookstore were located in high person and property crime incident "neighborhoods." We examined the "neighborhoods" and local areas surrounding the adult video/bookstores (1000 foot radius) further and we found that the adult video/bookstores were not the primary source of crime incidents in these locations.¹

Based on these findings, Linz and Yao conclude

... that there is no support for the City of Greensboro's theory that adult businesses produce adverse secondary effects. The results of our study show that adult businesses are not associated with crime events.²

Based on my reading of the Linz-Yao Report; on my reading of the literature cited in the Report; on my analyses of their data and of Uniform Crime Report (UCR) data obtained from the GPD, and on my experience in this field, it is my opinion that the Linz-Yao Report's methodology fails to meet the normally accepted standards of scientific rigor for to meet normally accepted standards for statistical analyses.

In addition to conclusions drawn from empirical findings, Linz and Yao argue that the empirical secondary effects literature consists entirely of studies that find no adverse

¹ This quotation is found on p. 3 (counting the title sheet as p. 1) of *Evaluating Potential Secondary Effects of Adult Cabarets and Video/Bookstores in Greensboro: A Study of Calls for Service to the Police* by Daniel Linz, Ph.D. and Mike Yao, November 30th, 2003. In the text, I call this "the Linz-Yao Report," or "Linz and Yao." Professor Daniel Linz, the first author of the Linz-Yao Report, has written secondary effect reports with several co-authors. I will use "Linz *et al.*" to refer to reports written with co-authors other than Mike Yao.

² Linz and Yao, p. 3.

secondary effects and studies that are too flawed to be taken seriously:

... All of the studies that claim to show adverse secondary effects are lacking in methodological rigor. The studies that have been done either by government agencies or by private individuals that have employed the proper methodological rigor have universally concluded that there are no adverse secondary effects.³

Based on the perceived consistency of the secondary effects findings, Linz and Yao conclude that the factual predicate for Greensboro Ordinance Chapter 30 is invalid. But in fact, the methodological rigor of secondary effects studies ranges from strong to weak. One study cited by the City used the most rigorous possible design and found substantively large, statistically significant adverse secondary effects.⁴ In my opinion, there is an ample factual predicate for Greensboro Ordinance Chapter 30.

To support their contrary argument, Linz and Yao cite two studies by Linz *et al.* that find *salutary* secondary effects:

Recently, we have conducted independent, reliable, studies using census data and modern analytical techniques to examine whether "adult" entertainment facilities, and particularly exotic dance establishments engender negative secondary effects. Unlike many of the previous reports, these studies do not suffer from the basic methodological flaws that were enumerated in *Paul*. Unfortunately, the City Council of Greensboro did not consider these investigations despite the fact that the reports were available.

These reports describe analyses of calls for service to the police in the City of Fort Wayne, Indiana, and Charlotte, North Carolina. In these studies there is no indication that, overall, crime rates are higher in the areas surrounding adult nightclubs. In fact, the data often show the reverse trend whereby crime incidents are lower in the areas surrounding the adult nightclubs compared to

³ Linz and Yao, p. 10.

⁴ This is the 1991 Garden Grove, CA study written by me and James W. Meeker: *Final Report to the City of Garden Grove: The Relationship between Crime and Adult Business Operations on Garden Grove Boulevard.*

control locations.⁵

The anomalous findings of *salutary* secondary effects in Fort Wayne and Charlotte reflect many of the same methodological flaws found in the Greensboro analyses. Each of these methodological flaws is sufficient to yield a spurious finding.

I.A What Linz and Yao *Actually* Found

Non-statisticians who read the Linz-Yao Report may miss a relevant fact: *Linz and Yao found substantively large adverse secondary effects associated with adult-oriented businesses (AOBs) in Greensboro.* This fact is easy to miss because it is buried in eighteen pages of computer output and mentioned in the Report's text only in passing. TABLE I below summarizes the results of the Linz-Yao statistical analyses. In Detail,

- ◆ Shaded columns of TABLE I correspond to the two major AOB-types: Books\Videos and Cabarets;
- ◆ Rows of TABLE I (in green) correspond to six crime categories: Crimes Against Person, Crimes Against Property, Drug-Related Crimes, Sex-Related Crimes, Disorder Types of Offenses, and Other Minor Offenses;
- ◆ Columns labeled "Effect" (in red) report secondary effect estimates for an AOB-type and crime category;
- ◆ Columns labeled " α " (in red) report the α -error rate for each secondary effect estimate.;

⁵ Linz and Yao, p. 10.

- ◆ Columns labeled "Bars" (in blue) report the ratio of the estimated AOB effect to the estimated effect for bars and taverns.

To illustrate the interpretation of TABLE I, consider Crimes Against Person. Reading across the first row, areas of Greensboro Bookstores/Videos and Cabarets have 205.9 and 78.2 more crimes respectively than areas of Greensboro with no AOBs. With 95 percent confidence, the Bookstores/Videos estimate is statistically significant ($\alpha \leq .01$) but the estimate for Cabarets ($\alpha = .11$) is not significant.

TABLE I - SUMMARY OF THE LINZ-YAO FINDINGS*

	Bookstores/Videos			Cabarets		
	Effect	α	Bars	Effect	α	Bars
^a Crimes Against Person	205.9	.01	6.6	78.2	.11	2.5
^b Crimes Against Property	897.7	.01	2.3	471.1	.10	1.2
^c Drug Related Crimes	27.4	.76	3.3	34.4	.58	4.1
^d Sex Related Crimes	7.6	.63	1.2	9.9	.37	1.6
^e Disorder Types of Offenses	60.2	.23	2.1	43.8	.21	1.5
^f Other Minor Offenses	594.9	.09	7.2	281.9	.25	3.4

^a Linz and Yao, Table 14 ^b Linz and Yao, Table 15 ^c Linz and Yao, Table 16

^d Linz and Yao, Table 17 ^e Linz and Yao, Table 18 ^f Linz and Yao, Table 19

* cf., Executive Summary, Table 1

The effect estimates in TABLE I show that Linz and Yao found adverse secondary effects for all six categories of crime and both types of AOBs. Only two of the twelve effect estimates in TABLE I are statistically significant, however. By convention, an effect estimate is *not statistically significant* (or *not significantly different than zero*) unless its

507
2-508

associated probability is smaller than .05 – unless $\alpha \leq .05$, *i.e.* By this convention, the only significant effect estimates are for Crimes Against Person and Crimes Against Property in those areas of Greensboro where Bookstores/Videos are located. The other ten effect estimates in TABLE I are not statistically significant and, thus, presumably not different than zero.

Though *statistically* small, the effect estimates in TABLE I are *substantively* large. How large? The columns labeled “Bars” (in blue) to the right of each α -probability are ratios of the effect for AOBs to the effect for bars or taverns that do not feature adult-oriented entertainment.⁶ The adverse secondary effects of AOBs are always larger than the adverse secondary effects of bars – as much as five times larger for some categories of crime. Given the well-researched and widely accepted relationship between bars and crime,⁷ no matter how *statistically* small the secondary effect estimates TABLE I may be then, they are *substantively* large.

As it turns out, the substantively large adverse secondary effect estimates in TABLE I are statistically large as well – *i.e.*, statistically significant at the $\alpha \leq .05$ level. Readers who are interested only in this bottom line are directed to TABLE IV.2 where the α -error levels for a simultaneous hypothesis test are reported. To understand how Linz and Yao could have missed this bottom line, however, the reader must understand how the statistical power of a hypothesis test is related to the methodological underlying the

⁶ In North Carolina, businesses that serve alcoholic beverages are private clubs. None of the bars or taverns in this contrast feature adult entertainment.

⁷ See D.W. Roncek and M.A. Pravatiner. Additional evidence that taverns enhance nearby crime. *Social Science Research*, 1989, 73:185-188.

hypothesis test.

I.B Methodological Flaws in the Linz-Yao Report

Substantively large numbers can be made statistically small – though not *vice versa* – by the use of inappropriate or less than optimal methods. In my opinion, this is what happened in Greensboro. The Linz-Yao methodology is idiosyncratic in many key respects and, in every instance, the idiosyncracies have the effect of transforming substantively large effects into statistically small effects. The shortcomings of the Linz-Yao Report span all three elements of scientific methodology, including (1) the measures of public safety collected for the study; (2) the quasi-experimental design used to interpret the analytic results; and (3) the statistical models used to analyze the public safety measures.

(1) Measurement problems. The most serious flaw by far is the use of calls-for-service (CFSs) to measure public safety risk. There is virtually no precedent in the criminology literature for using CFSs to measure crime or crime risk. A review of national criminology journals over the last three years, *e.g.*, finds no published articles where CFSs are used to measure crime risk. Indeed, secondary effects studies cited by Linz and Yao do not use CFSs to measure crime but, rather, following convention, use Uniform Crime Reports (UCRs) to measure public safety risk.⁸ Since the Linz-Yao

⁸ Both the Ft. Wayne study (*Measurement of Negative Secondary Effects Surrounding Exotic Dance Nightclubs in Fort Wayne, Indiana*) and the Charlotte study (*Are Adult Dance Clubs Associated with Increases in Crime in Surrounding Areas? A Secondary Crime Effects Study in Charlotte, North Carolina*) use Uniform Crime Reports (UCRs) to measure crime risk. The confusion of CFSs and UCRs arises because CFSs have been used traditionally in liquor license reviews (see, *e.g.*, *A Study of CFSs to Adult Entertainment Establishments which Serve*

findings and conclusions are couched in terms of “crime events” or “crime incidents,” and since CFSs do *not* measure crime, in the worst case, this flaw is sufficient to invalidate *all* of the Report’s empirical findings and conclusions. In the best case, the flaw creates a bias in favor of a null finding.

(2) Design problems. The quasi-experimental design used by Linz and Yao in Greensboro, the so-called “static group comparison” design, lacks any before-after contrast. Accordingly, a leading authority on design rates the “static group comparison” as the weakest of all quasi-experiments.⁹ Secondary effects studies that compare ambient crime before and after the opening of a new adult-oriented business (AOB) generally yield stronger – more valid – findings. Findings of secondary effects studies based on before-after designs are reviewed at later point. For the present, compared to secondary effect studies based on relatively weak “static group comparisons,” the design of the Greensboro study is idiosyncratic in two crucial respects.

The first design idiosyncrasy concerns the size of the impact and control areas. In theory, the impact of a criminogenic source – an AOB, *e.g.* – fades exponentially with distance from the source. “Noise” is a good analog. For both noise and crime risk, the farther one moves from the source, the weaker the sound. To accommodate this

Alcoholic Beverages by Capt. Ron Fuller and Lt. Sue Miller, Fulton County, GA Police Dept., June 13th, 1997). In this or any other context, however, CFSs measure the demand for police service, not crime risk.

⁹ See pp.12-13, D.T. Campbell and J.C. Stanley, *Experimental and Quasi-Experimental Designs for Research*. Rand-McNally, 1963. This is the design authority cited by Linz *et al.* in the Fort Wayne and Charlotte reports.

property, researchers often define impacts area as a radius of 250 to 500 feet around a source. In the major component of their study, however, Linz and Yao define the impact areas as *Census Blocks*.¹⁰ Since Census Blocks are neither circular nor small areas, even a large, significant secondary effect would be difficult to detect.

It is no surprise then that Linz and Yao fail to find statistically significant effects in Greensboro. Based on their recent work, however, it is surprising indeed that they would use Census Block areas.¹¹

The second design idiosyncrasy involves control comparisons. To estimate hypothetical secondary effects, Linz and Yao compare Census Blocks with at least one AOB to Census Blocks with no AOBs. Before making the comparison, however, they “statistically adjust” the impact and control Census Blocks for differences presumed to cause crime. Statistical adjustment is very technical issue, particularly in this context. Without discussing technical details, this aspect of the design represents a departure from their recent work.¹²

¹⁰ Actually, Census Block *Groups*. Hereafter I say “Census Block” as a short-hand for the technically correct term.

¹¹ In the Charlotte study, impact areas were defined as a 500-foot circles around AOBs. A 500-foot circle has an area of approximately 785,400 square-feet, about 2.8% of a square-mile. In the Ft. Wayne study, impact areas were defined as 1000-foot circles, approximately 3,141,600 square-feet areas, about 11.3% of a square-mile. In my opinion, a 1000-foot circle is too large an impact area for detection of a secondary effect. This is why I advise planners to build 1000-foot distances into their AOB regulations.

¹² This particular method is not used in either the Ft. Wayne or Charlotte studies. In theory, statistical adjustment of impact-control differences is superior to other methods of control (at least for “static group comparisons”). The availability of data for the adjustment is always a problem, of course.

Both design features represent departures from the conventions of the secondary effects literature and, especially, from their own prior work. In addition to the unknown threats to internal validity posed by the two design idiosyncracies, they raise the specter of “fishing.” In the jargon of scientific research, “fishing” refers to the practice of replicating a study several times. With just a few variations in measurements, statistical models, and quasi-experimental designs, a cynical researcher can capitalize on chance to produce any desired result. “Fishing” need not imply dishonesty or cynicism. On the contrary, scientific method recognizes that “fishing” can occur without the researcher’s intent or awareness. In experimental research, “fishing” is controlled through explicit design structures, including placebos, blinding, *etc.* In quasi-experimental research, where these structures cannot be used, “fishing” is controlled by means of rigidly enforced design conventions. Departures from convention must be explained and justified. If they are not explained, the critical scientific reader must assume that findings and conclusions are an artifact of “fishing.”

(3) Statistical problems. If one ignores the methodological problems posed by the idiosyncratic measure of crime risk and the idiosyncratic design, the manner in which Linz and Yao analyze their data poses yet another serious methodological problem. In prior research, Linz *et al.* have reported null findings – the absence of secondary effects – without reporting the associated probability of error.¹³ With two exceptions, Linz and Yao report null findings in Greensboro (TABLE I) but fail to report that probability of error exceeds the conventional level for social science research by a very large factor. The

¹³ The probability referred to here is the so-called “Type II” or “false negative” error rate.

unacceptably low statistical power of their null findings is due entirely to methodological idiosyncracies. Given the central question here – whether the adverse secondary effect estimates in TABLE I – questions of statistical power are at the focus of everything that follows.

I.C Outline of this Report

The salient methodological flaw in the Linz-Yao Report is the use of CFSs to measure crime. The correlation between CFSs and conventional measures of crime, such as Uniform Crime Reports (UCRs) is exceptionally weak. In Section II below, I use UCRs and CFSs for the year 2000 to estimate the correlation between CFSs and crime in Greensboro. The statistical reliabilities inferred from the CFS-UCR correlations never exceed .5, suggesting that more than 50 percent of the variance in GPD CFSs is due to factors other than crime – “noise.” The consequences of adding “noise” to an indicator are well known. Adding “noise” reduces the statistical size of an effect.

After demonstrating the weak CFS-crime correlation, I discuss related problems with the misuse of CFSs by Linz and Yao. Because the addresses assigned to CFSs record the location of complainants, for example, CFSs cannot be used to analyze “hot spots.” The Report’s conclusion that the number of CFSs to AOB addresses is lower than the number of CFSs to other nearby addresses, thus, says nothing about the public safety risks of AOBs.

In Section III, I address the quasi-experimental design used by Linz and Yao. In one important respect, their design is unprecedented in the secondary effects literature. Crime risk diminishes exponentially with distance from a criminogenic point-source – an

AOB. Accordingly, secondary studies typically look for secondary effects in the area within 500 feet of the AOB. Since crime risk diminishes exponentially with distance from the criminogenic source, an excessively large impact area can obscure even the largest secondary effect. In prior studies, Linz *et al.* used 500-foot (Charlotte, *e.g.*) and 1000-foot circles (Fort Wayne, *e.g.*) for impact areas. Linz and Yao use irregular polygons (Census Blocks) that are ten to one-hundred times large than any that have been used in secondary effects studies.

Of course, one need not be a statistician to understand the consequences of using excessively large impact areas; it is the equivalent of throwing a needle into a haystack. Other design idiosyncracies raise the problem of “fishing.” When a design can be picked from a modest menu of options, the statistical significance of a finding is meaningless. The sheer number of design idiosyncracies in the Linz-Yao Report are sufficient to invalidate the Report’s empirical findings.

In Section IV, I discuss the problem of statistical power. Criticizing studies that claim to find adverse secondary effects of AOBs, Linz *et al.* often quote *Daubert*¹⁴ on the importance of “error rates.” When Linz *et al.* fail to find adverse secondary effects, on the other hand, or as in this instance, when they conclude that an adverse secondary effect is statistically small – see TABLE I – Linz *et al.* do not report the error rate for the statistical tests underlying their conclusion. Calculating the error rates in Section IV, I demonstrate that their conclusions lack the requisite validity that would make them admissible under *Daubert*.

¹⁴ *Daubert v Merrell Dow Pharmaceuticals* 509 US 579 (1993).

In the concluding Section V, I review some of the literature used by Greensboro in the AOB ordinance process. At least one of the studies used by Greensboro meets the highest standard of validity. I also review two studies by Linz *et al.* that the City did not rely on in formulating its AOB ordinances. Contrary to the opinion of Linz and Yao, both studies have serious methodological shortcomings – many of which are found in their Greensboro study.

II. Measurement Problems in the Linz-Yao Report

Measurement is the *sine qua non* of science. Phenomena that cannot be measured cannot be studied scientifically. The adequacy of a measurement is summed up in the properties of *reliability* and *validity*.¹⁵ To illustrate reliability, Linz and Yao counted 2,445 CFSs to addresses within 1000 feet of “Elm Street Video and News.”¹⁶ If another researcher counted the number of CFSs, the recount would probably not yield the same number because even simple counts vary randomly.¹⁷ If the count-recount difference is reasonably small and random, however, the measurement is reliable and adequate for scientific research.

Reliability is probably not an important issue. I assume that the Greensboro data used by Linz and Yao are adequately reliable. Validity is a very different issue, however.

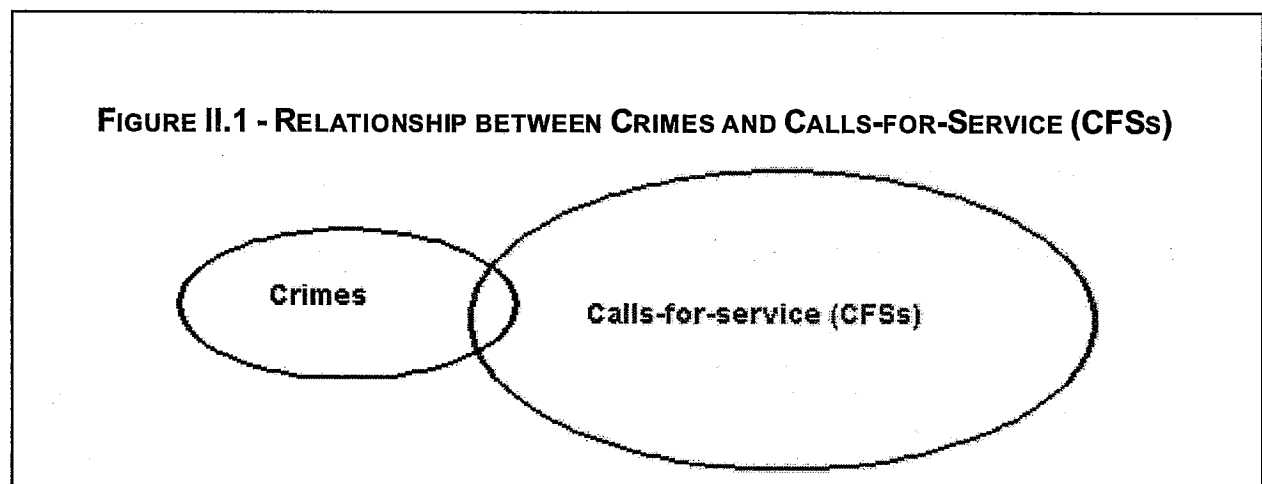
¹⁵ For definitions, see H.M. Blalock’s *Measurement and Conceptualization in the Social Sciences* (Sage, 1982). See also *Quasi-Experimentation: Design and Analysis Issues for Field Settings* by T.D. Cook and D.T. Campbell (Houghton-Mifflin, 1979).

¹⁶ Linz and Yao, Table 23, p. 20.

¹⁷ In his classic *On the accuracy of economic observations*, 2nd Edition (Princeton: Princeton University Press, 1965), Nobel laureate O. Morgenstern expressed this idea as “*Incipit numerare, incipit errare!*” Begin to count, begin to make mistakes!

The property of validity is associated with *nonrandom* measurement errors. Nonrandom measurement errors consist of differences between the concrete items that one measures and the abstract concepts that these items intend to represent. The relationship between abstract intelligence and concrete IQ is often used to illustrate the property of validity. Although a person's IQ and intelligence are not identical, they are hopefully similar; and if so, IQ is a valid measure of intelligence. If the difference is large, on the other hand, then IQ is not a valid measure of intelligence.

In this instance, of course, we are interested in measuring the hypothetical *crime risk* of an AOB. Whatever measure is used, its validity will depend on how well it tracks crime risk over time and space. Contrary to the conventions established in criminology in the secondary effects literature, particularly the recent work of Linz *et al.*, Linz and Yao use police CFSs to measure crime. This idiosyncratic choice of measures has no precedent and *per se* invalidates their conclusions.



II.A. CFSs Are *Not* Synonymous with Crime

Throughout their Report, Linz and Yao speak of "CFSs" and "crimes" as if these

two terms were synonymous. In fact, however, while CFSs and “crimes” (or crime-like incidents) are correlated, the correlation is quite weak. This fact, widely known among criminologists, is depicted in FIGURE II. In any modern jurisdiction, CFSs to the police department outnumber crimes reported to the police by a large factor. This well known fact is represented by the relative areas of CFSs (in red) and crimes (in blue). The overlap between CFSs and crimes represents their correlation.

As depicted in FIGURE II, most of the crimes (or crime-like incidents) that come to the attention of the police are *not* initiated by CFSs from victims and witnesses. The police become aware of most crimes through routine patrolling; through directed (or proactive) patrolling; and through specialized unit activity. On the other hand, most of the citizens who call the police – thereby initiating a CFS – are not crime victims or witnesses; most CFSs not initiated by crimes (or crime-like incidents). Examples include duplicated or unfounded CFSs; CFSs that have no apparent basis; and CFSs that precipitated by false alarms.¹⁸

To investigate the scope of this problem for the Greensboro study, Uniform Crime Reports (UCRs) and CFSs for the same crimes were compared for the period beginning

¹⁸ Of the 32,168 CFSs in 2000 that involved serious crimes, 19,974 (or 70.6 percent) were initiated by electronic alarms. More than 98 percent of all alarm-initiated CFSs in the year 2000 turned out to be false alarms – no crime, *i.e.* Since each of these CFSs resulted in a report, Linz and Yao included them in the analysis even though there was no crime involved. If 2000 is a typical year, one-in-three of the CFSs analyzed by Linz and Yao was a false alarm!

January 1, 2000 and ending December 31, 2000.¹⁹ The five columns of TABLE IIA report the UCR category, total CFSs for that category, CFSs that resulted in an arrest or report (in red), UCRs (in blue), and the ratio of red CFSs to UCRs.

	Total CFSs	CFSs w/rpt	UCRs	CFS : UCR
Total Serious Crimes	32,168	28,304	15,492	1.83 : 1.00
Total Personal Crimes	3,311	6,864	1,867	3.68 : 1.00
Total Property Crimes	26,920	21,440	13,625	1.57 : 1.00
Assault	2275	991	816	1.21 : 1.00
Arson	0	0	73	1.00 : 49.0
Auto Theft	1801	1308	1308	1.00 : 1.00
Burglary	22230	17841	3020	5.91 : 1.00
Homicide	0	0	20	1.00 : 41.0
Larceny	2889	2291	9224	1.00 : 4.03
Rape	159	124	121	1.02 : 1.00
Robbery	3152	2317	910	2.55 : 1.00

Considering total serious crimes, CFSs appear to overstate Greensboro's crime risk by a factor of 83 percent. When total crimes are broken down into personal and property crimes, the overstatement persists. When total crimes are broken down into the eight UCR categories, however, a range of biases become apparent. As reported in the right-hand column of TABLE IIA, while CFSs overstate the risk for some crimes – burglary, robbery, *etc.* – CFSs understate the risk for other crimes – arson, larceny, *etc.* Bias in the CFS-crime relationship is not a simple multiplicative factor then. For some

¹⁹ Part I UCR data were obtained from the GPD. The Part I (or serious) UCR categories are arson, assault, auto theft, burglary, homicide, larceny, rape, and robbery.

crimes, it is a *true* bias. A more important problem, however, is that for most crimes, CFSs appear to add random measurement error to the relationship.

II.B. CFS-Crime Correlations and Reliabilities

To estimate the correlation between CFSs and crime, BY-co-ordinates were selected at random from the CFSs and UCRs published by the GPD for 2000. Circles with radii of 500-feet were drawn around the BY-co-ordinates. The number of CFSs and UCRs inside the circles were counted and correlations were estimated from the counts. The results, reported in TABLE II.2, show that the correlations between UCR counts (in blue) and CFS counts (in red) are lower than what would ordinarily be expected or demanded from an indicator.

	Asslt	Rob	Rape	Pers	Auto	Burg	Theft	Prop
Assault	.325	.122	.121	.300	.059	.123	-.006	.041
Robbery	.122	.674	-.019	.394	.257	.521	.250	.365
Rape	.054	-.109	.074	-.011	-.028	-.065	-.077	-.077
Personal	.236	.534	.062	.444	.212	.431		.273
Auto Theft	.081	.504	.114	.326	.637	.721	.519	.648
Burglary	.196	.332	.190	.325	.361	.541	.327	.433
Theft	.056	.518	.124	.317	.615	.703	.563	.670
Property	.065	.524	.129	.327	.624	.717	.566	.678
Reliability	.106	.454	.071	.197	.406	.293	.317	.460

The last row of TABLE II.2 list the squared correlation coefficients, or raw reliabilities, for each of the CFS categories. Reliabilities are interpreted geometrically as

519
2-520

the intersection of the crime-CFS Venn diagrams in FIGURE II.1. The overlap between UCR assaults and assault CFSs ($r^2 = .106$) is interpreted to mean that the degree of overlap (or common variance) between the two indicators is 10.6 percent of the total. From the other perspective, 89.4 percent of the total variance in the two indicators is *unique* and, thus, has nothing to do with crime.

TABLE II.2 raises two questions. First, compared to data in other social science fields, how “good” are these reliabilities? Second, what are the practical consequences of using a low-reliability crime indicator? On the first question, reliabilities smaller than .75 are unacceptable for most social science applications. Since the median reliability in TABLE II.2 is approximately .305, testimony based on CFSs might be inadmissible under the *Daubert* standard. On the second question, the practical consequences of using a low-reliability crime indicator are well known. Adding measurement error in the outcome (or dependent) variable does *not* bias the effect estimate – substantively large effects persist in the face of measurement error – but *does* bias tests of significant in favor of the null finding.²⁰ As a practical matter, in other words, CFSs make substantively large effects statistically small.

II.C. CFS Addresses Are *Not* Crime Locations

Since CFSs are only weakly correlated with crime, using CFSs to measure crime risk is *per se* a fatal flaw. Even ignoring this threshold problem, however, it is nearly impossible to infer even the grossest spatial distribution of crime risk from CFS

²⁰ See, e.g., Blalock's *Measurement and Conceptualization in the Social Sciences* (Sage, 1982).

addresses. The problem is most obvious when Linz and Yao analyze “hotspot”

addresses within each Census Block:

...the adult bookstores are a negligible source of property crime events and do not appear to be the source of person crime events at all. The bookstores never rise above the 16th ranked address for property crime events (9 events) and are as low as the 205th rank (2 events) or cannot be ranked because there are zero crime events in their immediate vicinity.²¹

The fallacy in this reasoning is that the address recorded on a CFS is not necessarily the location of the precipitating incident. On the contrary, the CFS address tells the patrol unit where to find the caller. If X calls the GPD to complain about a disturbance at Y's house, in a majority of cases, the CFS goes to X's address. By the Linz-Yao logic, however, the “crime event” occurred at X's address.

If the proprietor of an business is familiar with this geo-coding convention, CFSs can be manipulated to make the business look more or less in need of police service or regulation. To build a case for more police services, the proprietor can complain to the police about problems that might otherwise be handled informally. Or to hide a public safety hazard, on the other hand, the proprietor can handle many problems informally, thereby recording fewer CFSs and making the business seem safer than it actually is. This is why criminologists do not use CFSs for “hotspot” analyses.²²

II.D. Summary

Given its nominal purpose— to determine whether AOBs are criminogenic – the

²¹ Linz and Yao, p. 31.

²² For another reason, see “Uniform Crime Reports as organizational outcomes.” (*Social Problems*, 1982, 29:361-372.). This article describes how a simple personnel change in an urban police department resulted in a thirty percent reduction in CFSs.

Linz-Yao Report should have analyzed crimes, not raw CFSs. The vast criminology literature has not even one precedent for using raw CFSs to measure crime.

Criminologists invariably measure crime with UCRs or sample surveys of victims.²³ The smaller, unpublished secondary effects literature has also typically used UCRs or analogous crime statistics.²⁴ This is not to say that CFSs are not a useful statistic. On the contrary, all urban police departments, including the GPD, collect these data for use in budgeting.²⁵ But no police department uses CFSs to measure crime or public safety. Criminologists and police departments alike use *crime* to measure *crime*.

A final point, worth noting in this summary, is that the geo-codes on GPD records are too crude to be used for many purposes, including purposes intended by Linz and Yao. Finding two substantively large and statistically significant adverse secondary effects, e.g. – see TABLE I – Linz and Yao rely on analyses of “hotspot” addresses to discredit their own finding:

²³ See, e.g., *Measuring Crime* (D.L. MacKenzie, P.J. Baunach, and R.R. Roberg, State University of New York Press, 1990). The criminological literature is consistent on this point. A search of four national criminology journals (*Justice Quarterly*, *Criminology*, *Criminal Law and Criminology*, and *Journal of Quantitative Criminology*) for the last three years found not one study that used CFSs to measure crime.

²⁴ This includes studies conducted by Linz *et al.*, particularly the two studies cited in the Linz-Yao Report (*Measurement of Negative Secondary Effects Surrounding Exotic Dance Nightclubs in Fort Wayne, Indiana*; and *Are Adult Dance Clubs Associated with Increases in Crime in Surrounding Areas? A Secondary Crime Effects Study in Charlotte, North Carolina*). The Fort Wayne study uses UCR arrests; the Charlotte study uses UCR crimes.

²⁵ These valid uses of CFSs are discussed in undergraduate policing texts. See, e.g., *Police Administration* by O.W. Wilson and R. McLaren (McGraw-Hill, 1978); *Police and Society* by R.R. Roberg, J. Crank and J. Kuykendall, (Wadsworth, 1999) or *Police Administration* by C. Swanson, L. Territo, and R. Taylor (Macmillan, 1993). All of these texts make the same points that I have made about CFSs.

The bookstores never rise above the 16th ranked address for property crime events (9 events) and are as low as the 205th rank (2 events) or cannot be ranked because there are zero crime events in their immediate vicinity. For crimes against person events the findings are even more striking — there is only one such event among the eight 1000 foot areas surrounding the video/bookstores.

But in virtually all cases, GPD “hotspot” addresses are spurious. In any year, e.g., one Greensboro address accounts for two to three percent of all serious crime reported to the GPD. The address (2400 Van Story) belongs to the Four Seasons Mall. Other are made into “hotspots” by chronically malfunctioning electronic alarms. Of the 148,155 property crime CFSs analyzed by Linz and Yao, 67,530 (45.6 percent) were precipitated by burglar alarms, mostly false. Due to many similar problems, analyses of “hotspot” address in the Linz-Yao Report are not to be taken seriously.

III. Design Flaws in the Linz-Yao Study

“Design” refers generally to the set of methods, or methodology, used to collect, analyze, and interpret data. One aspect of the Linz-Yao design, the use of CFSs to measure crime risk, has already been critiqued. Measurement is the *sine qua non* of valid inference. Because CFSs are *not* an acceptable crime risk measure, inferences about crime drawn from CFSs are invalid. If Linz and Yao were to replicate the Greensboro study using UCR crimes (vs. CFSs), however, there would still be three fundamental problems with their design:

- ◆ Lack of before-after contrasts;
- ◆ Excessively large impact areas;
- ◆ Inadequate controls.

Any of these three shortcomings would be sufficient to invalidate the findings of a secondary effects study. Though not obvious, moreover, all three shortcomings favor a null finding. To the extent that these shortcomings represent departures from designs used in the prior work of Linz *et al.*, furthermore, they raise the specter of “fishing.”

III.A Before-After Contrasts

The quasi-experimental design used by Linz and Yao in the Greensboro study is a simple variation of the so-called “static group comparison.”²⁶ Using a variation of the standard notation, this design is diagrammed as



The X in this diagram represents the presence of an AOB in the impact area – but not in the control area. The hypothetical secondary effect is estimated as the difference of the two crime measures. *I.e.*,

$$\text{Secondary Effect} = \text{Crime}_{\text{Impact}} - \text{Crime}_{\text{Control}}$$

If the impact and control areas are identical in every respect except the presence of an AOB, the secondary effect estimate is valid. If the two areas differ in any relevant way, on the other hand, the secondary effect estimate is invalid.

The “static group comparison” design is strengthened considerably when a before-after contrast is added. Using the same notation,

²⁶ Linz *et al.* cite a work by Campbell and Stanley, *Experimental and Quasi-Experimental Designs for Research*, as their authority on quasi-experimental design; *cf.* footnote #10 above. To maintain consistency, I use the same authority. In my opinion, Linz *et al.* have misread Campbell and Stanley.

Impact Area	Crime _{Impact, Before}	X	Crime _{Impact, After}
Control Area	Crime _{Control, Before}	.	Crime _{Control, After}

The hypothetical secondary effect is now estimated as the before-after difference in the impact area. *i.e.*,

$$\text{Secondary Effect} = \text{Crime}_{\text{Impact, After}} - \text{Crime}_{\text{Impact, Before}}$$

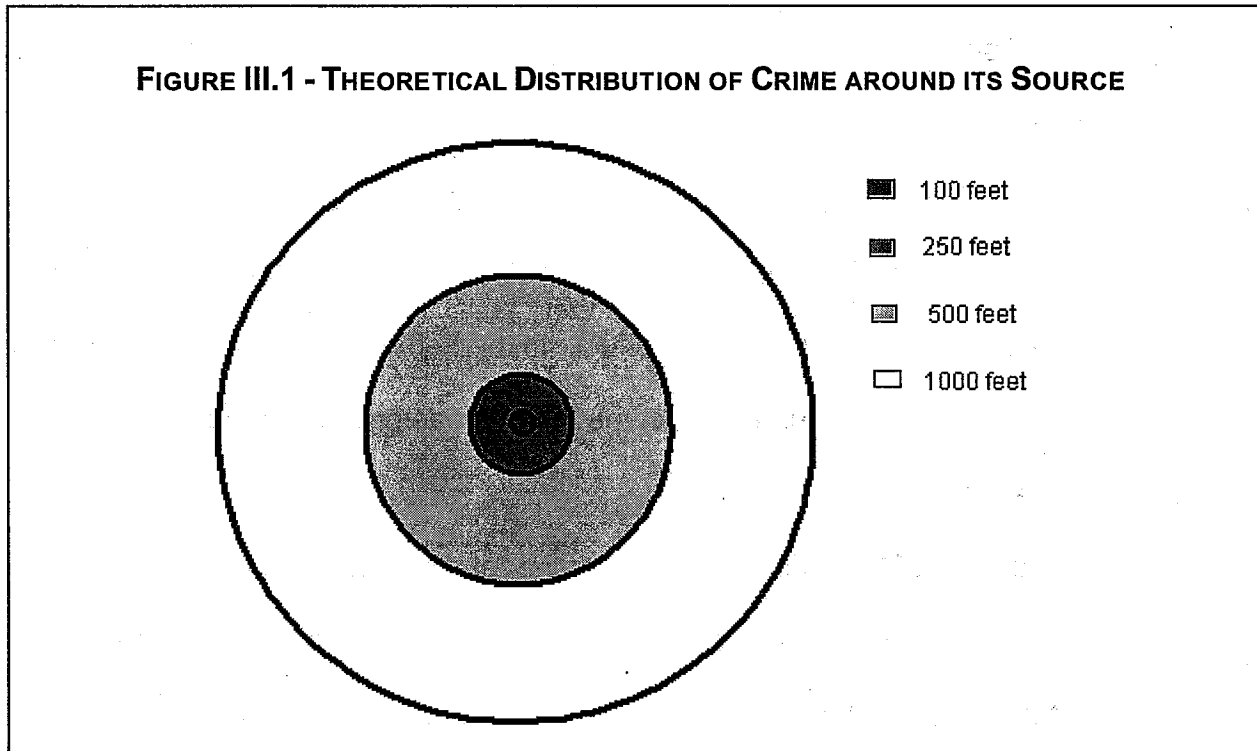
The analogous difference for the control area serves as a benchmark for assessing the validity and significance of the secondary effect. In the before-after design, crime in the impact and control areas is compared to crime in the areas prior to the opening of an AOB in the impact area.

The superiority of the before-design over the “static group comparison” design lies in the nature of their control comparisons. Over short time periods, say one or two years, impact and control areas are likely to remain stable in relevant ways. If the stability assumption holds, before-after differences are immune to the garden variety validity threats that plague static impact-control differences. If change scores are standardized – as percent changes, *e.g.*, or standard Normal scores – before-after secondary effect estimates are relatively robust to minor differences between impact and control areas.

Whether the stability assumption holds or not, however, or whether change scores can be easily standardized, before-after designs are inherently stronger than “static group comparison” designs. I will expand on this theoretical point shortly. In subsequent sections, I will report the results of several secondary effect studies that use before-after designs. For the most part, the validity of these studies cannot be

525
2-526

challenged. And at least one of these studies served as the empirical basis for Greensboro's AOB ordinance.



III.B Impact Areas in the Linz-Yao Study

Measuring a secondary effect is complicated by the fact that crime is a statistically rare event. Over the last two centuries, criminologists have observed that the temporal and spatial distributions of crime follow simple mathematical laws.²⁷ When

²⁷ Motivated by the problem of describing the distribution of crime among Paris neighbor-hoods, the French mathematician S.D. Poisson (1781-1840) discovered a probability distribution that bears his name. See, e.g., F. Haight, *Handbook of the Poisson Distribution* (John Wiley and Sons, New York 1967) for not only the history but, also, for technical details. Briefly, a Poisson distribution has two parameters, λ and p . For a fixed period of time – say, one year – in a given place, the individual's risk of criminal victimization is λ . If p individuals live in the place that year, the product λp is the annual crime rate. According to Poisson theory, the waiting-time (or distance) between crimes follows an exponential distribution with mean λp . The exponential distribution of waiting times is the important point.

crime is "generated" at a fixed site, the density of crimes around the site diminish exponentially with distance from the site. This is represented conceptually (though not to a mathematically precise scale) by concentric circles in FIGURE III.1. In this depiction, the impact of the criminogenic source or "hotspot" is most intense within 100 feet of the source. Though less intense, the impact is still noticeable within 250 feet of the "hotspot." At 500 feet, the effect is still detectable with an adequately powerful design and statistical model. At 1000 feet, however, the effect exists but is no longer detectable with typical designs and models.

"Noise" is a good analog to criminogenic impacts. Whereas a loud party is easily detected by neighbors on the same block or across the street, residents two blocks away will not notice the noise unless they listen carefully.²⁸ Four blocks away, exotic sound detection equipment may be needed to detect the noise. The analog to sound detection equipment in secondary effects research is statistical power. This technical topic is discussed in detail at a later point. For present purposes, it is sufficient to note that problems of inadequate statistical power can be resolved by design – i.e., by defining the impact and control areas as 250-foot or 500-foot circles.

The use of existing Census Block areas for the impact and control areas constitutes a major flaw in the design of the Greensboro study. For the design of secondary effect studies, Census Block areas pose two problems. First, Census Blocks

²⁸ City blocks in the older urban areas of Greensboro are approximately 250 feet long. In the newer suburban areas, city blocks are approximately 1000 feet long. Though approximate, these distances are a good rule-of-thumb for interpreting secondary effects.

are not circular areas centered on an AOB. If the AOB is located near the border of a Census Block then, its hypothetical impact may contaminate neighboring blocks. Otherwise, if the AOB is not near the center of the block, its hypothetical impact may not permeate the entire area of the block, creating "control" islands in the block. A more serious problem is that Census Blocks are often larger than the optimal size for impact and control areas.

Area	Mean	Range	Mean/Ideal	AOBs	Controls
≤0.2 km ²	.1524	.07 - .2	2.1	0	17
≤0.5 km ²	.3388	.21 - .5	4.6	7	53
≤1.0 km ²	.6873	.52 - .99	9.4	8	29
≤2.0 km ²	1.5050	1.07 - 2	20.6	5	11
≤5.0 km ²	2.9910	2.05 - 4.23	41.0	0	20
≥5.0 km ²	9.1143	5.06 - 19.24	124.9	4	19

TABLE III.1 reports the areas and statuses (impact vs. control) of the 173 Greensboro Census Blocks used by Linz and Yao.²⁹ To put these areas in context, the ideal 500-foot circular impact area is approximately 7.3 percent of a square kilometer. The fourth column of TABLE III.1 (in red) gives the ratio of the ideal impact area to the mean area of the Census Blocks. In the best case, where Census Blocks range from .21 to .5 km², 4.6 ideal impact areas would fit inside one Census Block. In the worst

²⁹ TABLE III.1 was generated from a file named "greensboro blk grp 11-26-03.sav" that Linz and Yao sent to the defendants on December 8th, 2003. There are several uncertainties about the file. Non-hierarchical regressions, estimated with SPSS, are reported in an Appendix. Area units (the variable "area") in this file are unlabeled. TABLE III.1 assumes that the units are square kilometers. One could ordinarily resolve these uncertainties through the Census Bureau website. Unfortunately, the Census website was down in the second week of December, 2003.

528
2529

case, Census Blocks are 124.9 times larger than the ideal. Even in the best case, the impact areas are so vast that they could hide even the largest secondary effect.³⁰

III.C Statistical Control in the Linz-Yao Study

The Achilles heel of the “static group comparison” design is the requirement that impact and control areas be virtually identical on all relevant risk factors. When identical impact and control areas are unavailable, impact-control differences can be adjusted by statistical means – in theory, *i.e.* In practice, unfortunately, the covariates required for statistical adjustment are available only for arbitrarily defined areas, such as Census Tracts, Blocks, *etc.*, in decennial years. Since most criminological theories operate on specific spatio-temporal scales – see Figure III.1, e.g. – these data are not ideally suited to criminological research.

Nevertheless, the availability of Block-level decennial Census data was a major factor in the decision by Linz and Yao to use Census Blocks for the impact and control areas:

Variables that have been investigated and have been found to be most important as predictors of crime activity include measures of racial composition (number of African Americans and racial heterogeneity), family structure (as measured by number of single-parent households, female headed households, or householders with children), economic composition (as measured family income), and the presence of motivated offenders, primarily males between the ages of 18 and 25 (see, e.g., Miethe & Meier, 1994).³¹

³⁰ The “dirty little secret” of social science research is that anyone with a modest research background can design a study that guarantees a null finding. The second most widely quoted sentence in Isaac Newton’s *Principia Mathematica* is “*Negativa non Probanda.*” In this present context, Newton’s observation can be paraphrased as “Finding nothing proves nothing.”

³¹ Linz and Yao, p. 20.

But in fact, the co-variation of these variables with CFSs has little basis in theory or fact. With respect to criminological theory, crime rates for macro-level social units – cities, counties, *etc.* – do appear to co-vary with demographics. But there is no theoretical reason to expect the same covariation in Greensboro, however, or to expect the same covariation for all CFS-types.

Some of the more technical aspects of this issue will be discussed in Section IV below. For present purposes, however, two broader, conceptual aspects of the Linz-Yao statistical adjustment warrant comments here. First, the regression models used by Linz and Yao to statistically adjust differences among Greensboro's Census Blocks use of *areal rates* as both outcome and explanatory variables. To illustrate, all of the Linz-Yao regression equations have the general form,

$$\text{CRIMES} / \text{AREA} = \alpha + \beta \text{POPULATION} / \text{AREA}$$

where CRIMES, AREA, and POPULATION are defined respectively as the number of CFSs (over the period, 1999-2003), the surface area (in km²) of a Census Block, and population (in 2000) of a Census Block; and where α and β are regression weights.

One minor problem with these equations is that “CFSs per square kilometer” has no relevant interpretation.³² Because a Census Block's area appears on both the left- and right-hand sides of their regression equations, however, Linz and Yao inject spurious covariance into their models. Concerning model “fit,” Linz and Yao claim:

³² For personal crimes – assault, homicide, *etc.* – the unit of risk is the individual. The conventional rate is, thus, “CFSs per population.” Since area is *not* the unit of risk – except in some bizarre crime like “land theft” – there is no precedent in the criminological literature for a rate like “CFSs per unit of area.” I can think of no reason why Linz and Yao would define a rate of this sort.

In the final analysis we are able to account for crime events in Greensboro (crimes against person, property crimes, sex crimes, drug-related crime and general disorder incidents) with a moderate to high level of accuracy (explaining from 30 to 60 percent of the variability in crime events across block groups, depending upon the type of crime event).³³

While technically correct, much of this "accuracy" is due to the unorthodox use of areal rates on both sides of the equation. In exchange for this accuracy, unfortunately, Linz and Yao sacrifice statistical power in their hypothesis tests, particularly those tests that relate to cabaret-type AOBs.³⁴

The second conceptual problem, put simply, is that Linz and Yao include too many adjustment variables in their regression models. Although each of the variables included in the models is justified by criminological theory, according to Linz and Yao, many of the explanatory variables have statistically insignificant weight in the regression models. The practical consequences of including statistically insignificant explanatory variables in a multiple regression equation are well known and, given the central issue here, not at all surprising. Each incremental adjustment sacrifices statistical power; an adjustment by a insignificant variable is a pure waste.

III.D The Specter of "Fishing" in the Greensboro Study

In scientific research, "fishing" describes the practice of conducting a study with several slightly different variations. Just a few measures, models, and designs, will produce the entire spectrum of findings – positive, null, and negative. The scientific

³³ Linz and Yao, p. 2.

³⁴ Because the cabarets are concentrated in the larger Census Blocks. The statistical power problem is discussed in Section IV below.

531
2-5-32

community controls “fishing” through design conventions. Design conventions serve, first, to enhance the comparability of research findings. A more important function in this instance, however, is to minimize “fishing” opportunities. Although researchers can depart from convention when necessary, significant departures must be explained and justified. Otherwise, the critical scientific reader assumes that the findings and conclusions are an artifact of “fishing.”³⁵

TABLE III.2 - DESIGNS OF THREE RECENT SECONDARY EFFECT STUDIES

	Greensboro	Fort Wayne	Charlotte
Crime Measure	CFs	UCR Arrests	UCR Crimes
Impact area	Census Blocks with AOBs	1000-foot radius around AOB	500- and 1000-foot radii around AOBs
Control area	Census Blocks without AOBs	1000-foot circle in a non-contiguous “matched” area	500- and 1000-foot radii around other businesses
Covariates	Demographics	None	Crime rates

The potential for “fishing” in the Greensboro study is demonstrated by comparing the designs of three recent secondary effects studies by Linz *et al.*: the Greensboro study, the Fort Wayne study, and the Charlotte study. Although these three studies were completed over two-year period by the same research teams, lead by Professor

³⁵ See pp. 42-3 in *Quasi-experimentation: Design and Analysis Issues for Field Settings* by T.D. Cook and D.T. Campbell (Chicago: Rand-McNally, 1979) for a discussion of “Fishing and the error rate problem..” Note further that *Daubert* addresses this issue implicitly in its discussion of “the known or potential rate of error.”

532
2-533

Linz, the basic designs vary radically. TABLE III.2 summarizes some of the obvious design differences.

Although all three of these studies were conducted during the same period by the same investigators, the design differences are striking. These include:

- ◆ Three different crime measures (CFSs, UCR arrests, and UCR crimes);
- ◆ Three different definitions of the impact areas (Census Blocks, 1000-foot radii, and 500-foot radii); and
- ◆ Three different types of controls (statistically adjusted Census Blocks strips, “matched” circles, and other businesses).

Considering only these three design elements, there are at least $(3 \times 3 \times 3 =)$ 27 different ways to conduct a secondary effects study. With this many “bites of the apple,” finding a result to support any position becomes a near certainty.

Although “fishing” artifacts are not easily calculated,³⁶ the problem should be intuitively clear. No evidence suggests that the findings and conclusions of the Linz-Yao Report are the product of a “fishing” expedition. Given the controversial nature of the findings and conclusions, on the other hand, as well as the pattern of departures from design convention listed in TABLE III.2, healthy skepticism is in order.

IV. Statistical Power in the Linz-Yao Report

Each of the measurement and design problems discussed in Sections II and III

³⁶ “Fishing” biases the research by inflating the false-positive and false-negative error rates. Error rates in the next section. Because the many possible design variations are not independent, however, the degree of bias is difficult to calculate.

above has the same result: making a substantively large effect statistically small. In light of these threshold problems, each of which is sufficient to invalidate the empirical findings, a critique of statistical power in the Linz-Yao Report might be moot. The issue of statistical power lies at the very heart of the secondary effects debate, however, and in light of TABLE I, at the heart of the Linz-Yao Report's findings.

IV.A Science and Decision Errors

Since every hypothesis must be *either* true *or* false, statisticians deal with two distinct types of decision error: "false positives" and "false negatives."³⁷ This logical dichotomy is not an accurate description of empirical hypothesis testing, unfortunately. Linz and Yao organize their analyses as a logical dichotomy. If the null hypothesis

H_0 : Crime rates in impact and control areas are equal.

is rejected, Linz and Yao will conclude, to a nominal level of statistical confidence, that the alternative hypothesis

H_A : Crime rates in impact and control areas are *not* equal.

is true. In pure logic, of course, if H_0 is true, then H_A must be false (and vice versa). In the empirical realm, however, every hypothesis test has three possible outcomes – a trichotomy!

The jury trial depicted in FIGURE IV is a useful analog. An AOB stands accused of posing an ambient crime risk. After hearing the evidence, the jury convicts, acquits, or hangs. When the jury hangs, there was no decision and, hence, no error. If the jury

³⁷ False-positives are also called "Type I" or "alpha-type" errors. False negatives are called "Type II" or "beta-type" errors. The terms "false positive" and "false negative," which come from the field of public health screening, are widely used in popular discourse.

convicts or acquits, on the other hand, there is always a small probability that the jury convicted an innocent AOB or acquitted a guilty AOB.

FIGURE IV - TWO TYPES OF DECISION ERROR

	But in Reality, the Defendant is ...	
	Guilty	Not Guilty
The Jury Convicts	95% Confidence	5% False Positives
The Jury Hangs	?	?
The Jury Acquits	20% False Negatives	80% Power

In real-world courtrooms, the probability of false verdicts is unknown. Courts enforce strict procedural rules to minimize the probability but we can only guess at the size of an error. In science, on the other hand, we know the *exact* probability of an error. Scientists accomplish this by adopting rigid definitions of certainty. To convict, the jury must have 95 percent certainty in the guilty verdict. This 95 percent level of certainty is called statistical "confidence." To acquit, the jury must have 80 percent certainty in the not-guilty verdict. This 80 percent level of certainty is called statistical "power." The two correct decisions are painted blue in FIGURE IV.

To ground the 95 percent confidence and 80 percent power levels in concrete meaning, the definitions are tied to a theoretical process of replication. In theory, if the case were tried again and again, in the case of a conviction, 95 percent of the juries would return the same guilty verdict; in the case of an acquittal, 80 percent would return the same not-guilty verdict.

535
2-536

The nominal levels of confidence and power imply that five percent of all convictions are false-positive errors and 20 percent of all acquittals are false-negative errors. The incorrect decisions are painted red in FIGURE IV. Errors are never a good thing but at least scientists know the error rates. Error rates can be set higher to make justice more certain, of course, but the level of certainty required for conviction is always set higher than the level required for acquittal.³⁸

IV.B TABLE I Revisited

In Section I above, I commented on the discrepancy between the numerical results of the Linz-Yao analyses and their prose description of the numerical results. Whereas the numbers amounted to substantively large adverse secondary effects, the text portrayed these numbers as supporting the null hypothesis – or using the jury trial analogy, of acquitting the AOBs:

From these analyses we are able to reliably conclude that once we control for variables known to be related to crime there is not a relationship between the presence of an adult cabaret or video bookstore in a

³⁸ The most comprehensive authority on statistical power is Chapter 22 of *The Advanced Theory of Statistics, Vol. 2, 4th Ed.* by M. Kendall and A. Stuart (Charles Griffin, 1979). J. Cohen's *Statistical Power Analysis for the Behavioral Sciences, 2nd Ed.* (L.E. Erlbaum Associates, 1988) and M. Lipsey's *Design Sensitivity: Statistical Power for Experimental Research.* (Sage Publications, 1990) are better known. Cohen (pp. 3-4) and Lipsey (pp. 38-40) set the conventional false-positive and false-negative rates at .05 and .2. The rates can be set lower, of course, but the ratio of false-positives to false-negatives is always 4:1, implying that false-positives are "four times worse than" false-negatives. The 4:1 convention, which dates back at least to 1928 (J. Neyman and E. Pearson, "On the use and interpretation of certain test criteria for purposes of statistical inference." *Biometrika*, 1928, 20A:175-240), reflects a view that science should be conservative. In this instance, e.g., the 4:1 convention works in favor of the plaintiffs.

neighborhood and crime events.³⁹

Accepting the hypothesis – or acquitting – assumes the false-positive rate associated with the secondary effect estimates are no higher than the nominal .2 level. Since Linz and Yao did not report false-positive rates for their hypotheses, I calculated them.

TABLE IV.1 - ERROR RATES FOR THE LINZ-YAO REGRESSION ANALYSES

	Books/Videos			Cabarets		
	Effect	α	β	Effect	α	β
Crimes Against Person	205.9	.01	.04	78.2	.11	.58
Crimes Against Property	897.7	.01	.08	471.1	.10	.63
Drug Related Crimes	27.4	.76	.88	34.4	.58	.92
Sex Related Crimes	7.6	.63	.83	9.9	.37	.86
Disorder Types of Offenses	60.2	.23	.46	43.8	.21	.76
Other Minor Offenses	594.9	.09	.27	281.9	.25	.76

α : false positive rate; β : false-negative rate

The effect estimates in TABLE IV.1 are taken directly from the Linz-Yao Report (Tables 14-19). The consistently large, positive estimates are interpreted as adverse secondary effects. The blue numbers immediately to the right of the estimates are the false-positive or α -error rates reported by Linz and Yao. Linz and Yao used these rates to test null hypotheses. Since ten of the twelve rates are larger than .05, Linz and Yao accepted the null hypotheses in ten cases – ten acquittals, in other words.⁴⁰ Last but not least, immediately to the right of false-positive rates, in red, are the false-negative or

³⁹ Linz and Yao, p. 32

⁴⁰ Using analyses of CFS addresses, Linz and Yao concluded that the two estimates with α -error are rates smaller than .05 were aberrations.

537
2-538

β -error rates for the effect estimates.⁴¹

By convention, false-negative rates in the social, behavioral, and biological sciences must be $\beta \leq .2$ before a null hypothesis can be accepted. But the false-positive rates in TABLE IV.1 range from .27 (for Other Minor Offenses in areas of Greensboro with Books/Videos AOBs) to .92 (for Drug Related Crimes in areas with Cabaret AOBs). These false-negative rates are much too large to be ignored. Failure to report false-negative rates as high as these challenges the threshold credibility of the Report. But even granting Linz and Yao the benefit of the doubt, these false-negative rates are much too high to warrant accepting even one null hypothesis. The record is not twelve acquittals, as Linz and Yao argue, but rather, two convictions and ten hung juries.⁴²

IV.C Summary

In purely substantive terms, the secondary effect estimates in TABLE IV.1 are large enough to worry any urban police department. How can numbers be substantively large but, yet, statistically small? The numbers are made smaller by a series of design choices that have the effect of reducing statistical power. Unfortunate design choices begin with the use of CFSs – a “noisy” measure of crime at best – and end with an idiosyncratic statistical adjustment by multiple regression.

⁴¹ These rates were estimated with PASS (J. Hintze, NCSS and PASS, Number Cruncher Statistical System, Kayesville, UT, 2001. www.ncss.com). All estimates assume $\alpha = .05$ and that variables were entered in the exact order reported in Tables 14-19 of the Linz-Yao Report.

⁴² But in fact, all twelve effect estimates in TABLE IV are positive. The probability of twelve independent analyses yielding twelve positive estimates, significant or not, would be infinitesimally small – unless the numbers being estimated were positive (vs. zero). I address this issue explicitly in the next section.

Given the constraints of time and resources, some of these unfortunate design choices can be addressed only in terms of strong mathematical or statistical theory. The problem of multiple independent hypothesis tests, on the other hand, can be rectified. The α -error rates reported by Linz and Yao, summarized in TABLE IV.1, assume among other things, that the six crime categories are independent. Of course, this assumption is incorrect. Greensboro's "high-crime" neighborhoods are likely to have high rates of all types of crime. As a consequence, the α -error rates reported by Linz and Yao lack the conventional nominal interpretation – they are wrong, *i.e.*

	Books/Videos		Cabarets	
	Effect	α	Effect	α
Crimes against person	220.8	.001	88.7	.048
Crimes against property	1027.5	.004	411.3	.089
Drug-related crimes	66.34	.312	16.7	.723
Sex-related crimes	21.9	.070	7.8	.351
Disorderly conduct	69.2	.081	34.1	.226
Other minor crimes	837.5	.002	205.0	.302
	Significant at $\alpha < .05$		Significant at $\alpha < .10$	

TABLE IV.2 reports secondary effect estimates and α -error rates for the six Linz-Yao regression equations. The difference between these numbers and the numbers reported by Linz and Yao (in TABLE IV.1, *e.g.*) is that the numbers in TABLE IV.2 were estimated under the assumption that the six crime categories are correlated across Census Blocks. The results of this regression, reported in the Appendix, support this assumption. Beyond that obvious point, however, the α -error rates in TABLE IV.2 show

539
2-540

that, in terms of crimes against the person – assault, homicide, rape, and robbery – both categories of AOBs have substantively large and statistically significant adverse secondary effects.

V. The Linz-Yao Literature Review

In reviewing the literature that the City of Greensboro relied on in writing its AOB ordinances, Linz and Yao conclude that there is a consistent relationship between the methodological rigor of a study and its findings:

All of the studies that claim to show adverse secondary effects are lacking in methodological rigor. The studies that have been done either by government agencies or by private individuals that have employed the proper methodological rigor have universally concluded that there are no adverse secondary effects.⁴³

In addition to relying on literature that they characterize as methodologically unsound, Linz and Yao faulted the City for ignoring the work of Linz *et al.* in Fort Wayne and Charlotte:

Recently, we have conducted independent, reliable, studies using census data and modern analytical techniques to examine whether “adult” entertainment facilities, and particularly exotic dance establishments engender negative secondary effects. Unlike many of the previous reports, these studies do not suffer from the basic methodological flaws that were enumerated in *Paul*. Unfortunately, the City Council of Greensboro did not consider these investigations despite the fact that the reports were available.⁴⁴

On these two grounds, Linz and Yao conclude that the City’s AOB ordinance had no legitimate factual predicate:

⁴³ Linz and Yao, p. 10.

⁴⁴ Linz and Yao, p. 10.

540
2-511

Consequently, the City of Greensboro had no reasonable basis for enacting the adult ordinance based on the information before it.⁴⁵

In my opinion, Linz and Yao overstate both grounds. First, while the broader secondary effect literature includes studies that lack scientific rigor, it also includes studies that satisfy reasonable standards of validity. These more rigorous studies figured prominently in the Greensboro's AOB ordinance process. Second, contrary to the characterization of Linz and Yao, the Fort Wayne and Charlotte studies by Linz *et al.* suffer from many of the same problems cited in the preceding sections.

V.A The 1991 Garden Grove Study

In the early 1990s, James W. Meeker and I conducted a series of secondary effect studies in the city of Garden Grove, CA. These studies found large, significant crime-related secondary effects associated with AOBs on one of the city's main streets. Although CFSSs were available, as criminologists, we were aware of the problems with these data and chose to use UCRs instead. Our understanding of crime "hotspots" lead us to define impact and control areas as 250-foot and 500-foot radii around the AOBs. To avoid the validity problems associated with "static group comparison" designs, we used a simple before-after quasi-experimental design. Finally, as a comparison standard, or control, we used other Garden Grove AOBs. Summarizing the Garden Grove studies:

- ◆ Crime measure: UCRs
- ◆ Impact and control areas: 250-foot and 500-foot radii around AOBs

⁴⁵ Linz and Yao, p. 14.

541
2-542

- ◆ Design: Before-after quasi-experiment
- ◆ Controls: Other AOBs in the same neighborhood

In terms of its scientific rigor, the Garden Grove study is the most comprehensive, authoritative study in the secondary effects literature. Nevertheless, Linz and Yao fault the Garden Grove study on several grounds:

The Garden Grove study fails to use the proper control comparisons. The study attempted to examine the effects of expansion of an adult business. It employed an average of adult businesses that did not expand as a control without attempting to determine if these businesses matched the test business in terms of demographics or other neighborhood features related to crime. Consistently, the authors do not find effects for "Type II" crimes, which include sex crimes. Identical effects are found for alcohol serving establishments that do not feature adult entertainment as those effects found for adult entertainment facilities. Finally, since business expansion was the focus of the study, a failure to examine the effects of other business expansions on crime rate due to increased customer traffic renders the study difficult to interpret.⁴⁶

None of the grounds cited by Linz and Yao are correct. Because the impact and control AOBs were in the same Census Block, *e.g.*, their demographics were identical. Part II (not "Type II") UCRs were included in the study and Part II impacts were found. Finally, business expansion was not the "focus of the study," although several AOB expansions were investigated. Linz and Yao could not have read the Garden Grove report carefully.

Figure V.1 reports a typical result of the Garden Grove study. In March, 1986, an AOB called the "Bijou" opened for business. Compared to the year before, Part I violent UCRs (assault, homicide, rape, robbery), Part I property UCRs (arson, auto theft, burglary, and theft), and Part II UCRs (including "victimless" crimes) rose significantly in

⁴⁶ Linz and Yao, p. 9.

the 500-foot impact area. The one-year before-after differences for the impact area are plotted as red bars in FIGURE V.1. During the same period, Part I and Part II UCRs at control areas – other AOBs – remained constant. The one-year before-after differences for the control, plotted as blue bars in FIGURE V.1, are nearly invisible – zero, *i.e.*

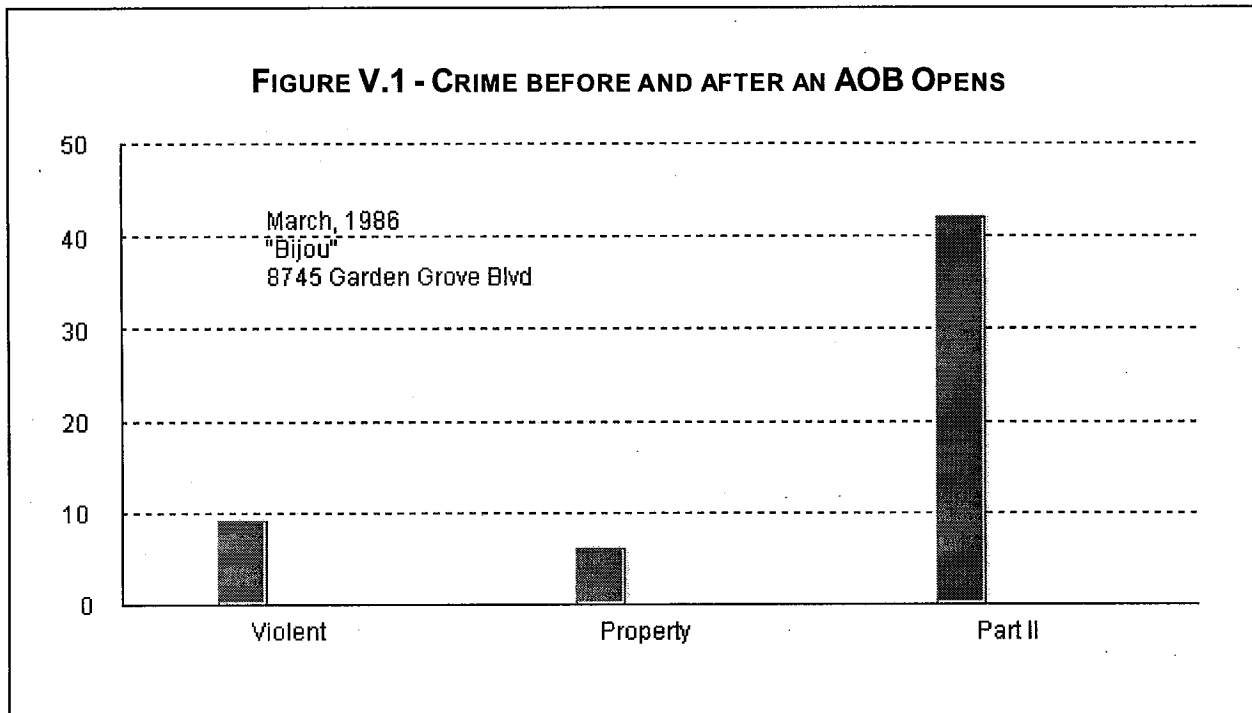
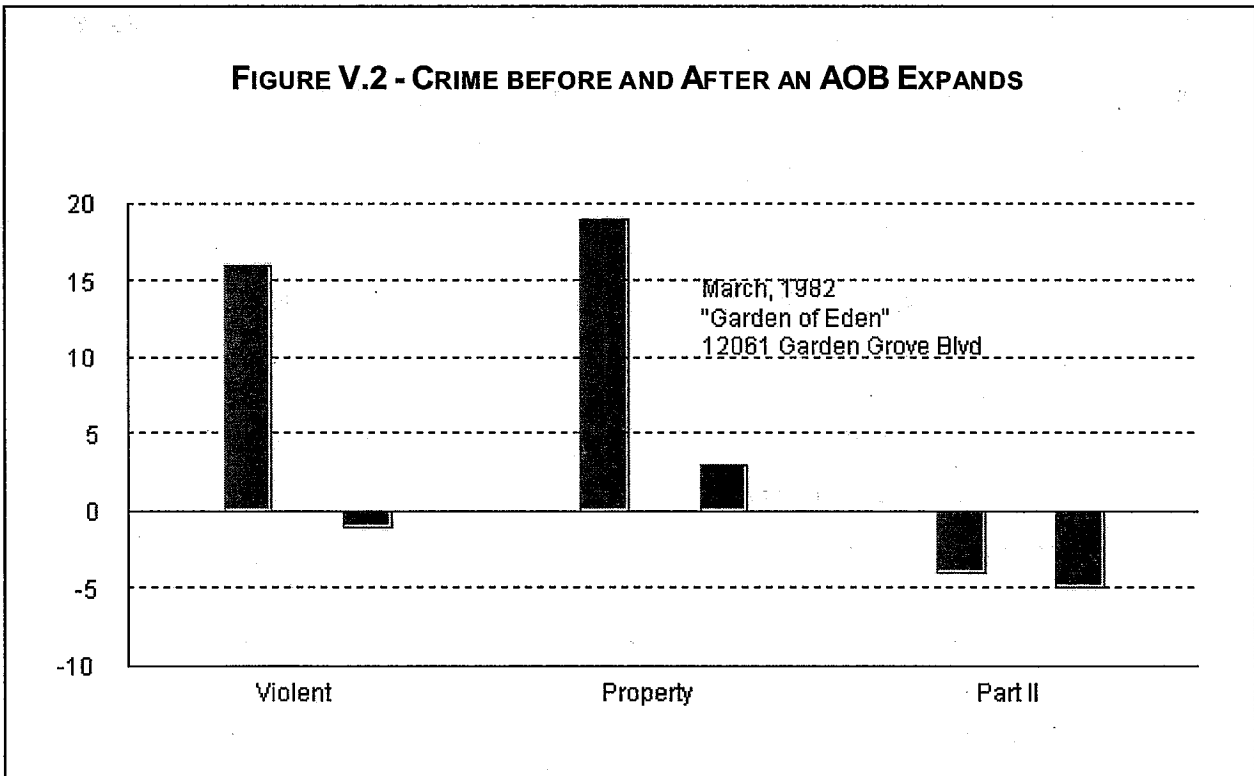


FIGURE V.2 reports result for the expansion of an existing AOB. In March, 1982, an existing AOB tripled its size by acquiring adjacent store fronts. Compared to the year before expansion, Part I UCRs rose sharply in the impact area but not in the control area. Part II UCRs declined in both areas. This unitary decline in Part II UCRs may explain the Linz-Yao comment about "Type II" crime. Because Part II UCRs, which include the so-call victimless crimes, are heavily influence by enforcement policy, their

5A3
2-574

use as secondary effect indicators is problematic.⁴⁷



In addition to the findings reported in FIGURE V.1-2, the Garden Grove study investigated the relationship between alcoholic beverage serving businesses and AOBs and the effects of architectural retrofits designed to mitigate adverse secondary effects. Since neither issue is relevant to Greensboro, those components of the study need not be reported here. The important point, in my opinion, is the straightforward interpretation supported by before-after designs. Contrasting crime risk after an AOB opens (or expands) to crime at the same address before the AOB opens (or expands)

⁴⁷ When a police department hires more homicide detectives, the homicide rate does not rise precipitously. Hiring more vice officers will generally lead to more vice arrests, however. The same principle holds for narcotics, traffic, and other Part II UCR crimes. This is the salient difference between Part I and Part II UCRs.

544
2-545

leaves little doubt about the nature of the relationship.

V.B The Fort Wayne and Charlotte Studies

The Fort Wayne and Charlotte studies, in contrast, are made difficult to interpret on several grounds. First, instead of using before-after designs, both studies used weak “static group comparison” designs. Second, both studies relied on controversial, non-intuitive control strategies. In Charlotte, *e.g.*, Linz *et al.* compared eight AOBs to two fast-food restaurants (a KFC and a McDonald’s) and a mini-mart. In Fort Wayne, Linz *et al.* compared UCRs in a 1000-foot radius around and AOB to UCRs in a “matched” 1000-foot circle. A larger problem, however, is that both studies found large, significant *salutary* secondary effects in AOB areas. These salutary secondary effects extended to all three dimensions:

- ◆ Crime was *lower* in AOB areas, compared to control areas.
- ◆ Real estate values were higher in AOB areas, compared to control areas. And in Charlotte,
- ◆ Residents of AOB areas were happier than residents of control areas.

These effects were so unexpected, so counter-intuitive, and so large, that Linz *et al.* had to speculate on the underlying mechanism. First, according to Linz *et al.*, AOB owners take proactive steps to protect customers.

The extensive management of the parking lots adjoining the exotic dance nightclubs, in many cases including guards in the parking lots, valet parking and other control mechanisms, reduces the possibility of disputes in the surrounding area. In addition, unlike other liquor serving establishments (bars and taverns), disputes in the areas surrounding

these exotic dance clubs between men regarding unwanted attention by other males to dates or partners are minimal due to the fact that the majority of patrons attend the clubs without female partners. Further, security measures inside the clubs reduce the potential for skirmishes among customers.⁴⁸

... the establishments themselves have evolved more closely into businesses – establishments with management attention to profitability and continuity of existence. To meet these objectives, it is essential that the management and/or owners of the clubs provide their customers with some assurance of safety. Accordingly, adult nightclubs, including those in Charlotte, typically have better lighting in their parking lots and better security surveillance than is standard for non adult-nightclub business establishments.⁴⁹

If this explanation is correct, it would appear that AOB regulations aimed at public safety – lighting, security guards, *etc.* – have a legitimate basis. More generally, according to Linz *et al.*, broader regulation of AOBs has been effective, at least in Charlotte:

As noted in the introduction to this paper, adult nightclubs have been subjected to over two decades of municipal zoning restrictions across the country and they usually must comply with many other regulations as well.⁵⁰

These rationales pose a dilemma for Linz *et al.* If AOBs have the miraculous salutary effects claimed by Linz *et al.*, it is because the regulation of AOBs has been effective. But on the other hand, if the salutary effects are an artifact of design idiosyncracies, AOBs are in need of regulation.

The second horn of the dilemma is more plausible. Except that neither the Fort

⁴⁸ p. 18., Daniel Linz and Bryant Paul, "Measurement of Negative Secondary Effects Surrounding Exotic Dance Nightclubs in Fort Wayne, Indiana." February 13, 2001.

⁴⁹ Land, K.C., Williams, J.R., and M.E. Ezell. *Are adult Dance Clubs Associated with Increases in Crime in Surrounding Areas?* p. 31-2.

⁵⁰ p. 31-32 of the Charlotte study.

Wayne or Charlotte studies used CFSs, they suffer from the same methodological flaws found in the Greensboro study.⁵¹ TABLE III.2 above lists the salient elements of design in Fort Wayne and Charlotte. Although the two studies were conducted during the same period by the same people, the differences in design are striking. In every study, Linz *et al.* select design elements from a cafeteria of options. Because no two Linz *et al.* designs are even roughly comparable, the credibility of their findings are haunted by the specter of “fishing.”

VI. Conclusion

Although the Linz-Yao Report was commissioned by the plaintiffs, the Report’s findings contradict the plaintiffs’ claim that Greensboro’s AOBs pose no crime-related secondary effects. In fact, as reported in TABLES I and IV.1 above, the large adverse secondary effects span both classes of AOBs and six categories of crime. As reported in TABLE IV.2, moreover, the substantively large effects for four serious crimes against persons – assault, homicide, rape, and robbery – are also statistically significant at the nominal $\alpha \leq .05$ level for both classes of AOBs. The relative magnitude of secondary effects reported by Linz and Yao warrant special emphasis. As shown in TABLE I, the secondary effects of AOBs in Greensboro range from 120 to 720 percent higher than the analogous crime effects for bars and taverns.

To conclude that neighborhoods with and without AOBs have statistically similar

⁵¹ On p. 11, Linz and Yao seem to claim the Fort Wayne study used CFSs: “The number of calls to the police from 1997-2000 in the areas surrounding the exotic dance nightclubs was compared to the number of calls found in the matched comparison areas.” But in fact, the Fort Wayne study used UCRs cleared-by-arrest (vs. all UCRs as was used in Charlotte).

crime rates – a null finding, *i.e.* – Linz and Yao had to overcome a formidable obstacle; two of their twelve secondary effect estimates were statistically significant at the nominal $\alpha \leq .05$ level. Linz and Yao urged the reader not to take these effects seriously because there were relatively few CFSs to AOB addresses. This argument ignores the fact that CFS addresses are not the locations of crime sites, of course, and attempts, subtly, to redefine the terms of debate.⁵²

Having dealt with the two statistically significant effect to their satisfaction, Linz and Yao turn their attention to the ten remaining effects. Because these ten estimates are *not* statistically significant, according to Linz and Yao, no matter how substantively large they may be, they must be treated as *if* they were zero. And if they are zero, Linz and Yao argue, the difference between neighborhoods with and without AOBs is zero – no difference, in other words.

The flaw in this argument is statistical power. To reject a null hypothesis, as Linz and Yao urge, false-negative error rates for the hypothesis test must be no larger than 20 percent (*i.e.*, $\beta \leq .2$). As reported in TABLE IV.1, of course, none of the Linz-Yao false-negative rates come even close to the conventional level required for social, behavioral, and biological science research.

The unacceptably low statistical power in the Linz-Yao hypothesis tests is a function methodological flaws, of course, spanning measurement, design, and analysis. All of these idiosyncracies have the effect of weakening the statistical foundation of the

⁵² The adverse secondary effects of AOBs are *ambient*. As depicted in FIGURE III.1, they radiate outward, diminishing exponentially with distance. Linz and Yao attempt to re-define the secondary effect as something that is necessarily limited the immediate premises or address.

hypothesis tests, making it more difficult to detect an adverse effect. That the adverse secondary effects persisted in the face of so many methodological challenges hints at how strong the adverse secondary effects in Greensboro really are.

Nevertheless, at least one of the methodological flaws in the Linz-Yao analyses can be addressed after the fact. The α -error rates reported by Linz and Yao assume that the six categories of crime are independent when, as a matter of empirical fact, they are highly correlated. TABLE IV.2 reports a set of α -error rates that take the correlations into account. When the inter-crime correlations are assumed, the large adverse effects for violent crimes achieve statistical significance at the nominal $\alpha \leq .05$ level for the two classes of AOBs. This ends the debate.

Finally, the opinions of Linz and Yao on the methodological rigor of the secondary effects literature used by Greensboro to formulate adult-oriented business regulations are at least overstated. *Some* of the methodological criticisms raised by Linz and Yao about *some* of the studies cited by the City are reasonable; but *other* criticisms about *other* studies are unreasonable and, apparently, incorrect. Some of the studies used by Greensboro are based on sound methodologies; and these studies document a mix of adverse secondary effects associated with AOBs. Taken as a body, this literature constitutes a solid empirical foundation for AOB regulations. In my opinion then, Linz and Yao are wrong. The City had an ample factual predicate for its regulations.

APPENDIX

1. Descriptive statistics for six dependent (outcome) variables and 13 independent (explanatory) variables used by Linz and Yao. All statistics were generated by SPSS from the file "greensboro blk grp 11-26-03.sav" emailed to the defendants by Mike Yao.

Var Label	Var Name	Min	Max	Mean	Std. Deviation
Crime: Person	PER_DENS	.00	1153.33	196.8618	234.20536
Crime: Property	PRO_DENS	.00	8900.00	1635.7824	1469.06826
Crime: Drug	DRG_DENS	.00	1577.27	89.0940	225.89693
Crime: Sex	SEX_DENS	.00	261.90	20.6177	37.25911
Crime: Disorderly	DIS_DENS	.00	883.33	127.0375	168.53584
Crime: Other	OTH_DENS	.00	6877.27	646.2676	1038.36874
Population Density	POP_DENS	114.66	13571.43	2599.0934	2022.21626
14-24 Year Olds	AGE15_24	34.00	2977.00	267.6185	340.57068
Median Age	MEDIAN_A	16.5	53.7	35.445	6.8148
Non-whites	NONWHITE	3.00	3494.00	716.9827	659.54439
Fem household w/children	HH_FEMC	0	411	54.54	52.323
Non-family households	HH_NONFA	20	1473	258.83	212.888
In-household unmarried	INHH_NON	5	481	101.88	86.972
Renter occupied household	OCCHU_RE	13	1659	272.65	274.734
Vacant housing	HU_VACAN	4	300	48.29	44.337
Owner vacancy rate	OWNER_VA	.0	14.3	2.022	2.1833
Private clubs (alcohol)	GBNC_BAR	0	11	.37	1.057
AOBs: Books/Videos	GBNC_BKS	0	2	.05	.237
AOBs: Cabarets	GBNC_CLB	0	2	.09	.328

2. Regression models estimated with SPSS from "greensboro blk grp 11-26-03.sav."

A. Summary Statistics for Six Models

Outcome Variable	R	R ²	Adj R ²	SE	F	df
Crime: Personal	.716	.512	.472	170.11259	12.848	13,159
Crime: Property	.798	.637	.607	920.77204	21.449	13,159
Crime: Drug	.637	.407	.358	181.05700	8.365	13,159
Crime: Sex	.563	.317	.261	32.02594	5.677	13,159
Crime: Disorder	.791	.625	.594	107.35378	20.378	13,159
Crime: Other	.708	.501	.461	762.54190	12.303	13,159

550
2-551

B. Parameter Estimates for Six Models

	B	Std. Error	Beta	t	Sig
Crime: Person	262.474	119.183		2.202	.029
Population Density	5.554E-02	.008	.480	-6.799	.000
15-24 Year Olds	-.236	.055	-.343	-4.268	.000
Median Age	-4.579	2.836	-.133	-1.615	.108
Non-whites	1.417E-02	.041	.040	.342	.733
Fem household w/children	.370	.519	.083	.712	.477
Non-family households	-.405	.202	-.368	-2.002	.047
In-household unmarried	-.104	.341	-.039	-.305	.761
Renter occupied household	.283	.170	.333	1.666	.098
Vacant housing	-.490	.563	-.093	-.870	.385
Owner vacancy rate	9.273	6.786	.086	1.367	.174
Private clubs (alcohol)	31.179	14.811	.141	2.105	.037
AOBs: Books/Videos	204.593	73.334	.207	2.790	.006
AOBs: Cabarets	79.035	47.496	.111	1.664	.098
	B	Std. Error	Beta	t	Sig
Crime: Property	1766.936	645.106		2.739	.007
Population Density	.419	.044	.577	9.471	.000
15-24 Year Olds	-1.725	.299	-.400	-5.762	.000
Median Age	-27.329	15.350	-.127	-1.780	.077
Non-whites	.433	.224	.194	1.929	.056
Fem household w/children	-5.730	2.811	-.204	-2.039	.043
Non-family households	-2.128	1.096	-.308	-1.942	.054
In-household unmarried	.725	1.847	.043	.392	.695
Renter occupied household	1.832	.921	.343	1.989	.048
Vacant housing	-2.145	3.046	-.065	-.704	.482
Owner vacancy rate	34.942	36.730	.052	.951	.343
Private clubs (alcohol)	390.320	80.170	.281	4.869	.000
AOBs: Books/Videos	954.246	396.938	.154	2.404	.017
AOBs: Cabarets	376.245	257.080	.084	1.464	.145

551
2-552

	B	Std. Error	Beta	t	Sig
Crime: Drugs	243.139	126.851		1.917	.057
Population Density	4.290E-02	.009	.384	4.933	.000
15-24 Year Olds	-.147	.059	-.221	-2.495	.014
Median Age	-5.992	3.018	-.181	-1.985	.049
Non-whites	-3.742E-02	.044	-.109	-.849	.397
Fem household w/children	1.685	.553	.390	3.048	.003
Non-family households	-.247	.215	-.232	-1.144	.254
In-household unmarried	-.963	.363	-.371	-2.652	.009
Renter occupied household	.250	.181	.304	1.381	.169
Vacant housing	1.312E-02	.599	.003	.022	.983
Owner vacancy rate	3.616	7.222	.035	.501	.617
Private clubs (alcohol)	7.204	15.764	.034	.457	.648
AOBs: Books/Videos	50.556	78.052	.053	.648	.518
AOBs: Cabarets	20.495	50.551	.030	.405	.686

	B	Std. Error	Beta	t	Sig
Crime: Sex	6.335	22.438		.282	.778
Population Density	8.623E-03	.002	.468	5.607	.000
15-24 Year Olds	-3.074E-02	.010	-.281	-2.953	.004
Median Age	-8.626E-02	.534	-.016	-.162	.872
Non-whites	9.428E-03	.008	.167	1.209	.229
Fem household w/children	-8.778E-02	.098	-.123	-.898	.371
Non-family households	-4.395E-02	.038	-.251	-1.153	.251
In-household unmarried	-3.905E-02	.064	-.091	-.608	.544
Renter occupied household	2.228E-02	.032	.164	.696	.488
Vacant housing	7.252E-02	.106	.086	.685	.495
Owner vacancy rate	1.573	1.278	.092	1.231	.220
Private clubs (alcohol)	6.981	2.788	.198	2.504	.013
AOBs: Books/Videos	7.730	13.806	.049	.560	.576
AOBs: Cabarets	9.059	8.942	.080	1.013	.313

	B	Std. Error	Beta	t	Sig
Crime: Disorder	236.652	75.214		3.146	.002
Population Density	4.747E-02	.005	.570	9.207	.000
15-24 Year Olds	-.154	.035	-.312	-4.423	.000
Median Age	-5.890	1.790	-.238	-3.291	.001
Non-whites	-2.950E-02	.026	-.115	-1.128	.261
Fem household w/children	.430	.328	.133	1.311	.192
Non-family households	-.290	.128	-.367	-2.274	.024
In-household unmarried	.510	.215	.263	2.367	.019
Renter occupied household	9.926E-02	.107	.162	.924	.357
Vacant housing	-.179	.355	-.047	-.503	.616
Owner vacancy rate	1.529	4.282	.020	.357	.721
Private clubs (alcohol)	27.870	9.347	.175	2.982	.003
AOBs: Books/Videos	66.218	46.279	.093	1.431	.154
AOBs: Cabarets	33.995	29.973	.066	1.134	.258

	B	Std. Error	Beta	t	Sig
Crime: Other	1450.149	534.247		2.714	.007
Population Density	.236	.037	.460	6.457	.000
15-24 Year Olds	-.981	.248	-.322	-3.957	.000
Median Age	-32.081	12.712	-.211	-2.524	.013
Non-whites	-7.424E-03	.186	-.005	-.040	.968
Fem household w/children	4.579	2.328	.231	1.967	.051
Non-family households	-1.635	.908	-.335	-1.801	.074
In-household unmarried	-3.086	1.530	-.259	-2.017	.045
Renter occupied household	1.349	.763	.357	1.768	.079
Vacant housing	-.238	2.522	-.010	-.094	.925
Owner vacancy rate	19.261	30.418	.040	.633	.528
Private clubs (alcohol)	81.963	66.393	.083	1.235	.219
AOBs: Books/Videos	645.549	328.726	.147	1.964	.051
AOBs: Cabarets	204.534	212.902	.065	.961	.338

553
2-554

C. Parameter Estimates for Six-Equation Model. Parameters were estimated with the Stata 8 SUREG routine from "greensboro blk grp 11-26-03.sav."

Equation	Obs	Parms	RMSE	"R-sq"	chi2	P
1. per_dens	173	8	165.7808	0.4960	169.74	0.0000
2. pro_dens	173	10	892.2249	0.6290	308.84	0.0000
3. drg_dens	173	7	175.9497	0.3898	119.37	0.0000
4. sex_dens	173	5	31.64325	0.2745	63.86	0.0000
5. dis_dens	173	8	104.6981	0.6118	287.57	0.0000
6. oth_dens	173	9	744.327	0.4832	193.60	0.0000

1. per_dens

	Coef.	Std. Err.	z	P> z	[95% Conf. Interval]
pop_dens	.0583978	.007305	7.99	0.000	.0440803 .0727154
age15_24	-.2567067	.0444481	-5.78	0.000	-.3438234 -.16959
median_a	-5.213533	2.296833	-2.27	0.023	-9.715243 -.7118229
hh_nonfa	-.3614153	.123571	-2.92	0.003	-.60361 -.1192206
occhu_re	.2351458	.0966512	2.43	0.015	.0457129 .4245787
gbnc_bar	23.88785	10.27709	2.32	0.020	3.745121 44.03058
gbnc_bks	220.7782	63.91651	3.45	0.001	95.50411 346.0522
gbnc_clb	88.73834	44.8434	1.98	0.048	.8468936 176.6298
_cons	300.7545	95.42885	3.15	0.002	113.7174 487.7916

2. pro_dens

	Coef.	Std. Err.	z	P> z	[95% Conf. Interval]
pop_dens	.4332474	.0397826	10.89	0.000	.3552749 .51122
age15_24	-1.845983	.2598476	-7.10	0.000	-2.355275 -1.336691
median_a	-32.90447	12.85666	-2.56	0.010	-58.10306 -7.705876
nonwhite	.4246629	.1454843	2.92	0.004	.1395189 .709807
hh_femc	-7.76403	1.777136	-4.37	0.000	-11.24715 -4.280906
hh_nonfa	-1.657183	.7851411	-2.11	0.035	-3.196031 -.1183348
occhu_re	1.71995	.6753602	2.55	0.011	.3962684 3.043632
gbnc_bar	340.2704	58.94667	5.77	0.000	224.737 455.8037
gbnc_bks	1027.469	353.2097	2.91	0.004	335.191 1719.748
gbnc_clb	411.2909	242.0976	1.70	0.089	-63.21155 885.7934
_cons	2037.614	536.4461	3.80	0.000	986.1989 3089.029

554
2-555

3. drg_dens

	Coef.	Std. Err.	z	P> z	[95% Conf. Interval]	
pop_dens	.0452171	.0076608	5.90	0.000	.0302022	.0602321
age15_24	-.1919905	.0463141	-4.15	0.000	-.2827646	-.1012165
median_a	-6.907077	2.394045	-2.89	0.004	-11.59932	-2.214836
hh_femc	1.400736	.2308506	6.07	0.000	.9482775	1.853195
inhh_non	-.7488683	.1661038	-4.51	0.000	-1.074426	-.4233108
gbnc_bks	66.34121	65.56554	1.01	0.312	-62.16489	194.8473
gbnc_clb	16.75276	47.19064	0.36	0.723	-75.7392	109.2447
_cons	263.0482	105.2732	2.50	0.012	56.71663	469.3798

4. sex_dens

	Coef.	Std. Err.	z	P> z	[95% Conf. Interval]	
pop_dens	.0090135	.0012701	7.10	0.000	.0065241	.0115029
age15_24	-.0310079	.0077629	-3.99	0.000	-.0462228	-.0157929
gbnc_bar	4.199698	2.047474	2.05	0.040	.1867219	8.212674
gbnc_bks	21.943	12.12063	1.81	0.070	-1.813004	45.699
gbnc_clb	7.841639	8.411152	0.93	0.351	-8.643916	24.32719
_cons	2.195358	4.159126	0.53	0.598	-5.95638	10.3471

5. dis_dens|

	Coef.	Std. Err.	z	P> z	[95% Conf. Interval]	
pop_dens	.0495055	.0045935	10.78	0.000	.0405023	.0585087
age15_24	-.1883981	.0278271	-6.77	0.000	-.2429382	-.1338581
median_a	-6.734602	1.441599	-4.67	0.000	-9.560084	-3.90912
hh_nonfa	-.1552782	.0538132	-2.89	0.004	-.2607502	-.0498062
inhh_non	.502001	.1362557	3.68	0.000	.2349448	.7690572
gbnc_bar	19.13064	5.260491	3.64	0.000	8.820268	29.44101
gbnc_bks	69.20503	39.71134	1.74	0.081	-8.627768	147.0378
gbnc_clb	34.13895	28.22523	1.21	0.226	-21.18149	89.4594
_cons	263.1086	61.50757	4.28	0.000	142.556	383.6612

555
2-556

6. oth_dens

	Coef.	Std. Err.	z	P> z	[95% Conf. Interval]	
pop_dens	.2487034	.0319462	7.79	0.000	.18609	.3113168
age15_24	-1.108898	.1933126	-5.74	0.000	-1.487784	-.7300124
median_a	-34.49121	9.209862	-3.75	0.000	-52.54221	-16.44021
hh_femc	3.917426	.7792158	5.03	0.000	2.390191	5.444661
hh_nonfa	-.6974107	.3322596	-2.10	0.036	-1.348628	-.0461938
inhh_non	-2.265352	.7496765	-3.02	0.003	-3.734691	-.7960132
occhu_re	.5386552	.2699186	2.00	0.046	.0096245	1.067686
gbnc_bks	837.5213	276.1655	3.03	0.002	296.247	1378.796
gbnc_clb	204.9952	198.4869	1.03	0.302	-184.032	594.0224
_cons	1512.252	399.746	3.78	0.000	728.7647	2295.74

*A Report On Zoning And Other Methods Of
Regulating Adult Entertainment In Amarillo*

September 12, 1977

PLANNING DEPARTMENT
CITY OF AMARILLO, TEXAS

551
2-558

A REPORT ON ZONING AND OTHER METHODS
OF REGULATING ADULT ENTERTAINMENT IN AMARILLO

CITY COMMISSION

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Marvin Winton

PLANNING 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
Gary Dumas, Planner I
Michael D. Moore, Planner I
Tom Horton, Draftsman II

Geno Wilson, Draftsman II
Steve Rodriguez, Draftsman I
Gail Beck, Secretary III
Maxine Hawk, Clerk II

September 12, 1977

558
2-559

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 sanctioned 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 ZONING AND OTHER METHODS
OF REGULATING 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.

560
2-561

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 determine the limitations of legislative regulation of adult-only businesses and the extent to which Amarillo, as a city, may regulate the industry through land use and licensing mechanisms.

DEFINITIONS

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 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, 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."

561
2-562

- 3: "The jury may measure 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 jury 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, they cannot declare what community standards shall be" [Smith v United States (1979)]

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; and
 - (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.

562
2-563

- (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.

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 Minor

- (a) For purposes of this section:-

563
2-564

- (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
 - (C) is utterly without redeeming social value for minors.
- (b) 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, employes, 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 new 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.

Pornographic 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 massage 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:

1. 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

564
2-56T

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 them 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.

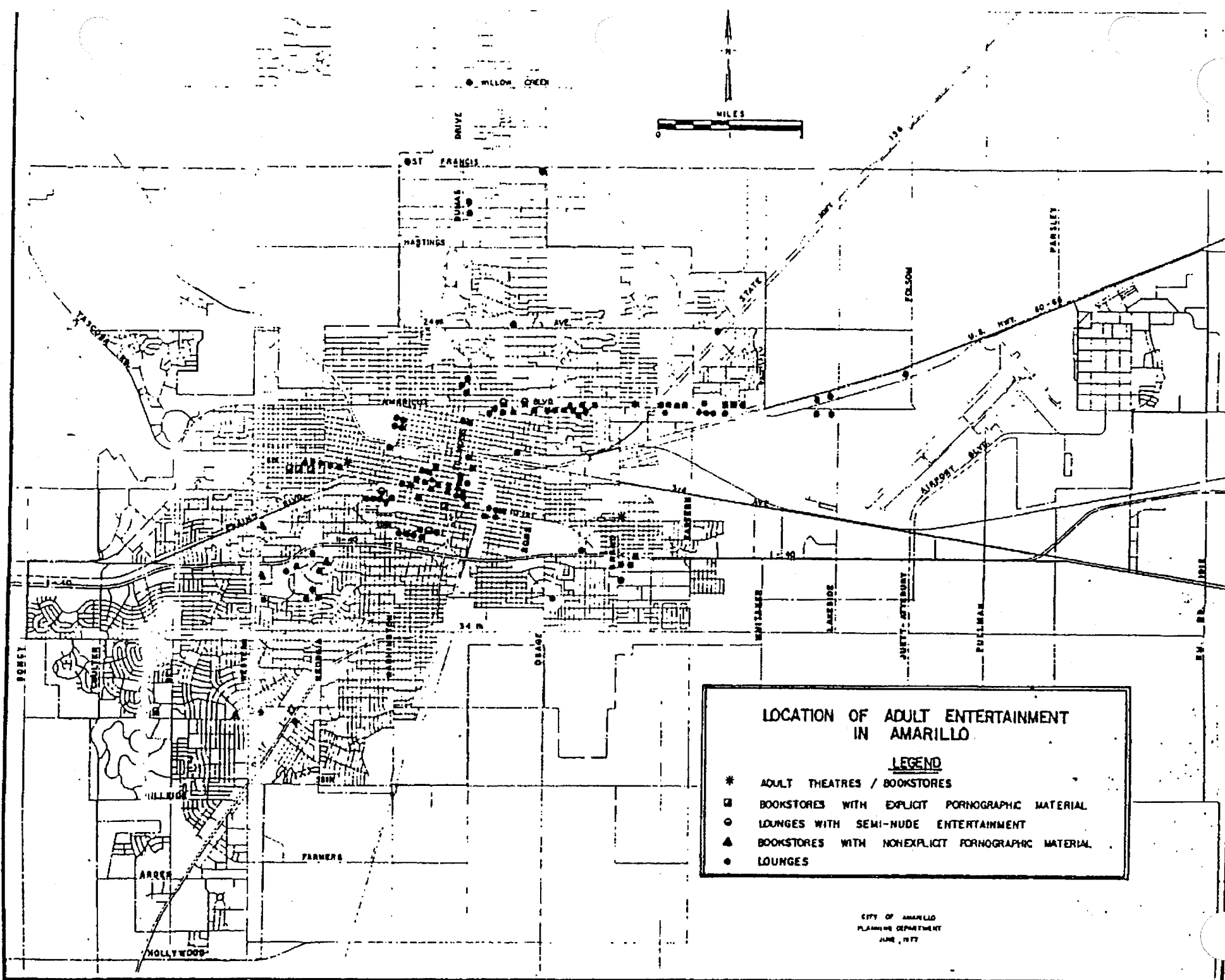
ADULT ENTERTAINMENT IN AMARILLO

Several businesses in Amarillo cater either wholly or partially to the adult-only market. The attached map, LOCATION OF ADULT ENTERTAINMENT IN AMARILLO, 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 2-1/2 times the City average in the immediate vicinity of alcohol only adult businesses, and 1-1/2 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 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.

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**LOCATION OF ADULT ENTERTAINMENT
IN AMARILLO**

LEGEND

- * ADULT THEATRES / BOOKSTORES
- BOOKSTORES WITH EXPLICIT PORNOGRAPHIC MATERIAL
- LOUNGES WITH SEMI-NUDE ENTERTAINMENT
- ▲ BOOKSTORES WITH NONEXPLICIT PORNOGRAPHIC MATERIAL
- LOUNGES

CITY OF AMARILLO
PLANNING DEPARTMENT
JUNE, 1977

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 nonexplicit 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 moviehouse 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 1973 a popular lounge hired totally nude dancers. Four competitors soon followed suit. Finally the City gained its first massage parlor.⁶

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 Penal 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.
2. 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 expenditures 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

512
2-573

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 ty

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 locations, 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 material (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.

SUMMARY 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:

1. 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.

573
2-574

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 of Amarillo's major thoroughfares. Also, this approach would probably tend to concentrate adult activities into the central business district and a few industrial areas.

RECOMMENDATIONS 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 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 pornographic 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.

576
2-577

1 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 S. Ct. 2629 (1973), and Roth v United States, 77, S. 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.

3 Amended by Act 1975, 64th Leg., p 372, Ch. 163, § 1, eff. September 1, 1975.

4 Acts 1973, 63rd Leg., p 883, Ch. 399, § 1, eff. January 1, 1974.

5 U.S. News & World Report, September 13, 1976, p. 76.

6 Time, April 5, 1976.

517
2-578

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

ABELINE RETAIL #30, INC.,)
)
 Plaintiff,)
)
 v.)
)
 COUNTY OF DICKINSON *et al.*)
)
 Defendant.)

Case No. 02:04-CV-02330-JWL

EXPERT REPORT OF DENNIS W. RONCEK, Ph.D.

I. **Opinions to be expressed:** Based on my training and professional experience, on my crime “hotspot” research, and on my review of the facts and materials of this case, I expect to offer the following opinions at a trial.

A. I have read the Rule 26 Report of Dr. Richard McCleary in this case and I concur with his opinions. Specifically

1. *Criminological Theory:* The relevant criminological theory is the so-called “routine activity theory.” From the tenets of this theory, sexually-oriented businesses (SOBs) will have crime-related secondary effects because they draw large numbers of potential victims to their addresses. For many reasons, these potential victims are “soft targets” for criminal predators. It is the density of “soft-targets” at the SOB addresses that attracts predatory criminals to the addresses, generating victimization risks in SOB neighborhoods.

2. *Crime Incidents.* Crime-related secondary effects involve three categories of crime: vice crimes, such as prostitution, lewd behavior, drugs, *etc.*;

518
2-579

predatory crimes, such as robbery, assault, auto theft, *etc.*; and crimes of opportunity, such as burglary, theft, and vandalism. These three crime categories include most of the crime incidents that would be classified as Part I (“serious”) Uniform Crime Reports (UCRs) and a small subset of Part II UCRs related to vice and opportunity crimes.

- a. A strong indicator of crime-related secondary effect is the ambient (or neighborhood) crime rate defined as the ratio crime incidents to a valid measure of the risk of being present in a particular area.
- b. Compared to crime incidents, police calls-for-service are a relatively weak indicator of the crime-related secondary effect. When crime incidents are available, calls-for-service are not an acceptable measure of victimization risk.
- c. The crime-related secondary effects of SOBs will involve Part II UCRs almost by definition. Part II UCRs can be affected by proactive police activity.

3. *Impact Areas*: Based on the relevant criminological research, crime-related victimization and offending secondary effects are most readily identifiable by statistical techniques within one census block from the source (an SOB in this case). My own research, which includes studies of the crime around public housing (Roncek et al. 1981), high schools (Roncek and Lobosco, 1983), and similar land uses (Roncek and Murray, 2003), confirms the one census block detectability pattern.

- a. A profoundly large effect might be detected in extremely large impact areas, but in general, these large impact areas make secondary victimization effects more difficult to estimate, biasing the analysis toward statistical insignificance.
- b. If all else is equal, crime-related secondary effects radiate outward from the source in what is called a distance-decay pattern. The expected pattern is heavily dependent on the street network of the local environment, however.

4. *Internal Validity*: With respect to the common threats to internal validity, the strongest possible quasi-experimental design for crime-related secondary effects research employs a before-after contrast with or without a control contrast.

- a. When before-after designs are not possible, crime-related secondary effects research could use "static group comparison" designs that compare areas around SOBs to areas around control businesses. The control businesses must be virtually identical to the SOBs on all variables related to crime risk, however, and this is extremely difficult to achieve in practice, although even such designs have substantial weaknesses.
- b. No matter what quasi-experimental design is used, control businesses are used only for the narrow purpose of ruling out plausible threats to internal validity. In a report submitted in this case, Dr. Daniel

Linz contends that control businesses serve a very different purpose, namely, to demonstrate that the secondary effects of SOBs are larger than the secondary effects of other businesses. The methodological authorities cited by Dr. Linz contradict this view, however. Further, this contention rests on a false assumption. Statistically significant harmful effects are harmful effects regardless of whether they are larger or smaller than those found for other land uses.

5. *Statistical Conclusion Validity*: The conventional Type I and Type II error rates in social science research are .05 and .2 respectively. Type I and Type II error rates are also known as “false-positive” and “false-negative” error rates respectively.

- a. If a secondary effect estimate has a false-positive rate smaller than .05, it is statistically significant. Subject to considerations of internal validity, the estimate leads to the inference that SOBs have secondary effects.
- b. If a secondary effect estimate is not statistically significant, but has a false-negative rate smaller than .2, the estimate leads to the incorrect inference that those SOBs do not have secondary effects.
- c. If the false-positive and false-negative rates exceed .05 and .2 respectively, the estimate supports neither inference.

B. The body of studies relied on by Dickinson County support the conclusion that SOBs

generate crime-related secondary effects. In the report that he submitted in this case, Dr. Linz contends that all of the studies relied on by the County suffer from disqualifying methodological flaws. I disagree with this opinion. While the rigor of the studies relied on by the County span the spectrum of methodological strength, taken as whole, the studies are sufficient to establish the conclusion. Furthermore, many of the methodological flaws cited by Dr. Linz are either irrelevant or incorrect.

1. *Control Comparisons.* Dr. Linz criticizes several of the studies relied on by the County because their control and SOB areas are not comparable. For studies based on before-after designs, Dr. Linz's criticism is simply wrong. For other designs, however, Dr. Linz's criticism is irrelevant. The problem is that Dr. Linz does not specify objective criteria for determining whether differences between SOB and control areas are unacceptable. In the 1979 Phoenix, AZ study, for example, the differences between SOB and control areas do not appear to be statistically significant. Furthermore, the differences are no larger than the analogous differences in Dr. Linz's own studies, particularly the 2001 Ft. Wayne study.

2. *Temporal Stability.* Dr. Linz criticizes several of the studies relied on by the County because they are based on time frames that are too short. Once again, the problem is that objective criteria are not specified. The longer the time frame, of course, the more powerful the design. If a secondary effect estimate is statistically significant, the time frame is generally long

enough. Since the studies that Dr. Linz criticizes on this ground reported statistically significant secondary effects, Dr. Linz's criticism is wrong.

3. *Interpretation.* Dr. Linz contends that the County misinterpreted the results of some studies. While these studies report no secondary effects, at least as Dr. Linz reads the studies, the County interprets the text as reporting a significant secondary effect. In the specific instances that Dr. Linz cites in his report, I arrive at the County's interpretation. Dr. Linz's contention to the contrary is based on selective quotations taken out of context.

C. Dr. Linz criticizes the County for relying on studies that report no novel, empirical results but, instead, report findings from other jurisdictions. If all of the studies considered by the County were reviews, or if the County could not distinguish between reviews and novel, empirical reports, this criticism might be relevant. The County considered a large body of literature, however, that included both reviews and novel, empirical reports. The criticism is irrelevant.

D. Dr. Linz criticizes the County for ignoring studies conducted by Linz and associates, implying that these studies are more rigorous than the studies considered by the County. I have seen no evidence that the County was aware of these studies and chose to ignore them. These studies are relatively recent, of course, most occurring after 2001, and this may explain why they were not considered. Nevertheless, I cannot agree with Dr. Linz's judgement that these studies are inherently more rigorous than the studies considered by the County. In many respects, they are no more rigorous than any other study in the secondary effects

literature. Many of the studies conducted by Dr. Linz and his associates are as weak as or weaker than any of the studies that he criticizes the County for relying upon in support of its contention of the existence of secondary effects.

1. In the Ft. Wayne study conducted by Dr. Linz and Bryant Paul, differences between the SOB and control areas (reported in Tables 1 and 2) are as large or larger than any in the secondary effects literature. The values for the counts of demographic characteristics, which they attribute to census blocks, are so large that they can only be for aggregates of census blocks. Furthermore, the 1000-foot radii used for impact areas is large enough to prevent finding any such effect for comparable land uses which draw individuals to their sites from other locations. A radius of this size can bias the results against finding a statistically significant crime-related public safety risk.

In addition to the serious problems related to impact areas, the Ft. Wayne study used a questionable measure of crime. Instead of using all crime incidents, Dr. Linz and Mr. Paul excluded all crime incidents that were not cleared by arrest. In most large cities, this peculiar rule would exclude the overwhelming majority of "serious" crimes. The exclusion would not be random, furthermore, but would favor the finding of no crime-related secondary effect.

Finally, Dr. Linz and Mr. Paul do not report the means, variances, and covariances that would be needed to calculate false-negative error

rates. Without these data, it is impossible to conclude that the Ft. Wayne finding has any validity.

2. The Charlotte study conducted by Dr. Linz, Bryant Paul, and three others attempts to be more rigorous than the Ft. Wayne study. Impact areas are defined as 500-foot circles (as opposed to 1000-foot circles) centered on 20 SOBs and secondary effects are defined as all "serious" UCR incidents (as opposed to the small fraction cleared by arrest). Despite these changes, the design of the Charlotte study is deficient in crucial ways.

The Charlotte study compared 20 SOB areas to three control areas. By itself, this design imbalance (20:3) generates a bias in favor of the no-effect finding. When the nature of the control businesses is considered, however, a more serious problem emerges. The control businesses in Charlotte were two fast-food restaurants (a McDonald's and a Kentucky Fried Chicken) and a gas station/convenience store. The differences between these controls and the SOBs are obvious.

The design imbalance in the Charlotte design biases the analysis by inflating the false-negative rate of the secondary effect estimate. As a consequence, the finding does not support the inference that there are no secondary effects in Charlotte.

Depending on the street network, a 500-foot radius can have the effect of "cutting off" the corner of the census/city blocks defined by the street network. Such "cutting off" could result in a substantial loss of

number of incidents that were tallied as "measures of crimes." Such losses would dilute or possibly completely conceal harmful secondary effects.

3. The results of a Greensboro, NC study conducted by Dr. Linz and Mike Yao yield secondary effect estimates that are consistent with the findings of the studies considered by the County. The Greensboro result is remarkable because its design is suboptimal in terms of its impact areas (*i.e.*, Census Block Groups which are much too large) and crime measures (*i.e.*, calls-for-service instead of crime incidents). Both design features generate statistical biases against the secondary effect finding. Nevertheless, the results of their analyses demonstrate a secondary effect.
4. In a San Diego study, Dr. Linz and Mr. Paul find that SOB areas have higher levels of raw calls-for-service than control areas, but claim that this effect estimate is not statistically significant. As in the Charlotte study, however, the false-negative rate for this estimate is much too high (approximately .5) to support the no-effect inference that Dr. Linz claims in his report.

The reasons for the unacceptably high false-negative rate in the San Diego study are revealing. Instead of using crime incidents, for example, Dr. Linz and Mr. Paul use raw calls-for-service, for which an overwhelming majority are not likely to be related to crime. The higher variances in these data show up in the false-negative rate.

Another problem in the San Diego design relates to the peculiar definition of the impact and control areas. Instead of using circles (as in Charlotte and Ft. Wayne) or Census Block Groups (as in Greensboro and several other studies) or Census Blocks, Dr. Linz and Mr. Paul use 2000-foot linear strips of addresses. The problem with this definition is that calls-for-service to addresses on cross- or side-streets are excluded. Based on my experience in San Diego, it is clear that many of the streets in the study are well-lit thoroughfares (University, Balboa, El Cajon, *etc.*) which are heavily patrolled by the police. Predatory criminals are more likely to lure victims to side-streets and alleys, which are darker and not as heavily patrolled. Calls to these addresses would be excluded from the linear strip impact areas used in this study.

5. Dr. Linz, Mr. Paul, and Dr. Randy D. Fisher estimate the correlation between the numbers of SOBs and UCR Rapes in Florida counties. Finding that this correlation is not statistically significant, they conclude that SOBs have no crime-related secondary effects. There are two problems with this conclusion.

a. The crimes expected in secondary effects of SOBs (robbery, auto theft, *etc.*) are perpetrated by criminal predators who are largely unknown to their victims. Many, if not most, UCR Rape perpetrators are largely known to their victims, however. In cases where UCR Rape perpetrators are strangers, the crime incidents

often unfold over a vast area. In short, UCR Rapes are not a strong secondary effects indicator

- b. To the extent that, women, in general, would not ordinarily be expected to be a large proportion of the customers of SOBs, the numbers and percentages of women who would be potential victims in the environments of these businesses should be smaller than those found in the environments of other businesses. Thus, from the tenets of routine activity theory, crimes for which women are the primary victims should not be particularly frequent in the vicinities of SOBs.
- c. The crime-related secondary effects of SOBs are unlikely to cover the entire area of a county. At the level of the county, there are dozens of crime-related characteristics (poverty, unemployment, demographics, *etc.*) that affect the occurrence of crime.

6. When the studies conducted by Dr. Linz and his associates are examined as a body of research, the methodological problems are striking. While conducted by the same researchers during the same period of time, for example, the studies use a bewildering array of crime measures (all UCRs, some UCRs, all calls-for-service, some calls-for-service, *etc.*) with no apparent reason or rationale. Their terminology itself is inconsistent and, quite often, it is misleading or incorrect. Very different indicators (incidents, arrests, calls-for-service, *etc.*) are given the same names. Dr. Linz and his colleagues seem to be unaware of the differences

among these indicators. When analyzing calls-for-service, furthermore, they seem to be unaware of the geocoding conventions. The addresses recorded for calls-for-service to 911 almost always reference the locations from which the call originated, not the locations of the occurrences of the crime incidents.

The research designs used in the studies conducted by Dr. Linz and his colleagues often involved very large areas and very small numbers of cases. This strategy runs counter to the strategy employed in the most widely-accepted studies of urban crime patterns. Most studies examine crime patterns, demographics, and land-use characteristics defined across all the subareas, census blocks, census block groups, census tracts in a jurisdiction. The focus on the smaller number of areas by Dr. Linz and colleagues falls outside the tradition of research in urban environmental criminology and, thus, would not be considered methodologically sound.

Studies based on smaller numbers of areas, such as those conducted by Dr. Linz and his colleagues, are sometimes used when pragmatic needs prohibit following the tradition in this field. Such work, however, departs from the pattern of published research, especially that found in the leading journals in the field of Criminology. Even when the number of "sites of interest" is small, however, the studies have found negative secondary effects when using all the subareas of a city. Not following this best practice makes it difficult to detect such effects and raises serious questions about the validity of this research.

II. Data and information relied on: The data and information that I relied on to form these opinions consists of documents filed in this case and research reports written by me and others. Specific documents include:

A. The August 27, 2004 report of Daniel Linz, Ph.D., including attachments:

1. Curriculum vitae of Daniel Linz, Ph.D.
2. Paul, B., D. Linz and B.J. Shafer, "Government regulation of 'adult' businesses through zoning and anti-nudity ordinances: de-bunking the legal myth of negative secondary effects." *Communication Law and Policy*, 2001, 6:355-391.
3. October 2, 2001 letter from Elizabeth Groff to Bryant Paul.
4. Paul, B. *Using Crime Mapping to Measure the Negative Secondary Effects of Adult Businesses in Fort Wayne, Indiana: A Quasi-Experimental Methodology.*
5. Linz, D., B. Paul, K.C. Land, M.E. Ezell and J.R. Williams. "An examination of the assumption that adult businesses are associated with crime in surrounding areas: A secondary effects study in Charlotte, North Carolina." *Law and Society Review*, 2004, 38(1):69-104.
6. G.W. McCarthy, H. Renski and D. Linz, *Measuring Secondary Effects Using Spatio-Temporal Estimation of Real Estate Price Appreciation.* May 24, 2001.
7. D. Linz, B. Paul and M. Yao. *Peep Show Establishments, Police Activity, Public Place and Time: A Study of Secondary Effects in San Diego,*

California. No date.

8. R.D. Fisher, D. Linz and B. Paul. *Examining the Link between Sexual Entertainment and Sexual Aggression: The Presence of Adult Businesses and the Prediction of Rape Rates in Florida*. No date.

B. Methodological authorities cited in the August 27, 2004 report of Daniel Linz, Ph.D., including:

1. Babbie, E. *The Practice of Social Research*, 8th Ed. 1998.
2. Campbell, D.T. and J.C. Stanley. *Experimental and Quasi-Experimental Designs for Research*. 1963.

C. Dickinson County Ordinance No. 070804.

D. Studies cited in the legislative record of Ordinance No. 070804, including

1. Phoenix, AZ (1979)
2. Minneapolis, MN (1980)
3. Houston, TX (1983)
4. Indianapolis, IN (1984)
5. Amarillo, TX (1977)
6. Garden Grove, CA (1991)
7. Los Angeles CA, (1977)
8. Whittier, CA (1978)
9. Austin, TX (1986)
10. Seattle, WA (1989)
11. Oklahoma City, OK (1986)

12. Cleveland, OH (1977)
13. Beaumont, TX (1982)
14. MN Attorney General (1989)

E. Other secondary effects studies, including:

1. *Evaluating Potential Secondary Effects of Adult Cabarets and Video/Bookstores in Greensboro: A Study of Calls for Service to the Police.* D. Linz and M. Yao, November 30th, 2003.
2. *A Methodical Critique of the Linz-Yao Report: Report to the Greensboro City Attorney.* R. McCleary. December 15, 2003.
3. *A Methodical Critique of the Linz-Paul Report: A Report to the San Diego City Attorney's Office.* R. McCleary and J.W. Meeker. March 12, 2003.
4. Affidavit of R. McCleary, September 10, 2004. New Albany DVD, LLC v. City of New Albany, IN. U.S. District Court for the Southern District of Indiana, New Albany Division (Cause No. 4:04-CV-0052-SEB-WGH).
5. *Crime Risk in the Vicinity of a Sexually-Oriented Business: Report to the Centralia City Attorney.* R. McCleary. Revised February 28th, 2004.

F. The August 27, 2004 report of R. Bruce McLaughlin.

I have also relied on training and experience and on my own research.

III. Exhibits to be used: I expect to use the documents listed at **II** above as exhibits.

IV. Qualifications: I am a Professor of Criminal Justice at the University of Nebraska at Omaha. I hold a Ph.D. in Sociology from the University of Illinois at Urbana-Champaign. By virtue of my background and research interests, I am an expert in

criminology generally and in the area of environmental criminology particularly. Over the last three decades, my research has focused on quantitative or statistical analyses of urban crime patterns. Combined with my work in spatial analysis through mapping crime locations, my research has been used to develop crime prevention strategies.

The graduate courses that I teach in the Department of Criminal Justice and in the College of Public Affairs and Community Service emphasize applications of sophisticated quantitative or statistical methods to criminology and criminal justice problems.

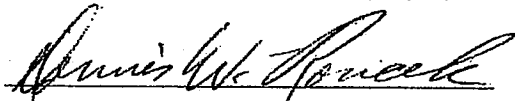
In addition to my research interests in criminology, spatial statistical modeling, crime mapping, and the like, I have first-hand knowledge of the local area involved in this case. I was a Professor of Sociology at Kansas State University in Manhattan, KS prior to accepting my current appointment.

My curriculum vitae is appended.

V. Compensation: I am being compensated at the rate of \$250 per hour. I do not expect the total compensation in this case to exceed \$7,500.

VI. Cases in which I have testified or been deposed within the last four years: I have not been deposed or given testimony in the last four years.

I declare under the penalty of perjury that the foregoing is true to the best of my knowledge.



Dennis W. Roncek, Ph.D.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

ABELINE RETAIL #30, INC.,)
)
 Plaintiff,)
)
 v.)
)
 COUNTY OF DICKINSON *et al.*)
)
 Defendant.)

Case No. 02:04-CV-02330-JWL

EXPERT REPORT OF Richard McCleary, Ph.D.

I. Opinions to be expressed: At a trial in this matter, based on my training, professional experience, research, and review of the facts and materials of this case, I expect to offer the following opinions:

A. Public safety or crime-related secondary effects of sexually-oriented businesses

(SOBs), including the class of businesses defined by Dickinson County Ordinance No. 070804 (hereafter, "Ordinance"), can be established by methods that, while empirical, do not rely on formal, systematic designs. Formal, systematic designs usually include before-after and/or cross-sectional control comparisons.

B. When formal scientific methods are used, inferential validity requires, at a minimum, a "static group comparison" design where crime rates in the vicinity of an SOB are compared to crime rates in the vicinity of one or more comparable control businesses.

1. Uniform Crime Reports (UCRs), collected by local police agencies for the FBI, are an accepted measure of crime risk. Part I UCRs include the serious

594
2-607

“violent” (homicide, robbery, rape, and assault) and “property” crimes (auto theft, larceny, and burglary). The adverse secondary effects of SOBs ordinarily involve robbery, assault, and auto theft.

2. The adverse secondary effects of SOBs also involve Part II UCRs, especially “victimless” crimes (public drunkenness, disorderly conduct, prostitution, *etc.*). Because these crimes are sensitive to policy activity, however, risk estimates from Part II UCR rates may be confounded. Part I UCR rates are a more valid measure of crime-related secondary effects.

C. Although police calls-for-service (CFSs) are traditionally used to evaluate liquor license renewals, CFSs are an invalid measure of crime risk.

1. The shortcomings of CFSs are well known to criminologists and social scientists. CFSs are easily manipulated, *e.g.*; are only weakly correlated with locations and times of crime incidents; are sensitive to minor variations in police policy; provide biased estimates of crime risk; and so forth. The validity implications of these problems are so great and so well known that virtually no published criminological research uses CFSs to measure crime risk.

2. These same problems are also known to underwriters. Actuarial estimates of the crime risk at an insured address are *always* based on crime incidents at the address, *never* on the CFSs to the address.

D. To measure the secondary effect of an SOB, Part I UCR crimes that occur within 500 feet of the address during a fixed period of time are used as crime rate numerators

(i.e., crime incidents per unit of area-time). Crime rates calculated this way can be interpreted as crime risks (i.e., as the probabilities of victimization) in a circle centered on an SOB.

1. While smaller circular areas (e.g., a 250-foot radius around an SOB) are acceptable in principle, smaller circles often exceed the precision of UCR geo-coding systems.
2. Larger circular areas (e.g., a 1000-foot radius around an SOB) tend to "dilute" the estimated effect, biasing it toward zero.
3. The 500-foot rule is dictated by conventional levels of statistical confidence (95 percent) and power (80 percent) for hypothesis tests. Statistical conventions aside, the public safety risks of SOBs extend beyond 500 feet. To manage this risk, communities require that SOBs be 1000-2000 feet from residences (or other sensitive uses). The minimum distance reflects the community's tolerance for public safety risk.

E. After the crime rate around an SOB is estimated, it can be compared to analogous crime rates around control businesses. Secondary effect studies have used three quasi-experimental designs for SOB-control comparison.

1. "Static group comparison" designs compare ambient crime at SOB sites with ambient crime at non-SOB (control) sites.
2. "Pretest-posttest" designs compare ambient crime at sites before and after SOBs move into the sites.
3. "Pretest-posttest control group" designs incorporate before-after contrasts at

non-SOB (control) sites.

F. According to methodological authorities, the "pretest-posttest control group" design is the strongest and the "static group comparison" design the weakest of the three quasi-experimental designs.

1. The internal validity of a "static group comparison" design assumes that SOBs and non-SOB controls are virtually identical on all ambient crime risk factors, including hours-of-operation, neighborhood demographics, traffic, etc.

2. In a "pretest-posttest" design, each SOB site serves as its own control. Assuming moderate temporal stability, ambient crime risk factors will be identical before and after SOBs move into the sites.

3. When adequate controls are unavailable, relevant SOB-control differences can be adjusted statistically. Statistical adjustment is not a certain solution to validity threats associated with "static group comparison" designs, however. To the extent that statistical adjustment requires a set of assumptions, moreover, the validity of statistically adjusted secondary effect estimates is always debatable.

G. After a secondary effect has been estimated, it must be tested. Statistical hypothesis tests involve false-positive and false-negative errors. False-positive errors occur only when the null hypothesis is rejected (*i.e.*, when the evidence shows that SOBs pose a public safety hazard). False-negative errors occur only when the null hypothesis is not rejected (*i.e.*, when the evidence shows that SOBs do not

pose a public safety hazard).

1. False-positive errors are also called "Type I errors" or " α -errors." When the hypothesis test leads to a secondary effect finding, the finding can be a chance artifact. If the secondary effect finding is due to chance, the finding is a false-positive error. The conventional false-positive rate in the social and biomedical sciences is five percent. In contrast, the probability that the secondary effect finding is correct is 95 percent. This probability is called "statistical confidence."
2. False-negative errors are also called "Type II errors" or " β -errors." When the hypothesis test leads to a null finding, this finding can be a chance artifact. If it is, the null finding is a false-negative. The conventional false-negative rate in the social and biomedical sciences is 20 percent. The probability that the null finding is correct is 80 percent and this is called "statistical power."
3. If the false-positive and false negative rates are larger than five and 20 percent respectively, the hypothesis test supports neither the null hypothesis (*i.e.*, no secondary effect) nor the alternative hypothesis (*i.e.*, a secondary effect). The test is inconclusive.

H. When relatively strong before-after designs are feasible, crime-related secondary effects studies find that SOBs, including bookstores or novelty shops, peep shows, as well as SOBs that feature live nude or semi-nude dancing, and simulation exhibitions, pose high crime risks.

1. These risks involve not only Part II UCR crimes, such as prostitution, public drunkenness, and disorderly conduct, but also Part I UCR crimes such as homicide, robbery, assault, and auto theft.
 2. Having been observed in a wide range of situations, places, and times, this finding is scientifically robust. In particular, the finding applies not only to SOBs that offer on-premise entertainment (e.g., peep-shows, viewing facilities, or live nude shows) but also to "take-home only" SOBs.
- I. The finding that SOBs pose high crime risks confirms modern criminological theory. According to theory, victimization risk is concentrated around a "hotspot" (e.g., an SOB) because of the quantity and quality of people drawn to the "hotspot."
1. *Quantity*: Successful SOBs necessarily attract patrons from wide catchment areas to a local neighborhood. Standard business practices designed to attract more patrons (sales, advertising, "giveaways," etc.) increase the density of potential victims at a site. This makes the site attractive to predatory criminals.
 2. *Quality*: SOB patrons travel to distant locations; use aliases; pay in cash; and when victimized, tend not to complain to or seek assistance from the police. The steps that SOB patrons take to maintain their anonymity make them attractive targets for predatory criminals.
- J. The crime risk posed by SOBs is inversely proportional to the distance to a bar or tavern. The fact that alcohol aggravates crime risks by a significant factor is, again, a function of both the quantity and quality of customers.

1. *Quantity*: Access to alcohol makes an SOB more attractive, thereby drawing more customers.

2. *Quality*: By lowering personal inhibitions and clouding judgments, alcohol makes SOB patrons more vulnerable to predatory criminals.

K. The crime risks posed by SOBs are not mitigated by inexpensive architectural retrofits. Research finds that walls, speed bumps, outdoor lighting, and other simple retrofits designed to mitigate crime risk do not produce significant mitigation effects.

L. The crime risks posed by SOBs can be mitigated by regulation, including zoning, licensing, and police inspections. The Dickinson County Ordinance is not substantially different than ordinances enacted in other jurisdictions. Based on empirical research and strong theory, there is a reasonable expectation that the Ordinance will mitigate the crime-related secondary effects of SOBs. In addition to the general effects expected due to regulation *per se*, focused effects are expected.

1. Components of the Ordinance that regulate minimum distances to non-SOB sites and/or between SOBs, are expected to minimize crime risk by reducing the density of potential targets.

2. Components of the Ordinance that regulate SOB premises (lighting, booth design, *etc.*) are expected to minimize on-premise crime risk. This is an important concern not only for SOB customers but, also, for police officers.

M. The factual predicate of the Dickinson County Ordinance includes secondary effects studies conducted in most regions of the U.S. over a 20-year period.

1. The consensus finding of these studies is that, compared to control areas, or in before-after comparisons, SOBs have high ambient crime rates. The crime-related secondary effects documented in these studies cover both Part I and Part II UCR categories.
2. Each of the studies considered in the legislative record, including those cited below in **II.D**, can be criticized on narrow methodological grounds. But these criticisms are not sufficient to invalidate the strong inference, drawn from a diverse body of studies, that SOBs have large, significant crime-related secondary effects.
3. The studies are typical of those relied on by legislative bodies at other times and in other jurisdictions.

N. Dr. Linz takes the opposite view, arguing that the crime-related secondary effects literature can be divided neatly into two categories: studies that find *null* effects (*i.e.*, no adverse secondary effect) and studies whose findings are categorically invalidated by one or more “fatal” methodological flaws. I disagree with Dr. Linz’ argument not only as it relates to the specific studies relied on by the County (*i.e.*, the studies listed at **II.D** below) but, also, as it relates generally to secondary effects studies.

1. Dr. Linz’ methodological critique of the secondary effect studies relied on by the County appears in his report (**II.A** below). Although Dr. Linz

characterizes the methodological shortcomings of these studies as "fatal," none of the methodological shortcomings that he cites is sufficient to categorically invalidate any study's finding.

2. Since any non-experimental design is imperfect by definition, every quasi-experimental study has methodological shortcomings. To be relevant, the methodological shortcoming must satisfy two conditions:

a. The shortcoming must be significant; *i.e.*, its effect must *change* the study's finding. If the shortcoming does *not* change the study's finding, a methodological critiques based on the shortcoming is irrelevant.

b. The shortcoming must *bias* the study's finding in favor of an adverse secondary effect finding. If the shortcoming biases the study in favor of a null finding, or if it favors neither finding, a methodological critiques based on the shortcoming is irrelevant.

3. Dr. Linz' methodological critique presents no evidence to suggest that any shortcomings are significant; or that any of the shortcomings bias the findings of a study in favor of a significant adverse secondary effect finding. The evidence suggests, on the contrary, that the shortcomings cited by Dr. Linz are both small and unbiased.

4. None of the methodological shortcomings cited by Dr. Linz applies to *all* of the studies relied on by the County. The validity of an inference drawn from a body of findings does not depend on the validity of any single

finding. Since the County drew its inference from a *body* of studies, Dr. Linz' argument is irrelevant.

5. Some of the studies relied on by the County do not report original findings but, rather, synthesize the findings of studies conducted in other jurisdictions. Synthetic literature reviews are a common scientific tool. Some of the most prestigious scientific journals publish these reviews for the simple reason that they *are* useful. Although Dr. Linz faults the County for considering literature reviews in the legislative process, the County should not be condemned for trying to learn what other jurisdictions had learned.
 6. Dr. Linz faults the County for relying on studies whose findings have been "disavowed" by the study authors. Having read the text in question, it is my opinion that Dr. Linz has misinterpreted the sort of rhetorical qualifications commonly used in reporting social science results.
- O. Dr. Linz' methodological critique of the broader secondary effects literature is detailed in an article by Dr. Linz, B. Paul, and B.J. Shafer (*i.e.*, II.A.2) that endorses four methodological rules for evaluating the validity of a secondary effects study. Although Dr. Linz implies that his four rules are derived from the four *Daubert* criteria,¹ the derivation is not obvious. Nor do Dr. Linz' four rules have a precedent or authority in the methodological literature. Rather, they were created *ex nihilo* by Dr. Linz for the limited purpose of criticizing the secondary

¹*Daubert v. Merrell Dow*, 509 U.S. 579 (1993). The four *Daubert* criteria are (1) falsifiability, (2) known error rates, (3) peer review, and (4) general acceptance in the scientific community.

603
2 - 610

effects literature. In this limited context, Dr. Linz' four methodological rules have a common sense appeal. When scrutinized, however, they are an arbitrary, incomplete, and contradictory methodological canon.

P. Dr. Linz faults the County for failing to consider studies commissioned by the SOB industry, particularly studies by Linz *et al.* (cited below in II.A). The County's failure to notice these studies is due in part to their recency. Nevertheless, had these studies been considered, the studies would have had no material impact on the debate. The findings of industry-commissioned studies are wholly consistent with the broader secondary effects literature.

1. Although Dr. Linz characterizes the findings of the Ft. Wayne study (II.A.4) by Linz and Paul as a null finding, numerical details required to evaluate the validity of the finding are not reported. Since the Ft. Wayne design is idiosyncratic in two crucial respects, the missing details represent a serious failure.

a. To measure crime in Fort Wayne, Linz and Paul excluded UCRs that were not cleared by arrest. Since most stranger-on-stranger crimes are never solved, this measure excludes most of the relevant crime from the secondary effect estimate, biasing the analysis in favor of a null finding.

b. To measure the impact of an SOB in Fort Wayne, Linz and Paul counted crimes within 1000 feet of an SOB, resulting in an impact area of 3.142 million square-feet, approximately the size of a large

604
2-611

shopping center. The use of such a large impact area will dilute any secondary effect, biasing the analysis in favor of a null finding.

2. In the Charlotte study (II.A.5), Linz *et al.* count all Part I UCRs (vs. the small fraction of UCRs cleared by arrest) reported within 500 feet (vs. 1000 feet) of an SOB. Although they find no statistically significant secondary effect, the null finding lacks sufficient statistical power to support the null finding. In the absence of the conventional 80 percent statistical power level, a null finding *cannot* be interpreted to mean, as Dr. Linz argues, that SOBs in Charlotte had no crime-related secondary effects.
3. In their San Diego study (II.A.7), Dr. Linz and Mr. Paul found that, compared to control areas, areas around SOBs had 15.7 percent more police calls-for-service. Although this substantively large adverse secondary effect was not statistically significant, as in the Charlotte study, the statistical power of their design fell short of the conventional 80 percent level. In a reanalysis of the San Diego data (II.E.3), Professor James Meeker and I calculated the power to be approximately the same as a coin-flip.
4. Finding no significant correlation between SOBs and UCR Rapes in Florida counties (II.A.8), Linz *et al.* conclude that SOBs have no crime-related secondary effects. County-level SOB-rape correlations are irrelevant for two reasons, however.
 - a. Crime-related secondary effects involve primarily stranger-on-stranger

605
2-612

crime (robbery, burglary, theft, *etc.*). To the extent that rapists and their victims are not strangers, the secondary effects of SOBs are not expected to involve rape incidents.

- b. The victimization risk attributable to a criminogenic source can be detected, at best, one or two blocks from the source. This is a negligibly small fraction of the total area of even the smallest Florida county. Searching for the crime-related secondary effect of an SOB at the county-level is roughly analogous to searching for bacteria with strong reading glasses and tweezers.
5. Dr. Linz' report in this case (II.A) does not cite a 2003 Greensboro, NC study (II.E.1) by Linz and Yao. Although Linz and Yao characterize their analysis of police calls-for-service data as a null finding, a reanalysis of those data (II.E.2) demonstrates that the SOBs have large, statistically significant adverse secondary effects.
 6. Dr. Linz' report in this case (II.A) to an analysis of Toledo, Ohio calls-for-service data that finds no secondary effect. A reanalysis of these data (II.E.4) finds a substantively large, statistically significant secondary effect for SOBs.
 7. In sum, although Dr. Linz faults the County for not considering secondary effect studies commissioned by the SOB industry, these studies find either large, significant effects (Greensboro, Toledo, *etc.*) or, else, due to low statistical power, are inconclusive (Charlotte, San Diego, *etc.*). Had the

County considered these studies, contrary to Dr. Linz' claim, the County would have arrived at the same conclusion. The findings of industry-commissioned studies are consistent with the consensus finding of the secondary effects literature.

II. Data and information relied on: The data and information that I relied on to form these opinions consists of documents filed in this case and research reports written by me and others. Specific documents include:

- A. The August 27, 2004 report of Daniel Linz, Ph.D., including attachments:
1. Curriculum vitae of Daniel Linz, Ph.D.
 2. Paul, B., D. Linz and B.J. Shafer, "Government regulation of 'adult' businesses through zoning and anti-nudity ordinances: de-bunking the legal myth of negative secondary effects." *Communication Law and Policy*, 2001, 6:355-391.
 3. October 2, 2001 letter from Elizabeth Groff to Bryant Paul.
 4. Paul, B. *Using Crime Mapping to Measure the Negative Secondary Effects of Adult Businesses in Fort Wayne, Indiana: A Quasi-Experimental Methodology*.
 5. Linz, D., B. Paul, K.C. Land, M.E. Ezell and J.R. Williams. "An examination of the assumption that adult businesses are associated with crime in surrounding areas: A secondary effects study in Charlotte, North Carolina." *Law and Society Review*, 2004, 38(1):69-104.
 6. G.W. McCarthy, H. Renski and D. Linz, *Measuring Secondary Effects Using*

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C. Dickinson County Ordinance No. 070804.

D. Studies cited in the legislative record of Ordinance No. 070804, including

1. Phoenix, AZ (1979)
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3. Houston, TX (1983)
4. Indianapolis, IN (1984)
5. Amarillo, TX (1977)
6. Garden Grove, CA (1991)
7. Los Angeles CA, (1977)

8. Whittier, CA (1978)
9. Austin, TX (1986)
10. Seattle, WA (1989)
11. Oklahoma City, OK (1986)
12. Cleveland, OH (1977)
13. Beaumont, TX (1982)
14. MN Attorney General (1989)

E. Other secondary effects studies, including:

1. *Evaluating Potential Secondary Effects of Adult Cabarets and Video/Bookstores in Greensboro: A Study of Calls for Service to the Police.* D. Linz and M. Yao, November 30th, 2003.
2. *A Methodical Critique of the Linz-Yao Report: Report to the Greensboro City Attorney.* R. McCleary. December 15, 2003.
3. *A Methodical Critique of the Linz-Paul Report: A Report to the San Diego City Attorney's Office.* R. McCleary and J.W. Meeker. March 12, 2003.
4. Affidavit of R. McCleary, September 10, 2004. New Albany DVD, LLC v. City of New Albany, IN. U.S. District Court for the Southern District of Indiana, New Albany Division (Cause No. 4:04-CV-0052-SEB-WGH).
5. *Crime Risk in the Vicinity of a Sexually-Oriented Business: Report to the Centralia City Attorney.* R. McCleary. Revised February 28th, 2004.

F. The August 27, 2004 report of R. Bruce McLaughlin.

In addition to these documents, my opinions are based on my training and experience in this

field.

III. Exhibits to be used: I expect to use the documents listed at **II** above as exhibits.

IV. Qualifications: My curriculum vitae is appended.

V. Compensation: I am being compensated at the rate of \$250 per hour for rendering an opinion in this case, exclusive of deposition. I am being compensated at the of \$300 per hour for deposition-related tasks. I do not expect the total compensation in this case to exceed \$7,500.

VI. Cases in which I have testified or been deposed within the last four years: In the last four years, I have been deposed or given testimony in six cases:

1. Alaska Inter-Tribal Council v. State. Alaska Superior Court, Dillingham Branch.
2. Artistic Entertainment v. City of Warner Robins. U.S. District Court, Middle District of Georgia (97-00195-CV-4-HL-5); U.S. Court of Appeals, Eleventh Circuit (02-10216).
3. Scamp's v. California Alcoholic Beverage Commission (and City of Westminster, CA), Alcoholic Beverage Control Board Administrative Hearing.
4. Mercury Books v. City of San Diego. U.S. District Court, Southern District of California (00-CV2461).
5. Washington Retailtainment, Inc. v. City of Centralia, WA. U.S. District Court, Western District of Washington at Tacoma (C03-5137FDB).
6. Giovanni Carandola Ltd., et al. v. Ann Scott Fulton et al. U.S. District Court for the Middle District of North Carolina, Greensboro Division (Case No. 1:01 CV 115).

I declare that the foregoing is true to the best of my knowledge and belief.

Richard McCleary

Richard McCleary, Ph.D.

411
2-618

Curriculum Vitae for Richard McCleary

#9 Virgil Court
Irvine, CA 92612

School of Social Ecology
University of California
Irvine, CA 92697-7070

Phones: 949-981-8590 (Home)
949-856-7280 (Office)
949-824-2056 (FAX)

Born: 9/6/46; Waukesha, WI
Social Security: 394-42-6612

MCCLEARY@UCI.EDU

EDUCATION

Ph.D., Northwestern University, 1977
M.A., Northwestern University, 1975
B.S., University of Wisconsin, 1974

ACADEMIC APPOINTMENTS

University of California-Irvine: Professor of Social Ecology (Criminology, Environmental Health Sciences, Urban and Regional Planning), 1988-Present; Co-ordinator of graduate programs in Epidemiology and Public Health; Director of MRRC Biostatistics Core.

University of Minnesota: Visiting Professor of Public Health (Epidemiology Division), 1998.

University of New Mexico: Associate Professor of Sociology, 1983-1988; Associate Director, New Mexico Statistical Analysis Center 1986-1988.

Human Relations Area Files, Yale University: Senior Research Scientist, 1986-1989.

University of Michigan: Instructor, ICPSR Summer Institute in Quantitative Social Science, 1983-1984.

State University of New York-Albany: Associate Professor of Criminal Justice, 1982-1983.

Arizona State University: Associate Professor of Criminal Justice, 1980-1982; Assistant Professor of Criminal Justice, 1978-1980; Director, Program in Applied Statistics, 1980-1982.

University of Illinois, Chicago: Assistant Professor of Criminal Justice and Sociology, 1977-1978; Lecturer in Criminal Justice, 1976-1977.

MEMBERSHIPS

American Society for Criminology
American Statistical Association
American Evaluation Association

612
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EDITORIAL BOARDS

Behavioral Assessment: Associate Editor, 1980-1984
Evaluation Studies Review Annual: Associate Editor, 1986
J. of Criminal Law and Criminology: Consulting Editor, 1982-Present
J. of Mathematical and Quantitative Criminology: Associate Editor, 2001-Present
J. of Research in Crime and Delinquency: Consulting Editor, 1981-Present
Justice Quarterly: Associate Editor, 1991-Present
Law and Policy Quarterly: Associate Editor, 1978-Present
New Direction for Program Evaluation: Advisory Editor, 1991-Present
Research Methods in Social Relations, 4th Ed.: SPSSI Board of Advisors
Social Pathology: Associate Editor, 1994-Present

COMMUNITY SERVICE

Board of Directors, Prevent Child Abuse - Orange County
Board of Directors, Orange County Youth and Family Services
Technical Advisory Board (HealthLink), Robert Wood Johnson Foundation
Executive Committee, UCI Mental Retardation Research Center
Executive Committee, UC Institute for Brain Aging and Dementia

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Contract #BJS-82-007 from the Alaska Department of Public Safety to the Justice Center, University of Alaska: "Forecasting crime rates in Alaska and Oregon," \$45,000 (Co-PI).

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Contract #0772 et seq. from the State of Arizona to the Principal Investigator: "Evaluation of 'scared straight'/PLIP program," \$17,000 (PI).

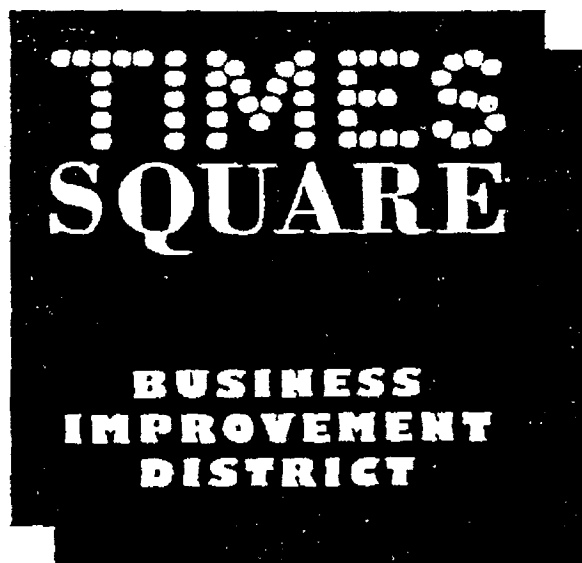
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**REPORT ON THE
SECONDARY EFFECTS OF THE
CONCENTRATION OF ADULT USE
ESTABLISHMENTS IN THE
TIMES SQUARE AREA**

April 1994

PREPARED BY INSIGHT ASSOCIATES



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**REPORT ON THE
SECONDARY EFFECTS OF THE
CONCENTRATION OF ADULT USE
ESTABLISHMENTS IN THE
TIMES SQUARE AREA**

April 1994

© 1994 **TIMES SQUARE BUSINESS IMPROVEMENT DISTRICT**
1560 Broadway, Suite 800, New York, NY 10036
(212) 768-1560 Gretchen Dykstra, President

421
2-627

INTERVIEW FINDINGS37
Property and Business Owners
Community Residents and Organizations

APPENDIX53

MAP

TABLE I: POPULATION CHARACTERISTICS 18

TABLE II: AGE CHARACTERISTICS 19

TABLE III: ACTUAL ASSESSED VALUES, CHANGES FROM 1985-1993
FOR SELECTED BLOCKFRONTS 25

TABLE IV: BLOCK BY BLOCK CHANGES IN ASSESSED VALUATION
ALONG EIGHTH AVENUE STUDY BLOCKS 27

TABLE IVa: BLOCK BY BLOCK CHANGES IN ASSESSED VALUATION
ALONG EIGHTH AVENUE STUDY BLOCKS 28

TABLE IVb: BLOCK BY BLOCK CHANGES IN ASSESSED VALUATION
ALONG EIGHTH AVENUE STUDY BLOCKS 29

TABLE V: CRIMINAL COMPLAINTS FOR SELECTED BLOCKFRONTS 32

TABLE VI: PROSTITUTION AND RELATED ARRESTS FOR
SELECTED BLOCKFRONTS 33

TABLE VIa: PROSTITUTION ARRESTS AT SELECTED LOCATIONS 34

622
2-628

TABLE OF CONTENTS

EXECUTIVE SUMMARY	i
INTRODUCTION	1
SUMMARY OF LEGAL ISSUES AND THE EXPERIENCE ELSEWHERE	3
Other Secondary Effect Studies	
A BRIEF HISTORY OF ADULT ENTERTAINMENT IN TIMES SQUARE	9
APPROACH AND METHODOLOGY	11
Gathering Data on Assessed Property Values	
Gathering Crime Data	
Selecting the Interviewees	
TIMES SQUARE: ITS PROMINENCE AND ITS PEOPLE	15
Demographics and Housing	
Total Population	
Housing Units	
Age	
Employment Characteristics	
TIMES SQUARE NEIGHBORHOOD: ITS ZONING AND ITS USES	21
Zoning	
Special Districts	
Land Uses	
ADULT USE ESTABLISHMENTS AND PROPERTY VALUES	25
Total Assessed Value	
Changes on Individual Properties	
Department of Finance Assumptions	
ADULT USE ESTABLISHMENTS AND CRIMINAL ACTIVITY	31
General Crime Statistics	
Criminal Activities: Drugs and Prostitution Arrests	

623
2-629

EXECUTIVE SUMMARY

BACKGROUND

After a dramatic decline in the number of adult use businesses in Times Square from an all-time high of approximately 140 in the late 1970s to 36 in June, 1993, the business and adjacent residential communities view with concern the increase to 43 in the last few months. The area of concentration of these businesses has shrunk and shifted from Broadway and Seventh Avenue to Eighth Avenue and the western edge of 42nd Street block between Seventh and Eighth Avenues. This summer the City and State will begin condemnation procedures against the remaining private parcels on the northeast corner of 42nd Street and Eighth Avenue. This action will reduce the overall number but displacement onto Eighth Avenue is possible.

Times Square is one of the City's most eclectic and vibrant commercial areas, producing extraordinary economic fuel and firing the imaginations of millions worldwide as the international icon of vitality and vibrancy. Times Square is home to some of the City's major corporations with more than 30 million square feet of office space. The BID represents approximately 400 property owners and 5,000 businesses including giant entertainment companies, international security firms, large law firms, theatrical agents and publishers. Times Square has a daily pedestrian count of 1.5 million people.

It is the capital of legitimate theater for the nation with 37 Broadway theaters and a total of 25,000 seats. These theaters together sell some 8 million tickets annually, pumping \$2.3 billion into the New York City economy annually.

Approximately 20 hotels with 12,500 hotel rooms (one-fifth of all hotel rooms in Manhattan) house some five million visitors a year and more than 200 restaurants, the largest concentration in any City neighborhood, serve them and local patrons. The Convention and Visitors' Bureau estimates 20 million tourists come to Times Square annually.

But Times Square is also home for thousands of residents who live within its heart or immediately adjacent to it. The BID alone has six churches within its boundaries. Among the 25,651 people who live in six census tracts which include 42nd to 54th from Sixth to Tenth Avenues, 15.4% are 62 years or older which is similar to Manhattan as a whole and to the two community districts (CB4 and CB5) in which Times Square exists. In 1990 nearly 2,000 children under the age of 14 lived in this area, too. Both old and young are generally circumscribed by their immediate community. The Census data also show that 48% of these residents work within less than half an hour from their homes and walk to work, spending both their

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working and off-hours in the Times Square area. This percentage is higher than the percentage for the borough as a whole and is much higher than the percentage of those in the other four boroughs.

Crime has plummeted over the past several years in Times Square with an estimated reduction by 60% on West 42nd Street alone. This reduction came in part from the closing of many adult use establishments on 42nd Street between 7th and 8th Avenues and the close coordination between the NY Police Department and the Times Square BID. The BID with its 40 public safety officers has witnessed an overall reduction of street crime within its boundaries by 19%, comparing 1992 to 1993, including an impressive reduction of 38% in grand larceny from the person. BID statistics also reveal that three card monte games have been reduced by some 57% over the past year.

The most recent Mayor's Sanitation Scorecard rated the sidewalks of Times Square at an impressive 93% thanks in large measure to the BID's 45 sanitation workers. In addition, the BID's homeless outreach team has placed many needy people in shelters and services.

During 1993, the City Council introduced legislation that would restrict the locations of adult uses citywide. This proposed legislation, along with similar bills proposed and enacted in cities across the nation, including Detroit, can only be upheld constitutionally, if it can be supported by documentation of negative secondary effects as well as evidence that the establishments could locate somewhere accessible for their patrons.

The Times Square BID commissioned an objective, fact-finding study to determine the effect, if any, these adult use businesses have on one of the City's most commercially vital areas. In this study, as in other secondary effects studies, researchers combined analysis of available data on property values and incidence of crime together with a demographic and commercial profile of the area to show relationships, if any, between the concentration of adult use establishments and negative impacts on businesses and community life. The study also includes, as allowed by Courts, anecdotal evidence from property owners, businesses and community residents and activists of their perceptions of the impact adult establishments have on their area.

FINDINGS

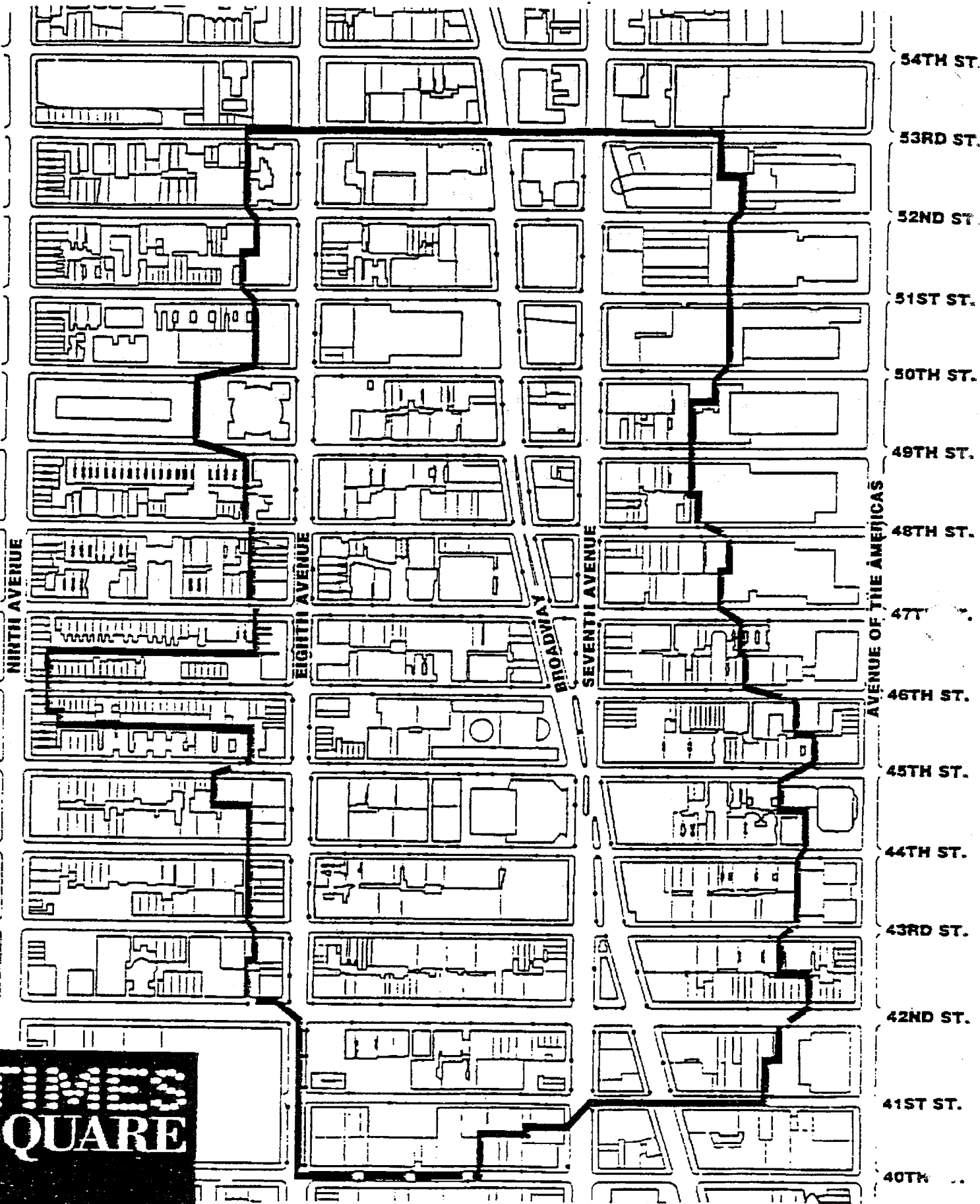
- All survey respondents acknowledged the improvements in the area and voiced optimism about the future of Times Square even as they bemoaned the increase of adult establishments on Eighth Avenue. Many respondents felt that some adult establishments could exist in the area, but their growing number and their concentration on Eighth Avenue constitute a threat to the commercial prosperity and residential stability achieved in the past few years.

● Although the study was unable to obtain data from before the recent increase in adult establishments and, thus, unable to show if there's been an increase in actual complaints, there were, in fact, 118 complaints made on Eighth Avenue between 45th and 48th compared to 50 on the control blocks on Ninth Avenue between 45th and 48th Streets. In addition, the study reveals a reduction in criminal complaints the further one goes north on Eighth Avenue away from the major concentration of these establishments.

● The rate of increase of total assessed values of the Eighth Avenue study blocks increased by 65% between 1985 and 1993 compared to 91% for the control blocks during the same period. Furthermore, acknowledging the many factors that lead to a property's increased value, including greater rents paid by some adult establishments, an assessment of the study blocks reveal that the rates of increases in assessed value for properties with adult establishments is greater than the increase for properties on the same blockfront without adult establishments.

● Many property owners, businesses, experts and officials provided anecdotal evidence that proximity (defined in various degrees) to adult establishments hurts businesses and property values.

624
2-632



54TH ST.
 53RD ST.
 52ND ST.
 51ST ST.
 50TH ST.
 49TH ST.
 48TH ST.
 47TH ST.
 46TH ST.
 45TH ST.
 44TH ST.
 43RD ST.
 42ND ST.
 41ST ST.
 40TH ST.

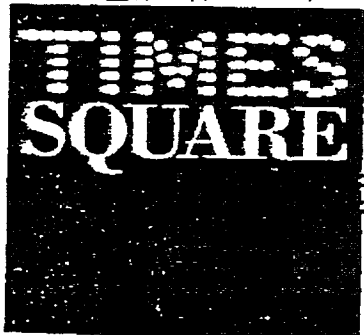
NINTH AVENUE

EIGHTH AVENUE

BROADWAY

SEVENTH AVENUE

AVENUE OF THE AMERICAS



Business Improvement District

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INTRODUCTION

After a dramatic decline in the number of adult use establishments in the Times Square area in the last eight years, Times Square, like other neighborhoods in the city, has experienced a sudden increase, especially along Eighth Avenue. This recent increase of adult businesses must be seen in the context of the current resurgence of Times Square as New York's premier tourist, entertainment, and commercial center. Member organizations of the BID and other concerned citizens have expressed particular concern about the impacts of a dense concentration of these businesses on the commercial life of the area. Thus, this study was commissioned by the Times Square Business Improvement District.

The Times Square Business Improvement District works to make Times Square clean, safe and friendly. The Times Square BID, working collaboratively with city agencies, community organizations and the many individuals and groups with a shared interest in the vitality of Times Square, provides supplemental security and sanitation services, homeless outreach efforts, tourism assistance and special events and marketing.

The BID extends from 40th to 53rd Streets, just west of Sixth Avenue to the west side of Eighth Avenue. Along 46th Street, it stretches to 9th Avenue. Its over four hundred members represent five thousand businesses and organizations in the Times Square area. Supported by mandatory assessments on local property owners, the BID has an annual budget of \$4.6 million. It is an independent not-for-profit organization, with a 46-member Board of Directors representing large property owners, large and small commercial tenants, residential tenants, and social service agencies.

During 1993, legislation was introduced in the City Council that would restrict the placement of adult uses on a city-wide basis. This legislation was spurred in large part by residential neighborhoods that, for the first time, were becoming home to adult establishments.

In the summer of 1993 the BID hired Insight Associates to assess that proposed legislation and its possible impact on Times Square in order to help the BID understand its options and determine an appropriate reaction. That study called attention to wider national experience. Legislation regulating adult uses, in order to pass Constitutional muster and be upheld in the courts, must be backed by documented evidence of secondary effects of such businesses and their concentration.

628
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The Times Square BID decided to initiate its own secondary effects study, to ensure that the Times Square experience is well-represented in any city-wide debate. The BID again hired Insight Associates, with Ethel Sheffer and Marcie Kesner as principal researchers, in September, 1993.

In the same month, the Mayor of the City of New York ordered the Department of City Planning to undertake a secondary-effects study for the entire city. That study has focused on six neighborhoods in the five boroughs, but not on Times Square. We have continued to exchange data and cooperate with City Planning in the course of our two parallel inquiries (See Appendix: The Department of City Planning Secondary Effects Study).

In addition, the Borough President of Manhattan has established a Task Force on which the BID serves. The Task Force, staffed by her office, has held public hearings and continues to gather information. It will be issuing its own recommendations in the Spring of 1994.

This study, then, seeks to obtain evidence and documentation on the secondary effects, if any, of these adult use businesses in the Times Square Business Improvement District, and of their dense concentrations, especially along 42nd Street and along Eighth Avenue. The BID instructed Insight Associates to follow the models offered by other secondary effects studies. The BID was not seeking an advocacy document, but rather an objective fact-finding study, that would add to the city-wide deliberations and to future attempts to find legal and effective ways to regulate these businesses.

Many people contributed a great deal of time and effort to this work. We want to thank particularly the staff of the Management Information Division of the Department of Finance and of the Crime Analysis Division of the New York Police Department, as well as staff of the Midtown South, Midtown North and Tenth Precincts and the Mayor's Office of Midtown Enforcement. We have not quoted any of our 54 interviewees who work and live in Times Square by name, but we thank them for taking the time from their very busy schedules to participate in our survey. We also are grateful to the many people in the real estate sector, the residents and community leaders in several neighborhoods, and the officials of municipal government in New York and other American cities, who were generous with their time in response to our inquiries.

SUMMARY OF LEGAL ISSUES AND THE EXPERIENCE ELSEWHERE

The concern about the presence of adult businesses in the midst of American cities dates at least from the decades following the Second World War when a recognition of their impact upon surrounding land values and a growing indignation about their effect on communities became widespread. By the early 1990's the regulation of adult use businesses and entertainment establishments had become a serious issue for communities across the United States. This is reflected in a number of studies and public testimony showing a relationship between adult use establishments on the one hand, and declining property values, crime and neighborhood deterioration on the other. It is these "secondary effects" which the Supreme Court and other federal and state courts take into account when ruling on the efforts of communities to regulate these businesses.

The present study is not a legal treatise--though it does review some legal precedents by way of background--but an analysis and documentation of the impacts of a concentration of adult use establishments on the Times Square area.

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The major questions on this subject for a court are whether any limitation on adult uses is based on content, or whether it is based on the secondary effects of these uses on the surrounding community. There have been a number of instances in the last years in which federal courts have found adult use zoning restrictions to be acceptable, if they have been motivated by a desire to protect neighborhood quality, as contrasted with an impermissible desire to ban the message purveyed by the adult uses. It appears that courts will accept restrictions if they serve a "substantial government interest", if any statute is narrowly drawn to achieve that end, and if there are "reasonably available alternative avenues of communication". "Substantial government interest" has been defined to include reasonable attempts by municipalities to reduce urban blight and to preserve neighborhood character. "Alternative avenues of communication" requires that there be enough other places in the city for the relocation of these establishments. The availability of such places needs to be shown in court as a matter of fact. ?

Some cities have employed a variety of regulatory mechanisms. They have created special use zoning districts; they have required that adult uses be located at specified distances from residences, schools, churches, or business and commercial districts; and they have required operators of regulated establishments to obtain licenses or permits. Some illustrations are:

• Detroit's adoption of an "anti-skid row" zoning ordinance to disperse and/or bar from designated areas the establishment of a broad array of designated businesses, including adult uses. These restrictions were supported by studies of secondary effects. *

630
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● Chicago's requirement that owners or managing agents register and provide specific information related to the nature of their business. Chicago also regulates signs and displays by prohibiting the exterior display of sexual activity and nudity.

● Renton, a suburb of Seattle, restricted adult motion picture theatres from locating within 1,000 feet of a residentially zoned area or a house of worship, park, or school. The restrictions were upheld because it was found that approximately five per cent of the city's total land would still remain available for adult uses.

● Boston's creation of an Adult Entertainment District on the borders of its downtown center, and has thus concentrated rather than dispersed adult uses. This is a two-block area know as the "Combat Zone".

● Islip, Long Island's plan to restrict the location of adult uses to industrial districts, a plan that was upheld by the New York State Court of Appeals.

Zoning has been an especially frequent tool for cities regulating adult uses, since the Supreme Court has held that adult entertainment is a type of land use, like any other, that can be subject to rational scrutiny under equal protection. (Jules B. Gerard, Local Regulation of Adult Businesses, Deerfield, Illinois: Clark Boardman Callaghan, 1992, p.129).

Certain generalizations are seen in the variety of Court rulings in regard to zoning:

* ● Locational restrictions cannot be so severe as to preclude the present and/or future number of adult uses in a city.

● The more evident and rational the relationship of adult use restrictions to recognized zoning purposes, (e.g. the preservation of neighborhoods, the grouping of compatible uses), the greater the likelihood that the zoning restriction will be upheld.

● The greater the vagueness of a law the more likely it is to be struck down.

● If there is too much administrative discretion a law is likely to be struck down, since government may regulate only with narrow specificity.

Other Secondary Effects Studies

The court decisions supporting and upholding regulatory measures were supported by studies of secondary effects, some of which we summarize below:

Detroit: In Young v. American Mini-Theatres, (427 U.S. 1976) the Supreme Court affirmed that cities may use zoning to restrict adult entertainment if adult entertainment is shown to have a harmful impact on neighborhoods. The City of Detroit adopted an anti-Skid Row zoning ordinance in 1962 prohibiting certain businesses, such as pool halls, pawn shops, and in an amended version in 1972, adult bookstores, motion picture theatres, and cabarets, from locating within 1,000 feet of any two other "regulated uses" or within 500 feet of a residentially zoned area. The ordinance sustained in Young was based on studies by urban planning experts that showed the adverse environmental effects of permitting certain uses to be concentrated in any given area.

Mt. Ephraim, New Jersey: In the next ten years, there were a number of Supreme Court cases which continued to define the limits of employing zoning as a tool for restricting adult entertainment. Although it was recognized that such restrictions were valid, it was also established in Schad v. Borough of Mt. Ephraim (452 U.S. 61, 1981) (though with a plurality decision because of varying interpretations among the justices) that municipalities may not use zoning to prohibit adult entertainment entirely. The deciding judges stated that the borough had not offered sufficient evidence to show the incompatibility of adult uses with other commercial businesses, and also had not provided adequate "alternative avenues of communication" for the location of such businesses.

Renton, Washington: In 1986, the U.S. Supreme Court upheld the Renton, Washington regulations (The City of Renton v. Playtime Theatres (475 U.S. 41, 1986), although the city had based its prohibitions upon a study of the secondary effects of adult theatres conducted in neighboring Seattle and other nearby cities. The Supreme Court stated that municipalities could rely on the experiences of other cities. Furthermore, the Court stated that a city must be allowed to experiment with solutions to serious problems and it must be allowed to rely upon the experiences of other municipalities about the deteriorating and blighting effects of adult use establishments.

Los Angeles: In June, 1977, the Los Angeles City Planning Department conducted a study of the effects of adult entertainment establishments in several areas within the city. It found "a link between the concentration of such businesses and increased crime in the Hollywood community" (p.1.) The study also concluded, based on its analysis of percentage changes in the assessed value of commercial and residential property between 1970 and 1976, that there was no direct relationship between adult uses and property value changes. But in response to questionnaires, it was shown that appraisers, realtors, bankers, businesspeople, and residents all believed that the concentration of adult entertainment establishments has an adverse

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economic effect on both businesses and residential property in respect to market value, rental value, and rentability/salability.

It was believed that these effects extend even beyond a 1,000 foot radius, and that they are related to the degree of concentration. In addition, there are adverse effects on the quality of life, including neighborhood appearance, littering, and graffiti.

Minneapolis-St. Paul: The Twin Cities have conducted a number of studies over a period of more than ten years. In a 1978 St. Paul study and a 1980 Minneapolis study, statistically significant correlations were seen between location of adult businesses and neighborhood deterioration. It was concluded that adult businesses tend to locate in somewhat deteriorated areas to begin with, but further deterioration follows the arrival of adult businesses.

In these early studies, significantly higher crime rates were associated with an area containing two adult businesses than in an area with only one such business. Significantly lower property value prevailed in an area with three such businesses than in an area with only one.

In 1983, St. Paul examined one neighborhood that had a particularly heavy concentration of adult entertainment establishments. The University-Dale neighborhood had many signs of deterioration and social distress. While these indicators could not be directly attributable to the presence of the adult establishments, it was stated that there was a relationship between the concentrations of certain types of adult entertainment and street prostitution, especially, as well as other crimes. (40-Acre Study, prepared by the St. Paul Department of Planning and Economic Development, p. 19.)

This perception of an unsafe and undesirable neighborhood was documented by a survey conducted by Western State Bank which found its efforts to attract employees and customers being frustrated by people's perceptions of the neighborhood. (ibid., p.23.)

In a 1987 Memorandum of the St. Paul Planning Department, discussing issues raised during the public review of proposed zoning regulations of adult establishments, it was stated that there is a relationship of prostitution activity to adult entertainment establishments, making for a "sex for sale" image of the neighborhood. The variables affecting the incidence of street prostitution include the character of the neighborhood, the effect of the concentration of adult businesses, and the specific kind of adult businesses associated with other serious land use problems. (ibid., p.53-54.)

While much of the public testimony and the expert analysis described the negative effects on residential areas, it was also stated that such uses should be prohibited from proximity to commercial areas as well, because the purposes are incompatible. (ibid., p.60.) If such harmful uses do continue to exist in commercial areas, it was recommended in the study that there be sufficient spacing requirements,

so as to minimize the documented negative effects of clusters of establishments.

In the 1988 Supplement to the 40-Acre Study, the City Planning Staff asserted that there is considerable evidence that multifunctional adult entertainment complexes can be the equivalent of the concentration of many single adult businesses. (Supplement to the 1987 Zoning Study, p. 6.) These multi-uses not only create multiple negative impacts but may also increase the intensity of the negative impacts. (ibid., p.7.)

In 1989, the Attorney General of Minnesota, Hubert Humphrey, III, issued a Report based upon the study by the state's Working Group on the Regulation of Sexually Oriented Businesses. It recommended a number of zoning and distancing regulations, as well as licensing regulations, while continuing to document the negative effects of such businesses on communities. It recommended that "Communities should document findings of adverse secondary effects of sexually oriented businesses prior to enacting zoning regulations to control these uses so that such regulations can be upheld if challenged in court. (Attorney General's Report, p. 5.)

Indianapolis, Indiana, and Phoenix, Arizona: The Minnesota Attorney General's Working Group summarized these two other studies. In 1983, Indianapolis researched the relationship between adult entertainment and property values at the national level. They took random samples of twenty percent of the national membership of the American Institute of Real Estate Appraisers. Eighty percent of the survey respondents felt that an adult bookstore located in a hypothetical neighborhood would have a negative impact on residential property values of premises located within one block of its site. Seventy-two percent of the respondents felt there would be a detrimental effect on commercial property values within the same one-block radius.

A Phoenix, Arizona Planning Department study, published in 1979, showed arrests for sexual crimes, and locations of adult businesses to be directly related. The study compared three adult use areas with three control areas with no adult use businesses.

Islip, New York: In 1980, the town of Islip, Long Island conducted a study of the impacts of adult bookstores on residential and commercial sections of the town. It focused on the impacts of the location of one particular bookstore, and it surveyed and inventoried the impacts of other adult use enterprises on nearby hamlets, including Bayshore and Brentwood in addition to Islip Terrace and Central Islip. This study also reviewed numerous newspaper articles and letters of complaint, in order to gauge public reaction. Further, it analyzed distances, travel time and other factors to support the town's regulations which confined such uses to industrial zones. This regulation was upheld by the New York State Court of Appeals in Town of Islip v. Caviglia, in 1989. The Court accepted the evidence in the Islip study that the ordinance was designed to reduce the injuries to the neighborhood and that ample space remained elsewhere for the adult uses after the re-zoning.

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A BRIEF HISTORY OF ADULT ENTERTAINMENT IN TIMES SQUARE

Times Square has long been known as a place for popular amusements from movies and theatre to flea circuses and video arcades. It has always attracted people of all incomes and tastes. But its history as a place of concentrated sex-related businesses really begins in the late 1960s and 1970s.

The concentration of massage parlors, nude live entertainments, erotic bookstores, X-rated movies, and peep shows increased at that time to such an extent that Times Square began to be called "a sinkhole". (The Daily News, August 14, 1975.)

The resulting crimes, assaults, and other violence made Times Square the highest crime area in the city. The numbers of sex-related businesses in Times Square and its environs reached as high, by some estimates, as 140 in the late 1970s and early 1980s.

In the 1970s the commercial and residential communities united to combat this blight by staging demonstrations and rallies, by sponsoring legislation, and, perhaps most important, by organizing themselves into the Mayor's Midtown Citizens' Committee, and in helping to create the Office of Midtown Enforcement.

The negative image of Times Square created by the increasing concentration of adult entertainment uses, coupled with pessimistic economic indicators, all contributed to a sense of decline on 42nd Street and the surrounding blocks.

In 1977, the City Planning Commission attempted to reduce the existing concentration of adult use businesses and to prevent future concentrations. Stimulated in part by the situation in Times Square, the Commission passed new zoning amendments to disperse such concentrations and to regulate their proximity to residential districts. The adverse economic and social effects produced by these concentrations were documented by findings of higher tax arrears on 42nd Street compared to the rest of midtown, declining sales tax revenue, and increases in criminal activity in Times Square. This zoning attempt failed at the last minute at the Board of Estimate.

But in the early 80s, several factors converged to stimulate a dramatic reduction in adult use establishments on 42nd Street and throughout Times Square. The State declared 42nd Street a "blighted area", and announced its intention to condemn numerous properties, including pornography shops, in order to stage the Urban Development Corporation's 42nd Street Development Project. Although litigation slowed down the project, most of the street has now been condemned and emptied of all uses.

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Meanwhile, there was increased police activity throughout the area and the Mayor's Office of Midtown Enforcement coordinated action against illegal businesses including massage parlors. The commencement of the AIDS epidemic had a sobering effect on live sex establishments and many disappeared. And private developers assembled Times Square parcels, removing existing adult uses.

In June 1993 when Insight Associates completed the review for the Times Square BID of City Council legislation there were 36 adult use establishments within the Times Square area, a dramatic decline from the all time high of 140 in the late 70s. In addition, the area of concentration had shrunk and shifted. No longer were sex shops lining Broadway and Seventh Avenue to the same degree, but rather they were beginning to cluster along Eighth Avenue. Now, nine months later, there are 43 adult establishments, with most of the new stores on 42nd Street lying outside of the UDC's project and along Eighth Avenue.

Amidst the refurbishing, upgrading and improvement of a once sorely deteriorated Times Square, there is now new concern about the recent sudden proliferation.

APPROACH AND METHODOLOGY

This study focuses on the Times Square Business Improvement District, but the study concentrates more closely on the areas of adult use business concentration, that is, 42nd Street from Seventh to Eighth Avenues, and Eighth Avenue from 42nd Street to 50th Streets, because more than half of all the District's adult use businesses are located on these blocks.

Following secondary effects studies in other cities, we combined available data on property values and incidence of crime, plus in-person and telephone interviews with a broad range of diverse business and real estate enterprises, including major corporations, smaller retail stores, restaurants, theatres and hotels, as well as with Community Boards, block associations, activists and advocates, churches, schools and social service agencies.

Gathering Data on Assessed Property Values

To measure the possible impact of adult use businesses and the concentration of such businesses in our study blocks, we sought data on the overall and specific changes in assessed valuation of property from the tax period 1985-1986 to the most recent 1993-1994 tax year. This, we felt, would give enough of a spread across real estate cycles. The 1985-1986 data were the earliest computerized data available to us from the Department of Finance records.

The Department of Finance, however, could not provide reliable data on market value, as opposed to assessed valuation. We were able to get, and have used, the actual, not the billable, assessed values. The data contained information on tax block and lot, building class, and street address. We aggregated the actual valuation figures by individual tax lots for Study and Control blockfronts for 1985 and 1986, and for 1993 and 1994. From this we derived the percentage of change between the two benchmark years. ✖

For this part of the study, we narrowed our focus to four Study Blocks: three blocks along Eighth Avenue, from 45th to 48th Street, and the 42nd Street Block between Seventh and Eighth Avenues. As contrasting control blocks where no adult use establishments exist, we chose the equivalent three blocks along Ninth Avenue, and 42nd Street between Eighth and Ninth Avenues. We then compared both the Study and Control blocks' data to similar statistics for all of Manhattan, and for all of New York City, as well as for the BID and the wider Times Square area. ✖

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In choosing Control Blocks, we realized that there is no block like 42nd Street between Seventh and Eighth Avenues--our study block--anywhere. But we felt that by shifting our focus just one block to the west, we would have a block with no adult establishments but with similar uses and traffic patterns (though it does have the Port Authority Bus Terminal on its corner). As controls for our Eighth Avenue Study Blocks, we took the similar parallel blocks on Ninth Avenue, which, although residential, have comparable though not identical land uses and traffic patterns.

Tax arrears data were obtained for the years 1988, 1989, 1992 and 1993, the most recent year available through the New York City MISLAND system. We compared the data for our control and study blocks with aggregated data by census tracts that roughly approximated the boundaries of the Times Square Business Improvement District, and with Manhattan and New York City as a whole as well. No significant or consistent findings were obtained from this exercise.

Gathering Crime Data

Working closely with the Crime Analysis Division of the NYPD, we requested crime data for the Study Blocks of 42nd Street, Seventh to Eighth Avenues, and Eighth Avenue, from 45th through 48th Streets, for a period of one year. This amount of data proved too difficult for the Crime Analysis Division to obtain, and we were ultimately given these data for only a three month time period, from June through August, 1993. The same information was also supplied for our Control Blocks, which, for this subject, were slightly different: instead of the 42nd Street block between Eighth and Ninth Avenues which includes the Port Authority Bus Terminal, the next block west, between Ninth and Tenth Avenues was used.

Selecting the Interviewees

X We initially obtained a listing of BID property owners for interview, by taking every fifth name on the BID's 404 owners' list. When an individual or corporation owned several properties, the name was used only once. We also eliminated the owners of adult use establishments (though later we did talk to one owner and operator of a number of such establishments in the area). We also deleted the many 42nd Street properties now owned by the State or City of New York or the New York State Urban Development Corporation. Similarly, we disregarded owners with telephone numbers outside the tri-state area, or those without listed telephone numbers. Banks and hotels were omitted from this first list.

This effort yielded a sample of 37 potential interviewees, of whom 20 were ultimately interviewed. The 20 included some of the largest developers and managers in Times Square and in New York City, with multiple holdings, as well as smaller residential and commercial property owners. It included as well the three major theatre-owning organizations, which control almost all the legitimate Broadway

houses, as well as a major nonprofit theatre. Two major communications companies were on this list.

This group of potential interviewees was then supplemented by selections from a listing of restaurants and hotels of different price levels. We interviewed seven restaurant owners or managers, representing eight restaurants in the Times Square area, including major chains, smaller coffee shops, and well known eateries. Two of these interviewees are also owners of the properties in which their operations stand. We interviewed four hotel owners or operators in three hotels along Eighth Avenue. Five retail establishment owners along Eighth Avenue were also interviewed.

Community group interviews included six churches, three social service agencies (plus one more informal interview with a fourth, serving the homeless), five block associations, the District Manager and Assistant District Manager of Community Boards Four and Five, respectively, and the Co-Chairs of each Board's Public Safety Committee. The principals of two public schools in the area were seen as well. In sum, 53 formal interviews were carried out, plus one less formal discussion with an owner and operator of several porn establishments.

For these interviews, we constructed a Survey Schedule questionnaire, which was modelled to some degree on the one being utilized by the City Planning Department's city-wide study of adult uses underway at the same time.

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TIMES SQUARE: ITS PROMINENCE AND ITS PEOPLE

The Times Square and Clinton communities, which the Business Improvement District encompasses or abuts, are dynamic and diverse neighborhoods. The area is home to some of the city's major corporations and there are more than 30 million square feet of office space. The BID has more than four hundred property owners, representing five thousand businesses in its membership. More than 250,000 employees work at enterprises that range from giant recording companies to international security firms to one-person theatrical agencies. Among the major corporations now making their home in Times Square are Morgan Stanley, Bertelsmann, Viacom, and many more. And of course, Times Square contains the highest concentration of legitimate theatres anywhere in the world, thirty-seven theatres, with as many as 25,000 seats to be filled on each performance day.

Times Square has a daily pedestrian count of 1.5 million persons. There are approximately twenty hotels, with 12,500 hotel rooms, in the Times Square area, one-fifth of all hotel rooms in Manhattan. Twenty million tourists and five million overnight visitors arrive annually. There are more than two hundred restaurants in the Times Square area. It is indeed New York City's center for commerce and the performing arts, business and tourism.

But the area is also a home for thousands of residents who live adjacent to and in the midst of this vibrant midtown commercial core. The area is replete with churches, block associations, civic associations, business organizations and theatre related organizations. The Times Square BID knows--and works with--some 35 social service agencies in the greater Times Square area.

It also has the largest concentration of pornography establishments in the city. The number of such businesses reached a high of about 140 establishments in the 1970s and early 1980s, and declined thereafter to approximately forty. There is some indication that the number has increased somewhat in the Times Square area and on its periphery, particularly on Eighth Avenue, in the past months.

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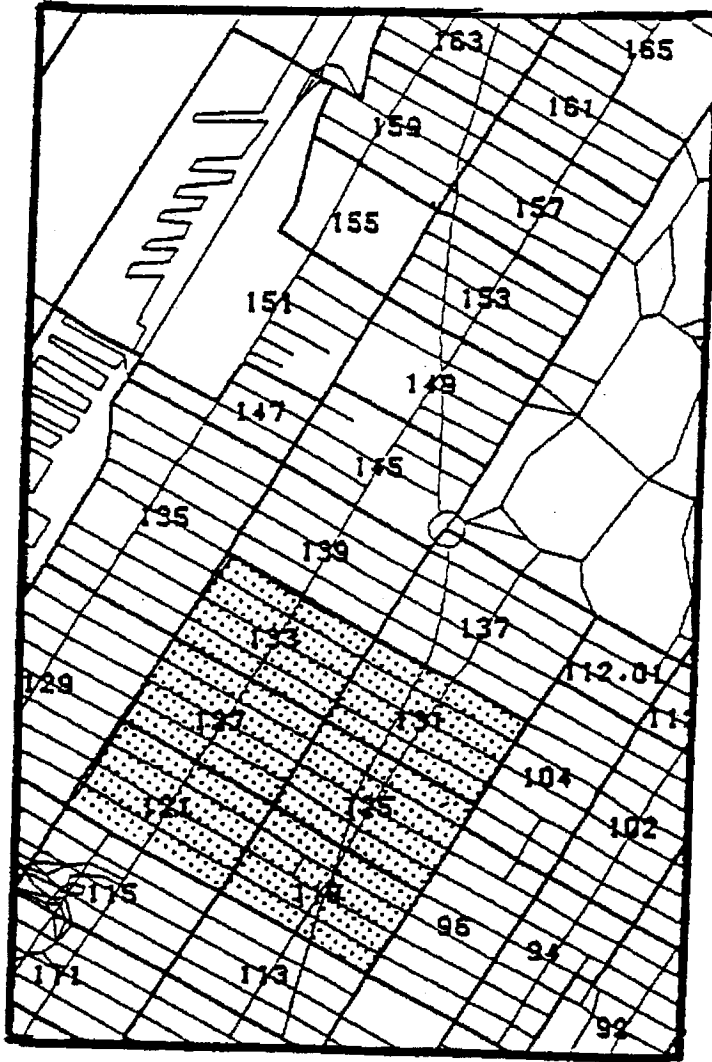
Demographics and Housing

In order to draw detailed demographic information from the 1990 Census, we aggregated data by the census tracts that most closely approximated the area of the Times Square BID. By using data from six census tracts that cover the area between Sixth and Tenth Avenues to the east and west, and 42nd and 54th Streets to the south and north, we have covered the entire BID, as well as additional blocks. Thus, data from these six tracts, which we will call the *Times Square Neighborhood* to avoid confusion with the Times Square BID, will reflect the demographics within the BID as well as the directly adjacent neighborhood. The map on the following page depicts the census tracts for this section of west midtown. As one can see, the Times Square BID falls within the boundaries of census tracts 119, 121, 125, 127, 131, and 133.

Broadly speaking, the eastern blocks of this area, particularly as one approaches Sixth Avenue, are commercial in character, with stores, restaurants, offices, and other commercial establishments. In comparison, the mid-blocks between Ninth and Tenth Avenues have a higher preponderance of housing; they constitute the eastern edge of the Clinton neighborhood.

Therefore, in reviewing the following census data, the reader must be aware that there will be a larger number of residents and housing units than those who actually reside within the official borders of the Times Square Business Improvement District. For example, our Census data show more than 25,000 residents in these tracts; the BID estimates 5,000 residents within its narrower boundaries. However, these 20,000 residents are, in fact, part of the Times Square community and view themselves as being affected by the adult use establishments (those along Eighth Avenue in particular).

TIMES SQUARE BID
CENSUS TRACTS



Source: New York City Department of City Planning, Computer Information Systems; U.S. Bureau of the Census

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Total Population

In 1990, the total population for the Times Square Neighborhood was 25,651, which was slightly higher than the previous decade. The racial characteristics are depicted below. In general, over half of the population was White (higher than the Manhattan percentage); 11% was Black/Non-Hispanic, and 24% were Hispanic. During the decade from 1980 to 1990, the Hispanic population declined slightly, while the Asian (particularly the non-Chinese Asian) population increased to approximately the same as that of the borough of Manhattan, or 7%.

**TABLE I
POPULATION CHARACTERISTICS, 1990
TIMES SQUARE NEIGHBORHOOD***

	1980 Number	1980 %	1990 Number	1990 %
White	14,251	57.9	14,807	57.7
Black, Non-Hispanic	2,252	9.2	2,785	10.9
Hispanic	6,793	27.6	6,099	23.8
Asian	1,117	4.5	1,761	6.9
Other	199	0.8	199	0.8
TOTAL	24,612	100.0	25,651	100.0

Source: U.S. Bureau of the Census, 1980 and 1990 Censuses of Population and Housing Characteristics, and Social and Economic Characteristics.

* Despite the image of Times Square as a solely commercial area, it is a place where many people raise their children. In 1990, there were 3,690 families with children under the age of 18 living in the six census tracts.

Housing Units

In 1990, there were over 18,000 housing units in the neighborhood, of which 75% were rental units and 49% were in large buildings of over 50 units. In a borough in which less than 10% of the units were vacant, 20.5% were vacant in Times Square.

The size of housing units within the six census tracts is smaller than elsewhere in the borough. While the median number of rooms per unit is 3 for Manhattan, it is 2.2 for the Times Square Neighborhood and 1 for the one census tract bounded by 42nd and 45th Streets, Sixth to Eighth Avenues.

In addition to these permanent housing units, there are also a considerable number of hotel rooms in Times Square. The Times Square BID estimates that over 12,500 hotel units are located within its boundaries. The large number of hotel rooms reflects Times Square's importance in the City's tourism industry. The number of tourists constitutes, from one point of view, a large group of potential customers for adult use establishments. But from another standpoint, as documented in our surveys with hotel operators, restaurateurs, and theatre owners, the concentration of adult use establishments is seen to be offensive to this stream of visitors and travellers.

Age

The population of the Times Square Neighborhood is similar in percentage of population age 62 and over to that of the borough or of the two Community Districts in which it falls: CD 4 and CD 5. In addition, in 1990 there were close to 2,000 children under the age of 14 living in the Times Square Neighborhood. Both the elderly and young, whose lives are generally circumscribed by their immediate community, are impacted by the types of businesses and uses that occur in the Times Square area, including the adult use establishments.

**TABLE II
AGE CHARACTERISTICS, 1990
TIMES SQUARE NEIGHBORHOOD**

	Time Square	CD4	CD5	Manhattan
TOTAL POP.	25,651	84,431	43,507	1,487,536
% UNDER 14	7.4	8.2	5.2	13.2
% OVER 62	15.4	15.9	15.3	15.9
MEDIAN AGE (years)	36.63	37.2	37.2	35.9

Source: U.S. Bureau of the Census, 1980 and 1990 Censuses of Population and Housing Characteristics, and Social and Economic Characteristics.

Employment Characteristics

Traditionally, a large percentage of Clinton residents have worked in the Times Square area, particularly in the theater and music industries as technicians, actors, and performers. This is borne out by the census data, which show a very high percentage of residents working within less than half an hour of their homes and walking to work. The percentage of workers in the Times Square Neighborhood who walk to work is higher than the percentage for the borough as a whole and is much higher than the percentage of those in the other four boroughs.

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In 1990, approximately two-thirds of the population of the Times Square Neighborhood above the age of 16 were employed. The Bureau of the Census estimated that 95% of these workers worked in New York City and 88% worked in Manhattan. This is similar to Manhattan's residents in general, of whom 94% worked in the City and 84% in the borough. Compare this to, for example, the Queens workforce, of which only 40% work in their home borough.

Similarly, while the mean travel time to work for Manhattan residents was 29 minutes (and that of the other four boroughs was approximately 40 minutes), the mean travel time to work for residents in these six census tracts was 23.16 minutes. Of the Times Square residents who travelled to work, 48%, or almost half, walked. Compare this to 29% of the Manhattan workforce and less than 10% in the other boroughs. Times Square, therefore, has a considerable segment of the population who spend both their working hours and off-time in the Times Square Neighborhood.

TIMES SQUARE NEIGHBORHOOD: ITS ZONING AND ITS USES

Zoning

The Times Square neighborhood is zoned for General Central Commercial uses, reflecting the importance of Times Square as a central core for the City and region. These C6 zones vary: while Broadway, Sixth and Seventh Avenues are zoned C6-6 (15 FAR), the midblocks and Eighth Avenue are zoned C6-5 or C6-4, for a lower FAR of 10. Uses permitted in C6 districts typically include all residential uses as well as commercial and wholesale uses.

To the west of Eighth Avenue the predominant zoning is R8, with a C1-5 overlay along 9 Avenue for our control blocks. R8 permits general residential uses of a 4.8-6.0 FAR. C1-5 commercial districts permit local neighborhood commercial uses at an FAR of 2.0.

Special Districts

Special Midtown District

Times Square lies within one special zoning district and directly abuts another. In fact, the eastern boundary of one of these districts and the western boundary of the other meet in the center of Eighth Avenue.

Eighth Avenue can thus be viewed as the transition between two special districts: one encouraging commercial development and the other attempting to preserve a low-scale residential community. That duality is reflected in the opinions of residents and businesses about the status and future of the Eighth Avenue strip.

There are those who view Eighth Avenue as a development corridor, which began to be such with the building of Worldwide Plaza but which remains under-built, with a number of vacant buildings and parking lots. There are others who see the area as one that can and should continue to serve the economic development needs of the theatre and entertainment industries as well as other related needs of the city. Still others think it can and should be enhanced as a residential avenue. Whatever their perspective, few see the concentration of adult use establishments as being beneficial to either the preservation or the development of the area.

The area of the Times Square Business Improvement District lies almost entirely within the boundaries of the Special Midtown District (Sect. 81 of the NYC *Zoning Resolution*). Within that, a large proportion of the BID is included within the Theater

Sub-District, and the even more restrictive Theater Sub District Core, which extends from 43rd to 50th Streets, and from 100 feet east of Eighth Avenue to 200 feet west of Sixth Avenue.

In general, the goals of the Special Midtown District include the strengthening of Midtown's business core, while directing and encouraging development and preserving the "scale and character" of Times Square. Within the overall Special District, the purpose of the Theater Sub-District is to protect the cultural and theatrical and ancillary uses (i.e., shops and restaurants) in Times Square. This sub-district provides additional incentives and controls to encourage preservation of theaters, special development rights transfers, and separate requirements for ground floor uses.

Special Clinton District

Directly to the west of the Midtown Special District--and thus, of the Times Square area--is the Clinton Special District, whose purpose is the preservation of the residential character of the Clinton community (Sect. 96). The west side of Eighth Avenue falls within the Perimeter Area of the Special Clinton District. It is a transition between the tourism area of the Midtown District and the low-rise residential neighborhood immediately to the west, and the manufacturing district further west. Community residents characterize Eighth Avenue as "The Front Door to Clinton".

The Special Clinton District regulations contain provisions regarding demolition of residential buildings and relocation of tenants that are stringent and designed to preserve the neighborhood's residential character.

Our Ninth Avenue control block falls not within the Perimeter Area, but rather in the more restrictive Preservation Area; the one exception is the block on which Worldwide Plaza is located, which is excluded from the Special District. Within the Preservation Area, there are also tough provisions in regard to demolition and relocation of residents.

Land Uses: Control and Study Blocks

In general, the land uses in this neighborhood are diverse and eclectic. We provide a detailed picture of this diversity below.

42nd Street Study Block Land Uses

The present land uses along 42nd Street reflect the general commercial nature of the block. The north side of 42nd Street between Seventh and Eighth Avenues has a significant number of now vacant theaters, awaiting redevelopment through the 42nd Street Development Project. In addition there are clothing, sporting goods, tobacco, and camera stores, as well as delicatessens and a fast food establishment

on the corner at Eighth Avenue. As one approaches the northeastern corner of the intersection at Eighth Avenue, one can see a concentration of adult use establishments on the still privately owned portion of that block. (The State will soon begin condemnation of these buildings.)

Along the south side of the 42nd Street Study block there are also a number of now-vacant retail establishments and theaters, as well as the Candler office building. Retail establishments that are open along the south side of the Study block include electronics, novelties, sporting goods and shoe stores, as well as one first-run movie theater.

There are approximately six adult use establishments on the north side of the 42nd Street Study Block, and nine adult use establishments on the south side, for a total of 14. (Some of these stores are divided with more than one entrance and level).

42nd Street Control Block

The land uses along the north side of the 42nd Street Control Block between Eighth and Ninth Avenues include the following uses: a bar, two parking lots, a church and its rectory, office supply and gift stores, a deli, an entry to an apartment house, and the entrance to an adult use establishment whose main entrance is on Eighth Avenue.

The south side of the control block is most notable for the Port Authority Bus Terminal, which takes up approximately two-thirds of the blockfront. Additional uses to the west of the Bus Terminal include: a pizzeria, a parking lot, a hotel entry, an appliance servicing establishment, offices, and the US Post Office's Times Square Station.

Other than the side entry to the Eighth Avenue adult use establishment, there are no adult use establishments actually on the control block.

Eighth Avenue Study Block

The Eighth Avenue Study blockfront extends three blocks from 45th to 48th Streets. The mixture of uses is not reflective of the General Commercial Core aspect of the location. Instead, the uses are a mixture of local retail including novelty shops and souvenir stands, as well as delis, drugstores, and liquor stores, parking lots, vacant properties, and restaurants and other eating and drinking establishments. There are some uses which serve the theatre industry to the east; for example, the hardware store between 47th and 48th Street.

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The study blocks are flanked by the Milford Plaza Hotel, between 44th and 45th Streets, the Days Inn between 48th and 49th Streets, and Worldwide Plaza between 49th and 50 Streets. Along this strip of three blocks there are eight adult use establishments: six movie theaters and two video stores.

Ninth Avenue Control Block

The building stock on Ninth Avenue resembles that on the Eighth Avenue study block: predominantly older, two to four-story buildings, often with apartments above the retail places. The uses on Ninth Avenue are more reflective of the area's zoning for local retail uses, with food markets, barbers, locksmiths, fast foods, and florists, for example. Also noteworthy are the numerous restaurants along Ninth Avenue serving primarily locals.

There are no adult use establishments along Ninth Avenue, either in our three-block control blockfront between 45th and 48th Streets, or for the entire stretch from 42nd Street up to 50th Street.

A map of all land uses as of March, 1994 along 42nd Street between Seventh and Ninth Avenue between 42nd and 50th Streets is attached at the end of this report.

ADULT USE ESTABLISHMENTS AND PROPERTY VALUES

Total Assessed Value

We attempted to compare total assessed value over time, and the rate of change, for our study and control blocks. We analyzed and compared the years 1985-1986 to 1993-1994. In addition, we compared our Study and Control blocks' assessed valuation to that of 1) the aggregated tax blocks falling within the boundaries of the Times Square Business Improvement District; 2) the entire Borough of Manhattan; and 3) the City as a whole. Our findings are summarized in Table III.

The Table shows that the rate of increase of the total actual assessed values of the Eighth Avenue Study Blocks was less than the rate of increase for the Control Blocks along Ninth Avenue on which no adult use establishments are or were located. To a lesser extent, the rate of increase of the actual total assessed value of the 42nd Street Study Block is less than that of the 42nd Street Control Block.

**TABLE III
ACTUAL ASSESSED VALUES
CHANGES FROM 1985-1993 FOR SELECTED BLOCKFRONTS**

BLOCKS	ACTUAL ASSESSED VALUE 1985-1986 (millions)	ACTUAL ASSESSED VALUE 1993-1994 (millions)	PERCENTAGE CHANGE 1985-1993
8TH AVE. STUDY BLOCKS (45-48 STS.)	11.22	18.55	65
9TH AVE. CONTROL BLOCKS (45-48 STS.)	4.52	8.65	91
42 ST. STUDY BLOCKS (7-8 AVES.)	34.89	51.63	48
42 ST. CONTROL BLOCKS (8-9 AVES.)	88.31	136.65	55
TSBID (ESTIMATED)*	2,034.7	3,252.3	60
MANHATTAN	29,462.7	47,229.4	61
CITYWIDE	53,589.8	81,714.6	52

Sources: NYC Department of Finance; Insight Associates

* The estimated BID total assessed value was determined by adding all 36 tax blocks that fall entirely or partially within the boundaries of the Times Square Business Improvement District.

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Changes on Individual Properties

After determining that the rate of increase of the total actual assessed values of the Eighth Avenue Study Blocks was less than the rate of increase for the Control Blocks, we zeroed in to compare more closely the rates of change for the lots themselves. After detailing each block, property by property, an overall figure for the "social block" or the avenue considered with both its east and west sides, is noted.

The assessed values of the tax lots on the Eighth Avenue Control Blocks were analyzed in terms of proximity to the location of adult use establishments; the purpose of the exercise was to see if there were any patterns regarding the location of establishments and the rates of change.

The findings are shown below. In most cases, the rate of changes for other lots on the blocks were less than those with adult use establishments. Note that the tax lots which have adult use establishments are indicated by bold type.

When there is a decline in the assessed value, and the Department of Finance records indicate no change in the building class or size, we can assume that the property owner had at some point filed for and been granted a reduction in the property's assessed value through a certiorari proceeding.

There may be many reasons for a property's assessed value to have changed at a rate different than those of the rest of the block, or the general area. One cannot automatically assume any one reason, such as the proximity of adult use establishments. For example, the physical condition of the property may have deteriorated, or the property may be at a location undesirable from the point of view of potential retailers.

While it may well be that the concentration of adult use establishments has a generally depressive effect on the adjoining properties, as a statistical matter we do not have sufficient data to prove or disprove this thesis. It may also be that simply the presence of adult use establishments is subjectively viewed by assessors as a factor that necessarily reduces the value of an property. In short, assumptions may influence assessment.

Also included in the lists below are the actual uses--the types of stores or restaurants, for example--for each property along the Eighth Avenue Study blockfronts, from 45th through 48th Streets. We have tried to see if there is any pattern in which uses that one might consider to be more compatible with an adult use reveal a different rate of change in assessed value than other, less compatible uses.

**TABLE IV
BLOCK BY BLOCK CHANGES IN ASSESSED VALUATION ALONG
EIGHTH AVENUE STUDY BLOCKS**

LOCATION (on Eighth Avenue)	BLOCK/LOT	ADDRESS	LAND USES	% CHANGE IN ASSESSED VALUE (1985/6- 1993/4)
8 AVENUE: 45-46 STREET				
West	1036/36	731-727	Pizzeria Grocer/Deli Vacant Deli	50%
West	1036/33	725	Pawn Shop	9%
West	1036/29	712	Photo lab Army/Navy Hair/Nails Restaurant Restaurant	33%
East	1017/61	740	Hotel entrance Liquor Novelty Bar Novelty	136%
East	1017/63	738	Adult Use (Capri)	138%
East	1017/58		Parking lot	61%
East	1017/4	732	Adult Use (Eros I)	166%
East	1017/3	730	Bar	84%
East	1017/2	728	Adult Use (Venus)	94%
East	1017/101	726	Deli	43%
East	1017/1	724	Souvenir/ T-shirts	275%
Social Block Change: 61%				

In the 45th to 46th Street study block, the parcels across the avenue from a concentration of three adult theaters show a rate of increase much lower than the average for the entire blockfront. The parcels on the same (east) side of the street from the theaters tended to show lower rates of increase in assessed value, except for 1017/1, whose owner is listed by the Department of Finance as that of an adult use establishment located at 265 W. 47 St, and 1017/61, which is a mixed use property comprising a hotel with retail uses below.

TABLE IVa
BLOCK BY BLOCK CHANGES IN ASSESSED VALUATION ALONG
EIGHTH AVENUE STUDY BLOCKS

LOCATION (on Eighth Avenue)	BLOCK/LOT	ADDRESS	LAND USES	% CHANGE IN ASSESSED VALUE (1985/6- 1993/4)
8 AVENUE: 46-47 STREET				
West	1037/36	767	Restaurant Fast Food	55%
West	1037/35	765	Hotel Entrance	-26%
West	1037/34	763	Adult Video	395%
West	1037/33	741-743	Travel Agency (entrance) Bar Restaurant	199%
West	1037/30	733-39	Pastry shop (formerly adult video) Novelty/Gift Electronics Bar Grocery Adult Video (Pleasure Palace)	125%
East	1018/61	760	Liquor store Pharmacy Deli Restaurant Union office (entrance)	55%
East	1018/3	754	Parking lot	121%
East	1018/1	750	Souvenirs Deli Bar	123%
Social Block Change: 73%				

There are no readily defined patterns for the properties located on the west side of Eighth Avenue on Block 1018. The parcels at 754 and 750 generally appreciated by over 120%, while the remaining parcel increased only by half.

However, on the west side of Eighth Avenue, on which there are two X-rated videos, located at 763 and 739, the properties not owned by the owner of the video establishments evidenced a lower rate of increase. The assessed value of the property at 765, adjacent to the Adult Video, actually declined by over 25%.

**TABLE IVb
BLOCK BY BLOCK CHANGES IN ASSESSED VALUATION ALONG
EIGHTH AVENUE STUDY BLOCKS**

LOCATION (on Eighth Avenue)	BLOCK/LOT	ADDRESS	LAND USES	% CHANGE IN ASSESSED VALUE (1985/6- 1993/4)
8 AVENUE: 47-48 STREET				
West	1038/36	787	Coffee shop Pizzeria	30%
West	1038/35	785	Hardware store	51%
West	1038/34	783	Restaurant	180%
West	1038/33	781	Lighting store	162%
West	1038/31	777	Adult Movie (Hollywood Twin)	120%
West	1038/29	771	Restaurant	136%
East	1019/61	782	Firehouse	48%
East	1019/63	780	Adult Use	59%
East	1019/64	778	Souvenirs	59%
East	1019/3	776	Adult Videos	59%
East	1019/2	772	Vacant, sealed building	107%
East	1019/1	770	Frame store (entrance on 47 St.)	-4%
Social Block Change: 66%				

It is difficult to see a strong pattern on the west side of Eighth Avenue, although the assessed values of the two properties located at 787 and 785 increased by far less than the other four, including 777, which houses the Hollywood Twin, and 771, which is owned by an individual listed as owner of other adult use establishments in the area.

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On the east side of Eighth Avenue, the two adult establishments and the property between them enjoy a common ownership; the three tax lots all increased in assessed value by precisely the same percentage--59%. On that block front there is also a NYC Fire House and an vacant and sealed building that is listed by the Department of Finance in 1993 as City-owned. The one remaining parcel on that block front--a framing store--experienced a decline in assessed valuation for the period.

A similar review of tax lots was not conducted for the other area of concentration, the 42nd St. Control Block. This was because it is felt that the many other trends and government actions along that strip, including public condemnation of the parcels and numerous lawsuits, would further complicate the analysis, and would prove fruitless.

Department of Finance Assumptions

In addition to the detailed analysis described above, we spoke to a high official in the Department of Finance to obtain his expert opinion on the relationships and effects, if any, of adult use establishments on neighboring properties. He stated that "there is no doubt in my mind that they [adult use establishments] adversely affect other properties." Their presence, he indicated, is factored into the locational aspect of the appraisal formula, though, he acknowledged that appraising is not itself an exact science. A commercial building may be obtaining a reasonable rate of return, but if that building were located near an adult use establishment, the assessor would tend to use a higher capitalization rate, which would therefore produce a lower value. The further away a property is from the adult uses, he explained, the lower the effect on its value.

ADULT USE ESTABLISHMENTS AND CRIMINAL ACTIVITY

General Crime Statistics

Over the past five years, according to the Office of Midtown Enforcement, police statistics show an estimated 54% decrease in crime in the Times Square area. This decrease parallels the decrease in adult use establishments, and although we cannot claim direct causality it is interesting to note that there is both the perception and the reality that Times Square is a safer place than it was years ago. While we were not able to collect crime statistics over a broad range of time, we were able to obtain information from the New York City Police Department for our Study and Control Blocks for a three-month period in 1993.

In addition, data on control blockfronts with no adult use establishments were requested for Ninth Avenue between 45th and 48th Streets, and for 42nd Street between Ninth and Tenth Avenues. The latter was selected as the control block for this purpose, rather than the block between Eighth Avenue and Ninth Avenue that had been used in analyzing property tax data, (see p. 25-30), because it was felt that encompassing the Port Authority Bus Terminal, with its unrelated associated crime statistics, would not provide a meaningful basis of comparison to the study block.

The crime data reports were prepared by the Precincts in which these blockfronts are located: Midtown South, Midtown North, and the Tenth Precinct. The reports generated by these precincts do not include complaints for prostitution or drugs (other than criminal possession of a controlled substance), as these crimes are reported in an incompatible format. (We did, however obtain some information on prostitution activity from other sources, which will be described below.) In addition, certain desired data, such as known locations for drug-dealing, are part of on-going investigations and prosecutions, and thus not available to us. The data we have used reflect the numbers of criminal complaints, not arrests, for known addresses or locations along the block fronts under study.

Actual complaints were listed for a wide range of crime categories, including Grand and Petit Larceny, Grand and Petit Larceny from an Auto; Criminal Possession of Controlled Substance; Criminal Harassment; Assault, Robbery, and Fraudulent Accosting. Each precinct used slightly different categories in preparing its reports for this study, but in general, the major categories were similar. Certain crimes were more prevalent in specific locations. For example, a larger number of complaints of Grand and Petit Larceny from an Auto were noted along Eighth Avenue between 45th and 48th Streets; this may reflect the presence there of parking lots.

Despite the many limitations on these data, there were certain significant patterns that did appear. In general, as seen in Table II, criminal complaints were higher for the 42nd Street study block than for the 42nd Street control block two blocks to the west. During the three month period of July through September, 1993, there were 45 criminal complaints on the Ninth to Tenth Avenue block of 42nd Street, and 88 on the Seventh to Eighth Avenue blockfront. Similarly, there were 118 criminal complaints on Eighth Avenue between 45th and 48th Streets, and only 50 for the same three blocks along Ninth Avenue.

One cannot assert that there is a direct correlation between these statistics and the concentration of adult use establishments on 42nd Street between Seventh and Eighth Avenue, or along Eighth Avenue between 45th and 48th Streets. But there is very definitely a pointed difference in the number of crime complaints between these study blocks and their controls.

It appears that there was a continuing reduction in crimes along Eighth Avenue the further away from 42nd Street, with its concentration of adult use establishments. While there were 135 complaints on Eighth Avenue between 42nd and 43rd Streets, there were only 80 on the block between 44th and 45th Streets. For the three blocks between 45th and 48th Streets, there were a total 118 complaints for the same period. These complaint statistics are summarized in Table V.

**TABLE V
CRIMINAL COMPLAINTS FOR SELECTED BLOCKFRONTS
JUNE, JULY & AUGUST 1993**

BLOCKFRONT	JUNE	JULY	AUGUST	TOTAL
8 Ave. between 42-43 Sts.	34	45	56	135
8 Ave. between 44-45 Sts.	38	21	21	80
8 Ave. between 45-48 Sts.	40	45	33	118
9 Ave. between 45-48 Sts.	16	13	21	50
42 St. between 7-8 Aves.	29	36	23	88
42 St. between 9-10 Aves.	16	16	13	45

Source: New York City Police Department; Insight Associates

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Criminal Activities: Drugs and Prostitution Arrests

As can be seen in the responses to our survey, one of the most frequently made assertions is that adult use establishments attract criminal activities, particularly drug dealing and prostitution. Working closely with the NYPD Crime Analysis Unit, we attempted to obtain data concerning arrests or complaints for these two types of criminal activities, in order to enhance the criminal complaint data discussed above.

Prostitution and drug complaints are not collected by the precincts in the same way as other criminal complaint data. Drug complaints and drug arrests are not maintained on the precinct level and are considered confidential, due to on-going criminal investigations. Thus, we were not able to obtain data on this type of criminal activity. With the cooperation of the Crime Analysis Unit, however, we were able to obtain information concerning prostitution arrests along Eighth Avenue from 42nd Street to 48th Street.

In a three month period from July through September, 1993, in the Midtown South Precinct, there were 19 arrests made on Eighth Avenue between 42nd and 45th Streets, compared to no arrests on Ninth Avenue between 42nd and 45th Streets. Further north on Eighth Avenue, between 45th and 48th Streets, the Midtown North Precinct reported 9 arrests for prostitution, compared to 14 arrests along Ninth Avenue for the same three blocks during the same three month period. Thus, the heaviest incidence of prostitution arrests occurred in the three block study area of dense concentration of adult use establishments, during this time period. Those findings are summarized in Table VI.

**TABLE VI
PROSTITUTION AND RELATED ARRESTS
FOR SELECTED BLOCKFRONTS
JUNE, JULY, & AUGUST 1993**

BLOCKFRONT	JUNE	JULY	AUGUST	TOTAL
8 AVENUE (42-45 Streets)	7	7	5	19
9 AVENUE (42-45 Streets)	0	0	0	0
8 AVENUE (45-48 Streets)	7	1	1	9
9 AVENUE (45-48 Streets)	3	10	1*	14

Source: New York City Police Department; Insight Associates

* In addition, there were 7 arrests for Patronizing a Prostitute for this month.

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In addition, we were able to obtain from the Midtown Community Court a list of locations for prostitution arrests appearing before that court for the period from October 12, 1993 through February 28, 1994. The Midtown Community Court sampled 60% of its prostitution arrests for this 4 1/2-month period, looking at the frequency of arrests on Eighth Avenue between 42nd and 48th Streets, as compared to those along Ninth Avenue between the same streets.

The number of prostitution arrests on Eighth Avenue was 20 for that period, compared to 5 for Ninth Avenue. However, higher than that was the number--24--for the area west of Ninth Avenue. This may reflect the well-known concentration of prostitution activity along the westernmost stretches of West Midtown, particularly along Tenth and Eleventh Avenues.

What is interesting, however, is that during this 4 1/2-month period, the location for the majority of prostitution arrests shifted dramatically eastward, from west of Ninth Avenue to Eighth Avenue itself. This change may have been a function of police activity and sweeps or may be related to other factors.

Nevertheless, the more recent level of prostitution activity, while higher in the west, dropped along Ninth Avenue, but increased again along Eighth Ave. This concentration of arrests along Eighth Avenue may be related to presence of adult use establishments along Eighth Avenue, but may also be related to traffic and pedestrian patterns, proximity to the Port Authority Bus Terminal, and proximity to Times Square itself. It should be noted that according to the Midtown Community Court's records, the most frequent locations for prostitution arrests in their sample were in the West 20s along Tenth and Eleventh Avenues and in the upper 50s on Sixth Avenue.

The findings are shown in the following table.

TABLE VIa
PROSTITUTION ARRESTS AT SELECTED LOCATIONS
MIDTOWN COMMUNITY COURT
(60% Sample)

LOCATIONS	10/12/93-12/31/93	1/1/94-2/28/94	TOTAL
8 AVENUE (42-48 Streets)	4	16	20
9 AVENUE (42-48 Streets)	3	2	5
WEST OF 9 AVENUE (42-48 Streets)	21	3	24

Source: Midtown Community Court, 3/4/94

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The Office of Midtown Enforcement, although acknowledging the decline in criminal activity in the Times Square area, continues to deploy surveillance teams to monitor the level of prostitution activity in the area. (Office of Midtown Enforcement 1991-2 Fiscal Year Report).

INTERVIEW FINDINGS

Previous secondary effects studies have combined survey research and anecdotal reports from community and business interests. Our study did so as well. A total of 54 interviews were conducted between November, 1993, and March, 1994. Three different interview questionnaires were employed: one designed for property owners and business operators, a second intended for local organizations, churches, and schools, and the third for Community Board representatives.

In general, we sought to obtain information on perceptions and experience of the impact in the Times Square area of adult entertainment establishments. More specifically, we tried to elicit detailed observations of the effects of these enterprises on business and daily life. We also attempted to obtain information on the effects of these businesses in geographic terms, i.e., the proximity and distance of adult use establishments and the resulting intensity and/or diminution of impacts.

To provide context, we asked all respondents about their views of what constituted the major problems facing the Times Square area, and the relative importance of pornography and adult use businesses among these problems. The open-ended conversations that followed completion of the formal interview schedule were often most productive. Where possible, the interview results are presented below as quantified measures but in addition, many valuable insights emerge from interview material that is not easily quantified.

Property and Business Owners

Real Estate Owners, Managers, and Corporate Leaders

Our twelve-interview sample in this important category included five of the largest real estate companies or management agencies in the city, with multiple holdings in Times Square and elsewhere. We interviewed one appraiser familiar with the Times Square area, one owner of residential property, and one leasing agent. In addition, we spoke with executives of two important publishing and communications corporate groups.

Most of these respondents have been part of the Times Square scene for decades, and some are relatively recent arrivals. They are all aware of Times Square's history, in all its ups and downs, and some have played roles in this history. Their observations and expertise, however, are focused on the growth of Times Square as a unique conglomerate of entertainment uses, commercial tenants, tourist attractions, and, increasingly, a home for financial and multi-national corporations.

As our appraiser interviewee stated, we must evaluate how the presence of these adult entertainment uses slows down or reduces rentals and business activity in the long run. That is, it can be said that pornographic uses may attract other businesses and traffic, which brings revenue to the owners of those businesses in the short run. But there is no way to encourage increased value of commercial properties for a variety of businesses in the long run if they are next door to a concentration of pornography establishments.

This observation is confirmed by the direct experience of our real estate respondents. Three real estate developers had bought buildings in the Times Square area which housed adult use businesses, and they sought to terminate these leases as quickly as possible. They all asserted that the presence of such stores had a definitely negative effect on office leasing, especially for corporate tenants. A leading real estate agent described the lower rents and difficult leasing conditions of an office building located on 42nd Street between Seventh and Eighth Avenues. He also depicted the lower rents on Eighth Avenue as compared to Seventh Avenue for comparable buildings, and cited instances of tenants refusing to renew leases because of the Eighth Avenue location and its atmosphere.

An owner of a smaller residential property on 46th Street said that he believed that the adult use businesses on his corner at Eighth Avenue frighten people away. He had an apartment on the market recently and a prospective applicant who said he wanted to rent it for his daughter and friends turned out to be really interested in using it as a massage parlor. The owner recently advertised office space in his building, but has so far attracted two adult use businesses, while other applicants have been scarce.

The builder and owner of World Wide Plaza spoke of the need to oust a porn theatre one block to the north (which later relocated further south on Eighth Avenue) in order to attract major corporate tenants. While his tenants have long-term leases, and he recognizes that the development of his building was affected by recent downturns in the real estate market having little to do with porn, he nevertheless expressed concern about the new spread of porn uses along Eighth Avenue. In fact, though the block from 50th Street to 51st Street, north of World Wide Plaza, remains vacant because of these larger market trends, he is seeking to encourage the lessee to rent to local retail uses, rather than to adult entertainment businesses. Members of this development organization stated that they believed that security costs in this building were somewhat higher than those of comparable buildings located in other neighborhoods. They also were very concerned about the recent increase in adult uses on Eighth Avenue, which they fear is occurring because of the public agency condemnations along 42nd Street, which may well be forcing the porn merchants northward.

All of our respondents said that adjacency of porn establishments has a negative effect on sales and leasing, and that plainly the concentration of establishments affects the overall image of the western edge of Times Square. They describe Eighth Avenue and certain side streets where these stores are located as

"less hospitable places", and as injurious to the quality of life. One corporate executive said that one of his employees was mugged in front of an adult-entertainment store. A developer and an executive of a corporation both said that adult businesses on the same street, or diagonally across the street from a property have offensive and negative results.

All except one developer said that perhaps there is a way to limit the number of such establishments, and to disperse them. The dissenter said that not even one could be tolerated.

All of our property owners and business representatives--large and small--expressed the view that adult use businesses have a negative effect on the market or rental values of businesses located in their vicinity. It was very clear that negative effect was intensely felt if the adult business was right next door, in the same building, or on the same block. But every respondent also emphasized the negative effects of a concentration of businesses, stating that "Eighth Avenue is a less attractive place to do business" than other avenues in the Times Square area. One representative of a major property owner said that there were more improvements on Ninth Avenue in recent years than on Eighth Avenue, as evidenced in the numbers of new restaurants and small viable retail stores which have opened on that street. In the light of other improvement in the Times Square area, this respondent, too, expressed concern about "the march of porn stores up Eighth Avenue."

A corporate newcomer to the Times Square area expressed great optimism about its future and he said that the confidence was shared by employees and prospective retail tenants, but he also said that the positive trends were clear along Seventh Avenue and Broadway, and certainly less so along Eighth Avenue.

A real estate agent who tries to rent only to "Triple A" tenants said that proximity to adult establishment would be a deterrent to them. If there was an opportunity to rent to, say, a major fast food chain, which might be willing to locate on Eighth Avenue, in such a case, he was sure that concessions or sweeteners would have to be offered in the form of sharing in increased insurance costs, or in offering lower-priced rentals.

On the other hand, new area business and long-term owners both said that there is much improvement in Times Square and that its new identity as a center for corporations, entertainment, and tourism will continue to make it attractive to investment from all over the world. Because of the extraordinary pedestrian traffic, it can and will attract major retailers, and it is important that this trend not be deterred by the concentration of porn theatres, strip clubs, and adult video stores.

Theatre Owners

Interviews were held with high executives of the three major legitimate theatre organizations. All were very emphatic about the deleterious effects of the presence of adult use stores near their theatres and in the neighborhood in general. They stated that these uses "scare away audiences", and were not good for business. One respondent believed that one of his well-equipped and otherwise competitive theatres could not compete for bookings because of its location near 42nd Street's porn strip. That is, he could not obtain rentals for productions, and was forced to create projects of his own to keep the theatre from staying dark.

All three, including the owner of that theatre, mentioned the direct negative effects of the presence of an adult use establishment right next door to the Martin Beck Theatre. Despite the fact that this theatre now houses a musical hit, the owners describe complaints from patrons about the adjacent sex establishment. Complaints were voiced about the "unpleasant" atmosphere on the western edge of the streets on which their theatres were sited, West Forty Fourth Street and West Forty Seventh Street.

One respondent, with a more than twenty year history of theatre operation in the area, was unequivocal in his view that the presence of these establishments hurt business. From the days of massage parlors in the 1970s to the video stores of today and the resurgence of topless dancing establishments, there has been a continuing pattern of deterioration of facades, sidewalks, and blockfronts--a pattern damaging to theatregoing. He believed that low-level drug dealing and prostitution could be linked to the presence of these adult entertainment places, and that the presence of even one such store on a street is negative.

The other two theatre executives believe that the more concentration of porn businesses you have, the more it hurts property values. While they did express concern for free speech considerations, they were all quite critical of the negative effects of the appearance of these stores, which they say contributes to blight.

These exhibitors asserted that Broadway theatre and restaurant patrons are a class of people who are discouraged by the prospect of walking through pornography-filled streets. The respondent from a nonprofit theatre located in Times Square, not immediately near adult use businesses, did not express major problems or complaints related to such places. He recognized, however, that many of his patrons parked their cars west of Eighth Avenue, and that many of his promotions included dining on Restaurant Row, but he cited no specifically perceived negative effects.

The theatre owners stated that the incidence of crime has declined in the Times Square area, and that the area is cleaner and safer, its negative raffish image has improved markedly. But they were concerned about Eighth Avenue, about vacant stores, and about uses such as porn stores that were incompatible with theatregoers.

Restaurants

We interviewed seven respondents, representing eight variously-priced restaurants and chains in the Times Square area. Two were located on 46th Street's Restaurant Row, two on Eighth Avenue, and three elsewhere in Times Square. One restaurateur was also a building owner.

All of the respondents believed, in general, that the presence of the adult use establishments was not good for their business. One of the owners was not at all affected, he said, by the adult businesses, because the block on which his restaurants were located was free of such uses. But although this restaurant operator had been offered properties on Eighth Avenue as well as on 43rd Street, he said that he would not open restaurants on those sites even if they were free. "My customers want to be entertained, to be in an uplifting environment. My places attract family and friends. I don't want my customers to be put off by the atmosphere."

But the owner of a lower-priced coffee shop on Eighth Avenue who claimed that he sought tourists and local business said that the presence of these businesses made for a "terrible" influence, and that Eighth Avenue was no longer "a very popular area". He said that business is off after 7:30 or 8 at night on this Avenue, compared to business a few years ago.

Another popular restaurant with a substantial core of regular customers who are not bothered by the presence of porn stores said, however, that the restaurant has great difficulty attracting the corporate parties that they have been seeking. They believe that there is a public perception that the area is unsavory, since they have had the experience of attracting potential parties, and then having those potential customers cancel. This manager also expressed concern that tourists may pass her restaurant by because it is sandwiched between pornography establishments.

Three of the restaurant operators described complaints from customers about loitering. The food establishments located on or near Eighth Avenue said that they believed that new porn businesses were relocating from 42nd Street; they also said that the flamboyant advertising of porn stores, even ads seen from across the avenue, had a negative effect on their business.

All these respondents were aware of and complained about drug dealing which they could not directly tie to the adult entertainment ventures, but which they felt were part of the same picture.

Both a small coffee shop owner and the owner of two larger family restaurants expressed their opinion that Times Square remains a promising business growth area and that they intend to stay. But the coffee shop may be forced to move off Eighth Avenue, and would like to unless conditions improve.

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Hotels

The three hotel operators who were part of the interview sample, and the owner of one of the properties--all located along Eighth Avenue--agreed that the dense concentration of adult entertainment venues was a deterrent to their trade.

The owner of a long-standing moderate priced tourist and convention hotel said that there had been a tremendous improvement in conditions in Times Square in the last two or three years. He attributed this to the work of the Police Department and the Times Square Business Improvement District. But this hotel owner continues to have some difficulty attracting airline and corporate business, and the trade shows that it seeks. He described complaints from airline personnel that women among them were verbally assaulted on Eighth Avenue. He said that Times Square is viewed as a "fun area", but that Eighth Avenue is the "seedy side of the district". He also said that he is himself "not a prude", that it is perhaps possible to live with some of these establishments, but that the concentration of them--more than one on every block on Eighth Avenue--is "disgusting and harmful". In sum, this manager of a large hotel said that there is great improvement, but there is still the need to combat sleaze through City action and through pressure on landlords.

An assistant manager of a chain hotel did not see any positive or negative direct effects of porn businesses on his own. But he did observe that prostitution activity seemed to be worse than last year, and he offered the opinion that plainly people do not like to see either that activity or porn establishments when they leave his hotel.

In the interviews with the owner and his lessee of a small hotel franchised by an international chain we heard about the direct effects of porn establishments. Though located on Eighth Avenue, with X-rated movies at the end of the block, they believed that they could attract customers because of their national booking service. But after obtaining their lease, an adult-use store opened right next to the front door of the hotel, and the respondent described many instances of customers having booked rooms through the national office arriving, looking, and cancelling. These customers sometimes took photographs of the adjacent porn store and sent them back to the national booking office. As a consequence, business is down substantially. Both owner and manager describe the constant activity of prostitution in front of the porn store and their hotel, and both associate drug dealing and crime with the loiterers attracted to the store.

The owner had the opportunity to acquire and rent the adjacent store. He could have rented to adult use businesses, he said, but refused. He claimed that the adult use is paying a much higher, above market rent than what the previous owner or any non-pornographic business would pay for that space. He also said that "I am certain that there are illegal activities in the back room [of the store]. The rent is too high to be sustained by the sales." Both men expressed concern about a store across the Avenue that had been vacant for a year and a half, and feared it would be rented for adult entertainment use.

Retailers

The five merchants interviewed had all been in business in the area for many years. Four are family-owned businesses which also own the buildings in which they operate. Three of the businesses are industry wholesalers, destination markets, and local service stores.

Two of the interview respondents saw no particular effects of the presence of adult use establishments on their own specific businesses. Both of these condemned the presence of drug and crack dealers in the vicinity. One of these two said that he knew the manager of a gay movie theatre across the Avenue and considered him a neighbor trying to do business.

Another interviewee felt differently, that conditions brought about by the porn businesses were pretty bad, negatively affecting rents. Though he said he was as concerned about the First Amendment as anyone, and "did not consider myself a saint", he did say that the people who hang out in front of these establishments are unsavory and are involved in petty street crime. He feels that the presence of such stores hurts the perception of Times Square as a place of entertainment and business. He had become optimistic about Times Square's future in the last years, but now found himself worried about the increase in the number of adult use stores on Eighth Avenue, and the consequent security and safety problems. Nevertheless, he plans to continue doing business in the area where his family has been since 1935, and would consider expanding into more space in an industrial or commercial building west of Eighth Avenue.

A liquor store owner said that his real living is from the residential and business trade in the area and he does not welcome the presence of the adult use stores. He is convinced that they are associated with street drug dealing, and claims to have observed known dealers in video stores many times per day. He believes that they frequent these places--which otherwise seem to be doing very little trade--because the video dealers are tied into the crack-selling business. That owner and a manager of a store owned by a family which has been doing business in Times Square for ninety years expressed great concern about vacant stores, high rents that only the porn operators can afford, and loiterers who interfere with customers.

Community Residents and Organizations

In the greater Times Square neighborhood there are eight block associations, approximately seven public schools, and about fifteen churches, six of them within the BID boundaries.

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Block Associations

Of eight known block associations in the area west of Eighth Avenue, we interviewed representatives of five. All the respondents described the negative impact of the concentration of adult use businesses for both the residential and commercial communities. They all said that they believed and observed that these uses are negative in their effects because they attract loiterers, drug dealers, prostitutes, and their customers. Four of the block association leaders said that adult use establishments drive out legitimate businesses, and they deplored the recent loss of a stationery store and a drycleaners which had been replaced by adult entertainment businesses.

All five representatives said they had been directly affected by the presence of adult use establishments on their blocks, and indirectly, by the presence of groups of prostitutes who congregate in front of the establishments on Eighth Avenue, and also onto the side streets. They linked this prostitution activity to Eighth Avenue itself, but they acknowledge the presence of prostitution and drug dealing on other avenues to the west. Four of these respondents had made complaints to owners or operators of adult use establishments about their displays and about loitering. One had not. The same four had also complained to the Police, Midtown Enforcement, and the Community Board.

On the question of the scope of the area impacted by an adult use business, four of the respondents believed that the impact was neighborhood-wide, by which they mean that the image of the entire area is tarred: "It erodes the neighborhood's self-esteem." In terms of the impact of any single adult entertainment location, two believed that such impact extends across a street or avenue, and one believed that it extended more than five hundred feet. All respondents commented on the appearance of the stores; some called them aesthetically unpleasing and garish, obtrusive and tawdry, and disturbing to children. Some felt that the appearance of adult movie theatres was somewhat less disturbing than that of other adult businesses, and others complained that the covered, blanked-out windows of adult bookstores were forbidding and repellent.

These community interviewees believe that drugs and drug-related criminal activities constitute the number one issue for neighborhood residents, prostitution activity a close second, and the presence of pornography establishments was rated as third.

Another theme for longer-time residents was the belief that there had been many signs of renewal and community health in the Times Square area in recent years, but that the arrival of new adult use businesses, vacant stores, and resultant increases in drug activity were now posing new threats to community stability. These respondents viewed themselves as part of a working- and middle-class community in Clinton, adjacent to the commercial Times Square, and fighting to preserve the residential character of their home blocks.

Community Boards Four and Five

Community Board Five covers the Times Square area and reaches through most of the BID district to the east side of Eighth Avenue. Board Four covers the west side of Eighth Avenue, the Clinton residential and manufacturing communities to the west, as well as the Chelsea community to the south, where there has also been a recent increase in the presence of adult establishments.

We interviewed the District Manager and the Co-Chair of the Public Safety Committee of Board Four, and the Assistant District Manager and Co-Chair of the Public Safety Committee of Board Five. All four told of an increase in complaints and concern being directed to the Boards over the past two years. For Board Four, many of the complaints focused on the area along Sixth Avenue in Chelsea, as well as on the area just south of the BID boundaries, on Eighth Avenue. There were specific complaints about particular establishments, including the documenting of criminal activity along Sixth Avenue, along Eighth Avenue south of the BID, and at Forty Sixth Street and Eighth Avenue.

In terms of effects, one representative may have summed up the feeling by saying that the presence of these businesses makes "people feel that my neighborhood is no longer my own: people who are apolitical begin to organize against these stores." Another said "the block is taken away from the residents, you can't walk down the street. Other people who use the street to walk or shop cross over or avoid these businesses."

All these respondents described instances of loitering, late-night drinking, and, in the case of some establishments, documented criminal activity. Yet, because these activists also had experience with the negative impacts of non-pornographic bars and discos as well, they did state that perhaps every establishment had to be judged on its own effects on a block or a community. If any of these users could be good neighbors, if they could blend in with the community, then perhaps some could be tolerated. But they also said that the experience has been that if there is one establishment, then others follow, leading to an unacceptable concentration of adult use stores. This is what has occurred in Chelsea, and this is the case on Eighth Avenue. When there comes to be "a critical mass" and when the stores are poorly run, the area becomes a point of attraction for all sorts of undesirable activities.

These informants expressed their concern about impacts on their residential communities, but they also saw their interests linked to the prosperity of the theatre community in Times Square, for example, and to the continuing growth of other businesses in Clinton and Chelsea.

Schools

We were able to interview representatives of two public schools in the area, Public School 111, and Park West High School. They decried the proliferation of adult entertainment stores in general, and stated that they did not want young people to grow up assuming that "the sleazy image" provided by these stores is the norm. "Why throw this at children before they are ready?" They also expressed concerns about prostitution and drug dealing in the area, which, together with the presence of the porn stores, contributes to the negative image of the Times Square and Clinton areas. One representative had recently made specific complaints about a nude bar opposite the back of the school building, and had worked with the Community Board to lessen the effects and even, unsuccessfully, to close that bar.

Social Service Organizations

Three interviews were held with 1) the executive director of an organization providing residential and service needs for older citizens, 2) the executive director of a multi-service settlement house, and 3) the executive director of an AIDS project. A fourth, more informal conversation was held with the executive director of an organization serving the homeless.

Two of these respondents observed that the presence of adult entertainment businesses has a negative effect on the area. The settlement house leader said that the families and children she serves try to avoid Eighth Avenue, and the senior service representative believed that their ability to attract viable commercial tenants for their retail rental space was being hurt.

The AIDS organization representative asserted that pornography may be okay for some, but may be linked to drugs and prostitution because there is also commercial sex taking place in and around these establishments. He believes that there is a double standard prevailing, in that not enough is being done to combat drug dealing, prostitution, and the spread of AIDS. Each of these interviewees was concerned about the negative image of Times Square that may be fostered by the presence of the porn businesses and their ancillary activities.

The respondent from the homeless agency described the presence of a scantily dressed woman dancing on the street and distributing flyers for a newly-opened business one block south of the BID boundaries. This new business is on the same block as the outreach ministry of a church, and very close to the two residences for homeless adults run by her organization. She stated that she is working with people who are "trying to get their lives together" and she found the presence of these establishments not helpful. The three executive directors believed that the appearance and exterior displays were "embarrassing", "seamy", and "seemed to be violent".

As to the issues and problems facing the neighborhood and Times Square, all three mentioned drug dealing and prostitution, and two spoke of the negative effects of street crime, even if they were only perceived effects. All three said that Times Square is and should be a place of entertainment and tourism, but that there was a difference between this and sleaze. One person also mentioned that the stalled 42nd Street development and the empty buildings had "deadened" the block. She was also concerned about the decline of neighborhood service stores, needed by seniors and families living in the area.

Religious Organizations

Six church representatives were interviewed, one of whom had been in the area only a few months while the others had been working in the Times Square area for many years. While these people all decried the content of the advertising at adult use businesses, their image of women, and the negative effects of their existence, their true complaints were directed at the ancillary activities or effects that they insist were the inevitable result of the businesses' presence. Each of these members of the clergy spoke about the prevalence of prostitution activity. Many knew who these prostitutes were, and were concerned about the violence they had observed, women being beaten and other violent incidents associated with the selling of sex on the street.

They all stated that the presence of these stores attracted people who, as one put it, "are involved in some sort of scam". That is, the stores attract hangers-on, street people who engage in gambling, drug dealing, as well as groups of men looking for sex, and women, men, and boys selling sex. Three of these interviewees acknowledged that there is also a great deal of prostitution west of Eighth Avenue where there are no adult entertainment spots.

Clergy spoke of themselves and their parishioners being accosted by prostitutes; one described an attempt by a prostitute to pick his pocket as he walked his dog on Eighth Avenue. One church leader believed that people come from all over the world to patronize the pornography establishments in the area, but three others said that they did not believe that tourists came to Times Square for this purpose. Instead, they maintained that it was difficult for tourists to make their way past the sleaze of Eighth Avenue.

These church people, like the community residents, spoke of a feeling that things had been improving in their community until the most recent influx of additional adult entertainment businesses. In some respects they welcomed what they saw as the improved image of Times Square, and praised the work of the BID. But their major issue, above all others, remains the drug problem, and resultant street crime, which they see as the scourge of the entire community.

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SOME ADDITIONAL TESTIMONY

During the course of this study, in addition to the interviews that made up the formal survey, we received or had passed along to us from time to time written communications from various individuals who live or work in the Times Square area. Some of these are sampled below:

, Proprietor, Restaurant:
(March 1, 1994)

I am a new business owner on West 47th Street between Broadway and Eighth Avenues. We opened our doors at [redacted] on October 7, 1994 [sic, 1993?]. Our restaurant occupies the space of the old Delsomma Restaurant. During these four months we have seen BID's work in the neighborhood evident in the painting of storefront gates, removal of bills posted on abandoned buildings, helpful clean-up crews and ever so accommodating security people. Unfortunately, we have also noticed the opening of four new adult video stores in a two-block stretch between 46th and 48th Streets on Eighth Avenue. While I have never seen any of them with more than two customers inside, the element of underground business they attract is atrocious, namely prostitution, drug dealing and loitering. Since their customers are few they obviously generate their income in some other unobvious manner.

While the owners of the adult video stores have a civil right to earn a living, I am opposed to its impact on the neighborhood and would like to know what I can do to protect the area from similar new business and discourage store owners from operating in the area. Not only does it hurt the area's legitimate businesses but we must remember there are several high schools in the area whose students should not be exposed to these activities.

Thomas K. Duane, Councilmember:

(Letter to the owner of 320 West 45th Street, now occupied by an adult entertainment business, December 23, 1993)

As you may be aware, "Private Eyes" joins the growing list of adult uses (i.e. adult video stores and topless/bottomless dance clubs) in the Clinton neighborhood of Manhattan. Red Zones in other American cities have caused dramatic increases in crime and negatively impacted the local economy. While you may gain short-term economic benefits from renting out your property to an adult use, you also will be creating a negative economic climate for your own property.

You should also be aware that your property is directly across the street from a residentially zoned property filled with families and young children. Moreover, the City Council has been considering legislation which would illegalize adult uses within 500 feet of residentially zoned property. "Private Eyes" would clearly be illegal if such legislation were to pass.

The Block Associations in Clinton have been working long and hard to make their streets safer and drug-free. Renting your property to an adult use such as "Private Eyes" undermines their hard work and significant achievements.

I am aware the Community Board #4 has offered to assist you in identifying a more appropriate use for 320 West 45th Street. I urge you to accept the board's offer. I would be more than happy to provide assistance from my office as well.

The West 45th Street Block Association:

(Letter to Community Board 4, March 4, 1994)

...The "Private Eyes" adult nightclub at 320 W. 45th St. has become a continuous cause of concern and frustration among block residents. Although the club may be in technical compliance with various laws, little by little, Private Eyes has created conditions that cheapen the quiet ambiance of this mostly residential block, adversely affect our quality of life and attract elements (both patrons and non-patrons) who continually disturb the peace.

...

"No Parking" was established on this block several years ago to discourage loitering around parked cars. By allowing (or encouraging) patrons to disregard parking regulations, conditions are created for late night crowds and disturbances.

Indeed, we've noticed a distinct increase in Private Eyes patrons hanging out and milling around parked cars -- late at night usually between 2 and 4 a.m.. These patrons are often inebriated, rowdy and shouting, blowing car horns and in at least one instance they have even tried to overturn a car. A side effect is that car alarms tend to go off frequently.

This late-night congregating in front of the club happens again and again. These people do not live here or have any respect for block residents. And whether by design or happenstance, the club attracts certain non-patrons detrimental to the block. Street prostitution and drug dealing has increased.

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...

Almost every night, Private Eyes has employees handing out advertising flyers on the corner of Eighth Avenue and 45th Street. Although we're cognizant of first amendment rights (which don't necessarily apply to commercial advertising), these pamphleteers tend to block a very busy corner, attract drug dealers and cause litter (from their discarded handouts).

...

We must relate that this is a residential block with approximately 2,000 apartments. This is not a problem of morals, but the presence and behavior of Private Eyes directly and adversely reduces whatever quality is left on this block. From various buildings, we've heard residents complain of being woken up in the middle of the night, others who claim they're afraid to go into their own building if blocked by dealers, crack addicts or other scurrilous characters.

Aside from a few storefront businesses, the Martin Beck Theatre is the only Broadway theatre west of 8th Avenue, bringing onto our block around 2,000 tourists every night and a portion of the \$2.3 Billion revenue of the theatre industry. The conditions created by Private Eyes may not directly affect that revenue, but surely tourists are in increased danger and may leave our city with a foul impression.

Ross Graham and Timothy Gay, Chairperson and Committee Chairperson of Community Board #4:

(August 16, 1993)

Re: the building at the northwest corner of 46th St. and 8th Avenue:

Community Board No. 4 understands that the property you own at the above location is being renovated to possibly accommodate a multi-floor adult entertainment center, or, in other words, a "porn palace."

Community Board No. 4 is on record as opposing a concentration of adult entertainment businesses in any specific neighborhood. Store fronts along Eighth Avenue in the 40s are quickly being turned into pornographic video and literature outlets, and several theaters specialize in adult movies and live entertainment.

The "porno palace" appears to be the first proposed multi-level facility of its kind in the neighborhood.

However, you should know that each of the 300 Blocks from West 43rd to West 59th Street is residential. West 45th, 46th (your corner), 47th and 48th Streets are especially residential with active block associations, and West 46th Street, as you know, is Restaurant Row. A number of

legitimate Broadway, off-Broadway, and off-off-Broadway theaters operate within a few blocks, as well as businesses ranging from major law firms (at Worldwide Plaza) to child care centers. Junior High School 17, with more than 700 children, is located a half a block away, on West 47th Street between 8th and 9th Avenues. In addition, your proposed "porno palace" is within 100 feet of a church.

Community Board No. 4 strongly urges you to reconsider the proposed use of your building.

Rowan Murphy, Assistant Director of Common Ground Community (CGC), operator of The Times Square, an affordable housing program in what was formerly the Times Square Hotel at 25 W. 43 Street:

(Testimony before Manhattan Borough President's hearing, October, 1993)

...CGC acquired The Times Square in March of 1991. At that time, there was one adult use establishment on the south side of W. 43rd Street, across from our building. The block, at that time, had a growing reputation as a "safe corridor," as the result of intensive efforts by the Mayor's Office of Midtown Enforcement, Midtown South, and local businesses to increase community policing and security awareness. In September of '92, two additional adult use establishments opened, the 24-hour "Playpen" and "Malebox" located directly across from our front entrance.

For the 364 individuals who live at The Times Square, and our staff, this concentration of uses has meant a steadily deteriorating quality of life on 43rd Street. Before the Malebox and Playpen opened, tenants could enjoy sitting in the lobby or mezzanine during the evening, strolling to the corner for coffee or lingering on the steps for some fresh air. Now, the street is a gathering place for prostitutes and others involved in illegal activities.

Patrons for the adult use establishments harass and intimidate our elderly tenants, in particular. Patrons use our service entrance as a urinal on a regular basis. Our security staff is hassled when attempting to keep our entrance clear of loiterers from these establishments. The street is now ugly and intimidating at night, discouraging use of the lobby and mezzanine by our tenants and creating noise problems for tenants living at the front of the building overlooking 43rd Street.

The concentration of adult uses on West 43rd Street gives the block a very different appearance and feeling than it had when a single establishment existed there.

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... [T]he density of adult uses, the disruptions they create, and the sordid street activity they attract have been major negative factors for those evaluating our building as a place to live. The majority of the applicants who decline acceptance at our building described their main reason for doing so as concern about the safety and quality of life on the block.

Public Nuisance and Public Health Problems: The Adonis Theatre

In January, 1994, the New York City Department of Health obtained a temporary closing order from the New York State Supreme Court, shutting down the Adonis Theatre, located at 693 Eighth Avenue, near 44th Street. This action was brought under the New York City Administrative Code, the State Sanitary Code and the Penal Law, in order to restrain a public nuisance at the premises and to stop acts of individuals which were detrimental to health and which are considered to be high risk sexual activity. This action was brought as part of the City's continuing effort to help control the spread of the AIDS virus. High risk sexual activities were observed by inspectors on nine visits to the Adonis Theatre over a four month period involving at least 95 individuals. The Court papers stated, "All incidents were seen in open areas. The management of the Adonis Theatre must obviously be aware--or must vigorously shield itself from knowledge--of all this high risk activity that is plainly visible to casual and occasional outside inspectors."

APPENDIX

The Department of City Planning Secondary Effects Study

The Department of City Planning is currently undertaking a study of secondary impacts of adult use establishments in six other locations in New York City. The Department compares assessed values but for the years 1986/7 and 1992/3. Comparing our findings for our years to their selected years, we found that the trends remained the same, but in somewhat different proportions: the difference between assessed valuation rates of change for 1986/7 and 1992/3 was less for the Eighth Avenue study block and the Ninth Avenue control block than for the years of 1985/6 and 1993/4, and the difference was greater for the "DCP years" of 1986/7 and 1992/3 as compared to our years of 1985/6 and 1993/4. These differences in findings may be related to the selection of different years in the real estate "boom and bust" cycle.

For both sets of data, the increases in assessed valuations occurred at a higher rate on the "control" blocks" on which there were no adult use establishments, than on the "study" blocks, on which there were adult use concentrations. We are not asserting a simple cause-and-effect relationship here. There are too many variables-- zoning, market trends, public condemnation proceedings for the 42nd Street Development Project, personal decisions by owners--that may affect assessed values-- in addition to the presence of adult uses.

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**REPORT OF THE ATTORNEY GENERAL'S
WORKING GROUP ON THE REGULATION
OF SEXUALLY ORIENTED BUSINESSES**

June 6, 1989



**HUBERT H. HUMPHREY, III
Attorney General
State of Minnesota**

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**MEMBERS OF THE
ATTORNEY GENERAL'S WORKING GROUP
ON THE REGULATION OF SEXUALLY ORIENTED BUSINESSES**

Ann Burkhart

Associate Professor
University of Minnesota
Law School
Minneapolis, Minnesota

Honorable Kathleen A. Blatz
Minnesota House of Representatives
IR/Bloomington, Minnesota

Honorable Terry M. Dempsey
Minnesota House of Representatives
IR/New Ulm, Minnesota

Thomas L. Fabel
Lindquist & Vennum
Minneapolis, Minnesota

John Lux

Minneapolis Chief of Police
Minneapolis, Minnesota

Sharon Sayles-Belton
Councilwoman
Minneapolis, Minnesota

Honorable Kathleen Yellenga
Minnesota House of Representatives
DFL/St. Paul, Minnesota

William Wilson
Councilman
St. Paul, Minnesota

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TABLE OF CONTENTS

INTRODUCTION	1
SUMMARY	3
IMPACTS OF SEXUALLY ORIENTED BUSINESSES	6
Minneapolis Study	6
St. Paul	7
Indianapolis	8
Phoenix	9
Los Angeles	10
Concentration of Sexually Oriented Businesses Neighborhood Case Study ..	10
Testimony	12
SEXUALLY ORIENTED BUSINESSES AND ORGANIZED CRIME	14
PROSECUTORIAL AND REGULATORY ALTERNATIVES	20
OBSCENITY PROSECUTION	21
RECOMMENDATIONS	24
OTHER LEGAL REMEDIES	25
RICO/FORFEITURE	25
RECOMMENDATIONS	28
NUISANCE INJUNCTIONS	28
RECOMMENDATIONS	30
ZONING	30
Supreme Court Decisions	31

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Standards and Need for Legal Zoning 35

Documentation to Support Zoning Ordinances 36

Availability of Locations for Sexually Oriented Businesses 37

Distance Requirements 39

Requiring Existing Businesses to Comply with New Zoning 40

RECOMMENDATIONS 41

LICENSING AND OTHER REGULATIONS 41

RECOMMENDATIONS 44

CONCLUSION 45

480
686
2-~~688~~ 481

INTRODUCTION

Many communities in Minnesota have raised concerns about the impact of sexually oriented businesses on their quality of life. It has been suggested that sexually oriented businesses serve as a magnet to draw prostitution and other crimes into a vulnerable neighborhood. Community groups have also voiced the concern that sexually oriented businesses can have an adverse effect on property values and impede neighborhood revitalization. It has been suggested that spillover effects of the businesses can lead to sexual harassment of residents and scatter unwanted evidence of sexual liaisons in the paths of children and the yards of neighbors.

Although many communities have sought to regulate sexually oriented businesses, these efforts have often been controversial and equally often unsuccessful. Much community sentiment against sexually oriented businesses is an outgrowth of hostility to sexually explicit forms of expression. Any successful strategy to combat sexually oriented businesses must take into account the constitutional rights to free speech which limit available remedies.

Only those pornographic materials which are determined to be "obscene" have no constitutional protection. As explained later in more detail, only that pornography which, according to community standards and taken as a whole, "appeals to the prurient interest" (as opposed to an interest in healthy sexuality), describes or depicts sexual conduct in a "patently offensive way" and "lacks serious literary, artistic, political or scientific value," can be prohibited or prosecuted. Miller v. California, 413 U.S. 15, 24 (1973).

Other pornography and the businesses which purvey it can only be regulated where a harm is demonstrated and the remedy is sufficiently tailored to prevent that harm without burdening First Amendment rights. In order to reduce or eliminate the impacts of sexually oriented businesses, each community must find the balance between the dangers of pornography and the constitutional rights to free speech. Each community must have evidence of harm. Each community must know the range of legal tools which can be used to combat the adverse impacts of pornography and sexually oriented businesses.

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On June 21, 1988, Attorney General Hubert Humphrey III announced the formation of a Working Group on the Regulation of Sexually Oriented Businesses to assist public officials and private citizens in finding legal ways to reduce the impacts of sexually oriented businesses. Members of the Working Group were selected for their special expertise in the areas of zoning and law enforcement and included bipartisan representatives of the state Legislature as well as members of both the Minneapolis and St. Paul city councils who have played critical roles in developing city ordinances regulating sexually oriented businesses.

The Working Group heard testimony and conducted briefings on the impacts of sexually oriented businesses on crime and communities and the methods available to reduce or eliminate these impacts. Extensive research was conducted to review regulation and prosecution strategies used in other states and to analyze the legal ramifications of these strategies.

As testimony was presented, the Working Group reached a consensus that a comprehensive approach is required to reduce or eliminate the impacts of sexually oriented businesses. Zoning and licensing regulations are needed to protect residents from the intrusion of "combat zone" sexual crime and harassment into their neighborhoods. Prosecution of obscenity has played an important role in each of the cities which have significantly reduced or eliminated pornography. The additional threat posed by the involvement of organized crime, if proven to exist, may justify the resources needed for prosecution of obscenity or require use of a forfeiture or racketeering statute.

The Working Group determined that it could neither advocate prohibition of all sexually explicit material nor the use of regulation as a pretext to eliminate all sexually oriented businesses. This conclusion is no endorsement of pornography or the businesses which profit from it. The Working Group believes much pornography conveys a message which is degrading to women and an affront to human dignity. Commercial pornography promotes the misuse of vulnerable people and can be used by either a perpetrator or a victim to rationalize sexual violence. Sexually oriented businesses have a deteriorating effect upon neighborhoods and draw involvement of organized crime.

Communities are not powerless to combat these problems. . . But to be most effective in defending itself from pornography each community must work from the evidence and within the law. The report of this Working Group is designed to assist local communities in developing an appropriate and effective defense.

The first section of the report discusses evidence that sexually oriented businesses, and the materials from which they profit, have an adverse impact on the surrounding communities. It provides relevant evidence which local communities can use as part of their justification for reasonable regulation of sexually oriented businesses.

The Working Group also discussed the relationship between sexually oriented businesses and organized crime. Concerns about these broader effects of sexually oriented businesses underlie the Working Group's recommendations that obscenity should be prosecuted and the tools of obscenity seized when sexually oriented businesses break the law.

The second section of this report describes strategies for regulating sexually oriented businesses and prosecuting obscenity. The report presents the principal alternatives, the recommendations of the Working Group and some of the legal issues to consider when these strategies are adopted.

The goal of the Attorney General's Working Group in providing this report is to support and assist local communities who are struggling against the blight of pornography. When citizens, police officers and city officials are concerned about crime and the deterioration of neighborhoods, each of us lives next door. No community stands alone.

SUMMARY

The Attorney General's Working Group on the Regulation of Sexually Oriented Businesses makes the following recommendations to assist communities in protecting themselves from the adverse effects of sexually oriented businesses. Some or all of

these recommendations may be needed in any given community. Each community must decide for itself the nature of the problems it faces and the proposed solutions which would be most fitting.

1. City and county attorneys' offices in the Twin Cities metropolitan area should designate a prosecutor to pursue obscenity prosecutions and support that prosecutor with specialized training.
2. The Legislature should consider funding a pilot program to demonstrate the efficacy of obscenity prosecution and should encourage the pooling of resources between urban and suburban prosecutor offices by making such cooperation a condition for receiving any such grant funds.
3. The Attorney General should provide informational resources for city and county attorneys who prosecute obscenity crimes.
4. Obscenity prosecutions should begin with cases involving those materials which most flagrantly offend community standards.
5. The Legislature should amend the present forfeiture statute to include as grounds for forfeiture all felonies and gross misdemeanors pertaining to solicitation, inducement, promotion or receiving profit from prostitution and operation of a "disorderly house."
6. The Legislature should consider the potential for a RICO-like statute with an obscenity predicate.
7. Prosecutors should use the public nuisance statute to enjoin operations of sexually oriented businesses which repeatedly violate laws pertaining to prostitution, gambling or operating a disorderly house.

8. **Communities should document findings of adverse secondary effects of sexually oriented businesses prior to enacting zoning regulations to control these uses so that such regulations can be upheld if challenged in court.**
9. **To reduce the adverse effects of sexually oriented businesses, communities should adopt zoning regulations which set distance requirements between sexually oriented businesses and sensitive uses, including but not limited to residential areas, schools, child care facilities, churches and parks.**
10. **To reduce adverse impacts from concentration of these businesses, communities should adopt zoning ordinances which set distances between sexually oriented businesses and between sexually oriented businesses and liquor establishments, and should consider restricting sexually oriented businesses to one use per building.**
11. **Communities should require existing businesses to comply with new zoning or other regulation of sexually oriented businesses within a reasonable time so that prior uses will conform to new laws.**
12. **Prior to enacting licensing regulations, communities should document findings of adverse secondary effects of sexually oriented businesses and the relationship between these effects and proposed regulations so that such regulations can be upheld if challenged in court.**
13. **Communities should adopt regulations which reduce the likelihood of criminal activity related to sexually oriented businesses, including but not limited to open booth ordinances and ordinances which authorize denial or revocation of licenses when the licensee has committed offenses relevant to the operation of the business.**

14. **Communities should adopt regulations which reduce exposure of the community and minors to the blighting appearance of sexually oriented businesses, including but not limited to regulations of signage and exterior design of such businesses, and should enforce state law requiring sealed wrappers and opaque covers on sexually oriented material.**

IMPACTS OF SEXUALLY ORIENTED BUSINESSES

The Working Group reviewed evidence from studies conducted in Minneapolis and St. Paul and in other cities throughout the country. These studies, taken together, provide compelling evidence that sexually oriented businesses are associated with high crime rates and depression of property values. In addition, the Working Group heard testimony that the character of a neighborhood can dramatically change when there is a concentration of sexually oriented businesses adjacent to residential property.

Minneapolis Study

In 1980, on direction from the Minneapolis City Council, the Minneapolis Crime Prevention Center examined the effects of sex-oriented and alcohol-oriented adult entertainment upon property values and crime rates. This study used both simple regression and multiple regression statistical analysis to evaluate whether there was a causal relationship between these businesses and neighborhood blight.

The study concluded that there was a close association between sexually oriented businesses, high crime rates and low housing values in a neighborhood. When the data was reexamined using control variables such as the mean income in the neighborhood to determine whether the association proved causation, it was unclear whether sexually oriented businesses caused a decline in property values. The Minneapolis study concluded that sexually oriented businesses concentrate in areas which are relatively deteriorated and, at most, they may weakly contribute to the continued depression of property values.

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However, the Minneapolis study found a much stronger relationship between sexually oriented businesses and crime rates. A crime index was constructed including robbery, burglary, rape and assault. The rate of crime in areas near sexually oriented businesses was then compared to crime rates in other areas. The study drew the following conclusions:

1. The effects of sexually oriented businesses on the crime rate index is positive and significant regardless of which control variable is used.
2. Sexually oriented businesses continue to be associated with higher crime rates, even when the control variables' impacts are considered simultaneously.

According to the statistical analysis conducted in the Minneapolis study, the addition of one sexually oriented business to a census tract area will cause an increase in the overall crime rate index in that area by 9.15 crimes per thousand people per year even if all other social factors remain unchanged.

St. Paul

In 1978, the St. Paul Division of Planning and the Minnesota Crime Control Planning board conducted a study of the relationship between sex-oriented and alcohol-oriented adult entertainment businesses and neighborhood blight. This study looked at crime rates per thousand and median housing values over time as indices of neighborhood deterioration. The study combined sex-oriented and alcohol-oriented businesses, so its conclusions are only suggestive of the effects of sexually oriented businesses alone. Nevertheless, the study reached the following important conclusions:

1. There is a statistically significant correlation between the location of adult businesses and neighborhood deterioration.

- 2. Adult entertainment establishments tend to locate in somewhat deteriorated areas.
- 3. Additional relative deterioration of an area follows location of an adult business in the area.
- 4. There is a significantly higher crime rate associated with two such businesses in an area than is associated with only one adult business.
- 5. Housing values are also significantly lower in an area where there are three adult businesses than they are in an area with only one such business.

Similar conclusions about the adverse impact of sexually oriented businesses on the community were reached in studies conducted in cities across the nation.

Indianapolis

In 1983, the City of Indianapolis researched the relationship between sexually oriented businesses and property values. The study was based on data from a national random sample of 20 percent of the American Institute of Real Estate Appraisers.

The Study found the following:

- 1. The appraisers overwhelmingly (80%) felt that an adult bookstore located in a neighborhood would have a negative impact on residential property values within one block of the site.
- 2. The real estate experts also overwhelmingly (71%) believed that there would be a detrimental effect on commercial property values within the same one block radius.

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3. This negative impact dissipates as the distance from the site increases, so that most appraisers believed that by three blocks away from an adult bookstore, its impact on property values would be minimal.

Indianapolis also studied the relationship between crime rates and sexually oriented bookstores, cabarets, theaters, arcades and massage parlors. A 1984 study entitled "Adult Entertainment Businesses in Indianapolis" found that areas with sexually oriented businesses had higher crime rates than similar areas with no sexually oriented businesses.

1. Major crimes, such as criminal homicide, rape, robbery, assault, burglary, and larceny, occurred at a rate that was 23 percent higher in those areas which had sexually oriented businesses.

2. The sex-related crime rate, including rape, indecent exposure, and child molestation, was found to be 77 percent higher in those areas with sexually oriented businesses.

Phoenix

The Planning Department of Phoenix, Arizona published a study in 1979 entitled "Relation of Criminal Activity and Adult Businesses." This study showed that arrests for sexual crimes and the location of sexually oriented businesses were directly related. The study compared three areas with sexually oriented businesses with three control areas which had similar demographic and land use characteristics, but no sexually oriented establishments. The study found that,

1. Property crimes were 43 percent higher in those areas which contained a sexually oriented business.

2. The sex crime rate was 500 percent higher in those areas with sexually oriented businesses.

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3. The study area with the greatest concentration of sexually oriented businesses had a sex crimes rate over 11 times as large as a similar area having no sexually oriented businesses.

Los Angeles

A study released by the Los Angeles Police Department in 1984 supports a relationship between sexually oriented businesses and rising crime rates. This study is less definitive, since it was not designed to use similar areas as a control. The study indicated that there were 11 sexually oriented adult establishments in the Hollywood, California, area in 1969. By 1975, the number had grown to 88. During the same time period, reported incidents of "Part I" crime (i.e., homicide, rape, aggravated assault, robbery, burglary, larceny and vehicle theft) increased 7.6 percent in the Hollywood area while the rest of Los Angeles had a 4.2 percent increase. "Part II" arrests (i.e. forgery, prostitution, narcotics, liquor law violations, and gambling) increased 3.4 percent in the rest of Los Angeles, but 45.4 percent in the Hollywood area.

Concentration of Sexually Oriented Businesses
Neighborhood Case Study

In St. Paul, there is one neighborhood which has an especially heavy concentration of sexually oriented businesses. The blocks adjacent to the intersection of University Avenue and Dale Street have more than 20 percent of the city's adult uses (4 out of 19), including all of St. Paul's sexually oriented bookstores and movie theaters.

The neighborhood, as a whole, shows signs of significant distress, including the highest unemployment rates in the city, the highest percentage of families below the poverty line in the city, the lowest median family income and the lowest percentage of high school and college graduates. (See 40-Acre Study on Adult Entertainment, St. Paul Department of Planning and Economic Development, Division of Planning, 1987 at p. 19.) It would be difficult to attribute these problems in any simple way to sexually oriented businesses.

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However, it is likely that there is a relationship between the concentration of sexually oriented businesses and neighborhood crime rates. The St. Paul Police Department has determined that St. Paul's street prostitution is concentrated in a "street prostitution zone" immediately adjacent to the intersection where the sexually oriented businesses are located. Police statistics for 1986 show that, of 279 prostitution arrests for which specific locations could be identified, 70 percent (195) were within the "street prostitution zone." Moreover, all of the locations with 10 or more arrests for prostitution were within this zone.

The location of sexually oriented businesses has also created a perception in the community that this is an unsafe and undesirable part of the city. In 1983, Western State Bank, which is currently located across the street from an adult bookstore, hired a research firm to survey area residents regarding their preferred location for a bank and their perceptions of different locations. A sample of 305 people were given a list of locations and asked, "Are there any of these locations where you would not feel safe conducting your banking business?"

No more than 4 per cent of the respondents said they would feel unsafe banking at other locations in the city. But 36 percent said they would feel unsafe banking at Dale and University, the corner where the sexually oriented businesses are concentrated.

The Working Group reviewed the 1987 40-Acre Study on Adult Entertainment prepared by the Division of Planning in St. Paul's Department of Planning and Economic Development. This study summarized testimony presented to the Planning Commission regarding neighborhood problems:

Residents in the University/Dale area report frequent sex-related harassment by motorists and pedestrians in the neighborhood. Although it cannot be proved that the harassers are patrons of adult businesses, it is reasonable to suspect such a connection. Moreover, neighborhood residents submitted evidence to the Planning Commission in the form of discarded pornographic literature allegedly found in the streets, sidewalks, bushes and alleys near adult businesses. Such literature is sexually very explicit, even on the cover.

and under the present circumstances becomes available to minors even though its sale to minors is prohibited.

Testimony

The Working Group heard testimony that a concentration of sexually oriented businesses has serious impacts upon the surrounding neighborhood. The Working Group heard that pornographic materials are left in adjacent lots. One person reported to the police that he had found 50 pieces of pornographic material in a church parking lot near a sexually oriented business. Neighbors report finding used condoms on their lawns and sidewalks and that sex acts with prostitutes occur on streets and alleys in plain view of families and children. The Working Group heard testimony that arrest rates understate the level of crime associated with sexually oriented businesses. Many robberies and thefts from "johns" and many assaults upon prostitutes are never reported to the police.

Prostitution also results in harassment of neighborhood residents. Young girls on their way to school or young women on their way to work are often propositioned by johns. The Flick theater caters to homosexual trade, and male prostitution has been noted in the area. Neighborhood boys and men are also accosted on the street. A police officer testified that one resident had informed him that he found used condoms in his yard all the time. Both his teenage son and daughter had been solicited on their way to school and to work.

The Working Group heard testimony that in the Frogtown neighborhood, immediately north of the University-Dale intersection in St. Paul, there has been a change over time in the quality of life since the sexually oriented businesses moved into the area. The Working Group heard that the neighborhood used to be primarily middle class, did not have a high crime rate and did not have prostitution. St. Paul police officers testified that they believed the sexually oriented businesses caused neighborhood problems, particularly the increase in prostitution and other crime rates. Property values were suffering, since the presence of high crime rates made the area

fashion with organized crime either the mafia or some other facet of non-mafia never-the-less highly organized crime.

Id. at 1047-48.

Thomas Bohling of the Chicago Police Department Organized Crime Division, Vice Control Section, told the Pornography Commission that "it is the belief of state, federal and local law enforcement that the pornography industry is controlled by organized crime families. If they do not own the business outright, they most certainly extract street tax from independent smut peddlers." Id. at 1048 (emphasis in original).

The Pornography Commission stated that it had been advised by Los Angeles Police Chief Daryl F. Gates that "organized crime families from Chicago, New York, New Jersey and Florida are openly controlling and directing the major pornography operations in Los Angeles." Id.

The Pornography Commission was told by Jimmy Fratianno, described by the Commission as a member of LCN, "that large profits have kept organized crime heavily involved in the obscenity industry." Id. at 1052. Fratianno testified that "95% of the families are involved in one way or another in pornography. . . . It's too big. They just won't let it go." Id. at 1052-53.

The Pornography Commission concluded that "organized crime in its traditional LCN forms and other forms exerts substantial influence and control over the obscenity industry. Though a number of significant producers and distributors are not members of LCN families, all major producers and distributors of obscene material are highly organized and carry out illegal activities with a great deal of sophistication." Id. at 1053.

The Pornography Commission reported that Michael George Thevis, reportedly one of the largest pornographers in the United States during the 1970's was convicted in 1979 of RICO (Racketeer Influenced and Corrupt Organizations) violations including murder, arson and extortion. The Commission also reported examples of other crimes associated with the pornography industry, including prostitution and other sexual

abuse, narcotics distribution, money laundering and tax violations, copyright violations and fraud. Id. at 1056-65.

Although the Pornography Commission report has been criticized for relying on the testimony of unreliable informants in drawing its conclusions finding links between pornography and organized crime (See Scott, Book Reviews, 78 J. Crim. L. & Criminology 1145, 1158-59 (1988)), its conclusions find additional support in recent state studies.

The California Department of Justice recently reported that:

California's primacy in the adult videotape industry is of law enforcement concern because the pornography business has been prone to organized crime involvement. Immense profits can be realized through pornography operations, and until recently, making and distributing pornography involved a relatively low risk of prosecution. But more aggressive law enforcement efforts and turmoil within the pornography business has destabilized the smooth flow of easy money for some of its major operations

As long as control over pornography distribution is contested, and organized crime figures continue their involvement in the business, the pornography industry will remain of interest to law enforcement officials statewide.

Bureau of Organized Crime and Criminal Intelligence, Department of Justice, State of California, Organized Crime in California 1987: Annual Report to the California Legislature at 59-62 (1988).

The Pennsylvania Crime Commission similarly determined in a 1980 report that most pornography stores examined were affiliated or owned by one of three men who had ties with "nationally known pornography figures who are members or associated of organized crime families." Pennsylvania Crime Commission, A Decade of Organized Crime: 1980 Report at 119.

For example, Reuben Sturman, a leading pornography industry figure based in Cleveland, was reported by the FBI in 1978 to have built his empire with the assistance of LCN member DiBernardo. Federal Bureau of Investigation Report Regarding the

Extent of Organized Crime Involvement in Pornography (1978). Sturman, who reportedly controls half of the \$8 billion United States pornography industry, was recently indicted by a federal grand jury in Las Vegas for racketeering violations and by a federal grand jury in Cleveland for income tax evasion and tax fraud. Newsweek, August 8, 1988, p. 3.

Evidence of the vulnerability of sexually oriented businesses to organized crime involvement underscores the importance of criminal prosecution of these businesses when they engage in illegal activities, including distribution of obscenity and support of prostitution. Prosecution can increase the risk and reduce the profit margin of conducting illegal activities. It may also disclose organized crime association with local pornography businesses and increase the costs of criminal enterprise in Minnesota.

In addition to prosecution, forfeiture of property used in the illegal activities related to sexually oriented businesses can cut deeply into profits. Regulation to permit license revocation for conviction of subsequent crimes may also expose and increase control over criminal enterprises related to sexually oriented businesses.

PROSECUTORIAL AND REGULATORY ALTERNATIVES

The regulation of many sexually oriented businesses, like other businesses dealing in activity with an expressive component, is circumscribed by the First Amendment of the United States Constitution.^{3/} Nonetheless, the First Amendment does not impose a barrier to the prosecution of obscenity, which is not protected by the First Amendment, or to reasonable regulation of sexually oriented businesses if the

3/ The First Amendment provides:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, or to petition the government for a redress of grievances.

The constitutional guarantee of freedom of speech, often the basis for challenges to regulation of sexually oriented businesses, restricts state as well as federal actions. See, e.g., Fiske v. Kansas, 274 U.S. 380, 47 S. Ct. 655 (1927).

regulation is not designed to suppress the content of expressive activity and is sufficiently tailored to accomplish the regulatory purpose.

The Working Group believes that communities have more prosecutorial and regulatory opportunities than they may currently recognize. The purpose of this section of the Report is to identify and recommend enforcement and regulatory opportunities. Of course, each community must decide on its own how to balance its limited resources and the wide variety of competing demands for such resources.

I. OBSCENITY PROSECUTION

Obscene material is not protected by the First Amendment. Miller v. California, 413 U.S. 15, 93 S. Ct. 2607 (1973). The sale or distribution of obscene material in Minnesota is a criminal offense. The penalty was recently increased to up to one year in jail and a \$3,000 fine for a first offense, and up to two years in jail and a \$10,000 fine for a second or subsequent offense within five years. Minn. Stat. § 617.241, subd. 3 (1988).^{4/}

The Working Group believes that Minnesota's obscenity statutes are adequate to prosecute and penalize the sale and distribution of obscene materials. However, historically, widespread obscenity prosecution has not occurred.

The Working Group believes this is not because the sale or distribution of obscene publications in Minnesota is rare, but because prosecutors have been reluctant to bring obscenity charges, because of limited resources, difficulties faced when prosecuting obscenity, and because obscenity has historically been considered a victimless crime.

^{4/} The prior penalty was a fine only -- up to \$10,000 for a first offense and up to \$20,000 for a second or subsequent offense. Minn. Stat. § 617.241, subd. 3 (1986). Obscenity arrests are so infrequent that incidents involving possible violations of section 617.241 are not separately compiled by the Minnesota Bureau of Criminal Comprehension. See Bureau of Criminal Apprehension, 1987 Minnesota Annual Report on Crime, Missing Children and Bureau of Criminal Apprehension Activities.

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Obscenity, however, should no longer be viewed as a victimless crime.^{5/} There is mounting evidence that sexually oriented businesses are, as described earlier in this report, often associated with increases in crime rates and a decline in the quality of life of neighborhoods in which they are located. Further, as discussed previously, when there is no prosecution of obscenity, large cash profits make pornographic operations very attractive to members of organized crime. The Working Group thus believes that prosecution of obscenity, particularly cases involving children, violence or bestiality, should assume a higher priority for law enforcement officials.

In addition, many of the difficulties faced when prosecuting obscenity can be addressed by adequate training and assistance. In order to prove that material is obscene, a prosecutor must prove:

(i) that the average person, applying contemporary community standards would find that the work, taken as a whole, appeals to the prurient interest in sex;

(ii) that the work depicts sexual conduct . . . in a patently offensive manner; and

(iii) that the work, taken as a whole, lacks serious literary, artistic, political, or scientific value.

Minn. Stat. § 617.241, subd. 1(a)(i-iii) (1988). This statutory standard was drawn to be consistent with constitutional standards set forth in Miller, supra.

^{5/} Two blue ribbon commissions have reached different conclusions regarding the harmfulness of sexually explicit material to individuals. A presidential Commission on Obscenity and Pornography concluded in 1970 that there was no evidence of "social or individual harms" caused by sexually explicit materials and, therefore, "federal, state and local legislation prohibiting the sale, exhibition, or distribution of sexual materials to consenting adults should be repealed." The Report of the Comm'n on Obscenity and Pornography at 57-8 (Bantam Paperback ed. 1970). However, in 1986, the Attorney General's Commission on Pornography concluded that "sexually violent materials . . . bear . . . a causal relationship to antisocial acts of sexual violence . . . [and that] the evidence supports the conclusion that substantial exposure to [non-violent] degrading material increases the likelihood for an individual [to] . . . commit an act of sexual violence or sexual coercion." Attorney General's Comm'n on Pornography, 1 Final Report at 326, 333 (1986).

To be sure, prosecutors face a number of hazards in prosecuting obscenity. They include inadequate training in this specialized area of law, attempts by defense attorneys to remove jurors who find pornography offensive, the offering into evidence of polls and surveys through expert testimony to prove tolerant community standards, efforts to guide jurors with jury instructions favorable to the defense, and discouragement with unsuccessful prosecutions.

But the hazards can be overcome. Alan E. Sears, former executive director of the U.S. Attorney General's Commission on Pornography has stated:

Prosecutors can successfully obtain obscenity convictions in virtually any jurisdiction in the United States. In order to obtain a conviction, it is incumbent upon a prosecutor to prepare well, know the law, not fall into the "one case syndrome" trap, obtain a representative jury through proper voir dire, keep the focus of the trial on the unlawful conduct of the defendant, and obtain legally sound instructions.

Sears, "How To Lose A Pornography Case," The CDL Reporter (n.d.).

The Working Group heard testimony from prosecutors who have pursued obscenity cases nationally regarding effective ways to prosecute obscenity cases. Materials can be bought or rented, rather than seized under warrant. In the absence of survey data, community standards can be left to the wisdom of the jury. In that case, experts should be prepared to testify if the defense attempts to make a statistical case that the material is not obscene. Prosecution of obscenity is also likely to be most effective if initial prosecutions focus on materials which are patently offensive to the community, such as those involving children, violence or bestiality.

The experience of other cities has demonstrated that vigorous and sustained enforcement of obscenity statutes can sharply reduce or virtually eliminate sexually oriented businesses. Cincinnati, Omaha, Atlanta, Charlotte, Indianapolis and Fort Lauderdale were cited to the Working Group as examples of cities which have

successful programs of obscenity prosecution.^{6/} The Working Group encourages prosecutors to take advantage of increasing training opportunities and other assistance for obscenity prosecutions and to reassess the desirability of increased enforcement. The Working Group is pleased to note that county attorneys and law enforcement groups in Minnesota have recently held forums and seminars on obscenity law enforcement and prosecution. The U.S. Justice Department's National Obscenity Enforcement Unit offers assistance to local prosecutors, including sample pleadings, indictments, search warrants, motions, responses and trial memoranda.^{7/}

RECOMMENDATIONS

1. City and county attorneys' offices in the Twin Cities metropolitan area should designate a prosecutor to pursue obscenity prosecutions and support that prosecutor with specialized training.
2. The Legislature should consider funding a pilot program to demonstrate the efficacy of obscenity prosecution and should encourage the pooling of resources between urban and suburban prosecuting offices by making such cooperation a condition of receiving any such grant funds.

^{6/} Memorandum to Jim Bellus, executive assistant to St. Paul Mayor George Latimer (prepared by St. Paul Department of Planning and Economic Development) (July 5, 1988); see also Waters, "The Squeeze on Sleaze," Newsweek, Feb. 1, 1988, at 45 ("After more than 10 years of levying heavy fines and making arrests, Atlanta has won national renown as 'the city that cleaned up pornography.'").

^{7/} The Address of the National Obscenity Enforcement Unit is U.S. Justice Department, 10th & Pennsylvania Ave. N.W., Room 2218, Washington, D.C. 20530. Its telephone number is 202-633-5780. Assistance is also available from Citizens for Decency through Law, Inc., 2845 E. Camelback Rd., Suite 740, Phoenix, AZ 85016. It is the publisher of "The Preparation and Trial of an Obscenity Case: A Guide for the Prosecuting Attorney." Its telephone number is 602-381-1322. The National Obscenity Law Center, another private organization, is located at 475 Riverside Drive, Suite 236, New York, N.Y. 10115. It publishes an Obscenity Law Bulletin and the "Handbook on the Prosecution of Obscenity Cases." Its telephone number is 212-870-3216.

3. The Attorney General should provide informational resources for city and county attorneys who prosecute obscenity crimes.
4. Obscenity prosecutions should concentrate on cases that most flagrantly offend community standards.

II. OTHER LEGAL REMEDIES

A. RICO/FORFEITURE

In addition to traditional criminal prosecutions, use of RICO statutes and criminal and civil forfeiture actions may also prove to be successful against obscenity offenders. By attacking the criminal organization and the profits of illegal activity, such actions can provide a strong disincentive to the establishment and operation of sexually oriented businesses. For example, the federal government and a number of the twenty-eight states which have enacted racketeer influenced and corrupt organization (RICO) statutes include obscenity offenses as predicate crimes. Generally speaking, to violate a RICO statute, a person must acquire or maintain an interest in or control of an enterprise, or must conduct the affairs of an enterprise through a "pattern of criminal activity." That pattern of criminal activity may include obscenity violations, which in turn can expose violators to increased fines and penalties as well as forfeiture of all property acquired or used in the course of a RICO violation. These statutes generally enable prosecutors to obtain either criminal or civil forfeiture orders to seize assets and may also be used to obtain injunctive relief to divest repeat offenders of financial interests in sexually oriented businesses. See 18 U.S.C. §§ 1961-68 (West Supp. 1988). RICO statutes may be particularly effective in dismantling businesses dominated by organized crime, but they may be applied against other targets as well.

The Working Group believes that Minnesota should enact a RICO-like statute that would encompass increased penalties for using a "pattern" of criminal obscenity acts to conduct the affairs of a business entity. Provisions authorizing the seizure of assets for obscenity violations should be considered, but the limitations imposed by the First Amendment must be taken into account.

It has been argued that a RICO or forfeiture statute based on obscenity crime violations threatens to "chill protected speech" because it would permit prosecutors to seize non-obscene materials from distributors convicted of violating the obscenity statute. American Civil Liberties Union, Polluting The Censorship Debate: A Summary And Critique Of The Final Report Of The Attorney General's Commission On Pornography at 116-117 (1986).

However, a narrow majority of the United States Supreme Court recently held that there is no constitutional bar to a state's inclusion of substantive obscenity violations among the predicate offenses for its RICO statute. Sappenfield v. Indiana, 57 U.S.L.W. 4180, 4183-4184 (February 21, 1989). The Court recognized that "any form of criminal obscenity statute applicable to a bookseller will induce some tendency to self-censorship and have some inhibitory effect on the dissemination of material not obscene." Id. at 4184. But the Court ruled that, "the mere assertion of some possible self-censorship resulting from a statute is not enough to render an anti-obscenity law unconstitutional under our precedent." Id. The Court specifically upheld RICO provisions which increase penalties where there is a pattern of multiple violations of obscenity laws.

However, in a companion case, the Court also invalidated a pretrial seizure of a bookstore and its contents after only a preliminary finding of "probable cause" to believe that a RICO violation had occurred. Fort Wayne Books, Inc. v. Indiana, 57 U.S.L.W. 4180, 4184-4185 (February 21, 1989). The Court explained there is a rebuttable presumption that expressive materials are protected by the First Amendment. That presumption is not rebutted until the claimed justification for seizure of materials, the elements of a RICO violation, are proved in an adversary proceeding. Id. at 4185.

The Court did not specifically reach the fundamental question of whether seizure of the assets of a sexually oriented business such as a bookstore is constitutionally permissible once a RICO violation is proved. The Court explained:

[F]or the purposes of disposing of this case, we assume without deciding that bookstores and their contents are forfeitable (like other property

such as a bank account or yacht) when it is proved that these items are property actually used in, or derived from, a pattern of violations of the state's obscenity laws.

Id. at 4185. The Working Group believes that a RICO statute which provided for seizure of the contents of a sexually oriented business upon proof of RICO violations would have the potential to significantly curtail the distribution of obscene materials.

Although Minnesota does not have a RICO statute, it does have a forfeiture statute permitting the seizure of money and property which are the proceeds of designated felony offenses. Minn. Stat. § 609.5312 (1988). But, this statute does not permit seizure of property related to commission of the offenses most likely to be associated with sexually oriented businesses. Obscenity crimes are not among the offenses which justify forfeiture. Although solicitation or inducement of a person under age 13 (Minn. Stat. § 609.322, subd. 1) or between the ages of 16 and 18 to practice prostitution (Minn. Stat. § 609.322, subd. 2) are included among the offenses which could justify seizure of property, many crimes involving prostitution are outside the reach of the present Minnesota forfeiture law.

The following crimes are not included among the crimes which can justify seizure of property and profits: solicitation, inducement, or promotion of a person between the ages of 13 and 16 to practice prostitution (Minn. Stat. § 609.322, subd. 1A); solicitation, inducement or promotion of a person 18 years of age or older to practice prostitution (Minn. Stat. § 609.322, subd. 3); receiving profit derived from prostitution (Minn. Stat. § 609.323); owning, operating or managing a "disorderly house," in which conduct habitually occurs in violation of laws pertaining to liquor, gambling, controlled substances or prostitution (Minn. Stat. § 609.33).

Although its reach would be much more limited, the legislature should also consider providing for forfeiture of property used to commit an obscenity offense or which represents the proceeds of obscenity offenses. Under the holding in Fort Wayne Books, Inc. v. Indiana, such forfeiture could not take place, if at all, until it was proved that the underlying obscenity crimes had been committed.

There are no comparable constitutional issues raised by enacting or enforcement of forfeiture statutes based on violations of prostitution, gambling, or liquor laws. The legislature may require sexually oriented businesses which violate these laws to forfeit their profits. The Working Group believes that such an expansion of forfeiture laws would give prosecutors greater leverage to control the operation of those businesses which pose the greatest danger to the community.

RECOMMENDATIONS

1. The legislature should amend the present forfeiture statute to include as grounds for forfeiture all felonies and gross misdemeanors pertaining to solicitation, inducement, promotion or receiving profit from prostitution and operation of a "disorderly house."
2. The legislature should consider the potential for a RICO-like statute with an obscenity predicate.

B. NUISANCE INJUNCTIONS

Minnesota law enforcement authorities may obtain an injunction and close down operations when a facility constitutes a public nuisance. A public nuisance exists when a business repeatedly violates laws pertaining to prostitution, gambling or keeping a "disorderly house." The Minnesota public nuisance law permits a court to order a building to be closed for one year. Minn. Stat. §§ 617.80-.87 (1988).

Nuisance injunctions to close down sexually oriented businesses which repeatedly violate laws pertaining to prosecution, gambling or disorderly conduct are potentially powerful regulatory devices. The fact that a building in which prosecution or other offenses occur houses a sexually oriented business does not shield the facility from application of nuisance law based on such offenses. Arcara v. Cloud Books, Inc., 478 U.S. 697, 106 S. Ct. 3172 (1986) (First Amendment does not shield adult bookstore

from application of New York State nuisance law designed in part to close places of prostitution).

Although the Working Group believes that nuisance injunctions with an obscenity predicate would be effective in controlling sexually oriented businesses, such provisions would probably be unconstitutional under current U.S. Supreme Court decisions. Six Supreme Court justices joined in the Arcara result, but two of them - Justices O'Connor and Stevens - concurred with these words of caution:

If, however, a city were to use a nuisance statute as a pretext for closing down a book store because it sold indecent books or because of the perceived secondary effects of having a purveyor of such books in the neighborhood, the case would clearly implicate First Amendment concerns and require analysis under the appropriate First Amendment standard of review. Because there is no suggestion in the record or opinion below of such pretextual use of the New York nuisance provision in this case, I concur in the Court's opinion and judgment.

Arcara, supra, 478 U.S. at 708, 106 S. Ct. at 3178.

In an earlier case, Vance v. Universal Amusement, 445 U.S. 308, 100 S. Ct. 1156 (1980), the Court ruled unconstitutional a Texas public nuisance statute authorizing the closing of a building for a year if the building is used "habitual[ly]" for the "commercial exhibition of obscene material." Id. at 310 n.2, 100 S. Ct. at 1158 n.2.

The Court's recent holdings in Sappenfield and Fort Wayne Books, Inc. give no indication that the Court would now look more favorably upon an injunction to close down a facility which sold obscene materials. The Court assumed without deciding that forfeiture of bookstore assets could be constitutional in a RICO case. But, in making this assumption, the Court distinguished forfeiture of assets under RICO from a general restraint on presumptively protected speech. The court approved the reasoning of the Indiana Supreme Court that, "The remedy of forfeiture is intended not to restrain the future distribution of presumptively protected speech but rather to disgorge assets acquired through racketeering activity." Fort Wayne Books, Inc. at 4185. The Court assumed that RICO provisions could be upheld on the basis that

"adding obscenity-law violations to the list of RICO predicate crimes was not a mere ruse to sidestep the First Amendment." Id. Without the relationship to proceeds of crime, a remedy which closed a facility for obscenity violations would be far less likely to withstand constitutional scrutiny.

RECOMMENDATIONS

1. Prosecutors should use the public nuisance statute to enjoin operations of sexually oriented businesses which repeatedly violate laws pertaining to prostitution, gambling or operating a disorderly house.

III. ZONING

Zoning ordinances can be adopted to regulate the location of sexually oriented businesses without violating the First Amendment. Such ordinances can be designed to disperse or concentrate sexually oriented businesses, to keep them at designated distances from specific buildings or areas, such as churches, schools and residential neighborhoods or to restrict buildings to a single sexually oriented usage. Because zoning is an important regulatory tool when properly enacted, the Working Group believes a careful explanation of the law and a review of potential problems in drafting zoning ordinances may be helpful to communities considering zoning to regulate sexually oriented businesses.

A. Supreme Court Decisions

The U.S. Supreme Court upheld the validity of municipal adult entertainment zoning regulations in Young v. American Mini Theaters, Inc., 427 U.S. 50, 96 S.Ct. 2440 (1976), and City of Renton v. Playtime Theaters, Inc., 475 U.S. 41, 106 S.Ct. 926 (1986).^{8/}

In Young, the Court upheld the validity of Detroit ordinances prohibiting the operation of theaters showing sexually explicit "adult movies" within 1,000 feet of any two other adult establishments.^{9/} The ordinances authorized a waiver of the 1,000-foot restriction if a proposed use would not be contrary to the public interest and/or other factors were satisfied. Young, supra, 427 U.S. at 54 n.7, 96 S.Ct. at 2444 n.7. The ordinances were supported by urban planners and real estate experts who testified that concentration of adult-type establishments "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." Id. at 55, 96 S.Ct. at 2445. A "myriad" of locations were left available for adult establishments outside the forbidden 1,000-foot distance zone, and no existing establishments were affected. Id. at 71 n.35, 96 S.Ct. at 2453 n.35.

Writing for a plurality of four, Justice Stevens upheld the zoning ordinance as a reasonable regulation of the place where adult films may be shown because (1) there was a factual basis for the city's conclusion that the ordinance would prevent blight; (2) the ordinance was directed at preventing "secondary effects" of adult-establishment concentration rather than protecting citizens from unwanted "offensive" speech; (3) the ordinance did not greatly restrict access to lawful speech, and (4) "the city must be allowed a reasonable opportunity to experiment with solutions to admittedly serious problems." Id. at 63 n.18, 71 nn.34, 35, 96 S. Ct. at 2445-49 n.18, 2452-53 nn.34, 35.

^{8/} The only reported Minnesota court case reviewing an adult entertainment zoning ordinance is City of St. Paul v. Carlone, 419 N.W.2d 129 (Minn. Ct. App. 1988) (upholding facial constitutionality of St. Paul ordinance).

^{9/} The ordinances also prohibited the location of an adult theaters within 500 feet of a residential area, but this provision was invalidated by the district court, and that decision was not appealed. Young v. American Mini Theaters, Inc., 427 U.S. 50, 52 n.2, 96 S.Ct. 2440, 2444 n.2 (1976).

Justice Stevens did not expressly describe the standard he had used, but it was clear that the plurality would afford non-obscene sexually explicit speech lesser First Amendment protection than other categories of speech. However, four dissenters and one concurring justice concluded that the degree of protection afforded speech by the First Amendment does not vary with the social value ascribed to that speech. In his concurring opinion, Justice Powell stated that the four-part test of United States v. O'Brien, 391 U.S. 367, 377, 88 S.Ct. 1673, 1679 (1968), should apply. Powell explained:

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 expression; and if the incidental restriction on . . . First Amendment freedom is no greater than is essential to the furtherance of that interest."

427 U.S. at 79-80, 96 S.Ct. at 2457 (citation omitted), (Powell, J., concurring).

Perhaps because Justice Stevens' plurality opinion did not offer a clearly articulated standard of review, post-Young courts often applied the O'Brien test advocated by Justice Powell in his concurring opinion. Many ordinances regulating sexually oriented businesses were invalidated under the O'Brien test. See R.M. Stein, Regulation of Adult Businesses Through Zoning After Renton, 18 Pac. L.J. 351, 360 (1987) ("consistently invalidated"); S.A. Bender, Regulating Pornography Through Zoning: Can We 'Clean Up' Honolulu? 8 U. Haw. L. Rev. 75, 105 (1986) (ordinances upheld in only about half the cases).

Applying Young, the Eighth Circuit Court of Appeals invalidated a zoning ordinance adopted by the city of Minneapolis. Alexander v. City of Minneapolis, 698 F.2d 936 (8th Cir. 1983). In Alexander, the challenged ordinance had three major restrictions on sexually oriented businesses: distancing from specified uses, prevention of concentration and amortization. It prohibited a sexually oriented business from operating within 500 feet of districts zoned for residential or office-residences, a church,

state-licensed day care facility and certain public schools. It forbade an adults-only facility from operating within 500 feet of any other adults-only facility. Finally, the ordinance required existing sexually oriented entertainment establishments to conform to its provisions by moving to a new location, if necessary, within four years.

The Eighth Circuit ruled that the Minneapolis ordinance created restrictions too severe to be upheld under the Young decision. It would have required all five of the city's sexually oriented theaters and between seven and nine of the city's ten sexually oriented bookstores to relocate and would have required these facilities to compete with another 18 adult-type establishments (saunas, massage parlors and "rap" parlors) for a maximum of 12 relocation sites. The effective result of enforcing the ordinance would be a substantial reduction in the number of adult bookstores and theaters, and no new adult bookstores or theaters would be able to open, the Court concluded. Alexander, supra, 698 F.2d at 938.

In Renton, supra, the United States Supreme Court adopted a clearer standard under which regulation of sexually oriented businesses could be tested and upheld. The Court upheld an ordinance prohibiting adult movie theaters from locating within 1,000 feet of any residential zone, single- or multiple-family dwelling, church, park or school.

Justice Rehnquist, writing for a Court majority that included Justices Stevens and Powell, stated that the Renton ordinance did not ban adult theaters altogether and that, therefore, it was "properly analyzed as a form of time, place and manner regulation." Id. at 46, 106 S.Ct. at 928. When time, place and manner regulations are "content-neutral" and not enacted "for the purpose of restricting speech on the basis of its content," they are "acceptable so long as they are designed to serve a substantial governmental interest and do not unreasonably limit alternative avenues of communication," Rehnquist stated. Id. He found the Renton ordinance to be content-neutral because it was not aimed at the content of films shown at adult theaters. Rather, the city's "predominate concerns" were with the secondary effects of the theaters. Id. at 47, 106 S.Ct. at 929 (emphasis in original). Once a time, place or manner regulation is determined to be content-neutral, "[t]he appropriate inquiry . . . is whether the . . . ordinance is designed to serve a substantial governmental interest and

allows for reasonable avenues of communication," Rehnquist wrote for the Court. Id. at 50, 106 S.Ct. at 930.

The Supreme Court found that Renton's "interest in preserving the quality of urban life" is a "vital" governmental interest. The substantiality of that interest was in no way diminished by the fact that Renton "relied heavily" on studies of the secondary effects of adult entertainment establishments by Seattle and the experiences of other cities, Rehnquist added. Id. at 51, 106 S.Ct. at 930-31.

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 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.

Id. at 51-52, 106 S.Ct. at 931.

Rehnquist's inquiry then addressed the means chosen to further Renton's substantial interest and inquired into whether the Renton ordinance was sufficiently "narrowly tailored."

His comments on Renton's means to further its substantial interest suggest that municipalities have a wide latitude in enacting content-neutral ordinances aimed at the secondary effects of adult-entertainment establishments. He quoted the Young plurality for the proposition that:

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.

Id. at 52, 106 S.Ct. at 931 (quoting Young, supra, 427 U.S. at 71, 96 S.Ct. at 2453).

As to the "narrowly tailored" requirement, Rehnquist found that the Renton ordinance only affected theaters producing unwanted secondary effects and, therefore, was satisfactory. Id.

The second prong of Renton's "time, place, manner" inquiry -- the availability of alternative avenues of communication -- was satisfied by the district court's finding that 520 acres of land, or more than five percent of Renton, were left available for adult-entertainment uses, even though some of that developed area was already occupied and the undeveloped land was not available for sale or lease. A majority of the Court found:

That [adult theater owners] 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. . . . In our view, the First Amendment requires only that Renton refrain from effectively denying [adult theater owners] a reasonable opportunity to open and operate an adult theater within the city, and the ordinance before us easily meets this requirement.

Id. at 54, 106 S.Ct. at 932.

B. Standards and Need for Legal Zoning

Unlike Young, the Renton case spells out the standards by which zoning of sexually oriented businesses should be tested. Renton and several lower court decisions rendered in its wake suggest that the two most critical areas by which the ordinances will be judged are 1) whether there is evidence that ordinances were enacted to address secondary impacts on the community, and 2) whether there are enough locations still available for sexually oriented businesses so that zoning is not just a pretext to eliminate pornographic speech.^{10/}

^{10/} Of 11 recent post-Renton adult-entertainment zoning decisions by federal courts, five invalidated ordinances, three upheld ordinances and three ordered a remand to district court for further proceedings. Zoning ordinances were struck in Avalon Cinema Corp. v. Thompson, 687 F.2d 659 (8th Cir. 1987) (city council failed to offer

(Footnote 10 Continued on Next Page)

This section first describes some of the legal considerations which communities must keep in mind in drafting zoning ordinances for sexually oriented businesses. Then, some suggestions are provided, based on evidence reviewed by the Working Group, of types of zoning which can be enacted to reduce the secondary effects of sexually oriented businesses.

1. Documentation to Support Zoning Ordinances

Sexually oriented speech which is not obscene cannot be restricted on the basis of its content without running afoul of the First Amendment. The justification for regulating sexually oriented businesses is based on proof that the zoning is needed to reduce secondary effects of the businesses on the community.

Since Renton, a number of adult entertainment zoning ordinances have been invalidated for failure of the enacting body to document the need for zoning regulations. Thus, one court invalidated a zoning ordinance because there was "very little, if any, evidence of the secondary effects of adult bookstores . . . before the City Council . . ."

(Footnote 10 Continued from Previous Page)

evidence suggesting neighborhood decline would result); Tollis, Inc. v. San Bernardino County, 827 F.2d 1329 (9th Cir. 1987) (no evidence presented to legislative body of secondary harmful effects); Ebel v. Corona, 767 F.2d 635 (9th Cir. 1985) (lack of effective alternative locations); 11128 Baltimore Boulevard, Inc. v. Prince George's County of Maryland, 684 F. Supp. 884 (D. Md. 1988) (insufficient evidence of secondary effects presented to legislative body; special exception provisions grant excessive discretionary authority to zoning officials); and Peoples Tags, Inc. v. Jackson County Legislature, 636 F. Supp. 1345 (W.D. Mo. 1986) (improper legislative purpose to prevent continued operation of adult-entertainment establishment). Zoning ordinances were upheld in SDJ, Inc. v. City of Houston, 837 F.2d 1268 (5th Cir. 1988); FW/PBS, Inc. v. City of Dallas, 837 F.2d 1298 (5th Cir. 1988); and S & G News, Inc. v. City of Southgate, 638 F.Supp. 1060 (E.D. Mich. 1986), aff'd without published opinion, 819 F.2d 1142 (6th Cir. 1987). Remands were ordered in Christy v. City of Ann Arbor, 824 F.2d 489 (6th Cir. 1987), cert. denied, ___ U.S. ___, 108 S. Ct. 1013 (1988) (remand for determination of excessive restrictions); International Food & Beverage Systems v. City of Fort Lauderdale, 794 F.2d 1520 (11th Cir. 1986) (remand for reconsideration in light of Renton, supra; nude bar ordinance), and Walnut Properties, Inc. v. City of Whittier, 808 F.2d 1331 (9th Cir. 1986) (remand, in part, for determination of land availability).

11126 Baltimore Boulevard, supra, 684 F. Supp. at 895; see also Tollis v. San Bernadino County, 827 F.2d 1329, 1333 (9th Cir. 1987) (ordinance construed to prohibit single showing of adult movie in zoned area; invalidated for failure to present evidence of secondary effects of single showing); but see Thames Enterprises v. City of St. Louis, 851 F.2d 199, 201-02 (8th Cir. 1988) (observations by legislator of secondary effects sufficient).

On the other hand, it is not necessary for each municipality to conduct research independent of that already generated by other cities. The Renton court held that evidence of the need for zoning of sexually oriented businesses can be provided by studies from 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, 106 S.Ct. at 931. See also SDJ, Inc. v. City of Houston, 837 F.2d 1268, 1274 (5th Cir. 1988) (public testimony from experts, supporters and opponents and consideration of studies by Detroit, Boston, Dallas and Los Angeles sufficient evidence of legitimate purpose).

The first section of this report summarizes evidence from various cities documenting the secondary effects of sexually oriented businesses. Following Renton it is intended that local communities will make use of this evidence in the course of assembling support for reasonable regulation of sexually oriented businesses.

2. Availability of Locations for Sexually Oriented Businesses

Courts also evaluate whether zoning of sexually oriented businesses is merely a pretext for prohibition by reviewing the alternative locations which remain for a sexually oriented business to operate under the zoning scheme. A municipality must "refrain from effectively denying . . . a reasonable opportunity to open and operate" a sexually oriented business. Renton, supra, 475 U.S. at 54, 106 S. Ct. at 932.

Access may be regarded as unduly restricted if adult entertainment zones are unreasonably small in area or if the number of locations is unreasonably few. There is no set amount of land or number of locations constitutionally required. The Renton

court found that 520 acres of "accessible real estate," including land "criss-crossed by freeways" -- more than five percent of the entire land area in Renton -- was sufficient. 475 U.S. at 53, 106 S.Ct. at 932. The Young court found the availability of "myriad" locations sufficient. 427 U.S. at 72 n.35, 96 S.Ct. at 2453 n.35.

Whether .058 square miles constituting .23 of 1 percent of the land area within the city's central business zone is sufficient is not clear. See Alexander v. The City of Minneapolis (Alexander II), No. 3-88-808, slip op. at 22 (D. Minn. May 22, 1989) (less than 1% of land area could be valid if "ample actual opportunities" for relocation exist); Christy v. City of Ann Arbor, 824 F.2d 489, 490, 493 (6th Cir. 1987) (remanding for a determination of excessive restriction). See also 11126 Baltimore Boulevard, Inc. v. Prince George's County of Maryland, 684 F. Supp. 884 (D. Md. 1988) (20 alternative locations sufficient); Alexander v. City of Minneapolis, 698 F.2d 936, 939 n.7 (8th Cir. 1983) (pre-Renton; 12 relocation sites for at least 28 existing adult establishments not sufficient).

The sufficiency of sites available for adult entertainment uses may be measured in relation to a number of factors. See, e.g., Alexander II, supra, slip op. at 22-23 (insufficient if relocation site owners refuse to sell or lease); International Food & Beverage Systems, Inc., 794 F.2d 1520, 1526 (11th Cir. 1986) (suggesting number of sites should be determined by reference to community needs, incidence of establishments in other cities, goals of city plan); Basiardanes v. City of Galveston, 682 F.2d 1203, 1209 (5th Cir. 1982) (pre-Renton case striking zoning regulation restricting adult theaters to industrial areas that were "largely a patchwork of swamps, warehouses, and railroad tracks . . . lack[ing] access roads and retail establishments").

However, the fact that land zoned for adult establishments is already occupied or not currently for sale or lease will not invalidate a zoning ordinance. Renton, supra, 475 U.S. at 53-54, 106 S.Ct. at 932; but see, Alexander II, supra, slip op. at 22-23 (reasonable relocation opportunity absent where owners refuse to sell or rent). There is no requirement that it be economically advantageous for a sexually oriented business to locate in the areas permitted by law.

3. Distance Requirements

Another factor that may be examined by some courts is the distance requirement established by an adult entertainment zoning ordinance. In SDJ, Inc. v. Houston, 837 F.2d 1268 (5th Cir. 1988), the Court was asked to invalidate a 750-foot distancing requirement on the ground that the city had not proved that 750 feet, as opposed to some other distance, was necessary to serve the city's interest.

The Court found that an adult entertainment zoning ordinance is "sufficiently well tailored if it effectively promotes the government's stated interest" and declined to "second-guess" the city council. Houston, supra, 837 F.2d at 1276.

Courts have sustained both requirements that sexually oriented businesses be located at specified distances from each other, see Young, supra, (upholding distance requirement of 1000 feet between sexually oriented businesses), and requirements that sexually oriented businesses be located at fixed distances from other sensitive uses, see Renton, supra, (upholding distance requirement of 1000 feet between sexually oriented businesses and residential zones, single-or-multiple family dwellings, churches, parks or schools).

The Working Group heard testimony that when an ordinance establishes distances between sexually oriented uses, an additional regulation may be needed to prevent operators of these businesses to defeat the intent of the regulation by concentrating sexually oriented businesses of various types under one roof, as in a sexually oriented mini-mall. The city of St. Paul has adopted an ordinance preventing more than one adult use (e.g., sexually oriented theater, bookstore, massage parlor) from locating within a single building. A similar ordinance was upheld in the North Carolina case of Hart Book Stores, Inc. v. Edmisten, 612 F. 2d 821 (4th Cir. 1979), cert. denied, 447 U.S. 929 (1980).

The experience with multiple-use sexually oriented businesses at the University-Dale intersection suggests that these businesses have a greater potential for causing neighborhood problems than do single-use sexually oriented businesses. Following Renton, it is suggested that lawmakers document the adverse effects which the

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.

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IT IS, THEREFORE, RECOMMENDED:

- THAT ADULT ENTERTAINMENT BUSINESSES BE ALLOWED TO LOCATE IN AREAS THAT ARE PREDOMINANTLY ZONED FOR DISTRICT-ORIENTED COMMERCIAL ENTERPRISES - I. E., C4 OR MORE INTENSE USE CATEGORIES.

- THAT NO ADULT ENTERTAINMENT BUSINESS BE ALLOWED TO LOCATE IN AREAS THAT ARE PREDOMINANTLY ZONED FOR NEIGHBORHOOD-ORIENTED COMMERCIAL ENTERPRISES - I. E., C3 OR LESS INTENSIVE USE CATEGORIES.

- THAT EACH LOCATION REQUIRE A SPECIAL EXCEPTION WHICH, AMONG OTHER CONSIDERATIONS, WOULD REQUIRE APPROPRIATE DEVELOPMENT STANDARDS DESIGNED TO BUFFER AND PROTECT ADJACENT PROPERTY VALUES.

- THAT THESE USES NOT BE ALLOWED TO LOCATE WITHIN 500 FEET OF A RESIDENTIAL, SCHOOL, CHURCH OR PARK PROPERTY LINE NOR WITHIN 500 FEET OF AN ESTABLISHED HISTORIC AREA.

- 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 been 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 residential (80%) 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 (64%) 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 affect 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.

While 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 its zoning power to regulate the location of adult entertainment businesses so that they operate in areas of the community that, while accessible to their patrons, are yet located in districts that are least likely to injure the general welfare of residents.

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- The average major crime rate (i.e., crimes per 10,000 population) in the IPD District was 748.55, the Control Area 886.34, and the Study Area 1090.51. Major crimes occurred in areas of the study that contained at least one adult entertainment establishment at a rate that was 23% higher than the six similar areas studied not having such businesses and 46% higher than the Police District at large.
- Although it was impossible to obtain a discrete rate for sex-related crimes at the police district level, it was possible to compare rates between the Control Areas and the Study Areas. The average sex-related crime rate in the Control Areas over the five year period was 26.2, while that rate for the Study Areas was 46.4.
- If the ratio of sex-related crimes was the same as that established for major crimes between the Control Area and the Study Area, however, we would expect a sex-related crime rate of 32.3. The actual rate of 46.4 is 77% higher than that of the Control Areas rather than the 23% that would be expected and indicates the presence of abnormal influences in the Study Areas.
- Close examination of crime statistics within the Study Areas indicate a direct correlation between crime and the residential character of the neighborhood. Crime frequencies were 56% higher in residential areas of the study than in its commercial areas.
- At the same time, sex-related crimes occurred four times more frequently within residential neighborhoods having at least one adult entertainment business than in neighborhoods having a substantially district-related commercial make-up having adult entertainment.
- Although the housing base within the Study Areas was of a distinctly higher value than that of the Control Areas, its value appreciated at only one-half the rate of the Control Areas' and one-third the rate of Center Township as a whole during the period 1979 - 1982.
- Pressures within the Study Areas caused the real estate market within their boundaries to perform in a manner contrary to that within the Control Areas, Center Township and the County. In a time when the market saw a decrease of 50% in listings, listings within the Study Areas actually increased slightly.

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 Indianapolis 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 Amendments of the Constitution.

In establishing an empiric base to determine whether controls were warranted in order to direct the location of these businesses, analyses of the data showed:

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TABLE OF CONTENTS

SUMMARY AND RECOMMENDATIONS	1
INTRODUCTION	1
STUDY METHODS	2
CRIME INCIDENCE	8
MAJOR CRIMES	9
SEX-RELATED CRIME	15
CRIME IMPACT BY AREA TYPE	22
REAL ESTATE IMPACT	27
PROFESSIONAL APPRAISAL OF IMPACTS	32
20% NATIONAL SURVEY	33
100% MSA SURVEY	39
APPENDICIES	
I. AREA MAPS	I-1
II. SURVEY OF APPRAISERS	II-1
III. LAND USE CONTROL OF ADULT ENTERTAINMENT	III-1

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ADULT ENTERTAINMENT BUSINESSES IN INDIANAPOLIS
AN ANALYSIS

Department of Metropolitan Development
Division of Planning
February, 1984

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ADULT ENTERTAINMENT BUSINESSES IN INDIANAPOLIS

AN ANALYSIS

1984

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Appendix C

COMPOSITION OF STUDY & CONTROL AREAS
BY ZONING DISTRICT

	Area One		Area Two		Area Three		Area Four	
	Study	Control	Study	Control	Study	Control	Study	Control
1-SF-3				2.92				
SF-3	18.78	26.97	25.43	22.31	33.26	47.29	22.49	22.39
SF-3-H								
MF-2	3.30			2.64	.77	2.32	1.72	
MF-3	.94		1.93	1.38	7.88	2.64	1.03	1.00
MF-4	.28							2.69
MF-5								
LO	4.47	1.45	.57	1.17	2.72	1.02		
GO		.43						
CS	13.90	15.88	26.54	13.06	10.31	1.21	13.16	24.99
CS-1	1.12	.78		.34	.40		15.44	1.55
CS-H								
GR	.98	.34		7.40	2.27	1.12	.77	1.55
LR	.54	.89		.37		3.78		
LI								3.62
AVIATION		3.05						
UNZ								
ROAD ROW	22.59	22.33	17.65	20.53	14.51	12.74	17.51	14.34
TOTAL	72.12	72.12	72.12	72.12	72.12	72.12	72.12	72.12

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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
Aggravated Promotion of Prostitution
Compelling Prostitution

Sexual Abuse
Aggravated 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

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Appendix B

TYPES OF CRIMES

Part 1 Crimes

Murder
Capital Murder
Criminal Negligent Homicide/Non-Traffic
Criminal Negligent Homicide/Traffic
Involuntary Manslaughter/Traffic
Justified Homicide

Sexual Assault
Attempted Sexual Assault
Aggravated Sexual Assault
Attempted Aggravated Sexual Assault
Rape of a Child
Attempted Rape of a Child

Aggravated Robbery/Deadly Weapon
Attempted Aggravated Robbery/Deadly Weapon
Aggravated Robbery by Assault
Robbery by Assault
Attempted Robbery by Assault

Attempted Murder
Attempted Capital Murder
Aggravated Assault
Aggravated Assault on a Peace Officer
Deadly Assault
Serious Injury to a Child
Arson with Bodily Injury

Burglary of a Residence
Attempted Burglary of a Residence
Burglary of a Non-Residence
Attempted Burglary of a Non-Residence

Theft
Burglary of a Vehicle
Burglary of a Coin-Operated Machine
Theft from Auto
Theft of Auto Parts
Pocket Picking
Purse Snatching
Shoplifting
Theft of Service
Theft of Bicycle
Theft from Person
Attempted Theft
Theft of Heavy Equipment
Theft of Vehicle/Other

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Respondents to the appraisers' survey commented 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 with 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 that 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).
5. 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, 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.

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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 single family residential) within 500 feet of the Study Areas. The results of these surveys were supplemented with 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 rentability/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 86% felt that the concentration of adult businesses would decrease the rental value of residential income property 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.

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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 the 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 increased 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 accounted 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 Impacts

Methodology. The study prepared by the City of Los Angeles utilized a two point approach 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.

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The Indianapolis appraiser survey included a question designed to help establish the basis for their opinions regarding the degree to which adult businesses affect 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 11 to 88 establishments.

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3. The majority felt that the negative impact was greater for residential properties than for commercial properties.

Table I
Effect of Adult Businesses on Property Values in Indianapolis, Indiana

	Decrease 20% or more	Decrease 10 to 20%	Decrease 1 to 10%	No change	Increase 1 to 10%	Increase 10 to 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
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	28.9	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

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Real Estate Impacts

Methodology. 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 MAI (Member Appraisal Institute) designation, who practiced in the 22 Metropolitan Statistical Areas similar in size to Indianapolis, was compiled. 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 Center 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.

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Appendix A

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 Analysis. 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 no 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 proximate 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. These data were assembled into two groups: Major Crimes and Sex-Related Crimes. Major Crimes included Criminal Homicide, Rape, Robbery, Aggravated Assault, Residence and Non-Residence Burglary, Larceny, and Vehicle Theft. Sex-Related Crimes 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 crimes 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 the Study areas. Crime rates were 56 percent higher in predominantly 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.

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Dispersion of Adult Businesses

The analysis of sex-related crime rates revealed that when more than one business was located in a study area, the crime rate was 66% higher. In order to address this potential problem, the regulation of adult businesses should prohibit their concentration. Presently, the ordinance requires a 1,000 foot (about three city blocks) separation between adult businesses. This requirement should be continued.

E. POTENTIAL LOCATIONS

The available use district maps were examined to identify potential locations where new adult entertainment business would be permitted to establish. Although the available maps do not provide full coverage of the city, the most heavily urbanized sections of the city were examined. The analysis found 4534 parcels of land of various sizes where an adult entertainment business would be permitted as a use by right under the current zoning assigned to these parcels. Adult entertainment businesses would be allowed as a conditional use on an additional 3328 parcels. These locations are located throughout the city and offer extensive sites for the establishment of new adult entertainment business. Permitted locations were found on approximately 110 use district maps, which comprise well over 90% of all maps examined. The maps will be retained on file in the Office of Land Development Services, 301 West Second Street, Austin, Texas 78767.

F. CONCLUSIONS

Implementation of the above recommended regulations will assure protection of First Amendment rights, and will also allow adult oriented business to operate without adversely affecting the property values and crime rates in surrounding neighborhoods.

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The assignment of proper zone districts must also consider the type of adult business. Adult Entertainment Businesses, (including bookstores, theaters, and film stores) represent a form of free speech which is protected by the First Amendment. Regulation of these uses must not unduly restrict freedom of speech. Adult Service Businesses, such as massage parlors and modeling studios, are not as sensitive to First Amendment issues.

Adult Entertainment Businesses are recommended in the GR, L, CBD, DMU, CS, CS-1, CH, MI, and LI zone districts and Adult Service Business are recommended in the L, CBD, DMU, CS, CS-1, and CH zone districts.

Conditional Use Permits

The conditional use permit process offers a viable method of regulating adult businesses by providing an extra degree of review needed to address the potential impacts adult businesses generate to surrounding neighborhoods. Unlike traditional zone district regulations, conditional use permits require site plan review, thus affording additional analysis and control.

Austin's current zoning ordinance prohibits adult businesses from locating within 1000 feet of any property zoned or used as residential. This provision led to the invalidation of the ordinance in the suit initiated by Taurus Enterprises because it was found that almost all commercially zoned property is, in fact, located within 1000 feet of residential property. This is particularly true in older areas of the City where narrow strip commercial development is flanked by residential use. This restriction should be eliminated from the ordinance and the issue of neighborhood protection should be addressed via the conditional use permit.

Conditional use permits are recommended in the GR, L, DMU, MI, and LI zoning districts for Adult Entertainment businesses and for Adult Service businesses they are recommended in the L, DMU, CS and CS-1 zone districts. See Table 16 for a summary of these recommendations.

Table 16
Zoning Summary

	GR	L	CBD	DMU	CS	CS-1	CH	MI	LI
Adult Entertainment Businesses	C	C	P	C	P	P	P	C	C
Adult Service Businesses	-	C	P	C	C	C	P	-	-

C - Conditional Use
P - Permitted Use

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CHAPTER IV CONCLUSIONS

A. CRIME RATES

The results of this study indicate that there can be significant detrimental impacts on neighborhoods located near adult businesses. An analysis of sex-related crime rates in areas with adult businesses (Study Areas) revealed rates approximately two to five times higher than city-wide averages. Control Areas, which contain no adult businesses but have similar locations and land uses as the Study Areas, were found to have sex related crime rates approximately the same as city-wide rates. Moreover, sex-related crime rates in Study Areas with more than one adult business were found to be 66% higher than Study Areas with one adult business.

B. PROPERTY VALUES

The results of the assessment of the impact of adult businesses on property values suggests that there may be a severe decline in residential property values located within one block of an adult business site. There is an indication, based on the subjective opinions of real estate appraisers and lenders, that the introduction of an adult business into an area adjacent to family-oriented, owner-occupied residential neighborhoods may precipitate a transition to a more transient, renter-occupied neighborhood. The results of the survey of appraisers and lenders closely parallels the results of a similar survey conducted in Los Angeles, California and nationwide surveys conducted by the Division of Planning in Indianapolis, Indiana.

C. TRADE AREA CHARACTERISTICS

The analysis of the trade area characteristics of the adult business sites indicates that these businesses draw a substantial portion of their clientele from outside the immediate area in which they are located, and a sizable percentage of their clientele appear to reside outside the Austin area. From a land use standpoint, these businesses exhibit characteristics similar to other regionally oriented commercial service businesses.

D. RECOMMENDATIONS

Zone Districts

The analysis of the trade area characteristics of adult businesses revealed that they tended to attract a regional rather than local clientele. This finding suggests that such uses should be restricted to regionally oriented commercial zone districts. These districts are usually located along heavily traveled streets such as arterials and interstate highways, and are not normally near single-family neighborhoods. Commercial zone districts that are designed for a regional orientation include CBD, DMU, CH, CS and CS-1 and to a lesser extent, the GR, L, MI, and LI zone districts.

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Three adult business sites were examined; an adult theater, an adult bookstore, and a topless bar. Due to study constraints, observation of these sites was limited to a single weekend night. It is believed, however, that the results of this examination reflect a reasonably accurate representation of the trade area of each business.

Results

The general location of customer residences was plotted on a map along with the location of the observed adult business. Addresses located outside of the Austin area or not found on the map are listed on the map legend. Maps 10, 11, and 12 illustrate the residences of observed customers with respect to the adult business surveyed.

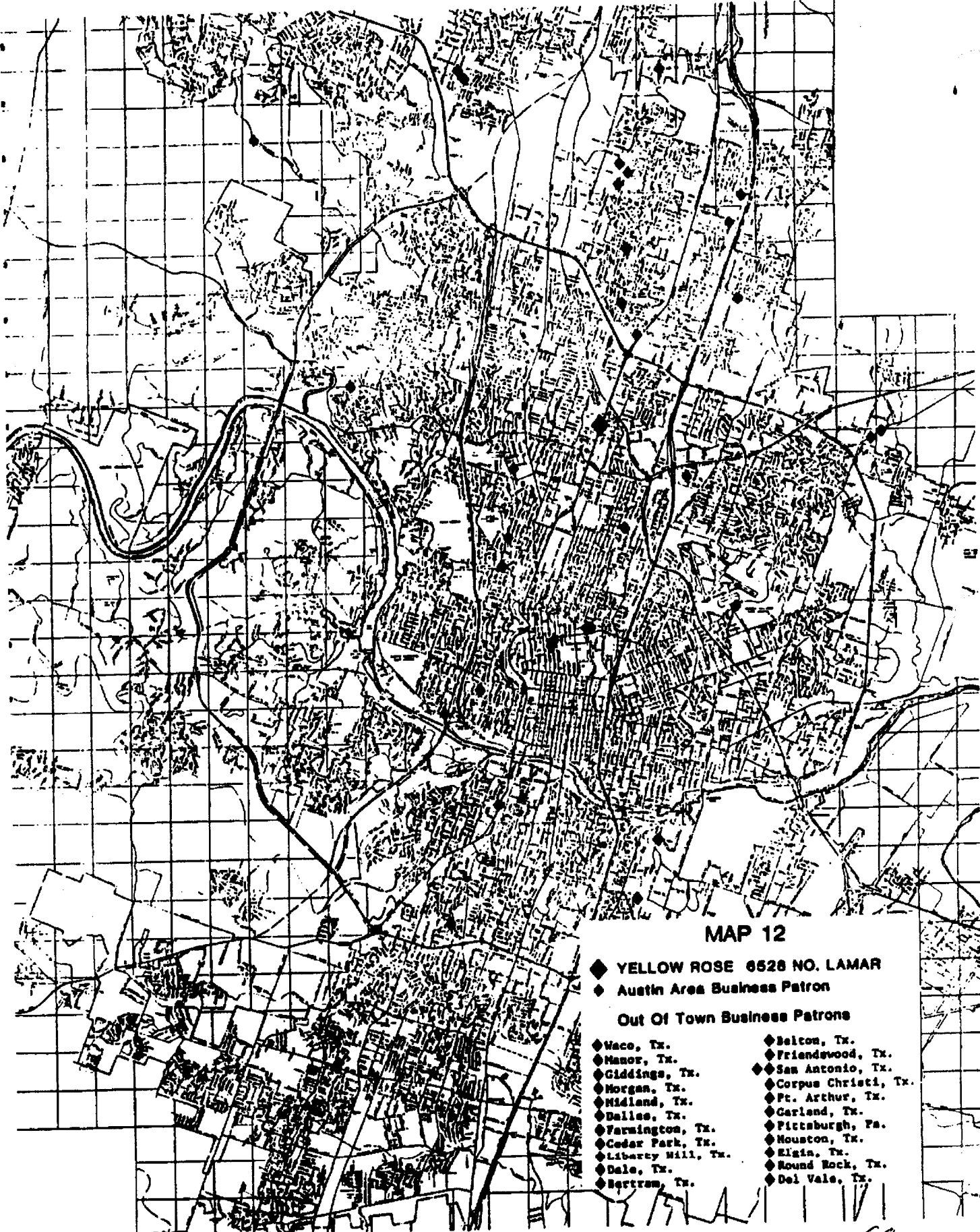
These maps indicate that the location of customers is fairly evenly distributed throughout the City, particularly in the case of the topless club, (Map 12). None of the three businesses observed appear to attract a significant number of customers from the immediate neighborhood. Of the 81 observations made only 3 were located within a one mile radius of the adult business. It should be noted that all of the adult businesses studied had single-family-residential neighborhoods in the immediate vicinity.

Almost half (44 percent) of the observed customers resided outside of the City of Austin. Table 15 summarizes this analysis for each of the adult businesses.

Table 15
Residence of Observed Customers

	Adult Theater	Adult Bookstore	Topless Bar
Within Austin	8	4	34
Outside of Austin	6	7	23
Total	14	11	57

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MAP 12

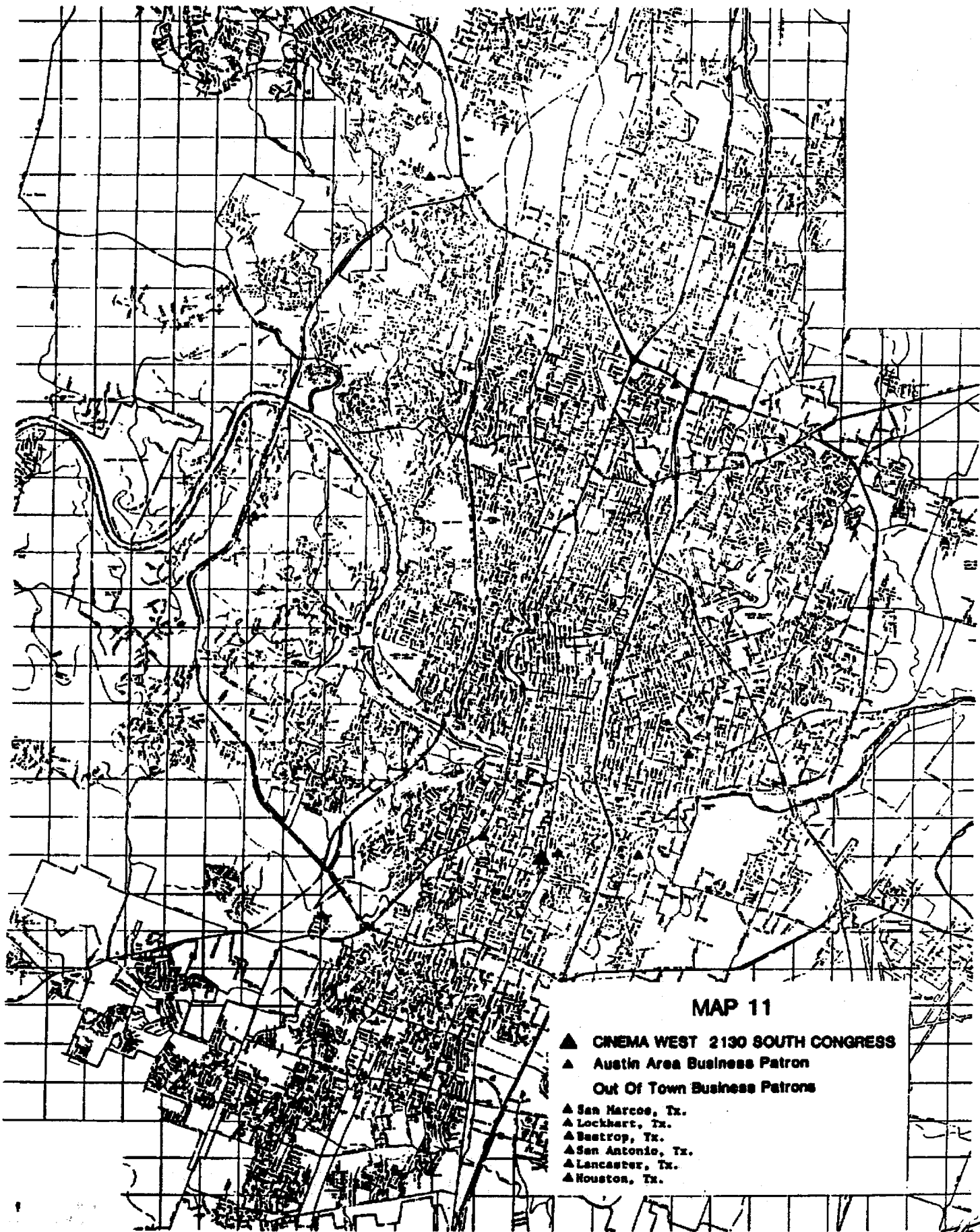
◆ **YELLOW ROSE 6528 NO. LAMAR**

◆ **Austin Area Business Patron**

Out Of Town Business Patrons

- | | |
|---------------------|-----------------------|
| ◆ Waco, Tx. | ◆ Belton, Tx. |
| ◆ Manor, Tx. | ◆ Friendwood, Tx. |
| ◆ Giddings, Tx. | ◆ San Antonio, Tx. |
| ◆ Morgan, Tx. | ◆ Corpus Christi, Tx. |
| ◆ Midland, Tx. | ◆ Ft. Arthur, Tx. |
| ◆ Dallas, Tx. | ◆ Garland, Tx. |
| ◆ Farmington, Tx. | ◆ Pittsburgh, Pa. |
| ◆ Cedar Park, Tx. | ◆ Houston, Tx. |
| ◆ Liberty Hill, Tx. | ◆ Elgin, Tx. |
| ◆ Dale, Tx. | ◆ Round Rock, Tx. |
| ◆ Bertram, Tx. | ◆ Del Valle, Tx. |

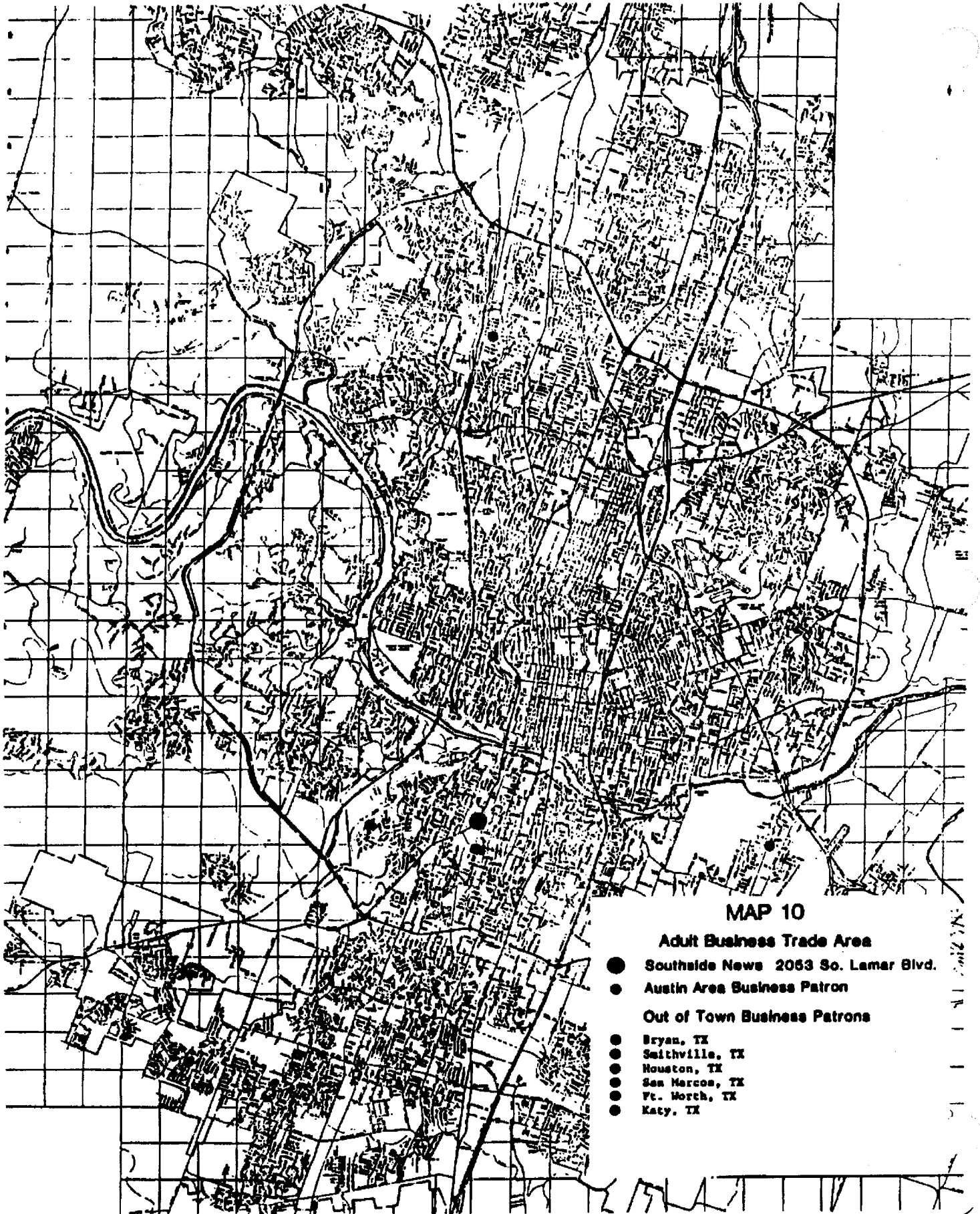
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MAP 11

- ▲ CINEMA WEST 2130 SOUTH CONGRESS
- ▲ Austin Area Business Patron
- ▲ Out Of Town Business Patrons
- ▲ San Marcos, Tx.
- ▲ Lockhart, Tx.
- ▲ Bastrop, Tx.
- ▲ San Antonio, Tx.
- ▲ Lancaster, Tx.
- ▲ Houston, Tx.

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MAP 10

Adult Business Trade Area

- Southside News 2053 So. Lamar Blvd.
- Austin Area Business Patron

Out of Town Business Patrons

- Bryan, TX
- Smithville, TX
- Houston, TX
- San Marcos, TX
- Ft. Worth, TX
- Katy, TX

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2-762 150

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 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.

Methodology

In order to establish the extent of an adult business trade area, a method of determining the location of customer residences must be employed. The method selected for this evaluation was the observation of vehicle license numbers. It was assumed that addresses listed on the vehicle registration reflected the location of the customers residence.

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Table 14
The Effect of Commercial Businesses on
Residential Property Values in Austin, Texas

	Much Higher	Somewhat Higher	About The Same	Somewhat Lower	Much 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%
Ice 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 in 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 was 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.

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Table 13
The Effect of Adult Businesses on
Property Values in Austin, Texas

	No Change	Decrease 1 to 10%	Decrease 10 to 20%	Decrease 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%

The tabulated responses in Table 13 indicate that a substantial majority (88%) of those surveyed felt that an adult book store 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.

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Analysis of Table 11 reveals a definite pattern concerning sex-related crime rates. Sex related crimes 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 I Crime Rate	Sex Related Crime Rate
Study Areas 1 & 2	281.42	10.02
Control Areas 1 & 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.

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Table 10
 Areas 4
 Existing Land Use
 (in 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 11
 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 3	69.60	2.37
Study Area 4	185.77	7.91
Control Area 4	133.41	1.84
City of Austin	83.14	2.81
All Control Areas	132.23	2.21

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Table 8
 Areas 2
 Existing Land Use
 (in acres)

	Study	Control
Single Family	22.2	24.6
Multi-Family	1.6	4.7
Commercial	24.2	23.3
Office	0.8	2.0
Industrial	-	-
Public	1.2	-
Parkland	-	-
Vacant	5.1	-
Roads	18.0	17.5

Table 9
 Areas 3
 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

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Table 5
Area 3
Population Characteristics

Ethnicity	Study	Control
% Anglo	17.7	54.8
% Black	12.1	2.4
% Hispanic	64.1	42.8
% Other	6.1	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	21.8
% 18 to 64	69.4	0.5
% 65 and over	14.5	5.7
% Owner Occupancy	38.2	24.0

Table 7
Area 1
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

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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.

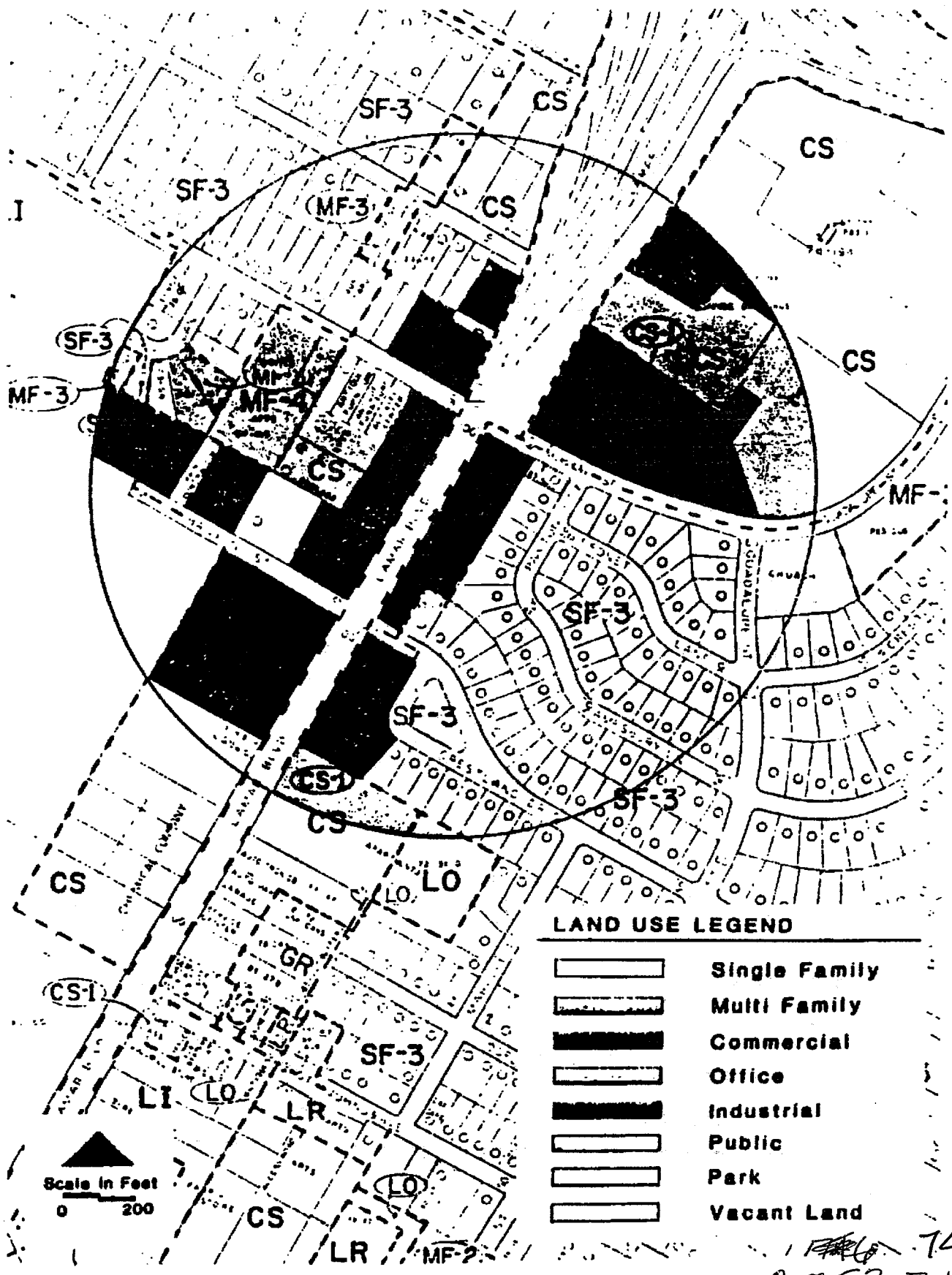
Table 3
Area 1
Population Characteristics

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






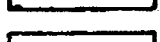
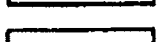

Table 4
Area 2
Population Characteristics

Ethnicity	Study	Control
% Anglo	60.9	75.2
% Black	4.4	6.2
% 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

MAP 9 CONTROL AREA 4



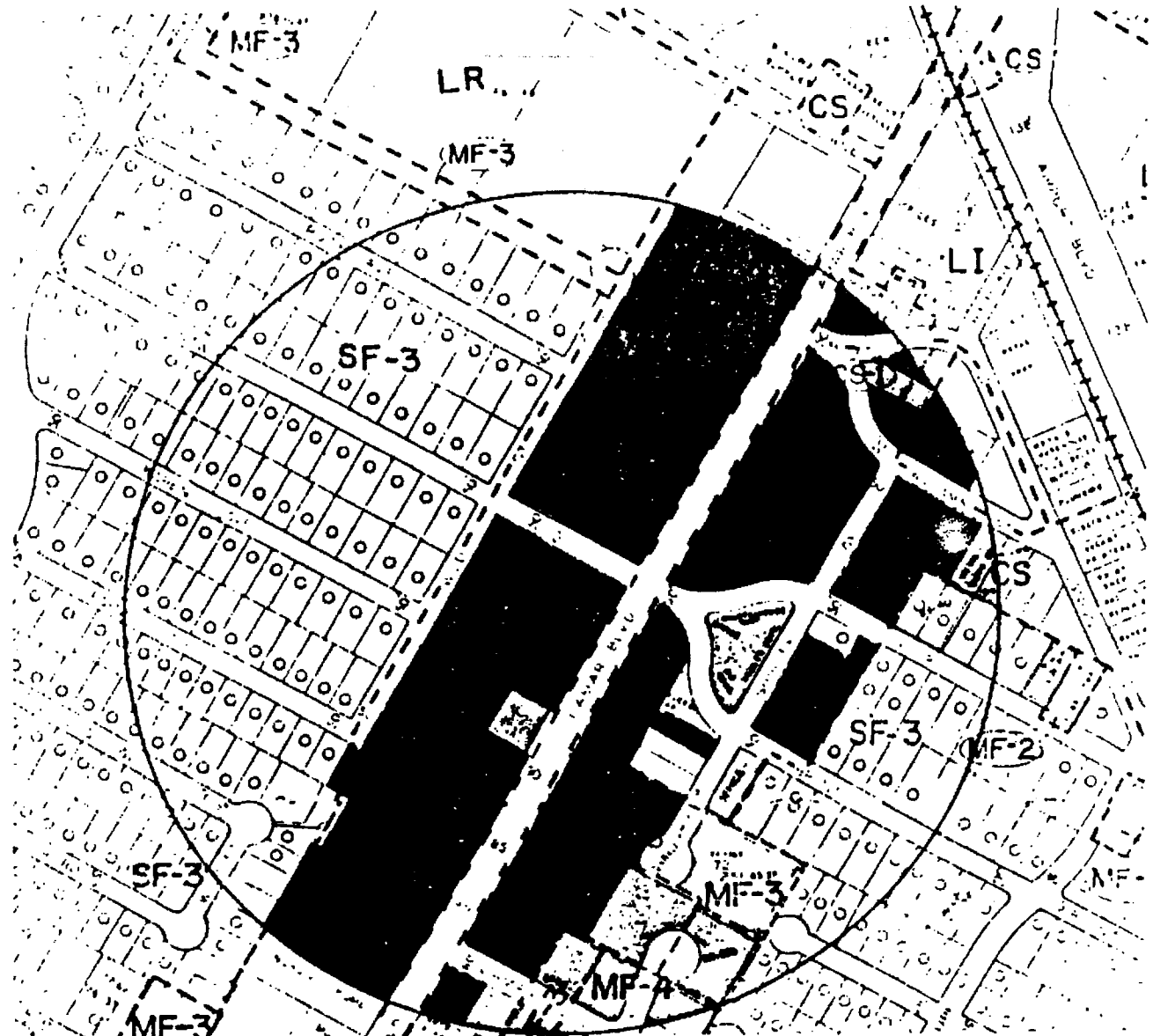
LAND USE LEGEND

-  Single Family
-  Multi Family
-  Commercial
-  Office
-  Industrial
-  Public
-  Park
-  Vacant Land







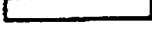


Scale in Feet
0 200

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MAP 8 STUDY AREA 4



LAND USE LEGEND

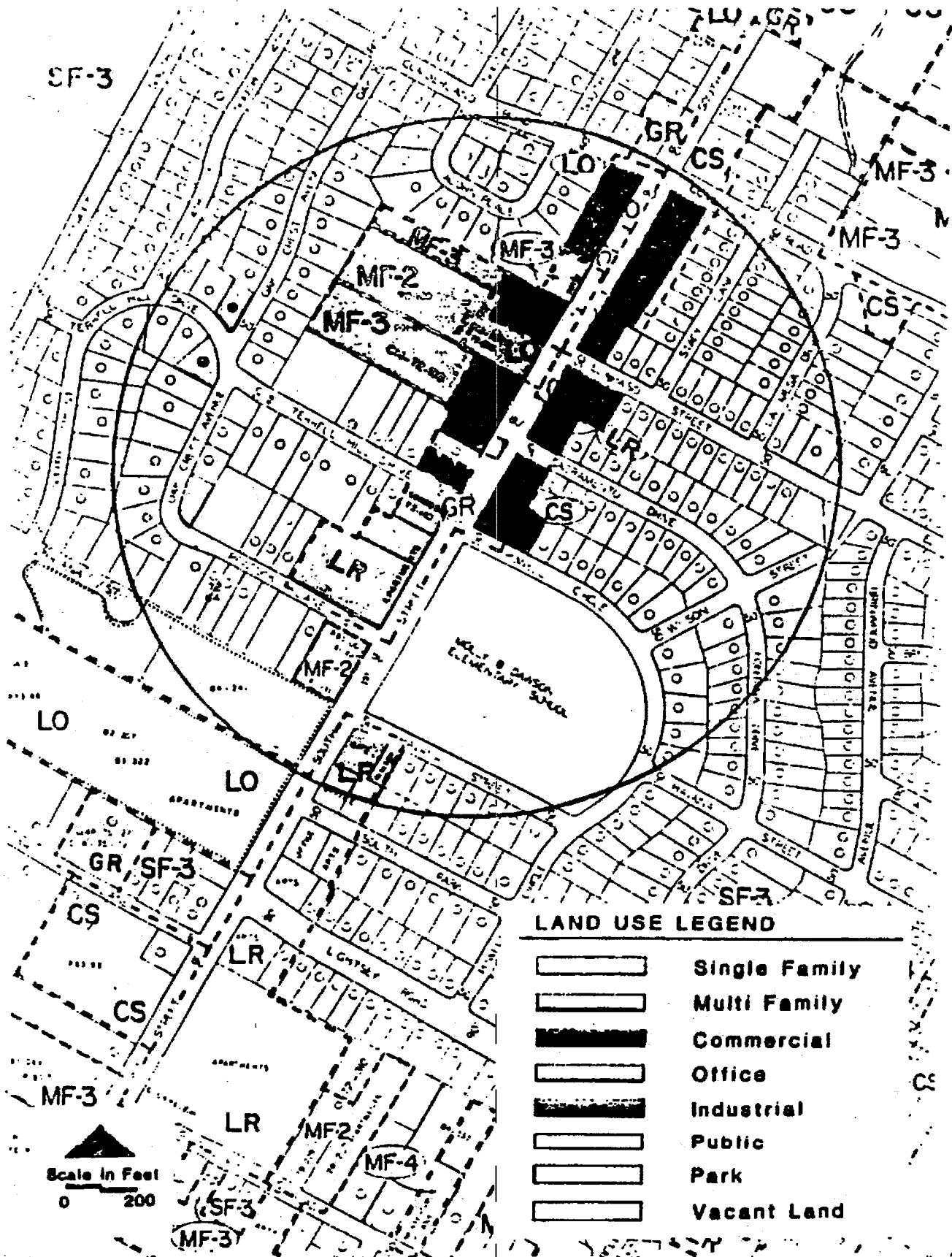
-  Single Family
-  Multi Family
-  Commercial
-  Office
-  Industrial
-  Public
-  Park
-  Vacant Land
-  Adult Business Site

Scale in Feet
0 200

AUSTIN IND
SCHOOL DISTRICT
ADMINISTRATION

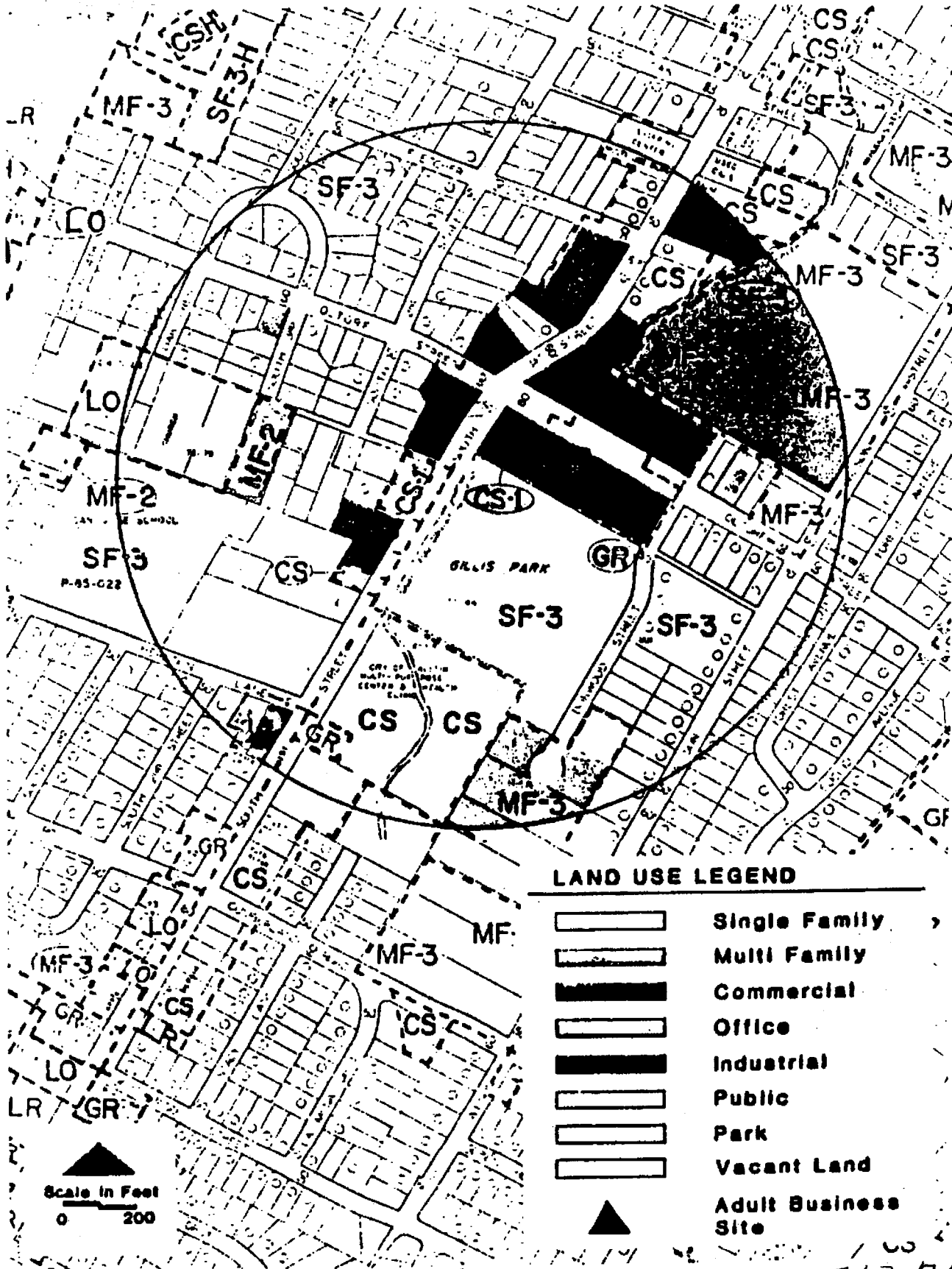
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2-752 746

MAP 7 CONTROL AREA 3

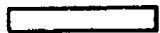










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MAP 6 STUDY AREA 3



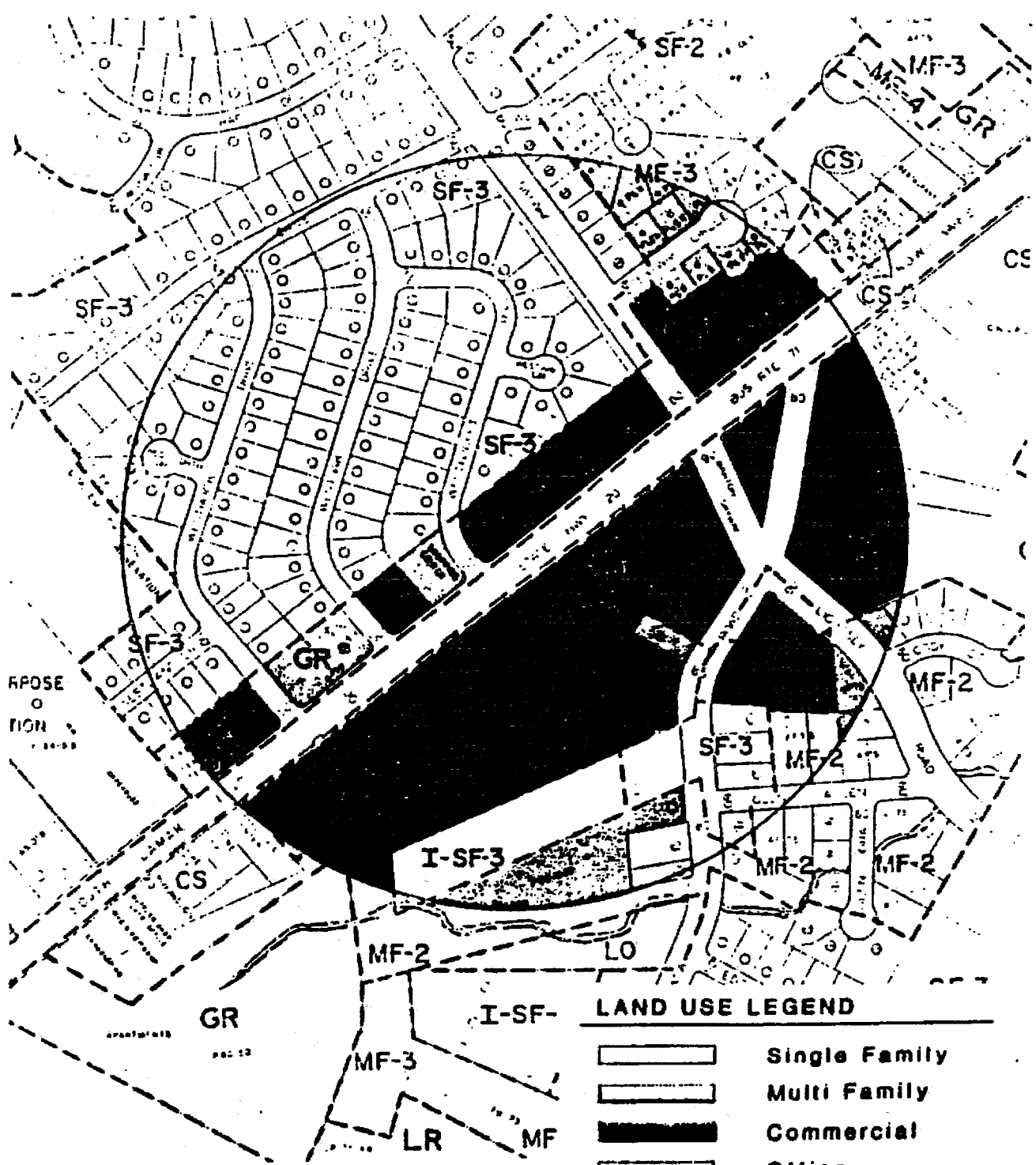
LAND USE LEGEND

- | | |
|---|---------------------|
|  | Single Family |
|  | Multi Family |
|  | Commercial |
|  | Office |
|  | Industrial |
|  | Public |
|  | Park |
|  | Vacant Land |
|  | Adult Business Site |

Scale in Feet
0 200

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MAP 5 CONTROL AREA 2



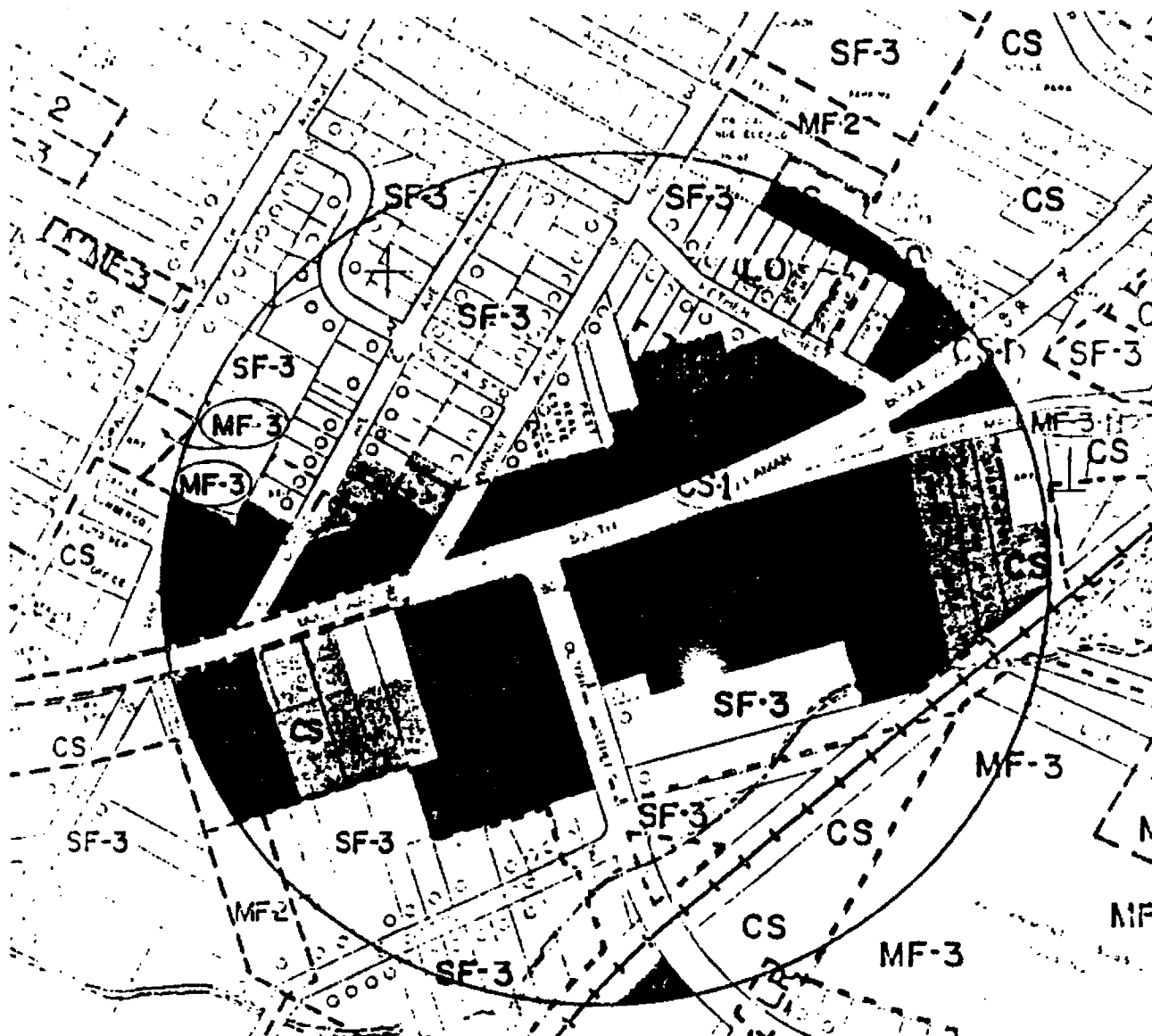
LAND USE LEGEND

	Single Family
	Multi Family
	Commercial
	Office
	Industrial
	Public
	Park
	Vacant Land












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MAP 4
STUDY AREA 2



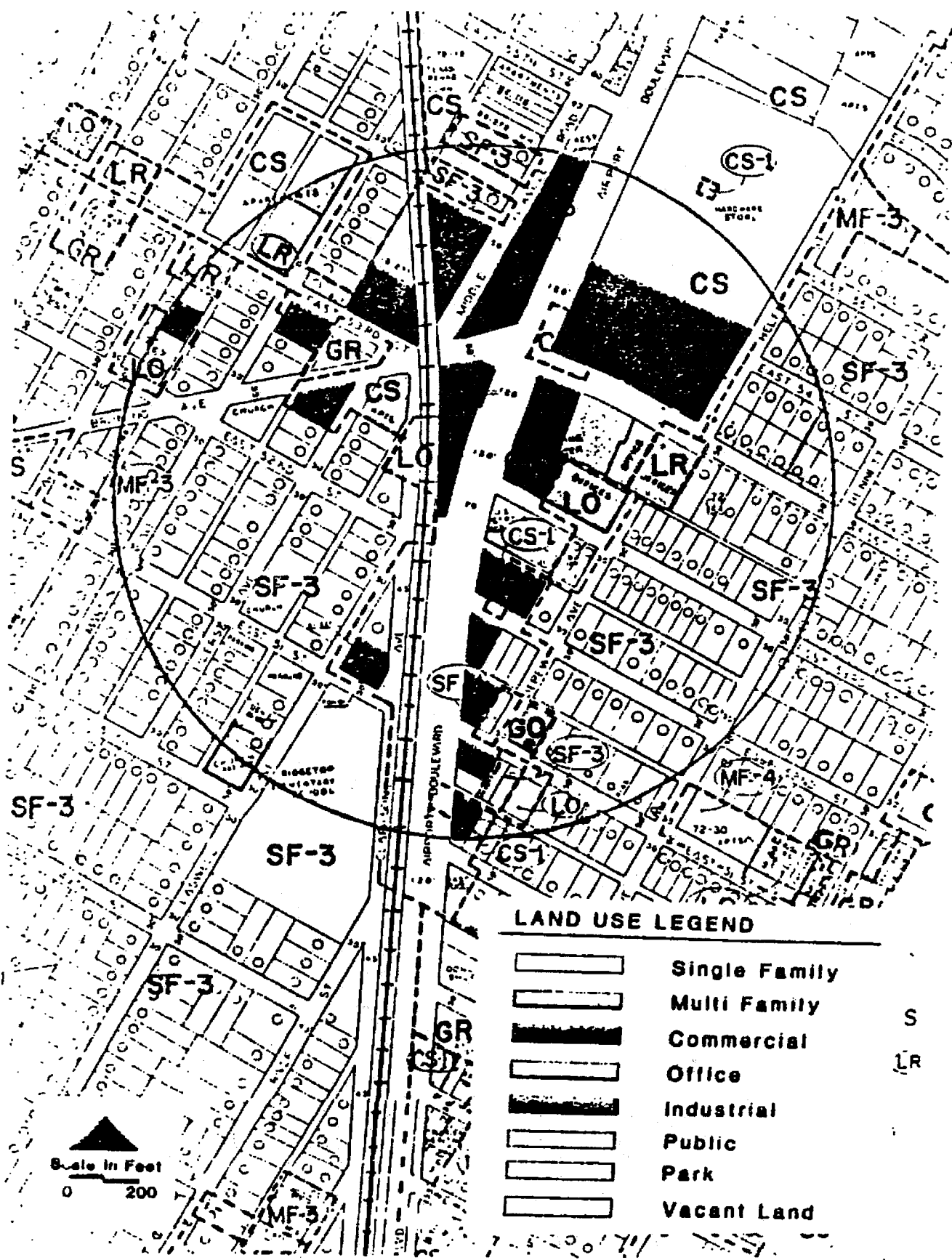
LAND USE LEGEND

-  Single Family
-  Multi Family
-  Commercial
-  Office
-  Industrial
-  Public
-  Park
-  Vacant Land
-  Adult Business Site

Scale in Feet
0 200

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26

MAP 3 CONTROL AREA 1



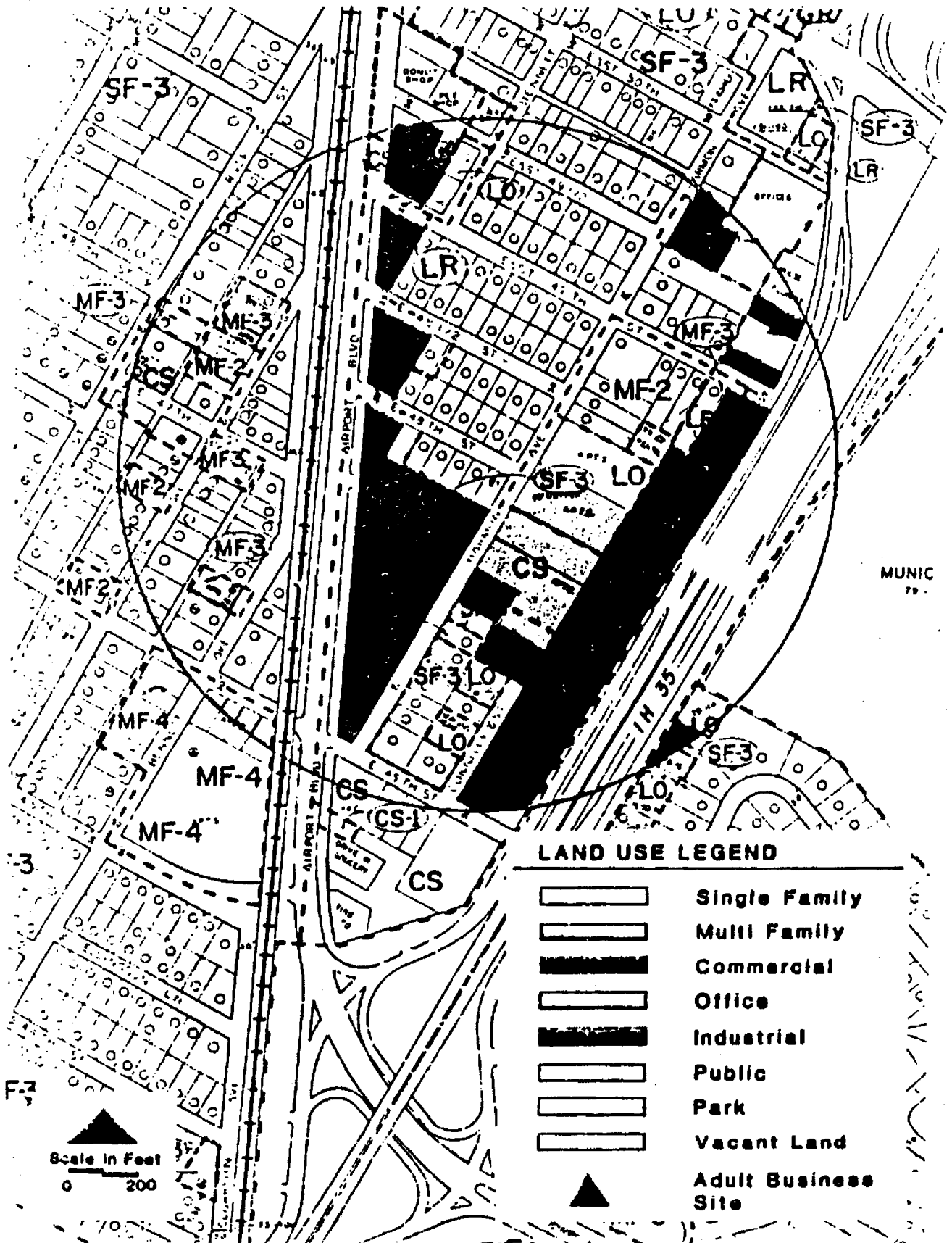
LAND USE LEGEND

	Single Family	
	Multi Family	S
	Commercial	
	Office	LR
	Industrial	
	Public	
	Park	
	Vacant Land	

Scale in Feet
0 200

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MAP 2
STUDY AREA 1



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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 IH-35 near its intersection with East 38 1/2 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.

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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 1	
Burlesque Modeling Studio	4912 N. IH-35
Pearls Place	4814 N. IH-35
Study Area 2	
Southside News	2053 S. Lamar
Video Barn	2055 S. Lamar
Study Area 3	
The Pleasure Shoppe	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 businesses 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.

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- | | |
|------------------------------|---------------------|
| 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 IH-35 |
| 19. The Chateau | 9401-B South IH-35 |
| 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 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?

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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 IH 35 |
| 9. Ms. Video | 718 Red River St. |
| 10. Sixth Street News | 706 East 6th St. |

Adult Theaters

- | | |
|------------------------|--------------------------|
| 1. Cinema West Theater | 2130 South Congress Ave. |
| 2. Texas Adult Theater | 2224 Guadalupe St. |

Adult Film Stores

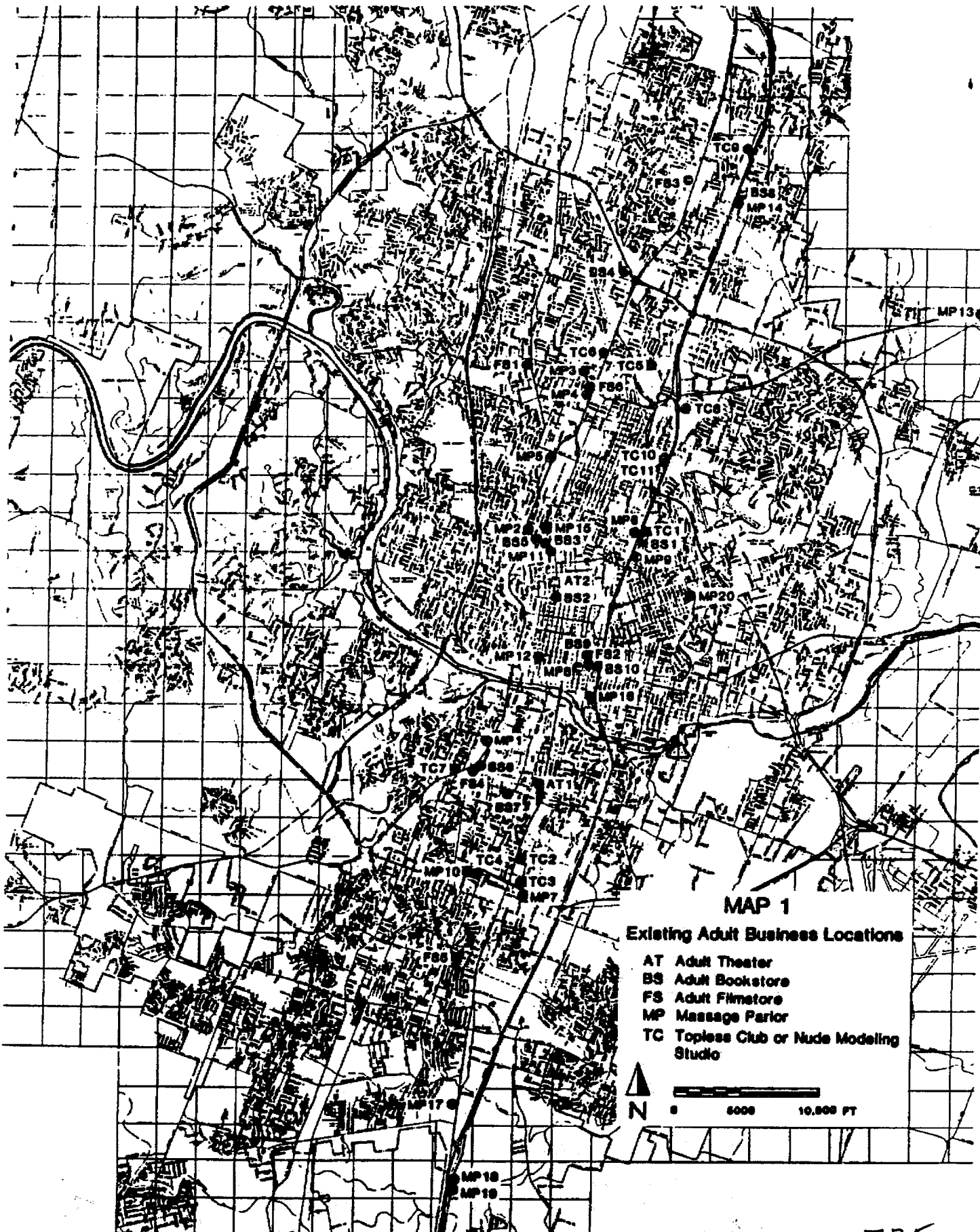
- | | |
|---------------|------------------------|
| 1. Video Barn | 5726 Burnet Rd. |
| 2. Video Barn | 708 East 6th St. |
| 3. Video Barn | 9640 North Lamar Blvd. |
| 4. Video Barn | 2055 South Lamar Blvd. |
| 5. Video Barn | 512 West Stassney Lane |
| 6. Video Etc. | 5610 North Lamar Blvd. |

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. I Dream of Jeanie | 4406 North Lamar Blvd. |
| 6. La Femme | 3502 North IH 35 |
| 7. Michelle's Massage | 403 East Ben White Blvd. |
| 8. Midnight Cowboy Oriental | 313 East 6th St. |
| 9. Oriental House of Massage | 3007 North IH 35 |
| 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 IH 35 #104 |

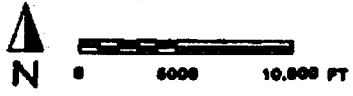
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MAP 1

Existing Adult Business Locations

- AT Adult Theater
- BS Adult Bookstore
- FS Adult Filmstore
- MP Massage Parlor
- TC Topless Club or Nude Modeling Studio



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CHAPTER III
ADULT ORIENTED BUSINESSES IN AUSTIN

A. LOCATION OF EXISTING BUSINESS

There were 49 adult-oriented businesses located within the corporate limits of the 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 through 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 28 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.

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 businesses².

The limitations established by these criteria are best illustrated by analysis of the invalidation of Atlanta, Georgia's Adult Entertainment Ordinance³. 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"⁴. The locational restrictions and amortization requirements in Atlanta were deemed too severe a restriction on the First Amendment rights of adult businesses.

2. Weinstein, Alan; Regulating Pornography: Recent Legal Trends;
(Land Use Law; February, 1982;) p.4

3. *ibid.* p.4

4. *ibid.* p.4

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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"¹.

1. McClendon, Bruce W.; Zoning for Adults Only, (Zoning news; American Planning Association, August, 1985).

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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% 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.

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CHAPTER II
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.

A. 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.

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, 1983, 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.

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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 and a topless bar - were examined to determine customer addresses by an observation of vehicle license numbers. Of the 81 observations made, only three customers had an address within one mile of an adult business. Nearly half (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 highway 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.

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SUMMARY

Purpose

This report provides the basis for development of an amendment to the Austin zoning ordinance regulating adult businesses. Austin's current adult business zoning ordinance was permanently enjoined from being enforced in January, 1985 when Taurus Enterprises sued over a "Code Violation Notice", issued by the City. The violation occurred because a bookstore was located within 1000 feet of property zoned and used for residential proposes.

Existing Research and Legal Basis

The first portion of the study examines existing research concerning the impact of adult business on crime rates and property values. Results from these studies contain similar findings - crime rates are higher 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.

Existing 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 Impacts of Adult Businesses in Austin

An analysis of crime rates was conducted by comparing areas with adult businesses (study 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 proximity to one another. Four study areas were defined: two with single 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 impact 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 property values within one block, and 59% felt that residential property values would decrease within three blocks. Respondents based their opinions on several factors. They 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 making 95% financing difficult.

727
726
2-732

TABLE OF MAPS

Map 1	Existing Adult Businesses Locations	7
Map 2	Study Area 1	12
Map 3	Control Area 1	13
Map 4	Study Area 2	14
Map 5	Control Area 2	15
Map 6	Study Area 3	16
Map 7	Control Area 3	17
Map 8	Study Area 4	18
Map 9	Control Area 4	19
Map 10	Adult Business Trade Area - Southside News	28
Map 11	Adult Business Trade Area - Cinema West	29
Map 12	Adult Business Trade Area - Yellow Rose	30

~~795~~
2-737 724

TABLE OF CONTENTS

	Page
I. Introduction	1
II. Summary of Existing Research	2
A. Analysis of Existing Research	2
B. Legal Basis	4
III. Adult Oriented Businesses in Austin	6
A. Location of Existing Businesses	6
B. Evaluation of Adult Business Impacts	9
C. Trade Area Characteristics	27
IV. Conclusions	32
Appendix	35

725
724
2-730

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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 II
Stephen M. Swanke, Planner I, Primary Contributor
Jean Page, Artist II
Monica Moten, Drafter II
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 II
Karen Murray, Senior Administrative Clerk

Building Inspection Department

James W. Smith, Director
Bill Cook, Manager, Neighborhood Conservation
Edward Sanchez, Acting Supervisor, General Inspections
Terry L. Meadows, Senior Inspector, General Inspections

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City of Austin



AUSTIN CITY COUNCIL

MAYOR

Frank C. Cooksey

MAYOR PRO TEM

John Treviño, Jr.

COUNCIL MEMBERS

Mark Rose
Smoot Carl-Mitchell
Sally Shipman
George Humphrey
Charles E. Urdy

CITY MANAGER

Jorge Carrasco

REPORT ON ADULT ORIENTED BUSINESSES IN AUSTIN

Prepared By
Office of Land Development Services
May 19, 1986

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requirements of the First Amendment. Rational regulation can be fashioned to protect both our communities and our constitutional rights.

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2. Communities should adopt regulations which reduce the likelihood of criminal activity related to sexually oriented businesses, including but not limited to open booth ordinances and ordinances which authorize denial or revocation of licenses when the licensee has committed offenses relevant to the operation of the business.

3. Communities should adopt regulations which reduce exposure of the community and minors to the blighting appearance of sexually oriented businesses including but not limited to regulations of signage and exterior design of such businesses and should enforce state law requiring sealed wrappers and opaque covers on sexually oriented material.

CONCLUSION

There are many actions which communities may take within the law to protect themselves from the adverse secondary effects of sexually oriented businesses. Prosecution of obscenity crimes can play a vital role in decreasing the profitability of sexually oriented businesses and removing materials which violate community standards from local outlets. Forfeiture and injunction to prevent public nuisance should be available where sexually oriented businesses are the site of sex-related crimes and violations of laws pertaining to gambling, liquor or controlled substances. These actions will remove the most egregious establishments from communities.

Zoning can reduce the likelihood that sexually oriented businesses will lead to neighborhood blight. Licensing can sever the link between at least some crime figures and sexually oriented businesses. Regulation and enforcement can protect minors from exposure to sexually explicit materials.

The Attorney General's Working Group on the Regulation of Sexually Oriented Businesses believes that prosecution, seizure of profits, zoning and regulation of sexually oriented businesses should only be done in keeping with the constitutional

1964. See Stratton v. Drumm, 445 F. Supp. 1305, 1310-11 (D. Conn. 1978); Ciunciolo v. Members of City Council, 376 F. Supp. 719, 722-24 (E.D. Tenn. 1974); Joseph v. House, 353 F. Supp. 367, 374-75 (E.D. Va.), aff'd sub nom. Joseph v. Blair, 482 D.2d 575 (4th Cir.), cert. denied, 416 U.S. 955, 94 S. Ct. 1968 (1974). Contra. Aldred v. Duling, 538 F.2d 637 (4th Cir. 1976).

Although the Working Group expressed strong concern about the operation of prostitution under the guise of massage parlors, this type of regulation is not advisable because legitimate therapeutic massage establishments could find their operations curtailed. Prostitution may be better controlled through prosecution and use of post-conviction actions such as forfeiture or enjoining a public nuisance.

In 1985, a court upheld an ordinance making it unlawful to display for commercial purposes material "harmful to minors" unless the material is in a sealed wrapper and, if the cover is harmful to minors, has an opaque cover. Upper Midwest Booksellers Ass'n v. City of Minneapolis, 780 F.2d 1389 (8th Cir. 1985). Last year, the legislature enacted a state law similarly prohibiting display of sexually explicit material which is harmful to minors unless items are kept in sealed wrappers and, where the cover itself would be harmful to minors, within opaque covers. Minn. Stat. § 617.293 (1988). This law has the potential to protect minors from exposure to sexually oriented materials. Communities also have considerable discretion to regulate signage so that the exterior of sexually oriented businesses does not expose unwitting observers to sexually explicit messages.

RECOMMENDATIONS

1. Prior to enacting licensing regulations, communities should document findings of adverse secondary effects of sexually oriented businesses and the relationship between these effects and proposed regulations so that such regulations can be upheld if challenged in court.

adult entertainment licensing ordinance because the city had made no findings on their justification. The invalid enumerated offenses were controlled substances act violations, bribery, robbery, kidnapping and organized criminal activity. The court upheld requirements that the licensee not have been convicted of prostitution and sex-related offenses. *Id.* at 1074. If a community seeks to require that persons with a history of other crimes be denied licenses, clear findings must first be made which justify denial of licenses on that basis.

The Dumas court also invalidated portions of the licensing ordinance permitting the police chief to deny a license if he finds that the applicant "is unable to operate or manage a sexually oriented business premises in a peaceful and law-abiding manner" or is not "presently fit to operate a sexually oriented business." Neither provision satisfied the constitutional requirement that "any license requirement for an activity related to expression must contain narrow, objective, and definite standards to guide the licensing authority." *Id.* at 1072. See also Alexander II, *supra*, slip op. at 16 (unconstitutionally vague to define regulated bookstores as those selling "substantial or significant portion" of certain publications); 1126 Baltimore Boulevard, *supra*, 684 F. Supp. at 698-99 (striking ordinance allowing zoning officials to deny permit if adult entertainment establishment is not "in harmony" with zoning plan, does not "substantially impair" master plan, does not "adversely affect" health, safety and welfare and is not "detrimental" to neighborhood because such standards are "subject to possible manipulation and arbitrary application").

A number of courts have upheld ordinances requiring that viewing booths in adult theaters be open to discourage illegal and unsanitary sexual activity. See, e.g., Doe v. City of Minneapolis, 693 F. Supp. 774 (D. Minn. 1988).

Licensing provisions and ordinances forbidding massage parlors employees from administering massages to persons of the opposite sex have withstood equal protection and privacy and associational right challenges. See Clampitt v. City of Ft. Wayne, 682 F. Supp. 401, 407-408 (N.D. Ind. 1988) (equal protection); Wiggins, Inc. v. Fruchtman, 482 F. Supp. 681, 689-90 (S.D. N.Y. 1979), *aff'd*, 628 F.2d 1348 (2d Cir. 1980), *cert. denied*, 449 U.S. 842, 101 S.Ct. 122. However, some courts have found same-sex massage regulations to be in violation of Title VII of the Civil Rights Act of

in mind are that regulations must be narrowly crafted to address adverse secondary effects, they must be reasonably related to reduction of these effects and they must be capable of objective application. If these standards can be met, licensing and other regulatory provisions may play an important role in preventing unwanted exposure to sexually oriented materials and in reducing the crime problems associated with sexually oriented businesses.

It is clear that failure to act upon a license application for a sexually oriented business cannot take the place of regulation. Without justification, denial or failure to grant a license is a prior restraint in violation of the First Amendment. Parkway Theater Corporation v. City of Minneapolis, No. 716787, slip. op. (Henn. Co. Dist. Ct., Sept. 24, 1975).

An ordinance providing for license revocation of an adult motion picture theater if the licensee is convicted of an obscenity offense is also likely to be held unconstitutional as a prior restraint of free speech. Alexander v. City of St. Paul, 227 N.W.2d 370 (Minn. 1975). The Alexander court stated:

[W]hen the city licenses a motion picture theater, it is licensing an activity protected by the First Amendment, and as a result the power of the city is more limited than when the city licenses activities which do not have First Amendment protection, such as the business of selling liquor or running a massage parlor.

Id. at 373 (footnote omitted); see also, Cohen v. City of Daleville, 695 F. Supp. 1168, 1171 (M.D. Ala. 1988) (past sale of obscene material cannot justify revocation of license).

However, the courts have permitted communities to deny licenses to sexually oriented businesses if the person seeking a license has been convicted of other crimes which are closely related to the operation of sexually oriented businesses.

In Dumas v. City of Dallas, supra, the court reviewed a requirement that a license applicant not have been convicted of certain crimes within a specified period. Five of the enumerated crimes were held to be not sufficiently related to the purpose of the

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officers should be used to support the need for zoning ordinances which address these problems.

RECOMMENDATIONS

1. Communities should document findings of adverse secondary effects of sexually oriented businesses prior to enacting zoning regulations to control these uses so that such regulations can be upheld if challenged in court.

2. To reduce the adverse effects of sexually oriented businesses, communities should adopt zoning regulations to set distance requirements between sexually oriented businesses and sensitive uses, including but not limited to residential areas, schools, child care facilities, churches and parks.

3. To reduce adverse impacts from concentration of sexually oriented businesses, communities should adopt zoning ordinances which set distance requirements between liquor establishments and sexually oriented businesses and between sexually oriented businesses and should consider restricting sexually oriented businesses to one use per building.

4. Communities should require existing businesses to comply with new zoning or other regulation pertaining to sexually oriented businesses within a reasonable time so that prior uses will conform to new laws.

IV. LICENSING AND OTHER REGULATIONS

Licensing and other regulations may also be used to reduce the adverse effects of sexually oriented businesses. The critical requirements which communities must keep

community seeks to prevent by prohibiting multiple-use businesses before enacting this type of ordinance.

4. Requiring Existing Businesses to Comply with New Zoning

Zoning ordinances can require existing sexually-oriented businesses to close their operations provided they do not foreclose the operation of such businesses in new locations. Under such provisions, an existing business is allowed to remain at its present location, even though it is a non-conforming use, for a limited period.

The Minnesota Supreme Court has explained the theory this way:

The theory behind this legislative device is that the useful life of the nonconforming use corresponds roughly to the amortization period, so that the owner is not deprived of his property until the end of its useful life. In addition, the monopoly position granted during the amortization period theoretically provides the owner with compensation for the loss of some property interest, since the period specified rarely corresponds precisely to the useful life of any particular structure constituting the nonconforming use.

Naegele Outdoor Advertising Co. v. Village of Minnetonka, 162 N.W.2d 206, 213 (Minn. 1968).

Such provisions applied to sexually oriented businesses have been said to be "uniformly upheld." Dumas v. City of Dallas, 648 F. Supp. 1061, 1071 (N.D. Tex. 1986), aff'd, FW/PBS, Inc. v. City of Dallas, 837 F.2d 1298 (5th Cir. 1988) (citing cases).

As detailed in the first section of this report (pp. 6-15), there are significant secondary impacts upon communities related to the location of sexually oriented businesses. These impacts are intensified when sexually oriented businesses are located in residential areas or near other sensitive uses and when sexually oriented businesses are concentrated near each other or near alcohol oriented businesses. The Working Group believes that evidence from studies such as those described in the first section of this report and anecdotal evidence from neighborhood residents and police

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 differentiated as to the general 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-Related".

STUDY SITE LOCATIONS

At the time of the study's inception, there were at least forty-three possible, distinct sites in Indianapolis 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 D1 through D12 (residential dwelling district classifications) and the commercial areas were neighborhood-related - principally C3 (a neighborhood commercial classification). Special Use designations were judged to be neighborhood-related or not on an individual basis. SU1 (church) & SU2 (school), for example, were judged to be generally neighborhood-related.

"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 a community-wide nature. SU6 (hospital) and SU21 (cemetery) were judged, therefore, to be related to the community generally.

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Within these two broad classifications, six locations were chosen. Two of them were situated in residential settings, two in regional-commercial settings and two in areas that fell in between, i. e., areas that had a high percentage of residential zoning but also contained a certain proportion of regionally oriented commercial zoning. These six locations became the Study Areas of this investigation. (cf. Appendix I)

**AREA ZONING CHARACTERISTICS
STUDY AREAS**

SITE	CHARACTERISTICS			
	Residential	Commercial	Special	Parks
<u>Residential</u>				
1. 5431 East 38th St.	D4=82%	C1=7% C3=8%	SU1=3%	-
2. 3155 East 10th St.	D5=75%	C3=24%	SU9=1%	-
<u>Coml./Residential</u>				
3. 3555 West 16th St.	D5=78%	C4=22%	-	-
4. 2101 W. Washington	D5=60%	C3=3% C4=18%	SU2=17%	PK1=2%
<u>Commercial</u>				
5. 6116 E. Washington	D5=65% D8=5%	C4=30%	-	-
6. 4441-63 N. Keystone	D5=15%	C2=5% C3=10% C5=40%	11U=12% 12U=13%	PK2=5%

Of the two sites chosen in residential areas, one contained an adult bookstore (Apollo Adult Books, 5431 East 38th St.) and a massage parlor (Eve's Garden of Relaxation, 5429 East 38th St.) The other residential location contained an adult movie house (Rivoli Theater, 3155 East 10th St.) and a topless bar (Ten-De Club, 3201 East 10th St.)

One of the commercial/residential areas had a topless bar within its boundaries (Blue Moon Saloon, 2101 West Washington), while the other harbored the White Front Bar which featured topless dancing (3535 West 16th St.)

The two commercial areas chosen were in the sixty-one hundred block of East Washington St. and the forty-four hundred block of North Keystone. The first site contained two adult bookstores (Modern Art Bookstore at 6118 and Adult Arcade at 6122) and a massage parlor (Spanish Moon at 6116.) The North Keystone location contained four massage parlors (Other World, 4441, Diamond's Angels, 4445, Pleasure Palace, 4461, and Town and Country, 4463), two adult bookstores (Video World, 4447 and Adult Bookstore, 4475) as well as a topless lounge (Devil's

Hideaway, 4451).

Six areas were also selected to serve as control sites for the study. These sites were chosen on the basis of their proximate location to the Study Areas (or their location on major thoroughfares 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**

<u>SITE</u>	<u>CHARACTERISTICS</u>			
	<u>Residential</u>	<u>Commercial</u>	<u>Special</u>	<u>Parks</u>
<u>Residential</u>				
1.2300 West 10th St.	D5=82%	C1=4% C3=14%	-	-
2.2500 East 10th St.	D5=80%	C2=12% C3=8%	-	-
<u>Coml./Residential</u>				
3.5420 E. Washington	D5=62% D6=8% D8=10%	C3=1% C4=19%	-	-
4.2600 W. Washington	D5=35% D4=34%	C1=2% C2=1% C5=13% C7=8%	SU1=3% SU2=3%	-
<u>Commercial</u>				
5.5200 W. Keystone	D2=7% D4=2% D5=15% D7=6%	C1=4% C3=9% C5=25% C7=20% C5=2%	11U=10%	-
6.750 N. Shadeland	D2=3% D3=15% D7=3%	C4=49% C5=10% C5=5%	SU1=15%	-

783
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AREA ZONING CHARACTERISTICS

	NEIGHBORHOOD-RELATED	COMMUNITY-RELATED
<u>Residential</u>		
Study Area		
1.	100%	-
2.	99%	1%
Control Area		
1.	100%	-
2.	100%	-
<u>Coml./Residential</u>		
Study Area		
3.	78%	22%
4.	82%	18%
Control Area		
3.	81%	19%
4.	78%	22%
<u>Commercial</u>		
Study Area		
5.	70%	30%
6.	35%	65%
Control Area		
5.	43%	57%
6.	36%	64%

STUDY SITE COMPARISONS

Throughout the following analyses, a series of comparisons are made at several different levels of geography: i.e., County/Police District; Census Tract/Census Tract Cluster; and Control/Study Area.

Large Area

When dealing with crime statistics, the Indianapolis Police Department District is used as the largest universe of comparison. In the case of real estate information, Marion County is used as the largest geographic area of comparison. Center Township is also used as a basis of comparison in the analysis of adult entertainment impacts on property values.

Mid-Size Area

Intermediate geographic levels used for comparison in the study were census tracts when study sites were centrally located within their boundaries. Where they were not, those census tracts in proximity to the site were chosen as the basis of comparison.

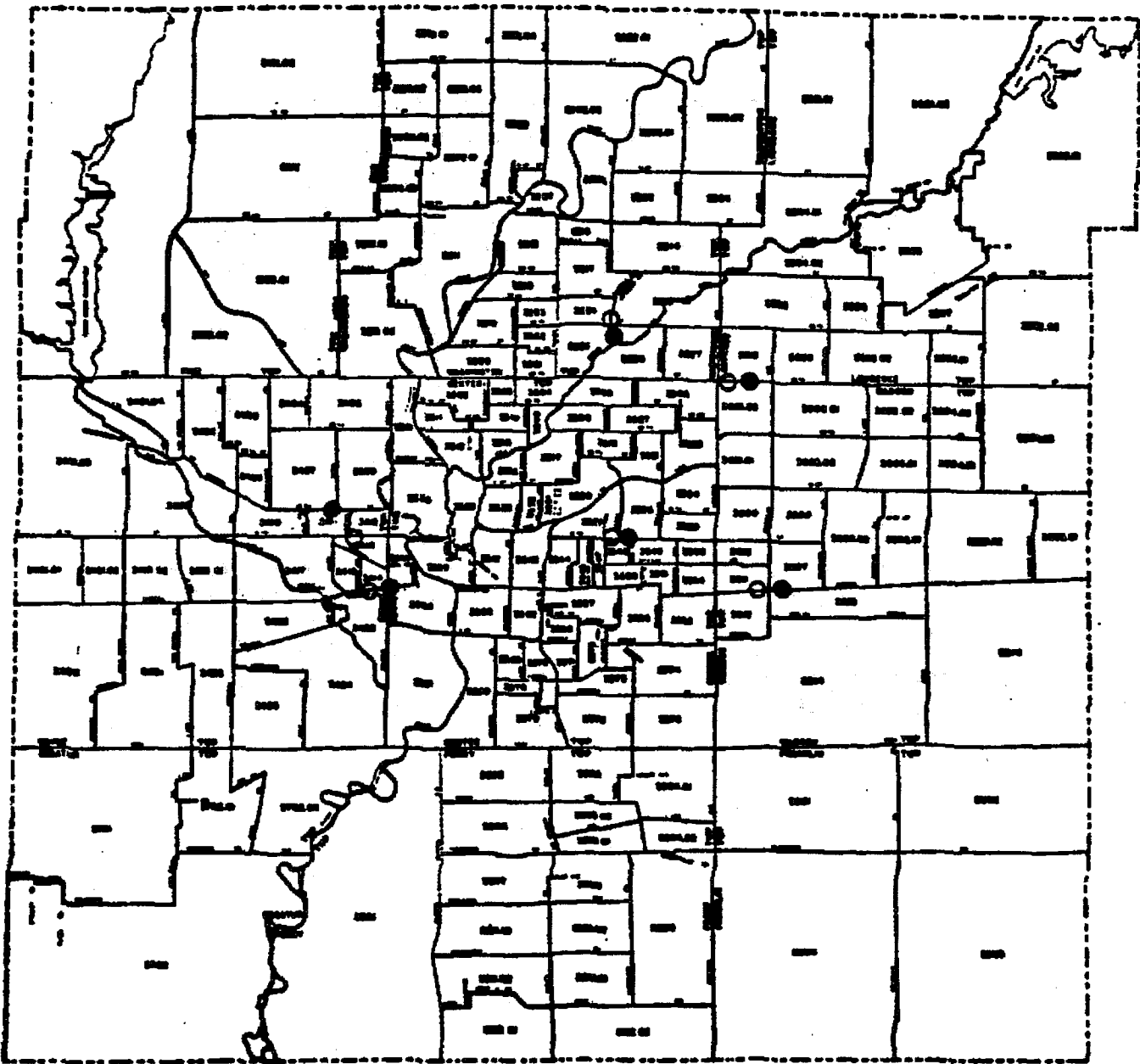
**CENSUS TRACTS/TRACT CLUSTERS
Study/Control Areas**

	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>	<u>6</u>
Control Areas	3412	3527	3611	3414	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.

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1980 CENSUS TRACTS
ADULT ENTERTAINMENT BUSINESS STUDY

- Study Area
- Control Area



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CRIME INCIDENCE

The Data Processing Unit of the Indianapolis Police Department performed two computer runs of their "Incidence 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 Control 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 Crimes² 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 sites in zoning mix, size of population, age of housing 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 for each area using 1980 Census data as the population constant. ⁴ 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.

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2-793

MAJOR CRIMES

The crimes of Criminal Homicide, Rape, Robbery, Aggravated Assault, Residence and Non-Residence Burglary, Larceny and Vehicle Theft are reported on a monthly basis by the Indianapolis Police Department as Major Crimes. During the period of this study (1978 - 1982), there were 175,796 major crimes reported in the IPD District with an annual high of 37,220 occurring in 1980. The crime rate for this year was 792.42 in the police district.

This represented an increase of 2,115 major crimes over the previous year total and an increase of 6% in the crime rate. The lowest annual total in the study period (33,898) was reported in 1981 which represented a drop of 10% in the crime rate from the previous year.

Indianapolis Police District Major Crimes/Rates 1978-1982					
Population- 488,700					
	1978	1979	1980	1981	1982
Murder	78/1.62	82/1.66	107/2.20	65/1.36	68/1.47
Rape	341/7.20	438/9.35	410/8.73	400/8.52	387/8.24
Robbery	1863/41.78	2063/43.71	2183/46.89	2184/46.71	1883/42.43
Aggravated Assault	1353/28.51	1684/35.94	1743/37.11	1880/40.03	1882/40.28
Residence Burglary	6848/134.11	6838/139.90	7486/159.57	7677/163.46	7783/165.70
Non-Residence Burglary	2382/50.93	3011/62.82	2878/61.91	2308/48.14	2213/47.12
Larceny	18682/387.86	18827/402.96	18808/402.51	18782/387.29	17487/372.51
Vehicle Thefts	3874/78.22	3451/73.47	3787/80.63	2882/61.18	2802/61.78
Total	34837/741.88	36105/747.39	37220/792.42	33888/721.70	34736/738.54
Total Crimes: 175,796					
Per 10,000 Population					

AN ANALYSIS OF
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IN DALLAS, TEXAS

AS OF APRIL 1997

Prepared for:

Ms. Sangeeta Kuruppillai
Assistant City Attorney
CITY OF DALLAS
Office of the City Attorney
City Hall 7BN
Dallas, Texas 75201

Prepared by:

PETER MALIN, MAI

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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-11,866)					
	1978	1979	1980	1981	1982
Murder	1/0.86	4/3.43	3/2.57	6/4.29	2/1.71
Rape	8/6.86	12/10.29	18/12.86	8/6.86	13/11.14
Robbery	37/31.72	44/37.72	44/37.72	50/42.86	36/30.86
Aggravated Assault	18/16.29	35/30.00	29/24.86	30/26.72	37/31.72
Residence Burglary	151/129.42	229/196.50	292/224.58	272/233.16	198/169.72
Non-Residence Burglary	71/60.86	50/42.86	62/53.16	59/50.67	79/67.72
Larceny	484/414.88	544/466.31	574/492.03	588/504.03	578/496.31
Vehicle Theft	141/120.86	112/96.01	110/94.29	83/71.16	90/77.16
Total	912/781.76	1,030/882.91	1,099/942.05	1,085/938.63	1,034/886.34
				Total 5,170	
				Average: 886.34	

*Per 10,000 Population

During the period 1978 - 1982, 4,657 major 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 -276.32 respectively from 1980

Study Area Major Crimes/Rates* 1978-1982
(Population- 8,541)

	<u>1978</u>	<u>1979</u>	<u>1980</u>	<u>1981</u>	<u>1982</u>
Murder	2/3.51	0/-	2/2.34	6/5.85	0/-
Rape	3/3.51	12/14.05	11/12.88	6/10.54	8/9.37
Robbery	55/64.40	53/62.05	58/67.81	26/30.44	44/51.52
Aggravated Assault	25/29.27	18/21.08	22/25.76	18/19.73	28/33.95
Residence Burglary	181/188.50	200/234.17	244/285.68	190/222.48	189/221.29
Non-Residence Burglary	52/66.01	58/67.81	80/93.67	65/76.10	64/74.93
Larceny	462/540.92	450/528.87	586/686.10	580/655.88	464/543.26
Vehicle Theft	76/88.86	80/105.37	100/117.08	60/70.25	77/90.16
Total	867/1018.10	881/1091.50	1103/1291.42	831/1090.04	875/1024.47
*Per 10,000 Population					Total: 4,867
					Average: 1090.51

The frequency of crimes in the IPD District, the Control Areas and the Study Areas showed approximately the same pattern. In each of the areas, the number of major crimes increased from 1978 to 1980 when they peaked. Subsequent years showed frequency levels below the 1980 high.

The average crime rate figure for the Indianapolis Police Department District was 748.55. The Control Area had a rate that was 137.79 higher than the overall police district, whereas the Study Area was 204.17 points higher than the Control Area. In other words, people living in the Control Area of the study were exposed to a major crime rate in their neighborhoods that was 18% higher than that of the IPD population generally.

Residents of the Study Area, however, were exposed to a major crime rate that was 23% higher than that of the Control Area and 46% higher than the population of the IPD District as a whole.

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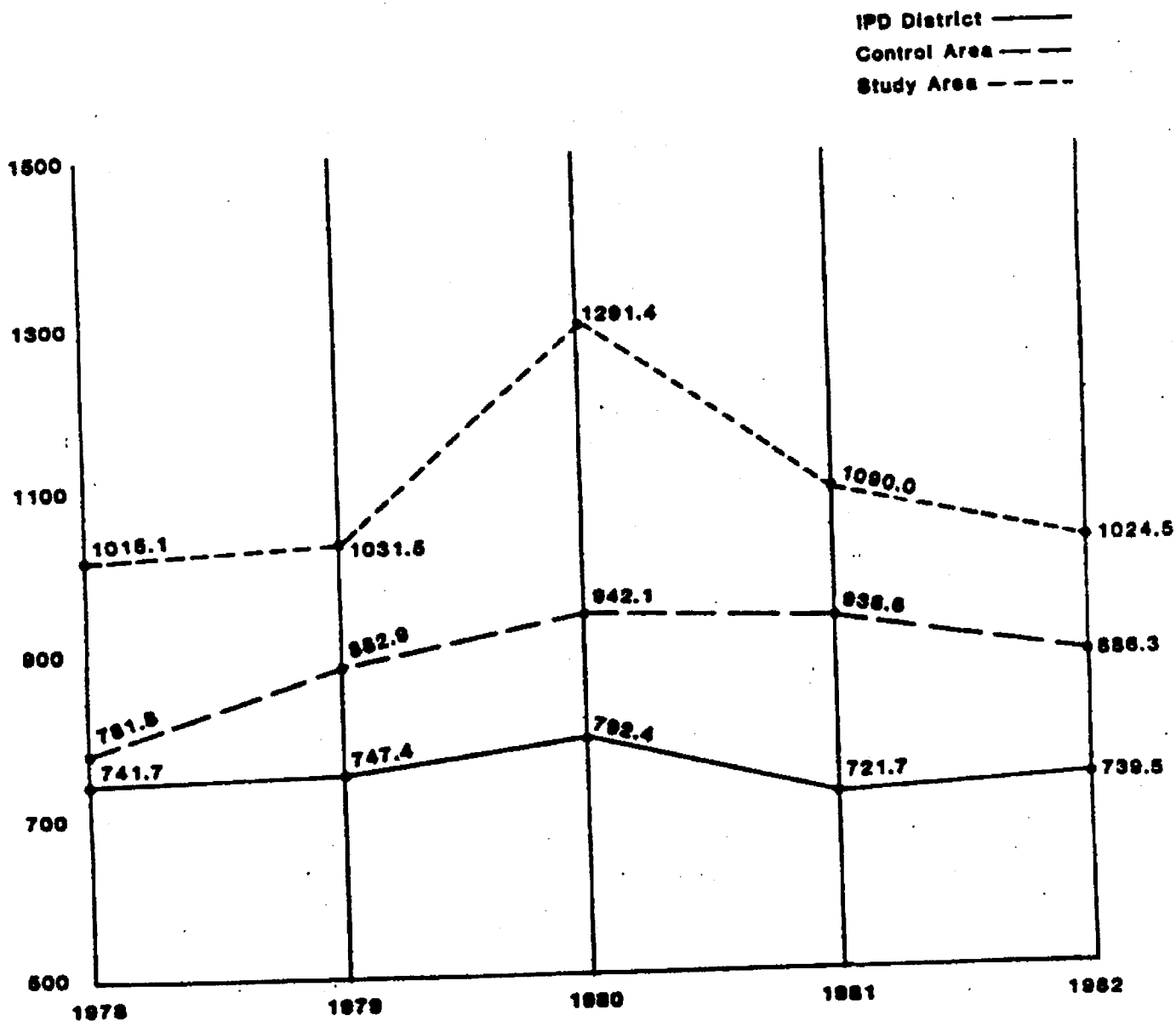
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Major Crime Rate* 1978-1982



*The numerical instance of Criminal Homicide, Rape, Robbery, Aggravated Assault, Residence Burglary, Non-Residence Burglary, Larceny and Vehicle Theft- Per 10,000 Population.

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It is interesting to examine crime rates within the Control and Study Areas in relation to the land use characteristics of the locations in which they occurred.

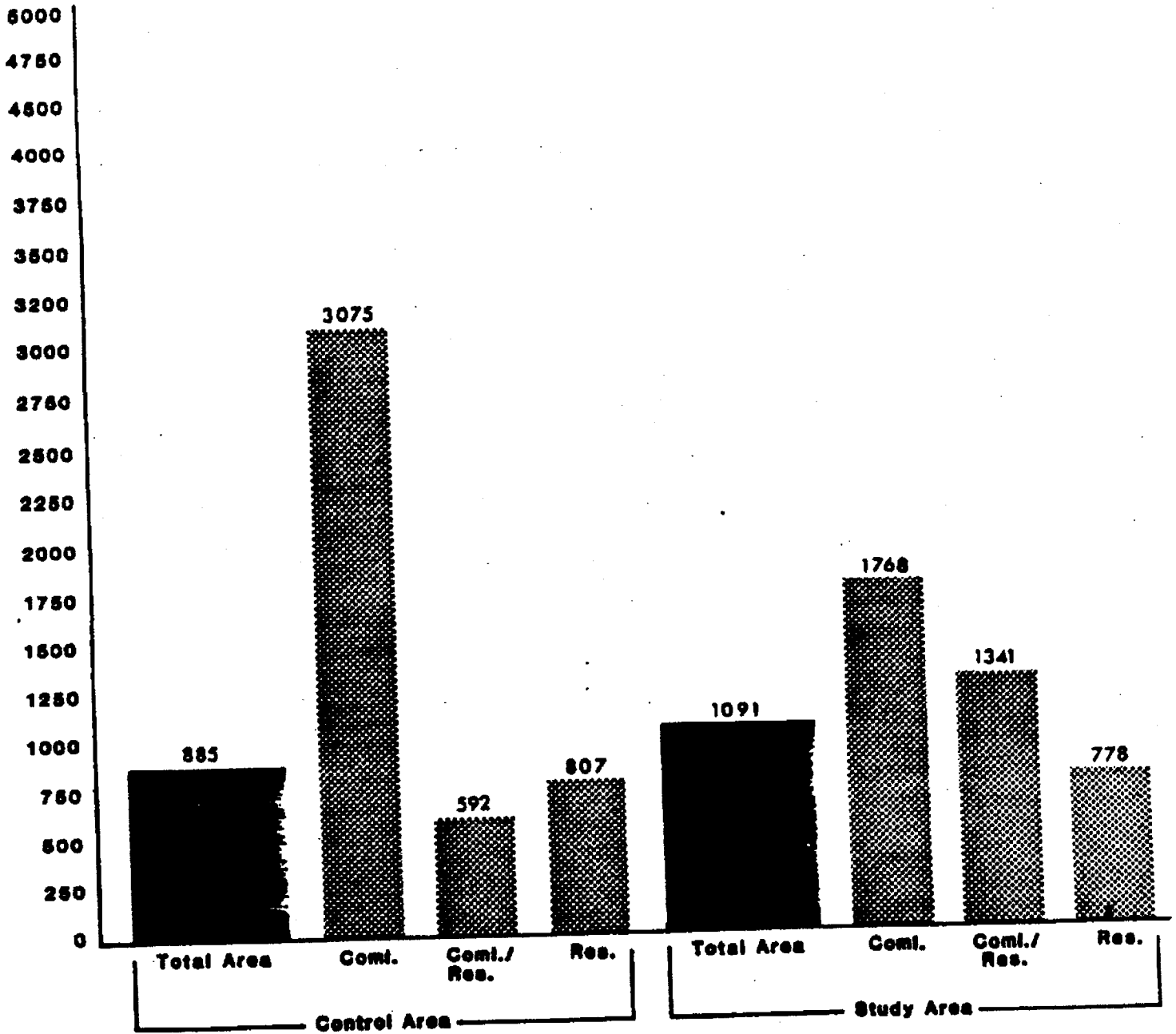
Crime rates provide a better understanding of actual impact on the resident of the area than crime frequencies in that they establish a ratio of crime to each 10,000 of population. In this way, they tell us just how vulnerable a neighborhood is historically to crime within its boundaries.

1978-1982 ANNUAL AVERAGE MAJOR CRIME RATE									
BY LAND USE									
AREA	Commercial			Coml./Res.			Residential		
	Pop.	Crime	Ann.Rt.	Pop.	Crime	Ann.Rt.	Pop.	Crime	Ann.Rt.
<u>Control</u>									
1.	379	240	1267						
2.	<u>523</u>	<u>1147</u>	<u>4386</u>						
	<u>902</u>	<u>1387</u>	<u>3075</u>						
3.				2828	837	592			
4.				<u>2382</u>	<u>705</u>	<u>592</u>			
				<u>5210</u>	<u>1542</u>	<u>592</u>			
5.							2159	1173	1087
6.							<u>3395</u>	<u>1067</u>	<u>629</u>
							<u>5554</u>	<u>2240</u>	<u>807</u>
<u>Study</u>									
1.	219	439	4009						
2.	<u>1218</u>	<u>831</u>	<u>1365</u>						
	<u>1437</u>	<u>1270</u>	<u>1768</u>						
3.				1015	834	1643			
4.				<u>1203</u>	<u>653</u>	<u>1086</u>			
				<u>2218</u>	<u>1487</u>	<u>1341</u>			
5.							3656	1232	674
6.							<u>1230</u>	<u>668</u>	<u>1086</u>
							<u>4886</u>	<u>1900</u>	<u>778</u>

Accordingly, we find that this impact is 74% higher in district commercial areas of the Control Area than similar district commercial areas of the Study Area. However, while the rate is approximately the same in the residential areas of both, the Study Area exhibits a crime rate that is 127% higher than the Control Area in locations that are mixed district-commercial and residential in nature.

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1978-1982 Annual Average Major Crime Rates*: Selected Areas



* Per 10,000 Population

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SEX-RELATED CRIME ⁵

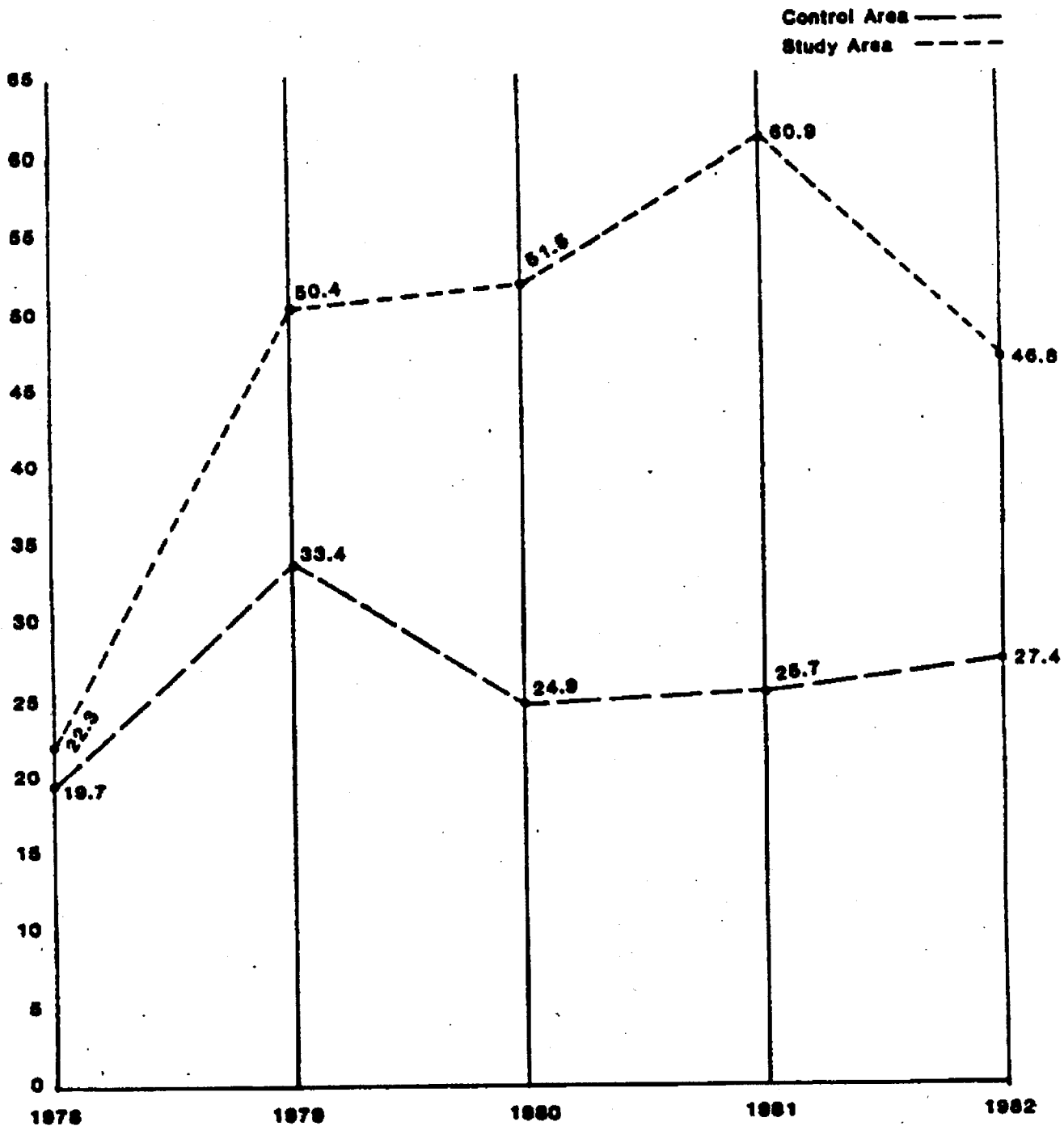
Crimes of Rape, Indecent Exposure, Obscene Conduct, Child Molestation, Adult Molestation and Commercial Sex were segregated and then aggregated from police printouts of total crime incidence occurring within the Study Area and the Control Area for the period 1978 - 1982. A total of 153 sex-related crimes was reported in the Control area during this period, with a high of 39 having occurred in 1979. During the same period, the Study Area experienced 198 sex-related crimes, reaching a high of 52 in 1981.

Control Area Sex-Related Crimes/Rates*1978-1982					
(Population-11,808)					
	1978	1979	1980	1981	1982
Rape	8	18	15	8	12
Indecent Exposure	7	10	9	18	4
Obscene Conduct	0	2	0	0	1
Child Molestation	6	10	4	8	12
Adult Molestation	2	3	0	1	2
Commercial Sex	0	1	1	0	0
Total	23/19.7	39/33.4	29/24.9	35/29.7	38/37.4
					Total 153
* Per 10,000 Population					

Study Area Sex-Related Crimes/Rates*1978-1982					
(Population-8,541)					
	1978	1979	1980	1981	1982
Rape	2	12	11	10	8
Indecent Exposure	10	14	12	5	7
Obscene Conduct	0	0	0	1	0
Child Molestation	5	9	5	11	8
Adult Molestation	1	0	0	0	2
Commercial Sex	1	0	10	25	18
Total	19/22.3	45/52.4	44/51.5	52/60.9	43/50.3
					Total 198
* Per 10,000 Population					

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Sex-Related Crime Rate* 1978-1982



* The numerical instance of Rape, Indecent Exposure, Obscene Conduct, Child Molestation, Adult Molestation and Commercial Sex- Per 10,000 Population.

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Whereas sex-related crime rates in the Control Areas varied from a low of 19.7 in 1978 to a high of 33.4 in 1979, the Study Areas increased from a low of 22.3 in 1978 to its peak of 60.9 in 1981.

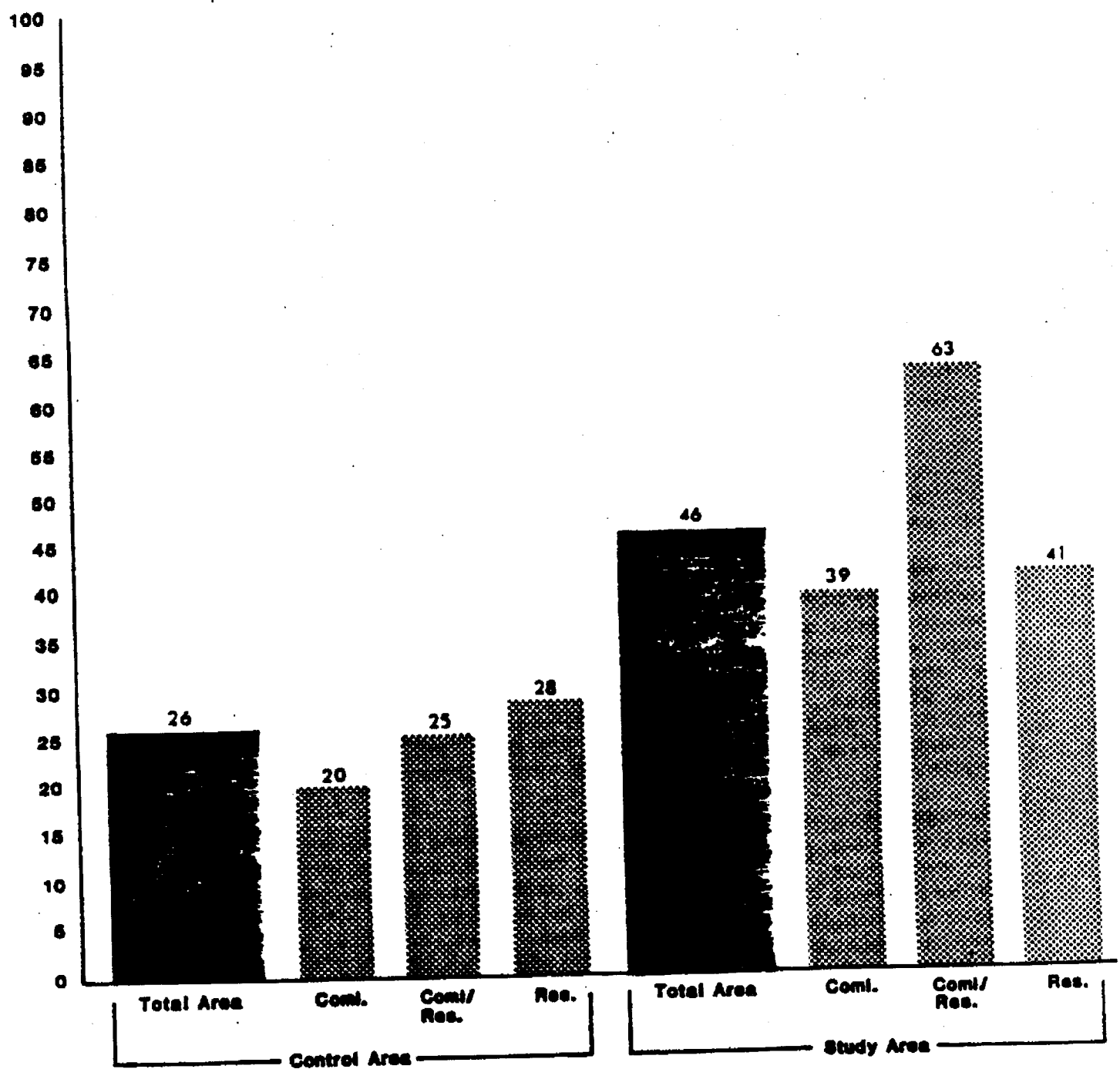
The average sex-related crime rate in the Control Area was 26.2 over the five year period. The rate in the Study Area was approximately .77% higher than this average during the same period of time at 46.4.

Comparing the crime rate for sex-related crimes by land use categories in the Control and Study Areas, a different pattern than that for major crime rates emerges.

1978-1982 ANNUAL AVERAGE SEX-RELATED CRIME RATE BY LAND USE									
Area	Commercial			Coml./Res.			Residential		
	Pop.	Crimes	Ann. Rt.	Pop.	Crimes	Ann. Rt.	Pop.	Crimes	Ann. Rt.
Control									
1.	379	2	11						
2.	523	7	27						
	<u>902</u>	<u>9</u>	<u>20</u>						
3.				2828	35	25			
4.				2382	29	24			
				<u>5210</u>	<u>64</u>	<u>25</u>			
5.							2159	49	45
6.							3395	29	17
							<u>5554</u>	<u>78</u>	<u>28</u>
Study									
1.	219	5	46						
2.	1218	23	38						
	<u>1437</u>	<u>28</u>	<u>39</u>						
3.				1015	38	75			
4.				1203	32	53			
				<u>2218</u>	<u>70</u>	<u>63</u>			
5.							3656	69	38
6.							1230	31	50
							<u>4886</u>	<u>100</u>	<u>41</u>

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1978-1982 Annual Average Sex-Related Crime Rates*: Selected Areas



* Per 10,000 Population

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Whereas major crime rates were similar in residential areas of the Control and Study Areas, the Control Area rate was substantially higher in district commercial areas and lower in mixed district commercial/residential areas. In contrast to this, the sex-related crime rate was uniformly higher in all land use categories of the Study Area, ranging from +46% in residential areas to +152% in district commercial/residential areas.

SUMMARY OF FINDINGS

Both the Control and the Study Area experienced a significantly higher incidence of major crimes/10,000 population than the IPD District as a whole. Much of this increase would be expected given their location in generally older, less affluent and more populous areas of the city.

It is more difficult to explain the distinctly higher crime rate experienced in the Study Areas as compared to the Control Area - 1,090.51 versus 886.34.

This dicotomy is even more apparent in the instance of sex-related crime rates in the two areas. The average sex-related crime rate in the Control Areas was 26.2. The Study Areas had an average rate of 46.4.

If the same ratio between the Control and Study Areas established for major crime during this period were applied, we would expect a crime rate that was 23% higher - or 32.3 - in the Study Areas. The actual rate of 46.4 is 77% higher than that of the Control Area and underscores a distinct departure from the expected. Not only is the rate substantially higher in the Study Area, but it is twice the rate that would have been expected from the distribution of crimes generally in Indianapolis.

The anomalies demonstrated in the comparison of the Study Area with the general population and the Control Area will not, in themselves, establish a causal relationship between Adult Entertainment Businesses and the crime rates in the immediate area surrounding them. The fact does remain, however, that in each subsection of the Study Areas where adult entertainment is offered a substantially higher sex-related crime presence obtains over the corresponding subsections of the Control Area in which no adult entertainment is offered. The same is true regarding the rate of major crimes.

In areas chosen for their similarities otherwise, an obvious difference lies in the presence of one or more adult entertainment establishments.

FOOTNOTES

1. The Incidence File is a computerized listing of all reports made by police after initial investigation of an incident to which they were dispatched. It, therefore, provides a more reliable indication of crime incidence than the computerized "Police Run" file which logs police dispatches based on preliminary information on the incidents.
2. Criminal Homicide, Rape, Robbery, Aggravated Assault, Residence Burglary, Non-Residence Burglary, Larceny and Vehicle Theft.
3. Rape, Indecent Exposure, Obscene Conduct, Child Molestation, Adult Molestation and Commercial Sex.
4. Since population estimates were not available for each year of the survey, the 1980 Census figures were used because they were the result of an actual enumeration and, falling at the mid-point of the survey, they would tend to balance out population trends during the five year time span.
5. Sex-related crimes are not isolated and compiled on a routine basis for the IPD District as a whole. A manual compilation of these data was proscribed by the time limitations of the study.

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Assistant City Attorney
CITY OF DALLAS
Office of the City Attorney
City Hall 7BN
Dallas, Texas 75201

Prepared by:

PETER MALIN, MAI

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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 (unlike 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 crime frequencies, at least in part, are determined 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 37% higher than commercial areas.

The following table displays major crime frequencies for the five year period by type of area, the existence or non-existence of adult entertainment and specific location.

MAJOR CRIME FREQUENCY							
	<u>1978</u>	<u>1979</u>	<u>1980</u>	<u>1981</u>	<u>1982</u>	<u>Tot.</u>	<u>%</u>
<u>District Commercial</u>							
Study Area							
No. Keystone	83	71	112	87	86	439	
E. Washington	150	152	202	186	141	831	
	<u>233</u>	<u>223</u>	<u>314</u>	<u>293</u>	<u>227</u>	<u>1270</u>	
Control Area							
No. Shadeland	38	41	34	43	84	240	
No. Keystone	212	217	210	259	249	1147	
	<u>250</u>	<u>258</u>	<u>244</u>	<u>302</u>	<u>333</u>	<u>1387</u>	
						<u>2657</u>	<u>27%</u>
<u>Mixed Res./Coml.</u>							
Study Area							
W. Washington	123	184	190	185	152	834	
West 16th St.	177	128	140	104	104	653	
	<u>300</u>	<u>312</u>	<u>330</u>	<u>289</u>	<u>256</u>	<u>1487</u>	
Control Area							
W. Washington	110	182	211	184	150	837	
E. Washington	160	151	130	139	125	705	
	<u>270</u>	<u>333</u>	<u>341</u>	<u>323</u>	<u>275</u>	<u>1542</u>	
						<u>3029</u>	<u>31%</u>
<u>Residential</u>							
Study Area							
East 10th St.	219	235	294	242	242	1232	
East 38th St.	115	111	165	127	150	668	
	<u>334</u>	<u>346</u>	<u>459</u>	<u>369</u>	<u>392</u>	<u>1900</u>	
Control Area							
East 10th St.	211	239	269	210	243	1173	
West 10th St.	181	200	244	260	182	1067	
	<u>334</u>	<u>346</u>	<u>458</u>	<u>369</u>	<u>392</u>	<u>2240</u>	
						<u>4140</u>	<u>42%</u>

The pattern was similar in comparison of the frequency of sex-related crime within the three areas during the same period of time. It was more pronounced, however. Fifty-one percent of the total occurred in residential environments, while thirty-eight percent occurred in mixed commercial-residential areas. In comparison, only eleven percent of the total occurred in district commercial areas.

The following table displays sex-related crime frequencies for the five year period by type of area, the existence or non-existence of adult entertainment and the individual locations included in the study.

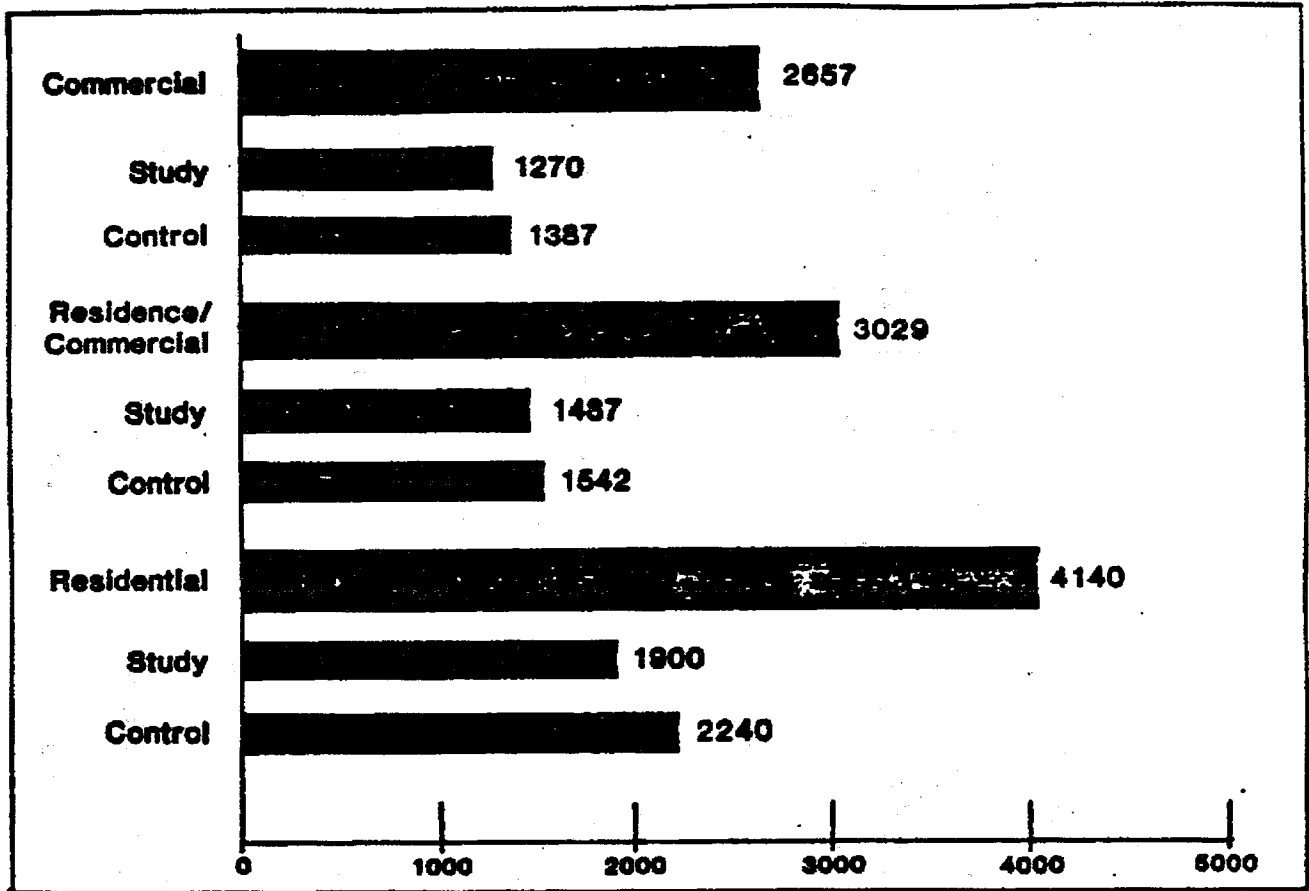
SEX-RELATED CRIME FREQUENCY

	<u>1978</u>	<u>1979</u>	<u>1980</u>	<u>1981</u>	<u>1982</u>	<u>Tot.</u>	<u>%</u>
<u>District Commercial</u>							
Study Area							
No. Keystonc	-	2	2	-	1	5	
E. Washington	-	4	4	8	7	23	
	<u>-</u>	<u>6</u>	<u>6</u>	<u>8</u>	<u>8</u>	<u>28</u>	
Control Area							
No. Shadeland	-	-	-	-	2	2	
No. Keystonc	1	3	1	1	1	7	
	<u>1</u>	<u>3</u>	<u>1</u>	<u>1</u>	<u>3</u>	<u>9</u>	
						<u>37</u>	<u>11%</u>
<u>Mixed Res/Coml.</u>							
Study Area							
W. Washington	5	10	12	8	3	38	
West 16 St.	1	4	8	9	10	32	
	<u>6</u>	<u>14</u>	<u>20</u>	<u>17</u>	<u>13</u>	<u>70</u>	
Control Area							
W. Washington	3	8	11	8	5	35	
E. Washington	4	10	3	8	4	29	
	<u>7</u>	<u>18</u>	<u>14</u>	<u>16</u>	<u>9</u>	<u>64</u>	
						<u>134</u>	<u>38%</u>
<u>Residential</u>							
Study Area							
East 10th St.	12	18	14	17	8	69	
East 38th St.	1	5	4	10	11	31	
	<u>13</u>	<u>23</u>	<u>18</u>	<u>27</u>	<u>19</u>	<u>100</u>	
Control Area							
East 10th St.	11	13	7	7	11	49	
West 10th St.	4	5	6	5	9	29	
	<u>15</u>	<u>18</u>	<u>13</u>	<u>12</u>	<u>20</u>	<u>78</u>	
						<u>178</u>	<u>51%</u>

These trends are not easily explained on the basis that "where 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 zoning designation. Further, the transient nature of this population could be considered to contribute to the incidence of certain crimes.

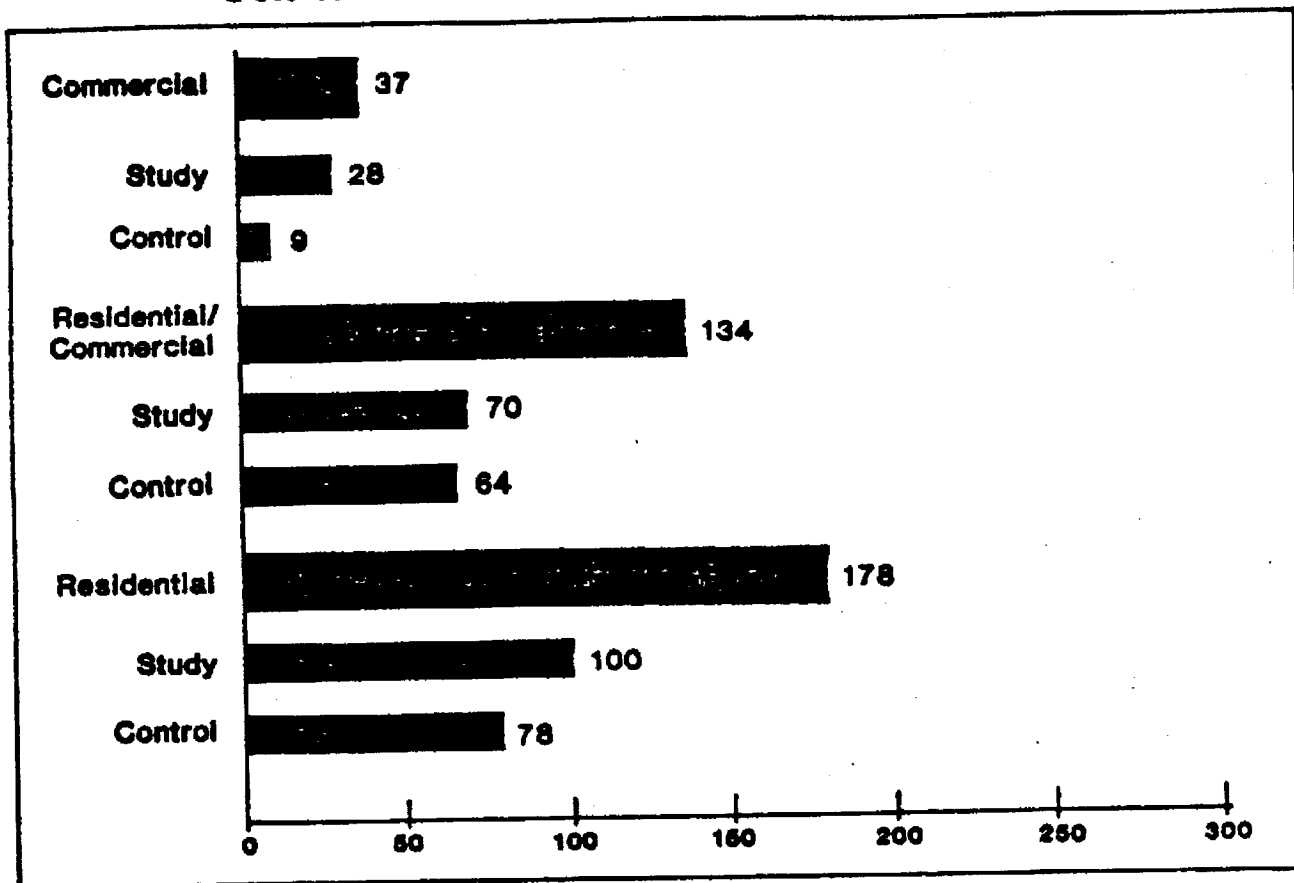
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Major Crimes / 1978-1982, Selected Areas



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Sex-Related Crimes / 1978-1982, Selected Areas



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SUMMARY OF FINDINGS

There appears to be a strong correlation between crime frequency and the residential character of neighborhoods, i.e., the more residential the nature of the neighborhood, the greater is the instance of crime in that neighborhood. Crime frequencies were, in fact, fifty-six percent higher in residential areas than district commercial areas.

The above correlation is even more acute when considering sex-related crimes. Sex-related crimes occurred four times more frequently in substantially residential milieus having one or more adult entertainment businesses than in commercial environments having one or more such businesses.

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 locations.

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 1980 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 were made in the study's original intent. Rather than doing annual comparisons of housing value, 1979 was chosen as the comparison year and the 1980 Census data set chosen due to the ability to summarize it at the county, tract and block level.

The geographic levels of comparison were the County as a whole, the Census Tract or Tract cluster in which the Study or Control Areas were located and the areas within a 1000-foot radius of the Study and Control location centroids.

A next step was to use the data available on real estate activity in the Multiple Listing Summaries to establish market performance between 1979 and 1982 in both the Control and Study Areas.* The results were compared to real estate activity in the residential market of Center Township which, in terms of value and general housing condition, most closely resembles the two areas among the nine Marion County townships.

COMPARISON RESULTS

AVERAGE MORTGAGE VALUES - 1979

<u>Marion County</u> ¹	\$ 41,854	
	<u>Control Areas</u>	<u>Study Areas</u>
<u>Tract/Tract Clusters</u> ¹	\$ 31,858	\$ 28,003
[<u>Tract/Tract Clusters</u> ²]	[27,872]	[21,605]
<u>1000-Foot Radius</u> ¹	23,721	24,616
[<u>1000-Foot Radius</u> ³]	[16,038]	[23,823]

1. Source: 1980 Census.
2. Source: Home Mortgage Disclosure Act Statements.
3. Source: Residential Multiple Listing Summaries.

Comparison of the 1980 Census data would indicate that the value of housing in the areas addressed in this study are from 40 to 73 percent below the Marion County average. While the average value of housing at the census tract level was somewhat higher in the census tracts in which the Control Areas were located than those in which the Study Areas were located (\$31,858 vs. \$28,003), the opposite was true when comparing the target areas themselves. Housing values within 1000 feet of adult entertainment businesses in the Study Areas were greater (although by a lesser margin) than those in the Control Areas (\$24,616 vs. \$23,721).

* Whereas the sample size is sufficient in most years to provide acceptable confidence levels for mortgage averages, the sample is only marginally acceptable in 1981 and 1982 for the Control Area.

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 Census 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

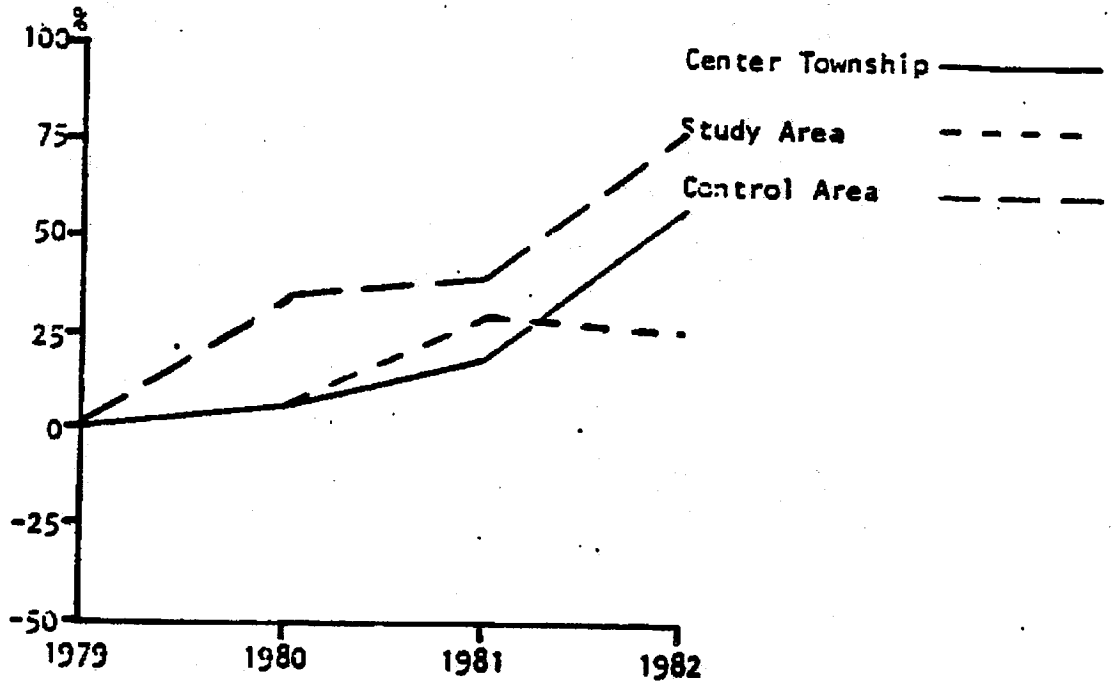
	<u>1979</u>	<u>1980</u>	<u>1981</u>	<u>1982</u>	<u>1979-1982 % Change</u>
Control Area ¹	\$16,038	\$21,687	\$22,650	\$28,420	+ 77%
<u>Study Area</u> ¹	23,823	25,432	30,964	30,090	+ 26%
<u>Center Township</u> ²	16,100	17,178	18,903	25,099	+ 56%

1. Source: Indianapolis Multiple Listings for Residential Prop.

2. Source: Home Mortgage Disclosure Act Statements.

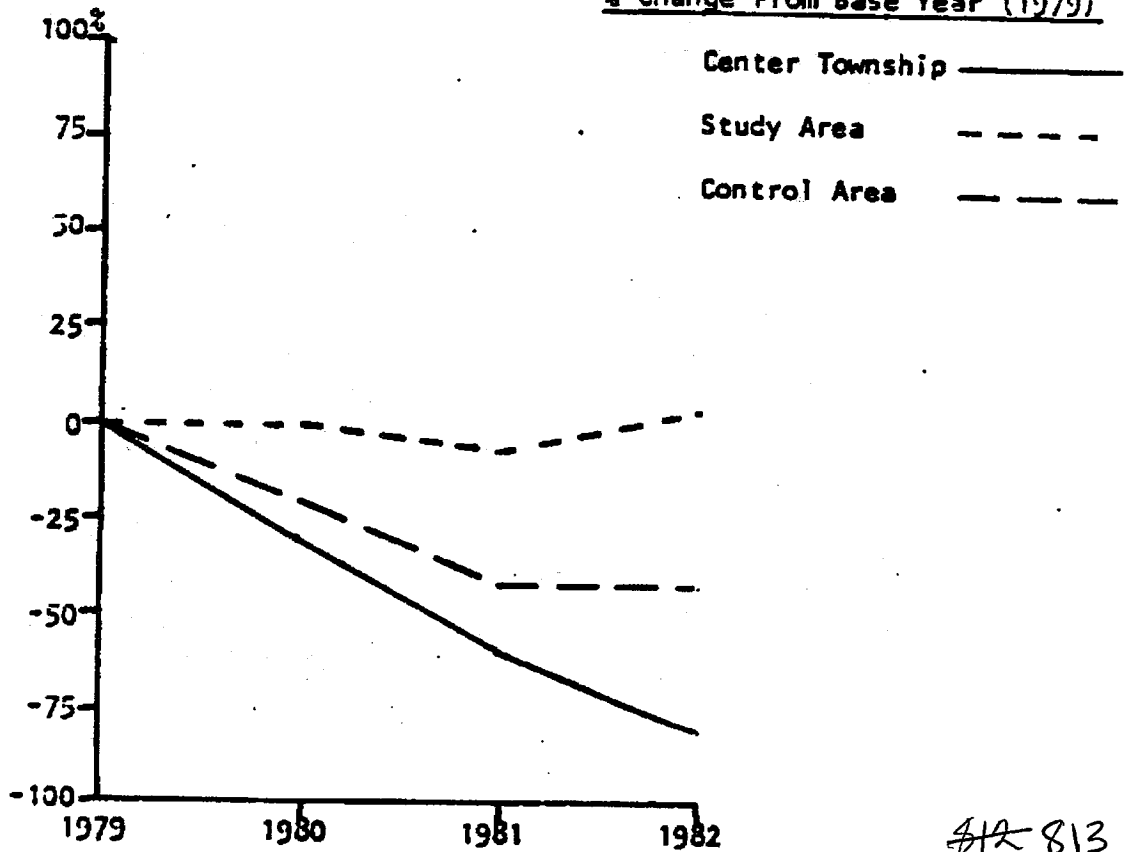
MORTGAGE VALUES

% Change From Base Year (1979)



REAL ESTATE LISTINGS

% Change From Base Year (1979)



412 813
2-818

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**

	<u>1979</u>	<u>1980</u>	<u>1981</u>	<u>1982</u>	<u>% Change</u>
<u>Control Area Listings¹</u>	29	23	15	15	- 52%
<u>Study Area Listings¹</u>	28	28	26	29	+ 4%
<u>Center Township Mortgages²</u>	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 a whole.

Another anomaly apparent in analysis of real estate activity within the three areas is that market forces within the Study Areas were present which caused real estate activity within its boundaries to run completely contrary to County, Township and Control Area trends.

In summary, the available data indicate 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.

PROFESSIONAL APPRAISAL OF IMPACTS

Because of the great number of variables that have the potential to cause a particular real estate market to perform 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 II) 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 Areas¹ (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 questionnaires were mailed. As of February 22, 507 (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 region² was fairly consistent: East, 41 - 27%; North Central, 56 - 28%; South, 89 - 25%; and, West, 63 - 24%. Return rates from the 100% MSA survey varied from 14% from Newark, N. J. to 62% from Cleveland, OH.

815 816
2-821

20% NATIONAL SURVEY RESULTS

Survey respondents overwhelmingly (80%) felt that an adult bookstore located in the hypothetical neighborhood described would have a negative impact on residential property values of premises located within one block of the site. Of these, 21% felt that the property value would decrease in excess of 20%, while 59% foresaw a value decrease of from 1% to 20%. One-fifth of the respondents saw no resulting change in residential property values.

Seventy-two percent of the respondents also felt that there would be a detrimental effect on commercial property values at the same one block radius. Only 10%, however, felt that the effect would exceed 20% of worth with the majority (62%) seeing a 1% to 20% decrease in value. 28% of the survey predicted that there would be no negative effect.

While the great majority of appraisers felt that the effect of an adult bookstore on property within one block of the site would decrease property values, they felt that this impact fell off sharply as the distance from the site increased.

At a distance of three blocks, only 36% of the respondents felt that there would be a negative impact on residential properties, whereas 64% felt that there would be no impact at all. Better than three-fourths (77%) of the survey saw no impact on commercial property at this distance.

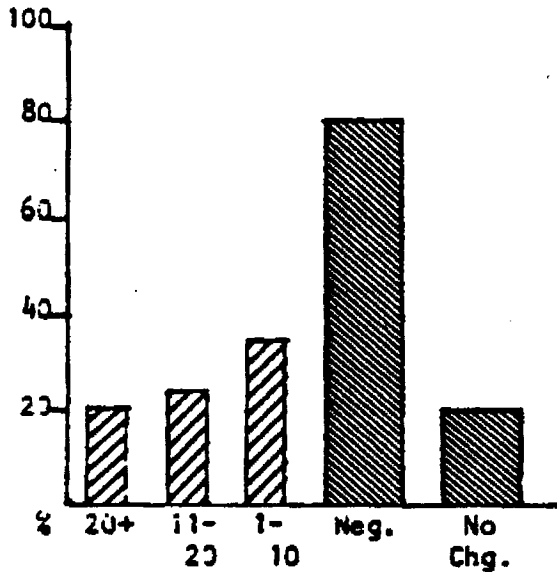
In summary:

- The great majority of appraisers who responded to this survey felt that there is a negative impact on residential and commercial property values within one block of an adult bookstore.
- This negative impact dissipates markedly as the distance from the site increases, so that at three blocks the estimate of negative impact decreases by more than one half judged by the number of respondents indicating negative impact at three blocks.
- The majority of respondents felt that the negative impact of an adult bookstore is slightly greater for residential properties than for commercial properties and decreases less dramatically with distance for residences.

NATIONAL SURVEY OF APPRAISERS

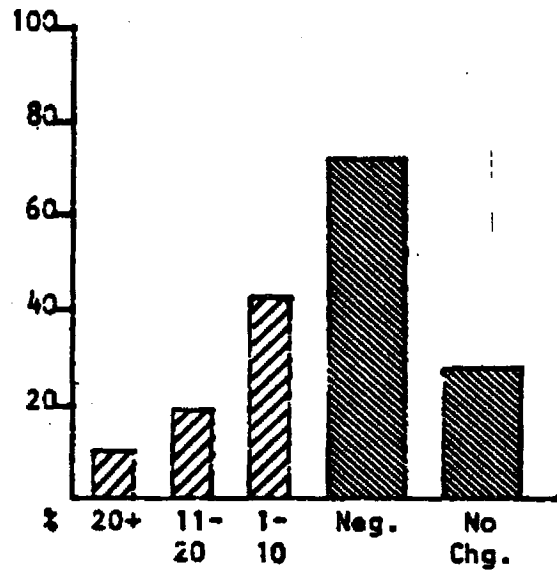
Impact of Adult Bookstores On
Property Values

RESIDENTIAL PROPERTY AT ONE BLOCK ²



REGION	REGION					TOTAL
	EAST		CENTRAL		WEST	
	1	2	1	2		
DECREASE 20+	7	17	21	0	0	45
	12.2	22.1	20.0	15.2	0.0	21.3
	17.1	20.0	22.0	12.7	0.0	21.3
	0.0	0.0	0.0	0.0	0.0	0.0
DECREASE 10-20	10	10	10	10	0	40
	21.3	10.0	22.0	20.0	0.0	21.3
	21.7	17.0	22.0	20.0	0.0	21.3
	0.0	0.0	0.0	0.0	0.0	0.0
DECREASE 1-10	22	22	22	22	0	88
	10.0	20.0	20.2	20.7	0.0	20.1
	20.2	20.2	22.7	22.2	0.0	20.1
	0.0	0.0	0.0	0.0	0.0	0.0
NO CHANGE	0	7	10	10	0	37
	0.0	14.0	20.0	22.0	0.0	20.1
	0.0	17.0	20.0	20.0	0.0	20.1
	0.0	0.0	7.0	0.0	0.0	0.0
COLUMN TOTAL	45	60	60	60	0	225
TOTAL	10.0	20.0	20.7	20.0	0.0	100.0

COMMERCIAL PROPERTY AT ONE BLOCK



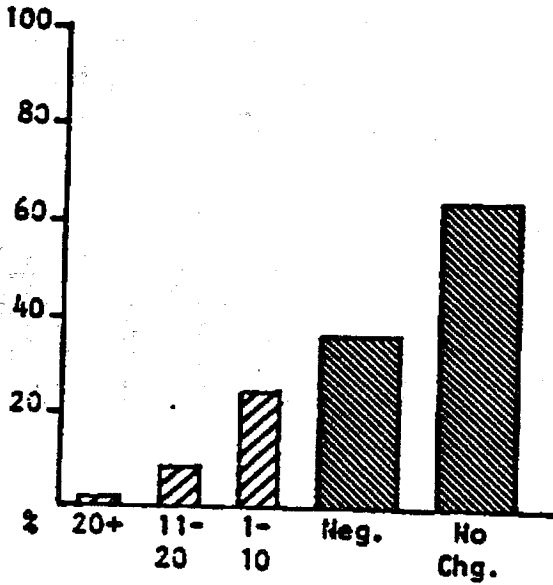
REGION	REGION					TOTAL
	EAST		CENTRAL		WEST	
	1	2	1	2		
DECREASE 20+	3	7	11	0	0	21
	12.2	20.0	20.0	10.0	0.0	10.0
	7.0	12.0	12.0	0.0	0.0	10.0
	1.0	0.0	0.0	1.0	0.0	0.0
DECREASE 10-20	0	10	20	11	0	41
	0.0	20.0	20.0	22.0	0.0	10.0
	0.0	20.0	22.0	17.0	0.0	10.0
	1.0	0.0	0.0	0.0	0.0	0.0
DECREASE 1-10	22	22	22	22	0	88
	20.0	20.0	20.0	20.0	0.0	20.0
	20.7	20.0	20.0	20.0	0.0	20.0
	0.0	0.0	0.0	0.0	0.0	0.0
NO CHANGE	0	7	10	17	0	34
	0.0	14.0	20.0	22.0	0.0	20.0
	0.0	17.0	20.0	17.0	0.0	20.0
	0.0	0.0	10.0	0.0	0.0	0.0
COLUMN TOTAL	31	60	60	60	0	211
TOTAL	10.0	20.0	20.7	20.0	0.0	100.0

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2-823

NATIONAL SURVEY OF APPRAISERS

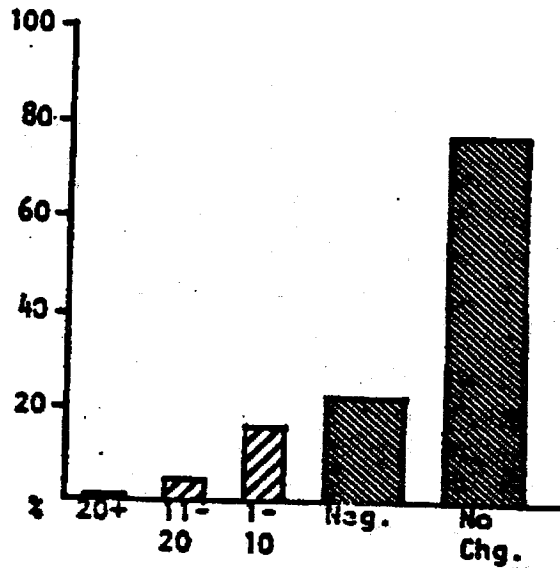
Impact of Adult Bookstores On
Property Values

RESIDENTIAL PROPERTY AT THREE BLOCKS



COUNT	PERCENT	REGION				GRAND TOTAL
		EAST	NORTH CENTRAL	SOUTH	WEST	
DECREASE 20+	0.0	0.0	0.0	0.0	0.0	0.0
DECREASE 11-20	2.0	0.0	0.0	0.0	0.0	2.0
DECREASE 1-10	22.0	0.0	0.0	0.0	0.0	22.0
DECREASE NEG.	34.0	0.0	0.0	0.0	0.0	34.0
NO CHANGE	61.0	0.0	0.0	0.0	0.0	61.0
TOTAL	100.0	0.0	0.0	0.0	0.0	100.0

COMMERCIAL PROPERTY AT THREE BLOCKS



COUNT	PERCENT	REGION				GRAND TOTAL
		EAST	NORTH CENTRAL	SOUTH	WEST	
DECREASE 20+	0.0	0.0	0.0	0.0	0.0	0.0
DECREASE 11-20	2.0	0.0	0.0	0.0	0.0	2.0
DECREASE 1-10	22.0	0.0	0.0	0.0	0.0	22.0
DECREASE NEG.	34.0	0.0	0.0	0.0	0.0	34.0
NO CHANGE	61.0	0.0	0.0	0.0	0.0	61.0
TOTAL	100.0	0.0	0.0	0.0	0.0	100.0

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 surrounding 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.

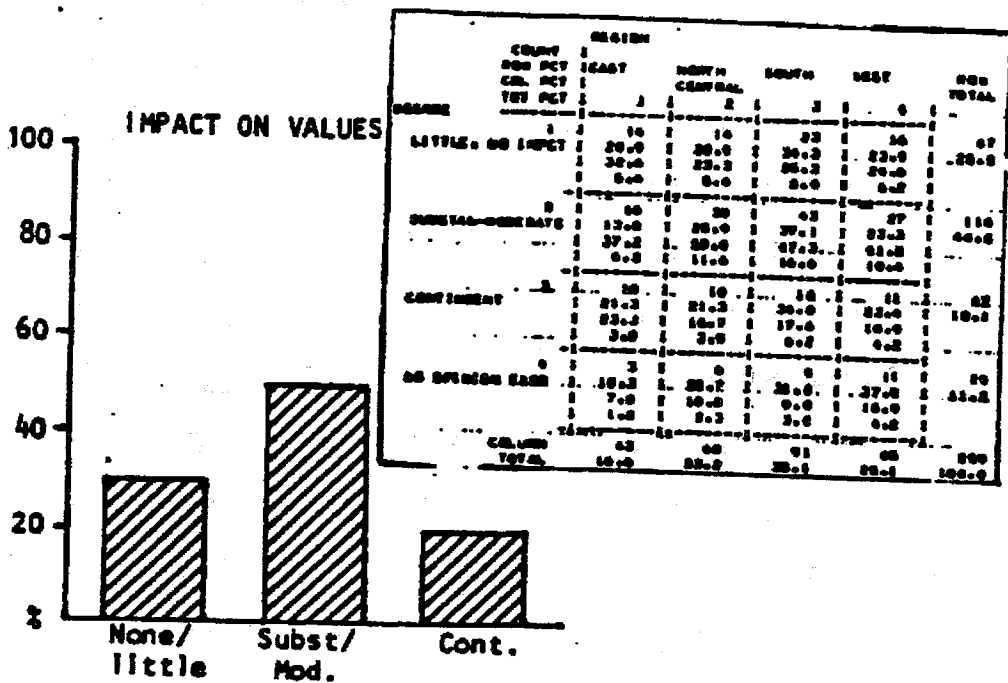
Land Use	NATIONAL SURVEY OF APPRAISERS Impact On Residential Properties				
	Higher		Value	Lower	
	Much	Some	Same	Some	Much
Store-front church	5%	20%	58%	16%	1%
Pool hall	1%	8%	45%	38%	8%
Welfare office	-	12%	46%	33%	8%
Neighborhood tavern	2%	18%	45%	32%	4%
Record store	8%	27%	61%	5%	-
Medical office	24%	38%	35%	2%	-
Drug rehab Center	-	7%	35%	42%	17%
Ice cream parlor	15%	30%	53%	3%	-
Video-game parlor	1%	18%	50%	27%	5%
Disco	-	11%	42%	35%	12%
Branch library	24%	34%	38%	4%	-

The survey also asked the degree to which adult bookstores affect property values generally and the basis for this opinion.

Twenty-nine percent of those expressing an opinion saw little or no effect as the result of adult bookstores on surrounding property values. They based this opinion on their own professional experience (13%), the observation that this use usually occurs in an already-deteriorated neighborhood (24%) and the feeling that only one such adult entertainment use would be inconsequential.

A substantial-to-moderate negative impact was projected by 50% of the respondents. Twenty-nine percent felt that this was because it attracted "undesirables" to the neighborhoods in which they were located, while 14% felt that it creates a bad image of the area and 15% felt that the use offended prevailing community attitudes so that home buyers/customers would be discouraged. 13% based their opinion on professional experience.

A number of survey respondents (20%) saw the potential impact on a neighborhood as being contingent on certain variables. 28% of these felt that it would depend on the existing property values in the area as well as the subjective values of its residents. 23% felt that development standards such as facade and signage would determine impact and 11% saw the nature of the existing commercial area and its buffering capacity as being most important.



820 821
2-826

NATIONAL SURVEY OF APPRAISERS

Impact Of Adult Bookstores on Property Values

Category	LITTLE/NO IMPACT				
	100%	75%	50%	25%	0%
No reason given	0	0	0	0	0
Appraisal experience	0	0	0	0	0
Area in decline	0	0	0	0	0
Area in decline	0	0	0	0	0
Not an income area	0	0	0	0	0
Only one store in matter	0	0	0	0	0
Commercial not for	0	0	0	0	0
Market adjusts quickly	0	0	0	0	0
Tolerated by current owner	0	0	0	0	0
Other	0	0	0	0	0
Total	0	0	0	0	0

Category	SUBSTANTIAL/MODERATE IMPACT				
	100%	75%	50%	25%	0%
No reason given	0	0	0	0	0
Appraisal experience	0	0	0	0	0
Prevailing Attitudes negative	0	0	0	0	0
Unharmonious	0	0	0	0	0
Perceptions of crime	0	0	0	0	0
Bad image	0	0	0	0	0
Access under discussion	0	0	0	0	0
Bad influence on young	0	0	0	0	0
Access more similar uses	0	0	0	0	0
Other	0	0	0	0	0
Total	0	0	0	0	0

Category	CONTINENT IMPACT				
	100%	75%	50%	25%	0%
No reason given	0	0	0	0	0
Bad enough info	0	0	0	0	0
Local attitudes/controls	0	0	0	0	0
History of zoning	0	0	0	0	0
Widespread of customer	0	0	0	0	0
Owner/management	0	0	0	0	0
Owner/management	0	0	0	0	0
Type outgroup/land values	0	0	0	0	0
Access other	0	0	0	0	0
Total	0	0	0	0	0

821 823-822
2-827

100% MSA SURVEY RESULTS

The 100% survey of Metropolitan Statistical Areas similar in size to Indianapolis produced results that were consistent in virtually all respects with the results of the 20% national survey.

As in the nationwide survey, respondents overwhelmingly (78%) indicated that an adult bookstore would have a negative effect on residential property values in the neighborhood described if they were within one block of the premises. 19% felt that this depreciation would be in excess of 20%, whereas 59% foresaw a decrease in value of from 1% to 20%.

Sixty-nine percent saw a similar decrease in commercial property values within one block of the adult bookstore. As in the national survey, far fewer (only 10%) felt that a devaluation of over 20% would occur. The majority (59%) saw the depreciation as being in the 1% to 20% range.

Once again, the negative impact observed within a one block radius of the adult bookstore fell off sharply when the distance was increased to three blocks - although, judged on the number of those indicating no impact, there would appear to be more of a residual effect on residential properties than on commercial properties.

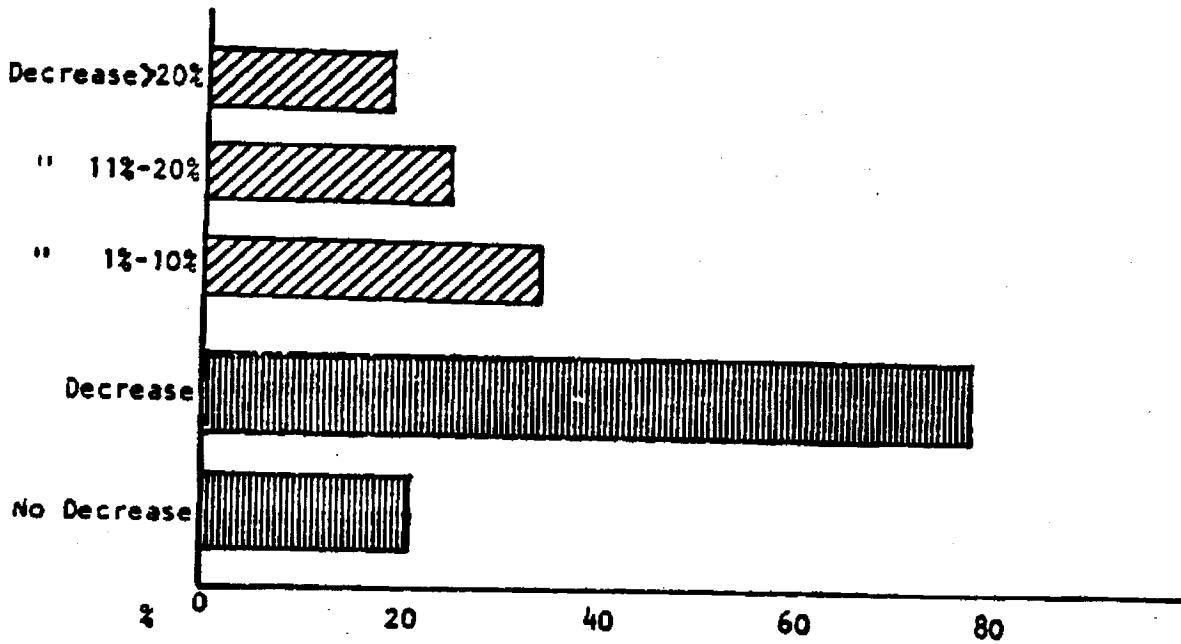
39% of the appraisers felt that a negative impact on residential properties would still obtain at three blocks from the site. Only three percent felt that this impact would be in excess of twenty percent. The remaining 36% felt that depreciation would be somewhere in the one to twenty percent range. 61% saw no appreciable effect at all at three blocks.

Commercial property was judged to be negatively impacted at three blocks by 23% of the survey. 76% saw no change in value as a result of the bookstore.

In summary:

- Appraisers assigned a negative value to an adult bookstore located within one block of residential and commercial properties at an approximate three-to-one ratio.
- At a three block distance, this ratio tended to be reversed.
- The number of those indicating a decrease in value at three blocks decreased at only one half the rate for residential property as for commercial property.

IMPACT OF ADULT BOOKSTORES ON RESIDENTIAL PROPERTY AT ONE BLOCK

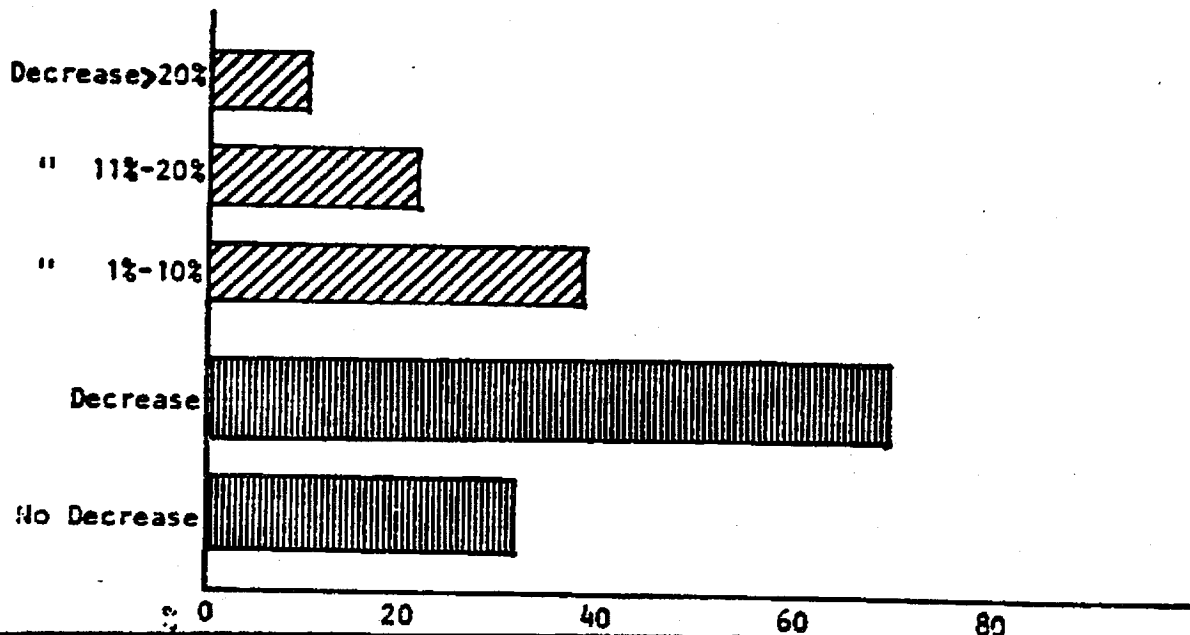


GROUP	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20
DECREASE >20%	10.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
11%-20%	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1%-10%	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
DECREASE	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
NO DECREASE	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	10.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

GROUP	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20
DECREASE >20%	10.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
11%-20%	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1%-10%	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
DECREASE	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
NO DECREASE	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	10.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

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2-829 824

IMPACT OF ADULT BOOKSTORES ON COMMERCIAL PROPERTIES AT ONE BLOCK



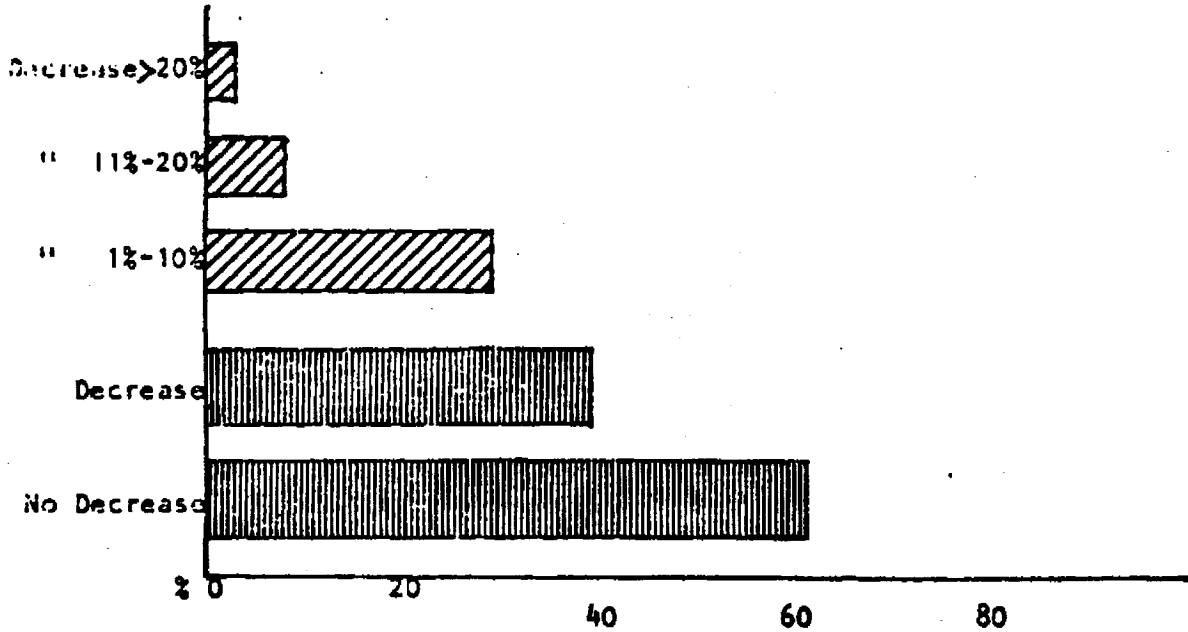
TYPE OF PROPERTY	NO. OF PROPERTIES	NO. WITH ADULT BOOKSTORES	NO. WITH OTHER COMMERCIAL USES	NO. WITH RESIDENTIAL USES	NO. WITH MIXED USES	NO. WITH OFFICE USES	NO. WITH RETAIL USES	NO. WITH INDUSTRIAL USES	NO. WITH OTHER USES	TOTAL
Office	22	10	10	0	0	0	0	0	0	22
Retail	10	5	5	0	0	0	0	0	0	10
Industrial	5	0	5	0	0	0	0	0	0	5
Mixed Use	15	8	7	0	0	0	0	0	0	15
Other	10	5	5	0	0	0	0	0	0	10
TOTAL	62	38	24	0	0	0	0	0	0	62

TYPE OF PROPERTY	NO. OF PROPERTIES	NO. WITH ADULT BOOKSTORES	NO. WITH OTHER COMMERCIAL USES	NO. WITH RESIDENTIAL USES	NO. WITH MIXED USES	NO. WITH OFFICE USES	NO. WITH RETAIL USES	NO. WITH INDUSTRIAL USES	NO. WITH OTHER USES	TOTAL
Office	22	10	10	0	0	0	0	0	0	22
Retail	10	5	5	0	0	0	0	0	0	10
Industrial	5	0	5	0	0	0	0	0	0	5
Mixed Use	15	8	7	0	0	0	0	0	0	15
Other	10	5	5	0	0	0	0	0	0	10
TOTAL	62	38	24	0	0	0	0	0	0	62

824 826
2-830-825

MSA SURVEY OF APPRAISERS

IMPACT OF ADULT BOOKSTORES ON RESIDENTIAL PROPERTY AT THREE BLOCKS



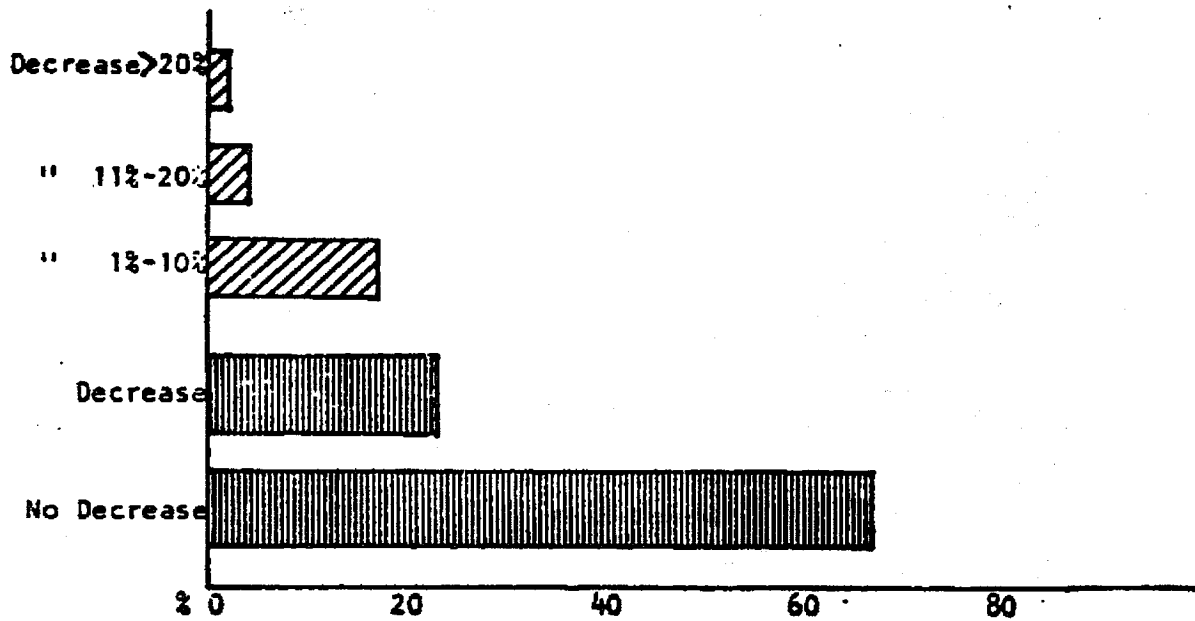
NEIGHBORHOOD	ALBANY	ALBANY	ALBANY	ALBANY	ALBANY	ALBANY	ALBANY	ALBANY	ALBANY	ALBANY	ALBANY	ALBANY	ALBANY	ALBANY	ALBANY	ALBANY	ALBANY	ALBANY	ALBANY
...

...
...

826
825
827
43 2-831
51

MSA SURVEY OF APPRAISERS

IMPACT OF ADULT BOOKSTORES ON COMMERCIAL PROPERTY AT THREE BLOCKS



Category	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
Block 1
Block 2
Block 3
TOTAL

Category	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
Block 1
Block 2
Block 3
TOTAL

44
 826 828
 2-832 827 52

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 undesirable 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 effect of a disco would be neutral or negative.

**MSA SURVEY OF APPRAISERS
Impact On Residential Properties**

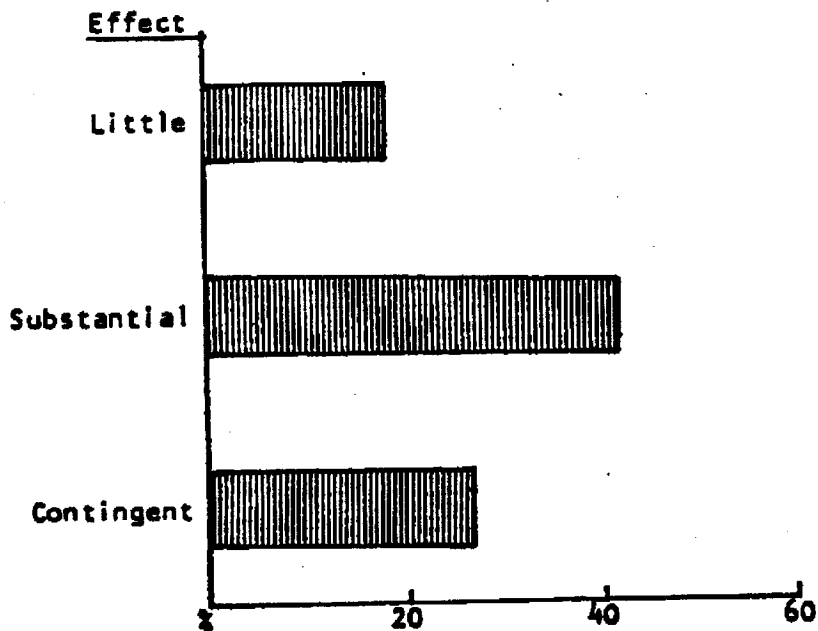
<u>Land Use</u>	<u>Value</u>				
	<u>Higher</u>		<u>Same</u>	<u>Lower</u>	
	<u>Much</u>	<u>Some</u>		<u>Some</u>	<u>Much</u>
Store-front church	4%	24%	52%	20%	1%
Pool hall	1%	12%	48%	33%	6%
Welfare office	1%	13%	41%	37%	7%
Neighborhood tavern	-	17%	52%	25%	6%
Record store	6%	29%	54%	10%	-
Medical office	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%
Branch library	24%	37%	34%	5%	1%

In response to the question about their evaluation of the impact of adult bookstores generally on surrounding property values, 21% of those expressing an opinion felt that there would be little or no impact with such a use. They principally based this opinion on their experience as appraisers (20%) and the observation that such uses usually located in areas that had already deteriorated (26%).

47% of the survey felt that there is a substantial-to moderate impact. Their opinions were based on professional appraisal experience (18%), and the observations that: given current mores, an adult bookstore would discourage home buyers and customers (14%); the use precipitated decline and discouraged improvement (11%); and, it would attract "undesirables" to the neighborhood (29%).

The nature of this impact on property was contingent on a number of factors in the minds of 32% of the respondents. 13% felt that it depended on local attitudes and the adequacy of legal controls on their operation. Exterior factors such as signage and building facade quality were seen by 16% as the determinant. 30% felt the impact would be directly related to the values (both monetary and human) prevalent in the neighborhood. And 20% felt that the answer depended on whether or not the business was likely to attract other such businesses.

EFFECT OF ADULT BOOKSTORES ON PROPERTY VALUE MSA SURVEY OF APPRAISERS



EFFECT	COUNT	CITY																
		CHICAGO	PHOENIX	MEMPHIS	SAN ANTONIO	DALLAS	SAN JOSE	DENVER	MINNEAPOLIS	PORTLAND	SAULSBURY	MEMPHIS	ATLANTA	INDIANAPOLIS	LOUISVILLE			
LITTLE	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Substantial	2	10.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Contingent	3	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL																		

EFFECT	COUNT	CITY																
		CHICAGO	PHOENIX	MEMPHIS	SAN ANTONIO	DALLAS	SAN JOSE	DENVER	MINNEAPOLIS	PORTLAND	SAULSBURY	MEMPHIS	ATLANTA	INDIANAPOLIS	LOUISVILLE			
LITTLE	1	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Substantial	2	10.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Contingent	3	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL																		

824 830
2-835

**EFFECT OF ADULT BOOKSTORES ON PROPERTY VALUE
MSA SURVEY OF APPRAISERS**

SUBSTANTIAL OR MODERATE EFFECT

832-833
2-838

DANPCTY										DANPCTY										DANPCTY									
CDPT	INDUS	AGRI	MANU	COMM	TRAN	UTIL	RETA	ENTR	RESI	INDUS	AGRI	MANU	COMM	TRAN	UTIL	RETA	ENTR	RESI	INDUS	AGRI	MANU	COMM	TRAN	UTIL	RETA	ENTR	RESI		
0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0		
1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0		
2	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0		
3	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0		
4	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0		
5	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0		
6	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0		
7	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0		
8	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0		
9	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0		

64

- 0 = No reason given.
- 1 = Appraisal experience.
- 2 = Prevailing attitudes are negative.
- 3 = Unharmonious use.

- 4 = Precipitates decline.
- 5 = Creates a bad image.
- 6 = Attracts undesirable.

- 7 = Bad influence on the young.
- 8 = Attracts similar uses.
- 9 = Other.

832-833

SUMMARY OF FINDINGS

The great majority of appraisers (75%) 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 10%.

At a distance of three blocks, the great majority of respondents (71%) felt that the impact was negligible on both residential (64%) 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 or 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.

FOOTNOTES

1. Metropolitan Statistical Areas (MSAs) surveyed at 100% were chosen on the basis of having a one to two million population at the time of the 1980 U. S. Census. They were: Phoenix, Arizona; Sacramento, San Diego and San Jose, California; Denver/Boulder, Colorado; Hartford, Connecticut; Fort Lauderdale, Miami and Tampa, Florida; Indianapolis, Indiana; New Orleans, Louisiana; Kansas City, Missouri; Newark, New Jersey; Buffalo, New York; Cincinnati, Cleveland and Columbus, Ohio; Portland, Oregon; San Antonio, Texas; Seattle, Washington; and Milwaukee, Wisconsin. Although slightly outside the population parameters for this selection, Louisville, Kentucky and Atlanta, Georgia were also included.
2. Regional designations used were those employed by the U. S. Bureau of the Census for the 1980 Census. The data were processed and crosstabulations performed using the Statistical Package for the Social Sciences.
3. The discrepancy between the number of survey responses and the number of responses to the question in this and subsequent tables is the result of some respondents having omitted answers to questions 6 and 7 of the survey.

APPENDIX I

Area Maps

835 834
2-847 61

NOTE

For the purpose of this study, the maps included in this Appendix categorize existing land uses within the Study and Control Areas as having a Residential or a District Commercial Character.

All dwelling district, neighborhood-related commercial and special use zoning classifications are designated as being of "Residential Character".

More intense commercial uses, industrial uses and district-related special uses are considered to have a "District Commercial Character".

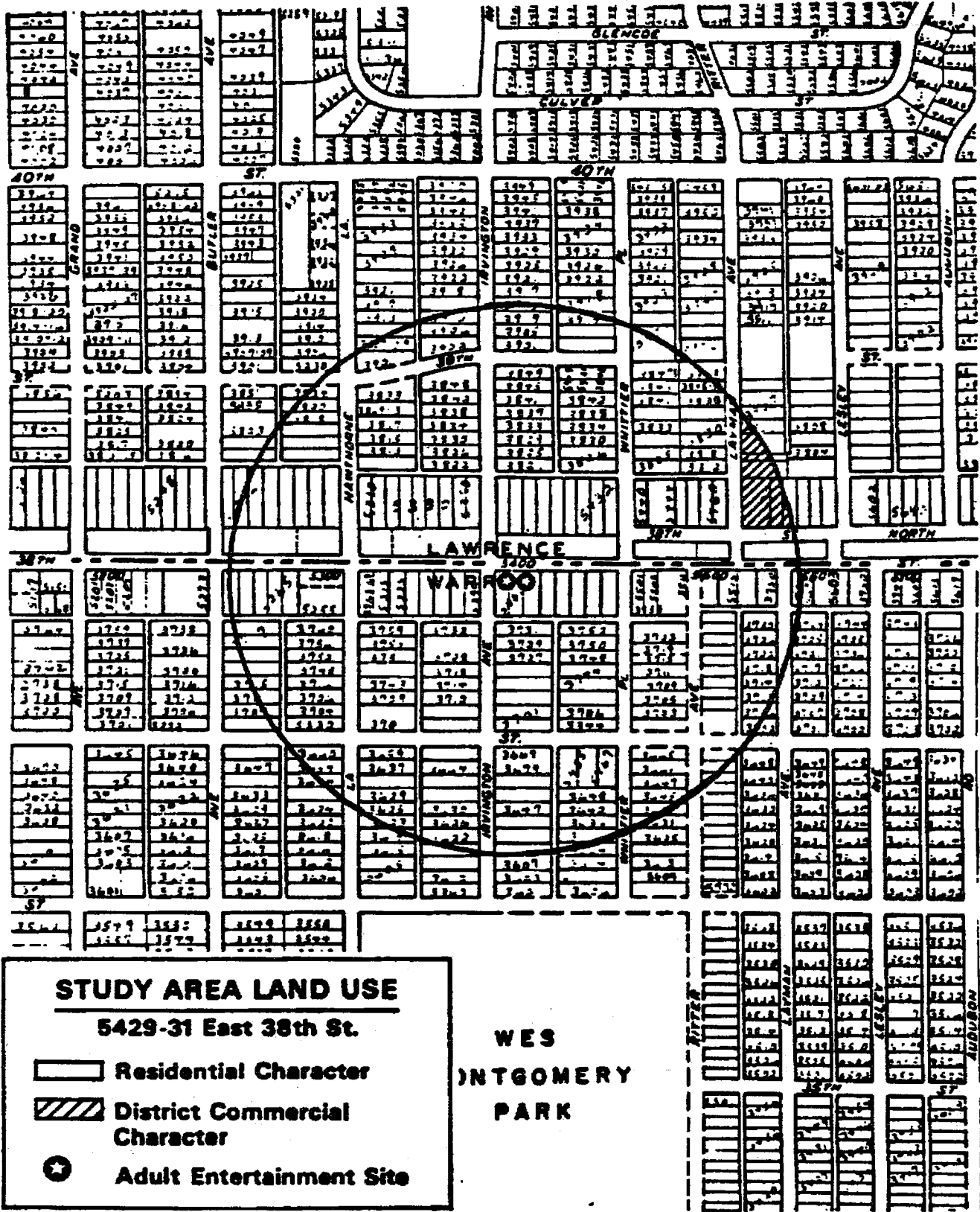
836 837 6
2-842

ADULT ENTERTAINMENT BUSINESS STUDY



837 838
2-843 63

ADULT ENTERTAINMENT BUSINESS STUDY



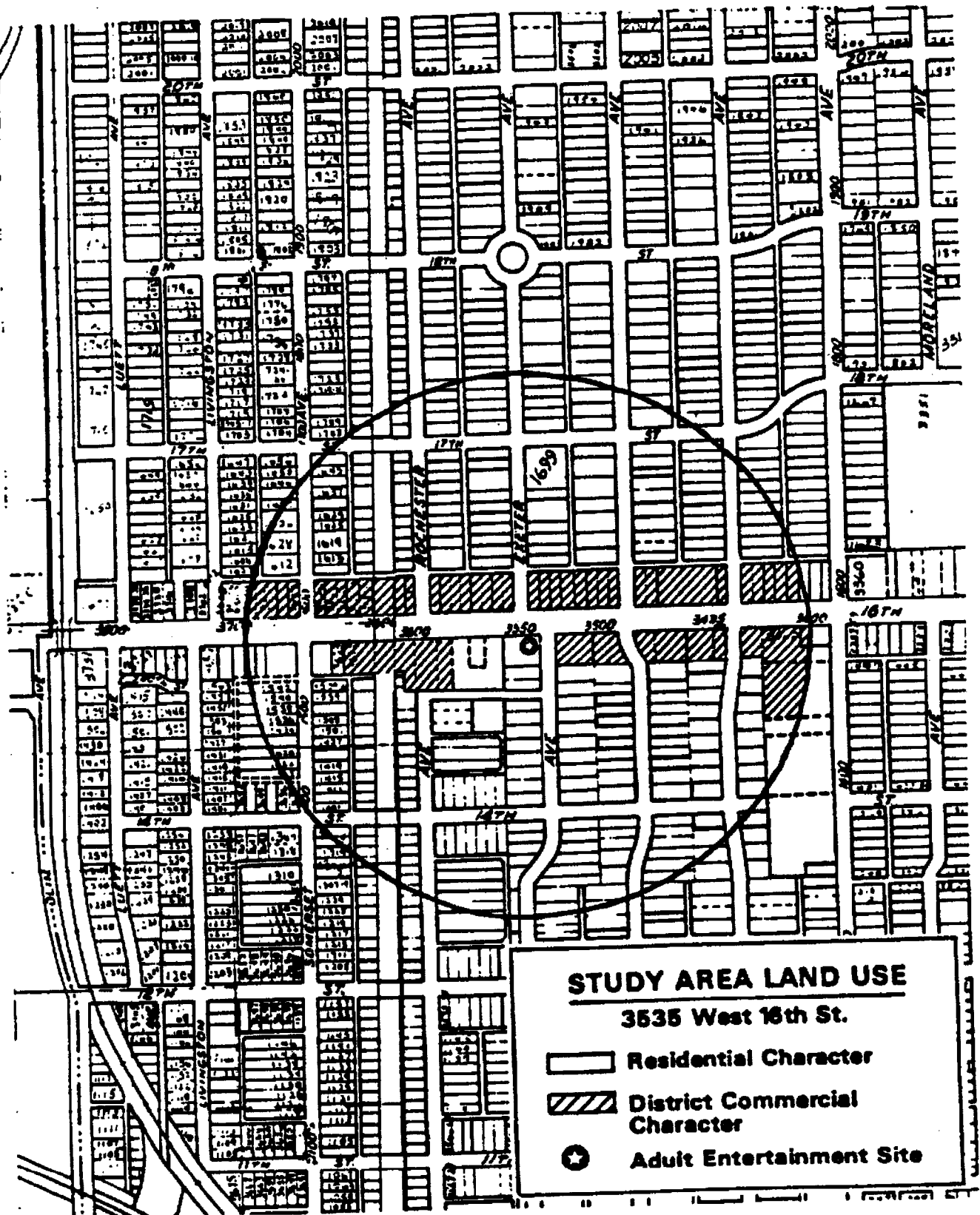
STUDY AREA LAND USE
 5429-31 East 38th St.

- Residential Character
- District Commercial Character
- ★ Adult Entertainment Site

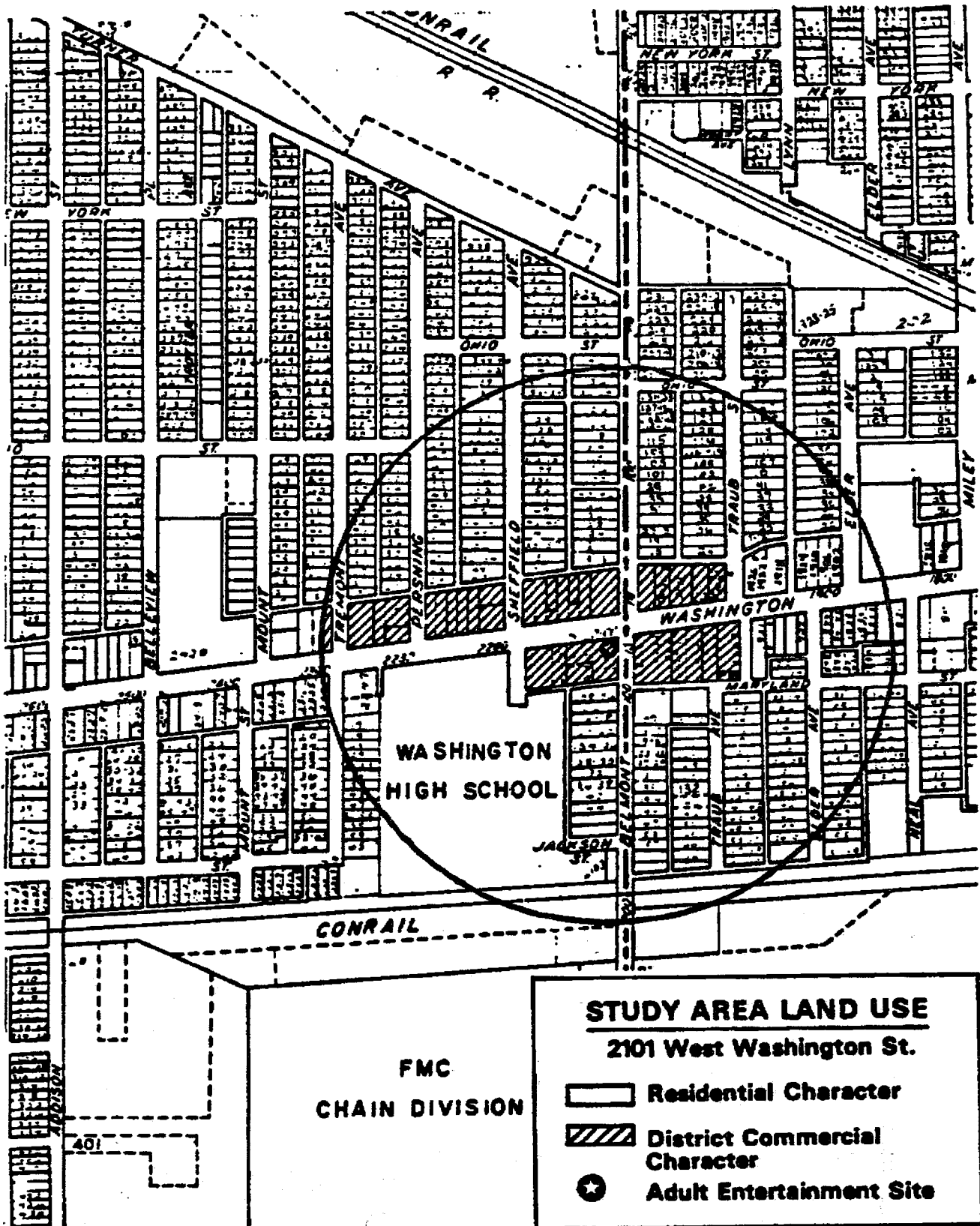
WES
 MONTGOMERY
 PARK

838 839
 2-844

ADULT ENTERTAINMENT BUSINESS STUDY



ADULT ENTERTAINMENT BUSINESS STUDY



STUDY AREA LAND USE

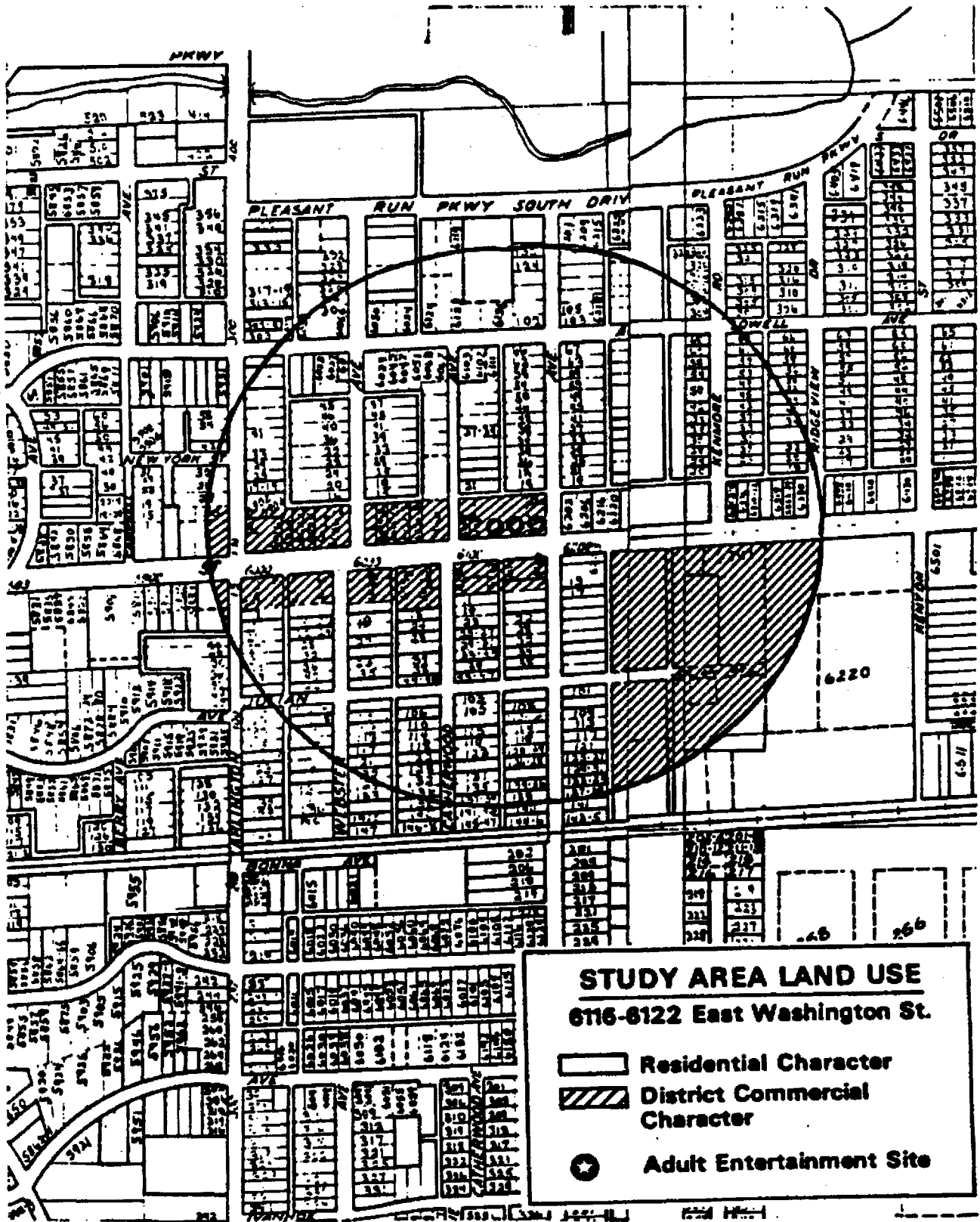
211 West Washington St.

- Residential Character
- District Commercial Character
- ★ Adult Entertainment Site

1-111

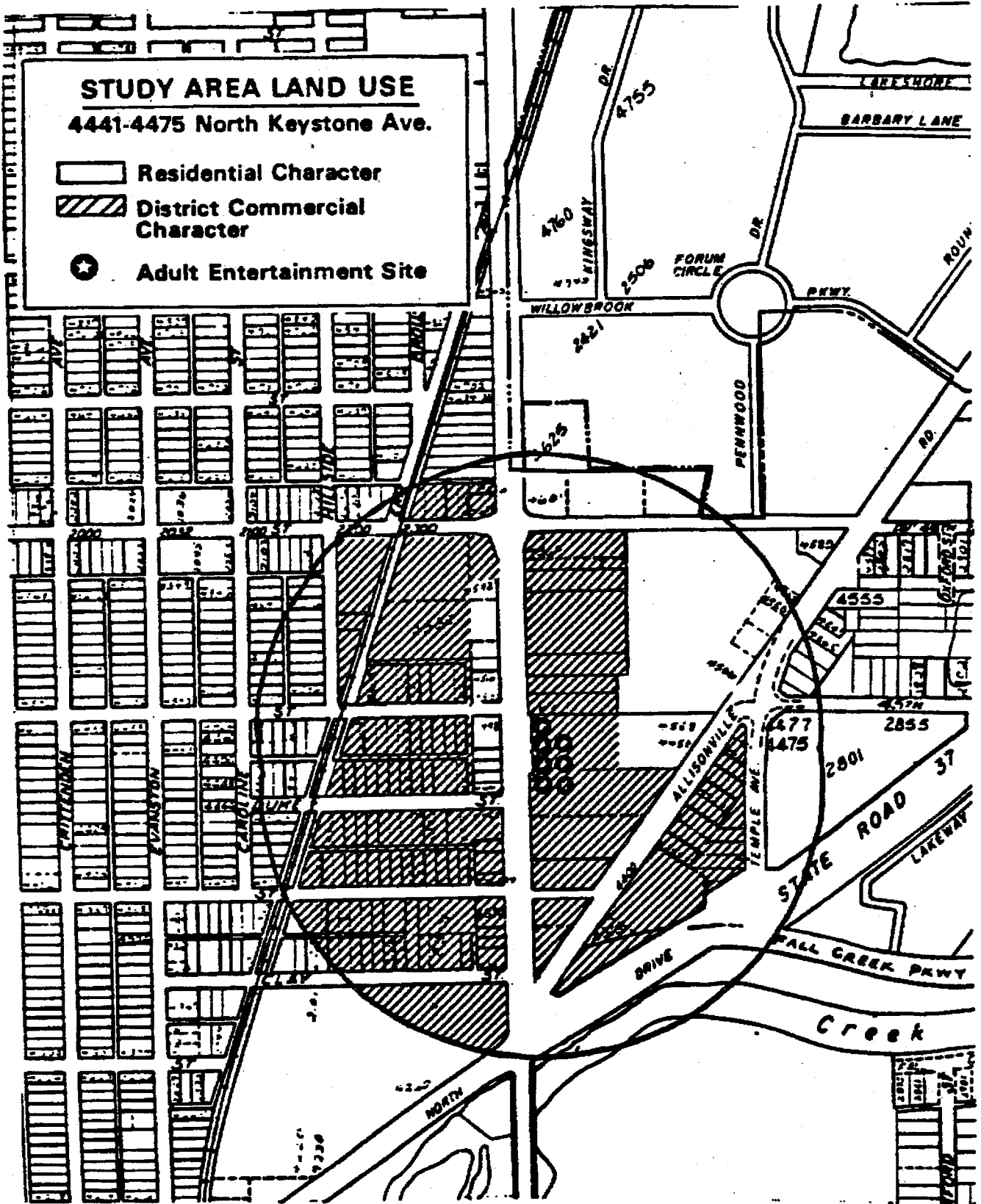
841
839 840
2-845 65

ADULT ENTERTAINMENT BUSINESS STUDY

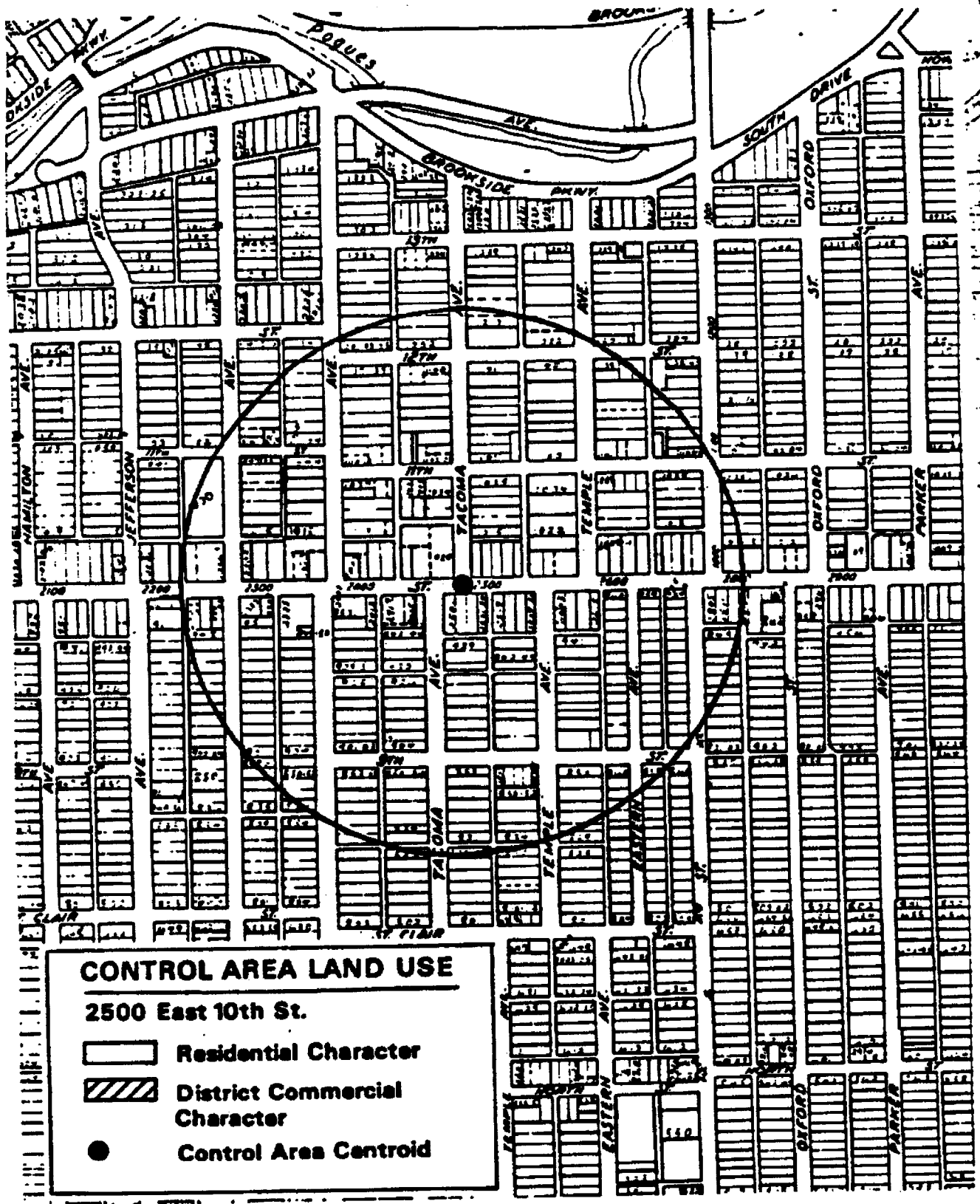


84+842
 2-847




ADULT ENTERTAINMENT BUSINESS STUDY



ADULT ENTERTAINMENT BUSINESS STUDY



CONTROL AREA LAND USE
2500 East 10th St.

-  Residential Character
-  District Commercial Character
-  Control Area Centroid

ADULT ENTERTAINMENT BUSINESS STUDY



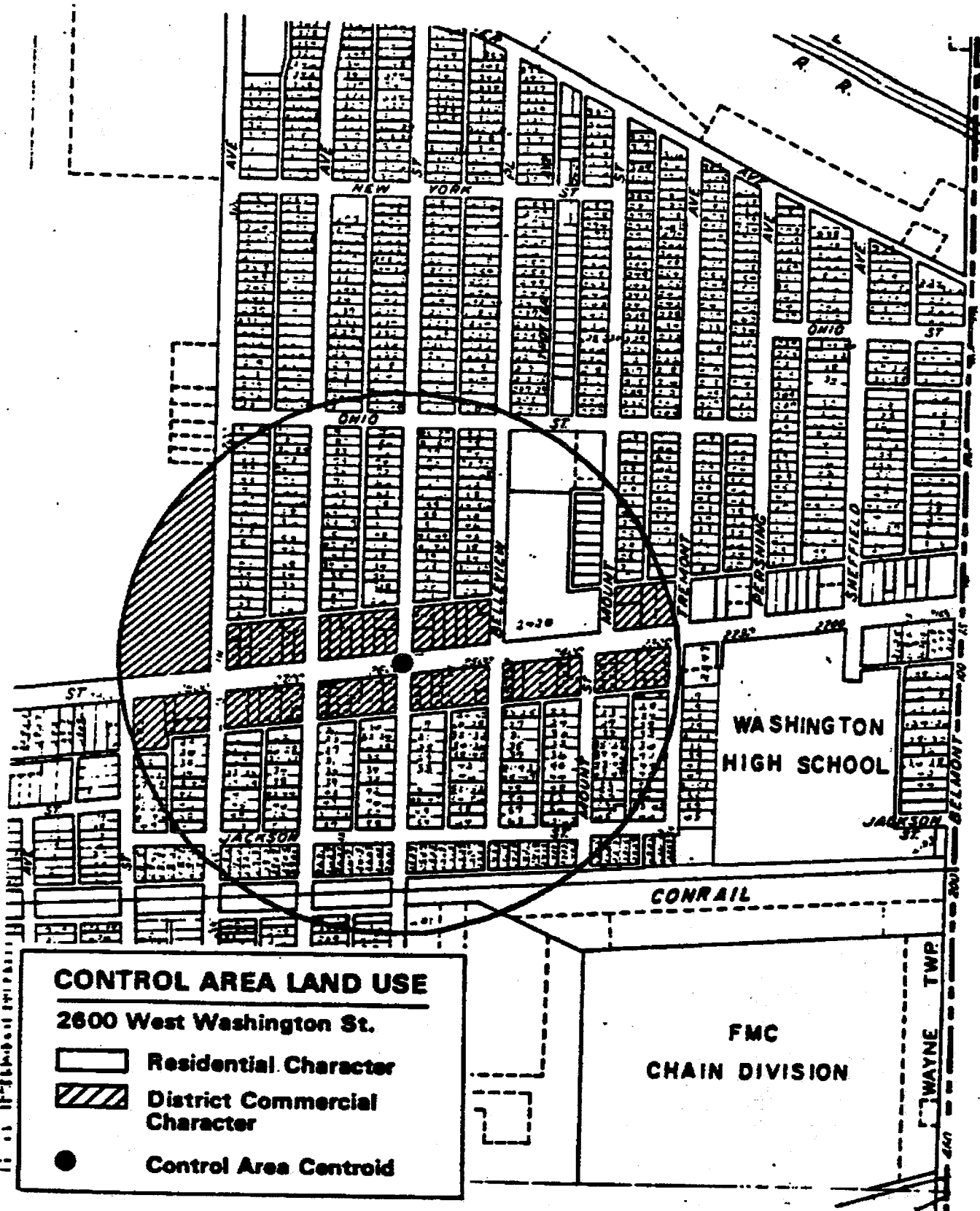
844 845
2-850

ADULT ENTERTAINMENT BUSINESS STUDY






845 849
2-851

ADULT ENTERTAINMENT BUSINESS STUDY



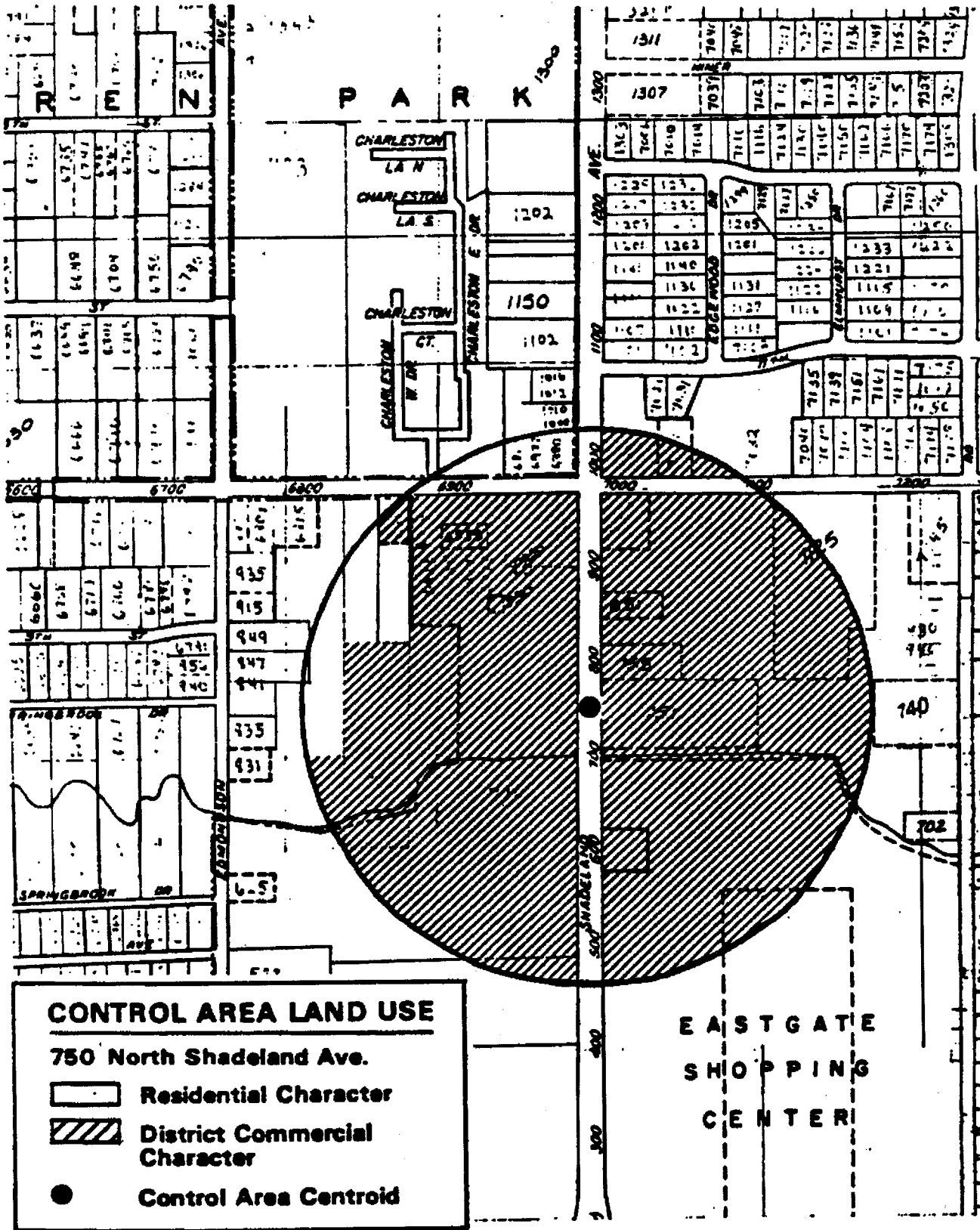
CONTROL AREA LAND USE

2600 West Washington St.

-  Residential Character
-  District Commercial Character
-  Control Area Centroid

846 847.
2-852
72

ADULT ENTERTAINMENT BUSINESS STUDY



CONTROL AREA LAND USE

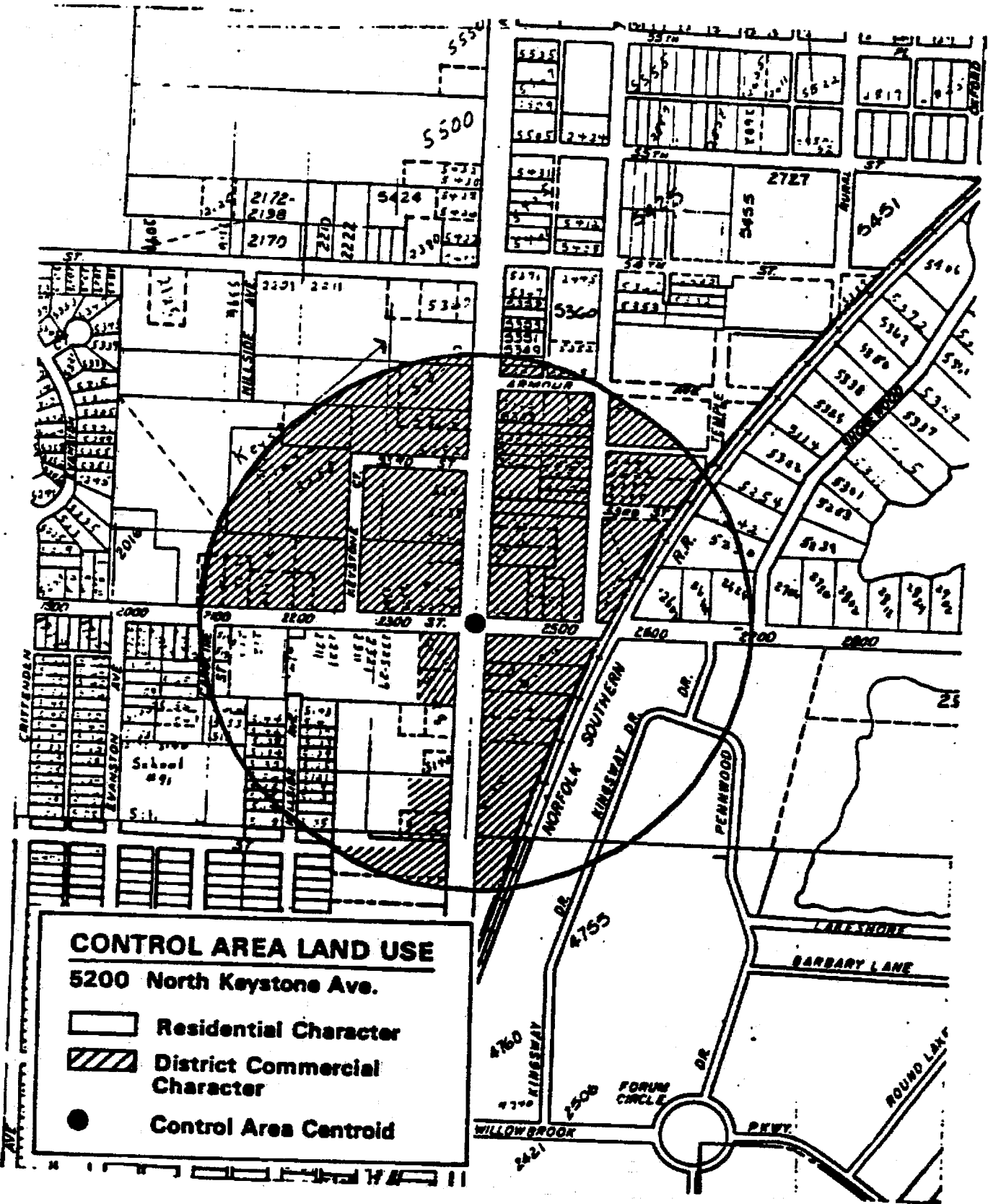
750 North Shadland Ave.

- Residential Character
- District Commercial Character
- Control Area Centroid

EASTGATE
SHOPPING
CENTER

847-848
2-853

ADULT ENTERTAINMENT BUSINESS STUDY

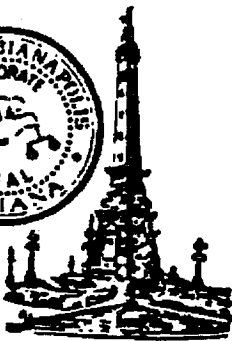


848849
 2-854 74

APPENDIX II

Appraiser Survey

849-850
2-855-75



CITY OF INDIANAPOLIS

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 location 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 opinions you share with us on the enclosed survey forms would be very valuable to us in the development of a positive legislative approach to this difficult local issue.

Thank you very much for your assistance.

Sincerely,


David E. Carley

cc. L. Carroll

851
2-850
~~2-850~~



INDIANA UNIVERSITY

Division of Research

SCHOOL OF BUSINESS
Bloomington/Indianapolis
10th and Fee Lane
Bloomington, Indiana 47405
(812) 337-5507

TO: Professional Real Estate Appraisers

FROM: Indiana University, School of Business, Division of Research

Please help us in this brief national survey. The information provided will help clarify an important question. 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 activities serving the neighborhood. There is a building that was recently vacated by a hardware store 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 neighborhood.

Please indicate your answers to questions 1 through 4 in the blanks provided, using the scale A through G.

- SCALE: A Decrease 20% or more
B Decrease more than 10% 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 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 adult bookstore to be affected?
3) How would you expect the average values of RESIDENTIAL property located three blocks from the bookstore to be affected?
4) How would you expect the average values of the COMMERCIAL property three blocks from the adult bookstore to be affected?

854852
2-857 77

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 be...

- A much higher
 - B somewhat higher
 - C about the same
 - D somewhat lower
 - E much lower
- than if an
adult bookstore
occupied the site.

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 _____	

6) 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 in the postage paid envelope provided for your convenience.

853
~~857~~ 78
2-858

APPENDIX III

Land Use Control of
Adult Entertainment

853 854
~~2-859~~

APPENDIX III

LAND USE CONTROL OF ADULT ENTERTAINMENT

LEGAL BASIS

Zoning has traditionally been defined as a process by which a municipality legally controls 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 that 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 Legislature, 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. Ambler Realty Co.,⁶ the United States Supreme Court upheld the city of Euclid, Ohio's municipal zoning ordinance which had been claimed to involve an unconstitutional deprivation of property by deciding that comprehensive zoning ordinances are a proper

exercise of the police power and do not constitute an unconstitutional deprivation of property. This position was reaffirmed by the Supreme Court of the United States in 1927.⁷

Thus, the general legality of zoning is established beyond doubt. Subsequent decisions by this court⁸ established that such ordinances, however, could be unconstitutional when applied to a particular property. This established the basis for the system under which the City of Indianapolis currently operates where each variance or rezoning request is decided on its own merits.

THE PUBLIC WELFARE

The police power authorizes a government to adopt and enforce all laws necessary to protect and further the public health, safety, morals and general welfare of its citizens.⁹

Limitations on the exercise of zoning power are essentially the same as those restricting the police power under the U. S. Constitution, i. e., they must be reasonable and guarantee due process and equal protection. It may not be exercised in an unreasonable, oppressive, arbitrary or discriminatory way. Zoning laws, then, must have a real, substantive relation to the legitimate governmental objective of the protection and furtherance of the public health, safety, morals and general welfare of citizens.

The public welfare, in these contexts, means the stabilization of property values, promotion of desirable home surroundings, and happiness,¹⁰ and embraces the orderliness of community growth, land value and aesthetic objectives¹¹ and is reasonably designed to further the advancement of a community as a social, economic and political unity.¹²

CONTROL OF ADULT ENTERTAINMENT¹³

Reacting to the increased availability of pornography in the United States and attendant pressures at the community level for its control, a number of municipal governments have addressed the proliferation of adult entertainment businesses through, among various methods, land use controls. The validity of such an approach was upheld in 1976 in the landmark decision Young v. American Mini Theatres, Inc.¹⁴ in which the Court upheld a Detroit zoning ordinance which prohibited more than two adult movie theaters or other sexually-orientated enterprises from locating within 1000 feet of one another or certain other designated businesses. Against

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 sexually-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 on objective, ascertainable criteria, will probably be disapproved as contrary to the precept that, in the First Amendment area, "government may regulate only with narrow specificity".

Any community, then, which would employ its zoning power to regulate adult uses within its jurisdiction must be particularly concerned that the adoptive ordinance be demonstrably motivated by and founded on sound land use principles, it allow reasonable accommodation for such uses within its jurisdiction, and that it clearly define both the nature and regulations of the use in order to avoid, to the extent possible, the need for subjective interpretation of each proposed use.

The Young decision has encouraged a great amount of experimentation on the part of municipalities in an effort to prevent deterioration of their commercial districts and adverse impact upon adjacent areas. The effectiveness of these innovations will be determined by time and the legal tests to which they will be subject as this business segment establishes itself.

For the time being, however, this decision encourages an approach in which localities have tended to control the siting of adult entertainment businesses on the basis of land use.

FOOTNOTES

1. Cf Smith v. Collison, 119 Cap App 180, 6 P2d (1931); Devaney v. Bd. of Zoning Appeals, 132 Conn. 537, 45 Ad2 828 (1946); Toulouse v. Bd. of Zoning Adjustment, 147 Me 387, 87 Ad2 670 (1952).
2. Cf American Sign Co. v. Fowler, 276 SW2d 651 (Ky 1955).
3. Cf Lincoln Trust Co. v. Williams Bldg. Corp., 229 NY 313, 128 NE 209 (1920).
4. Jonas v. Fleming Town Bd. & Zoning Bd. of Appeals, 51 Ad2d 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 (1926).
7. Cf Zahn v. Bd. of Pub. Works, 274 U.S. 325, 47 S Ct 574, 71 L Ed 1074 (1927); and Garieb 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 (1928)).
9. Cf Scrutton v. County of Sacramento, 275, Cal App 2nd, 79 Cal Rptr 872 (1969); Troiano v. Zoning Comm'n of Town of No. Branford, 155 Conn 265, 231 A2d 536 (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 2440, 49 L Ed 2d 310, reh denied 97 S Ct 191 (1976), rev'd 518 F2d 1014 (6th Cir 1975).

FOOTNOTES

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8. Cf Sup. Ct. in Nectow v. Cambridge (U.S. 183, 48 S. Ct. 447, 72 L Ed 842 (1928)).
9. Cf Scrutton v. County of Sacramento, 275, Cal App 2nd, 79 Cal Rptr 872 (1969); Trolano v. Zoning Comm'n of Town of No. Branford, 155 Conn 265, 231 A2d 536 (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 2440, 49 L Ed 2d 310, reh denied 97 S Ct 191 (1976), rev'd 518 F2d 1014 (6th Cir 1975).

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Final Report to the City of 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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Table of Contents

I. Introduction and Executive Summary		1
II. Legal Requirements For Controlling Adult Entertainment Businesses		7
III. Crime in Garden Grove, 1981-1990		17
Figure 1	17.1	
Table 1	18.1	
Figure 2	19.1-2	
Figure 3	20.1	
IV. The Impacted Area and the Public Safety Hazard		22
Table 2	23.1	
V. Quasi-Experimental Contrasts		25
VI. Survey of Real Estate Professionals		33
VII. Household Survey		39
VIII. Conclusions		47
Appendices		
Real Estate Survey Frequencies	A.9	
Household Survey Frequencies	A.13	
Real Estate Instrument		
Household Instrument		
Proposed Statute		

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, J.D., Ph.D., and five research assistants. This document presents the statistical analyses that we feel are the most relevant for the legal requirement 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 Grove 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 years 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 which 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

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Consultants' Final Report - Page 2

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 businesses? 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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Consultants' Final Report - Page 3

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 findings regardless of their implications for 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 show that:

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Consultants' Final Report - Page 4

● 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 nature and magnitude of the effects, *the adult businesses on Garden Grove Boulevard constitute a serious public safety hazard.*

● Except for expansions, the adult businesses were in operation at their present locations on Garden Grove 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 versa*) 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 was surveyed. Over nine hundred questionnaires were distributed with a response rate of fifteen percent. The results of this survey show that:

● Real estate professionals overwhelmingly agree that close proximity of adult businesses are associated with decreased property values for commercial, single-family residential and multiple-family residential 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 of households living near the adult businesses was surveyed. The results of this survey show that:

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Consultants' Final Report - Page 5

- 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.*
- *Where 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.*

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Consultants' Final Report - Page 6

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.¹ 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

¹ *Report of the Commission on Obscenity and Pornography* (Bantam Books, 1970).

² See D.A. Downs, *The New Politics of Pornography* (University of Chicago Press 1989).

³ See W.A. Simpson, *Pornography and Politics: Report of the Home Office* (Waterlow Publishers, 1983).

⁴ Attorney General's Commission on Pornography, *Final Report* (U.S. 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 *Miller* 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 prosecutions⁶ and appeals⁷ of obscenity convictions have declined nationwide.⁸

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

⁵ *Final Report supra* note 4 at 461.

⁶ The New York Obscenity Project, "An Empirical Inquiry in to the Effects of *Miller v. California* on the Control of Obscenity", *New York University Law Review* 52:843 (1977).

⁷ R.E. Riggs, "Miller v. California Revisited: An Empirical Note," *Brigham Young University Law Review* 2:247 (1981).

⁸ See generally *Downs, supra*, note 2 at 20.

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anti-discrimination statutes was first tried by Minneapolis⁹ but has failed to catch on in general.¹⁰ 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

⁹ Minneapolis Code of Ordinances (MCO), Title 7, ch. 139.20, sec. 3, subd. (gg), (1).

¹⁰ See *Downs supra* note 2.

¹¹ 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 Angeles 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.

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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 have been increased and a number of liquor licenses in the area have been revoked. 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 of "adult entertainment" businesses.¹³

The other approach that municipalities have followed is the dispersement 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 theaters, adult book stores, cabarets, bars, taxi dance halls and hotels. This statutory zoning approach to regulating adult business was legally challenged and subsequently upheld by the Supreme Court as

¹³ Id., at 9.

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such zoning laws. In *Renton v. Playtime Theatres, 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 businesses within the jurisdiction of the municipality. It is the first factor this report is primarily concerned with.¹⁷ In the *Mini Theatres* case the Detroit Common Council made a finding that adult businesses are especially injurious to a

¹⁶ 475 U.S. 41 (1986)(Hereinafter *Renton*).

¹⁷ Even if an ordinance were enacted for the proper reasons the court still must determine whether the ordinance would effectively prevent any operation of an adult 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.

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constitutional in *Young v. American Mini Theatres, Inc.*¹⁴ This model has been adopted by numerous cities including Los Angeles and twelve other Southern California cities for 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 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 (427 U.S. 50, 71).

Indeed the Supreme Court upheld the Constitutionality of the concentration model in *Renton*, "Cities may regulate adult theaters by dispersing them, as in Detroit, or by effectively concentrating them, as in *Renton*." (infra note 16 at 52).

¹⁵ 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 the 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).

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Consultants' Final Report - Page 13

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 insufficient.¹⁹ 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.

¹⁸ *Mini Theatres* supra note 18 at 55.

¹⁹ "Here, 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 failed to show that the ordinance, as interpreted by the 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 Bernardino County* 827 F.2d 1329,1333 (9th Cir. 1987).

²⁰ *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41, 106 S.Ct. 925, 89 L.Ed.2d 2a(1986).

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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 1977,²² 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 Angeles 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 Angeles is not a good comparison city for Garden Grove.

Like the *LA Study*²³ this analysis relies on a multimethodological 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.

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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 I²⁵ and Part II²⁶ crimes associated with the Hollywood area and its 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-core motel, 2 bookstores, 7 theaters, and 1 massage parlor/scam joint; in 1975 had 3 hard-core motels, 18 bookstores, 29 theatres, and 38 massage parlor/scam joints. (see *LA Study*, Table VI, p. 54). Garden Grove on the other hand only has seven bookstores and adult video stores.

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Consultants' Final Report - Page 16

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 distances. 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 have higher crime rates than other areas, this gives little support for regulation of specific distances between adult business and other land uses.

The *LA Study* also presents the analyzes of two questionnaires, one to businessmen and residential property owners, and one to realtors, real estate appraisers and lenders, to determine the effects of adult businesses. While the questionnaires do ask the respondents about possible negative effects, there was no distinction between the negative effects when the distances from adult businesses varied, nor when there were two or more such business located near each other. Both of these issues are important aspects of the Garden Grove ordinance.

²⁸ See Appendix for the Garden Grove ordinance.

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III. Crime in Garden Grove, 1981-1990

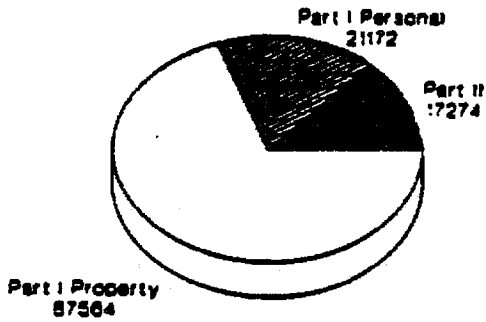
During the decade of our study, 1981-1990, the Garden Grove Police Department recorded 108,196 UCR Part I crimes (112 homicides, 548 rapes, 3,835 robberies, 16,677 assaults, 24,498 burglaries, 51,393 thefts, and 11,133 auto thefts) and 17,274 UCR Part II crimes (2,828 sexual offenses, 5,353 drug offenses, 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 II 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 policing. 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 locations of adult businesses, 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 can 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,

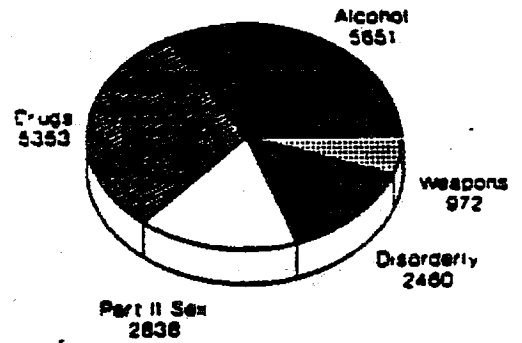
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Figure 1 - Distribution of Crimes in Garden Grove, 1981-1990

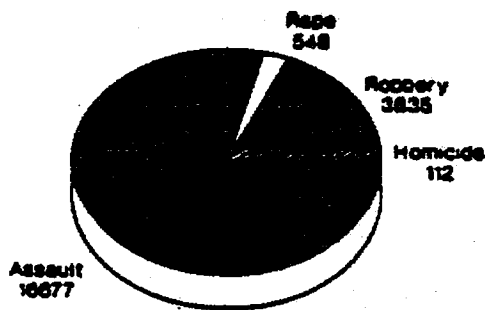
Total Crime



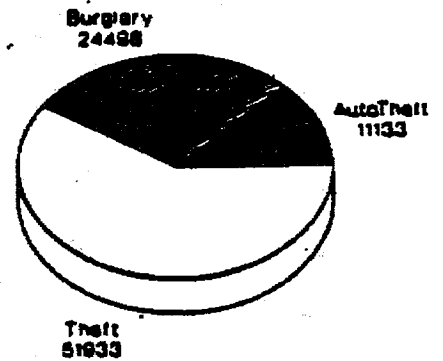
Part II



Part I Personal



Part I Property



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Consultants' Final Report - Page 18

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 median on rape, robbery, assault, burglary,

²⁹ The 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

	<i>Homicide</i>	<i>Rape</i>	<i>Assault</i>	<i>Robbery</i>	<i>Burglary</i>	<i>Theft</i>	<i>Auto Theft</i>
Anaheim	7.3	48.8	273.8	199.6	2351.	4348.	777.
Bakersfield	6.6	65.3	567.2	489.5	3651.	6649.	796.
Belmont	10.6	41.6	638.7	435.5	2836.	7971.	841.
Concord	2.9	27.9	102.2	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.
Fullerton	4.9	32.3	168.2	201.5	1503.	4071.	503.
Garden Grove	10.5	38.1	325.2	293.6	2159.	4040.	693.
Glendale	2.9	12.2	189.1	140.2	1378.	2940.	663.
Hayward	6.4	38.5	267.1	405.0	1809.	4926.	503.
Huntington Beach	2.4	22.3	100.9	147.8	1378.	2883.	450.
Inglewood	28.7	112.6	1236.2	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.
Oxnard	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

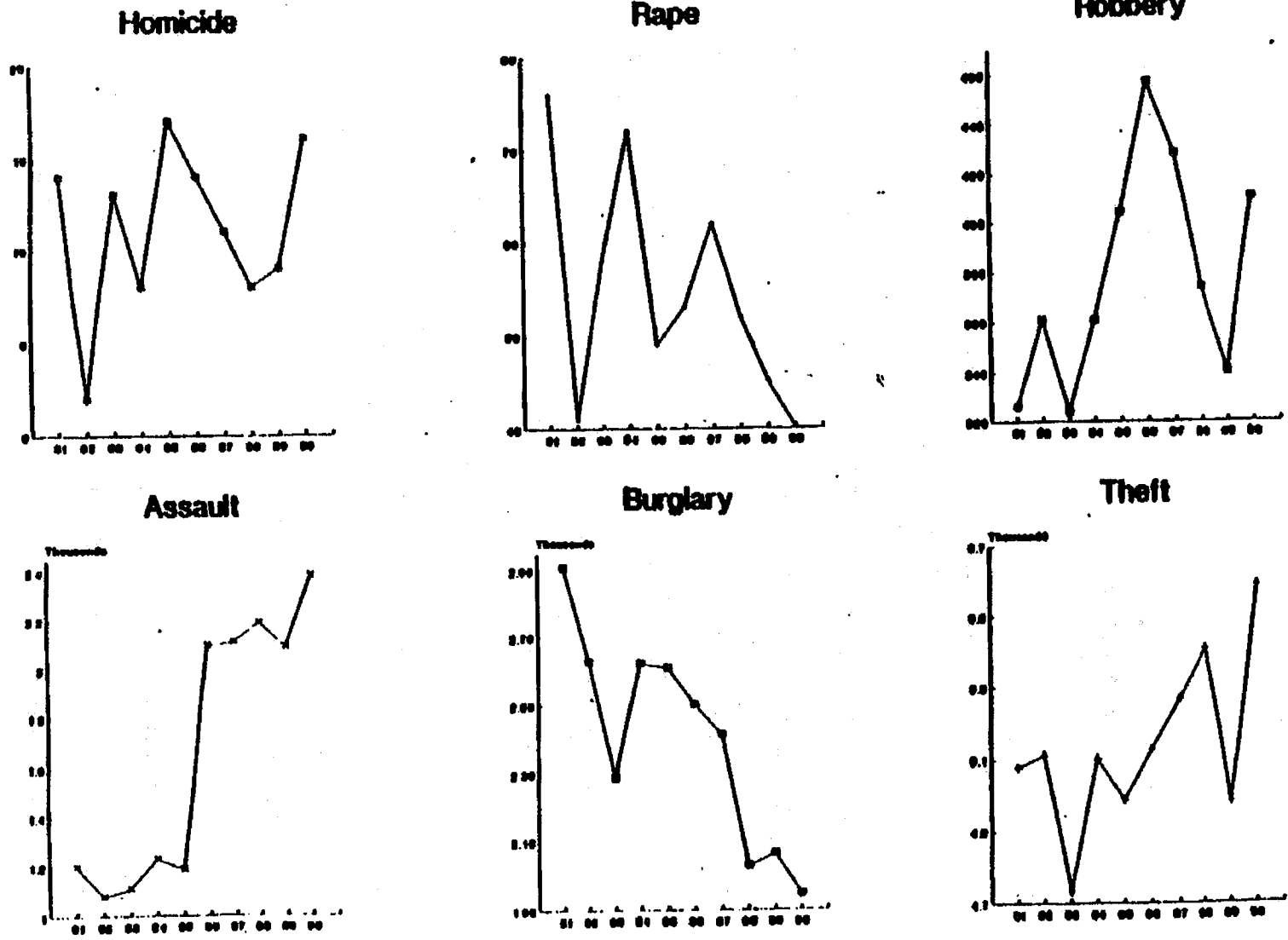
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and theft. None of these rankings is significantly different than the median, of course, and furthermore, the rankings fluctuate slightly from year to year. While Garden Grove has an "average" crime rate relative to other cities, however, like any 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, 1981-1990.³⁰ 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 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 systematically over time. Although this phenomenon has been widely reported by statisticians since the early 19th century, it is not well

³⁰ 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.

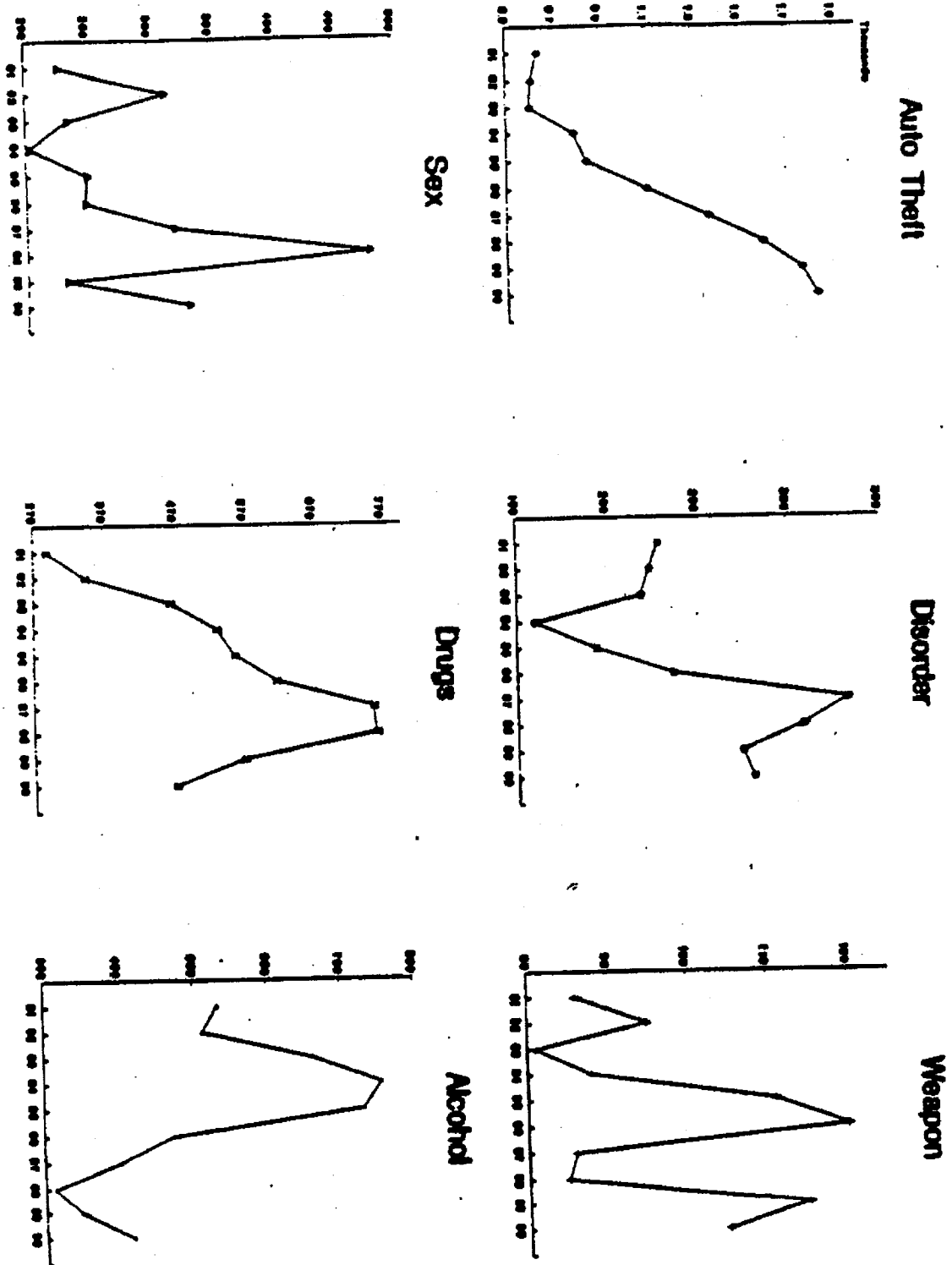
Figure 2 - Annual Crime Trends in Garden Grove, 1981-1990



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Figure 2 - Annual Crime Trends in Garden Grove, 1981-1990

Annual Crime Trends



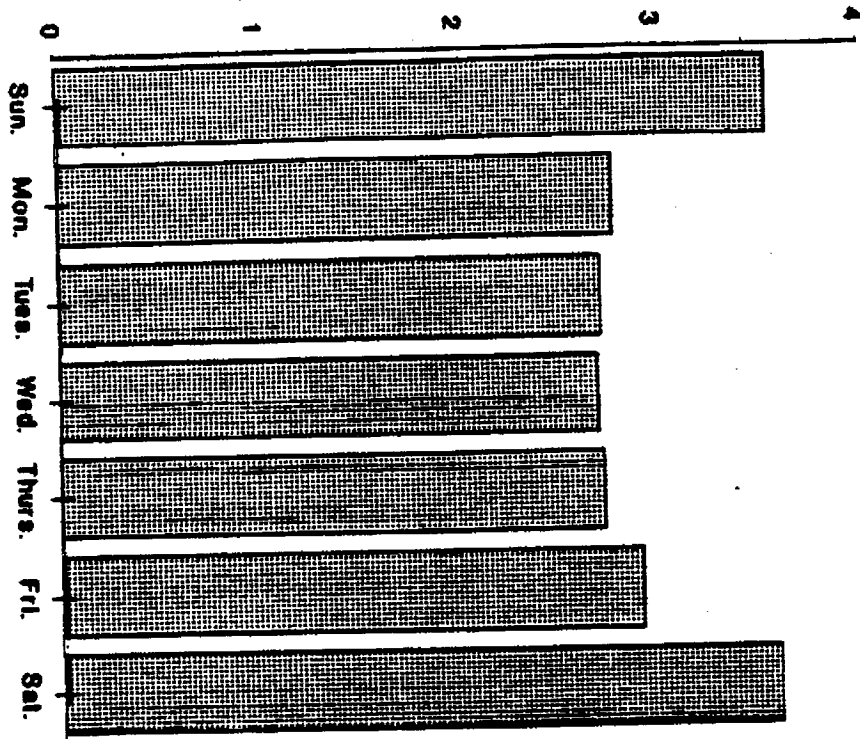
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understood by popular media or the public. Nevertheless, each of the seven Part I crime trends is consistent with a "random" process and, hence, each is amenable to a statistical analysis. The five Part II crime trends, in contrast, are not at all 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 II crime rates to the operation of adult businesses. Although we report effects for Part II crimes in subsequent analyses, the only internally valid effects are for Part I crimes.

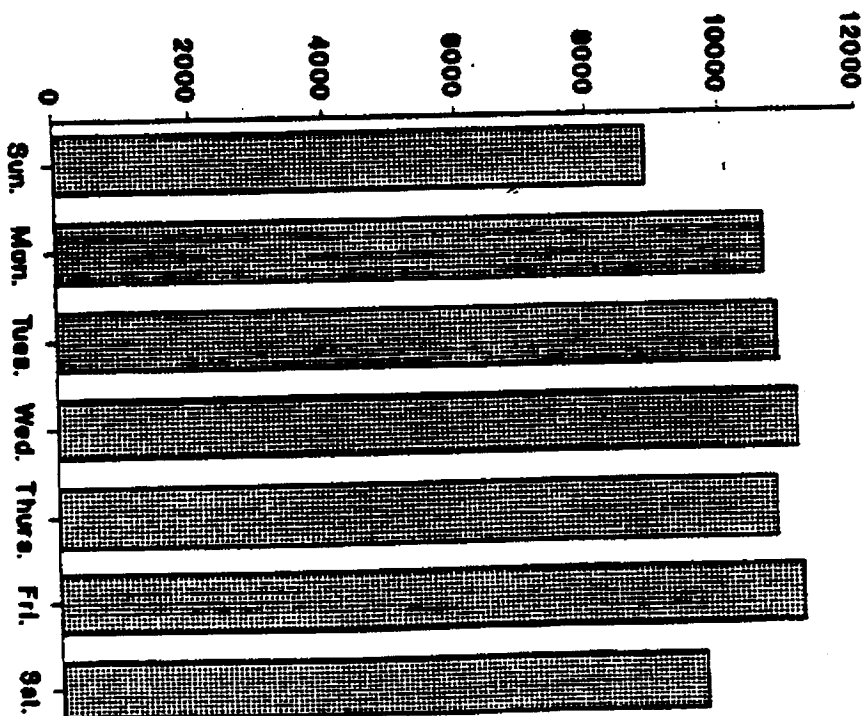
Figure 3 shows another type of trend. Examining the day of the week of the seven Part I crimes, a distinct pattern emerges. We see here that the occurrence of Personal crimes peaks on weekends. Conversely, Property crimes peak during midweek and are least likely to occur on weekends. The basis for this pattern is well established in theory: crimes 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



Part I Personal Crimes



Part I Property Crimes

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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 most 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 II 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 causal 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

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and 1977 respectively, pose the same problem. In March, 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 findings 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 II crime on Garden Grove Boulevard during the last decade.* Since this disparity could occur by chance alone 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.

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**Table 2 - Reported Crimes for Adult Businesses
Garden Grove Boulevard Only, 1981-1990**

Bookstores/Peepshows

<i>Address</i>	<i>Personal</i>		<i>Property</i>		<i>Part I</i>		<i>Part II</i>	
	<i>N</i>	<i>Rank</i>	<i>N</i>	<i>Rank</i>	<i>N</i>	<i>Rank</i>	<i>N</i>	<i>Rank</i>
8192 Garden Grove	16	19	190	5	206	5	160	1
8502 Garden Grove	25	9	93	13	118	11	52	7
8743 Garden Grove	0		7	192	7	217	4	71
8745 Garden Grove	3	91	17	98	20	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

Bars/Taverns

<i>Address</i>	<i>Personal</i>		<i>Property</i>		<i>Part I</i>		<i>Part II</i>	
	<i>N</i>	<i>Rank</i>	<i>N</i>	<i>Rank</i>	<i>N</i>	<i>Rank</i>	<i>N</i>	<i>Rank</i>
8112 Garden Grove	41	1	94	12	135	8	22	17
8284 Garden Grove	15	23	35	50	50	40	4	69
8575 Garden Grove	28	7	84	16	112	13	35	11
8801 Garden Grove	10	46	38	47	48	41	14	31
8803 Garden Grove	21	13	56	28	77	23	20	20
12045 Garden Grove	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

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Consultants' Final Report - Page 24

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.

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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 *noncausal* explanations for any set of numbers. Validity requires that a *change* in the operation of an adult business be followed 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 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

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Consultants' Final Report - Page 26

Garden Grove Boulevard. The before/after and test/control contrasts for this change are:

Test Site	One Year Before				One Year After			
	200'	500'	1000'		200'	500'	1000'	
<i>Personal Crimes</i>	1	14	28	43	15	16	28	59
<i>Property Crimes</i>	10	46	84	140	17	58	167	242
<i>Part II Crimes</i>	21	11	16	48	16	12	17	45
Control Site	200'	500'	1000'		200'	500'	1000'	
<i>Personal Crimes</i>	0	11	22	33	1	9	28	39
<i>Property Crimes</i>	13	52	76	141	12	56	87	155
<i>Part II Crimes</i>	15	23	27	65	11	22	29	62

Over the next year, Personal crimes within a 200-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 in 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 its 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:

Test Site	One Year Before				One Year After			
	200'	500'	1000'		200'	500'	1000'	
<i>Personal Crimes</i>	2	7	21	30	6	11	30	47
<i>Property Crimes</i>	3	19	94	116	11	40	113	164
<i>Part II Crimes</i>	13	14	43	70	8	13	42	63
Control Site	200' 500' 1000'				200' 500' 1000'			
<i>Personal Crimes</i>	2	10	30	42	1	11	31	43
<i>Property Crimes</i>	19	49	76	144	20	60	67	147
<i>Part II Crimes</i>	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 effect was observed at a "control" site developed from the mean crime counts of four other adult businesses, the increases are 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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Consultants' Final Report - Page 28

for this change are:

Test Site	One Year Before				One Year After			
	200'	500'	1000'		200'	500'	1000'	
<i>Personal Crimes</i>	0	10	51	61	4	15	46	65
<i>Property Crimes</i>	3	19	67	89	6	25	60	91
<i>Part II Crimes</i>	11	13	16	40	34	11	25	70
Control Site	200'	500'	1000'		200'	500'	1000'	
<i>Personal Crimes</i>	1	13	49	63	1	11	54	66
<i>Property Crimes</i>	5	22	74	101	4	24	68	96
<i>Part II Crimes</i>	9	17	22	48	28	13	20	61

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 Preview 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

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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, however, 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:

Test Site	One Year Before				One Year After			
	200'	500'	1000'		200'	500'	1000'	
<i>Personal Crimes</i>	2	13	26	41	2	11	21	34
<i>Property Crimes</i>	3	19	67	89	6	25	60	91
<i>Part II Crimes</i>	11	13	16	40	34	11	25	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

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Consultants' Final Report - Page 30

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 impact 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:

Test Site	One Year Before				One Year After			
	200'	500'	1000'		200'	500'	1000'	
<i>Personal Crimes</i>	0	1	12	13	2	8	35	45
<i>Property Crimes</i>	9	29	56	94	7	41	62	110
<i>Part II Crimes</i>	4	2	7	13	2	9	11	22
Control Site	200'	500'	1000'		200'	500'	1000'	
<i>Personal Crimes</i>	0	1	14	15	0	2	14	16
<i>Property Crimes</i>	4	12	45	61	2	19	51	72
<i>Part II Crimes</i>	4	8	7	19	5	9	12	26

In the subsequent year, Personal crime within 1000 feet rose significantly.

³³ A 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.

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Consultants' Final Report - Page 31

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.

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:

Test Site	One Year Before				One Year After			
	200'	500'	1000'		200'	500'	1000'	
<i>Personal Crimes</i>	2	9	13	24	2	13	9	26
<i>Property Crimes</i>	4	15	29	48	5	19	39	63
<i>Part II Crimes</i>	13	22	8	43	80	26	5	111
Control Site	200'	500'	1000'		200'	500'	1000'	
<i>Personal Crimes</i>	0	2	12	14	1	1	14	16
<i>Property Crimes</i>	5	11	39	55	3	13	44	60
<i>Part II Crimes</i>	7	8	7	22	7	8	13	28

In the subsequent year, no significant change was observed either in Personal or Property crime; significance notwithstanding the change was in the opposite direction of what was expected. Part II crimes within 200 feet of the *Hip Pocket* rose precipitously and significantly. No change was observed at a "control" site.

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Consultants' Final Report - Page 32

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.

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VI. Survey of 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.³⁴ 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 of responses.

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19 were eliminated because of response bias.³⁵ The final analysis is based on 122 valid responses.³⁶

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 will be substantially decreased:

³⁵ Throughout the questionnaire, various questions 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 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.

³⁶ This gives a response rate of 122/924 or 13.2%. This is somewhat lower than the response rate for the *LA Study* of 81/400 or 20% (p. 38). However, that report makes no mention of correction for response bias. If the 19 returned questionnaires that were eliminated for response bias had been included in the analysis, the response rate would have been 141/924 or 15.3%.

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Consultants' Final Report - Page 35

	<i>Decrease</i>	<i>No Effect</i>	<i>Increase</i>
Single-family	97.5%	2.5%	0.0%
Multiple-family	95.0%	5.0%	0.0%
Commercial	81.5%	15.1%	3.3%

When adult businesses are located more than 200 feet but less than 500 feet of a residential or commercial property, the effect diminishes only slightly:

	<i>Decrease</i>	<i>No Effect</i>	<i>Increase</i>
Single-family	95.1%	4.9%	0.0%
Multiple-family	92.5%	6.7%	0.8%
Commercial	77.5%	20.0%	2.5%

The difference between 200 and 500 feet is insignificant. Otherwise, the strongest impact occurs for single-family residences with a smaller (though still extremely large and significant) impact on commercial property.

The density of adult businesses is also considered to have a negative impact on property values. When two adult businesses are located within 1000 feet of each other and within 200 to 500 feet of a property, values are expected to diminish significantly:

	<i>Decrease</i>	<i>No Effect</i>	<i>Increase</i>
Single-family	89.3%	9.8%	0.8%
Multiple-family	86.8%	12.3%	0.8%
Commercial	71.9%	27.3%	0.8%

Density impacts are judged to be slightly smaller than the impacts of location *per*

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se. 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, traffic, litter, loitering and noise; and decreased safety for women and children, quality of life, and rents. Specific responses were:

	<i>Increase</i>	<i>No Effect</i>	<i>Decrease</i>
Crime	93.1%	6.0%	0.9%
Traffic	97.4%	1.7%	0.9%
Litter	86.2%	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

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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:

	<i>Increase</i>	<i>No Effect</i>	<i>Decrease</i>
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	23.2%	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*.

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Consultants' Final Report - Page 38

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.

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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 Ana telephone households in March and April, 1991, a refined final version of the instrument was then administered to a stratified "random" sample of Garden Grove telephone households in the summer of 1991.³⁸ 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.

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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:

Completed	118	47.2%	80.3%
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 numbers 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.

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aspects of urban life. Exceptions to this rule are rare and the intensity of the feeling is greatest in neighborhood nearer Garden Grove 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 describe) 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 assess the impact that an adult entertainment business located in their neighborhood would have on series of "social problems."

Specifically:

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 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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Consultants' Final Report - Page 42

Responses to this series of questions reveal a consistent perception of the impact of adult businesses on the part of citizens. Broken down into three categories:

	<i>Increase</i>	<i>No Effect</i>	<i>Decrease</i>
Crime	72.9%	27.1%	0.0%
Traffic	60.7%	38.5%	0.9%
Litter	66.7%	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%	45.3%
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 business.

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

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Consultants' Final Report - Page 43

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 of residential life, for example, garner 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 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%

Regulatory initiatives designed to reduce the density of adult businesses, on the

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Consultants' Final Report - Page 44

Regulatory initiatives designed to reduce the density of adult businesses, on the other hand, 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	18.8
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 short 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,

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Consultants' Final Report - Page 45

	<i>Own</i>	<i>Rent</i>		<i>Women</i>	<i>Men</i>	
<i>Regulate Yes</i>	74	24	98	57	42	99
<i>Regulate No</i>	7	10	17	6	11	17
	81	34	115	63	53	116

Both differences (owners vs. renters and women vs. 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, home owners and women diverge slightly:

	<i>Own</i>	<i>Rent</i>		<i>Women</i>	<i>Men</i>	
<i>Move Yes</i>	52	17	69	43	27	70
<i>Move No</i>	28	17	45	20	25	45
	80	34	114	63	52	115

While home owners are more likely (vs. renters) to say 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 away) and to 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.

Consultants' Final Report - Page 45

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Consultants' Final Report - Page 46

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 our survey.

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VIII. 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 professionals. Put simply, these businesses have a real impact on the daily lives of their neighbors. By all measures, respondents living near one 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*

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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 geographical concentration of adult businesses.

Although these two surveys may represent subjective opinion, their results are consistent with objective analyses of crime 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 impressions 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 bars. 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 on 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 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.*

There is a tendency to view adult entertainment businesses as "moral nuisances" when, in fact, the data show that they are public safety "hot spots." Adopting this view, it may be useful to enact policies designed to ensure the safety of customers and neighbors. The Garden Grove Police Department is ideally suited to advise on the range of policy options that might be implemented.

A final recommendation pertains 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. Nevertheless, we detect a

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Consultants' Final Report - Page 50

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 (vs. 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.

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APPENDIX

Real Estate Survey Frequencies

Household Survey Frequencies

Real Estate Instrument

Household Instrument

Proposed Statute

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Consultants' Final Report - A1

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	38.5	38.5
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, how would you expect average values of the following types of property to be effected if they are less than 200 feet away from the new adult bookstore?

...Single-family residential

20% Decrease	76	62.3	62.8
10-20% Decrease	28	23.0	23.1
0-10% Decrease	14	11.5	11.6
No Effect	3	2.5	2.5
Missing	1	.8	

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Consultants' Final Report - A2

...Multiple-family residential

20% Decrease	46	37.7	38.3
10-20% Decrease	42	34.4	35.0
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% Decrease	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% Decrease	41	33.6	34.2
10-20% Decrease	36	29.5	30.0
0-10% Decrease	34	27.9	28.3
No Effect	8	6.6	6.7
10-20% Increase	1	.8	.8
Missing	2	1.6	

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Consultants' Final Report - A3

...Commercial

20% Decrease	20	16.4	16.7
10-20% Decrease	37	30.3	30.8
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	31.1	31.1
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	26.2	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% Decrease	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	

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Consultants' Final Report - A4

How would you expect the average 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
No Effect	8	6.6	6.8
0-10% Increase	1	.8	.8
Missing	4	3.3	

...Multiple-family residential

20% Decrease	42	34.4	35.3
10-20% Decrease	41	33.6	34.5
0-10% Decrease	25	20.5	21.0
No Effect	10	8.2	8.4
0-10% Increase	1	.8	.8
Missing	3	2.5	

...Commercial

20% Decrease	25	20.5	21.4
10-20% Decrease	40	32.8	34.2
0-10% Decrease	25	20.5	21.4
No Effect	23	18.9	19.7
0-10% Increase	4	3.3	3.4
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 residential?

...Crime

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	

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Consultants' Final Report - A5

...Traffic

Substantial Increase	28	23.0	23.9
Some Increase	60	49.2	51.3
No Effect	26	21.3	22.2
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	12.1
Some Decrease	1	.8	.9
Substantial Decrease	1	.8	.9
Missing	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 Decrease	1	.8	.9
Missing	10	8.2	

...Safety

Substantial Increase	24	19.7	21.2
Some Increase	7	5.7	6.2
No Effect	12	9.8	10.6
Some Decrease	24	19.7	21.2
Substantial Decrease	46	37.7	40.7
Missing	9	7.4	

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Consultants' Final Report - A6

...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	41.2
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
Some Decrease	51	41.8	45.1
Substantial Decrease	41	33.6	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
Some Increase	57	46.7	49.6
No Effect	11	9.0	9.6
Substantial Decrease	2	1.6	1.7
Missing	7	5.7	

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Consultants' Final Report - A7

...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	29.5	31.3
Some Increase	60	49.2	52.2
No Effect	18	14.8	15.7
Substantial Decrease	1	.8	.9
Missing	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	14.3
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	10	8.2	

...Quality of business environment

Substantial Increase	6	4.9	5.4
Some 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	

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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	

...Loitering

Substantial Increase	41	33.6	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	4.1	4.4
No Effect	4	3.3	3.5
Some Decrease	39	32.0	34.5
Substantial Decrease	61	50.0	54.0
Missing	9	7.4	

...Ability to attract customers

Substantial Increase	6	4.9	5.3
Some Increase	4	3.3	3.5
No Effect	8	6.6	7.0
Some Decrease	37	30.3	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 feet of an area on the following problems if the area is residential?

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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	38.7
No Effect	8	6.6	6.7
Substantial Decrease	2	1.6	1.7
Missing	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
Some Decrease	2	1.6	1.7
Substantial Decrease	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	

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Consultants' Final Report - A10

...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	4.4
Some Increase	5	4.1	4.4
No Effect	7	5.7	6.1
Some 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	4.1	4.3
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 locating two or more bookstores within 1000 feet of each other and within 200 feet of an area on the following problems if the area is commercial?

...Crime

Substantial Increase	53	43.4	44.2
Some Increase	59	48.4	49.2
No Effect	6	4.9	5.0
Substantial Decrease	2	1.6	1.7
Missing	2	1.6	

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Consultants' Final Report - A11

...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
Substantial Decrease	1	.8	.8
Missing	2	1.6	

...Litter

Substantial Increase	50	41.0	42.7
Some Increase	53	43.4	45.3
No Effect	12	9.8	10.3
Some Decrease	1	.8	.9
Substantial Decrease	1	.8	.9
Missing	5	4.1	

...Noise

Substantial Increase	39	32.0	33.1
Some Increase	48	39.3	40.7
No Effect	29	23.8	24.6
Substantial Decrease	2	1.6	1.7
Missing	4	3.3	

...Safety

Substantial Increase	17	13.9	14.3
Some Increase	8	6.6	6.7
No Effect	12	9.8	10.1
Some Decrease	38	31.1	31.9
Substantial Decrease	44	36.1	37.0
Missing	3	2.5	

...Quality of business environment

Substantial Increase	5	4.1	4.3
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	

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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
Missing	11	9.0	

...Loitering

Substantial Increase	49	40.2	42.6
Some Increase	45	36.9	39.1
No Effect	5	4.1	4.3
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
No Effect	7	5.7	6.1
Some Decrease	43	35.2	37.7
Substantial Decrease	56	45.9	49.1
Missing	8	6.6	

...Ability to attract customers

Substantial Increase	7	5.7	5.9
Some Increase	3	2.5	2.5
No Effect	10	8.2	8.5
Some Decrease	38	31.1	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	

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Consultants' Final Report - A13

Household Survey Response Tabulations

To the best of your knowlege, 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 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.

... Crime

Substantial Increase	55	46.6	46.6
Some Increase	31	26.3	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
Some Decrease	1	.8	.9
Substantial Decrease			
Missing	1	.8	

... Litter

Substantial Increase	43	36.4	36.8
Some Increase	35	29.7	29.9
No Effect	38	32.2	32.5
Some Decrease	1	.8	.9
Substantial Decrease			
Missing	1	.8	

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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
Some Decrease	1	.8	.9
Substantial Decrease	1	.8	.9
Missing	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
Missing	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
Missing	1	.8	

... Property Values

Substantial Increase	9	7.6	7.7
Some Increase	8	6.8	6.8
No Effect	18	15.3	15.4
Some Decrease	23	19.5	19.7
Substantial Decrease	59	50.0	50.4
Missing	1	.8	

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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
Some Decrease	3	2.5	2.6
Substantial Decrease	1	.8	.9
Missing	1	.8	

... Graffiti

Substantial Increase	44	37.3	38.3
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
Some Increase	23	19.5	19.8
No Effect	38	32.2	32.8
Some Decrease	2	1.7	1.7
Substantial Decrease			
Missing	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	

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Consultants' Final Report - A16

Do you believe the City should regulate the location of adult businesses?

No	17	14.4	14.5
Yes	100	84.7	85.5
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?

500 Feet	4	3.4	3.4
1000 Feet	10	8.5	8.6
1 Block	3	2.5	2.6
3+ Blocks	89	75.4	76.7
Farther	10	8.5	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	37.3	37.6
Industrial	68	57.6	58.1
None	4	3.4	3.4
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	

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Consultants' Final Report - A17

Are you aware of any specific incidents related to adult entertainment businesses in your neighborhood?

No	92	78.0	78.6
Yes	25	21.2	21.4
Missing	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 thru 45	26	22.0	23.6
46 thru 65	34	28.8	30.9
66 or Older	12	10.2	10.9
Missing	8	6.8	

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Consultants' Final Report - A18

What is your highest level of education?

Grade School	2	1.7	1.8
High School	32	27.1	28.1
Some 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 you 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
Missing	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
No	42	35.0	35.0

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CITY OF GARDEN GROVE ADULT BUSINESS SURVEY CALL SHEETS

CASE ID: _____

Phone number: _____

Address: _____

Interviewer date time outcome time/date of callback

- 1. _____
- 2. _____
- 3. _____
- 4. _____
- 5. _____
- 6. _____
- 7. _____
- 8. _____
- 9. _____
- 10. _____

General Notes and Problems:

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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 on the impact of certain businesses, 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 confidential.

(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 close is the nearest adult bookstore or adult entertainment establishment?

- | | |
|-------------------------------------|------------------------------------|
| <input type="checkbox"/> 200 feet | <input type="checkbox"/> 1 block |
| <input type="checkbox"/> 500 feet | <input type="checkbox"/> 2 blocks |
| <input type="checkbox"/> 1000 feet | <input type="checkbox"/> 3+ blocks |
| <input type="checkbox"/> Don't know | |

2. Which adult entertainment establishment is it?

(Prompt respondent for identifying information, is the exact business name, or location, or general identification)

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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
- 500 feet
- 1000 feet
- 1 block
- 2 blocks
- 3+ blocks

7. In what zone do you think these types of businesses should be allowed?

- Residential
- Commercial
- 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?

- Strongly support
- Support
- Neutral
- Oppose
- Strongly oppose

9. Would you support a law that prohibited the concentration of adult entertainment business within 1000 of each other?

- Strongly support
- Support
- Neutral
- Oppose
- Strongly oppose

10. Are you aware of any specific incidents related to adult entertainment businesses in your neighborhood?

- No
- Yes

If yes please explain:

11. Do you own your home or do you rent ?

- Own
- Rent

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18. Would you like to be notified of any public hearings related to the restriction of adult entertainment businesses in Garden Grove?

Yes

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 Manager's Office number 714-741-5101)

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REAL ESTATE PROFESSIONAL SURVEY

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 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 new 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-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 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. Multiple-family residential	1	2	3	4	5	6	7
12. Commercial	1	2	3	4	5	6	7

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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 evaluate the impact of locating an adult bookstore 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	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

17. If the area is commercial:

	Substantial Increase	Some Increase	No Effect	Some Decrease	Substantial 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 the business environment	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 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:

18. If the area is residential:

	Substantial Increase	Some Increase	No Effect	Some Decrease	Substantial 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. affect loitering	1	2	3	4	5

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If the area is commercial:

	<u>Substantial Increase</u>	<u>Some Increase</u>	<u>No Effect</u>	<u>Some Decrease</u>	<u>Substantial Decrease</u>
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 the business environment	1	2	3	4	5
g. rents	1	2	3	4	5
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.

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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 words and phrases clearly indicates a different meaning intended in that specific case.
- B. **GENERAL INTERPRETATION** The following general interpretations shall apply throughout this Section:
1. 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, the 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 an accessory 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.

ADULT ENTERTAINMENT BUSINESSES: Adult entertainment businesses shall be defined as follows:

1. Adult Book Store 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 (50) 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.
8. 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,

5752T/1928A (5)
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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:
 - 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 primary or a secondary means of access to abutting properties.

APARTMENT: 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 POOL 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, snooker, 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.
- (8) The number of days for individual business addresses shall count toward the maximum allowable days allocated for 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 ENTERTAINMENT 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.
- 3. Higher crime rates in the vicinity of adult businesses.
- 4. Blighted 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.

B. SPECIFIED SEXUAL ACTIVITIES AND ANATOMICAL AREAS.

Pursuant to Section 9.1.1.05C, an adult entertainment business is any 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."

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: anilingus, buggery, coprophagy, coprophilia, cunnilingus, fellatio, necrophilia, pederasty, pedophilia, piquerism, sapphism, zoerasty; 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 than 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 C-2 zone, where the adult entertainment businesses regulated by this 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:

1. Within two hundred (200) feet of any area zoned for residential use or within two hundred (200) feet of 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 of 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:

1. 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 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 carried out pursuant to the Community Redevelopment Law; and

4885T/1907A (33)

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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 to 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 of 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 (18) years of age 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.

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REAL ESTATE PROFESSIONAL SURVEY

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 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 new 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-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 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. Multiple-family residential	1	2	3	4	5	6	7
12. Commercial	1	2	3	4	5	6	7

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If the area is commercial:

	Substantial Increase	Some Increase	No Effect	Some Decrease	Substantial 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 the business environment	1	2	3	4	5
g. rents	1	2	3	4	5
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.

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How would you expect the average values to be affected if the properties are within 200 to 500 feet of a 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 evaluate the impact of locating an adult bookstore 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	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

17. If the area is commercial:

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 the business environment	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 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:

18. If the area is residential:

	Substantial Increase	Some Increase	No Effect	Some Decrease	Substantial 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. affect loitering	1	2	3	4	5

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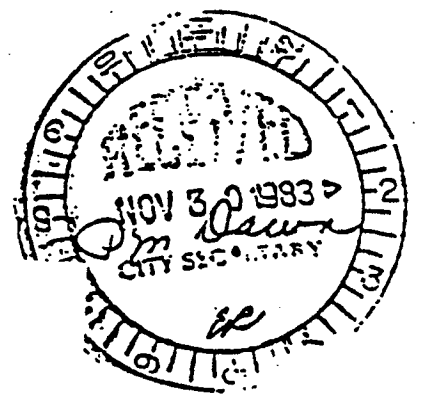
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HOUSTON CITY COUNCIL

COMMITTEE ON THE PROPOSED REGULATION OF
SEXUALLY ORIENTED BUSINESSES

LEGISLATIVE REPORT ON AN ORDINANCE AMENDING SECTION 28-73
OF THE CODE OF ORDINANCES OF THE CITY OF HOUSTON, TEXAS;
PROVIDING FOR THE REGULATION OF SEXUALLY ORIENTED COMMERCIAL
ENTERPRISES, ADULT BOOKSTORES, ADULT MOVIE THEATRES AND
MASSAGE ESTABLISHMENTS; AND MAKING VARIOUS PROVISIONS
AND FINDINGS RELATING TO THE SUBJECT



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HOUSTON, TEXAS

COMMITTEE ON THE PROPOSED REGULATION OF
SEXUALLY ORIENTED BUSINESSES

LEGISLATIVE REPORT

INTRODUCTION

This Legislative Report has been prepared by the Committee on the Proposed Regulation of Sexually Oriented Businesses as a summary of the Committee's work in preparing the draft ordinance which has been submitted to the Houston City Council for consideration. This Report briefly sketches some of the most significant aspects of the history of the Committee, summarizes prior efforts at the regulation of sexually oriented businesses both in Houston and elsewhere, recapitulates the principal themes heard in the public testimony taken by the Committee, and offers a brief section-by-section analysis of the proposed ordinance.

This Report has not been drafted as a legal treatise on the regulation of sexually oriented businesses. Certainly considerable care was taken by the Committee to consult with the Legal Department at every step of the legislative process. Representatives of the Legal Department actually drafted the language of the ordinance pursuant to the directions of, and in consultation with, the Committee. However, the various legal issues raised during the Committee's deliberations are dealt with here from a layman's, not the lawyer's perspective, although it is the lawyer's perspective that undergirds the ordinance. The purpose of this Report is to explain to members of Council, and to the general public, what the Committee has recommended, and why, in the plainest possible language. For the same reason, this Report is not filled with footnotes, although all of the information is drawn from the materials and transcripts compiled by the Committee, and available as a matter of public record.

ORIGINS AND ESTABLISHMENT OF THE COMMITTEE.

On September 27, 1982, Mayor Kathryn J. Whitmire of the City of Houston announced the formation of a special committee of Council Members for the purpose of determining the need for an appropriate means of regulating sexually oriented businesses in Houston. This Council Committee on the Proposed Regulation of Sexually Oriented Businesses was composed of Council Members Dal M. Gorczyński, who represents District H, Council Member Georg Greanias, who represents District C, and Council Member Christi Hartung, who represents District G. Mayor Whitmire appointed Council Member Greanias to serve as chair of the Committee.

The Committee was formed by the Mayor in response to growing community concerns about the proliferation of sexually oriented

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businesses in Houston. This concern had been summarized in a memorandum from Council Member Greanias to the Mayor on September 20, 1982:

"Given its healthy economic climate and a legal environment that is, despite our identification with the Bible Belt, laissez faire on most sexual matters, Houston has long been an attractive environment for sexually oriented businesses. . . .

"Since Houston is not zoned, these sexually oriented businesses are located anywhere and everywhere, oftentimes near residential areas, or near schools, churches, or public parks. Their locations are frequently marked by garish or enticing signage. The effect on the ability of neighborhoods and commercial areas to retain their identity after the opening of such businesses in the area has been extremely adverse. Moreover, the establishment of one such business in an area has often led to the opening of another, in a rather perverse example of synergy. Finally, there is a growing body of evidence to suggest that there are substantial links between at least some of these businesses and various forms of organized crime. . . ."

The memorandum from Council Member Greanias made clear that in his mind at least the issue was not one of morality, or of passing judgment on the lifestyle of any individual, but of reasonable land use controls versus the rights and privileges of the individual:

"The importance of the city's ability to deal meaningfully with the issue of sexually oriented businesses should not be underestimated. To some it may seem a parochial question, relevant only to those who live in areas where sexually oriented businesses have located; to others it may appear just one more item on the agenda of those who are convinced that the city is in the terminal throes of sexual degradation on every front.

"But the problem imposed by these sexually oriented businesses is much broader in its implications, and runs directly to the heart of our present policies on land use. Does our decision not to impose zoning carry with it the requirement that we not seek to moderate the influence of sexually oriented businesses on our neighborhoods, whatever the consequences for the stability and quality of those neighborhoods?

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Does our decision not to impose zoning tie our hands in dealing with the collateral criminal activity that apparently attaches to some of these operations?"

At the same time, the initial memorandum from Council Member Greanias to Mayor Whitmire underscored a problem for which the Committee was to show great concern during the course of its deliberations:

"There is also another, equally important question: Does our desire to protect the freedom and privacy of the individual, and to permit that individual to pursue his or her life without inhibition, mean that we are proscribed from taking any actions that while not significantly infringing on those rights nevertheless sets a standard for the community as a whole?"

It was these questions that formed the heart of the Committee's inquiry during its one year of existence. The Committee believes that these questions have been successfully addressed in the proposed ordinance that has been presented to Council for its consideration.

OPERATION OF THE COMMITTEE

Methodology. The Committee conducted its work in several phases. The first phase, which was carried out in November and December of 1982, involved a series of public hearings in several parts of the city, as well as at City Hall. There were three regional hearings and one hearing in City Council Chambers. The first hearing was held at Spring Woods Senior High School on November 8, 1982. The second hearing was held at Berean Baptist Church on November 22, 1982. The third hearing was held at Bering Methodist Church on December 5, 1982. The fourth and final session in this first series of hearings was held in City Council Chambers on December 15, 1982. (During the course of these hearings, several comments were made about choosing churches as the sites for some of the hearings. The Committee chose these locations not because of their religious significance, but because they had a history of being used for community affairs, their locations were well known to the general public, and access to each such site was convenient from various places around the city.)

After the first set of hearings had been completed, the Committee went into executive sessions for a period of approximately three months, from late December of 1982 until the early part of April 1983. During that time, the Committee met with representatives of the Legal Department to review the testimony

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gathered in the initial hearings, as well as to discuss the results of staff research on the subject. Among those participating in this work were Messrs. John Whittington, Robert Collins, Charles Williams, and Adam Silverman from the Legal Department of the City of Houston, Kent Speer, John Elsenhans and Michael McEachern from the office of Council Member George Greanias, Fred Harper from the office of Council Member Christin Hartung, and Nancy Brame from the office of Council Member Dale Gorczynski. Francis J. Coleman, Jr., City Attorney for the City of Houston, also participated in these conversations from time to time.

On May 6, 1983, the Committee published the results of its efforts: a draft of a proposed ordinance regulating sexually oriented businesses in the City of Houston. At the time that the Committee published its draft ordinance, further hearings were announced at which the Committee would solicit testimony on the ordinance as proposed. These hearings -- originally planned to be three in number -- were held on Wednesday, May 15, 1983, Wednesday, May 22, 1983, and Thursday, May 24, 1983, in City Council Chambers. A fourth hearing, not originally planned, was held on Thursday, June 16, 1983.

Based upon these further public hearings, the Committee then went back into executive session with its legal counsel and other staff to make further refinements in the ordinance. The changes made pursuant to the public comments are noted in the commentary on the specific ordinance provisions themselves.

An additional word is perhaps warranted on the decision of the Committee generally not to meet with individuals and groups apart from the public sessions. It was determined early on that an ordinance such as that being considered by the Committee, with its potential for controversy, should not be subject to private bargaining between individuals or businesses and members of the Committee behind closed doors. It was felt by all members of the Committee that it would be far more preferable to gather all testimony and evidence in a public forum, and then reflectively to consider the information without conferral with private parties. At the same time, the Committee felt that its executive deliberations were justified in encouraging the free flow of discussion of ideas and sensitive concepts, knowing that the entire work product would be subject to the public comment, review and debate inherent in the Committee's procedures and the processes of Council.

The Committee also felt it imperative not to become subject to demands for quick action at the price of working with deliberate speed towards its goals. It is for this reason that the original date scheduled for submission to Council of a draft

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version of an ordinance was moved from January 25 to July (This date was pushed back several more times, and for similar reasons, before the ordinance was finally submitted to Council. It was for this same reason that additional hearings were scheduled during the second phase of the public sessions. Likewise, the Committee decided to request that the proposed ordinance be considered during the course of three readings, a contrasted with the normal procedure of suspending the three-reading practice and passing ordinances -- even those oftentimes having major effects on the city -- on an emergency basis in just one reading. Throughout its work, the goal of the Committee was to assure ample ventilation of all points of view, the thoroughgoing examination of all of the very difficult questions involved, and as complete an understanding as possible by all parties of the issues confronting the Committee and the solutions arrived at.

Analysis of Testimony. The hearings held by the Committee on the Proposed Regulation of Sexually Oriented Businesses were among the most extensive ever held by any committee of the Houston City Council. The hearings were open to all persons who wished to testify, and the Committee made no attempt to limit the type of remarks made to the Committee or to censor those remarks in any way. (At this point it should be noted that the Committee also accepted written comments from anyone, regardless of whether they testified in person. Such comments became part of the Committee's public record as a matter of course.) However, a clear distinction should be drawn between the Committee's willingness to permit full expression of diverse views -- a willingness that is reflected in the transcript of the hearings -- and any wholesale incorporation of those remarks by the Committee into the ordinance proposed to Council. Indeed, a chief function of the Committee was to evaluate the testimony, and to set aside those comments seen as not germane to the issues at hand or not dealing with problems, addressing instead those issues within the rightful purview of the city.

Thus, although there were a substantial number of witnesses expressing a fundamentalist opposition to what those witnesses deemed obscenity and pornography, the Committee chose -- and in fact made clear during the hearings -- to focus its efforts on land use issues rather than questions of pornography and obscenity. Similarly, a number of witnesses made comments adverse to the operation of gay bars. Again it was pointed out to those witnesses that such establishments were not necessarily within the working definition of a "sexually oriented business" (a definition that was modified over time as the ordinance was further refined) and therefore not a subject in themselves to be dealt with in the proposed ordinance. Finally, a number of witnesses made statements and proposals that would effectively

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ban all sexually oriented businesses, as that phrase is broadly defined. 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.

With these comments by way of preface, it is useful to review briefly the principal points made during the hearings and later relied upon by the Committee in the drafting of the proposed ordinance. Further comments on the use of the testimony in the development of the various ordinance provisions can be found in the section by section analysis of the ordinance that concludes this Report.

The first point made by many witnesses that seemed of merit to the Committee was that sexually oriented businesses, while a nuisance and not necessarily representative of the desires or activities of a majority of Houstonians, nonetheless have a right to exist. The rights of individuals were a theme in the testimony of a number of the witnesses. The willingness of Houstonians to "live and let live" was reinforced in the findings of a Houston attitudes survey conducted by Dr. Steven Klineberg, of Rice University, along with others. Briefly put, that study concluded that Houstonians were loath to support restrictions on personal behavior. Among those witnesses whose testimony was seen as most helpful by the Committee, the majority of such witnesses were generally solicitous of individual and minority rights, not anxious to impose any community standard of conduct on unwilling individuals, and concerned with merely striking an appropriate balance between the needs of the community at large and the rights of individuals to do as they please.

The second point made by many of the witnesses to whose testimony the Committee repeatedly referred during its deliberations was that while these businesses might have the right to exist, protection of their rights could be consistent with effective regulatory restrictions that would minimize the adverse consequences of those businesses to adjacent areas and activities. These witnesses -- many of them individuals who had direct personal experience of these businesses in their neighborhoods, or representatives of civic organizations that had had many dealings with the problems created by such businesses -- stated that while the businesses might have a right to exist, steps could be taken that, while not unduly restrictive of their operations, would offer some assistance to those neighbors and businesses surrounding the sexually oriented business. For instance, one gentleman living on West Alabama next to an adult bookstore, while agreeing that such businesses would probably

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continue to exist and that he was resigned to that fact, and cited a series of untoward incidents occurring on or near his property that were directly related to that adult bookstore. His position seemed to be that while Council might not be able to rid him of the business, it might nonetheless take steps to ameliorate the worst effects of that enterprise.

The third point made by many of the witnesses who proved most helpful to the Committee in providing guidance for the drafting of the ordinance was that among the most important negative effects of these businesses were the adverse consequences on neighborhood protection and enhancement, and the consequent adverse effect on property values. A number of neighborhood representatives and civic club participants recounted numerous instances of problems that had been created by these businesses for neighborhoods which were trying to preserve a neighborhood fabric. Several real estate brokers with substantial experience in areas affected by sexually oriented businesses offered documented instances in which property values had been affected by the establishment of sexually oriented businesses, as well as information of a more general nature as to the effect of these businesses on the course of neighborhood development. In expert testimony by Dr. Andrew Rudnick of the Rice Center, given before the full Council, this "cause and effect" syndrome was again attested to. It seemed to be a consensus among both the lay and expert witnesses that in neighborhood areas and areas of quality commercial development, the establishment of sexually oriented businesses had a detrimental effect on property values, at least in part because they were perceived adversely to affect the quality of life -- including among other things such issues as suitability for family activities and stability of the neighborhood environment -- of the area.

The fourth point made by the witnesses whose testimony was most commonly relied upon by the Committee was that among the most significant problems created by the businesses were the ancillary activities caused by the clustering of businesses, as in the case of street prostitution in the lower Westheimer area, and the problem of exterior appearance. Even where businesses could not be forced to relocate because of apparent preemptions in state law, most witnesses stated that reasonable controls on signage and exterior appearance were required. The intrusiveness of the signage and exterior features into the consciousness of the community was repeatedly cited. It was also noted that although adults might train themselves to ignore such signage, it would be hard if not impossible to demand the same self-discipline from children. That children would be likely attracted to such advertising (which in at least one case even featured popular cartoon characters) was perceived as a significant problem in the expert testimony of one psychiatrist.

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who cited information discussing the relations between exposure to such signage and psychological problems those children might subsequently experience.

The fifth point developed in the testimony and regarded as significant by the Committee was that sexually oriented businesses are likely contributory factors to criminal activities that are encouraged as ancillary to these enterprises. This link between these businesses and related problems of criminal activity was affirmed by the Chief of Police and other representatives of the Police Department, as well as by non-expert witnesses with long personal experience of living in areas where sexually oriented businesses are located. To the Committee, this issue of criminal activity occurring in the area of sexually oriented businesses was not a central problem, but rather a concurrent question of somewhat lesser significance than the land use issues. At the same time, however, the Committee felt that the testimony justified the conclusion that the criminal activity that does tend to occur in the vicinity of sexually oriented businesses, particularly where those businesses have clustered, has an adverse effect on property values. This adverse effect makes such activities a secondary concern, even though the principal focus of the Committee and the ordinance is on land use matters.

The sixth point brought out in the testimony -- particularly the testimony of city employees engaged in enforcing current statutes regulating such businesses, as well as private individuals who have sought legal recourse against such businesses -- was the difficulty of achieving reasonable enforcement of the law. Part of this enforcement problem centers on the relatively limited arsenal of remedies available to home-rule cities under Texas law in such circumstances. Some of the problem has been alleviated by cooperative efforts between cities and counties, as is the case in Houston, where Harris County cooperates with the city by bringing suits whenever requested to accompany a city suit, thus bringing into play the padlock power of the county -- a power the city lacks. However, another part of the problem is that existing laws and ordinances are structured in such a way as to make it difficult to sustain an action against even an offender clearly in violation of the law. For example, if an injunction for abatement of a nuisance is brought against the owner of a particular sexually oriented business -- such as an adult modeling studio -- it is quite possible that by the time the suit is actually brought to trial the ownership of the business has been transferred. The case is then thrown into limbo because the appropriate party or parties is (or are) no longer "joined" in the suit. The lawsuit stalls while the business continues in operation.

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Another point which the Committee thought relevant to its deliberations regarded those businesses which are thought to enjoy special protection under the First Amendment. This issue was perhaps one of the most difficult that the Committee faced. Despite whatever personal preference the members of the Committee might have had, the clear mandate of the Committee was to prepare an ordinance that was as legally defensible as possible. After considerable deliberation, the Committee accepted the contention of those lawyers who argued that to lump First Amendment and all other businesses into one indistinguishable category for purpose of regulation would probably be unwise and cause the ordinance to be submitted to substantial challenges. This is not to say that the arguments of the lawyers are unquestionably correct. Nor is it to say that following the recommendations of these lawyers represents what the Committee believes to be wise public policy. But what the Committee did was to remember continuously its principal charge, and to set aside its personal preferences and opinions in favor of proposing an ordinance with a maximum likelihood of being upheld in court.

While a variety of other issues and problems were raised in testimony taken before the Committee, the foregoing points seemed to members of the Committee to be the most significant and worth of attention. The manner in which this testimony was translated into proposals for legislative action will become clear in the Section by Section Analysis that follows below.

PRIOR HOUSTON ATTEMPTS TO REGULATE

Early Efforts. The proposed ordinance does not represent the first attempt by the City of Houston to regulate sexually oriented businesses. As stated in HOUSTON: A HISTORY, by David G. McComb:

"In 1840 a city ordinance provided a fine of not less than \$50 and a jail term of ten to thirty days for any woman committing lewd actions or exhibiting herself in a public place in a style 'not usual for respectable females. Brothels within the city limits could not be located closer than two squares to a family residence. A supplementary ordinance in 1841 required a \$20 bond for a 'female of ill fame' found in a public place after 8:00 p.m. in order to ensure good behavior. Although perhaps not a prostitute, one of the most notorious female characters from the period was Pamela Mann, an expert at firearms, knives, horseback riding, and profanity. She appeared in court at various times charged with counterfeiting, forgery, fornication, larceny, and assault. According to William Ransom Hogar she ran the Mansion House Hotel in such fashion that 'Mrs. Mann and her 'girls' achieved a satisfying success."

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providing Houston with female companionship of a 'robust and none too virtuous nature.'

Universal Amusement. A more recent and perhaps more relevant attempt to regulate sexually oriented businesses in Houston occurred in 1977, with the passage of Ordinances 28-65 and 36-14. Ordinance 28-65 amended a prior ordinance to make it "unlawful for any person to operate or cause to be operated an adult commercial establishment within two thousand (2000) feet of a Church, school or other educational or charitable institution." Under this ordinance, an "adult commercial establishment" was defined as "any business or enterprise having as a substantial or significant portion of its stock in trade or activity the sale, distribution, lending, rental, exhibition, or other viewing of material depicting sexual conduct or specified anatomical areas for consideration." Ordinance 36-14 made it unlawful to operate within two thousand (2,000) feet of a church, school or other educational or charitable institution any motion picture theatre "which exhibits a film that explicitly depicts ... contact between any part of the genitals of one person and the genitals, mouth or anus of another person; ... contact between a person's mouth, anus, or genitals and the mouth, anus, or genitals of an animal or fowl; ... manipulation of a person's genitals; ... defecation; or ... urination." Both ordinances required all businesses coming under the ambit of the law to bring themselves into compliance within thirty (30) days of passage of the ordinances. (A third ordinance, not as significant, dealt with a redefinition of "public amusement park" and "places of public entertainment and amusement.")

The 1977 ordinances were successfully challenged in a 1977 case styled Universal Amusement Co., v. Hofheinz. In an opinion handed down October 5, 1977, Judge Ross N. Sterling granted the request of plaintiffs for declaratory and injunctive relief. At the conclusion of the trial, the Court orally declared the ordinances unconstitutional on their face, permanently enjoined their enforcement against plaintiffs, and severed plaintiffs' claims for punitive damages and attorneys' fees.

For purposes of considering the ordinance now being proposed by the Committee, it is instructive to consider the grounds on which the 1977 ordinances were struck down as unconstitutional by the Court. Although at least one of the attorneys appearing before the Committee during its second session of hearings alleged that no ordinance could be fashioned that would meet the objections made by the Court, the Committee is of the opinion that it is indeed possible to draft such an ordinance.

In summary, Judge Sterling held the ordinances unconstitutional on grounds of vagueness, stating that this alone would be

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2-973

sufficient grounds to void the ordinance on grounds of unconstitutionality. However, he went on to say that in his opinion there were other constitutional defects, namely that the ordinances were violative of the First and Fourteenth Amendments to the Constitution by abridging the freedoms of speech and press guaranteed therein, that they denied the plaintiffs the equal protection of the laws as guaranteed by the Fourteenth Amendment, and that they denied plaintiffs due process of law as guaranteed by the Fifth and Fourteenth Amendments.

Vagueness. The Court found that the challenged ordinances violated basic tenets of constitutional law. It cited the general rule that whenever a penal statute is involved -- as was the case here, since a fine of up to \$200 was to be imposed for violations of ordinance 28-65 -- the terms of that statute "must be sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties" and that "a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential of due process of law."

However, the Court was quick to point out that even more than the usual rule requiring exactness in the drafting of a penal statute was involved in the case at hand. The ordinances in question were not only penal, but also restricted the exercise of First Amendment rights. While the Court did not hold that no such restrictions on First Amendment rights could ever be successfully enacted, it did state emphatically that in such instances even stricter standards than those required of ordinary penal statutes would be called for.

The plaintiffs in Universal Amusement claimed that the ordinances under examination failed both the general test of strictness required of any penal statute, not to mention the stricter standard applied when a law restricting First Amendment rights are in question. With this argument the Court agreed. Especially troublesome was the lack of any definitions whatsoever for such words as "Church," "school," or "other educational or charitable institution." Similarly, the words "substantial" and "significant" as used to modify "portion of its stock in trade or activity" was found by the Court to be "hopelessly vague." As the Court pointed out:

"Any theater which ever exhibited 'X or R' movies might be covered from time to time depending on the meaning of the words 'substantial' and 'significant.'"

The Court noted that one of the asserted purposes of the ordinances was the protection of children, but held that

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to live in a particular section of town so that a watchful eye could be kept on them. To paraphrase The Mikado, the legislative remedy should fit the problem. Another possible way of looking at it is that the cure should not be worse than the disease.

In Universal Amusement the Court found that there was not just overbreadth, but "substantial overbreadth." The Court seemed to be of the opinion that the attempt to regulate businesses which dealt in material depicting "sexual conduct" or "specified anatomical areas" failed the overbreadth test because it raised the distinct possibility that the ordinances would "deter those who normally deal with such materials from exercising their right to sell or exhibit them because (1) what they sell or exhibit might fall within the scope of the ordinance, and (2) their dealings with such material might result in the branding of their businesses as "adult commercial establishments." In the opinion of the Court, the ordinances being challenged had the potential to effectively prohibit all theatres from showing "R" rated movies and medical bookstores from selling books on anatomy or physiology which depicted nudity or partial nudity. Coupled with the fact that the ordinances as written were not in the opinion of the Court subject to narrowing by state law decisions, the ordinances were found to be consequently overbroad and therefore constitutionally infirm.

Protected Speech. The ordinances that were the subject of the lawsuit in Universal Amusement attempted to regulate to some extent activities normally considered as under the ambit of the First Amendment. Therefore one of the issues was whether the ordinances abridged freedom of speech in any unwarranted fashion. The Court noted that there could be regulation of such speech. But, the Court stated, such regulation must be reasonable. In the case of the ordinances at issue, the Court held that the administrative officials charged with enforcement of the ordinances were left free to exercise what the Court characterized as "virtually unfettered discretion." For instance, under the ordinances it was left to a policeman to determine what was a "church" or "school." Such breadth of discretion was found by the Court to be unacceptable in ordinances which proposed to regulate what were considered First Amendment activities.

This concern for protected speech was heightened by the fact that as a practical matter the ordinances did not merely limit the time and place and manner where the activities at issue could be engaged in. Instead, in application the ordinances banned all such activities from the City of Houston, at least as far as the Court could see under its review of the facts. Under such circumstances, the Court stated, it was impossible to say that these particular ordinances represented a reasonable restraint on the First Amendment activities at issue.

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Equal Protection. The Court in Universal Amusement stated that while a city can treat different classes of people in different ways, the difference in treatment must be based on some rationale directly connected with the appropriate exercise of municipal power for accepted purposes. The question in the particular case was whether the city, in treating the businesses at issue differently than other businesses, was doing so for reasons that were grounded in acceptable public policy consistently applied. The Court also noted that of some importance would be whether the state had already enacted legislation to deal with the public policy issues stated as the grounds for the ordinances.

In Universal Amusement, the Court found that the purported purpose of protecting children and permitting them to be raised in a suitable atmosphere, while perhaps worthwhile, did not call for the expansive ordinances that had been attempted. Moreover, the Court noted that there were already a substantial number of laws on the books at the state level dealing with the problem of protecting children from such activities. The Court distinguished the Detroit ordinance, on which Houston had relied, by noting that one of the primary purposes of that ordinance was to preserve the quality of urban life. Given these facts, the Court seemed to believe that the City of Houston had gone too far in its ordinances, given the goals it was seeking to accomplish.

Due Process. The final issues dealt with by the Court in Universal Amusement was that of denial of due process. The Court found that while some exercise of municipal authority in this area might be justified, the ordinances at issue went far beyond what was permissible and in effect deprived persons of their property without adequate reason or compensation. First, the ordinances effectively banned such businesses from the city even though it purportedly only limited their ability to locate in certain areas. Second, the ordinances were drafted in such a way that even if a business could find an acceptable location, the business would forever be in jeopardy of losing its authority to operate if a church or school moved within the prohibited distance.

Summary. In reviewing the decision of Universal Amusement for purposes of its work in drafting an ordinance proposal, the Committee kept several points in mind with regard to the foregoing discussion. First, businesses that are argued as under the ambit of the First Amendment enjoy special protection. But even the Court in Universal Amusement seemed to indicate that such protection is not absolute and that reasonable regulation is permissible. Therefore, the Committee took special care in all matters of regulation affecting First Amendment businesses to exercise what the Committee deemed prudence and restraint.

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Fifth, the Committee has provided in the ordinance for several avenues of recourse for any party that believes himself aggrieved by administration of the ordinance. At the same time, however, the ordinance has throughout been designed to limit the discretion of the administrative officers in charge of the ordinance to minimize the possibilities for such abuses of discretion that would require redress.

Sixth and finally, the Committee has spent considerable time reviewing computerized maps to give reasonable assurance that while the ordinance may be restrictive in absolute terms of locations available to sexually oriented businesses, it is not prohibitory in what it seeks to accomplish. After reviewing a series of maps developed in accordance with the distance formulas set forth in the ordinance, the Committee feels that there is reasonable evidence to support the conclusion that such is indeed the case.

REMEDIES ADOPTED BY OTHER CITIES

Houston is not the only American city to have had to deal with the problem of sexually oriented businesses. Other municipalities such as Detroit, Boston, Chicago, Dallas, Los Angeles, and Santa Maria, California, as well as regional governments such as Fairfax County, Virginia, have also grappled with the issue. Although Houston is unique as compared to these other governments with respect to the zoning issue, there are nonetheless lessons that can be drawn from comparing the experience of other municipalities to our own.

Detroit. The efforts of the city of Detroit to regulate sexually oriented businesses found their roots in attempts made in 1962 to combat the skid-row effects occurring in certain neighborhoods. Ultimately, the city in 1976 amended the anti-skid row ordinance developed out of that earlier effort to cover sexually oriented businesses. These new regulations were upheld by the United States Supreme Court. The key elements of this ordinance provided the following:

- (1) Sexually oriented businesses were explicitly defined;
- (2) Sexually oriented businesses were prohibited within five hundred feet (500') of an area zoned residential;
- (3) Sexually oriented businesses were prohibited from locating within one thousand feet (1000') of any two other regulated sexually oriented businesses; and

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mixed into the general run of office buildings and retail and wholesale operations. Substantial residential housing or residential activities were not part of the fabric of the neighborhood.

The decision to create a Combat Zone proved advantageous to the city of Boston for a number of reasons. First, the creation of a single such zone where all businesses were treated alike avoided any charges that the Boston regulatory scheme violated the equal protection provisions of the Fourteenth Amendment. Second, by creating a particular zone where such businesses could be established without question, the City avoided the sometimes difficult issues involved in trying to define what would or would not be considered a "sexually oriented business." Finally, the city was under this scheme able to avoid the difficulties and confusions that can sometimes be attendant upon any system involving licensing. In addition, the Boston approach entailed lower administrative costs, gave the city firm control over the growth of the sexually oriented businesses industry, and provided city officials with a controlled environment -- essentially a laboratory -- in which to investigate the effects of sexually oriented businesses on their surrounding environment. It is interesting to note that while the Boston plan has met with reasonable success, it has not been copied by any other American city.

While the Committee was urged to consider the combat zone concept for Houston, the proposal was discarded at a rather early point in the deliberations. The principal reason for rejecting the concept was the geographical difference between Boston and Houston. Boston proper is a city of fairly limited land area. Houston currently contains approximately 560 square miles. While a single combat zone might work in Boston, given its limited size, the Committee concluded that a defensive combat zone approach in Houston would require at least several such areas throughout the city. Otherwise, those located at a distance from the single combat zone might argue that their right of access to sexually oriented businesses had been wrongfully limited. The other problem, of course, would be that of locating sites for these multiple combat zones. Although several witnesses advocated this approach to the Committee, no witness was ready to volunteer his or her area as a candidate for such a zone -- in itself eloquent testimony to the perception of the effect of these businesses on their surrounding areas, a perception that expert witnesses would show appears to translate into adverse consequences for property values.

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Chicago. In 1977, the city of Chicago amended its municipal ordinance to include new regulations on adult-use businesses. The Chicago ordinance generally followed the Detroit legislation. The basic strategy of the regulatory scheme could be broken into three parts: first, there was a strong effort to define the purpose and intent of the ordinance; second, there was a good deal of effort put into defining sexually oriented businesses; and third, there was substantial time spent to carefully define the type of regulation and enforcement being adopted.

The Chicago ordinance also had some features not found in the Detroit ordinance. First, registration standards were imposed that required nine types of responses, mostly concerning ownership. Certain restrictions, though vaguely defined, were placed on exterior displays. On this particular point, the ordinance provided that "no adult use shall be conducted in any manner that permits the observation of any material depicting, describing or relating to 'specified sexual activities' or 'specific anatomical areas' from any public way or from any property not registered as an adult use." This provision was under the ordinance applicable to "any display decoration, sign, show window, or store opening." Finally, fines of not less than fifty dollars (\$50.00) nor more than two hundred dollars (\$200.00) were imposed for each offense with the provision that in the case of a continuing offense a day during which the offense continued could be counted as a separate case.

Dallas. The city of Dallas adopted an ordinance regulating sexually oriented businesses in 1977. Interestingly, while Dallas is a zoned city, this regulatory ordinance was not made part of the zoning ordinance, but rather was incorporated into the general municipal code. The Dallas ordinance, like that in Chicago, was closely modelled on the Detroit law.

Under the Dallas ordinance, the distance requirement between sexually oriented businesses and areas zoned residential was one thousand feet (1000'). This distance was measured as a straight line from property line to property line of the two conflicting structures without regard to intervening structures. It is instructive to note that this one thousand foot (1000') restriction was struck down due to lack of evidence as to the deteriorating effects sustained by neighborhoods as a result of the interposition of sexually oriented businesses.

Los Angeles. In 1978, the city of Los Angeles imposed a thirty (30) day moratorium on the establishment of new sexually oriented businesses in order to provide an opportunity for the city to draft a new and comprehensive ordinance regulating the industry. (It is not clear whether such a moratorium would be permissible under recent antitrust decisions involving the

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liability of municipalities for violation of the Sherman Act. The city then used its Planning Department to study the effect of sexually oriented businesses on their surrounding environments. The conclusion of this study was that regulation of sexually oriented businesses was necessary to "prevent the continued erosion of the character of the affected neighborhoods."

The drafting of the Los Angeles ordinance followed the basic pattern established in the wake of the successful effort by the city of Detroit. What businesses were "sexually oriented" was meticulously defined and the activities of those businesses were likewise carefully delineated. Similar care was taken in the definition of the city's regulatory authority and with respect to the fines imposed for violations of the ordinance. An additional section provided for severability of the ordinance, thus allowing the ordinance to stand even if a particular section failed a judicial test.

At this writing, our best information indicates that the Los Angeles ordinance has withstood any challenges and remains intact as originally passed. Again, a key element in the success of the ordinance was the careful development of information on the nature of the problem being addressed, thoughtful efforts to delineate as clearly as possible the intent and operation of the ordinance, and a strong rational tie between the problems being addressed and the regulatory scheme.

Fairfax County, Virginia. The ordinance adopted in Fairfax County, Virginia, for the regulation of sexually oriented businesses again follows the general pattern successfully established by the city of Detroit. However, in the area of issuance of permits, the Fairfax County ordinance is much more detailed.

Specifically, the Fairfax County ordinance gives the chief of police jurisdiction over the application process. In exercising this responsibility, the chief of police receives assistance from the Inspection Services Division, the Fire and Rescue Services, the Director of Health, and the Zoning Enforcement Division. The annual fee for renewal of the license is Two Thousand Dollars (\$2,000.00); this annual renewal fee is in addition to a business license tax. The applicant must also complete a comprehensive application form dealing with the type of business, location and ownership. With respect to ownership, in-depth information is requested, and checks are made on the criminal records or prior questionable activities of the applicant.

Additionally, permit fees are required from massage technicians. These permits specify fees, term of the permit and health

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requirements. Again, the application is comprehensive and delves into the applicant's background and history, and is accompanied by fingerprints. The ordinance also goes further than the Detroit law in setting minimum standards for sexually oriented businesses with regard to structure and general hygiene, the display of permits, and the establishment of a right of entry for relevant government inspection agents.

Santa Maria, California. The ordinance enacted by Santa Maria, California, is interesting in that it provides a regulatory scheme whereby sexually oriented businesses are divided into different classes, as follows:

"Class A" sexually oriented businesses are those which provide entertainment in conjunction with the operation of an eating place.

"Class B" sexually oriented businesses are those which provide entertainment in conjunction with a business whose principal activity is the serving of alcoholic beverages.

"Class C" sexually oriented businesses are those where entertainment is offered in conjunction with either of the business activities described as "Class A" or "Class B," but where the exhibition of the human body is involved.

Under this regulatory scheme, "Class A" businesses are the most lightly regulated, "Class B" businesses more so, and "Class C" businesses most of all. "Class C" businesses must deposit with the Director of Finance a refundable deposit of five hundred dollars (\$500.00). This deposit would be used to pay the costs of additional city services such as police and fire assistance. This particular legislation was probably less referred to by the Committee than any other statutory scheme because its purposes seemed on the face of the ordinance to differ notably from the purposes of the ordinance proposed for Houston.

SECTION-BY-SECTION SUMMARY OF ORDINANCE

Legislative Findings. The legislative findings sections of the ordinance has been drafted to summarize as concisely but as completely as possible the underlying reasons why an ordinance is needed, and why the ordinance has been structured in its present form. This Report is also incorporated by reference into the Legislative Findings.

The city bases its right to regulate sexually oriented commercial enterprises on its general police powers -- the right

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to pass legislation to assure public safety, health, morals and other related goals. The city also bases its right to regulate as proposed in this ordinance under specific grants of authority from the state, including Art. 1175, §22 (authorizing regulation by municipalities of places of public amusement), Art. 1175, §23 (authorizing licensing by municipalities of businesses susceptible to the police power), Art. 1175, §24 (authorizing municipal regulation of billboards and other exterior signage), Art. 1175, §34 (authorizing municipalities to exercise the general police power), and Art. 2372w (authorizing municipalities to regulate businesses whose principal activity is the offering of services intended to provide sexual stimulation or sexual gratification).

The Committee has proposed that Council exercise the foregoing powers on the basis of its findings generated through the hearings held by the Committee and Council between November 4, 1982 and October 25, 1983. These findings have already been discussed at some length in the foregoing subsection titled "Analysis of Testimony." The Legislative Findings section of the ordinance briefly summarizes those findings.

Article I: Definitions. The definitions included under Article I have been carefully crafted to conform with the Committee's intention to regulate as effectively as possible, without infringing on federal constitutional guarantees, areas preempted by state legislation or the operation of legitimate business. Although most of the definitions are by their nature self-evident, comments on some of the definitions are warranted to underscore the balance which the Committee constantly sought between effective regulation on the one hand and, on the other, the limits placed on municipal action by federal constitutional guarantees and state law.

"Enterprise," for example, refers only to those establishments whose major business involves products or services intended to provide sexual stimulation or gratification. Inclusion of the word "major" is intended to exempt out such businesses as convenience stores which sell "Playboy" or "Playgirl" or other similar such magazines as a relatively small part of their overall operation. In addition, specific exemptions are granted to several categories of businesses. Adult bookstores, adult movie theatres and businesses licensed to sell alcoholic beverages are exempted because of apparent preemption by state law; massage parlors are omitted because they are covered by another city ordinance. (It should be noted, however, that although the foregoing businesses are not defined as "enterprises," and therefore not subject to the locational and permit requirements of the ordinance, they still are subject to specified provisions of the ordinance.) Businesses licensed by the state, such as those employing

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2-982

psychologists or physicians are also exempted, as are businesses whose major activity is the selling of clothes.

The definitions in Article I also offer good examples of the consistency in reasoning which the Committee sought to achieve in its work. For instance, it has already been noted that a major theme in the testimony heard by the Committee concerned the deleterious effects of sexually-oriented businesses on children, and the consequent problems caused for neighborhood stability and the quality of life, as reflected in property values. For this reason, schools were placed within the category of protected establishments near which such sexually oriented businesses cannot be located. (It was this same general line of reasoning -- namely, the need to protect areas frequented by children and used for family oriented activities -- that led to including churches among the protected activity categories.) However, it was also concluded by the Committee that at some point a person, even though still in school, matures to the point where the city can no longer reasonably claim the right to protect him or her from such businesses. While the age at which maturity may be achieved by different individuals may vary, it was concluded by the Committee that a reasonable cutoff age as a general rule would be seventeen (17), coinciding with earliest usual age of graduation from secondary school. For this reason the definition of "school" (Article I, Section V) is limited "to public and private schools used for primary or secondary education."

Another problem the Committee faced in drafting the ordinance proposal was to minimize opportunities for circumvention of the ordinance. Concern was expressed by all members of the Committee and by the Legal Department, that some sexually oriented businesses, eager to escape the locational restrictions placed upon them, might start showing movies and argue that they were in fact "Adult Movie Theaters" protected by state law and not subject to municipal restrictions on location. The Committee has sought to deal with problems of this sort by careful drafting, as in the definition of "Adult Movie Theatre", which specifically requires that such theatres have tiers or rows of seats facing a screen or projection area, making it clear that simply setting up a projector and a screen will not make a modeling studio a movie theater under the ordinance.

Article II. Permit Required. Article II of the ordinance establishes that all sexually oriented commercial enterprises within the Houston city limits must obtain a license from the Director of Finance and Administration before they can operate.

Article III. Permit Applications. The requirements which must be fulfilled before a permit may be granted to a sexually oriented commercial enterprise are set out in Article III. The

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list of information to be supplied, which shall be submitted to the Director of Finance and Administration, was taken for the most part from the present ordinance 28-73. This was decided by the Committee on the basis of issues raised during the hearings. For instance, a number of witnesses cited the problems inherent in tracking down the person ultimately responsible for a partnership or corporation; hence, the Committee has recommended a series of ownership disclosures which, while not onerous to the business enterprise, will provide information adequate for reasonable enforcement of the ordinance should its provisions subsequently be violated. The application requirements also call for submission of relevant state-issued documents pertaining to the authorization of the enterprise to do business within the State of Texas. The application form shall also include a written declaration that all information contained in the application is true and correct, and that the applicant is in conformity with all provisions of the ordinance; violation of these provisions will be grounds for suspension or revocation of the permit.

Article IV. Permit Fee. The ordinance establishes a permit fee of \$350.00 for each permit application. The amount of this fee was based on testimony by William R. Brown, Director of Finance and Administration, which fixed the cost of processing each such application at within Ten Dollars (\$10.00) of the \$350.00 figure later adopted by the Committee. Since the \$350.00 represents the cost to the city of actually processing the application, regardless of whether the permit is approved or disapproved, the fee is payable at the time the permit is requested and shall be nonrefundable. The permit shall be good for one year from the date of issuance, and shall be renewable annually; the \$350.00 fee for each renewal of the permit represents the costs of each year's review of the permit application and the ongoing costs of administering the regulations established by the ordinance, including the costs of enforcement through inspections of the establishments by city personnel.

It should also be noted that just prior to submission of the proposed ordinance to Council, a general review of all fees and charges of the City of Houston was undertaken. This general review, which will generate the most reliable direct and indirect cost data in the city's history, may produce a different figure for the processing of the permit. If so, an adjustment (most likely upward) will have to be made in the permit fee. At the time of this writing, however, the \$350.00 figure still represents the best estimate of the actual cost of processing the application and administering the regulations proposed under the ordinance.

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Article V. Issuance or Denial of a Permit. Assuming the submitted application conforms to the requirements of the ordinance, the Director of Finance and Administration must within twenty (20) days issue a permit to the applicant. Although there are several grounds on which an application for a permit will be denied -- the failure to supply all of the required information, for example, or the giving of information that is knowingly false, fraudulent or untruthful -- the most important of these reasons focuses on certain distance requirements that must be met in the location of sexually oriented commercial enterprises. (Again, exempted from these locational restrictions are adult movie theaters, adult bookstores, businesses selling alcoholic beverages, and massage parlors.) Specifically, the ordinance would require that all subject businesses be located not less than 750 feet from a church or school (both terms being defined in the ordinance) and not less than 1,000 feet from each other. (In the event two such businesses are closer to each other than 1,000 feet, then Article VI, Section B provides that a permit shall be issued to the applicant "having the longer period of enterprise ownership at the same location for which a permit is sought.")

A third distance requirement set out in Article V has been characterized as the "residential concentration" test. A circle with a 1,000 foot radius is drawn around the location of the proposed business. If within the circle thereby determined seventy-five percent (75%) or more of the tracts are residential (that is, if seventy-five percent (75%) or more of the tracts were coded as residential, in the city's Metrocom computer), then the business could not locate there. Conversely, however, should land use in the area become more commercial, such that the percentage dropped below seventy-five percent (75%), the business might under a new permit application be granted the right to operate at the formerly unacceptable location.

These distance requirements are good examples of the Committee's efforts to analyze the information preserved during the public hearings, to distill from that information the real nature of the problems to be addressed and to then develop solutions logically and consistently related to the actual problems. For example, while many who testified acknowledged the right of such businesses to exist, and while many of these same witnesses expressed solicitude for the rights of those who might want to avail themselves of the goods or services offered by such businesses, the same witnesses also expressed strong concern about balancing these considerations against the effects such businesses might have on children and the fabric of the family unit, as well as property values and the quality of urban life. In reviewing the testimony, the Committee concluded that this concern was justified -- particularly in light of some of the

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expert testimony offered -- and hence created the 750 foot [] with respect to churches and schools which were viewed as centers for family oriented activities.

A second set of problems brought out in the hearings is the detrimental effect that the clustering of such businesses can have on a surrounding area. Testimony from the Chief of Police, as well as information supplied by residents of areas where concentrations of such businesses are unusually high, repeated the point that the clustering of such businesses exacerbate the problems they create by developing an atmosphere in which a "secondary market" of illicit activities -- both sexual and otherwise -- are encouraged. Although most witnesses agreed that the location of such businesses could not be restricted in such a way as to effectively eliminate them altogether, most witnesses -- including the Chief of Police -- stated that in their view a "separation" or "nonclustering" provision would alleviate some of the problems normally associated with the operation of such businesses. In reviewing this testimony, and in considering the experience of cities such as Detroit, the Committee concurred with the judgment of the witnesses and therefore included a requirement regarding spacing of the businesses from each other.

A third set of problems identified during the hearings was the difficulties created when these businesses locate in areas that are primarily residential in character. These problems are aggravated in Houston because of the lack of zoning laws; in the absence of any ordinance, only deed-restricted developments are allowed some measure of protection and even that degree of protection stops at the border of the deed restricted area. Most witnesses who testified on this point before the Committee acknowledged that there was little likelihood that zoning would be imposed in Houston. At the same time, however, many of these same witnesses indicated their belief that reliance on deed restrictions as the sole method of protection was woefully inadequate, particularly since so many of the areas most severely affected by the problem of sexually oriented businesses were ones in which deed restrictions had irrevocably lapsed, or in which such restrictions had never existed at all.

In reviewing the testimony on this point, the Committee concluded that there were sound policy reasons for the city to provide greater protection for areas of high residential concentration from the adverse consequences of too many sexually oriented businesses. Concern for children and family-related activities already cited above with respect to the distance requirement from church and schools was likewise a factor here. Concern was also felt for the need to maintain some degree of stability in residential areas so as to provide at least a measure of corresponding stability in the property tax base.

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Finally, concern was expressed that the protections afforded deed restricted areas, however minimal, ought to be extended by providing singular (if not the same) protection to any area with a high concentration of residential usage. (Although the Committee considered extending the same sorts of protections to areas less residential in character, it was not thought that the same policy considerations applied with equal force as areas became "less residential.")

In evaluating these distance requirements, the Committee also remained sensitive to concerns that were raised during the hearings by opponents of the ordinance. For instance, at least one of the lawyers representing some of the businesses that will be affected by the ordinance argued that the "residential concentration" test was tantamount to zoning. After careful consideration the Committee respectfully disagreed. To the Committee, there is a great deal of difference between an ordinance creating a zoning commission which then proceeds to establish use categories for entire areas of the city and an ordinance which merely requires that if the market, operating freely, has resulted in an area that is "predominantly residential" in character, then certain businesses cannot locate within a fixed distance of that area. In the first instance, the city dictates land usage and only a change by the city in the ordinance fixing such usage will permit deviation from that rule. In the second instance, the city merely provides that in the event usage in a particular area should through operation of the free market develop along certain lines, then certain restrictions will be involved. Conversely, should the market dictate a change in overall usage of an area (as in a case where an area formerly predominantly residential became commercial), then the city restrictions would be lifted. The difference might best be characterized as that between active and passive -- or "reflective" -- land management.

The Committee also took quite seriously the concerns expressed during the hearings by some representatives of the affected businesses that determining whether a proposed location would conform with the ordinance would prove unduly burdensome and costly. However, the Committee believes that introduction of the Metrocom computerized mapping system into city government effectively answers this concern. As stated in testimony offered before the Committee by Ken Strange, the Metrocom administrator, it will be possible, for a minimal charge which reflects the actual cost of computer and clerical time, to determine in advance -- and within just a few hours -- whether a particular proposed site is permissible for a sexually oriented business. Under the circumstances, the Committee concluded that the "residential concentration" test was not only a suitable remedy for some of the problems adduced during the hearings, but also that

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the test would not place an undue or unfair burden on businesses to be regulated.

A brief comment should be made with respect to the appeals process established to provide recourse from permit denials by the Director of Finance and Administration. While an initial appeal hearing before the Director is provided for in the ordinance, the Committee felt that given the nature of the issues involved, and the desire to assume that the ordinance in both theory and practice did not operate to abuse individual rights, an appeal to Council should also be provided. This has been done in Article V, Section E.

Article VI. Existing Enterprises. The method of transition from the present situation to that under the new ordinance, and specifically the treatment of previously existing businesses under the new ordinance was the subject of considerable thought by the Committee. The results of that lengthy consideration of the transition problems are embodied in Article VI.

Section A of Article VI provides the timetable under which businesses must conform with the ordinance. For this purpose the ordinance divides the City into four quadrants; compliance with the terms and conditions of the ordinance are phased through use of these quadrants. Section B provides that where two subject businesses are within 1,000 feet of each other, that business having the longer period of ownership at the same location shall receive the permit, while the business with the lesser ownership period at the same location shall be denied a permit. In the opinion of the Committee, this approach seemed the fairest way to treat the difficult problem of dealing fairly with businesses too close together to comply with the ordinance, without abandoning entirely the attempt to enforce the ordinance against existing businesses. The Committee chose to remain consistent with this "prior in time, prior in right" approach by providing that where a subject business is closer than 750 feet to a church or school that business will not be required to abandon the location if it can be shown that the period of enterprise ownership at the same location exceeds the length of time the church or school has been located at that site.

Sections C and D of Article VI deal with the difficult issue of grandfathering versus amortization of existing businesses. The Committee decisions with respect to the issues raised by this question again exemplify the careful attempt to base legislative action on the relevant information gathered during the hearing process as well as the desire of the Committee to offer the maximum possible protection to individual interests while also dealing effectively with the need for action testified to in the hearings.

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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. At the same time, however, the Committee recognized that even if existing businesses were to be brought under the ordinance, this could not be done in a way that would ignore the investments that had been made in the businesses (and therefore prima facie unconstitutionally deprive persons of their property without just compensation,). The Committee understood -- and if it had not, it certainly would have after having been drilled on the point numerous times by representatives of the Legal Department -- that even under an amortization approach the amortization period could not be so short as to effectively deprive the owners of the subject businesses of their property interests without just compensation.

Sensitivity to the need for an adequate amortization period was frustrated, however, by the lack of evidence in the hearing record on which the Committee could base its decision as to what constitutes an appropriate amortization period. No member of the affected industries, nor owners or representatives of affected individual businesses, appeared before the Committee for purposes of offering testimony on this point. (One owner of an adult bookstore did suggest, by written correspondence to the Committee, that the amortization period be extended to ten (10) years; however, the Committee believed that this suggestion was unrealistic. Certainly the recommendation was not supported by any factual data.)

In the absence of such testimony, the Committee found itself in a difficult position. While the Committee admittedly wished to legislate the shortest possible period within which subject businesses must come under the ordinance or, alternatively, abandon their present locations, the members did not want to impose a time limit that, based on actual numbers, was unfair. The problem, however, was that the numbers were not available because the relevant affected businesses had chosen not to supply them to the Committee. (The Committee briefly considered using the subpoena powers available to Council under the Charter when considering such legislative matters, but decided against doing so for reasons explained below.)

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In the end, the Committee devised ordinance provisions in Sections C and D of Article VI -- which deal with this dilemma in an effective, fair and practical way. Section C of Article VI provides that if an existing business cannot qualify for a permit under the ordinance, then that business shall terminate its operations at that particular location within six months after the business receives notice from the Director of Finance and Administration of its ineligibility for a permit. However, should any business so notified believe that six months will be insufficient for the business to recoup the investment represented by the enterprise, then the owner or owners of that business shall have the right to petition the Director of Finance and Administration for an extension, which can be as long as the Director determines appropriate based on the evidence presented.

The Committee believes this approach adequately answers the dilemma presented by the lack of factual testimony in the records as to the earning capacity of these businesses. The provisions set forth a reasonable minimum time period for compliance that speaks to the Committee's desire for speedy implementation of the ordinance. At the same time, businesses which believe six months is too short, can, if they choose, come forward with books and records supporting their contention that they are entitled to a longer amortization period -- indeed, to as long an amortization period as they can prove. Should the Director of Finance and Administration refuse to grant such an extension despite the evidence submitted or should the extension be less than what is reasonably justified, the decision could be appealed to the Council under Article V, Section E. And if that appeal failed, it is the Committee's understanding that the applicant may have standing to appeal the Director's decision to the state district courts as an arbitrary and capricious exercise of discretionary authority under those doctrines relating to taking of property.

The Committee believes that this approach is fairer and more feasible than fixing a longer period of amortization effective with respect to all businesses. Moreover, this approach avoids the need to subpoena books and records from business owners unwilling or at least hesitant to divulge financial information in order to develop an amortization period grounded in a hearing record. Instead, the decision is left to each individual business and its owner as to whether that particular owner wishes to divulge business data in order to secure an extension of the six-month time limit. This assures the business owner maximum privacy should he or she so desire, while also allowing the city to achieve its goal of speedy compliance with the ordinance in order to deal as effectively as possible with a serious existing problem.

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Article VII. Revocation of Permit. The Committee in hearing testimony became concerned not just about the circumstances under which the initial permit would be granted, but also about the means by which a permit could be revoked should a business fall out of compliance with the ordinance during the term of the permit. For this reason, the Committee requested the drafting of provisions that dealt with the principal problems testified to during the hearings as to the operation of these businesses. These common problems can be classified as follows:

Minors as Employees. A number of witnesses before the Committee expressed concern, particularly with regard to adult modeling studios, as to the actual age of some persons employed on the premises. Article VII, Section A(1) provides that a permit shall be revoked if persons under the age of seventeen (17) are found to be employees of a subject enterprise. Seventeen years of age was selected to comply with relevant state law. A companion provision, Article XI, prohibits the entry upon the premises of such businesses of anyone younger than seventeen, and requires each affected business to provide an attendant to assure compliance with this prohibition.

Exterior Appearance and Signage. Although a majority of the witnesses appearing before the Committee felt that the control of the exterior appearance and signage of such businesses would help deal with the negative effect of such businesses on neighborhood stability and property values, most also stated concern that such provisions, if enacted, would not be heeded seriously by the businesses in question. In considering these arguments, the Committee concluded that effective enforcement of these provisions was a necessity. The Committee therefore provided that violation of these provisions will result in loss of the permit to do business.

Recurring or Chronic Criminal Activity. A consistent theme in the testimony before the Committee, whether offered by experts, citizens with specially significant experience with sexually oriented businesses or members of the general public, was the problem of associated crime taking place in these establishments without action being taken by the city or any other suitable authority against such establishments. Once again, many witnesses stated that while they understood the need to accept the right of such businesses to exist, they believed there was a need to provide sanctions against those businesses

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which operate outside the law or which permit (either deliberately or by acts of omission) unlawful activities to take place on their premises. Article VII, Section A(3) addresses this problem raised during the hearings by providing that whenever three or more persons are adjudged guilty in a trial court of committing certain criminal acts (as specified in Chapter 21, Chapter 43, Section 22.011, or Section 22.021 of the Texas Penal Code) on the premises of such a business, the permit of that business will be revoked if it can be shown that the owner or operator of the business either knew of the activities and did not seek to prevent them, or else failed to take adequate steps to become aware of the activity.

The Committee believes that the concept of three or more persons being found guilty in a trial court serving as the triggering mechanism for this position is both fair and effective. Requiring actual convictions deals with the concern expressed by some during the hearings that such a provision, if triggered only by a certain number of arrests, would encourage police harassment of such establishments. The sensible alternative appeared to require judicial action on the arrest. At the same time, however, members of the Committee were keenly aware that the pace of the judicial process makes it unlikely that in any one-year period three or more persons would be arrested, tried and have their cases heard at all levels of appeal. Given these realities, Article VII, Section A(3) represents a compromise in which judicial action is required, but completion of the appeals process is not. Moreover, should a particular business owner feel that this revocation mechanism is being used improperly against him because of some defect in the adjudications relied upon, this issue can be raised independently in the appeal on the revocation where the Director can then make a determination on the merits of the argument separate from the criminal process.

False, Fraudulent or Untruthful Permit Information. One of the most significant difficulties reported to the Committee during its hearings by those agencies currently charged with enforcement of existing laws against those businesses proposed to be covered by the ordinance is the lack of accurate and complete data. In many instances according to testimony this lack of information is due to the businesses themselves, which engage in practices ranging from legally complex schemes of corporate ownership that

985986
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obscure true authority and control to outright falsehoods and fraudulent misrepresentations with respect to the operations of a business. It is of course impossible to divert those who are determined to undertake such actions from doing so. But the Committee concluded that a major gap in enforcement would be created if the giving of false, fraudulent or untruthful information on the application form were not provided for; this is the reason for, and purpose of Article VII, Section A(4).

As a concluding comment, the Committee would point out that all of the revocation provisions are subject to the same appeals process provided for elsewhere throughout the ordinance. (These appeals provisions are set out in detail in Article V, Sections C through E.) This appeals process would include an appeal to Council. The Committee is also of the opinion that in the event Council were to uphold the revocation of a permit by the Director of Finance and Administration, that decision would be subject to appeal to a state district court.

Article IX. Other Permit Provisions. Article IX includes a member of miscellaneous but important provisions. Section A requires posting of the permit on the premises of the business authorized by that permit. The permit must be posted in an "open and conspicuous" place to assure ease of enforcement by public officials. (Open and conspicuous posting of the permit also benefits the business, since it allows for a check of the permit's existence with a minimum of disruption to normal business operations.)

Section B makes all permits issued under the ordinance good only for the location for which the permit was originally issued; in addition, permits are not assignable or transferable. This latter provision was adopted by the Committee in response to the problem cited during the hearing of "rolling over" ownership of a business. The propensity of such businesses when under scrutiny (as during a court case brought by the city for prohibited activities) to change ownership and thereby continue to do business while avoiding further legal action (because the new owner has not been named as a defendant in the city suit) is dealt with by making any such change of ownership grounds for termination of the permit. Section C of Article IX makes it unlawful to counterfeit, forge, change, deface or alter a permit in any way.

Articles IX and X. Restrictions on Exterior Appearance and Signage. Article IX which covers all sexually oriented businesses, as well as adult bookstores, adult movie theatres, and massage establishments, sets restrictions regarding the external

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2-993

appearance of all such businesses. (With respect to businesses selling alcohol, only signage and not exterior appearance regulated.) First, no such business can allow its goods or services to be visible from any point outside the establishment. Second, the ordinance forbids the use of flashing lights or pictorial representations on the exterior of such businesses; words can be used to a limited extent as noted below in the discussion of Article X. Third, the ordinance requires that all such businesses be painted a single achromatic color -- that is to say, some shade of grey. Exceptions to this requirement are permitted where the business is located in a commercial multi-unit center where the entire center is painted the same color, or where the color scheme employed is part of an overall architectural system or pattern. (A similar exception is provided for any unpainted portions of the exterior.) The ordinance provides that all subject businesses will come into conformity with these provisions of the ordinance within six months of the effective date of the ordinance.

Article X regulates the signage of all sexually oriented businesses, including adult bookstores, adult movie theatres, and massage establishments; businesses licensed to sell alcoholic beverages also are subject to the signage provisions. The ordinance allows two types of signs to be displayed. The first type -- a "primary sign" -- may contain only the name of the establishment and a generic phrase, selected from phrases specified in the ordinance, describing the nature of the establishment. The letters on a "primary sign" must be uniform and must be of a solid color. The background on the sign also must be of a solid color. Additionally, "primary signs" must not contain any pictorial representations or flashing lights, must be rectangular, must not exceed 75 square feet in area, and must not exceed 10 feet in height and 10 feet in length.

The second type of sign is the "secondary sign." A "secondary sign," while smaller than a "primary sign," has fewer restrictions placed on it. "Secondary signs" are regulated only to the extent that they must be attached to a wall or door of an establishment, must be rectangular, must not exceed 20 square feet in area and must not exceed 5 feet in height and 4 feet in length.

Non-conforming signs must be removed or made to conform within six months of the effective date of the ordinance. Extensions of the six month period can be granted by the Director of the Department of Finance and Administration if it can be proved that more time is needed to recoupment the investment in the non-conforming sign. Approval of the request for extension cannot be withheld if the request is adequately supported by financial records. The procedure for securing such an extension

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is virtually identical to the procedure set out in Art Sections D through E, concerning requests for extensions of the six month amortization period for non-conforming existing enterprises.

The Committee adopted these provisions regarding exterior appearance and signage after hearing considerable testimony, both from expert witnesses and members of the lay public, regarding the problems caused by the exterior appearance and signage of the businesses. Again, the majority of witnesses admitted the right of such businesses to exist, and a number of witnesses pointed out what they believed to be the state-imposed limitations on the city's ability to regulate the location of certain kinds of these businesses, such as adult movie theaters and adult bookstores. However, it was also pointed out to the Committee by a number of witnesses that despite these concessions, action should still be taken to minimize the adverse effect of these businesses on their surrounding neighborhoods.

The Committee found in hearing testimony that these adverse effects take several forms. First, a number of experts in Houston real estate testified that the businesses adversely affect the value of adjoining and neighboring property. Specific examples of this phenomena were cited to the Committee during its hearings. (Similar testimony was offered during the additional hearing held before the entire Council.) Second, the Committee received lay testimony regarding the effects of the exterior appearance of such businesses on children. A number of parents expressed concern over the consequences to their own children and children of others because of exposure to the language and signage, including pictorial representations, used by these businesses. This testimony from lay persons was corroborated by expert statements regarding the adverse effects of such signage and exterior decoration upon children.

These two considerations -- the effect of the businesses on the value of neighboring properties and on children -- seemed to the Committee to be part of the more general problem of preseving a reasonable level of quality of life in Houston, a problem of paramount importance if the city is to maintain a stable community environment where property values are maintained (an essential element in any consideration of municipal finances, for example) and further investment is encouraged. There was considerable testimony, for instance, to the effect that the current situation along lower Westheimer is impeding economic redevelopment of the area. The sexually oriented businesses clustered in that area are apparently able to pay extraordinarily high monthly rents -- much higher than non-sexually oriented businesses can afford. The result has been the "shutting out" of non-sexually oriented businesses, which could survive

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economically except for the artificially high rents. In addition, there was considerable testimony as to how the atmosphere created by the clustering of such businesses made it difficult for non-sexually oriented businesses to attract sufficient clientele to be successful.) This inability to attract "seed businesses" has in turn made it difficult to encourage other larger-scale quality development in the area. It has also discouraged those who wish to reside in the area and thereby continue the mixed-development plan of land use that has historically made the Montrose a unique community.

In response to these problems, the Committee did not propose steps that would ban sexually oriented businesses altogether. Instead, the remedies proposed would limit the concentration of such businesses and their obtrusiveness even where allowed to locate; it is the intention thereby to create an economic situation in which other types of businesses might also be encouraged to locate in an area, thereby achieving a more balanced urban mix. Where the particular type of business could not be regulated as to its location -- as in the case of adult bookstores or adult movie theatres, thanks to the apparent preemption of any city action because of state law -- the Committee recommended the next most effective and available action: namely, to make the businesses as unobtrusive as possible, and to minimize the negative impact of the businesses on their surrounding areas through controls on signage and exterior appearance.

There were those who argued to the Committee that the signage of sexually oriented businesses is no more alluring than that associated with other outdoor advertising. Other witnesses contended that even the garish external appearance of these businesses was no worse than might be found in conjunction with other non-sexually oriented businesses. Based on all of the testimony, however, the Committee concluded that the qualitative difference between the signage and exterior appearance regulated under this ordinance and other signage and exterior businesses themselves. Based on the testimony, it is the opinion of the Committee that sexually oriented businesses have adverse effects on their surrounding neighborhoods unlike any negative effects that could be shown by strip shopping centers in general, convenience stores or other commercial establishments. As the Committee reads the testimony of those witnesses deemed most credible, a clear case is made that sexually oriented businesses, because of their unique adverse consequences on the surrounding neighborhoods, require regulation in whatever way reasonable possible to minimize those adverse consequences.

It is also the Committee's finding that based both on the testimony and the experience of other city's, the single most

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effective action to be taken with respect to sexually oriented businesses is to restrict their location. However, locational restrictions by themselves are not enough; where the law allows, these should be coupled with restrictions on external signage and appearance to minimize the obtrusiveness of the sexually oriented business wherever located. Where thanks to state law the city's right to regulate location has been preempted, the need to strictly regulate exterior signage and appearance becomes even more critical as almost the only meaningful tool left in the municipal arsenal to deal with the problems posed by sexually oriented businesses for the quality of Houston life.

Article XI. Age Restrictions on Entry. A recurrent theme in the testimony before the Committee was the effect of these businesses upon children, which in turn would affect the quality of life in Houston. One of the specific problems considered by the Committee in this regard was the entry by minors onto the premises of such businesses. The Committee felt that barring persons under the age of seventeen from entry onto the premises of a sexually oriented business -- which in this instance would include an adult movie theatre, adult bookstore or massage establishment -- was a reasonable response to this concern. Section B of Article XI, placing an affirmative duty on the establishment to enforce this provision seemed to the Committee to be the simplest, most reasonable means of attaining enforcement of this article, particularly as the alternative would be a large number of roving inspectors, the cost of which would most likely be borne by the establishments through the permit fee.

Article XII. Restrictions on Employment of Minors. In addition to concern about the presence of minors in sexually oriented businesses as customers, the Committee also received testimony indicating that minors might be employed in some of these businesses, particularly the adult modeling studios. For this reason, the Committee felt it necessary to include a specific prohibition against the employment of persons under the age of seventeen in sexually oriented businesses -- again including adult movie theatres, adult bookstores and massage establishments.

Article XIII. Priority of Right. One issue raised during the Committee's deliberations was whether a sexually oriented enterprise, once lawfully permitted, could lose its permit if a school or church were to be established within 750 feet of the enterprise, or if seventy-five per cent of the tracts of land within the calculated circular area were to become residential in accordance with the terms and conditions of Article V, Section B(3). After substantial deliberation, the Committee concluded that the "prior in time, prior in right" doctrine should be consistently applied. A church or school which

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knowingly chose its location despite the prior existence of a sexually oriented commercial enterprise, were not deemed by the Committee to occupy the same status as those schools, churches and residential areas which existed prior to the establishment of the sexually oriented business in question. However, the Committee did provide that this right to continued existence would terminate with the expiration without timely renewal or revocation of the permit.

Article XIV. Effect on Massage Establishments. The City of Houston already has one ordinance governing massage establishments -- Chapter 27 of the Houston Code of Ordinances. The provisions of this ordinance are not intended to supplant that Chapter; but instead are designed to complement its provisions. If a conflict should be deemed to exist between Chapter 27 and this new ordinance, however, the provisions of the new ordinance will govern.

Articles XV - XIX. Additional Provisions. Articles XV through XIX are additional provisions deemed necessary by the Committee for a complete and effective ordinance. Article XV sets the rules regarding notices under the ordinance; all such notices must be sent in writing and will be considered as having been delivered three days after their delivery to the U.S. Mails. Article XVI makes violations of the ordinance a Class C misdemeanor; each day a violation continues is deemed for purposes of the ordinance as a separate offense. Article XVII establishes the authority of the Director of Finance and Administration, or his duly appointed subordinates, to enforce the ordinance, if necessary by lawful entry by means of a search warrant onto the premises of the business in question. Article XVIII empowers the City Attorney to file suit to enforce this ordinance. Article XIX provides that if any provision of the ordinance should for any reason be held invalid, the remainder of the ordinance shall continue in full force and effect.

CONCLUSION

The Committee has attempted to show in this Report that the new ordinance regulating sexually oriented businesses is not a "knee jerk" response to public complaints about such establishments. Rather the ordinance is the culmination of over one year's work during which time citizen input was received, specific problems were identified, various remedies were considered, and legal contours were set. The Committee candidly acknowledges that a more restrictive ordinance was envisioned in the early days of the project, as reflected by the draft initially propagated by the Committee. However, such a restrictive ordinance could not be sanctioned if the Committee were to adhere

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to its goal of striking a careful balance between the rights of those persons who do not wish to be exposed to sexually oriented businesses and the rights of those persons who wish to operate or patronize such establishments. The Committee earnestly believes that the current proposed ordinance achieves that goal, and that the ordinance proposed to Council represents the furthest legally defensible extent to which the city can go in the regulation of sexually oriented businesses.

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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**

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2-1000 293-994

Table of Contents

Introduction3

History of the Ordinance.....4

Description of the Committee's Work.....

 General.....5

 Findings and Conclusions.....5

 HPD Vice Review.....7

 Public Hearing Summary.....10

 Review of Written Correspondence.....11

Committee Recommendations.....12

 A. Adult Arcade Ordinance Changes.....12

 B. Procedural Changes - SOB Enforcement.....13

 C. Land Use & Related Changes.....14

 D. Conduct and Operations.....15

 E. Amortization.....16

Section by Section Analysis.....19

Conclusion.....37

997995
2-1002

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 II and III of Chapter 28 of the Code of Ordinances, Houston, Texas. In addition, a new Article VIII 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 principally 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 Committee was guided in its deliberations at various points from advice by the Legal Department and received numerous legal comments 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 titled the "Sexually Oriented Business Ordinance Revision Committee." Council Members Jew Don Boney, Jr. and Helen Huey served as co-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 of 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 SOBAs. 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 of 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 to 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 multifamily tracts were being counted as one tract in the residential quota, where in actuality, many families were living independently upon one tract. Through the Planning and Development Department a new formula was established based 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 platted 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 sights. 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, that 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 that 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
 18 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 dancer is arrested under a different or "stage" name. A license will ensure an individuals 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 diarobe on entry. Performance is based specifically on the amount of money a patron is willing to

spend. This takes place behind locked doors. Vice officers' testimony revealed that in their opinion, these businesses were merely fronts for prostitution. Vice officers elaborated on schemes 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 of permit/license
- 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 extant 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
- b. review all SOBs, regulated and licensed, unlicensed and illegal
- c. licensing of employees
- d. visibility issues
- e. revision of land policies
- f. 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 participative 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 employee 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. Devaney, 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 SOBAs 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. Plexiglass 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 council approval, and was held January 6, 1997.

REVIEW OF 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 association, 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 patron, and plexiglass 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. II 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 II 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. II. 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. II of Ch. 28 of the Code of Ordinances. This recommendation would only impact article II 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 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. 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. III 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 SOB's.
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 multi-family 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

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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 stating "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 1/2 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, of 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 preexisting non-conforming uses are not to be perpetual." 636 F.Supp. at 1371. The Court noted that Texas follows the generally accepted rule that nonconforming 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. Benvers*, 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 community. 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 has 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 regulations, 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 nonconforming 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 nonconforming 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 all 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 ordinance, the notice of issuance or denial of the permit has been expanded to twenty days with a possible extension totaling thirty days.

Section 28-93 (g). Issuance or denial by police chief. All fees must be paid with either a certified check, cashier's check or money order.

Section 28-94. Term. Permit terms have been restructured to read as follows: "Each permit shall be valid for a period of one (1) year and shall expire on the anniversary of its date of issuance, unless sooner revoked, or surrendered. Each permit shall be subject to renewal as of its expiration date by the filing of a renewal application with the police chief. Renewal applications must be filed at least twenty (20) days prior to the expiration date of the permit that is to be renewed and shall be accompanied by a fee of one hundred dollars (\$100.00).

Section 28-95 (b). Transfer upon change. The original transfer fee was set over ten years ago. The Vice department recently analyzed the current costs for transfer. The transfer application fee has changed to \$100.00 to reflect these costs.

Section 28-98. Conduct in adult arcades or adult mini-theatres. The terms "indecent exposure" and "lewd conduct" have been added here to be consistent throughout this Ordinance.

Section 28-99 (b). Appeals. "Secretary of the general appeals board" has been deleted and replaced by "hearing officer" because it was determined that the transfer of this duty will streamline the appeals into an efficient, professional, and impartial process. In the event it is not

Conducted by:

PLANNING DEPARTMENT
CITY OF PHOENIX

1979
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 to 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 of adult businesses in one area of the City.

The latter approach has resulted in the more noteworthy problems. For instance, in Boston's concentrated adult business area there is control of signs, upgrading of streets and sidewalks, renovation of store fronts, and even the construction of a new park. This scheme has not affected the high number of stabbings, murders, and muggings which 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 which 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.

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In the Phoenix Zoning Ordinance an amendment concerning adult businesses 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 waiving 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 in Boston and New York's districts directly related to the adult business being there, or to some other societal variables in the neighborhood? Are they identifiable, and thus a probable cause for 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 area containing an adult business. Also, financial institutions take nearby adult businesses into account when financing

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residential properties. Finally, people's perceptions of criminal activity is reinforced by a greater incidence of sexual crimes in areas or commercial districts containing adult businesses.

In this study we will show that there 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 neighborhoods of the nature of crimes associated with adult businesses. Sex crimes appear to generate substantial fears for the safety of children, women, and neighborhoods in general. Their association with adult businesses generates negative images (as well 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 of property crimes, violent crimes, and sex offenses from the year 1978 are compared in each study and control area.

THE STUDY AND CONTROL 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 west 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:

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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.

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TABLE I

THE STUDY AND CONTROL AREA LOCATIONS

STUDY AREA I

Roosevelt Street - Oak Street
16th Street - 32nd Street

CONTROL AREA I

Starting at 47th Avenue, east on Osborn Road,
South on 35th Avenue, west on Thomas Road,
South on 39th Avenue, West on Roosevelt Street,
North on 43rd Avenue, West on McDowell Road,
and North on 47th Avenue, to the point of
beginning.

STUDY AREA II

Oak Street - Osborn Road
32nd Street - 40th Street

CONTROL AREA II

Osborn Road - Campbell Avenue
32nd Street - 40th Street.

STUDY AREA III

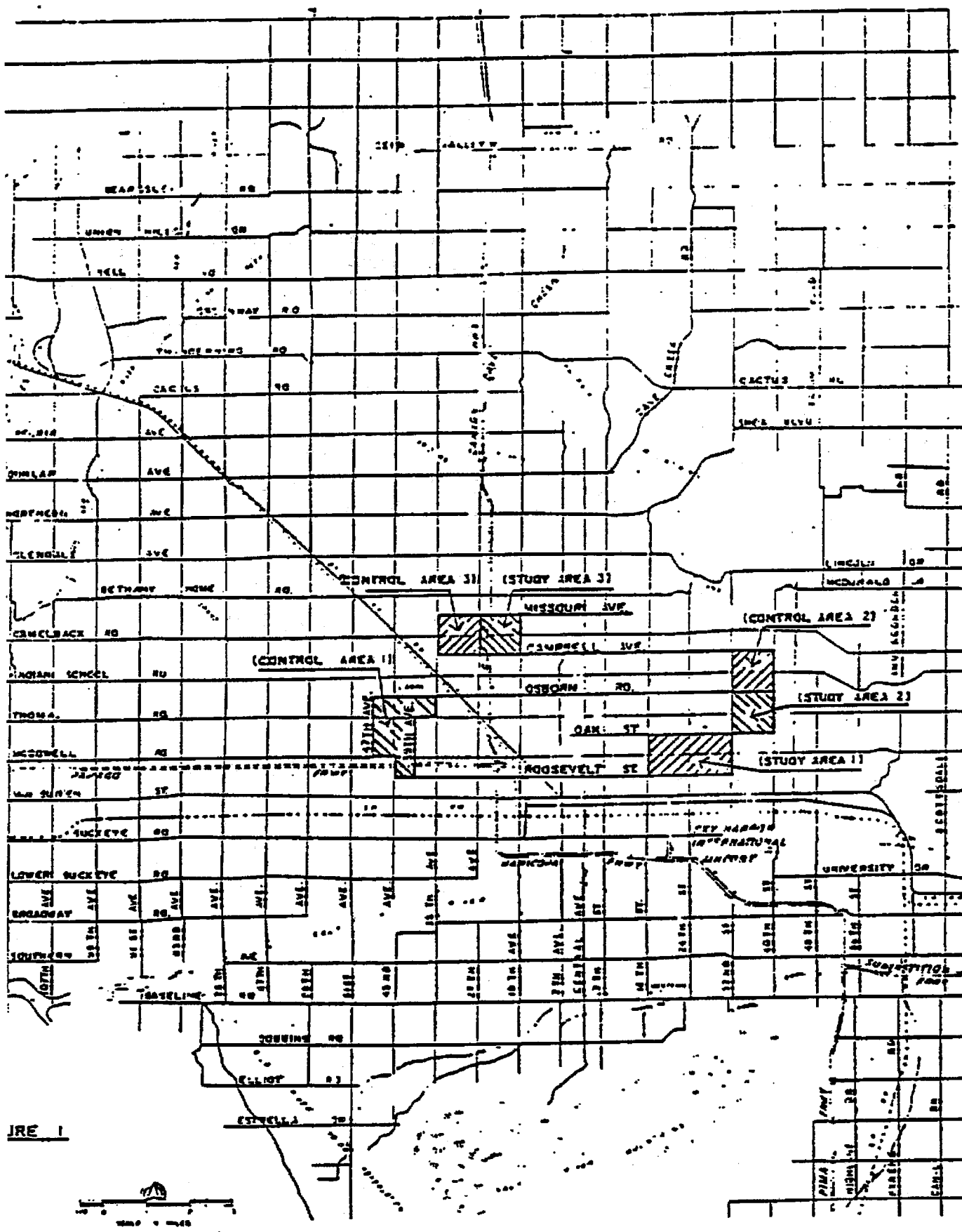
Missouri Avenue - Campbell Avenue
19th Avenue - 27th Avenue

CONTROL AREA III

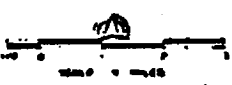
Missouri Avenue - Campbell Avenue
27th Avenue - 35th Avenue

Figure 1, following shows the boundaries of the three study and control areas.

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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; 2433 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 AND CONTROL AREA I

	<u>% Non-White</u>	<u>Building/ 1950-1970</u>	<u>Income</u>	<u>Median Age</u>	<u>Land Use</u> <u>Commercial/Residential</u>	
Study I	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 after 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 of the Study Area.

The comparison of population characteristics are shown in Table III.

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TABLE III
POPULATION CHARACTERISTICS OF STUDY AND
CONTROL AREA II

	<u>% Non-white</u>	<u>Building/ 1950-1970</u>	<u>Income</u>	<u>Median Age</u>	<u>Land Use Commercial/Residential</u>	
Study II	7.4	88.0	\$10,779	36	18%	82%
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

	<u>% Non-white</u>	<u>Building/ 1950-1970</u>	<u>Income</u>	<u>Median Age</u>	<u>Land Use Commercial/Residential</u>	
Study III	8.2	83%	\$9,829	29	29%	71%
Control III	8.8	93%	10,559	28	28%	72%

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TABLE V
PROPERTY, VIOLENT, AND SEX CRIMES IN ADULT BUSINESS AREAS
AND THEIR CONTROL AREAS 1978

	STUDY I		CONTROL I		STUDY II		CONTROL II		STUDY III		CONTROL III	
	#	#/1000 pop.*	#	#/1000 pop.*	#	#/1000 pop.*	#	#/1000 pop.*	#	#/1000 pop.*	#	#/1000 pop.*
Property Crimes	1616	130.05	1176	88.48	753	107.5	363	62.2	780	125.8	575	116.8
Violent Crimes	89	7.16	66	4.96	21	3.0	21	3.6	39	6.29	36	7.3
Sex Offenses	127	10.22	12	.90	43	6.1	13	2.2	71	11.5	14	2.84
Rape	14	1.13	5	.38	5	.71	1	.17	5	.80	2	.41
Indecent Exposure	107	8.61	6	.45	37	5.3	10	1.7	60	9.7	9	1.83
Lewd & Lascivious	2	.16	0	0	1	.14	1	.17	4	.64	1	.20
Child Molest	4	.32	1	.08	0	0	1	.17	2	.32	2	.41

Property Crimes - Burglary, Larceny, Auto Theft
Violent Crimes - Murder, Rape, Robbery, Assault
Sex Offenses - Rapes, Indecent Exposure, Lewd and Lascivious, Child Molest

* 1978 Estimates of population at the enumeration district level were derived by the Planning Department Research Section.

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CONCLUSIONS

Table V Property, Violent, and Sex Crimes in Selected Study Areas--1978¹ is a tabulation of the number of crimes committed and the rate of those 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 crimes than for either property or violent crimes. The following table illustrates a comparison of the ratio of the crime rate of the study area to the control area:

TABLE VI

CRIME RATES AS A PERCENTAGE OF STUDY AREA TO CONTROL AREA

Study Area	Property Crimes	Violent Crimes	Sex Crimes	Sex Crimes (Less Indecent Exposure)
I	147%	144%	1135%	358%
II	173	83	277	160
III	108	86	405	178
<u>Average</u>	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 rate in the Study Areas as compared with the Control Areas. Although the majority of sex

¹Table V Property, Violent, and Sex Crimes in Selected Study Areas--1978, was derived from information provided by the City of Phoenix Police Department's Crime Analysis Unit and Planning and Research Bureau. The data from these two sections was compiled by adding the number by 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 arrest rates.

crimes are Indecent Exposure, the fourth column illustrates that the remainder of the sex crimes also exhibit a significantly higher rate 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 I. 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.

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APPENDIX I

ESTABLISHMENT 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 was identified.
3. Preliminary decision was made to choose three study areas based on concentration and geographic isolation from each other.
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:

1. 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. Determination 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.

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APPENDIX III

METHODOLOGY OF WEIGHTING POPULATION CHARACTERISTICS
OF STUDY AND CONTROL AREAS

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 that the Census Tract contributed to 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:

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WEIGHTING OF POPULATION CHARACTERISTICS BY CENSUS TRACT
FOR STUDY AND CONTROL AREAS

<u>Census Tract</u>	<u>% Non-White Population</u>	<u>% Dwelling Units Built Since 1950</u>	<u>Median Family Income</u>	<u>Median Age of Population</u>	<u>% of Acreage Used Residentially</u>
<u>Study I</u>					
1115	8.5	67	\$8,741	32	82
1116	14.2	54	8,191	30	80
1133	45.0	50	5,451	27	58
1135	25.0	61	8,990	27	57
<u>Control I</u>					
1100	13.0	98	10,992	24	88
1101	18	100	11,202	26	45
1122	25	90	8,751	27	74
1123	30	99	10,179	22	52
1126	35	72	8,361	29	68
<u>Study II</u>					
1114	7.9	85	11,119	33	79
1109	6.9	91	10,469	38	85
<u>Control II</u>					
1109	6.9	91	10,469	38	92
1083	2.3	94	13,345	38	85
<u>Study III</u>					
1073	7.8	82	9,996	32	74
1090	8.7	83	9,609	26	68
<u>Control III</u>					
1072	9.2	90	10,570	27	66
1091	8.5	96	10,550	29	78

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STATE OF ARIZONA)
) ss.
County of Maricopa)

CATHERINE FREITAS, being first duly sworn, upon her oath,
deposes and says:

The following is my testimony:

Q: What is your name?

A: Catherine Freitas.

Q: Where do you reside?

A: I live in Phoenix, Arizona.

Q: What is the highest level of education you have
achieved?

A: I have a Bachelor's Degree in Business Administration
from the University of Hawaii at Manoa.

Q: How are you currently employed?

A: I am working as an escort at the Sunset Strip.

Q: What type of business is the Sunset Strip?

A: The Sunset Strip is a licensed escort bureau with the
City of Phoenix which offers incall services.

Q: What are incall escort services?

A: A customer, typically a man, comes to the business where
he is entertained by a woman in a private room. Sometimes there
will be more than one woman involved. The entertainment is of an
adult nature.

Q: When did you start working there?

A: The beginning of June 1995.

Q: Who hired you?

A: I was hired by Holly Wilde, the owner.

Q: How long have you worked as an escort at an escort
bureau?

A: A little less than one year.

Q: What other escort bureaus have you worked for?

A: Just one other, Temptations.

Q: What was the location of Temptations during the time that you were working there?

A: 3912 E. Miami in Phoenix.

Q: When did you begin working at Temptations?

A: December 9, 1994.

Q: When did you leave?

A: I left around the beginning of June 1995.

Q: What position were you hired to fill?

A: Escort-dancer.

Q: Who hired you?

A: Steve Budge.

Q: Whom did you understand Steve Budge to be at that time?

A: The business' owner.

Q: Were you hired as an employee or an independent contractor?

A: An independent contractor.

Q: Did you receive any training or instruction on the operation of the business?

A: Yes.

Q: Who provided the training and instruction?

A: Steve Budge and Melissa.

Q: Who is Melissa?

A: Melissa was Steve Budge's wife and a manager. She also worked at Temptations as an escort-dancer. I believe that they are now divorced.

Q: What were the training and instruction provided?

A: I was shown a blue plastic board, about legal size, which contained the shows which were available. There were generally four shows available, 15, 30, 45, and 60 minutes. The prices for these shows ranged from \$40.00 to \$200.00. In each case, there was a \$20.00 room fee.

The first level of show would include nude dancing. The second level would include nude dancing with explicit posing. The third level was explicit nude posing with the model able to touch the customer. The fourth level was explicit nude posing with mutual touching.

I was told by Steve himself that there was to be no

"sucking or fucking," but that if the girls did releases, he did not know about it and would deny knowing about it if the girl were caught.

I did not know what he meant by a "release," so I asked him what he meant by that term and he said that it was a hand-job. That term I understood.

Q: How much did Steve indicate the escort would receive from the room and show fee?

A: The escort received nothing from the room fee, and anywhere between 16% and 33% of the show fee depending upon the type of show. Steve also told me that the girls could make as much as \$1,000.00 on one shift. This was almost entirely from tips, but also included what the business paid the escort from the show fee.

Q: What percentage of the tips did the escort retain?

A: 100% for all shows.

Q: Did these rates continue in effect the entire time that you were at Temptations?

A: No.

Q: How did they change?

A: Toward the end of my time there, the escorts received nothing from the show fee for a 15 minute show. Also, and again toward the end of my time there, Steve was considering adding a topless show for which the model would receive none of the show fee.

Q: Did Steve or Melissa tell you when you were first hired how much an escort could expect to receive from a customer for a release?

A: Yes.

Q: How much?

A: \$100.00.

Q: Did you understand there to be a policy on accepting less than \$100.00 for a release?

A: Yes.

Q: What was it?

A: Releases were not to be done for less than \$100.00 without the approval of management.

Q: Was this approval ever given?

A: Yes.

Q: Under what circumstances?

A: A long-time customer could get a release for \$80.00 or, in some cases, less.

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Q: How would an escort know who a long-time customer was?

A: Steve seemed to have a very good memory of the customers and for how long they had been customers. He could see who the customers were when he was on the premises by viewing a monitor of the lobby. When the escort brought Steve the show fee, Steve would tell her that a particular customer pays \$80.00, or some lesser amount, for a release.

Q: Did an escort ever refuse to do a release?

A: Yes.

Q: What would happen in that case?

A: If the customer was someone that Steve did not believe was associated with law enforcement, he would send another escort into the room who he knew would do the release.

Q: How would a regular customer typically indicate his desire for a release?

A: The regular customer would either put \$100.00 on a table next to the escort where she could see it, or would hand it directly to the escort, usually at the very beginning of the show.

Q: And that was enough to indicate that he wanted a release?

A: Yes.

Q: What training did you receive on the law?

A: Steve showed me many pages of what he said was the law, but I did not receive a copy. He said I was free to look at it at any time, and I did review some of it. I asked him to explain it to me in lay terms. He told me where I could not touch myself, that I couldn't have sexual intercourse or oral sex with the customers, or engage in sadomasochistic abuse. He seemed to know the law very well.

Q: Do you recall the time when the Phoenix Police Department attempted to close down a number of incall escort bureaus?

A: Yes.

Q: When was it?

A: It was in March of this year.

Q: How is it that you happen to recall the event?

A: The Police attempted to shut down Temptations, and I was called by the business and left a message not to come in until further notice.

Q: How long did it take to get that notice?

A: Two or three days.

Q: Were there any changes in the operation of the business after you returned?

A: Yes.

Q: What were they?

A: Steve said that no releases were to be given unless it was to a customer that had received one before, because that would mean that the customer was probably not a police officer or an informant. He asked the managers to check to make sure that customers receiving releases were regular customers.

Q: What was the effect on business of these changes?

A: The girls' incomes started to fall drastically. There was talk among some of the girls of working elsewhere, for example at Sunset Strip. It was believed that the split was 60-40 there in favor of the model, which was higher than at Temptations.

One girl tried to have a meeting to organize all the girls so that pressure could be put on Steve to run the business differently. According to the girl that tried to organize the meeting, Steve found out about it, approached her, and convinced her not to go forward with the idea. She was very upset and told me that if something happened to her, that Steve had done it.

After this, I approached Steve myself and asked if it would be possible for all the girls to work on percentages, so that there wouldn't be the same pressure on the girls to perform acts of prostitution in order to make money.

He said that if this happened that business would really fall off because this is what customers expected at his business. He also said that if I didn't like it that I could go somewhere else, but that if I did, that I was kidding myself that no one else was doing this. He added that he had been to every other club in town and could get an act of prostitution at any of them for the right price.

Q: You were not successful then in changing the manner in which the escorts were compensated?

A: No, but about this time, he came up with a system to allow releases to continue.

Q: What was that system?

A: The escort was to wait until the customer had taken off all of his clothes and had touched his penis. The customer was then asked to repeat the statement that he was not a cop or affiliated with law enforcement in any way. The escort would then ask the customer, while he was masturbating: "Would you like help with that?" After all of this, the \$100.00 price could then be given.

Q: How were the private rooms monitored in which the escort met with the customer?

A: The rooms were monitored for sound. Also, the doors to

the rooms had vents that someone on the outside could look through to see what was going on inside.

Q: Was anyone ever caught having sexual intercourse with a customer?

A: Yes.

Q: How do you know that?

A: The girl that was caught told me.

Q: What happened to her?

A: Steve found out about it and was going to fire her, but then gave her another chance.

Q: When did this happen?

A: In April or May of this year.

Q: Are you aware of any other incidents of Temptations' escorts having sexual intercourse with customers?

A: Only based upon what Steve told me.

Q: What did he tell you?

A: In a phone conversation with me soon before I left, he named two girls that he said he knew had had sexual intercourse with a customer.

Q: Did this have something to do with why you left?

A: Yes.

Q: What was the connection?

A: It seemed to me that he was now condoning sexual intercourse.

Q: Were there any other reasons why you left?

A: Yes, Steve had also started to mention expanding the outcall operation. Except for the compensation, the arrangement with the escorts was to be the same. The women would be expected to perform acts of prostitution, but if they were caught, then Steve knew nothing about it. The amount for the escort was to be lowered, however, to \$25.00 per hour.

I also had a conversation with a limousine driver that Steve had used as a driver. This person told me that Steve had told him that all the girls could be expected to perform acts of prostitution, including sexual intercourse.

Q: Who were the managers while you were there?

A: Melissa Budge, John Williams, Joe, Brett and Andre.

Q: Do you know how the managers were trained?

A: Yes.

Q: How were they trained?

A: Steve trained all the managers and told them exactly what to do.

Catherine Freitas
CATHERINE FREITAS

SUBSCRIBED AND SWORN TO before me this 29th day of November,
1995, by Catherine Freitas.

Pam Linsden
Notary Public

My Commission Expires:
My Commission Expires Dec. 14, 1993

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PHOENIX POLICE DEPARTMENT REPORT

ORIGINAL

PAGE NO. 1

DR NO.: 80991354

REPORT DATE: 19980613 TIME: 2332

TYPE OF REPORT: PROSTITUTION

OFFENSE: 301

PROSECUTION DESIRED: YES

LOCATION: 004030 E ELWOOD ST
SECRET SEDUCTIONS

BEAT: 0431 GRID: AB37

DATE/TIME OF OCCURRENCE: SAT 061398 2230

REPORTING OFFICER(S): [REDACTED] UNIT: 152

PREMISES: ADULT ONLY STORE/MOVIE OCCUPIED: YES

**** SUSPECT INFORMATION ****

INDEX SUSPECT-01:

NAME: [REDACTED] TAFFYE JO

RACE: W SEX: F AGE: DOB: 061070 HT: 501 WT: 118
 HAIR: BLN EYES: BLU SSN: [REDACTED]
 HOME: 00 [REDACTED] ROAD APT/SUITE: [REDACTED]
 TEMPE AZ ZIP CODE:
 WORK: 004030 E ELWOOD ST APT/SUITE:
 PHOENIX AZ ZIP CODE:
 BUS. NAME [SECRET SEDUCTIONS] PH: EXT.
 OCCUPATION: DANCER
 LEVEL OF FORCE: OFFICER PRESENCE

CLOTHING DESC & MISC:
BLACK DRESS, PLAID UNDERWARE

**** VICTIM INFORMATION ****

VICTIM -01:

NAME: CITY OF PHOENIX

**DISSEMINATION IS RESTRICTED TO
 CRIMINAL JUSTICE AND AUTHORIZED
 LICENSING AGENCIES ONLY.
 SECONDARY DISSEMINATION TO NON-
 C.J. OR AUTHORIZED LICENSING
 AGENCIES IS PROHIBITED**

REL/TO: DAVE CITY ATTY

DATE: AUG 28 1998

**** NARRATIVE ****

BY/OFF: ORGANIZED CRIME BUREAU

SERIAL NUMBER: [REDACTED]

ADDITIONAL DETECTIVES: SGT [REDACTED] [REDACTED]

DEFINITIONS: PLAY WITH YOURSELF = STREET SLANG FOR MASTURBATION.

ON 061398, TAFFYE [REDACTED] COMMITTED AN ACT OF PROSTITUTION BY MASTURBATING HERSELF, WHICH SHE ADVISED WAS INCLUDED IN THE 100.00 DOLLARS THAT HAD BEEN GIVEN TO HER BY UNDERCOVER DETECTIVE [REDACTED] FOR A PRIVATE DANCE SHOW.

80991354

Continued.

10341035
 2-1042 (16)

PHOENIX POLICE DEPARTMENT REPORT

ORIGINAL

PAGE NO. 2

DR NO.: 60991354

ON 061398. I WAS WORKING WITH THE VICE ENFORCEMENT UNIT CONDUCTING A COVERT INSPECTION OF THE BUSINESS KNOWN AS "SECRET SEDUCTIONS". THE REASON FOR THIS INSPECTION WAS TO CHECK THE COMPLIANCE WITH THE STATE AND CITY CODES IN AN UNDERCOVER CAPACITY.

I ENTERED THE BUSINESS AND WAS GREETED BY A FEMALE (LATER IDENTIFIED AS SHANNON MICHELLE [REDACTED]), WHO ASKED ME TO FOLLOW HER TO ANOTHER ROOM WHERE I COULD WAIT DUE TO EVERYONE BEING BUSY AT THE MOMENT. AFTER A FEW MINUTES I WAS THEN GREETED BY A WHITE FEMALE IN A SHORT BLACK DRESS WHO GREETED ME AND TOLD ME HER NAME WAS "TAFFYE". TAFFYE (LATER IDENTIFIED AS TAFFYE JO [REDACTED]), THEN ASKED ME TO FOLLOW HER TO ANOTHER ROOM, WHERE SHE SAT DOWN AND BEGAN TO TALK WITH ME.

TAFFYE SAID THE ROOM FEE WOULD BE SIXTY DOLLARS AND THAT THE MINIMUM TIP WOULD BE ONE HUNDRED DOLLARS. SHE WENT ON TO SAY THAT THERE WAS NO SEX ALLOWED AND THAT THERE WERE NO HAND JOBS EITHER. TAFFYE SAID THAT SHE WOULD DANCE NUDE FOR ME AND THAT DEPENDING ON THE TIP THE DANCE'S GOT BETTER. WE THEN HAD SOME SMALL TALK ABOUT MY MARRIAGE AND ABOUT SOME OF THE PROBLEMS I WAS HAVING WITH MY WIFE. TAFFYE THEN ASKED ME IF I WOULD LIKE HER TO DANCE FOR ME. AND I TOLD HER THAT I WOULD. SHE THEN TOOK ME TO ANOTHER SMALLER ROOM THAT HAD TWO WALLS COVERED WITH MIRRORS AND HAD A LARGE CUSHION CHAIR AND STOOL. TAFFYE THEN COLLECTED THE SIXTY DOLLARS FOR THE ROOM AND TWO FIFTY DOLLAR BILLS FROM ME FOR HER TIP. SHE THEN SAID THAT SHE WOULD BE RIGHT BACK AND FOR ME TO GET COMFORTABLE. THEN LEFT THE ROOM.

I THEN TOOK OFF MY SHIRT AND SAT ON THE CHAIR AND WAITED FOR HER TO RETURN. A SHORT WHILE LATER TAFFYE WALKED BACK INTO THE ROOM AND TOLD ME NOT TO BE NERVOUS DUE TO THE WAY I MUST HAVE LOOKED. SHE THEN SAT DOWN IN FRONT OF ME AND WE BEGAN TO TALK. I TOLD HER THAT I WAS HAVING PROBLEMS WITH MY WIFE BUT THAT I DIDN'T WANT TO CHEAT ON HER. TAFFYE AGAIN SAID THAT THERE WAS NO SEX ALLOWED. I TOLD HER THAT I DIDN'T WANT THAT BUT THAT SHE WAS REALLY BEAUTIFUL. I TOLD HER THAT I WAS REALLY NERVOUS THAT I DIDN'T WANT TO FEEL LIKE I WAS CHEATING ON MY WIFE. I THEN ASKED HER IF SHE WAS GOING TO DANCE NUDE FOR ME. TAFFYE SAID THAT SHE WOULD IF THAT IS WHAT I WANTED. I TOLD HER I DID AND SHE ADVISED THAT I COULD ALSO GET NUDE AS WELL. I TOLD HER THAT I DIDN'T FEEL REAL COMFORTABLE WITH THAT AND TOLD HER THAT I WOULD TAKE OFF MY PANTS BUT THAT I WOULD LIKE TO KEEP MY UNDERWARE ON. TAFFYE SAID THAT IT WOULD BE OK AND THEN SHE BEGAN TO UNDRESS.

TAFFYE SAID THAT I COULD TOUCH HER DURING THE DANCE AND THEN SHE BEGAN TO DANCE FOR ME NUDE. DURING THE DANCE SHE RUBBED HER BREASTS AGAINST MY FACE AND INTO MY GENITAL AREA. SHE WOULD CARESS HER BREASTS AND ON SEVERAL OCCASIONS WOULD RUB HER VAGINA. AFTER THE LAST TIME SHE DID THIS I ASKED HER IF SHE THOUGHT THAT "PLAYING WITH YOURSELF" WAS CHEATING. SHE SAID THAT SHE DIDN'T AND THAT THE DANCERS EVEN ENCOURAGE THE GUYS TO MASTURBATE THEMSELVES. I TOLD HER THAT I WAS TALKING ABOUT HER AND THAT IF SHE COULD PLAY WITH HERSELF. SHE THEN BEGAN TO RUB HER VAGINA AGAIN ONLY MORE IN A CIRCULAR MOTION. SHE STOOD IN FRONT OF ME AND AGAIN TOLD ME THAT I COULD TOUCH HER. I THEN PUT MY HANDS ON HER THIGHS AND ON

60991354

Continued.

1035 1036
2-1043

PHOENIX POLICE DEPARTMENT REPORT

ORIGINAL

PAGE NO. 3

DR NO.: 80991354

HER HIPS. SHE THEN SAID THAT SHE COULD SIT ON THE STOOL FOR ME SO THAT I COULD GET A BETTER LOOK.

TAFFYE SAT DOWN ON THE STOOL AND SPREAD HER LEGS APART FULLY EXPOSING HER VAGINA TO ME. SHE THEN PUT ONE FOOT EACH ON MY KNEE'S AND BEGAN TO MASTURBATE HERSELF. TAFFYE WOULD RUB HER CLITORIS AND ON NUMEROUS OCCASIONS STUCK ONE OF HER FINGERS INTO HER VAGINA. TAFFYE CONTINUED THIS AND LAYED BACK ON THE STOOL. AS TAFFYE WAS MASTURBATING SHE BEGAN TO MOAN AND LOOK AT ME WHILE DOING SO. TAFFYE MASTURBATED FOR APPROX. TEN MINUTES OF THE HALF AND HOUR SHOW.

AS TAFFYE WAS MASTURBATING I ASKED HER IF I NEEDED TO GET MORE MONEY OR IF HER PLAYING WITH HERSELF WAS INCLUDED IN THE 100.00 DOLLARS THAT I HAD GIVEN HER. SHE SAID THAT IT WAS OK BUT THAT IF I WANTED TO TIP HER MORE. THAT I COULD. SHE WENT ON TO TELL ME THAT SHE WOULDN'T DO ANY MORE THEN SHE WANTED TO FOR THE TIP I HAD GIVEN TO HER.

THE SHOW THEN ENDED AND TAFFYE AND MYSELF GOT DRESSED. I ASKED IF I COULD CALL AND HAVE ANOTHER SHOW WITH HER IN THE FUTURE. TAFFYE THEN GAVE ME A CARD AND WROTE HER NAME ON IT TELLING ME TO CALL ANYTIME. I THEN LEFT THE BUSINESS AND CONTACTED THE OTHER DETECTIVES. THE OTHER DETECTIVES THEN WENT BACK INTO THE BUSINESS A SHORT TIME LATER AND CONDUCTED AN INSPECTION OF IT. THE PURPOSE OF THIS WAS ALSO TO IDENTIFY TAFFYE.

IT IS REQUESTED THAT IS1 TAFFYE. BE CHARGED WITH ONE COUNT OF PROSTITUTION, P.C.C. 23-52.A.1. A CLASS ONE MISDEMEANDR. FOR MASTURBATING HERSELF AFTER BEING GIVEN 100.00 DOLLARS.

THE SIXTY DOLLARS AND THE ONE HUNDRED DOLLARS WERE NOT RECOVERED AND NOT IMPOUNDED.

VICTIM RECEIVED RIGHTS INFORMATION: NO

MAIL-IN SUPPLEMENT:

INVOICES:

END OF REPORT

DR NO: 80991354

1036 1037
2-1044



Chattanooga Police Department

J.L. Dotson
Chief of Police



SPECIAL INVESTIGATIONS DIVISION

DEAR MR. KNOBLETT,

SPECIAL INVESTIGATIONS DIVISION PERFORMED A LONG-TERM UNDERCOVER VICE INVESTIGATION OF CINEMA 1 LOCATED AT 4100 ROSSVILLE BLVD. WE FOUND THAT THE BUSINESS WAS IN VIOLATION OF THE ADULT ENTERTAINMENT ORDINANCES. THESE VIOLATIONS WERE BLATANT AND COMMON. OUR INVESTIGATION OF THE ACTIVITY AT CINEMA 1 LEAD TO A PADLOCKING OF THE BUSINESS THROUGH THE DISTRICT ATTORNEY'S OFFICE. I THEREFORE RECOMMEND THAT THE RENEWAL OF THE BUSINESS' ADULT ENTERTAINMENT LICENSE BE DENIED.

SINCERELY,

GERALD DOSSETT

SPECIAL INVESTIGATIONS

1038
1037
2-1045

SEP 26 '02 12:20PM
Chattanooga, Tennessee 37406

Phone: (423) 772-
FAX: (423) 698-9333



Chattanooga Police Department

J.L. Dotson
Chief of Police



FROM THE DESK OF GERALD DOSSETT
SPECIAL INVESTIGATIONS DIVISION

DEAR MR. NOBLETT,

THIS IS A BRIEF SYNOPSIS OF OUR OFFICE'S INVESTIGATION OF THE CINEMA ONE THEATER LOCATED AT 4100 ROSSVILLE BLVD. FROM JULY 1999 UNTIL JANUARY 2000 VICE MADE 14 UNDERCOVER VISITS. FOUR OF THESE VISITS WERE TAPED. THE FOLLOWING DATES ARE FROM OUR UNDERCOVER VISITS IN 1999:

JULY 14, 21, 26, 27, 28, AND 30; AUGUST 24, 26, AND 27; SEPTEMBER 2, 4, 8, AND 12. ONE VISIT WAS MADE JANUARY 5, 2000. MICHAEL JENKINS, KIRK EIDSON AND MYSELF MADE THE UNDERCOVER VISITS. THE INVESTIGATION WAS SUSPENDED AT THAT TIME DUE TO DEPARTMENT REORGANIZATION.

THE INVESTIGATION WAS RESUMED IN OCTOBER 2001. THE FOLLOWING UNDERCOVER VISITS WERE MADE:

NOVEMBER 7, 15, 28, 2001; DECEMBER 19, 2001; JANUARY 14, 27, 2002; APRIL 24, 2002; JUNE 7, 2002.

THE RESULTS OF OUR INVESTIGATION LED US TO OBTAIN A NUISANCE ABATEMENT ORDER THROUGH THE DISTRICT ATTORNEY'S OFFICE. WE NOW ARE ACTING IN COOPERATION WITH YOUR OFFICE TO DENY THE RENEWAL OF THE BUSINESS' ADULT ENTERTAINMENT LICENSE. I WILL FURTHER ASK THAT DAVID LAMAR FRANKLIN AND ANY SHAREHOLDERS OF CINEMA 1 INC. BE NAMED PERSONALLY IN THE DENIAL TO PREVENT FURTHER OFFENSES UNDER ANOTHER BUSINESS NAME AT A DIFFERENT LOCATION.

SINCERELY,

A handwritten signature in black ink, appearing to read "Gerald Dossett", with a circled "1039" written above it.

GERALD DOSSETT

DETECTIVE SPECIAL
INVESTIGATIONS

1039
1038
2-1046

July 21, 1999 1245-1345 HRS

ON JULY 21, 1999 I WENT INTO CINEMA ONE ADULT BOOKSTORE. I WENT INTO THE BUSINESS AT APROXIMATELY 1245 HRS. I WENT INTO THE "MINI MOVIE OR PEEP SHOW" PORTION OF THE BUSINESS. AS ONE ENTERS THE BUSINESS, THE PEEP SHOW AREA ENTRANCE IS IN THE REAR LEFT CORNER OF THE ROOM. I ENTERED THE PEEP SHOW AREA. THE ONLY LIGHT IN THAT PORTION OF THE BUSINESS IS THE LIGHT FROM THE TELEVISIONS PLAYING MOVIES IN CUBICLES. THERE ARE APROXIMATELY 20 CUBICLES IN THIS AREA. WHILE IN THE PEEPSHOW AREA I COUNTED EIGHTEEN PATRONS ALL MALE. PEOPLE USUALLY WALK AROUND IN THE AREA STOP AT A CUBICLE TO VIEW PORTIONS OF A MOVIE PLAYING IN A CUBICLE AND THEN MOVE ONTO ANOTHER CUBICLE. ANYBODY WALKING IN THE ARE CAN SEE INTO THE CUBICLES. THE CUBICLES DON'T HAVE DOORS. SOME CUBICLES HAVE A "L" SHAPE. IN THE "L" SHAPE CUBICLES YOU HAVE TO ENTER THE CUBICLE TO SEE AROUND THE CORNER AND VIEW THE MOVIE. WHILE I WAS IN THIS AREA I COUNTED EIGHT MEN MASTURBATING INSIDE CUBICLES. THE MEN HAD THEIR PENIS OUT IN THEIR HAND STROKING IT BACK AND FORTH. IN ONE CUBICLE I SAW TWO MEN MASTURBATING. EACH MAN WAS STROKING HIS OWN PENIS. IN ONE CUBICLE I SAW A DRIED FLUID ON THE PLEXIGLASS THAT COVERED THE TELEVISION. IN MY OPINION, THE FLUID LOOKED LIKE DRIED SEMEN. I LEFT THE BUSINESS AT APPROXIMATELY 1345 HRS.

G. DOSSETT 760

1040
1039
2-1047

JULY 27, 1999-CINEMA ONE

ON JULY 27, 1999 I ENTERED CINEMA ONE ADULT BOOKSTORE AT APPROXIMATELY 2235 HRS. I THEN PAID TO GET INTO THE MINI-MOVIE OR PEEPSHOW PORTION OF THE BUSINESS. I ENTERED THE PEEPSHOW AREA AND BEGAN WALKING AROUND IN THE AREA. I SAW TWO MEN PLAYING WITH EACH OTHER'S PENIS IN ONE CUBICLE. I CONTINUED TO WALK AROUND AND THE TWO MEN BEGAN TO KISS A SHORT TIME LATER. I THEN WALKED BY THE CUBICLE AND I SAW ONE-MAN PERFORMING FELLATIO ON THE OTHER MAN. I SAW FOUR MEN MASTURBATING IN SEPARATE CUBICLES (ALONE IN CUBICLES). SHORTLY AFTER 2300 HRS THERE WERE APPROXIMATELY 20 MEN IN THE PEEPSHOW AREA. I COULD SEE TWO MEN IN A CUBICLE THAT WAS NOT PLAYING A MOVIE. THE ROOM WAS ALMOST TOTALLY DARK. THE ONLY LIGHT IN THE PARTICULAR CUBICLE CAME FROM THE DIM LIGHT IN THE MAIN AREA. ONE MAN WAS ON HIS KNEES AND THE OTHER MAN WAS STANDING. THE MAN ON HIS KNEES LOOKED AS IF HE WAS PERFORMING FELLATIO ON THE MAN THAT WAS STANDING. I COULD NOT ACTUALLY SEE THE PENIS IN HIS MOUTH BECAUSE IT WAS TOO DARK. BUT THE MOTIONS HE WAS MAKING LED ME TO BELIEVE HE WAS PERFORMING FELLATIO. I LEFT THE ESTABLISHMENT AT APPROXIMATELY 2325 HRS.

G. DOSSETT 760

1040
2-1048 1041

July 1999

June 1999							July 1999						
S	M	T	W	T	F	S	S	M	T	W	T	F	S
6	7	8	9	10	11	12	4	5	6	7	8	9	10
13	14	15	16	17	18	19	11	12	13	14	15	16	17
20	21	22	23	24	25	26	18	19	20	21	22	23	24
27	28	29	30				25	26	27	28	29	30	31

Monday	Tuesday	Wednesday	Thursday	Friday	Sat/Sun
June 28	29	30	July 1	2	3
					4
5	6	7	8	9	10
					11
12	13	14	15	16	17
		Cinema One ✓ 1420 hrs to 1515 hrs			18
19	20	21	22	23	24
		Cinema One ✓ 1245-1345 G.D. 1640-1720 M.J.			25
26	27	28	29	30	31
Cinema one ✓ 1356 hrs to 1457 hrs	Cinema One ✓ 2235 to 2325 HRS	Cinema one ✓ 1407 hrs to 1512 hrs Cinema One ✓ 2126 to 2216		Cinema one ✓ 073099	August 1

6697-2
 1044
 1042

2-1049

CINEMA ONE 082499

ON AUGUST 24, 1999 I (DOSSETT 760) WENT TO CINEMA ONE AT APPROXIMATELY 2230HRS. I PAID TO GET INTO THE MINI MOVIE SECTION OF THE BUSINESS. I ENTERED THE MINI MOVIE SECTION AND STARTED TO WALK AROUND. WHILE THERE I OBSERVED TWO MEN MASTURBATING IN CUBICLES ALONE. THE MEN WERE IN TWO SEPARATE CUBICLES. THERE WERE APPROXIMATELY 15-20 MALES IN THE MINI MOVIE AREA OF THE BUSINESS DURING THE TIME I WAS THERE. I ALSO OBSERVED ONE MAN SITTING IN A CUBICLE PERFORMING ORAL SEX ON A MAN STANDING IN FRONT OF HIM. WHILE THE SITTING MAN WAS PERFORMING ORAL SEX ON THE STANDING MAN ANOTHER MAN WALKED UP AND PULLED OUT HIS PENIS. THE SITTING MAN BEGAN TO PLAY WITH THE SECOND STANDING MAN'S PENIS WHILE HAVING FELATIO WITH THE FIRST STANDING MAN. SOON AFTER THAT THE SITTING MAN BEGAN TO SWITCH BACK AND FORTH BETWEEN THE TWO STANDING MEN PERFORMING FELATIO. THE ACT WAS DONE IN A CUBICLE (WITH OUT A DOOR) IN PLAIN VIEW OF ANYONE WALKING BY. ALSO THE THREE MEN DID NOT STOP WHEN SOMEONE ENTERED THE ROOM. ONE MALE PUT HIS HAND ON HIS PENIS AND GESTURED FOR ME TO COME IN A CUBICLE WITH HIM. I LEFT AT APPROXIMATELY 0015 HRS.

G. DOSSETT 760

~~1042~~ 1043
2-1048

CINEMA ONE 082699

ON AUGUST 26, 1999 I (DOSSETT 760) WENT TO CINEMA ONE AT APPROXIMATELY 0110 HRS. I WENT IN AND PAID TO GET INTO THE THEATER PORTION OF THE BUSINESS. I WALKED IN AND SAT DOWN. THERE WERE THREE OTHER PEOPLE IN THE THEATER. A COUPLE WAS SITTING IN THE COUPLES SECTION OF THE THEATER, AND A SINGLE MALE WAS SITTING TOWARD THE FRONT OF THE THEATER. ALL THREE PEOPLE LEFT A VERY SHORT TIME AFTER I ENTERED THE THEATER. I THEN PAID TO GO TO THE MINI MOVIE SECTION OF THE BUSINESS. I BEGAN TO WALK AROUND IN THE MINI MOVIE SECTION OF THE BUSINESS. I COUNTED FIVE MEN MASTURBATING IN SEPARATE CUBICLES ALONE. I ALSO SAW ONE MAN SITTING PERFORMING FELLATIO ON A MAN STANDING IN FRONT OF HIM. AT APPROXIMATELY 0130 HRS A WHITE MALE (5'10, 170, BROWN HAIR) BEGAN TO SWEEP THE FLOOR. HE SWEEPED THE UNOCCUPIED CUBICLES AND THE HALL. HE THEN MOPPED THE UNOCCUPIED CUBICLES AND THE HALL. AS SOMEONE LEFT A CUBICLE HE WOULD MOP IN THAT CUBICLE. ALL OF THE CUBICLES WERE NOT MOPPED. HE THEN CAME AROUND AND SPRAYED A FEW SQUIRTS OF A LIQUID IN EACH STALL. THE MAN MOPPED WITH A CHEMICAL THAT BURNED MY NOSE AND AFFECTED MY EYES. THE WALLS WERE NOT CLEANED WHILE I WAS THERE. I THEN WAS TOLD THAT THE BUSINESS WAS CLOSED AND ASKED TO LEAVE AT 0200HRS. I LEFT AT THAT TIME.

G. DOSSETT 760

~~1043~~ 1049
2-10-49

August 1999

August 1999

September 1999

S	M	T	W	T	F	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

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12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30		

Monday	Tuesday	Wednesday	Thursday	Friday	Sat/Sun
August 2	3	4	5	6	7
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9	10	11	12	13	14
					15
16	17	18	19	20	21
					22
23	24	25	26	27	28
Cinema 1 2330 to 1215 hrs G.D.	Cinema 1 0110 to 0200 hrs G.D. Cinema 1 0100 to 0205 hrs M.J.	Cinema 1 0110 to 0200 hrs G.D. Cinema 1 0100 to 0205 hrs M.J.	Cinema 1 ✓ 012099 082799 0120 to 0220hrs	CINEMA 1 ✓	29
30	31	September 1	2	3	4
			Cinema 1 ✓ 090299 1450hrs to 1555hrs		Cinema One ✓ 2145 - 2330hrs 6945 M.J.
					5

1044
2-10507015

CINEMA ONE 091299

ON 091299 I, OFFICER DOSSETT, WENT TO 4100 ROSSVILLE BLVD (CINEMA ONE). I PAID \$5.41 AND ENTERED THE MINI MOVIE SECTION OF THE BUSINESS AT APPROXIMATELY 2015 HRS. I OBSERVED 3 MALES MASTURBATING ALONE IN SEPARATE CUBICLES. I ALSO OBSERVED TWO MEN KISSING IN A CUBICLE. I WAS IN THE MINI MOVIE SECTION FOR APPROXIMATELY 55 MIN. THERE WERE APPROXIMATELY 15 MEN IN THE MINI MOVIE SECTION DURING THE TIME I WAS IN THE BUSINESS.

G. DOSSETT 760

1046
1045
2-1051

1047
4046
2-1052

September 1999

August 1999

September 1999

S	M	T	W	T	F	S
1	2	3	4	5	6	7
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15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

S	M	T	W	T	F	S
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30		

Monday	Tuesday	Wednesday	Thursday	Friday	Sat/Sun
August 30	31	September 1	2	3	4
			Cinema One 1450 to 1555 hrs M.J.		Cinema One 2145 hrs to 2330 hrs M.J.
6	7	8	9	10	11
		2400 ✓	Cinema One 1450 hrs to 1555 hrs 1450-1550 ✓		Cinema One ✓ 091299 G.D.
13	14	15	16	17	18
20	21	22	23	24	25

Chattanooga Police Department
Special Investigations Unit

Report of Investigation

Page 1

Case Subject Name: Cinema One

Case File Number: 155

Complaint Number: n/a

Investigation Action: Open Case: Supplement: Close Case:

Date Prepared: 110801

Prepared by: Dossett 760

Other Officers:

Subject of Report: Cinema One opening report.

On October 22, 2001 Special Investigations Division received a complaint from the Chattanooga-Hamilton County Health Department. The health department forwarded this division a complaint that they received that states that sexual activity was taking place in the Cinema One Adult Theater.

A decision was made that we would monitor the activity at the Cinema One Adult Theater. Our goals in this investigation are to establish if there is sexual activity happening in public areas of this establishment, to determine if this activity is common practice, to establish if any violation of state law or city ordinances are occurring and to help determine if there is any risk to the community with the assistance of the health department or any other public agency.

The first phase of this investigation will consist of undercover visits to the establishment. The results of the first phase will determine whether further police action is necessary.

INDEXING: Cinema One Adult Theater

; SUISS #: ; Alias: ; DOB: ; Race: ; Sex: ; Height: ; Weight: ; Eyes: ; Hair: ;

Drivers License #: ; SSN #:

Address: 4100 Rossville Blvd

Telephone #:

Vehicle:

Date: 110801

Signature:(Officer)

Approved: Date: 110801

Signature:(Title and Name)

2-1053 1048
1047

Chattanooga Police Department
Narcotics Division

Report of Investigation

Page 1

Case Subject Name: CINEMA ONE

Case File Number: 155

Complaint Number:

Investigation Action: Open Case: Supplement: Close Case:

Date Prepared: 110701

Prepared by: DOSSETT 760

Other Officers: Sgt. ATKINSON, Det. WOLFF

Subject of Report: VICE

ON NOVEMBER 07, 2001, AT APPROXIMATELY 1215 HOURS, DETECTIVE WOLFF AND MYSELF WENT TO CINEMA ONE THEATER LOCATED AT 4100 ROSSVILLE BLVD. AFTER PAYING THE MINI MOVIE ENTRY FEE WE WENT TO THE MINI MOVIE SECTION OF THE BUSINESS. WHILE IN THIS AREA DETECTIVES OBSERVED SEVERAL WHITE MALES MASTERBATING. THE MEN MASTERBATING HAD THERE PENIS' OUT IN THEIR HAND, IN PUBLIC VIEW WHILE MASTERBATING. I OBSERVED TWO WHITE MALES PERFORMING ORAL SEX ON OTHER MEN. DETECTIVES STAYED APPROXIMATELY THIRTY FIVE MINUTES.

Date: _____

Signature:(Officer) _____

Approved: Date: _____

Signature:(Title and Name) _____

2-10534
1048/1049

Wolff Lee
From: Atkinson Janice
Sent: Wednesday, November 28, 2001 11:04 AM
To: Wolff Lee
Subject: Investigative Report Form.doc

Chattanooga Police Department
Special Investigations Unit

Report of Investigation
Page 1

Case Subject Name: Cinema One Theater Case File Number: 155
Complaint Number:
Investigation Action: Open Case: x Supplement: Close Case:
Date Prepared: 11-16-01 Prepared by: Wolff
Other Officers: Dossett, Batts, Atkinson, Floyd, Narramore
Subject of Report: Vice

On November 15, 2001 at approx. 2200 hrs. this Investigator along with Detective Dossett went to the Cinema One Theater located at 4100 Rossville Blvd. Upon entering the business, a seventeen dollar fee was paid by both Detectives to a white male who was behind the counter. We then went thru a metal door, which took us into an area that consisted of several rooms. Observed while in the rooms were numerous male parties involved in masturbation. Some of the male parties masturbated themselves while other male parties masturbated each other. One incident that was observed in one of the rooms was a white male engaging in oral sex with another white male. When this investigator walked into the room, the male looked up and he was asked if he minded being watched. He stopped and appeared to pull a hair from his mouth and stated that he did not mind but did not want a room full. He then continued with the oral sex. Also observed was several other male parties engaged in oral sex with each other in other parts of the Theater. This investigator saw six male parties engaged in oral sex and four male parties engaged in masturbation. This investigator went into a room where a movie was showing female and male oral sex. At that time I was approached by a male party who asked if he could do that to me. Both Detectives were inside the business for approx. one hour. The conditions of the business was dirty and the floor was sticky with an unknown substance. Some of the male parties ejaculated on the floor and or wall. This activity was monitored electronically.

INDEXING:

; SUISS #: ; Alias: ; DOB: ; Race: ; Sex: ; Height: ; Weight: ; Eyes: ; Hair: ; Drivers

1050 ~~1050~~ 1046
2-1054/1055

Chattanooga Police Department
Narcotics Division

Report of Investigation

Page 1

Case Subject Name: CINEMA ONE

Case File Number: 155

Complaint Number:

Investigation Action: Open Case: Supplement: Close Case:

Date Prepared: 112801

Prepared by: DOSSETT 760

Other Officers: Sgt. ATKINSON, Det. WOLFF

Subject of Report: VICE

ON NOVEMBER 28, 2001, AT APPROXIMATELY 1640 HOURS, DETECTIVE WOLFF AND MYSELF WENT TO CINEMA ONE THEATER LOCATED AT 4100 ROSSVILLE BLVD. DETECTIVES ENTERED THE THEATER THROUGH THE FRONT DOOR AT WHICH TIME WALKING UP TO THE COUNTER TO PAY THE COVER CHARGE. THE CASH REGISTER WAS BEING RUN BY A WHITE FEMALE. DETECTIVE WOLFF AND DOSSETT PAID THE MALE SIX DOLLARS AND FIFTY CENTS A PIECE. AFTER PAYING THE MINI MOVIE ENTRY FEE WE WENT TO THE MINI MOVIE SECTION OF THE BUSINESS. WHILE IN THIS AREA DETECTIVES OBSERVED AT LEAST SIX WHITE MALES MASTERBATING, AND THERE WERE THREE BLACK MALES MASTERBATING IN MOVIE STALLS. THE MEN MASTERBATING HAD THERE PENIS' OUT IN THEIR HAND, IN PUBLIC VIEW WHILE MASTERBATING. I OBSERVED ONE WHITE MALE PERFORMING ORAL SEX ON OTHER MAN.

DETECTIVES STAYED APPROXIMATELY THIRTY FIVE MINUTES. DURING THIS TIME THE CONDITIONS OF THE BUSINESS WAS DIRTY AND THE FLOORS HAD A UNKNOWN STICKY LIKE SUBSTANCE ON IT.

Date: _____

Signature:(Officer) _____

Approved: Date: _____

Signature:(Title and Name) _____

1050
2-1055
1051

Chattanooga Police Department
Narcotics Division

Report of Investigation

Page 1

Case Subject Name: CINEMA ONE

Case File Number: 155

Complaint Number:

Investigation Action: Open Case: Supplement: Close Case:

Date Prepared: 122001

Prepared by: DOSSETT 760

Other Officers: Sgt. ATKINSON, Det. WOLFF, FLOYD

Subject of Report: VICE

ON DECEMBER 19, 2001, AT APPROXIMATELY 1430 HOURS, DETECTIVE WOLFF AND MYSELF WENT TO CINEMA ONE THEATER LOCATED AT 4100 ROSSVILLE BLVD. DETECTIVES ENTERED THE THEATER THROUGH THE FRONT DOOR AT WHICH TIME WALKING UP TO THE COUNTER TO PAY THE COVER CHARGE. THE CASH REGISTER WAS BEING RUN BY A WHITE MALE. DETECTIVE WOLFF AND DOSSETT PAID THE MALE SIX DOLLARS AND FIFTY CENTS A PIECE. AFTER PAYING THE MINI MOVIE ENTRY FEE WE WENT TO THE MINI MOVIE SECTION OF THE BUSINESS. WHILE IN THIS AREA DETECTIVES OBSERVED AT LEAST FIVE WHITE MALES IN DIFFERENT ROOMS MASTERBATING, AND THERE WERE TWO BLACK MALE MASTERBATING IN MOVIE STALLS. THE MEN MASTERBATING HAD THEIR PENIS' OUT IN THEIR HAND, IN PUBLIC VIEW WHILE MASTERBATING. I OBSERVED TWO WHITE MALES PERFORMING ORAL SEX ON OTHER MEN. I SAW AT LEAST ONE WHITE MALE MASTERBATE AND EJACULATED ON THE FLOOR AND WALL.

DETECTIVES STAYED APPROXIMATELY FORTY FIVE MINUTES, DURING THIS TIME THE CONDITIONS OF THE BUSINESS WAS DIRTY AND THE FLOORS HAD A UNKNOWN STICKY LIKE SUBSTANCE ON IT.

THE VISIT WAS VIDEO TAPED BUT THE TAPING ON THE VISIT FAILED.

INDEXING:

; SUISS #: ; Alias: ; DOB: ; Race: ; Sex: ; Height: ; Weight: ; Eyes: ; Hair: ; Drivers License #: ;
SSN #:

Address:

Telephone #:

Vehicle:

Date: 12 2001

Signature:(Officer)

[Signature] 760

Approved: Date: 12 20 01

Signature:(Title and Name)

[Signature] 011382

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2-1057

Chattanooga Police Department
Narcotics Division

Report of Investigation

Page 1

Case Subject Name: Cinema One Theater

Case File Number: 155

Complaint Number:

Investigation Action: Open Case: Supplement: Close Case:

Date Prepared: 011402

Prepared by: Wolff

Other Officers: Sgt. Atkinson, Det. Dossett, Floyd

Subject of Report: Vice

On January 14, at approximately 1745 hours, this investigator along with detective Dossett went to Cinema One Theater located at 4100 Rossville Blvd. Detectives entered the theater through the front door at which time walking up to the counter to pay the cover charge. The counter was being run by a white female and a white male. Detective Dossett paid the male six dollars and fifty cents and detective Wolff paid the female six dollars and fifty cents. After paying the cover charge we then went thru a metal door, which took us into an area that consisted of several rooms. While in this area detectives observed three white males in different rooms masterbating, and one black male standing in the hallway masterbating. Detectives Wolff asked all three parties if they minded being watched all three stated no they did not care. Detective Wolff observed one of the males ejaculate onto the TV screen during this time. Detectives observed three different white males performing oral sex on three other males. Detective Wolff entered one room where one act was taking place and asked if they minded being watched they stated no. The male that was receiving the oral sex stated that this guy could suck a dick. Detective Wolff asked the other four if they minded being watched they all stated no.

Detectives stayed approximately forty five minutes, during this time the conditions of the business was dirty and the floors had a unknown sticky like substance on it.

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SSN #:

Address:

Telephone #:

Vehicle:

Date: _____

Signature: (Officer) _____

Approved: Date: _____

Signature: (Title and Name) _____

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21058

Chattanooga Police Department
Narcotics Division

Report of Investigation

Page 1

Case Subject Name: CINEMA ONE

Case File Number: 155

Complaint Number:

Investigation Action: Open Case: Supplement: Close Case:

Date Prepared: 012902

Prepared by: DOSSETT 760

Other Officers: Det. WOLFF

Subject of Report: VICE

ON JANUARY 27, 2002, AT APPROXIMATELY 1830 HOURS, DETECTIVE WOLFF AND MYSELF WENT TO CINEMA ONE THEATER LOCATED AT 4100 ROSSVILLE BLVD. DETECTIVES ENTERED THE THEATER THROUGH THE FRONT DOOR AT WHICH TIME WALKING UP TO THE COUNTER TO PAY TO ENTER THE MINI MOVIE SECTION OF THE ESTABLISHMENT. A WHITE MALE WAS RUNNING THE CASH REGISTER. DETECTIVE WOLFF AND DOSSETT PAID THE MALE SIX DOLLARS AND FIFTY CENTS. AFTER PAYING THE MINI MOVIE ENTRY FEE WE WENT TO THE MINI MOVIE SECTION OF THE BUSINESS. WHILE IN THIS AREA DETECTIVES OBSERVED AT LEAST THREE WHITE MALES AND TWO BLACK MALES IN DIFFERENT ROOMS MASTURBATING, AND ONE MAN FONDLING ANOTHER MAN IN A STALL. ALL PEOPLE MASTURBATING HAD THEIR PENIS' OUT MASSAGING THEIR PENIS WITH THEIR HAND. I OBSERVED THREE SEPARATE INSTANCES OF ONE MAN PERFORMING ORAL SEX ON ANOTHER MAN. THERE WERE APPROXIMATELY 15-20 PEOPLE IN THE MINI-MOVIE SECTION OF THE BUSINESS. ALL WERE MALE. WE STAYED IN THE BUSINESS FOR APPROXIMATELY 30 MINS. BEFORE LEAVING.

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SSN #:

Address:

Telephone #:

Vehicle:

Date: 1/29/02

Signature:(Officer) [Signature]

Approved: Date: 1-29-02

Signature:(Title and Name) Sgt. [Signature]

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Chattanooga Police Department
Narcotics Division

Report of Investigation

Page 1

Case Subject Name: CINEMA ONE

Case File Number: 155

Complaint Number:

Investigation Action: Open Case: Supplement: Close Case:

Date Prepared: 042402

Prepared by: DOSSETT 760

Other Officers: Det. WOLFF, ATKINSON

Subject of Report: VICE

ON APRIL 24, 2002, AT APPROXIMATELY 1328 HOURS, DETECTIVE WOLFF AND MYSELF WENT TO CINEMA ONE THEATER LOCATED AT 4100 ROSSVILLE BLVD. DETECTIVES ENTERED THE THEATER THROUGH THE FRONT DOOR AT WHICH TIME WALKING UP TO THE COUNTER TO PAY TO ENTER THE MINI MOVIE SECTION OF THE ESTABLISHMENT. A WHITE MALE AND FEMALE WERE RUNNING THE CASH REGISTER. DETECTIVE DOSSETT PAID THE MALE \$13 DOLLARS. AFTER PAYING THE MINI MOVIE ENTRY FEE WE WENT TO THE MINI MOVIE SECTION OF THE BUSINESS. WHILE IN THIS AREA DETECTIVES OBSERVED AT LEAST TWO WHITE MALES IN DIFFERENT ROOMS MASTURBATING, AND TWO MEN PERFORMING ORAL SEX WITH TWO OTHER MEN IN TWO DIFFERENT STALLS. ALL PEOPLE MASTURBATING HAD THEIR PENIS' OUT MASSAGING THEIR PENIS WITH THEIR HAND. THERE WERE APPROXIMATELY 10-15 PEOPLE IN THE MINI-MOVIE SECTION OF THE BUSINESS. I OBSERVED TWO FEMALES IN THE MINI MOVIE SECTION. ONE FEMALE WAS KISSING, FONDLING AND BEING FONDLED BY A MALE IN A STALL. WE STAYED IN THE BUSINESS FOR APPROXIMATELY 45 MINS. BEFORE LEAVING. THE VISIT WAS VIDEO TAPED. THE VIDEO RECORDED OPERATED FOR APPROXIMATELY 22 MINS. THE BATTERY FAILED AFTER THAT PERIOD OF TIME.

INDEXING:

; SUISS #: ; Alias: ; DOB: ; Race: ; Sex: ; Height: ; Weight: ; Eyes: ; Hair: ; Drivers License #: ; SSN #:

Address:

Telephone #:

Vehicle:

Date: 042402

Signature:(Officer) [Signature] 760

Approved: Date: 042402

Signature:(Title and Name) [Signature] 760

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Chattanooga Police Department
Special Investigations Unit

Report of Investigation

Page 1

Case Subject Name: CINEMA ONE

Case File Number:

Complaint Number: N/A

Investigation Action: Open Case: X

Supplement: Close Case:

Date Prepared: 110802

Prepared by: DOSSETT 760

Other Officers: WOLFF

Subject of Report: INSPECTION OF CINEMA ONE

ON NOVEMBER 8, 2002 DETECTIVE LEE WOLFF AND MYSELF MADE AN INSPECTION OF CINEMA ONE. WE WALKED IN THE BUSINESS AND IDENTIFIED OURSELVES. WE THEN WENT TO THE MINI MOVIE SECTION. IT WAS IN OPERATION WITH APPROXIMATELY 10 CUSTOMERS IN THE SECTION. WE FOUND MARK DYESS FONDLING CLARENCE SMITH'S EXPOSED PENIS IN ONE OF THE BOOTHS.

THE BUSINESS HAD MONITORS OVER THE CASH REGISTER THAT SHOWED THE MINI MOVIE SECCION. THE MINI MOVIE SECTION WAS DARK. THE VISIT WAS MADE AT 1415 TO 1425.

A LETTER WAS DELIVERED TO THE BUSINESS FROM THE CITY ATTORNEY'S OFFICE.

INDEXING: MARK DYESS

; SUISS #: ; Alias: ; DOB: ; Race: ; Sex: ; Height: ; Weight: ; Eyes: ; Hair: ; Drivers License #: ;
SSN #:

Address: 601 CHICKAMAUGA AVE 5 ROSSVILLE GA

Telephone #: 314-2217

Vehicle:

INDEXING: CLARENCE SMITH

; SUISS #: ; Alias: ; DOB: ; Race: ; Sex: ; Height: ; Weight: ; Eyes: ; Hair: ; Drivers License #: ;
SSN #:

Address: 6737 HARBOR CIR

Telephone #: 344-6022

Vehicle:

Date: _____

Signature: (Officer) _____

Approved: Date: _____

Signature: (Title and Name) _____

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Chattanooga Police Department
Special Investigations Unit

Report of Investigation

Page 1

Case Subject Name: CINEMA ONE

Case File Number:

Complaint Number: N/A

Investigation Action: Open Case: X

Supplement: Close Case:

Date Prepared: 112102

Prepared by: DOSSETT 760

Other Officers: WOLFF, ATKINSON, FLOYD, YATES, PENNEY, POLAND,
HENNESSEE

Subject of Report: INSPECTION OF CINEMA ONE

ON NOVEMBER 21, 2002 DETECTIVES FROM THE CHATTANOOGA POLICE DEPARTMENT MADE AND UNDERCOVER VISIT AND INSPECTION OF CINEMA ONE. OFFICERS PENNY, POLAND AND HENNESSEE WENT INTO THE ESTABLISHMENT AT APPROXIMATELY 2012 HOURS. THEY PAID \$19.67 TO ENTER THE MINI MOVIE SECTION. ONCE IN THE MINI MOVIE SECTION JAMES HUITT PROPOPOSITIONED ALL THREE DETECTIVES FOR ORAL SEX. HUITT THEN TOUCHED PENNY'S CHEST AND GROIN AREA.

OTHER DETECTIVES WENT INTO THE BUSINESS AND SAW RAY COX IN THE THEATER SECTION OF THE BUSINESS WITH HIS PENIS EXPOSED. DETECTIVES ALSO FOUND A USED CONDOM IN THE MINI MOVIE SECTION OF THE BUSINESS. I. D. WAS CALL OUT AND THE CONDOM WAS PHOTOGRAPHED AND COLLECTED.

THE MINI MOVIE SECTION OF THE BUSINESS WAS DARK AND I ASKED THE OWNER ~~FRANKLIN~~ FRANKLIN TO TURN ON THE LIGHTS AND HE COULD NOT. HUITT WAS ARRESTED FOR SEXUAL BATTERY. MEASUREMENTS WERE MADE OF THE BOOTHS AND THE LAYOUT OF THE BUSINESS WAS SKETCHED.

INDEXING: HUIETT JAMES

; SUISS #: ; Alias: ; DOB: 053152 ; Race: W ; Sex: M ; Height: 510 ; Weight: 240 ; Eyes: ; Hair: ;
Drivers License #: ; SSN #:

Address: 4417 SENECA DR

Telephone #: 821-1668

Vehicle:

INDEXING: RAY COX

; SUISS #: ; Alias: ; DOB: 083142 ; Race: W ; Sex: M ; Height: ; Weight: ; Eyes: ; Hair: ; Drivers
License #: 006514984 GA ; SSN #:

Address: 9360 SWEETBROW TRACE JONESBORO GA

Telephone #:

Vehicle:

Date: _____

Signature: (Officer) _____

Approved: Date: _____

Signature: (Title and Name) _____

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National Institute of Justice

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Marlys McPherson-Executive Director

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An Analysis of the Relationship Between
Adult Entertainment Establishments, Crime,
and Housing Values

Submitted to the Consumer Services Committee
Minneapolis City Council

by

Marlys McPherson
Executive Director

and

Glenn Silloway
Research Associate

The Minnesota Crime Prevention Center, Inc.
121 East Franklin Avenue
Minneapolis, Minnesota 55404

October, 1980

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An Analysis of the Relationship Between Adult
Entertainment Establishments, Crime, and Housing Values

Table of Contents

	<u>Page</u>
Preface.....	1
CHAPTER I - BARS AND CRIME.....	3
Section A - General Relationship Between Bars and Crime.....	4
1. Introduction: The Research Question.....	4
2. Methodology.....	4
3. Analysis and Findings.....	8
4. Summary: General Relationship Between Bars and Crime....	15
Section B - The Effect of Changing the Liquor Patrol Limits: New bars and Crime.....	16
1. Introduction: The Research Question.....	16
2. Methodology.....	17
3. Analysis and Findings.....	19
4. Summary Findings.....	24
Section C - Characteristics of "Nuisance" Bars.....	25
1. Introduction: The Research Question.....	25
2. Methodology.....	25
3. Analysis and Findings.....	29
4. Summary of Findings.....	34
CHAPTER II - ADULT ENTERTAINMENT ESTABLISHMENTS AND NEIGHBORHOOD DETERIORATION.....	35
Introduction.....	36
Section A - Policy Issues.....	38
Section B - The Research Design.....	42
1. Introduction: The Research Question.....	42
2. Variables and Data Sources.....	44
3. Level of Analysis.....	49
Section C - Analysis and Findings.....	50
1. Simple Relationships.....	50
2. Complex Relationships.....	52
3. Tests for Linearity.....	67
4. Causal Analysis.....	67
Section D - Summary and Conclusions.....	73
CHAPTER III - EMPIRICAL FINDINGS AND POLICY RECOMMENDATIONS.....	76
APPENDIX A - Supplementary Materials for Chapter I: Bars and Crime.....	A-1
APPENDIX B - Supplementary Materials for Chapter II: Adult Entertainment and Neighborhood Deterioration...	B-1

An Analysis of the Relationship Between Adult
Entertainment Establishments, Crime, and Housing Values

Preface

This study examines two separate but related issues: 1) the relationship of bars to crime, and 2) the impact of adult entertainment establishments on neighborhood deterioration.

The first issue is specific in its focus and is limited to studying the impact of alcohol-serving establishments on crime in the immediate geographical area (a six-block radius) around the bar. This relationship between bars and crime is analyzed in three sections in the first chapter of this report. These analyses investigate:

1. The general relationship between bars and crime, taking type of neighborhood into account;
2. The effect of eliminating the liquor patrol limits in 1974; and
3. The characteristics of "nuisance" bars as compared with "non-nuisance" bars.

The second issue is broader, and more complex to answer. The study looks at all adult entertainment establishments . . . saunas, rap parlors, adult theaters, etc., in addition to bars. It examines their relationship to neighborhood deterioration as measured by crime and housing value. For this part of the study, "neighborhoods" are defined as census tracts. Other factors affecting neighborhood deterioration are controlled for in order to measure the independent effects of adult entertainment establishments. The research questions involve establishing whether or not there is an association between adult entertainment and neighborhood deterioration at the census tract

level, and then determining whether the evidence supports the hypothesis that adult entertainment precedes neighborhood deterioration.

The second chapter of the report presents the analysis of these issues in four sections:

1. A summary of the policy issues that motivate the study,
2. The research questions and study design derived to investigate these policy issues,
3. The analysis and results of the study, and
4. The summary conclusions.

This study was commissioned by the Minneapolis City Council in winter, 1980 to provide some empirical basis for policy decisions regarding the licensing and zoning of adult entertainment establishments. The research questions were derived through discussions with the members of the Council's Consumer Services Committee, and with members of the committee appointed to assist the research, including John Bergquist, manager of the Department of Licenses and Consumer Services, Roger Montgomery of the Police Inspection Unit, and Mary Wahlstrand of the City Attorney's office. Numerous other city employees were generous with their time and helpful in their suggestions.

CHAPTER I
BARS AND CRIME

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Section A

General Relationship Between Bars and Crime

1. Introduction: The Research Question

The hypothesis investigated in this section is that bars are significantly associated with crime. This portion of the study examines the general association of bars to crime as well as the association of certain types of bars to crime, while controlling for neighborhood setting. The general hypothesis in this context can be reinterpreted as specific research questions:

- a. Are selected crimes distributed non-randomly in areas surrounding bars as a group? Do they cluster around bars?
- b. Do these distributions provide evidence of an association between types of bars and crime, i.e., do the crimes tend to cluster around the various types of bars?
- c. Do these observed distributions change when controls (factors other than bars or crimes) are taken into account?

2. Methodology

a. Variables and Data Sources

The major independent variable is all licensed alcohol-serving (on-sale) establishments in Minneapolis. This variable is measured by identifying the location (address) of each bar. The license categories established by the city -- beer, wine, or liquor bars, and Class A, B, or C entertainment -- are subdivisions of the independent variable and are considered separately in some analyses below. Bars are also classified into two categories according to the volume of food service business they do.

The data source for identifying bar locations was the records of the License Department of the City of Minneapolis. According to these

records, there were 203 liquor licenses, 21 wine licenses, and 143 beer licenses issued in 1979. Each of these businesses is also licensed for a certain entertainment level. The data source for classifying bars according to volume of food business were the observations of members of the License Department and the Minneapolis Police Department. 215 of the 367 licensed establishments could be classified in this way. The remaining 152 bars are dropped from any analysis based on food categories.

The dependent variable is the density of crime in areas surrounding the bars. The crimes that are measured for the analysis are street robbery and assault. These crimes are reasonable in that we might expect to find a relation between alcohol consumption and these personal crimes. No theory connecting crime and drinking in public places exists, but we have sufficient experience with the effects of alcohol on aggressive behavior to make the connection. In addition, bars serve as gathering places where outbursts of aggression have handy targets. Finally, neither observed relationships (as in the adult entertainment portion of this study, which shows a low overall relationship between bars and residential burglary, for example) nor logic argue for the inclusion of other crimes. One important candidate may be vandalism, but reported vandalism rates are so unreliable by present measurement techniques that it could not be included.

Crime counts were made at the address level using the offense report data automated through the Minneapolis Police Department's Integrated Criminal Apprehension Program (ICAP). These counts were aggregated into frequencies for each crime and for each area

surrounding a bar for a one-year period from May 1, 1979 to April 30, 1980. Assaults and street robberies were considered both separately and together in various analyses.

Finally, the analysis takes into account the type of neighborhood as a control variable. "Neighborhood" is here defined as a census tract, and it is measured by the percent of owner-occupied homes by tract. It was necessary to use the census tract as the unit of measurement for this variable because the address level data necessary to construct the exact distance decay areas was not available at an affordable price. Percent owner-occupied, taken from the 1970 census, is known to be highly related to other indicators of socio-economic status such as income, and in addition it is believed to indicate in some degree the important properties of stability and salience of neighborhood identity on the part of residents. The actual measure used is a Z-score, dividing the variable into three categories (low = $-.5$ standard deviations or less, medium = $-.5$ to $.5$, high = $.5$ or greater).

b. Unit of Analysis

The units of analysis are the areas around each bar, and the subdivisions of that area. These units of analysis are not existing civil divisions, like census tracts, but rather are created by specialized processing software which uses the address-level crime data provided by ICAP to first aggregate the data into uniform areas around each bar and then perform standard analyses on the densities of crimes found in these areas for each bar or group of bars. This technique is known as distance decay analysis.

Distance decay analysis determines the degree to which crime is uniformly distributed geographically about a particular site. Where crime is not uniformly distributed around a site but displays a pattern of being densely distributed near the site and gradually becoming less dense as distance from the site increases, then it may be the case that the site is associated with crime. There are three tests to determine whether a site is statistically associated with crime:

1. Is a distance decay curve present, that is, does the density of crime decrease as we move away from the site?
2. Is there a significant chi-square statistic demonstrating that the areas around sites vary from normal density?
3. Is there a significantly negative slope to the curve as measured by a signs test?

Only if all three tests are positive do we consider a site associated with crime. Thus, this study uses a conservative test in order to be confident that the relationship between crime and bars actually exists.

The sub-areas constructed around each bar by the distance decay software are six approximately concentric rings of 1/10 mile in width each, for a total area with a 6/10 mile radius.¹ The technique compares the proportion of the total crimes in each ring to the proportion of land area within each ring to get a measure of the density in crime in each concentric ring. These measures (six for each distance decay) are then tested by the three tests outlined above to see if the density of crime is non-random and if it is concentrated at the middle of the area (the "node") where the bar is.²

¹The technique is most easily described with concentric rings as the units of analysis. The actual unit of analysis used in this study was city-blocks.

²See Appendix A.1 for a further description of distance decay analysis.

3. Analysis and Findings

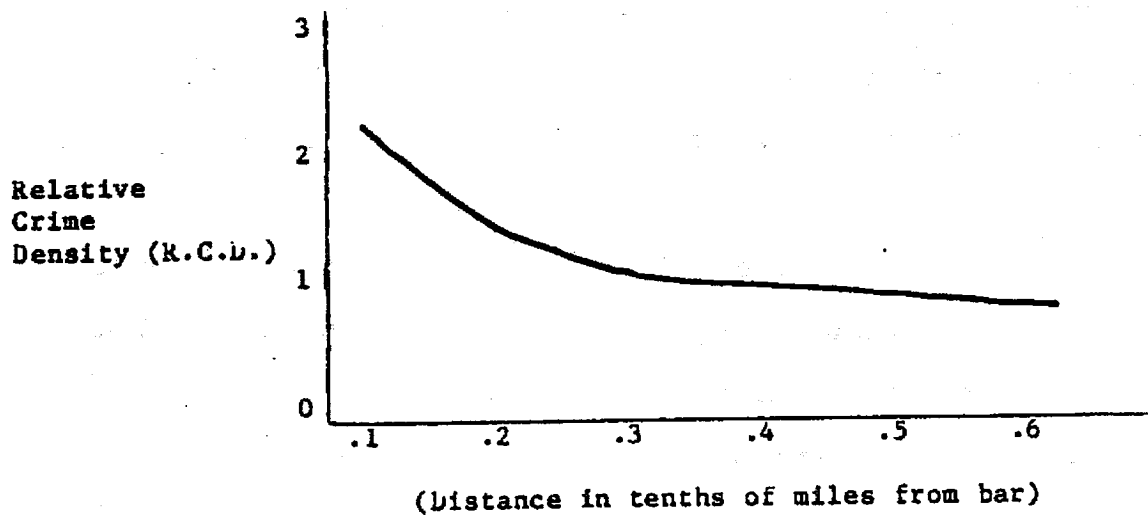
a. Are selected crimes distributed non-randomly in areas surrounding bars as a group? Do they cluster around bars?

This analysis looks at the general association between bars and selected types of crime. Separate distance decay analyses were performed on the 367 bars and a summary analysis was prepared for all bars. This was done for each of the crimes separately and for the two crimes combined.

The summary analysis of bars and assaults in Figure I.1 demonstrates a classic distance decay curve. As can be seen in Figure I.1, as distance from the bar increases the density of assaults decreases. Both the chi-square and the signs test are significant. As a group, bars in Minneapolis are significantly associated with assaults. This, of course, does not mean that every bar is associated with assault.

Figure I.1

Distribution of Assaults Around Bars

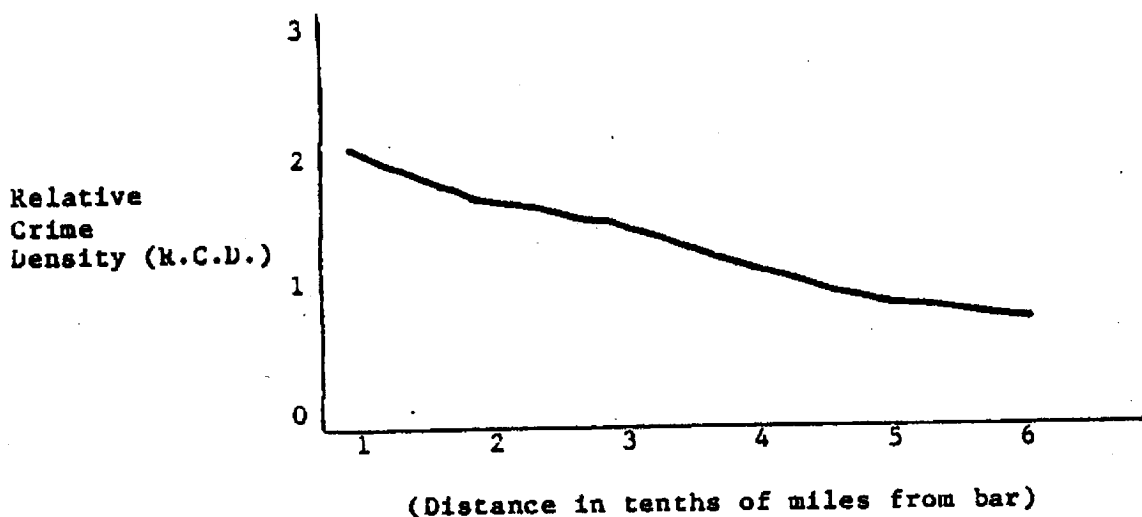


$\chi^2 = 2325.6$ Sig. .05 Slope negative .03

The association of Minneapolis bars and street robbery is demonstrated in Figure I.2. Once again, there is a fairly strong distance decay curve which indicates a concentration of street robbery around bars that decreases as distance from the bar increases. Both the chi-square and the signs are significant. In general, bars in Minneapolis are significantly associated with street robbery.

Figure I.2

Distribution of Street Robbery Around Bars

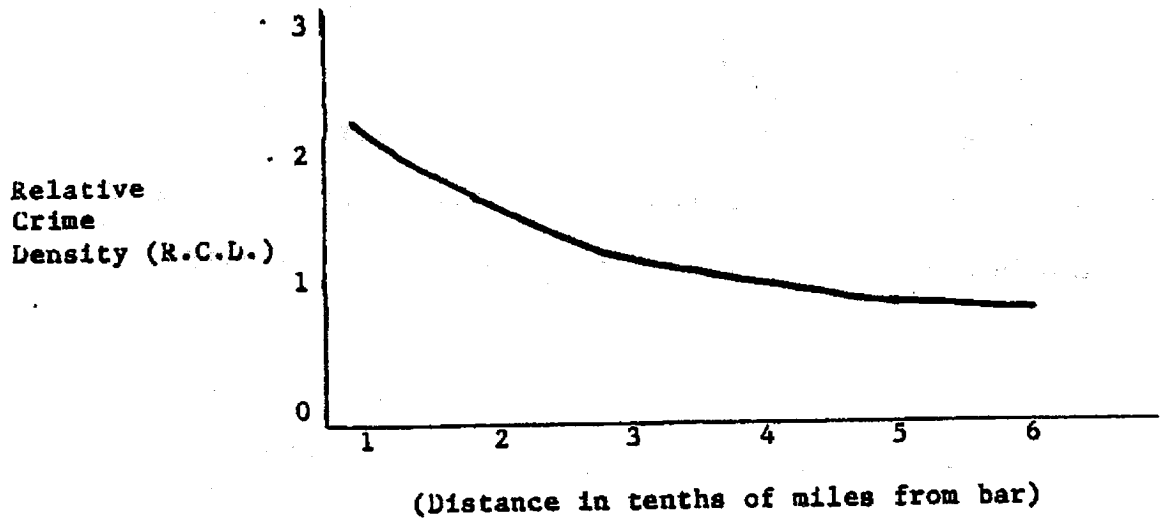


$\chi^2 = 1968.4$ sig. 05 Slope negative .03

Because bars are associated with both assaults and street robberies separately, we may expect that they will be associated with the two crimes combined. This is the case as presented in Figure I.3. Again, the chi-square and signs test are both significant. It is the case that bars are associated with the crimes of assault and street robbery both separately and combined.

Figure 1.3

Distribution of Assaults and Street Robbery Around Bars



$\chi^2 = 4122.0$ Sig .05 Slope negative .03

b. Do these distributions provide evidence of an association between types of bars and crime, i.e., do the crimes tend to cluster around the various types of bars? Do these observed distributions change when controls (factors other than bars) are taken into account?

Despite the relationship between bars and crime in general, it is quite possible that this relationship does not exist for some categories of bars but does hold for others.

Bars are licensed according to the type of alcohol allowed to be served. The city has three categories: liquor, beer (3.2), and wine. The level of entertainment allowed in a licensed establishment also is licensed by the city and is used to categorize bars. There are three classes of entertainment defined by license categories: "C" (juke boxes, machines, T.V.); "B" (single performer plus those permitted under "C"), and "A" (live bands, shows, dancing, plus those permitted under "B" and "C").

In addition, the city staff expressed interest in the effect of volume of food business on crime. The assumption to be tested is that bars with lower food volume have lower associations with crime than bars with greater food volume. The two categories of food volume are: high = greater than 50 percent food; low = less than 50 percent food volume. This section looks at bars and their association with crime in each of these three categorizations: alcohol, entertainment, and food.

Because many other studies on crime have found that the type of neighborhood has a great influence on crime, it was decided to add neighborhood type as a control variable. Therefore, the study analyzes the relationship of all bars with the selected crimes while controlling for the environment in which a bar exists.

(1) Bars by sub-type and crime

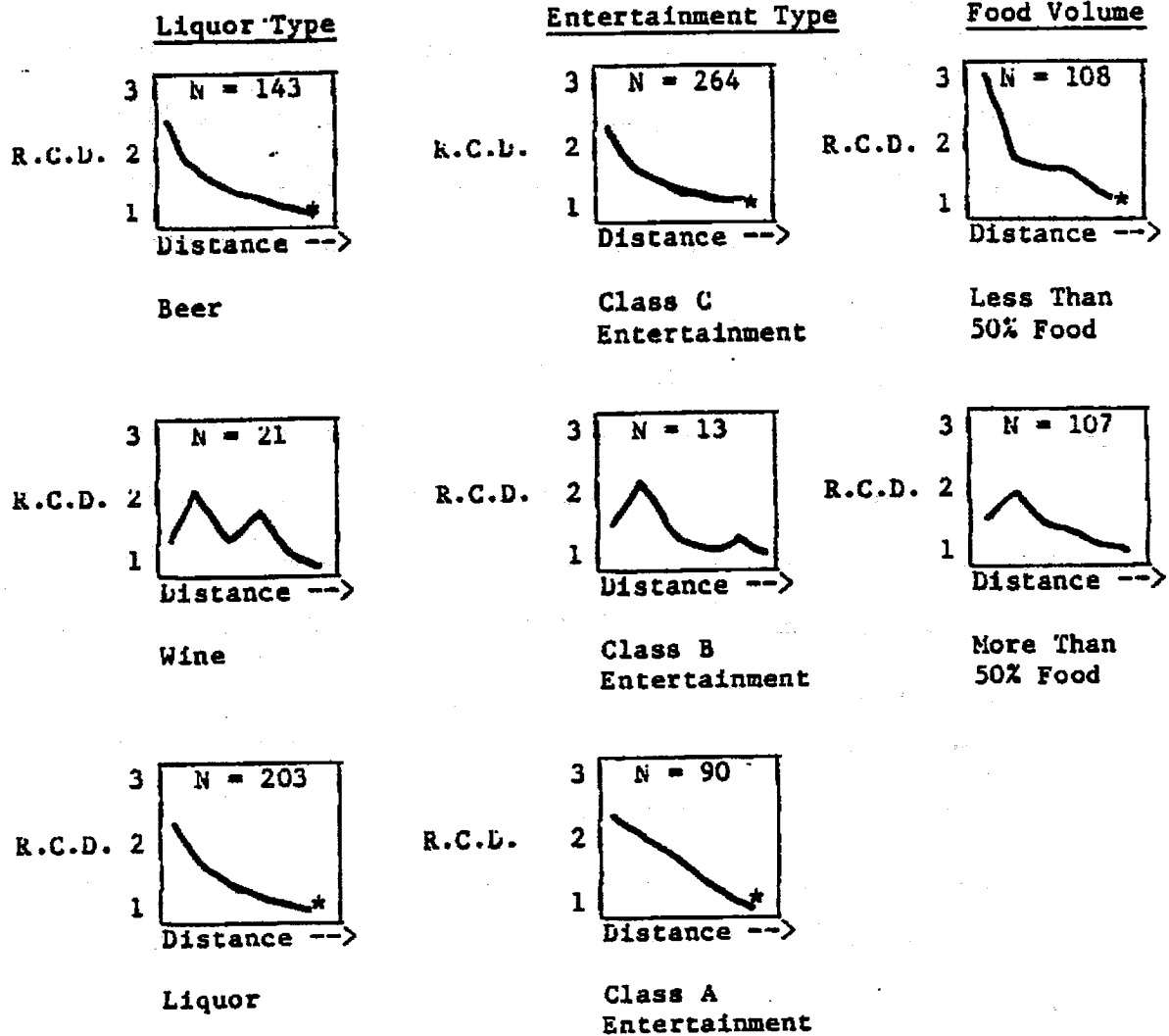
Summary distance decays were run for each of the six license categories of bars, plus two categories of food volume in the businesses, measuring the density of the combined crimes of assault and street robbery.¹ The results of these eight summary distance decays are reported in Figure 1.4.

Wine and Class B entertainment bars, and bars which have more than 50 percent of their total volume in food service do not show significant associations with the distribution of the selected crimes in the surrounding areas. All other categories do exhibit significant

¹Separate analyses for each crime were performed, but the results were similar and therefore the combined measure was used.

Figure I.4

Distribution of Crime Around Bars by Categories of Bars



*These distance decay curves are significant according to the three tests outlined in the text.

tendencies toward clustering around the bars as types.¹ In the cases of wine and Class B bars, these results may be due to the spatial

¹The results for wine and Class B bars may be questioned by some because of the small number of bars in those categories. However, the technique aggregates the number of crimes in surrounding areas to get a density measure, and it would be sensitive to low N if the number of crimes in a ring were small. In these cases, all rings in the aggregated measures count over several hundred crimes (some crimes are counted more than once), so the number is adequate.

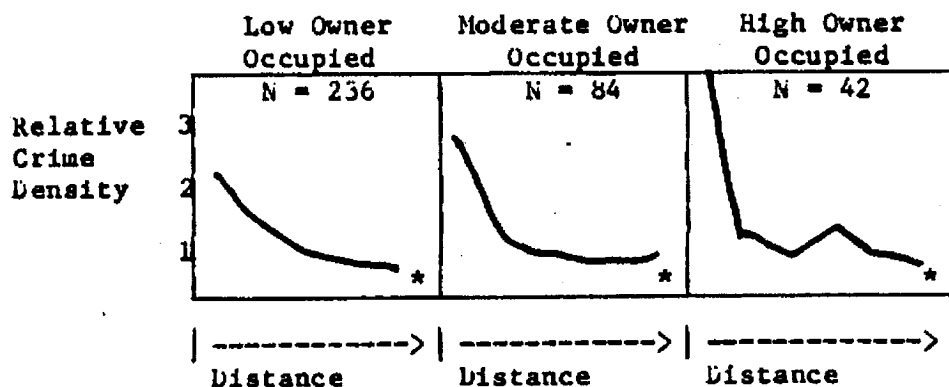
distribution of the bars in the city and the way the distance decay technique aggregates events within these distributions. Wine bars are also bars with high food volume which may in fact account for a lower crime association. Class B bar effects cannot be accounted for in any simple way by the kind of entertainment permitted since bars with both fewer (Class C) and more (Class A) entertainment options are significantly associated with crime.

(2) Crime around bars controlling for neighborhood type

Figure I.5 reports three summary distance decays for all bars within the three types of neighborhoods as identified by percent owner occupied housing.

Figure I.5

Distribution of Crime Around all Bars Within Types of Neighborhoods



*Indicates significant distance decay.

As Figure I.5 shows, the measured densities of the crimes of assault and street robbery are significantly associated with the location of bars in all three types of neighborhoods.

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This finding is especially interesting in the cases of the moderate and high owner-occupied neighborhoods where the possibly confounding impact of the downtown bars has been eliminated. The low owner-occupied cell contains all of the bars from the downtown area where few people own the homes they live in. This concentration of bars may exaggerate the impact of bars on crime because we know that:

- 1) assaults and street robberies are concentrated in highly commercialized areas, such as the Central Business District, which suggests that the observed relationship between bars and these crimes may be due to some characteristic of the commercial area other than bars, and
- 2) the aggregating technique used in the distance decay analysis overweights crimes around extreme clusters of bars, such as is found downtown.

however, these considerations are not present in higher owner-occupied neighborhoods, which tend to be lower crime areas and removed from concentrations of bars like that found in downtown. The fact that a greater density of crime around bars remains in these areas gives us somewhat more confidence that the finding of a relationship between bars and crime really exists. Concentrations of bars or the fact that bars are in commercial zones still could be confounding these results, but this is substantially less likely when the downtown bars are eliminated from the analysis.

4. Summary: General Relationship Between Bars and Crime¹

What is the general relationship between bars and crime? Does the relationship hold when other variables associated with crime are controlled?

a) An aggregate analysis of all 367 bars in Minneapolis shows that bars as a group are associated with the crimes of assault and street robbery.

b) This relationship between bars and the selected crime types remains when type of neighborhood (as measured by percent owner-occupied housing) is controlled.

c) Bars whose food volume accounts for over 50 percent of total volume, bars with wine licenses, and bars with Class B entertainment licenses are not associated with the crimes of assault and street robbery.

¹Additional distance decay results showing groups of bars cross-classified by type of license or food volume and type of neighborhood are provided in Appendix A. Those results support the ones reported here.

Section B

The Effect of Changing the Liquor Patrol Limits:
New Bars and Crime

1. Introduction: The Research Question

Liquor patrol limits have had a long and controversial history in Minneapolis. Initially established in 1887, the patrol limits restricted liquor licenses to be located within certain boundaries. The original liquor patrol boundaries were drawn closely around the central city so that Minneapolis Police Department foot patrolmen could reach the ends of the limits. (An indication that the presumed relationship between bars and crime is indeed an old idea.) There were several unsuccessful attempts during the 1950's to extend the patrol limit boundaries, with the issue ultimately bound up with the larger issue of the economic and physical redevelopment of the downtown area.¹ City voters finally approved a charter amendment to extend the patrol limit boundaries in 1959.²

The liquor patrol limits continued to be a political issue throughout the 1960's. In 1974, voters approved a charter amendment abolishing the liquor patrol limits altogether. The restriction that on-sale liquor establishments can be located only in seven-acre

¹Many groups argued that the narrow confines of the patrol limits would guarantee that another skid row would develop, similar to the one along Washington Avenue that was cleared in the 1950's and that resulted in many liquor licenses being forced to relocate. Therefore, one of the principal arguments was to extend the limits to permit a wider dispersal of the bars.

²The boundaries in effect after 1959 extended the patrol limits to Franklin on the south, Lyndale on the west, Broadway on the north and the Mississippi river on the east, along with a section in Northeast Minneapolis along University Avenue.

commercial zones remained in effect, however. As a result of Minneapolis' liquor licensing restrictions, major portions of the city remained without liquor bars until 1974 (with the exception of several "distressed" licenses issued outside of the limits).

One of the purposes of this study is to examine the effect on crime of the 1974 rescission of the liquor patrol limits. If bars are associated with higher incidences of certain kinds of crimes, as has been hypothesized, then one would expect to find significant increases of crime around those liquor bars established outside the old patrol limits.

2. Methodology

a. The Research Design

In order to answer the question about the effect on crime of the elimination of the liquor patrol limits, "before" and "after" analyses of the amount and distribution of the crime of assault were conducted. The logic of the design is illustrated below (Figure I.6).

Figure I.6

Before and After Research Design for Assessing
Impact of Abolishment of Liquor Patrol Limits

Before
(One year period,
July 1, 1974 -
June 30, 1975)

Amount (number) of
assaults within
six blocks of the
site

Distribution of
crime as indicated
by distance decay
analysis of
sites

Introduction of
a bar to the
site

Introduction of
a bar to the
site

After
(One year period,
May 1, 1979 -
April 30, 1980)

Amount (number) of
assaults within
six blocks of the
bar

Distribution of
crime as indicated
by distance decay
analysis of
sites

As indicated, the design looks at crime in areas outside the patrol limits before new liquor licenses were established and then compares it with crime after those liquor licenses have been in existence for a period of time. An area with a radius of six blocks around each new bar site was selected for the unit of analysis. This is the same unit as was used to examine the general relationship between bars and crime. If those liquor licenses granted after 1974 have an effect upon crime, it would be expected that the amount or distribution of crime (or both) around those sites would change between the two time periods.

b. The Data

Bars located outside the old liquor patrol limits were identified by mapping the 1980 liquor licenses and identifying bars located outside the boundaries in effect in 1974. The City License staff then provided the dates on which licenses were granted for these locations. A total of twenty-three bars were identified that met the following criteria: 1) had been granted licenses at locations outside the patrol limits after the 1974 change, and 2) existed before the 1979 data collection period. A list of these bars can be found in Appendix A.

The crime variable used in this analysis was number of assaults reported to the Police Department.¹ As suggested previously, the

¹The general relationship between bars and crime was explored using data on assaults and street robberies. The same definition of the dependent variable, crime, would have been used for this analysis except that address-level data on street robbery was unavailable for the 1974-75 period. But, as the previous analysis indicates, both assaults and street robberies show similar patterns.

hypothesized relationship between bars and the crime of assault is supported on logical grounds. The data on assaults comes from two sources. For the "before" period, crime data for July 1, 1974 through June 30, 1975 was taken from the Crime in Minneapolis study in which address-level crime data was coded from police offense reports.¹ The Minneapolis Police Department's ICAP (Integrated Criminal Apprehension Program) system provided data for the "after" time period of May 1, 1979 through April 30, 1980.

c. The Analysis

In order to test the hypothesis that on-sale liquor licenses granted outside the old patrol limits are associated with a disproportionate increase in crime, both the number of assaults and the distribution of assaults within the six-block radius area of each of the 23 new liquor license sites were analyzed for the two time periods. Distance decay analyses were performed to analyze the distribution of crimes in the areas around each of the sites. For a complete discussion of the distance decay technique, see Appendix A. If the distribution of crime around the sites changed significantly during the five-year period, one would expect to find a random distribution of assaults in 1974-75 (as indicated by the distance decay curve) and a non-random distribution (i.e., a significant chi-square and negative slope in the distance decay curve) for the 1979-80 data.

3. Analysis and Findings

a. Amount of Crime

The results of the comparative analysis (1974-75 to 1979-80) of the number of assaults in the immediate vicinity of the 23 liquor

¹D. Frisbie, et al., Crime in Minneapolis, Minneapolis: Minnesota Crime Prevention Center, Inc., 1977.

licenses granted outside the old patrol limits does not show an unexpected increase. That is, on the average, assaults in the areas surrounding these sites did not increase at a greater rate than for the city as a whole. These results are presented in Table I.1. In general it cannot be said that the introduction of bars into new areas of the city resulted in an increase in the amount of crime (assaults) in those neighborhoods, although this was true for some particular bars.

Table I.1

Comparison of the Number of Assaults, 1974-75 to 1979-80

	1974-75	1979-80	Percent Change
Areas surrounding the 23 new liquor license sites	2,124*	2,384*	+12%
Minneapolis city-wide totals	4,156	5,614	+35%
<p>*Note that the crime counts in the cells for the 1974-75 and 1979-80 new liquor licenses are not actual crime counts for those areas, but reflect the aggregating procedure used by the distance decay technique. The percent change for the new licenses can be compared to the percent change for the city as a whole. The temporal change within a row is also a valid comparison, as the areas are the same at both times.</p>			

b. Distribution of Crime

Comparative analysis of the distribution of assaults within the six-block radius area surrounding the 23 new liquor license sites suggests an apparent tendency toward a greater concentration of assaults in the immediate one-block area where the bars are located. As Table I.2 illustrates, in 1974-75 none of the sites had significant distance decay curves (defined in terms of a significant chi-square

and a significant negative slope). In other words, the assaults did not cluster around the sites, but were more randomly distributed throughout the area. In 1979-80, however, six of these sites had significant distance decay curves, and an additional seven sites showed an increased concentration of assaults within the block of the bar although the increases were not sufficient to achieve significance.

Table I.2

Comparison of Distance Decay Analyses of New
Liquor License Sites, 1974-75 to 1979-80

	1974-75	1979-80
Number of Significant* Distance Decay Curve Analyses for the 23 sites	0	6
*Significant chi-square at .05 level and significant negative slope.		

Table I.3 provides additional confirmation of a greater concentration of assaults within the immediate block where new liquor licenses are located. As this Table suggests, while the increase in assaults for the six-block areas where the 23 new licenses are located (12 percent) was less than the city-wide average (35 percent), the percent increase in assaults within one block of the bar sites was considerably higher (69 percent).

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1080 1080
2-1085

Table I.3

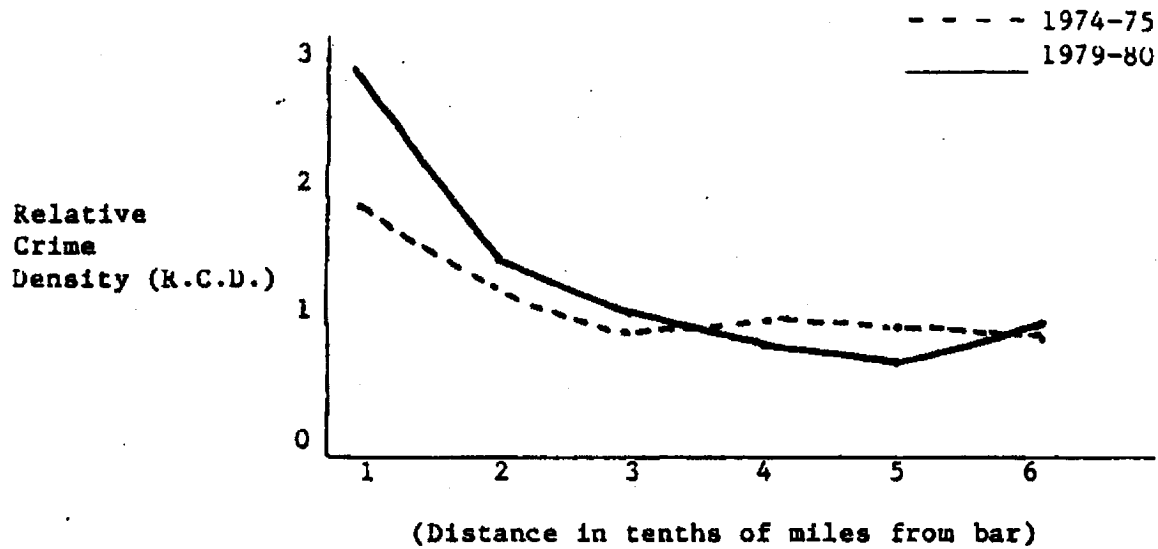
Change in the Distribution of Assaults Around
New Liquor License Sites, 1974-75 to 1979-80

	1974-75	1979-80	Percent Change
Number of assaults within one block area of the 23 new liquor license sites*	110	186	+69%
Number of assaults within six-block radius area of the 23 new liquor license sites*	2,124	2,384	+12%
Minneapolis city-wide totals	4,156	5,614	+35%
<p>*Note that the crime counts in the cells for the 1974-75 and 1979-80 new liquor licenses are not actual crime counts for those areas, but reflect the aggregating procedure used by the distance decay technique. The percent change for the new licenses can be compared to the percent change for the city as a whole. The temporal changes within rows are valid as the areas are the same at both times.</p>			

Finally, a comparison of the summary distance decay curve for the 23 sites in 1974-75 to the summary curve for those same sites with liquor licenses in 1979-80 shows that the concentration of assaults within the first .1 mile band has increased significantly. The relative crime density for the first .1 mile band has increased from 1.86 in 1974-75 to 2.81 in 1979-80. This comparison is illustrated in Table I.4.

Table 1.4

Comparison of Summary Distance Decay Curves
1974-75 to 1979-80



The χ^2 for both curves is significant at .001 level;
both curves have significant negative slopes

From these results we may conclude that although there was some change in the amount and distribution of crime around some of the bar sites, in general the introduction of bars in areas outside the liquor patrol limits has not had the effect of increasing the amount of crime in the neighborhoods around these sites. However, there was a fairly uniform effect of increasing the concentration of assaults within one block of the bar sites. This indicates that bars may have an affect on crime, but the area is geographically limited to the immediate surrounding area. It may be that groupings of bars (concentrations) have a wider range effect on distribution of crime, but we were unable to test this hypothesis given the limited number of such concentrations among the new licenses issued.

4. Summary Findings

What is the effect on crime of the 1974 rescission of the liquor patrol limits?

a. Twenty-three liquor licenses were granted outside the old liquor patrol limits between 1974 and 1979. An analysis of the numbers of assaults in the areas surrounding these sites shows that, on the average, assaults did not increase at a greater rate than for the city as a whole.

b. In general, there was an increased concentration of assaults within one block of the bar sites where liquor licenses were granted outside the patrol limits.

Section C

Characteristics of "Nuisance" Bars

1. Introduction: The Research Question

There are a number of bars in Minneapolis that generate "nuisances" and crime-related problems for the citizens of the city. These nuisances are in the form of relatively minor crimes such as vandalism, noise, litter, and discomfort of local residents. Yet, nuisance situations often are more obvious to citizens and cause them more concern and worry than serious crimes, such as assault and robbery. Although this was not part of the contract, several city officials expressed interest in knowing whether bars which generate nuisance situations differ systematically from bars which do not generate nuisances. If there are systematic differences between nuisance bars and non-nuisance bars, are these differences controllable through licensing restrictions? A third purpose of this portion of the study was added: to conduct some preliminary and exploratory analyses of the characteristics of nuisance-generating bars.

2. Methodology

a. The Research Design

Members of the City staff and the City Council suggested a number of factors that could be important in explaining why some bars generate nuisance situations and others do not. The factors suggested included: 1) the volume of food business, 2) proximity to a primarily residential area, 3) the type and availability of parking,¹ 4) the

¹City staff and Council members expressed concern that bars that do not have off-street parking can create nuisances. It is assumed that customers parking in front of houses and in front of other businesses create conflict situations which result in disturbances and nuisances.

type of entertainment,¹ 5) the type of liquor license, 6) the type of clientele, and 7) bar management practices. The data on the first six of these characteristics was collected through on-site observational visits to a sample of 40 Minneapolis bars.²

The research design is based on comparing two samples of bars, 20 bars identified as generating nuisances and 20 non-nuisance bars, on the six characteristics identified above. Although nuisances often result in calls-for-service to the police, at present the Minneapolis Police Department does not have an automated record keeping system for these calls that provides easy access to this data. Because the city has tens of thousands of calls each year, a study of all bars and their relationship to nuisances was outside the scope of this study. Instead a sample of bars believed to generate nuisances and a sample of bars that do not were selected for the comparative analysis.

A chi-square statistic was used to determine if there was a statistically significant difference between the two samples of bars on the characteristics.

Members of the Minneapolis City Council were asked to identify bars in their wards which generate complaints to their offices as well as to identify "exemplary" bars. Members of the Police License Inspection Unit were asked to identify bars in these two categories as well. From these nominations, 20 bars from each type of bar (nuisance and non-nuisance) were selected from their nominations. A list of

¹Entertainment at a bar has been cited as a potential source of nuisances because of the number and type of people it attracts.

²Given the observational method selected and the relatively short time spent at each bar, we were unable to collect data on the variable of management practices.

the 40 bars included in the two samples can be found in Appendix A. On-site observations using a structured data collection instrument were made at the 40 bars by MCPC, Inc. staff. A copy of the data collection instrument used is also included in Appendix A.

b. Definition of the Variables and Data Sources

(1) Volume of food. The 40 bars were categorized according to whether their food business constituted over 50 percent of their gross business sales. Most of this data came from the Police Inspection Unit with supportive data from on-site observation.

(2) Proximity to residential neighborhood. The bars were categorized according to their proximity to residential areas using the following classifications: 1) within a block, 2) between one and two blocks, and 3) greater than two blocks distance. The data was collected by on-site observation.

(3) Type and availability of parking. The sampled bars were categorized according to the type of parking available for their customers: 1) street parking only, 2) metered street parking, 3) other parking lots available in the vicinity, and 4) the bar provides its own adequate-sized parking lot. The data was collected through on-site observation and inspection.

(4) Type of entertainment. The 40 bars were categorized two different ways according to type of entertainment. The first category consists of the types of entertainment license issued to bars by the City's Licensing Department: Class C, Class B, Class A (see p. 10 above for a discussion of these classifications). The second category is the type of entertainment actually present (as opposed to that for which they were licensed), based upon the on-site observations. The

categories used were the following: 1) none, 2) single performer, and 3) band (and/or major disco-type sound system).

(5) Type of liquor license. The City issues liquor licenses based upon the type of alcohol which can be served. There are three classifications: 1) beer (3.2 alcoholic content), 2) wine, and 3) liquor. There are very few wine licenses in Minneapolis and neither of our samples included any bars with wine licenses, so for this portion of the study the two remaining types of alcohol were used: 1) beer, and 2) liquor.

(6) Type of clientele. The city has little direct control over the type of clientele a bar attracts; thus, this aspect of bars is not directly affected by city policies. Although the analysis of clientele may be interesting, the value to policy makers may be quite limited.

The factors describing clientele included age, class, residence and social pattern. Information about these variables was collected by on-site observation and was analyzed. As might be imagined, the measurements on this set of variables were subject to considerable error. Since only one visit was made to each bar, and the measurements were taken according to the judgments of one observer, the results obtained were considered to be too unreliable. Therefore, they are not included in this report.

(7) Game rooms. Although information on game rooms was not a part of the original data collection instrument, this information was collected. The criteria used to classify bars on whether or not they had a game room was: 1) the games constituted a clearly defined

area of the establishment, and 2) the games were an important attraction for the bar. Bars with one or two machines were not classified as having a game room.

3. Analysis and Findings

a. Volume of Food

The data on the relationship between volume of food and type of bar (nuisance or non-nuisance) is presented in Table I.5.

Table I.5

Relationship of Volume of Food Business to Type of Bar

	Less Than 50% Food	More Than 50% Food
Nuisance Bars	69% (20)	0% (0)
Non-Nuisance Bars	31% (9)	100% (11)
Total	100% (29)	100% (11)

$$x^2 = 15.172 \text{ 1df}$$

$$\text{sig. } .001$$

As this Table indicates, none of the bars with over 50 percent food business were nuisance bars, while the majority of the bars with low food volume tended to be nuisance bars. This difference is statistically significant. It suggests that if a bar does a large volume of food business it is less likely to generate nuisances than if it does a small volume of food business.

b. Proximity to Residential Neighborhood

Table I.6 shows the results of the analysis for the relationship between proximity to residential neighborhood and type of bar.

Table I.6

Relationship of "Proximity-to-Neighborhood" and Type of bar

	Within 1 block	1-2 blocks	2 or more
Nuisance Bars	63% (10)	22% (2)	53% (8)
Non-Nuisance Bars	37% (6)	78% (7)	47% (7)
Total	100% (16)	100% (9)	100% (15)

$$x^2 = 3.844 \quad 2df$$

$$sig. .15$$

The results are more ambiguous than was the case for volume of food. Although there is a tendency for bars closer to residential areas to be nuisance bars, this result is not statistically significant at a level which justifies reaching general conclusions.

c. Type and Availability of Parking

The results of the analysis of the relationship between the type of parking available and type of bar are shown in Table I.7.

Table I.7

Relationship Between Type of Parking Available and Type of Bar

	Street	Meter	Other Lot	Own lot
Nuisance Bars	69% (9)	33% (1)	71% (5)	29% (5)
Non-Nuisance Bars	31% (4)	67% (2)	29% (2)	71% (12)
Total	100% (13)	100% (3)	100% (7)	100% (17)

$$x^2 = 6.424 \quad 3df$$

$$sig. .10$$

These results are ambiguous, but the tendency exists for nuisance bars to rely on street parking, while non-nuisance bars tend to have their own lots. These results are significant at the .10 level.

To carry the analysis further, a comparison was made between bars that have their own lot available and those that do not (i.e., they rely on all other types of parking). This involved combining the first three categories. The results of this comparison are clearer and statistically significant. Table I.8 indicates that bars without their own lots are much more likely to be nuisance bars, while bars with their own parking lots are less likely to be associated with nuisances.

Table I.8

Relationship Between Ownership of Parking Lot and Type of Bar

	Other Parking Facilities		Bar Owns Lot	
Nuisance Bars	65%	(15)	29%	(5)
Non-Nuisance Bars	35%	(8)	71%	(12)
Total	100%	(23)	100%	(17)

$\chi^2 = 5.013$ 1df
sig. .05

d. Type of Entertainment

Using the first definition of this variable, type of entertainment license issued by the City, the results in Table I.9 are obtained.

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2-1095

Table I.9

Relationship Between Type of Entertainment License and Type of Bar

	C	B	A
Nuisance Bars	53% (10)	33% (1)	50% (9)
Non-Nuisance Bars	47% (9)	67% (2)	50% (9)
Total	100% (19)	100% (3)	100% (18)

$\chi^2 = .386$ 2df
no sig.

As this table indicates, there is not a significant relationship between the type of entertainment license a bar has and whether or not it is a nuisance bar.

When the alternative entertainment classification scheme (observed type of entertainment) is used, the results are slightly different. These results appear in Table I.10.

Table I.10.

Relationship Between Observed Type of Entertainment and Type of Bar

	None	Single	Band
Nuisance Bars	44% (12)	25% (1)	78% (7)
Non-Nuisance Bars	56% (15)	75% (3)	22% (2)
Total	100% (27)	100% (4)	100% (9)

$\chi^2 = 4.111$ 2df
sig. .112

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2-1096

This data shows some tendency for the bars with higher levels of entertainment to be associated with nuisance bars, but this is not a statistically significant finding.

e. Type of Liquor License

Table I.11 contains the data on this variable and its association with whether or not a bar is nuisance-generating.

Table I.11

Relationship Between Type of Alcohol and License and Type of Bar

	Beer		Liquor	
Nuisance Bars	33%	(2)	53%	(18)
Non-Nuisance Bars	67%	(4)	47%	(16)
Total	100%	(6)	100%	(34)

$\chi^2 = .784$ 1df
no sig.

According to these results from the sample of bars, the type of liquor license a bar has is not related to whether or not it generates nuisances. bars with one type of alcohol license are not more likely to be nuisance bars than bars with another type of license.¹

f. Game Rooms

Table I.12 shows that the relationship between game rooms and type of bar is significant. Bars with game rooms are more likely to generate nuisances than bars that do not have game rooms.

¹The sampling procedure makes this result dubious since the city-wide distribution of beer licenses versus liquor licenses is 143 versus 203, quite different proportions than 6 versus 34.

Table 1.12

Relationship Between Game Rooms and Type of Bar

	No Game Room		Game Room	
Nuisance Bars	32%	(8)	80%	(12)
Non-Nuisance Bars	68%	(17)	20%	(3)
Total	100%	(25)	100%	(15)

$\chi^2 = 8.640$ 1df
sig. .01

4. Summary of Findings

Are there any systematic, significant differences in the characteristics of bars which generate crime-related nuisances when compared to bars that do not generate nuisance complaints?

- a. Bars which do less than 50 percent volume of business in food tend to be nuisance bars.
- b. There is no statistically significant relationship between a bar's proximity to a residential neighborhood and whether or not it is a nuisance bar.
- c. Bars which do not have their own parking lots tend to be nuisance bars.
- d. Bars with a higher level of entertainment (e.g., bands) tend to be nuisance bars, but the finding is not statistically significant.
- e. There is no relationship between the type of liquor license a bar has and whether or not it is a nuisance bar.
- f. Nuisance bars are more likely to have game rooms than are non-nuisance bars.

CHAPTER II

ADULT ENTERTAINMENT ESTABLISHMENTS AND
NEIGHBORHOOD DETERIORATION

Introduction

The general purpose of this section is to examine the impact of adult entertainment establishments on neighborhood quality. The study is empirical, and uses statistical techniques to examine the relationships between concentrations of adult entertainment establishments and measures of neighborhood quality. On the basis of this analysis of data, inferences about whether adult entertainment establishments are associated with neighborhood decline and whether the establishments follow or precede neighborhood decline can be made.

The concerns represented here are neither unique to Minneapolis¹ nor new to the city.² There is widespread recognition of the importance of the use of city policy to encourage healthy, viable neighborhoods, and there is a suspicion that adult entertainment businesses -- bars, saunas, adult bookstores, and the like -- may be undesirable in such neighborhoods.

Two fairly common measures of neighborhood quality are used in this report: the crime rate, and a measure of housing value. While neither of these measures is perfect, each of them embodies real concerns of residents of the city. These measures consistently reflect our intuitive ideas of a "good" neighborhood; that is, relatively high quality housing (as reflected in housing value) and low crime rates are better than low quality housing and high crime.

¹See, for example, City of Los Angeles, "Study of the Effects of the Concentration of Adult Entertainment Establishments in the City of Los Angeles" (Los Angeles: Department of City Planning, 1977).

²For a number of years the city has attempted various approaches to controlling the effects of adult entertainment. The liquor patrol limits, zoning regulations, licensing of saunas, and so forth, are all part of this effort.

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.¹ 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 vs. American Mini Theaters, Inc.*,² 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-sale 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

¹*Village of Euclid V. Ambler Realty Co.*, 272 U.S. 365, cited in Fredric A. Strom, Zoning Control of Sex Businesses (New York: Clark Boardman Co., Ltd., 1977), p. 21

²427 U.S. 50

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2-1102

response to the problem of neighborhood decline based on the testimony and evidence of expert witnesses.¹

The conditions laid down in *Young vs. 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 establishments 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).²

¹Ibid.

²Licensing of certain sexually oriented businesses, e.g., saunas and rap parlors, has proved difficult since the licensing can be avoided simply by changing the ostensible purpose of the business. Also, several past attempts to use license violations to revoke licenses have been challenged successfully in court.

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 precede 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 answering them.¹

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 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

¹Methodological issues and discussion of the choices of techniques are contained in Appenax B.1.

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.

2. Variables and Data Sources

Numerous data sources were used to obtain measures of the many variables used in this study.¹ 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

¹Appendix B.2 contains a complete list of variable names and their descriptions and/or measurement.

beer. We will refer to these simply as beer, wine, or liquor. Wine 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 I, 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 II.I shows the numbers of bars in each category for 1970 and 1979, excluding the downtown tracts.¹

Table II.1: Number of Bars by Category, 1970 and 1979²

	1970			1979		
	Class A	Class B	Class C	Class A	Class B	Class C
beer	10	3	175	5	2	128
Wine*	0	0	0	1	0	17
Liquor	28	3	58	47	3	62
Total	38	6	233	53	5	207

*"Wine" was not a license category in 1970.

¹Downtown tracts 45, 46.01, 46.02, 44, 47, 53, and 54 were eliminated from most analysis because they are not, properly speaking, residential areas. There are numerous households in the area, but the predominance of commercial and other non-residential uses, combined with the high concentration of adult businesses, distorts the analysis performed here. See Tables II.7 and II.8 for some results including downtown.

²Counts here differ from those in the previous section because downtown tracts are excluded. The 1979 citywide total, including downtown is 367. In this study, the total is 265.

(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 II.2 provides counts of these businesses for 1970 and 1979, again omitting downtown.

Table II.2: Number of Sexually-Oriented Businesses by Category, 1970 and 1979

	<u>1970</u>	<u>1979</u>
Saunas, etc.*	11	14
Adult bookstores	UNK	7
Adult theaters	1	6
Bars with sexually-oriented entertainment	UNK	5

*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.¹

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.

¹Douglas W. Frisbie, et al, Crime in Minneapolis, Minneapolis: Minnesota Crime Prevention Center, Inc., 1977.

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.

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(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.¹

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.

¹Programming and tape creation for PMS data were performed by the City's Management Information Service.

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.¹ The simple correlation coefficients confirm these expectations.

Table II.3: Pearson Correlation Coefficients: Adult Entertainment Establishments and Measures of Neighborhood Quality, 1979

	Mean Housing Value 1979	Crime Rate Index, 1979-80
All adult businesses	-.1320	.1926*
Sexually-oriented businesses	-.1533*	.2440*
Alcohol-serving businesses	-.1208	.1380
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 II.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 bars show relatively strong relationships with both housing value and the crime rate in the expected directions.² The

¹See Minnesota Crime Prevention Center, "Neighborhood Deterioration and the Location of Adult Entertainment Establishments in St. Paul," Minneapolis: MCPC, Inc., 1978.

²See Appendix B.1 for a breakdown of the crime rate into four of its component crimes and their associations with adult establishments.

relationship between the location 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 II.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.¹ 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.² 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. Most 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. Complex Relationships

- Do the observed relationships change after controlling for the impacts of other variables known to be associated with neighborhood quality?

¹Members of the Police Department and the Licensing staff supplied the list of licensed establishments that are primarily in food service.

²See Appendix b.1 for a presentation and discussion of these results.

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 the effects of other variables.

a. Partial Correlation

Table II.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 II.4 show the effects of controlling for food business on the relationships between adult entertainment business types and the neighborhood deterioration measures.¹ 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

¹Sexually-oriented establishments and all adult business partial correlations are not reported in this case because there is no indication that sexually oriented businesses serve food.

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 II.4: Partial Correlation Coefficients:
Adult Entertainment Establishments
and Neighborhood Quality, 1979

	Simple Correlations		Partial Control for food		Partial Control for Percent Commercial		Partial Control for Mean 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*	.0879
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*	-.0856	-.0560	.0303	-.1066

*Significant at the .05 level or better.

The controls for commercial area (the fifth and sixth columns in Table II.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.

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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.¹

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

¹See Appendix B.1: information in Tables 7 and 8 in Appendix B.1 also suggests that the relationship of sex businesses to crime is due to the type of area these businesses are in. Specifically, sex businesses are significantly related to commercial vacancies. They are also highly related to commercial crime even though they are not, at the tract level, associated with high commercial concentrations.

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 Entertainment Establishments and Crime¹

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,

¹See Appendix B.1 for a description of the methods used in this portion of the analysis, and for some further results. Unless otherwise noted, the regressions do not include downtown census tracts.

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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 II.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 II.5: Multiple Regression: Adult Entertainment Establishments and Crime, 1979, with Controls

	Regression #1: Control variables and crime.				Regression #2: Controls plus all adult businesses and crime.				Regression #3: Controls plus all adult businesses and crime, including downtown.			
	.b	error of b	sig.	beta	.b	error of b	sig.	beta	.b	error of b	sig.	beta
Control Variables												
% serving food	-28.20	10.81	.010	-.191	-26.42	10.99	.018	-.1787	-76.23	58.09	.192	-.1022
% of area units commercial	.6556	.2966	.029	.268	.7057	.3020	.021	.2242	5.850	.9756	.000	.6745
Mean income	-.00638	-.00114	0-	-.513	-.0066	.0012	.000	-.5315	.0076	.0054	.165	.1251
Independent Variables												
All adult Sexually-oriented Bars					-.8835	.9669	.363	-.0735	.3936	3.201	.903	.0121
Beer												
Wine												
Liquor												
Class A												
Class B												
Class C												
Summary Statistics												
R		.658				.661				.594		
R ²		.433				.437				.353		
Significance		0-				.000				.000		

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Table 11.5 Continued: Multiple Regression: Adult Entertainment Establishm

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		Regression #4: Controls plus sexually-oriented businesses and crime.				Regression #5: Controls pl bars and crime.			
		.b	error of b	sig.	beta	.b	error of b	sig.	be
Control Variables	% serving food	-26.51	10.65	.014	-.1794	-24.85	10.98	.026	-.1
	% of area units commercial	.6365	.2917	.031	.2023	.7388	.3002	.015	.23
	Mean income	-.0062	.0011	.000	-.4963	-.0067	.0015	.000	-.5
Independent Variables	All adult Sexually-oriented Bars	9.151	4.080	.027	.1564	-1.517	1.008	.135	-.1
	Beer								
	Wine								
	Liquor								
	Class A								
	Class B								
	Class C								
Summary Statistics	R			.676				.666	
	R ²			.457				.444	
	Significance			.000				.000	

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.¹ These coefficients are about the same size and have the same signs in all the regressions in Table II.5 except for number 3, which includes downtown tracts.² This indicates 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 II.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

¹In part, this is an artifact of the data: the crime index is defined to include commercial crimes which happen only in commercial areas, by definition. However, redefining the index to exclude commercial crimes does not change the regressions very much overall. And the greater changes in the commercial variables represent an important loss of information.

²The inclusion of the downtown tracts shows the way these tracts change the relationships among the variables.

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.¹

Liquor bars and Class A entertainment bars are also significantly related to crime, but not in 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 in 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

¹The citywide average crime rate index by tract is approximately 48.62.

greatly affected by their surroundings. In other words, the environment of the bar produces the conditions that spawn crime, not the bar itself.¹ 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 II.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 related to housing value is the wine bar.² 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

¹This interpretation is also supported by the partial correlations. The food control, as discussed, produced relations in the expected direction. However, the residential and commercial environmental controls changed the relations between these types of bars and crime from weakly positive to significantly negative.

²The inclusion of downtown tracts, as usual, changes these values. The adult businesses then become significantly related to housing value. See regression #3 in Table II.6.

Table II.6: Multiple Regression: Adult Entertainment Establishments and Housing Values, 1979

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	Regression #1: Control only, with housing value.				Regression #2: Controls plus all adult businesses and housing value.				Regression #3: Controls plus all adult housing values: includes downtown.			
	.b	error of b	sig.	beta	.b	error of b	sig.	beta	.b	error of b	sig.	beta
Control Variables												
% serving food	36123.35	4438.19	0	.5449	36985.71	4507.3	.000	.5579	38683.7	4464.3	.000	.5386
% of area units commercial	77.63	121.79	.525	.0550	101.99	123.80	.412	.0723	-237.73	74.96	.002	-.2846
Mean income	3.199	.466	0	.574	3.090	.4769	.000	.5546	2.333	.4186	.000	.3981
Independent Variables												
All adult					-425.76	396.43	.285	-.0789	-648.93	246.59	.010	-.2074
Sexually-oriented												
Bars												
Beer												
Wine												
Liquor												
Class A												
Class B												
Class C												
Summary Statistics												
R			.724				.728				.768	
R ²			.525				.529				.588	
Significance			-0-				.000				.000	

Table II.6 Continued: Multiple Regression: Adult Entertainment Estai

		Regression #4: Controls, including crime index, plus adult, and housing value.				Regression #5: Controls sexually-oriented busines and housing value.		
		.b	error of b	sig.	beta	.b	error of b	sig.
Control Variables	% serving food	33611.6	4409.59	.000	.5070	35823.3	4451.0	.000
	% of area units commercial	192.13	120.96	.115	.1361	80.94	121.88	.508
	Mean income	2.247	.5155	.000	.4033	3.162	.4682	.000
	Crime Index	-127.73	36.65	.001	-.2848			
Independent Variables	All adult	-538.62	379.74	.159	-.0998			
	Sexually-oriented					-1627.88	1704.80	.342
	Bars							
	Beer							
	Wine							
	Liquor							
	Class A							
Class B								
Class C								
Summary Statistics	R		.758				.727	
	R ²		.575				.528	
	Significance		-0-				.000	

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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.

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.¹ 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 that the causal relations assumed are correct.

¹See Appendix B.1 for further discussion.

The major technique used here to assess causality is path analysis.¹ 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.² These summary variables are used as controls. In the analysis presented here, only the 1979 factor scores are considered.

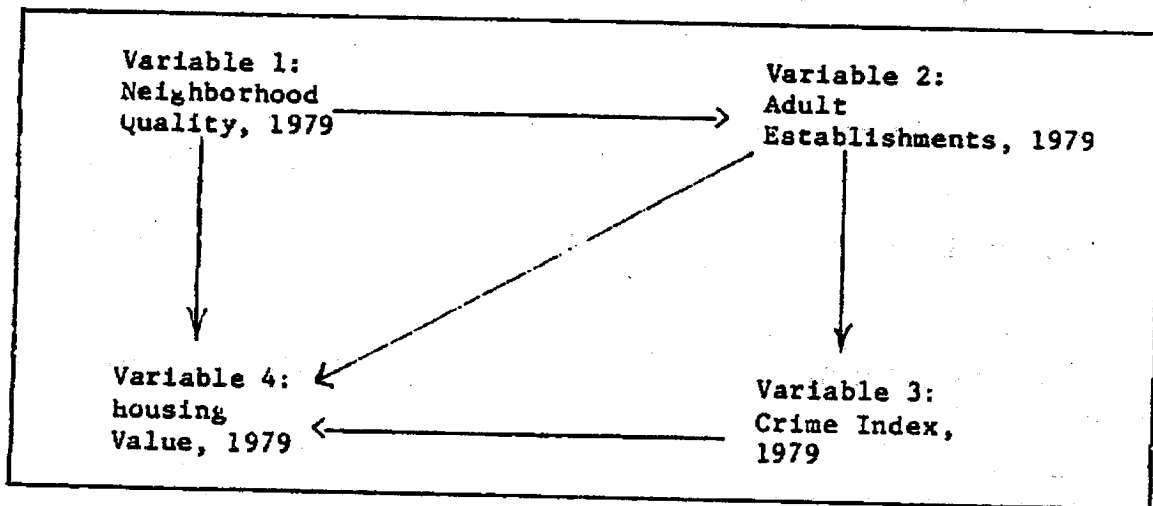
The central hypothesis tested is that adult entertainment establishments have a direct causal impact on neighborhood quality measures, but that they also follow from neighborhood quality. That is, these businesses are in a cycle where they are more likely to locate in areas where there is already some deterioration, and then contribute to further decline of the area. This hypothesis is consistent with both our intuitive notions about the matter, and with

¹See Appendix B.1. (Section D, p. B-11) for further discussion of the technique.

²These summary variables were created from a set of 12 variables describing the residential and commercial characteristics of neighborhoods, including density, stability of residents, percent owner occupied, commercial vacancies, and so forth. The technique used was an R-factor analysis with Quartimax rotation. A single factor accounting for 82 percent of the shared variance of the variable set was used to develop factor scores for each census tract. This new variable was used in the path analysis. A 1970 factor was found that accounted for 100 percent of the shared variance of the variables.

some evidence developed in an earlier study in St. Paul.¹ Using arrows to indicate the direction of causality, Figure II.1 represents this hypothesis: Causally speaking, Figure II.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 II.7 contains the relevant predictions and actual values of the correlation coefficients obtained from the data.

Figure II.1: Path Diagram of the hypothesis that Adult Establishments Contribute to On-Going Processes of Deterioration in Census Tracts



¹Minnesota Crime Prevention Center, "Neighborhood Deterioration and the Location of Adult Entertainment Establishments in St. Paul" (Minneapolis: MCPC, Inc., 1978). Using different methods, the St. Paul study found that the location of bars was related to both prior measures of neighborhood deterioration, and to subsequent ones. It concluded that adult businesses may be part of a cycle of decline in which they contribute to or accelerate an on-going process.

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The model in Figure II.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 II.7 in prediction #3. However, the observed partial correlation in Table II.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 establishments.

Table II.7: Path Analysis Predictions and Actual Empirical Values¹

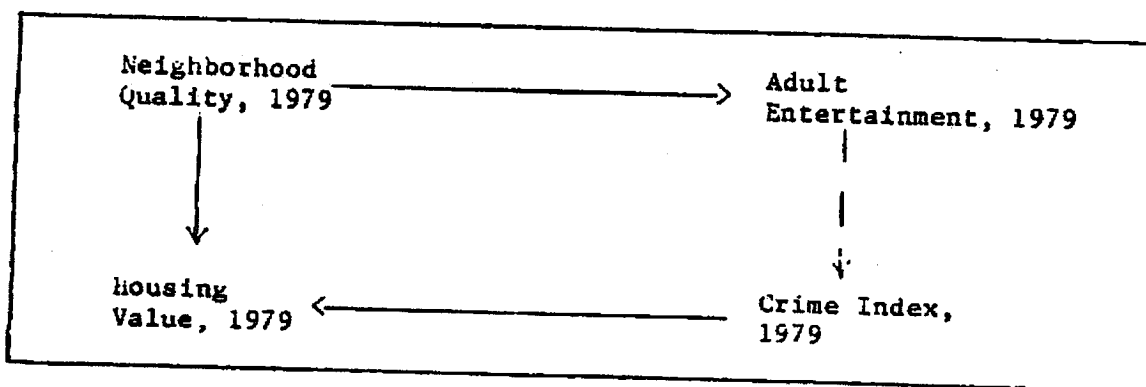
<u>Predictions</u>	
(1)	Pearson's r, variables 2 and 4: $r_{24} = (r_{12}) (r_{14})$
(2)	Pearson's r, variables 2 and 3: $r_{23} = (r_{12}) (r_{13})$
(3)	Partial correlation, variables 2 and 4, controlling for 1: $r_{24.1} > 0.$
(4)	Partial correlation, variables 2 and 3, controlling for 1: $r_{23.1} > 0.$
<u>Actual Values</u>	
(1)	$r_{24} = -.1320 = (r_{12}) (r_{14}) = -.130$
(2)	$r_{23} = .1926 = (r_{12}) (r_{13}) = .25$
(3)	$r_{24.1} = -.0044$
(4)	$r_{23.1} = -.0761$

¹The logic of predictions in path analysis is discussed in Appendix B.1.

The predictions for adult businesses and crime (predictions #2 and #4) are not so clear cut. The predicted correlations in Table II.7 are similar to the actual ones ($F_{23.1} = -.0767 > 0$). 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.¹

Figure II.2 shows the revised model that seems to reflect the data more adequately than Figure II.1. The dotted line between adult entertainment and crime indicates that a weak direct link between

Figure II.2: Revised Causal Path Model of Adult Entertainment and Measures of Neighborhood Decline



¹It should be noted that for all predictions an analysis of regression coefficients for these variables generally confirms the results reported here. The regression for crime, with both the quality index and adult business as independent, suggests that the adult variable loses significance, and its coefficient drops toward zero.

Section D

Summary 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.

Working factors which reflect business decisions, urban conditions, or neighborhood environment into account changes the 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,

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.

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.

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 to test the compatibility of a hypothesis about the causal relationships 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 angry 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 different 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, 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 50

6. Adult entertainment establishments and other kinds of late night businesses should not be placed adjacent to each other.

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 general 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 (b) 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 total 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 greater 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.¹

- 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

¹Phillip L. Clay, Neighborhood renewal, Lexington, Mass: Lexington Books, 1979, pp. 47, 64-65, 62.

commercial areas is quite great, and could not be appreciably affected by removing bars. This is also confirmed by previous studies.¹

Such a concentration would improve the efficiency of some city efforts, such as police 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. It 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.

¹Crime in Minneapolis, op.cit., p. 174. The proportion of assaults where the victim was either intoxicated or leaving a bar was 12.5% in 1975.

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

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APPENDIX A.1

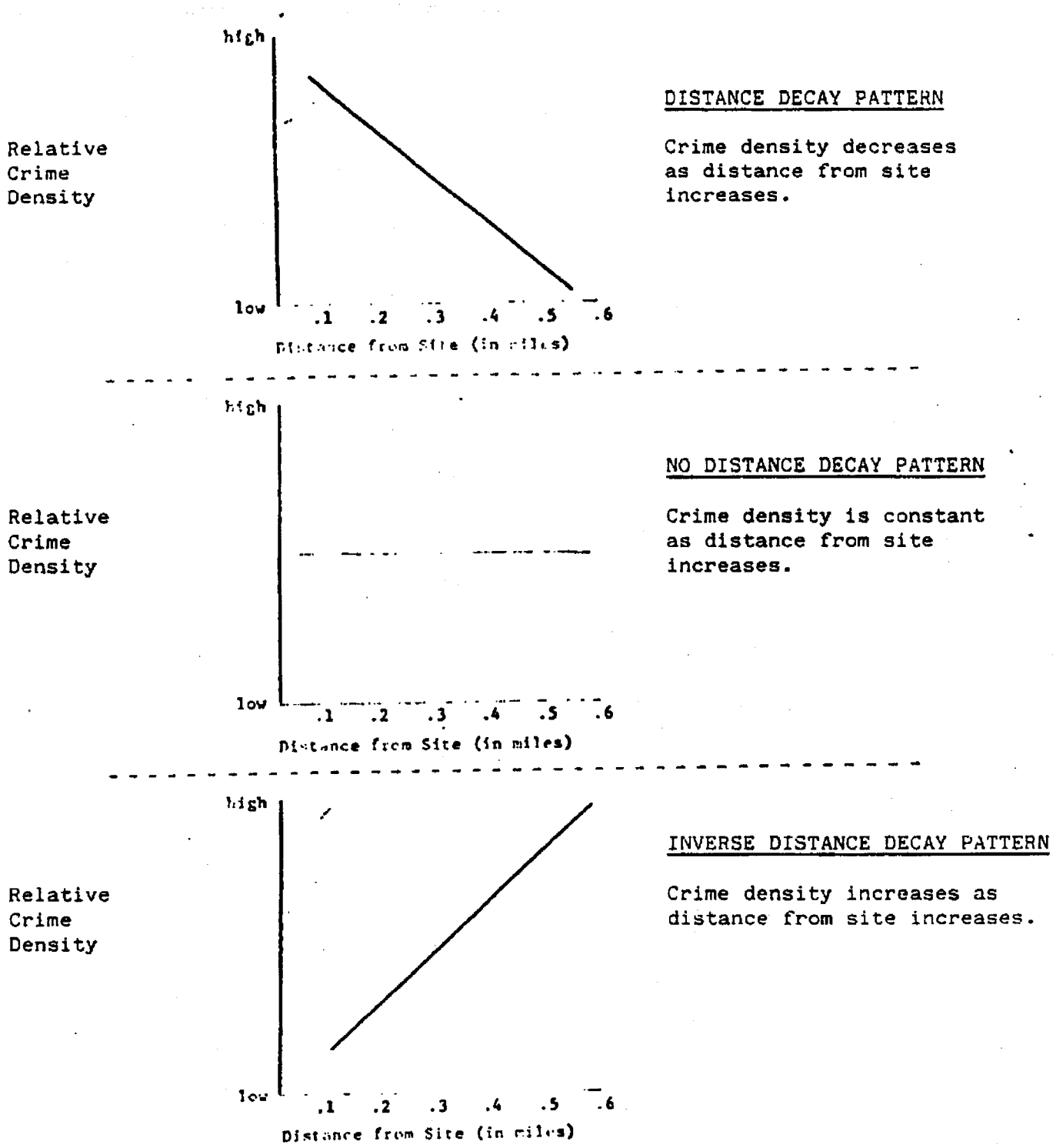
Distance Decay Methodology

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 1

An Interpretive Guide to Distance Decay Curves^a



^aThese are pure types. Actual curves may display some amount of random variation and/or curvilinearity.

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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.

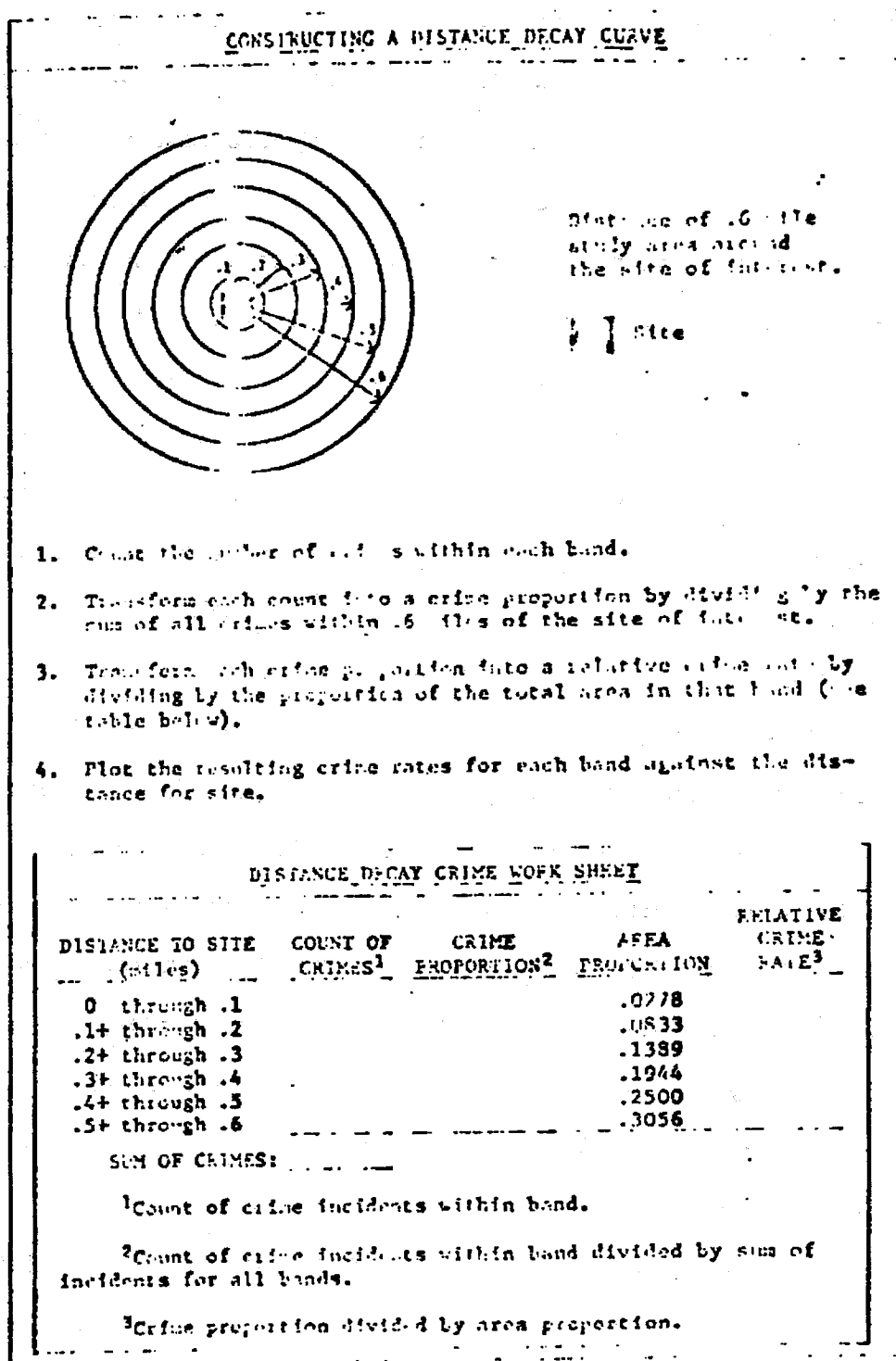
As with any statistical technique, the distance decay analysis will produce misleading results if it is used improperly. As noted above, the analysis is meaningful only if some theoretical assumption about the relationship of the nodes to the events in the areas around them can be made, and the measurement 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 get 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.

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



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

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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 $F' < 0$.

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 nonuniformity 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 assign a probability of $1/2^5$ 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.

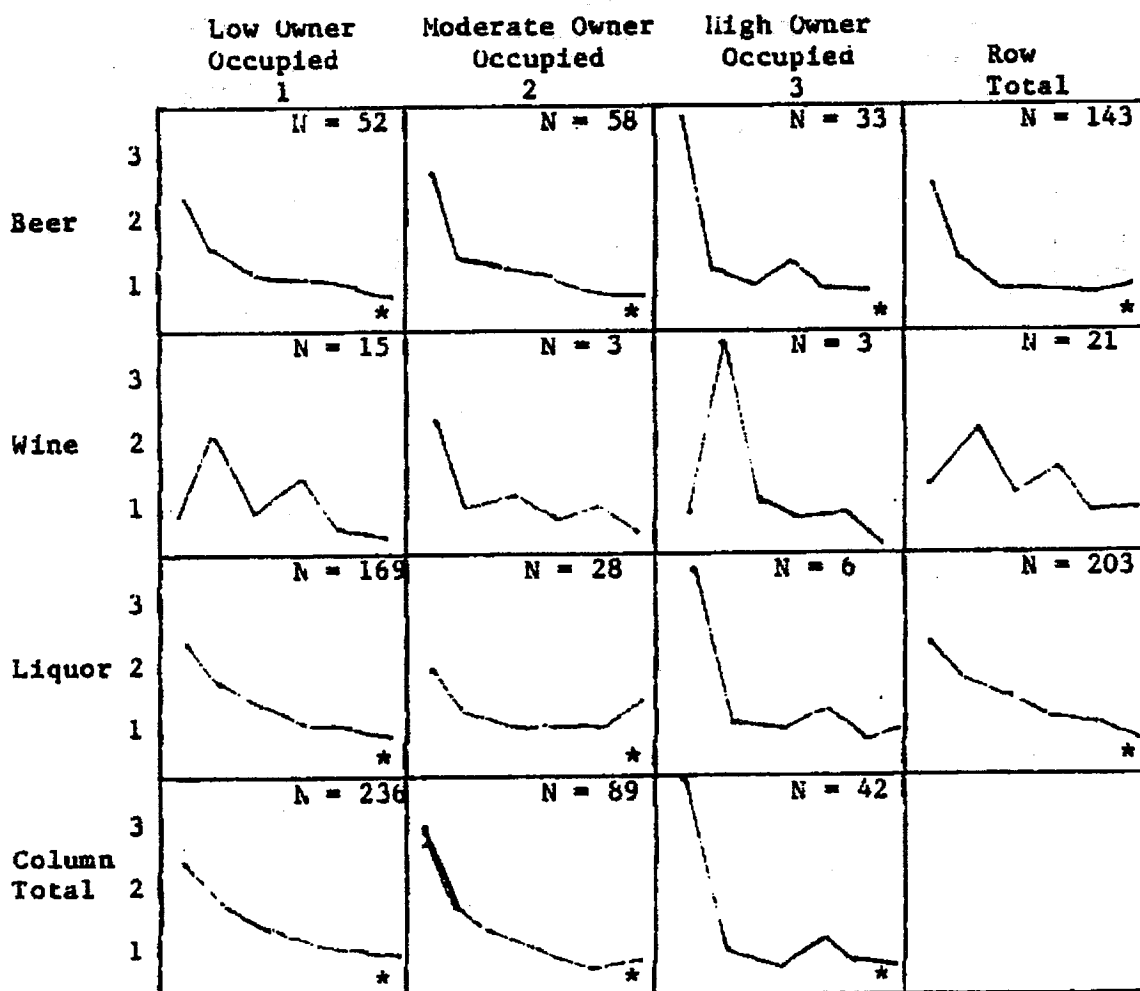
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Appendix A.2

Results of Summary Distance Decay Analyses for Detailed Categories

Figure A.2.1

Distribution of Crime Around Bars by Types of Liquor Licenses, Controlling for Neighborhood

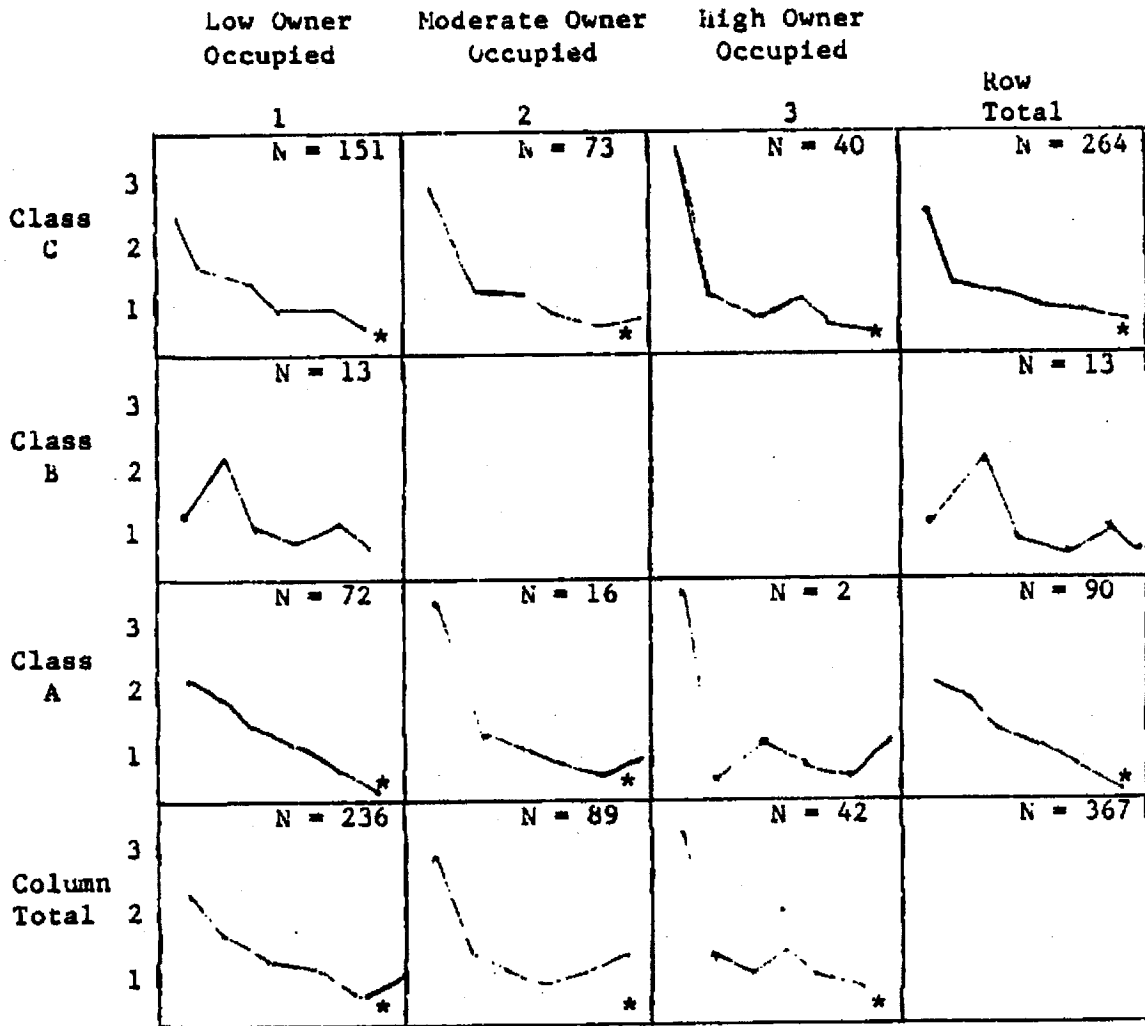


* = significant
N = number of bars

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Figure A.2.2

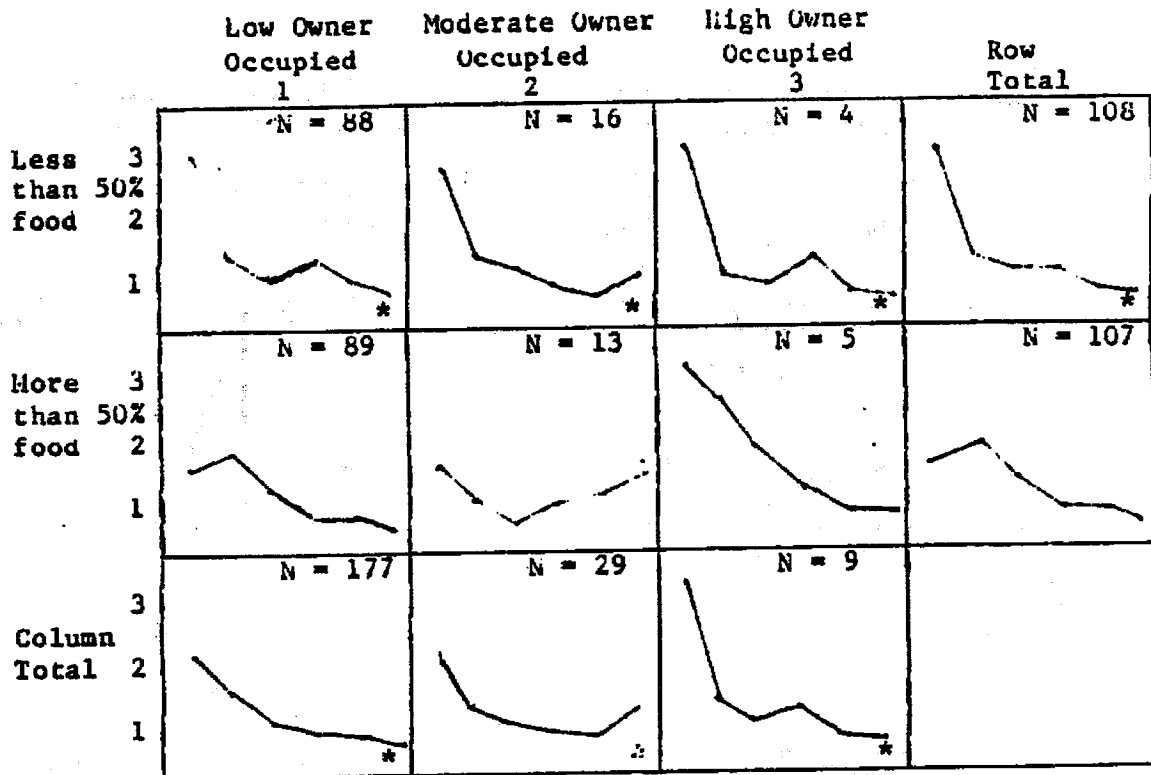
Distribution of Crime and Bars by Type of Entertainment Categories, Controlling for Neighborhood



* = significant
h = number of bars

Figure A.2.3

Distribution of Crime Around Bars by Volume of Food,
Controlling Neighborhood



* = significant
N = number of bars

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	.96	.86	.84
Cell 2	2.67	1.29	1.06	.98	.83	.90
Cell 3	3.49	1.19	.93	1.16	.81	.80
Row Total	2.52	1.42	1.07	.97	.85	.86
Cell 4	1.15	2.08	1.07	1.37	.70	.67
Cell 5	2.32	1.14	1.16	.92	1.0	.82
Cell 6	.90	3.60	1.09	.89	.90	.41
Row Total	1.21	2.04	1.07	1.34	.71	.68
Cell 7	2.19	1.63	1.29	1.01	.84	.71
Cell 8	1.93	1.17	.96	.92	.79	1.11
Cell 9	4.37	1.18	1.03	1.10	.75	.77
Row Total	2.20	1.62	1.28	1.01	.84	.71
Column 1 Total	2.18	1.63	1.25	1.02	.84	.72
Column 2 Total	2.52	1.27	1.04	.96	.83	.93
Column 3 Total	3.59	1.26	.95	1.14	.80	.78

Values for Figure A.2.2, Type of Entertainment Categories and Neighborhood

Cell 1	2.31	1.40	1.18	1.01	.86	.79
Cell 2	2.40	1.25	1.09	.97	.84	.95
Cell 3	3.54	1.28	.95	1.15	.81	.77
Row 1 Total	2.35	1.38	1.16	1.01	.86	.81
Cell 4	1.56	2.15	1.07	.87	.90	.77
Cell 5	None					
Cell 6	None					
Row 2 Total	Same as Cell 4					
Cell 7	2.11	1.86	1.39	1.07	.79	.61
Cell 8	3.33	1.40	1.18	.92	.74	.86
Cell 9	5.14	.68	1.25	.73	.57	1.13
Row 3 Total	2.15	1.84	1.38	1.07	.79	.62
Column Values	Same as 1					

Values for Figure A.2.3, Volume of Food and Neighborhood

Cell 1	2.69	1.57	1.29	1.10	.75	.68
Cell 2	2.47	1.39	1.23	.96	.71	.91
Cell 3	4.25	1.25	.99	1.16	.78	.72
Row 1 Total	2.88	1.56	1.29	1.10	.75	.69
Cell 4	1.57	1.69	1.24	.99	.92	.73
Cell 5	1.36	.88	.68	.87	.94	1.27
Cell 6	2.88	2.24	1.16	.82	.75	.74
Row 2 Total	1.57	1.68	1.23	.99	.92	.74
Column 1 Total	2.13	1.64	1.26	1.04	.85	.71
Column 2 Total	2.01	1.18	1.01	.93	.81	1.06
Column 3 Total	3.90	1.50	1.03	1.07	.77	.72

Appendix A.4

Liquor Licenses Granted Outside the Liquor Patrol Limits
Between 1974 and 1979

<u>Name</u>	<u>Address</u>	<u>Date Liquor License Granted</u>
1. Ames Lodge #106	1614 Plymouth Avenue	5/28/76
2. Artist's Quarter	14 East 26th Street	12/20/74
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	2/25/77
6. Campus Club	300 Washington S.E.	8/25/77
7. Howie's	2119 West Broadway	10/10/75
8. Improper Fraction	710 Washington S.E.	4/25/76
9. Jimmy's	3675 Minnehaha Avenue	2/28/75
10. Martini's and Bagels	3025 West Lake Street	3/17/78
11. Minnikahda Club	3241 Zenith	12/12/75
12. Occie's	2951 Lyndale Avenue South	2/28/75
13. Poodle	3001 East Lake Street	2/4/75
14. Popeya's	3601 East Lake Street	3/27/75
15. Rainbow Cafe	2916 Hennepin Avenue	3/27/75
16. Society of Fine Arts	2400 3rd Avenue South	7/25/75
17. Stardust Lanes	2520 26th Avenue South	8/8/75
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	3016 Hennepin Avenue	2/13/76
21. Waldo's	4601 Lyndale Avenue North	11/27/74
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

<u>Bars Identified as Nuisance Bars</u>	<u>Bars Identified as Non-Nuisance Bars</u>
Addison's	Arthur's
Beanie's	Black Forest
Carousel	Cedar Inn
Dollie's	Charlie's
Duffy's	Duff's
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's
Spring Inn	Sunny's
Uncle Sam's	The First Story
Union	Williams Pub
Waldo's	Zurbey's

1155
2-1161

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?

Age

_____ 19 - 29 = 0

_____ 30 - 45 = 1

_____ 46+ = 2

Race

_____ White = 0

_____ Mixed = 1

_____ Minority = 2

Social Pattern

_____ Single = 0

_____ Couples = 1

_____ Groups = 2

1156
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APPENDIX B

Supplementary Materials for Chapter II:
Adult Entertainment and Neighborhood Deterioration

1157
2-1463

Appendix B.1

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 7: Pearson Correlation Coefficients:
Adult Entertainment Establishments
and Selected Crime Rates, 1979

	Assault Rate	Residential Burglary Rate	Commercial Burglary Rate	Commercial Robbery Rate
All adult businesses	.1889*	-.1010	.0937	.0317
Sexually-oriented businesses	.1876*	.0848	.3096*	.3003*
Alcohol-serving businesses	.1258	-.1239	.0315	-.0315
Beer	.1173	.2008*	.1210	.1054
Wine	-.0356	-.0225	-.0907	-.0629
Class A	.0951	-.2365*	-.0197	-.0869
Class B	.2487*	.1402	.1084	.1266
Class C	.1232	-.0518	.0565	-.0191
Beer Class A	.0357	.0555		
Beer Class B	.2330*	.2701*		
Beer Class C	.0879	.1412		
Wine Class A	.0195	.0333		
Wine Class B	N.A.	N.A.		
Wine Class C	-.0401	-.1066		
Liquor Class A	.0456	-.1090		
Liquor Class b	.1273	.0722		
Liquor Class C	.1175	-.0873		

*Significant at the .05 level or better.

1159
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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 results 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

	Proportion of business predominantly food	Proportion of Tract Commercial	Number of non-manu- facturing businesses	Proportion of Com- mercial Property Vacant
All adult businesses	.2565	.4219*	.4030*	.2081*
Sexually-oriented businesses	-.0486	.0873	.0453	.2457*
Alcohol-serving businesses	.3212*	.3960*	.4290*	.1736*
Beer	-.1183	.0925	.2375*	.0422
Wine	.6163*	.2825*	.3994*	-.0042
Liquor	.3259*	.4023*	-.3318*	.1609*
Class A	.3076*	.3410*	.3063*	.1887*
Class b	.0927	.1603*	.1467	.1774*
Class C	.2678*	.3669*	.4569*	.0615

*Significant at the .05 level or better.

1160
2-1765

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.¹

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

¹J. Anthony, "The Effect of Income and Socio-Economic Groups on Housing Choice," cited in Michael Ball, "Recent Empirical Work on the Determinants of Relative Housing Prices," Urban Studies 10, 1973, p. 232. Also see p. 231 in Ball's article.

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 (k or k^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.¹

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.

¹Refer to the variables list and correlation matrix in Appendix B.2. By convention, correlations greater than .6 are considered possibly important sources of multicollinearity, to be avoided if possible.

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 the 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.

(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 b's) 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) R^2 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.

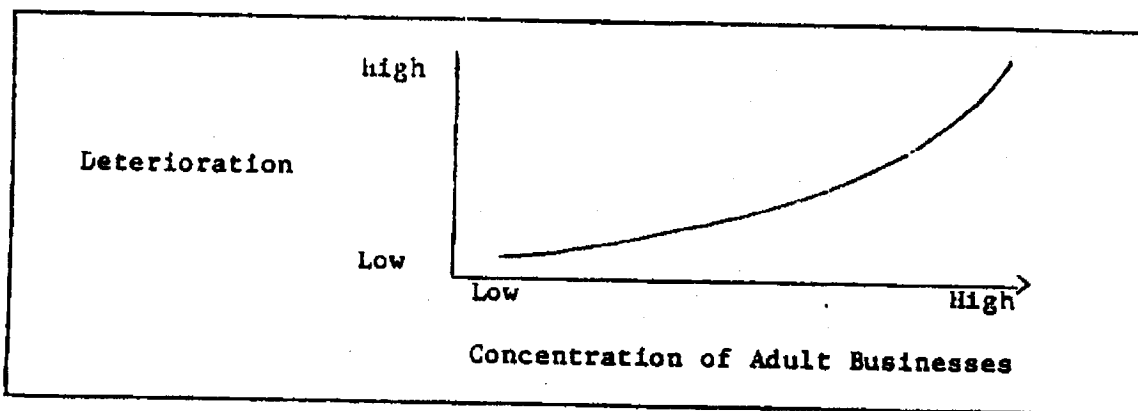
C. Tests for Linearity

Two 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.

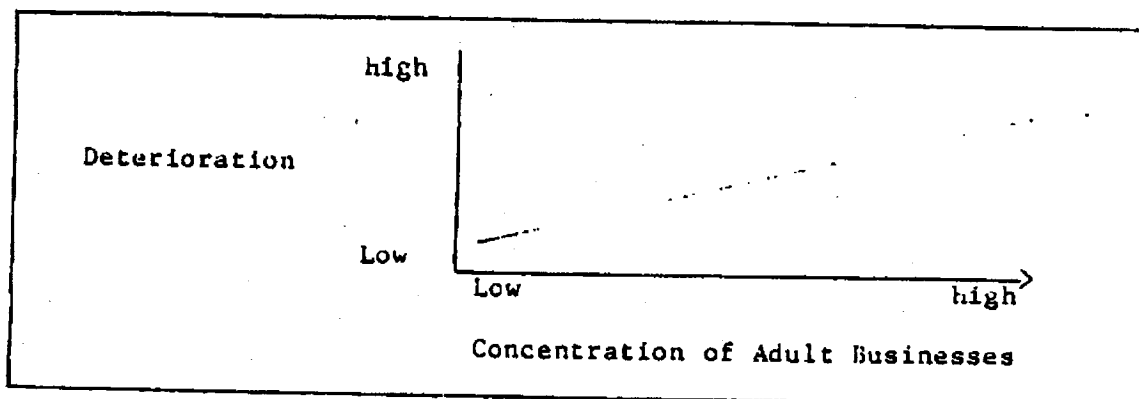
Figure A presents this "non linear" hypothesis. If the data do match this hypothesis, there are two consequences. First, it means that concentrations of adult business are increasingly bad for neighborhoods as concentration increases, and second, that the common statistical techniques, such as linear regression, must be modified.

Figure A: Graphic Representation of the Non-linear Hypothesis of the Relationship Between Adult Businesses and Neighborhood Deterioration



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.

Figure B: Graphic Representation of the Non-linear Hypothesis of the Relationship Between Adult Businesses and Neighborhood Deterioration



1167
2-1172

The analysis of variance test is an F-test that is based on a comparison of the correlation ratio, E^2 , with the squared correlation coefficient, r^2 : The formula for the test is:

$$F_{k-2, N-k} + \frac{(E^2 - r^2) (N-k)}{(1-E^2) (K-2)},$$

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.¹

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

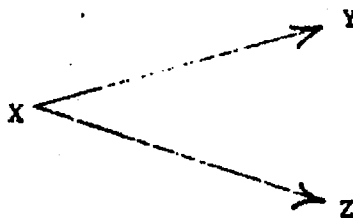
The path analysis technique used here is a way of comparing either regression coefficients or correlation and partial correlation coefficients to determine if the pattern of relationships in a data set are consistent with theoretical assumptions. The theoretical assumptions or hypotheses are a critical 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

¹For example, see any edition of H. H. Blalock's Social Statistics.

(assumptions about causal relations in the data) to see which one is most consistent with the data.¹ 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



Predictions

$$r_{yz} = r_{xy} r_{xz}$$

$$r_{yz \cdot x} = 0$$

¹The standard introductory reference for the technique is H. N. Blalock, Causal Inferences in Nonexperimental Research (Chapel Hill: University of North Carolina Press, 1964).

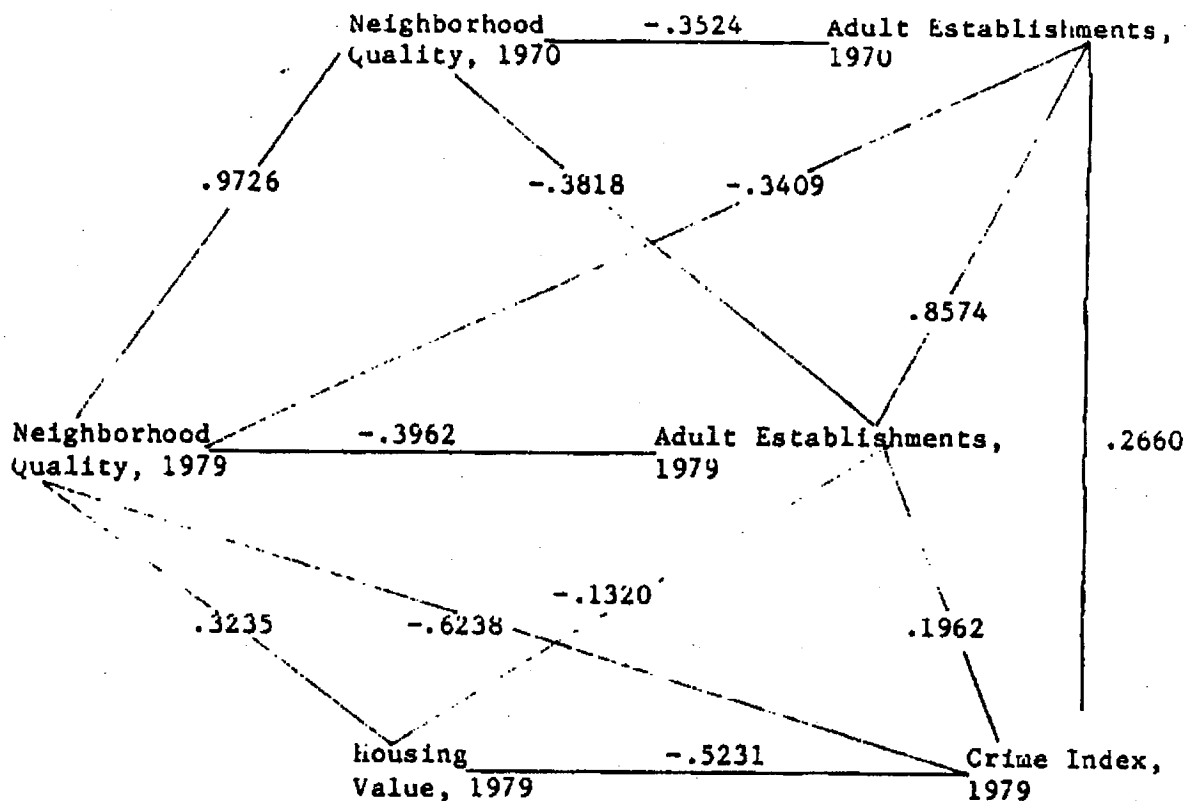
Specifically, the model in Figure C asserts that variable X is the cause of both Y and Z, but that there is no direct connection between Y and Z. Mathematicians have shown that these hypotheses translate into predictions about the behavior of simple and partial correlation coefficients, and regression coefficients. These predictions are shown beneath Figure C. The first prediction is that the simple correlation coefficient between Y and Z (r_{yz}) should equal the product of the correlations between X and Y and X and Z.¹ The second prediction is that the partial correlation between Y and Z controlling for X ($r_{yz.x}$) 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 it.

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.

¹Assuming (1) the model is correct, and (2) the effects of measurement error are random and negligible.

Figure D: Pearson Correlation Coefficients
Among Path Analysis Variables



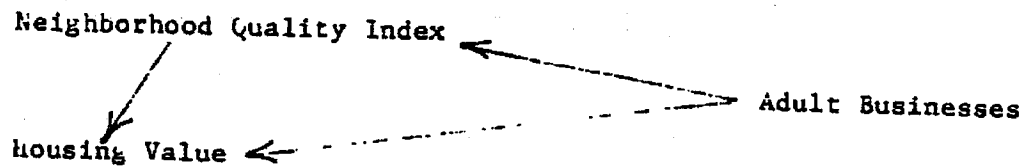
The decision was made to use only the data for 1979 as (1) the measurements for 1970 were not identical to those for 1979, (2) there were too few observations to do a genuine time series analysis, and (3) the 1970 neighborhood quality measure and the 1970 adult business measure were very highly correlated with their 1979 counterparts. 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.

1171
2-1776

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



Appendix B.2

List of Variables for Neighborhood Deterioration Study

Variables 45 through 70 refer to 1979 data. Variables that begin with "PM" are taken from the Property Management System. Variables that begin with "P6" are from the 1978 Polk City Directory.

REL POS	VARIABLE 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	YTRACT	Y-COORDINATE OF TRACT CENTER

1173
2-1178

REL POS	VARIABLE NAME	VARIABLE LABEL
21	DISTCRD	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	OWNUM	MEAN VALUE OWNER OCC RES UNIT
32	MEANI	MEAN FAM AND UNREL INCOME
33	HAGEPCT1	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 RATES BY OFF - 1 2 3 7 8
40	FACT02	CRIME RATE BY OFF - 4 5 6
41	ZV17	Z SCORE % OWNER OCCUPIED
42	ZDEM03	ZSCORE % POPULATION WHITE
43	ZMEANI	ZSCORE MEAN INCOME
44	NEIGH	3 TYPES OF NEIGHBORHOODS DERIVED FROM Z
45	FM8SF	TOTAL SINGLE FAMILY UNITS
46	FM8DT	TOTAL DUPLEX-TRIPLEX UNITS
47	FM8MF	TOTAL MULTI-FAMILY UNITS
48	FM8HSF	TOTAL HOMESTEAD SINGLE FAMILY UNITS
49	FM8HDT	TOTAL DU-TRIPLEX HOMESTEAD UNITS
50	FM8HMF	TOTAL HOMESTEAD MULTIFAMILY UNITS
51	FM8A1	% TOTAL SF BUILT BEFORE 1940
52	FM8A2	% TOTAL SF BUILT 1940-1959
53	FM8A3	% TOTAL SF BUILT AFTER 1960
54	FM8C1	%TOTAL SF WITH CONDITION 4,5,
55	FM8X1	SUM AREA CODES BY TOTAL SF UNITS
56	FM8X2	SUM SF BLD AREA BY TOTAL SF UNITS
57	FM8X3	GBA OF COMMERCIAL BY TOTAL COMMERCIAL

REL POS	VARIABLE NAME	VARIABLE LABEL
58	FM8X4	SUM LOT AREA OF SF DUP TRIPLEX
59	FM8X5	SUM LOT AREA FOR UNITS WITH ALPHA NOT =C
60	FM8X6	SUM LOT AREA FOR UNITS WITH ALPHA = C
61	FM8X7	SUM LOT AREA FOR ALL UNITS
62	FM8X8	SUM MARKET VALUE SF BY TOTAL SF UNITS
63	FM8X9	SUM EMV COMMERCIAL BY TOTAL COMMERCIAL U
64	FM8X10	SUM BLD CODES BY TOTAL SF
65	V8111	NSP PCT STABLE
66	V8112	NSP PCT UNITS OCCUPIED
67	F8LK2	% COMMERCIAL UNITS
68	F8LK6	SUM COMMERCIAL UNITS
69	F8LK8	CHANGE COMMERCIAL UNITS
70	F8LK9	% COMMERCIAL UNITS CHANG OF OCCUPANTS
71	F8LK11	VACANT COMMERCIAL UNITS
72	F8LK12	% VACANT COMMERCIAL UNITS
73	F8LK16	TOTAL NON-MANUFACTURING FIRMS
74	F8LKH	TOTAL HOUSEHOLDS
75	F8LKAH	AVE SIZE HOUSEHOLDS
76	F8LKIN	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	BAR7I	LIQUOR BAR 1970 CLASS A
86	GMOV7	GENERAL MOVIE 1970
87	SUANA7	SUANA 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

1175
2-480

REL POS	VARIABLE NAME	VARIABLE LABEL
95	BARBE	WINE BAR 1980 CLASS B
96	BARBF	WINE BAR 1980 CLASS A
97	BARBG	LIQUOR BAR 1980 CLASS C
98	BARBH	LIQUOR BAR 1980 CLASS B
99	BARBI	LIQUOR BAR 1980 CLASS A
100	GMOVB	GENERAL MOVIE 1980
101	SUANAB	SUANA 1980
102	AMOV8	ADULT MOVIE 1980
103	DBK8	ADULT BOOKSTORE 1980
104	POOL8	
105	PRBAR8	PROBLEM BAR 1980
106	FOOD8	OVER 50% FOOD8 1980
107	SEX8	SEUAL 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	RAFES 1980
113	OCSC8	OTHER CRIMMINAL 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	FM800	* OWNER OCCUPIED
122	FM8TRU	TOTAL RESIDENTIAL UNITS
123	FM8FOO	Z OWNER OCCUPIED
124	EPOP8	EST 1980 POP FROM POLK
125	ASLT8R	1980 ASSAULTS PER 1000 POP.
126	RAPE8R	1980 RAFES 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

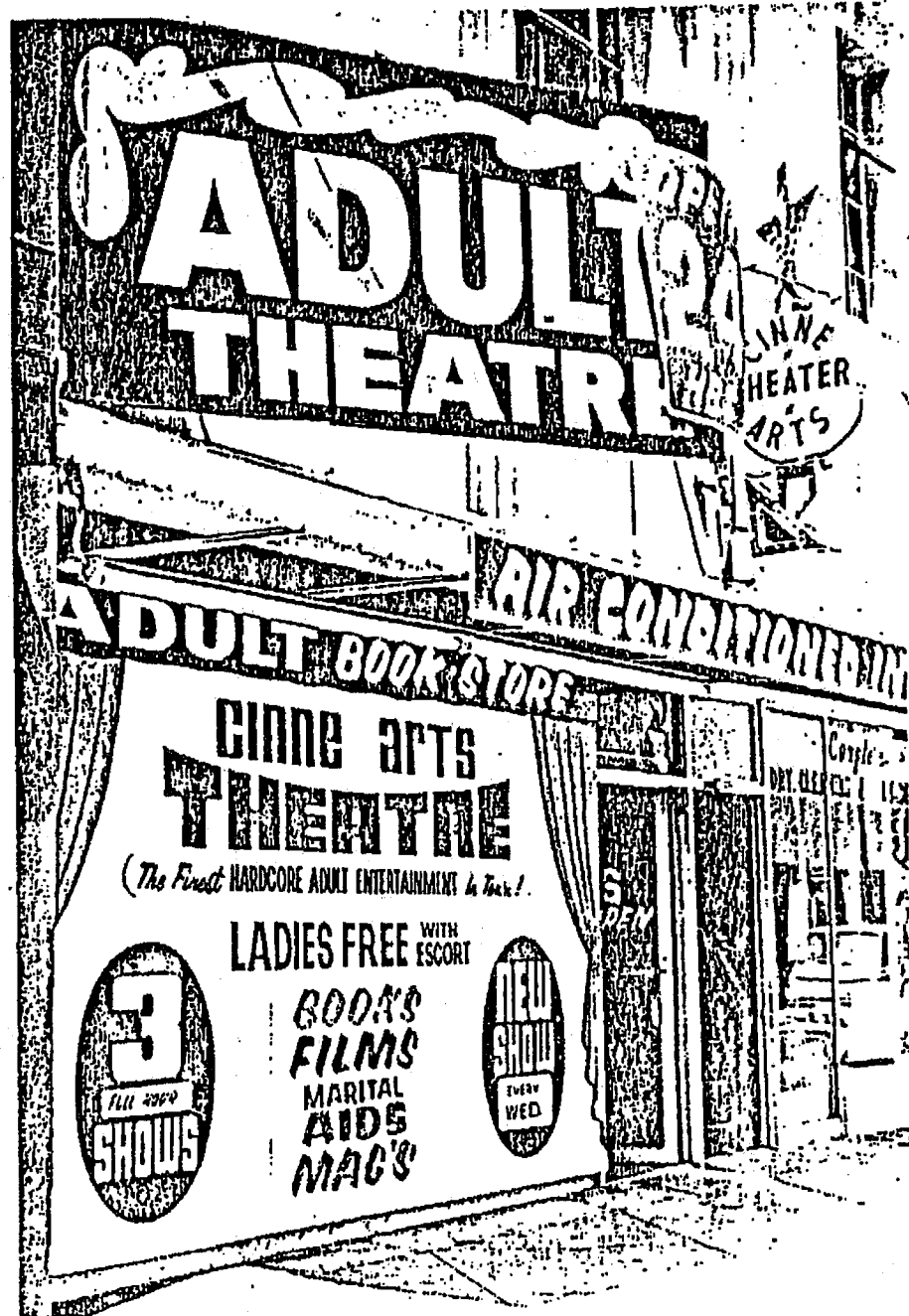
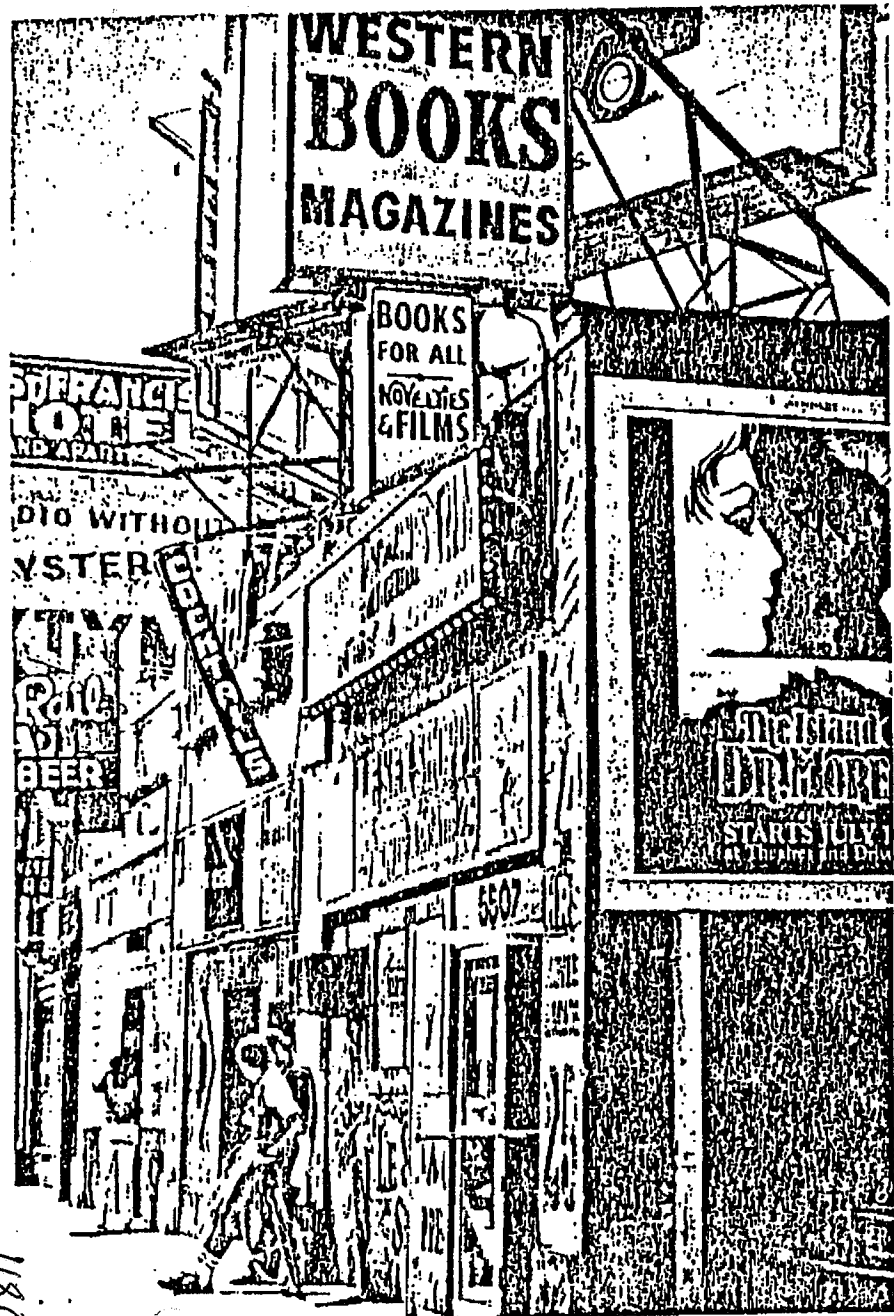
FFL POS	VARIABLE NAME	VARIABLE LABEL
132	RESPECT8	% AREA RESIDENTIAL 1980
133	COMPCT8	% AREA COMMERCIAL 1980
134	RAPE7	FREQ 1974 RAPES
135	ASLT7	FREQ ALL ASSAULTS 1974
136	RAPE7R	RAPES PER 1000 POP.
137	ASLT7R	ASSAULTS PER 1000 POP.
138	EPOP	1974 ESTIMATED POP FROM POLK
139	CRDEX8R	SUM OF RESIDENTIAL 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 LIQUOR7 LIC.
147	SEXBIZ	SUM OF 1980 SUANAS, ADULT MOVIES, ADULT B
148	BARS	SUM OF ALL 1980 BARS
149	BARS7	SUM OF ALL 1970 BARS
150	HUPCTMF	PM8MF BY PM8SF+PM8DT+PM8MF
151	AREAMMF	PM8X5-PM8X4
152	CBAR	CONDENSED BARS VARIABLE 081 =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 LIQ. LIC.
157	TYPEC	1980 BARS WITH CLASS C LIQ. LIC.
158	TYPEA7	1970 BARS WITH CLASS A LIQ. LIC.
159	TYPEB7	1970 BARS WITH CLASS B LIQ. LIC.
160	TYPEC7	1970 BARS WITH CLASS C LIQ. LIC.
161	RBURG7R	RATEF4*1000 BY DEM01
162	BBURG7R	RATEF5*1000 BY DEM01
163	BROR7R	RATEF6*1000 BY DEM01
164	DV8111	V8111-V111
165	DV8112	V8112-V112
166	DFMSFOO	FMSFOO-V113
167	DEPOP8	EPOP8-DEM01
168	DF8LK2	F8LK2-FOLK2

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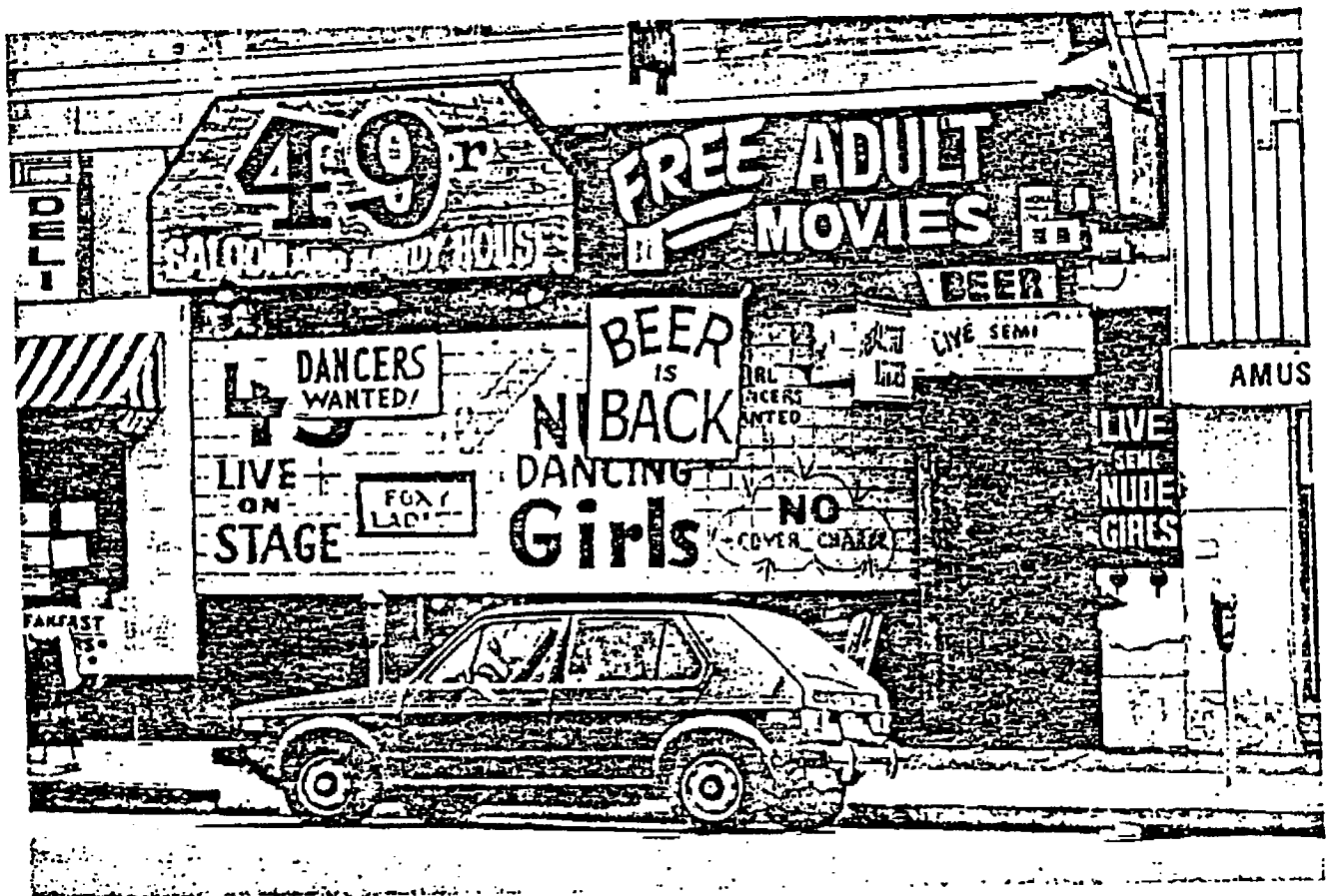
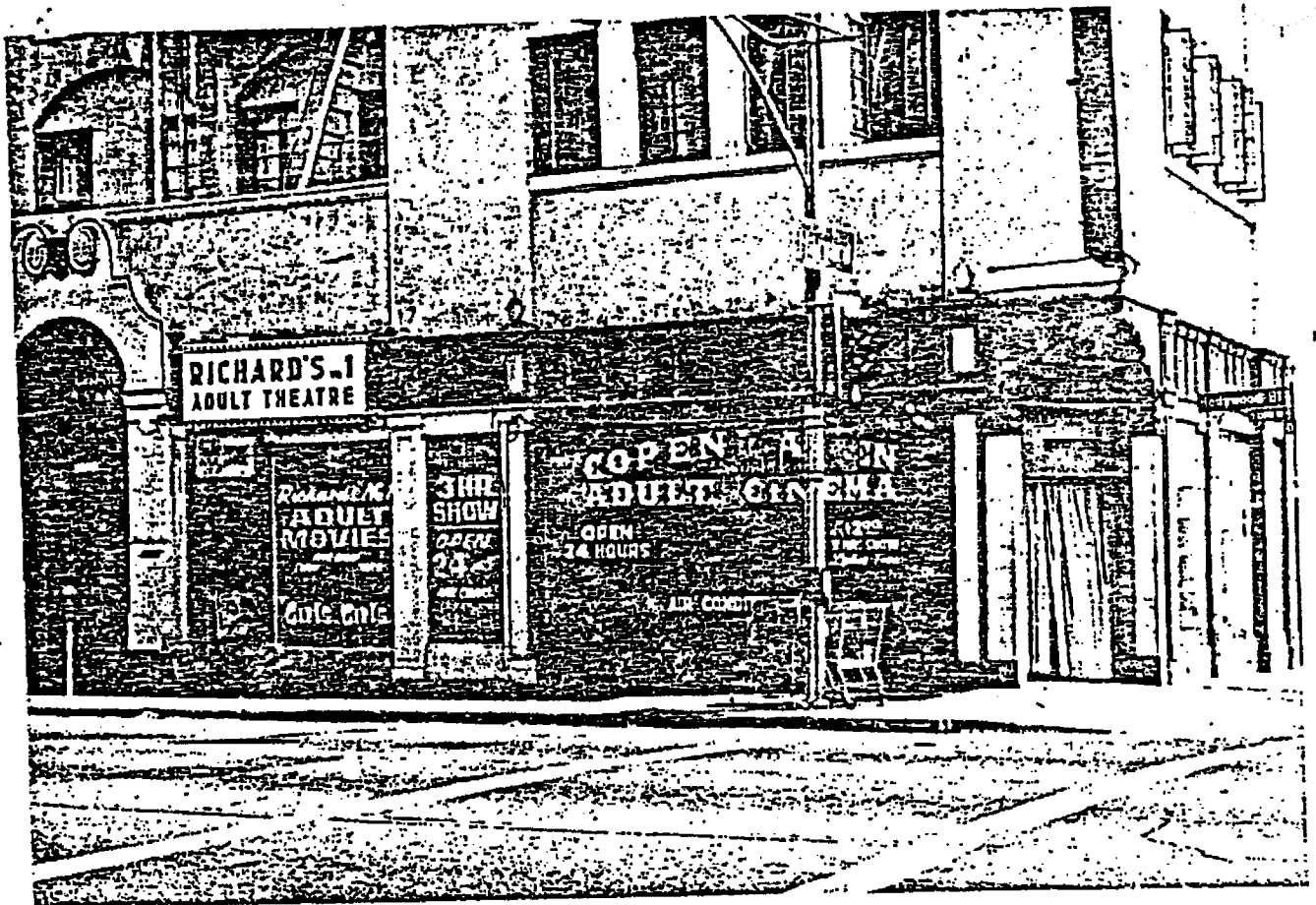
REL POS	VARIABLE NAME	VARIABLE LABEL
169	DFBLK12	FBLK12-FOLK12
170	DFBLKIN	FBLKIN-MEAN1
171	DFMSX8	FMSX8-OWNUM
172	DRBURG	RBURG8R-RBURG7R
173	DBBURG	
174	DBROB	BROB8R-BROB7R
175	DRAPE	RAPE8R-RAPE7R
176	DASLT	ASLT8R-ASLT7R
177	DBARS	BARS-BARS7
178	DBEER	BEER-BEER7
179	DWINE	WINE-WINE7
180	DLIQUOR	LIQUOR-LIQUOR7
181	DTYPEA	TYPEA-TYPEA7
182	DTYPEB	TYPEB-TYPE7B
183	DTYPEC	TYPEC-TYPE7C
184	FOODPCT	FOOD8 BY BARS
185	FACTOR7	FACTOR SCORES FROM NEIGHBORHOOD VARIABLE
186	FACTOR8	1980 FACTOR SCORES FROM NEIGH. VAR.S

10. There is a high degree of turnover in individual adult entertainment businesses as evidenced on page 51 (Much of this change is probably due to Police enforcement.)
11. The Los Angeles City Council, both on its own initiative and at the urging of numerous citizens groups, has proposed a variety of approaches to limiting the possibly deleterious effects of "adult entertainment" business on neighborhoods.
12. At least 10 cities have adopted ordinances similar to the Detroit dispersal ordinance. Several other cities have enacted other forms of regulations.
13. The Detroit ordinance does not regulate massage parlors. Of the cities with regulations, three have included massage parlors within the purview of their zoning ordinance.
14. None of the cities surveyed call out or regulate adult motels as a part of their "adult entertainment" ordinance.
15. The Detroit Ordinance is prospective in its application and therefore does not include an amortization provision, i.e. provide for a time period for the removal of existing businesses. Although other such ordinances have included such provisions, none had been validated by the courts at the time of this study.

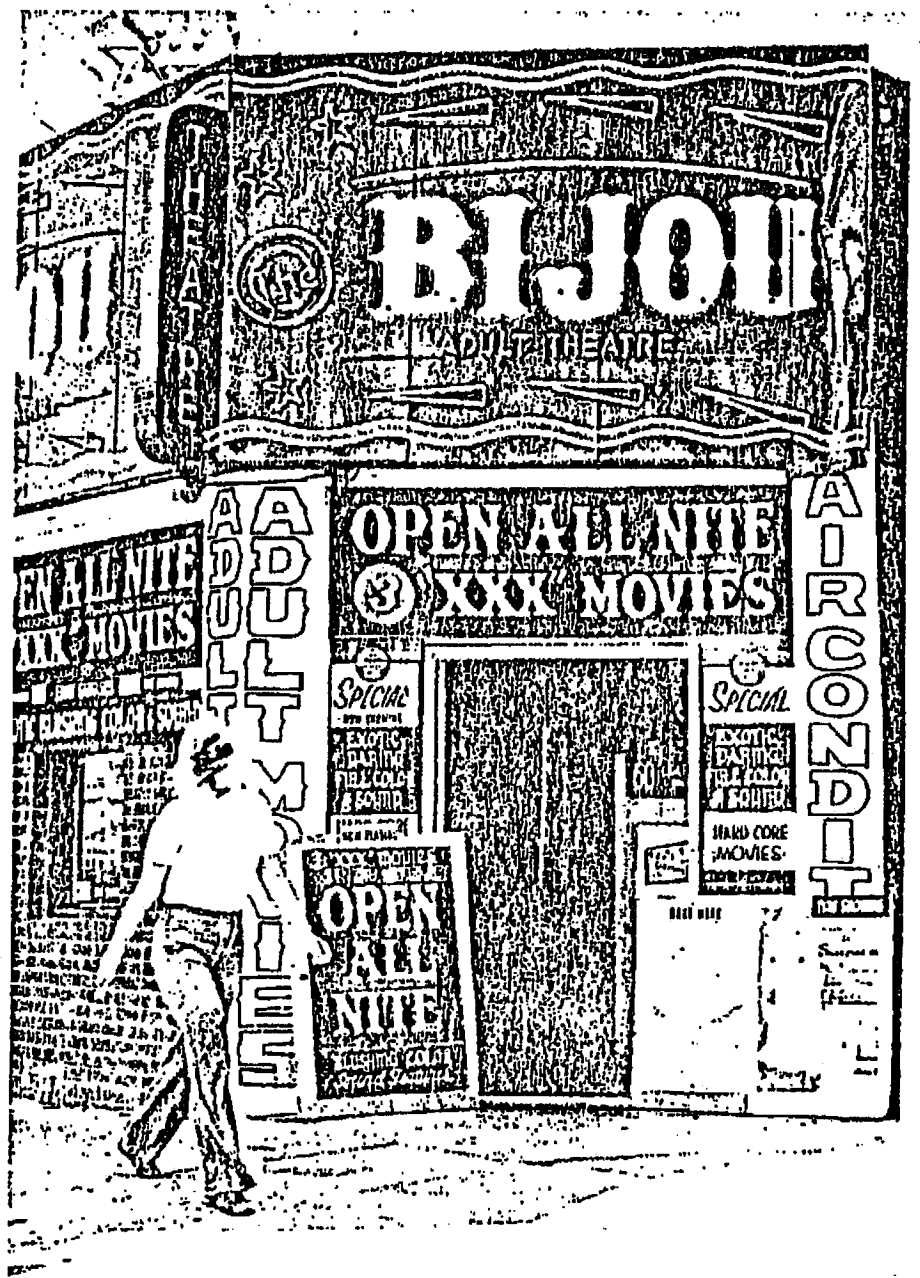
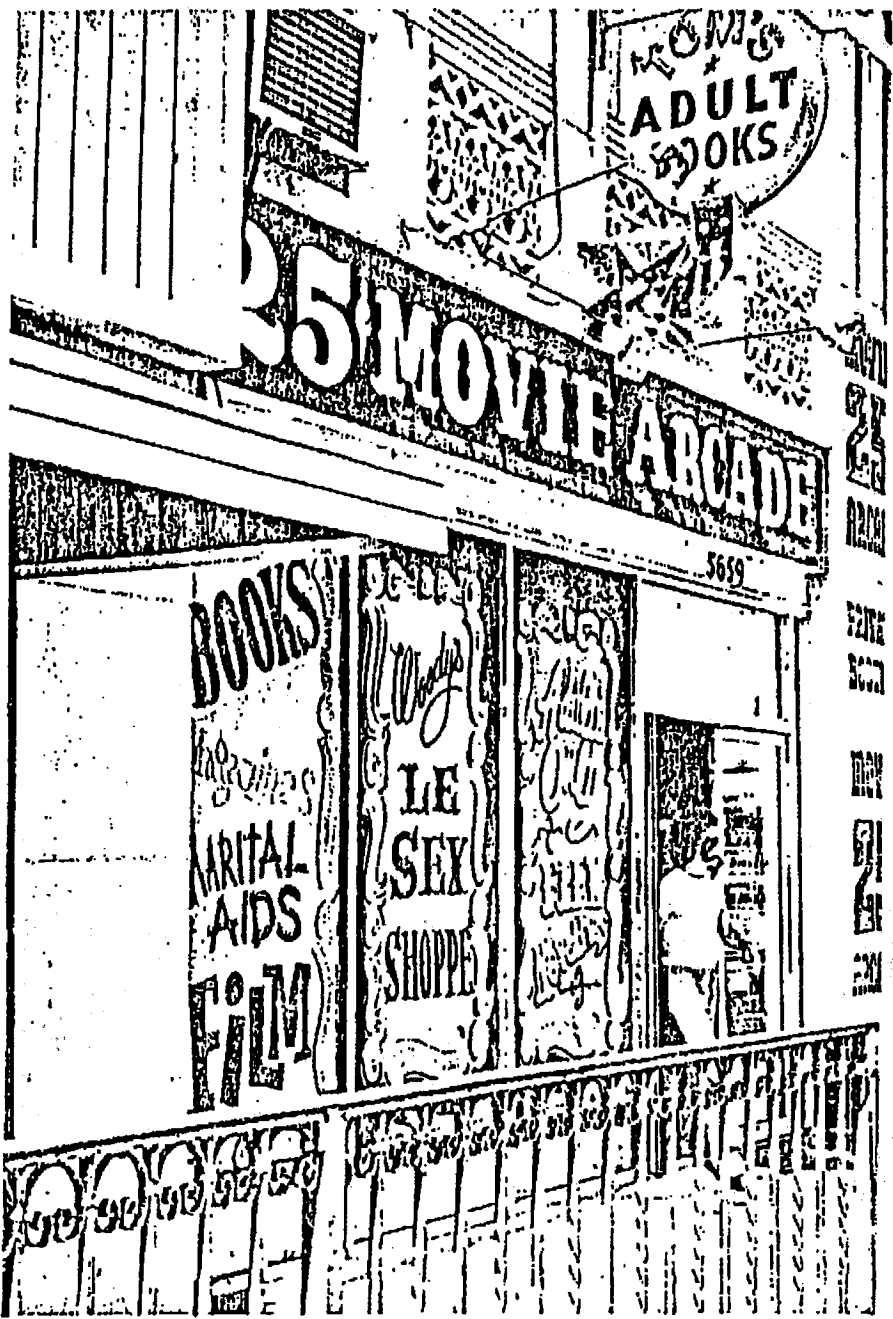
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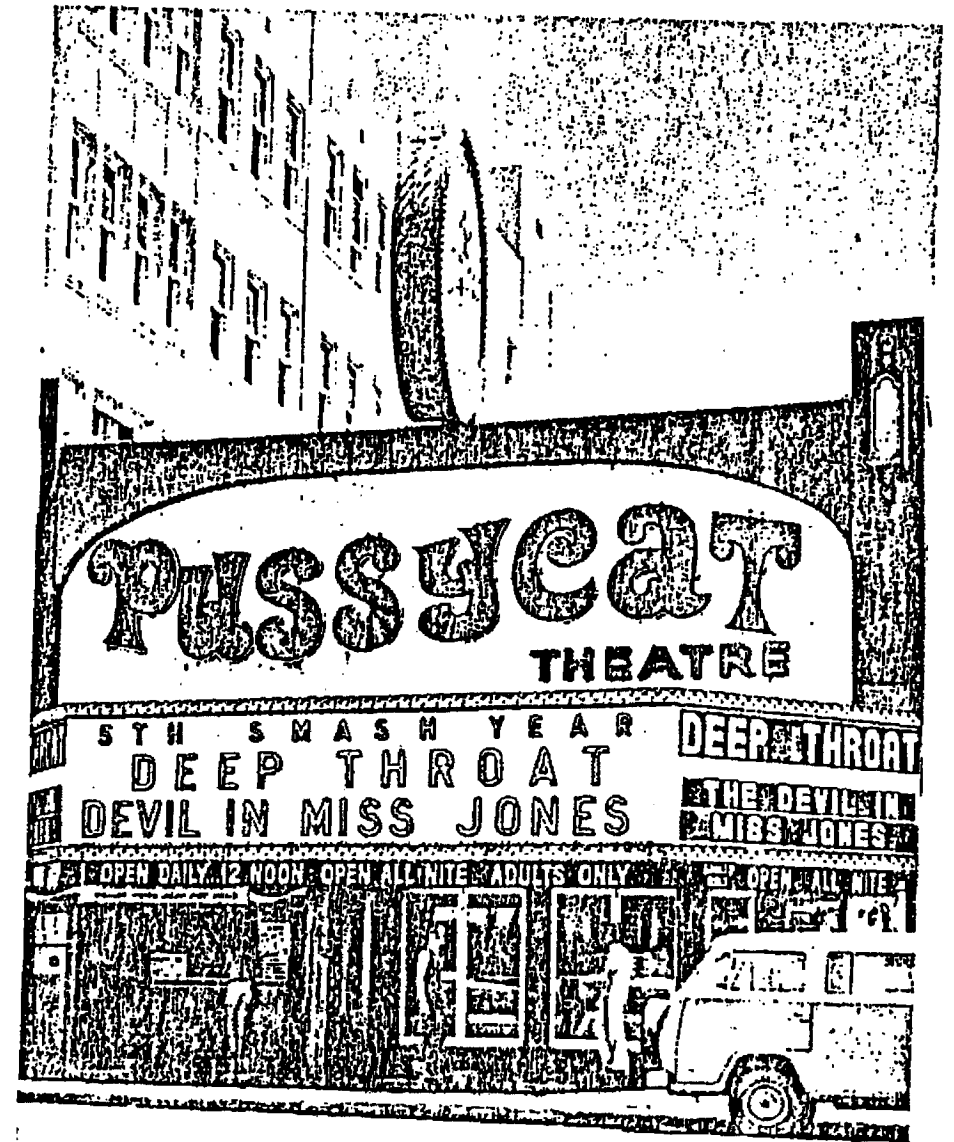


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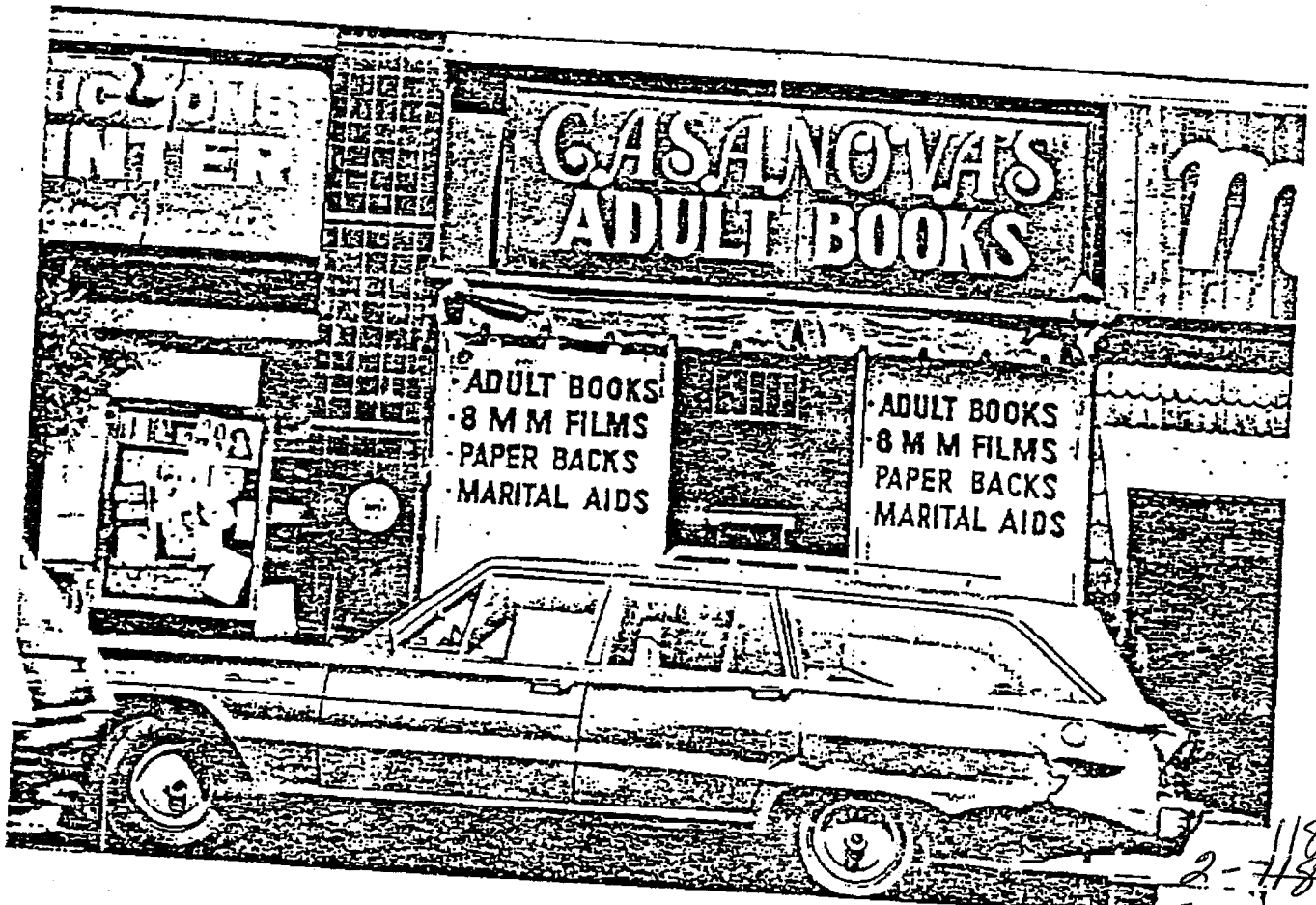


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II.

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 nearby properties and/or neighborhoods. The term "adult entertainment" is a general term utilized by the Planning staff to collectively refer to businesses which primarily 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 entertainment; 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 proliferation of such sexually oriented businesses. The derivation of such concern is varied--religious, moral, sociological and economic. The positions advocated by the public range from a "laissez faire" attitude to outright moral indignation and demand 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 continues 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 exist in 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 question," 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 any regulations regarding "adult entertainment" question the legitimacy of the government's interest 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 obviously greater (where the confines of an adult bookstore (where no person under 18 years of age is allowed).

In completing this study, the Planning Department has made every effort to ensure a fair and unbiased analysis of "adult entertainment." The staff has been instructed to objectively review information of a factual nature; and, although the personal feelings of organized groups and the public at large were forcefully expressed at the two public meetings and in the study questionnaires, the staff has maintained independence from such strong emotions in evaluating the data gathered.

As noted above, the staff has specifically been given the charge to determine whether the concentration of "adult entertainment" establishments has any blighting or degrading effect on the neighborhoods in which they reside. We did not consider the specific nature or content of the materials or services rendered, advertised or promised, for this would have constituted a censor-like role for the Department which was neither desired nor requested by the Council.

This study has focused on the Hollywood community as well as portions of Studio City and North Hollywood as those areas of Los Angeles having the greatest concentration of "adult entertainment" establishments. In order to assess the effect of the concentration of "adult entertainment" establishments in these areas, the staff has analyzed such factors as changes in assessed property values, and reviewed various crime statistics as well as other demographic and related data as available from the U.S. Census. In addition, the Department has reviewed various established approaches to the regulation of "adult entertainment" business, including legislation already enacted by other jurisdictions, and earlier efforts of the City of Los Angeles to regulate such businesses.

By means of two public meetings on the subject conducted by representatives of the City Planning Commission, and through the use of a mail survey questionnaire, the Department has also attempted to provide additional documentation relative to the actual or perceived impact of adult entertainment businesses on the community. Current information on crime statistics has been provided in a separate report prepared by the Los Angeles Police Department, major portions of which are herein included.

III.

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 use regulations have developed in the United States: the concentration approach, as evidenced by the "Combat 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 1974. The purpose of the overlay 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 where they were deemed to be inappropriate. Other considerations included facilitating the policing of such activities and allowing those persons 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 forbidden 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 be 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 approach 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 buildings. Due to complaints of serious criminal incidents, law enforcement activities have been increased and a number of liquor licenses in the area have been revoked. 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 of "adult entertainment" businesses.

In Los Angeles, the Police Department has investigated the effect of "adult entertainment" businesses in Hollywood and found a link between the clustering of these establishments and an increase in crime. (See Section V, pages 51 to 55). For this reason, and due to the enforcement problems created by such concentrations, the Police Department is not in favor of a concentration approach in the City of Los Angeles. Public testimony at hearings and through Planning Department questionnaires has indicated an overwhelming public disapproval of this approach for the City of Los Angeles.

2. Detroit Approach

The City of Detroit has developed a contrasting approach to the control of "adult entertainment" businesses. The Detroit Ordinance attempts to disperse adult bookstores and theaters by providing that such uses cannot, without special permission, be located within 1000 feet of any other "regulated uses" or within 500 feet of a residentially zoned area.

This ordinance was an amendment to an existing anti-skid row ordinance which attempted to prevent further neighborhood deterioration by dispersing cabarets, motels, pawnshops, billiard halls, taxi dance halls and similar establishments rather than allowing them to concentrate.

The ordinance was immediately challenged and eventually was upheld by the United States Supreme Court. (Young v. American Mini Theaters 96 Supreme Ct. 771, 1976.)

In response to our request, data supplied by the City of Detroit Police Department indicates that the combination of the dispersal ordinance and a related ordinance prohibiting the promotion of pornography have been an effective tool in controlling adult businesses. To date, 18 adult bookstores and 6 adult theaters have been closed. There are 51 such businesses still in operation in Detroit and 38 pending court cases for various ordinance violations.

3. Variations Adopted by Other Cities

The success of the Detroit ordinance has spurred attempts by a number of other cities to adopt similar ordinances. The uses controlled and the types of controls established by these ordinances are summarized in Tables I and II, infra.

While the current study of the effect of "adult entertainment" businesses on neighborhoods in Los Angeles has encompassed all forms of "adult entertainment", the ordinances reviewed and the Detroit Ordinance specifically, are less encompassing in scope. Table I, on the following page, lists and reviews a number of ordinances, which regulate various specified adult uses.

TABLE I

Number of Zoning Ordinances Regulating Specified
Adult Entertainment Uses

(11 Ordinances Reviewed-1 not adopted)

USE	No. of Cities Regulating*
Adult Theaters	11
Adult Bookstores	9
Mini-theaters and coin operated facilities	5
Massage Parlors (includes "physical culture establishments")	
Modeling Studios/Body Painting	2
Pool/Billiard Halls	2
Topless Entertainment	2
Newsracks	1
Adult Motels	0

* (Numbers have incorporated-where appropriate-uses entitled "physical culture establishments" and "businesses to which persons under 18 could not be admitted".)

The Detroit dispersal ordinance does not regulate massage parlors, nor does it require any existing business to close by amortization. Many of the more recent ordinances include amortization provisions and several of these are currently in varying stages of litigation.

Perhaps the most comprehensive ordinance proposed to date (although not adopted) is that of New York City. The proposed ordinance creates five classes of controlled uses, one of which is entitled "physical culture establishments" and is defined as a general class including any establishment which offers massage or other physical contact by members of the opposite sex. The ordinance would also apply to clubs where the primary activity of such club constitutes one of the five defined classes of adult uses.

The ordinance also provides for a special permit exempting individual adult uses from amortization requirements when the Board of Standards and Appeals makes findings regarding:

1. The effect on adjacent property;
2. Distance to nearest residential district;
3. The concentration that may remain and its effect on the surrounding neighborhood;
4. That retention of the business will not interfere with any program of neighborhood preservation or renewal; or
5. In the case of an adult bookstore or motion picture theater, the Board finds that the harm created by the use is outweighed by its benefits.

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 the Detroit model. Bellflower also includes parking requirements and the screening of windows to prevent a view of the interior; it prohibits the use of loudspeakers or sound equipment which can be heard from public or semi-public areas.

Other cities impose such controls as design review, prohibition of obscene material on signs and required identification of the business as "adult". Such controls are a possible alternative or addition to regulation of adult uses by location.

Exterior controls affect the aspects of adult businesses which are most offensive to some citizens. The basis for such controls stems from the recognition of privacy as a constitutional right and the right to be "left alone" as a part of that right. ¹ (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.

¹ The theory that there should be no first amendment bar to sign controls is discussed by Charles Rembar, in "Obscenity--Forget It", Atlantic Monthly, May 1977, pgs. 37-41.

ORDINANCES REGULATING ADULT ENTERTAINMENT
USES BY DISPERSAL

CITY	USES CONTROLLED	DISTANCE FROM RESIDENTIAL	DISTANCE FROM CHURCHES SCHOOLS	CONCENTRATION	AMORTIZATION	APPEALS PROCEDURE	OTHER CONTROLS
Seattle	Adult theaters				yes-90 days		Allow only in BM, CM, & CMT Zones; terminate such uses in all other zones
Denver	Entertainment to which persons under 18 could not be lawfully admitted	500'					
Dallas	Adult shows or theaters	1000'	1000'				
Cleveland	Adult bookstores, adult movies and mini-motion picture theaters, pool or billiard halls			1/1000'			
Detroit	Adult bookstores, adult motion picture theater, mini-motion picture theaters, cabarets, hotels, motels, pawnshops, pool or billiard halls, public lodging houses, secondhand stores, shoeshine parlors, taxi-dance halls	500'		2/1000'		Waiver by petition of 51% of persons owning/residing or doing business within 500'	Ordinance prohibiting promotion of pornography

2-1199
-1199

CITY	USES CONTROLLED	DISTANCE FROM RESIDENTIAL	DISTANCE FROM CHURCHES SCHOOLS	CONCENTRATION	AMORTIZATION	APPEALS PROCEDURE	OTHER CONTROLS
New York (not adopted)	Adult bookstores, motion picture theaters, "topless" entertainment facilities, coin-operated entertainment facilities, physical culture establishments	500'		2-3/1000'	1 year closest to R-zone first to go	Special permit exception must make findings	.Sign regulat .Applies to c .Adult use al a primary use
Oakland	Adult bookstores, adult movies, peep shows, massage parlors	1000'		1/1000'	1-3 yrs. if no use permit		All require C. permit
Kansas City	Adult bookstores and motion picture theaters, bath houses, massage shops, modeling studios, artists-body painting studios	1000'	1000'			Waiver, if petition of 51% of persons residing or owning property within 1000' of proposed use.	Confined to over lay C-X zone within C-2, 3,
Santa Barbara	Adult newsracks, bookstores, motion picture theaters		1000' (& from parks or recreation facilities)	1/500'			Public displa defined materia prohibited
ellflower	Adult bookstores, theaters or mini-theaters, massage parlors	1000'	1000' (& from parks or play-grounds)	1/1000'			By C.U. all bui ing openings, entries, window covered or screened to p vent view int the interior
	Modal studios		500'				No loud speaker

2-1198-1193

CITY	USES CONTROLLED	DISTANCE FROM RESIDENTIAL	DISTANCE FROM CHURCHES SCHOOLS	CONCENTRATION	AMORTIZATION	APPEALS PROCEDURES	OTHER CONTROLS
Atlantic City	Adult motion picture theaters, mini-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 Licensing of massage parlors; no treatment of a person of the opposite sex

2-1199
1194

B. ALTERNATE OR SUPPLEMENTARY FORMS OF REGULATION CURRENTLY AVAILABLE UNDER STATE AND MUNICIPAL LAW

1. Red Light Abatement Procedure

Red light abatement is a mechanism authorized by state law which allows local government to control criminal sexual behavior by controlling the places in which such behavior occurs.

Sec. 11225 of the California Penal Code generally provides that every building or place used for illegal gambling, lewdness, assignation, or prostitution, or where such acts occur, is a nuisance which shall be enjoined, abated, and prevented. There are three basic steps involved in the City's application of the Red Light Abatement Procedures:

- (a) A complaint is filed by the City Attorney based upon the declarations of police officers of instances of prostitution taking place on the premises.
- (b) The City attempts to obtain a preliminary injunction to shut down the business until completion of the scheduled trial. If the City succeeds, the premises may only be re-opened as a legitimate business until the time of the trial.
- (c) At the trial, the burden is on the City to prove that prohibited acts occurred on the premises. The remedy may be closure of the premises for all purposes for one year, placing the building in the custody of the court, or an order preventing the use of the premises for prostitution forever.

Complaints may be filed by citizens, and Sec. 11228 of the Code provides that in Red Light Abatement Actions "evidence of the general reputation of a place is admissible for the purpose of proving the existence of a nuisance".

This method has been used successfully by the City to abate adult entertainment establishments in Hollywood along Western Avenue. Although Red Light Abatement is directed at regulating sites, a Red Light Abatement conviction can affect the ability of an owner or operator to obtain a permit for a similar business at another site (see permit requirements supra). Due to the requirement of a court proceeding, however, this method of control is both time consuming and expensive.

2. Police Permit Requirements

Section 103 of the Los Angeles Municipal Code provides for the regulation and control of a variety of businesses by permits issued by the Board of Police Commissioners. Permittees are subject to such additional requirements as may be imposed by law or by the rules and regulations of the Board.

Those businesses for which the City of Los Angeles requires a police permit and which may also be oriented towards adult entertainment include:

- Arcades (Sec. 103.101)
- Bath and Massage (103.205)
- Cafe Entertainment and Shows (103.102)
- Dancing Academies, Clubs, Halls (103.105, 106, 106.1)
- Motion Picture Shows (103.108)

In some cases, the specific regulations applied to a business, if enforced, preclude adult entertainment activities as a part of, the operation of the business, with revocation of the operating permit an available remedy for violation of the regulation.

The most detailed regulations are applied to cafe entertainment (Sec. 103.102 LAMC) and are summarized as follows:

a. Businesses Subject to the Regulations

Operation of cafe entertainment or show for profit, and the operation of public places where food or beverages are sold or given away and cafe entertainment, shows, still or motion pictures are furnished, allowed or shown. The regulation does not apply to bands or orchestras providing music for dancing.

b. Cafe Entertainment Defined

"Every form of live entertainment, music solo band or orchestra, act, play, burlesque show, revue, pantomime, scene, song or dance act". The presence of any waitress, hostess, female attendant or female patron or guest attired in a costume of clothing that exposes to public view any portion of either breast at or below the areola is included with the purview of the ordinance.

c. Summary of Activities Prohibited

Allowing any person for compensation or not, or while acting as an entertainer or participating in any live act or demonstration to:

- (1) Expose his or her genitals, pubic hair, buttocks or any portion of the female breast at or below the areola;
- (2) Wear, use, or employ, or permit, procure, counsel or assist another person to wear use or employ, any device, costume or covering which gives the appearance of or simulates the genitals, pubic hair, natal cleft, perineum or any portion of the female breast at or below the areola.

The above provisions do not apply to a theatrical performance in a theater, concert hall or similar establishment which is primarily devoted to theatrical performances.

The permit may also be revoked for conviction of the permittee, his employee, agent or any person associated with permittee as partner, director, officer, stockholder, associate or manager of:

- (1) An offense involving the presentation, exhibition or performance of an obscene production, motion picture or play;
- (2) An offense involving lewd conduct;
- (3) An offense involving use of force and violence upon the person or another;
- (4) An offense involving misconduct with children;
- (5) An offense involving maintenance of a nuisance in connection with the same or similar business operation; or, if the permittee has allowed or permitted acts of sexual misconduct to be committed within the licensed premise.

Massage businesses have traditionally been regulated by licensing. The latest changes in the massage regulations became effective in November of 1976. The application for a permit now requires:

- (1) detailed information regarding the applicant;
- (2) name, address of the owner and lessor of the property upon or in which the business is to be conducted, and a copy of the lease or rental agreement;

- (3) requirement of a public 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 operation;
- posted list of available services and their cost;
- a record of each treatment, the name and address of the patron, name of employee and type of treatment administered.

So-called "private" clubs or "consenting adult clubs" which have ostensibly been formed as an alternative to massage parlors had until recently been regulated via the requirement of a social club permit. In June 1977, however, the ordinance establishing such requirement was declared unconstitutional by a Los Angeles Municipal Court due to unreasonable restrictions on the freedom of association. To date, it is unknown whether the City will appeal the ruling or amend the ordinance.

C. OTHER REGULATION OF ADULT ENTERTAINMENT BUSINESSES IN LOS ANGELES

Regulation of adult entertainment businesses has a long history in Los Angeles. In 1915 the "prevalence of sex evils arising out of massage parlors" caused the City Council then to enact Section 27.03 (L.A.M.C.) as "a safeguard against the deterioration of the social life of the community."² The ordinance provided:

"(a) It shall be unlawful for any person to administer, for hire or reward, to any person of the opposite sex, any massage, any alcohol rub or similar treatment, any fomentation, any bath or electric or magnetic treatment, nor shall any person cause or permit in or about his place or business or in connection with his business, any agent, employee, or servant or any other person under his control or supervision, to administer any such treatment to any person of the opposite sex."³

This provision remained in the Code, in one form or another, until a similar Los Angeles County ordinance was declared invalid in 1972 due to the preemption of the criminal aspects of sexual activity by the State.⁴

In reaching its conclusion, the court referred to the discussion of the Los Angeles City ordinance in In Re Maki. This 1943 case upheld the constitutional validity of the ordinance, and, according to the court, established the primary purpose of such ordinance as the limiting of criminal sexual activity.

The late 1960's and early 1970's brought a proliferation of nude bars and sexual scam joints in the Los Angeles area. In 1969, the Cafe Entertainment regulations (Section 103.102 Los Angeles Business Code) was modified to include strict controls on nudity (see discussion infra).

A variety of Council motions were made to control other types of "adult entertainment" such as arcades, massage parlors, and newsracks. Many of these were initiated due to substantial citizen complaints, and some resulted in final ordinances. (See Table III pages 19a to 19d.)

² In Re Maki 56 CA 2d. 635, 1943.

³ Section 27.03.1 Los Angeles Municipal Code, 1938.

⁴ Lancaster v Municipal Court 6 C 3d 805, 1972.

Beginning in 1974, several Council motions were made generally calling for an investigation and preparation of an ordinance regulating adult theaters and bookstores. The advice of the City Attorney was sought, and at the suggestion of that Office, action was delayed pending the Supreme Court decision regarding the Detroit Ordinance. That decision was handed down in June of 1975. On July 13, 1976, a Council motion was introduced by Councilman Wilkinson requesting a study of concentrations of adult entertainment similar to that of Detroit.

Table III provides a generalized summary of the major Council files and actions relating to adult entertainment.

While not part of this study, a recently enacted ordinance controlling on-site sale of alcoholic beverages should be recognized as an attempt to control another adult-type use. Effective March 1, 1977, the Los Angeles Municipal Code was amended to require a conditional use permit for the on-site sale of alcoholic beverages. (Council File No. 70-200, City Plan Case No. 22878). Although aimed at the regulation of anti-social activities in all establishments serving alcoholic beverages, the subject ordinance would, of course, also have a "spillover" effect with regard to those businesses which have adult entertainment as well as alcoholic beverages.

Generally, the ordinance would, in all cases, require issuance of a conditional use permit for any business selling alcoholic beverages for on-site consumption, rather than the previous practice of permitting them as a matter of right in certain zones. The advantage of the new procedure is that as a prerequisite of approval of an individual application, there must be a public hearing to determine whether the proposed use will have a detrimental effect upon nearby properties and the neighborhood in which it is being proposed. In the long run, the ordinance may prove to be an effective device to regulate uses (dispensing alcoholic beverages) which tend to have a deteriorating effect on an area, some of which may, coincidentally, also be adult entertainment businesses.

TABLE III

CITY COUNCIL FILES RELATING TO ADULT ENTERTAINMENT

1201
2-1226

DATE	FILE NO.	SPONSORS	RECOMMENDATION	DISPOSITION
3/23/70		North Hollywood Chamber of Commerce	That topless and bottomless bars and pornographic film and literature be confined to the M-3 zone.	Disapproved by the Planning Commission.
3/71	C.F. 72-374	Councilman Snyder	Effort to control bath or massage parlors by modifying the definition of "physical therapy" in state law. And, City support for legislation that would make Physical Therapists, Chiropractors responsible for activities in their offices and prohibit treatment by unlicensed assistants unless the license holder is in the room.	Introduction of AB 823 modifying the definition of physical therapy - Died in Committee November 1972.
			Recommend modification of Board of Chiropractors Rules and Regulations.	State Board of Chiropractic Examiners adopted "Board Rule 316" which makes chiropractors responsible for the conduct of employees in their place of practice, and specifically prohibits sexual acts or erotic behavior involving patients patrons or customers.

TABLE III (cont'd.)

DATE	FILE NO.	SPONSORS	RECOMMENDATION	DISPOSITION
2/74	C.F. 72-374 'S-1 S-2	Stevenson and Wilkinson	Study of the need and feasibility of regulating hours of operation, mini- mum requirement for practitioners - and health and safety conditions in massage parlors.	1/9/75 Board of Police Commissioners approved ordi- nance and adopted agreement with County to provide inspection of massage parlors.

1202
1224
1229
2-1489

TABLE II (cont'd.)

1228 1203
2-1028

DATE	FILE NO.	SPONSOR	RECOMMENDATION	DISPOSITION
10/18/74	C.F. 74-4521	Snyder, Robert Stevenson, Ferraro	Provide by Ordinance that permits may not be granted to operate motion picture theaters which show "adult" films or bookstores which sell printed material which may not be sold to minors at locations which are within 1,500 feet of the nearest school, playground or church.	Police and Fire and Civil Defense Committee referred prepared ordinance to Planning Committee.
1/21/75	C.F. 74-1969		Police permit requirement for arcades becomes effective. Regulates 5 or more coin or slug operated machines. Revocation for non-compliance with health, zoning, fire requirements, obscenity convictions. Regulates hours of operation.	Regulation subsequently found unconstitutional by the Appellate Department of Superior Court, L.A. County.
1/27/76		City Planning Commission	Planning Department report to City Planning Commission, at their request, regarding proposed regulation of massage parlors and adult bookstores in Los Angeles.	No action taken.
1/9/76	C.F. 73-374 S-1A		Council <u>adopts</u> ordinance requiring permits to operate a massage business, act as a massage technician and gives a massage for compensation effective 4/17/76.	Ordinance now in effect.
1/23/76	C.F. 74-4521 S-2	Wilkinson and Stevenson	Require public hearings prior to opening of an adult bookstore which has for sale sexually explicit material; limit the hours of operation.	Referred to Police, Fire and Civil Defense.

TABLE III (cont'd.)

E	FILE NO.	SPONSOR	RECOMMENDATION	DISPOSITION
6/25/76	C.F. 74-4521	Wilkinson, Gibson, Nowell, Braude, Russell, Wachs, Stevenson, Bernardi, Farrell, Lorenzen	Request City Attorney to draft an ordinance following <u>Young vs. American Mini Theaters</u> guidelines.	Referred to Police, Fire and Civil Defense Committees.
6/28/76	C.F. 74-4521	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.
7/13/76	C.F. 74-4521	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.
3/15/77	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.
5/5/77	C.F. 77-860 S-49	File not available for review.	Support state legislation providing specific penalties for use of minors for pornography.	
/11/77	C.F. 77-1997	File not available for review.	Regarding prostitution enforcement laws.	

1-29-79
2-10-79 1204

IV.
METHODOLOGY AND ANALYSIS

Methodology

In complying with the City Council's instructions, the Department has utilized various available data sources, including property assessment data, U. S. Census data, and obtained other information germane to the subject in an effort to determine, on an empirical basis, the effects (if any) of adult entertainment facilities on surrounding business and other properties. The Department also reviewed sales data of commercial and residential property in areas containing concentrations of adult entertainment businesses and in "control areas" containing no such concentrations. The staff also attempted to secure information on the sales volume of commercial properties, but was unable to obtain this information.

It should be emphasized that, in conducting this study, every effort was made by the Department to preclude the introduction of subjective judgment or other bias, except where the opinions of other individuals or groups were specifically solicited.* It was the Department's intent to base any conclusions entirely on relevant data and other factual information which became available during the course of conducting the study.

The procedure employed by the Department in conducting this study involved the following areas of emphasis:

1. A measure of the change from 1970-76 in assessed "market value" of land and improvements for the property occupied by and within an appropriate radius of five known "clusters" (nodes) of "adult entertainment" businesses. An identical measure of four "control areas" without concentrations of adult entertainment businesses was also made to determine if a significant difference in the rate of change in assessment values occurred in such areas between 1970 and 1976. Comparisons were also made with the entire community in which the concentration nodes were located.
2. An analysis of responses received from a mail survey questionnaire conducted by the Planning Department;

* Expert opinions were requested from realtors, realty boards, appraisers and lenders through letters and questionnaires. The Department also sent letters to local members of the American Sociological Association requesting their assistance in this study. Their replies were limited in number and not significant in terms of this study.

3. Review of available data from the U.S. censuses of 1960 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 regulation of "adult entertainment" businesses, including legislation enacted by other jurisdictions;
6. An analysis of alternate forms of control, including existing Municipal Code provisions relative to this general subject;
7. A discussion of earlier efforts of the City to control adult entertainment in Los Angeles; and
8. A presentation of the Los Angeles City 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 residential 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 and 1976. However, this source of data 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.

Items 5, 6, and 7, above, are the subject of Section III of this report, entitled "Methods Currently Used to Regulate Adult Entertainment Business". The Police Department's report is discussed herein as Section V. The Planning Department's analysis of topics 1 through 4 is described in detail, below.

A. CHANGES IN ASSESSED VALUATION BETWEEN 1970-76 IN FIVE SEPARATE AREAS CONTAINING HIGH CONCENTRATIONS OF ADULT ENTERTAINMENT BUSINESSES

In order to determine if there has been a significant change in assessed property values which may have been influenced by the proliferation of "adult entertainment" businesses, the Department has calculated the change in the assessed value of land and improvements for properties occupied by, and located within, a 1,000 to 1,800 foot radius of known concentrations of adult entertainment businesses. Five such areas were selected for analysis, as described below. The year 1970 was selected as the base period because of the availability of data for that year, and since that point in time corresponds approximately with the beginning of the proliferation of adult entertainment businesses in Los Angeles. The percentage change in the assessed "market" value of land and improvements for commercial and residential properties was calculated for the 1970 base year and for 1976.

Similar calculations covering the same time period were also prepared for "control areas" (containing no concentration of adult entertainment businesses) but which were similar, in terms of zoning and land use, or which were located in geographical proximity to the study area nodes. Four such control areas were selected.

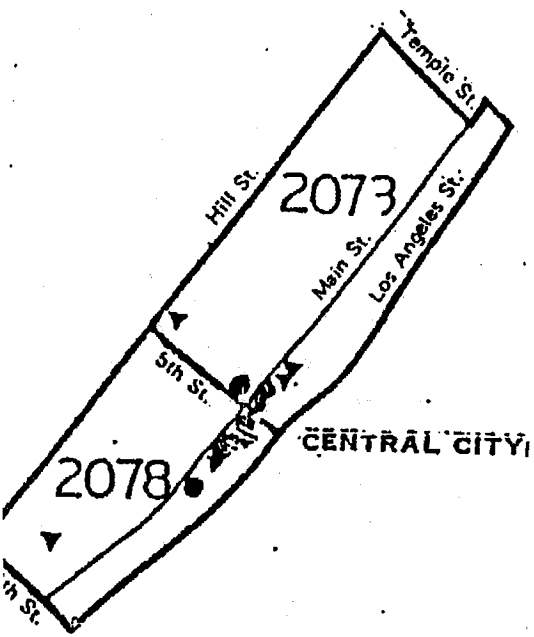
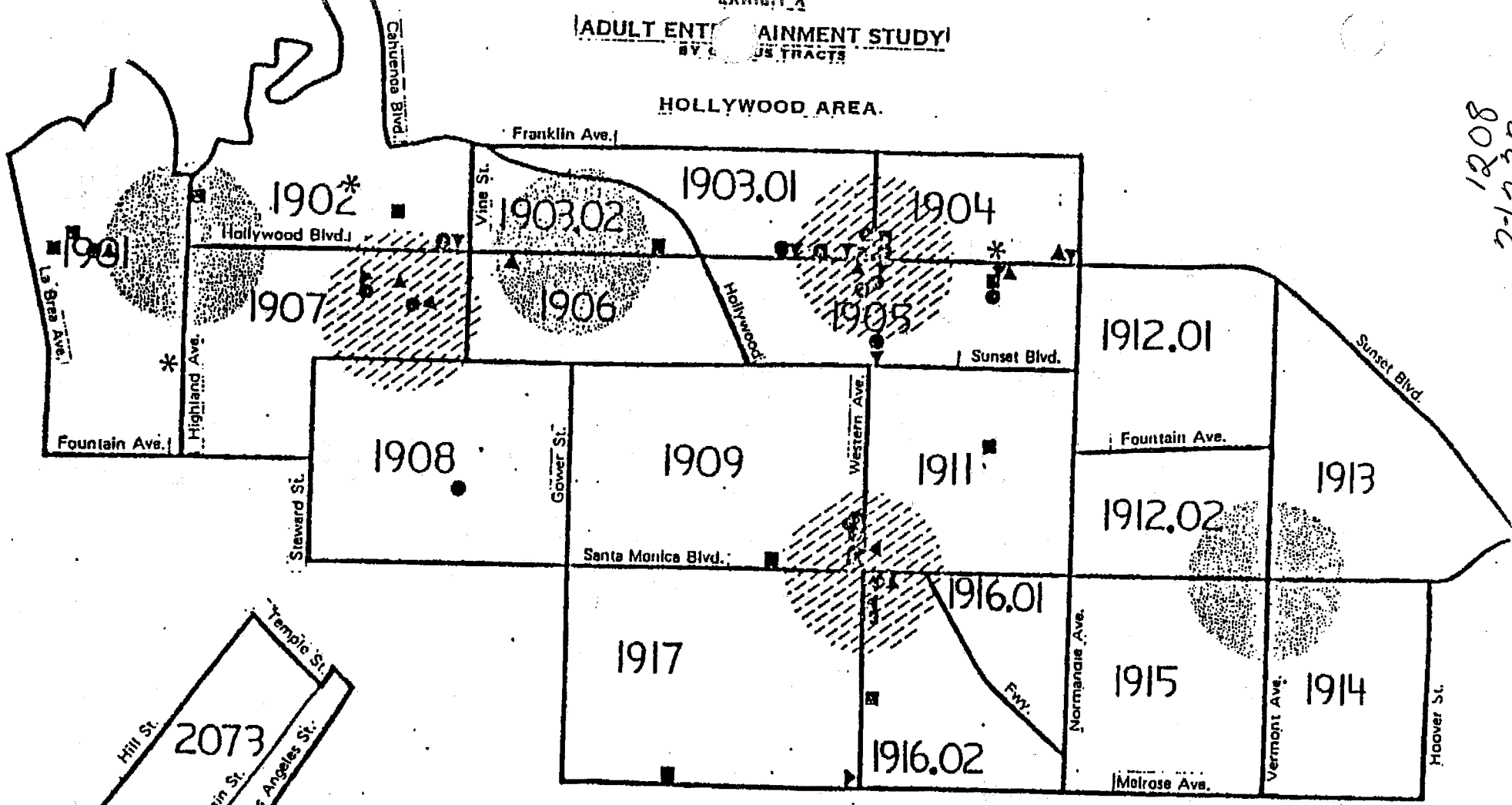
1. Study and Control Areas

On the basis of field investigations and other available data, the Department determined that there are five different areas within the City suitable for analysis, each containing a relatively high concentration of adult entertainment establishments. As shown in Exhibits "A" and "B" on the following pages, three of these concentrations (or "nodes" of activity) are located in Hollywood; one is in Studio City; and one is in North Hollywood. In each case, the focal point of the area selected for analysis was the intersection of two major streets, with the adult entertainment businesses located along the commercially zoned frontage of one or both of the streets forming the intersection. In four of the five areas selected, residentially zoned and developed properties are situated not farther than one-half block from the commercially-zoned frontage. (One node in Hollywood is entirely surrounded by commercial properties.)

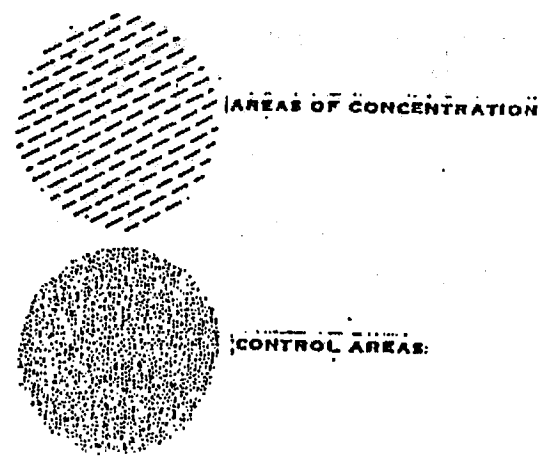
ADULT ENTERTAINMENT STUDY
BY CENSUS TRACTS

HOLLYWOOD AREA.

8021
2-12-33



- MESSAGE PARLORS
- BOOKSTORES/ARCADES
- ▲ THEATERS
- * ADULT MOTELS



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.

In 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 businesses); and Selma 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 area, 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.

As also shown in Exhibit "A", three separate "control areas" were established in Hollywood, each originating at the intersection of two major streets and also encompassing all property within an approximate 1,000-foot radius of the street intersection. Control areas were established at: Santa Monica Boulevard and Vermont Avenue; Hollywood Boulevard and Highland Avenue; and Hollywood Boulevard and Gower Street. In the San Fernando Valley, Exhibit "8" indicates one control area, centered at the intersection of Lankershim Boulevard and Whipple Street, and encompassing property within a radius of approximately 1,500 feet of that intersection, relates to the two nodes of concentration in Studio City and North Hollywood. None of the control areas has adult entertainment businesses within its boundaries, with the exception of the area surrounding the intersection of Hollywood Boulevard and Gower Street which contains one such business.

Table IV, indicates the percentage change in assessed land and improvement value from July 1970 to July 1976 for the commercial and residential property encompassed by the applicable radius surrounding each of the five nodes of concentration, together with their corresponding control areas. For purposes of comparison, the same data is shown for the entire City and for the Community within which the study areas are located. Since concentrations of adult entertainment businesses could have a particular effect on the value of other business properties in an area, a separate tabulation is also shown for only commercially zoned land within each study and control area. (Table IV-A.)

As indicated in Table IV, the 1970-76 percentage change in total assessed "market" valuation of commercially and residentially zoned property (land plus improvements) increased in all three areas in Hollywood containing concentrations of adult entertainment businesses. However, there was some variance in the magnitude of the increase. Changes in the three study area nodes were 2.79, 8.71, and 3.41 percent; compared with increases in the three corresponding control area of 12.53, 1.94, and 5.09 percent, respectively.

The study area node located at Santa Monica Boulevard and Western Avenue increased by 2.79 percent, compared with a substantially greater increase of 12.53 percent in the "control area" associated with that node. Total assessed value within the study area surrounding the intersection of Selma Avenue and Cahuenga Boulevard increased by 3.41 percent while the associated control area increased by the slightly greater amount of 5.09 percent. In direct contrast to this pattern, however, the Hollywood and Western node registered an 8.71 percent increase, while its corresponding control area increased by only 1.94 percent.

TABLE IV

1970-76 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"		Percentage Change in Assessed Valuation 1970-76		
	1969-70	June 1977	Land	Improvements	Total
Santa Monica Boulevard and Western Avenue (<u>Hollywood</u>)	6	12	-0.22	5.81	2.79
Santa Monica Boulevard and Vermont Avenue (<u>Hollywood Control Area</u>)	N.A.	0	-4.84	32.66	12.53

Hollywood Boulevard and Western Avenue (<u>Hollywood</u>)	6	9	3.51	13.21	8.71
Hollywood Boulevard and Highland Avenue (<u>Hollywood Control Area</u>)	N.A.	0	19.32	-7.83	1.94

Selma Avenue and Cahuenga Boulevard (<u>Hollywood</u>)	4	7	21.12	-12.54	3.41
Hollywood Boulevard and Gower Street (<u>Hollywood Control Area</u>)	N.A.	1	17.76	-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 Ventura Boulevard (<u>Studio City</u>)	1	6	67.11	63.10	64.93
Lankershim Boulevard and Vineland Avenue (<u>North Hollywood</u>)	2	4	15.88	9.65	12.61

1979
2-12-37

1213
2-1258

TABLE IV (cont'd.)

Property Within Approximate 1,000 to
1,800 Foot Radius of Intersection of
Streets Shown:

Lankershim Boulevard and Whipple
Street (Valley Control Area)

Sherman Oaks-Studio City
Community

North Hollywood Community

City of Los Angeles

No. of Entertainment "Sites"	1969-70	June 1977	Percentage Change in Assessed Valuation 1970-76		
			Land	Improvements	Total
N.A.		0	62.28	27.66	42.76
N.A.		10	69.25	60.44	64.33
N.A.		5	28.59	33.15	31.07
N.A.		212	35.08	38.92	37.15

TABLE 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 Commercially 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"		Percentage Change in Assessed Valuation 1970-76		
	1969-70	June 1977	Land	Improvements	Total
Santa Monica Boulevard and Western Avenue (<u>Hollywood</u>)	6	12	-0.47	8.53	3.4
Santa Monica Boulevard and Vermont Avenue (<u>Hollywood Control Area</u>)	N.A.	0	-12.53	4.13	-6.38

Hollywood Boulevard and Western Avenue (<u>Hollywood</u>)	6	9	-2.52	-0.45	-1.77
Hollywood Boulevard and Highland Avenue (<u>Hollywood Control Area</u>)	N.A.	0	25.01	-11.19	4.06

Selma Avenue and Cahuenga Boulevard (<u>Hollywood</u>)	4	7	21.93	-18.79	0.54
Hollywood Boulevard and Gower Street (<u>Hollywood Control Area</u>)	N.A.	0	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 (<u>Studio City</u>)	1	6	19.24	25.83	21.9
Lankershim Boulevard and Vineland Avenue (<u>North Hollywood</u>)	2	4	-0.76	3.91	1.92

12.14
2-1234

TABLE IV-A (cont'd.)

Property Within Approximate 1,000 to 1,800 Foot Radius of Intersection of Streets Shown:

Lankershim Boulevard and Whipple Street (Valley Control Area)

Studio City Community

North Hollywood Community

City of Los Angeles

No. of Entertainment "Sites"
1969-70 June 1977

N.A. 0

N.A. 10

N.A. 5

N.A. 212

Percentage Change in Assessment Valuation 1970-76
Land Improvements Total

82.28 -6.35 27.16

30.95 13.01 22.02

2.74 7.56 5.21

12.27 13.52 12.93

Sources/Notes - Tables IV and IV-A:

Actual assessment data from which percentage changes in Tables IV and IV-A were derived is shown in Appendix A. Assessment data was obtained from the City's Land Use Planning and Management System (LUPAMS) computer file. Data is as of July 1 for years shown. "Entertainment Site" means adult theatre, arcade, massage parlor, nude dancing establishment or similar use. Number of "entertainment sites" for 1969-70 was obtained from L. A. Police Department; for June 1977 from L. A. Police Department and L. A. City Planning Department. N.A. means not available. Property included within areas described is shown in Exhibits A and B.

2-12-40 12/15

2-12/15 2-1

1912 HET-C
The percentage increase in assessed values within the three study areas, as well as the control areas, was considerably less in each case than percentage gains registered by the Hollywood 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 located in Studio City (centered east of the intersection of Tujunga Avenue and Ventura Boulevard) increased by 64.93 percent--the largest increase of any of the areas analyzed. In direct contrast, the "adult entertainment node" located at Lankershim Boulevard and Vineland Avenue increased by only 12.61 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, but 22 percent less 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 but 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 reveals that the percentage change in assessed values of land and improvements combined was generally lower in all study areas than in their corresponding control areas. 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 less than in the 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 - Changes in Assessed Valuation

On the basis of the foregoing, there would seem to be some basis to conclude that the assessed valuation of property within the study areas containing concentrations of adult entertainment businesses have generally tended to increase to lesser degree than similar areas without such concentrations. ~~However, in the staff's opinion there would 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~~

~~assessed~~ ~~valuations~~ ~~between~~ ~~1970~~ ~~and~~ ~~1976~~. However, responses to the Department's mail questionnaires from real estate representatives and appraisers have indicated that in their opinion concentrations of adult entertainment businesses have, in some cases, had a direct negative impact on property values.

B. 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 on April 27, 1977 at Le Conte Junior High School. The second meeting was conducted in Northridge on April 28, 1977 at Northridge Junior High School. Both meetings were conducted by Planning Commission President Suzette Neiman and Planning Commissioner Daniel Garcia, with Deputy City Attorney Chris Funk also in attendance..

Questionnaires were available at the meetings for the convenience of those wishing to submit their comments in writing.

Attendance was approximately 200 persons at the Hollywood meeting and 300 persons at the Northridge meeting. A combined total of 60 persons addressed the Commission. 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 Hall, telephone (213) 485-5071.)

The most prevalent type of comment 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 businesses.
- An increase in street crime.
- Offensive signs and displays.
- A need to use existing enforcement tools, such as "red light abatement" to control "adult entertainment" businesses.

- Representatives of La Cienega art gallery proprietors expressed concern over the recent establishment of an adult theater in the area and its incompatibility with gallery use.

A representative of the "Pussycat Theaters" organization informed the Commission that a survey taken by the theater operators indicated that the majority of patrons were middle class, that most were registered voters, and that many were married and had college educations. It was stated that a large number of the patrons were found to reside within a few miles of their theaters. The representative of this theater chain expressed concern at the "lumping" of all adult entertainment businesses into one classification. He felt that in terms of aesthetics, clientele, and effect upon the neighborhood, the theaters were not in the same classification as some other types of adult businesses. (The Commission requested the written documentation of the survey; however, it has not been received to date.)

Several speakers at the Northridge meeting expressed concern that the City even felt it needed to request their opinion on such a subject. They felt that their displeasure over the distribution and display of pornographic materials should be obvious. Citizens also indicated how they had been responsible for the closing of certain establishments in the San Fernando Valley by picketing and other means. Some speakers indicated that they were disturbed by the availability and display of obscene material in drug stores and supermarkets.

The following is a summary listing of specific relevant comments from the two meetings:

Hollywood Meeting (April 27, 1977)

- It was alleged that organized crime is in the sex service business and that this is a \$64 million local business.
- Hollywood and particularly Hollywood Boulevard was once a cultural center; now there is a different class of people. This is a degeneration of Hollywood and Hollywood Boulevard.
- In Hollywood, due to fear for safety, people walk around in groups, not alone or as couples.
- Zoning is not the ultimate response to obscenity: there are public nuisance laws, red light abatement statutes, etc.
- There was concern about the effects on children; parents in Hollywood indicated that they did not allow their children to walk unescorted: there are too many muggings and attacks.
- There are problems brought on by the changing population of the area: street fights, acts of mischief and minor property damages have resulted.

- A local minister indicated concern for the elderly, and that children from 4 to 7 years old cannot ride their bikes without being accosted; he also indicated there had been 23 arrests for prostitution near a local elementary school; he further stated that residents have to go to other areas to shop.
- A representative of a local synagogue stated that the elderly were afraid to walk to religious services and that car pooling had been established.
- A representative of the Hollywood Businessmen's Association advised that 50 percent of the sex crimes reported (in the City) were in the Hollywood area; that since the Police have closed some sex establishments crime has dropped; that adult entertainment businesses have contributed to a deteriorating condition in Hollywood; that there is a 100 percent turnover in school attendance; that the business license ordinance should be modified to require an environmental impact report and proper sign controls for new establishments and that notice should be given to persons within one-half mile; he also reiterated that traditional businesses were leaving the area.
- It was indicated that property values had gone down; Vine and Selma was valued at \$12.50 per sq. ft. years ago, but recently it was worth only \$8.50 per sq. ft.

Northridge Meeting (April 28, 1977)

- A representative of the North Hollywood Chamber of Commerce indicated that adult entertainment businesses were an economic and social blight; that the Police Commission was no help; that they had proposed the M3 Zone for these uses; that we need more police and should make greater use of red light abatement; that the Alcoholic Beverage Control Department should do more.
- Claims were made that the Pussycat Theater in North Hollywood was a dangerous environment to women and children; that in the recent past 2 teenage girls had been accosted and a woman had been attacked and had to jump from a car.
- A beauty shop owner near a Pussycat Theater indicated she no longer stayed open in the evening because her customers were afraid.
- Adult entertainment businesses should be required to rent space in "Class A" buildings.
- Various persons objected to newsracks, obscene material, problems of congestion and ingress and egress.

- 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 needed to develop an ordinance to control adult entertainment.
- Claims were made that adult entertainment business 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 pornographic 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.

C. SURVEY QUESTIONNAIRE CONDUCTED BY DEPARTMENT OF CITY PLANNING

1. Description of Survey

In order to determine additional factual data relating to the subject, and to seek the comments and opinions of property owners, businessmen, realtors, real estate boards, real estate appraisers, representatives of banks, Chambers of Commerce, and others, the Department conducted a mail survey. Two questionnaires were developed. One was designed primarily for businessmen and residential property owners and is hereinafter referred to as the General Questionnaire. The second was designed for realtors, real estate appraisers and lenders and is hereinafter referred to as the Appraiser Questionnaire. A copy of the two questionnaires is contained in the Appendix. The completed questionnaires, together with other letters relative to this subject, are on file in Room 510, Los Angeles City Hall.

The General Questionnaire was mailed to all property owners (of other than property in single-family use) within a 500-foot radius of each of the five study areas. The questionnaire was also distributed to various community groups (including local and area Chambers of Commerce) and at the public meeting in Hollywood and in Northridge.

The Appraiser Questionnaire was mailed to all members of the American Institute of Real Estate Appraisers having a Los Angeles City address and to members of the California Association of Realtors whose office is located in the vicinity of the study areas.

Each of the two questionnaires contained spaces for a respondent to check answers to a series of questions relating to the overall effect (if any) of adult entertainment establishments on nearby properties. It should be emphasized that the Department intentionally structured the "objective response" portion of the questionnaires so as to reduce "bias" and to solicit the maximum range of responses to any specific question. For example, a respondent could check "positive", "negative" or "no effect" in response to the question... "What overall effect do you feel that adult entertainment establishments have on a neighborhood?"

In addition to the direct response portion of the questionnaire, information of a more subjective nature was also solicited. For example, after each question, space was provided for a respondent to list any comments or examples which might pertain to a specific question. The beginning of each questionnaire also invited the respondent to write comments in the space provided or on a separate sheet.

Between February 10 and April 30, 1977, a total of approximately 4,000 questionnaires were mailed (with return envelopes provided) or otherwise distributed to businessmen, real estate appraisers, realtors, representatives of banks and savings and loan institutions, the owners of multiple-unit residential property, and others. Of this number, 694 questionnaires were completed and returned to the Department (an overall 17.4 percent rate of return).

In addition, the Department received 197 non-solicited, completed questionnaires from property owners in Studio City. These questionnaires were distributed in a private mailing by a private individual. The subject mailing included a replica of the Department's appraiser questionnaire, together with written material alleging City intent to create an adult entertainment zone in Studio City (copy included as Appendix D-2). According to the subject individual's testimony at the public hearing on April 27, 1977, 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, correcting the misinformation (copy included in Appendix D-1).

2. Results of Survey Questionnaires

A tabulation of the responses to the specific questions solicited in the objective portion in each of the two types of questionnaires is presented below. A summary of the comments follows:

GENERAL QUESTIONNAIRE

- RESPONSES -

$\frac{\text{Total no. of responses}}{\text{Total no. of questionnaires}} = \frac{581}{3600} = 16\% \text{ return}$

Question

1. What overall effect do you feel that adult entertainment establishments have had on a neighborhood:

	<u>Positive</u>	<u>Negative</u>	<u>No effect</u>
Effect on the business condition (sales & profits) in the area:	43(7.4%)	492(84.7%)	36(6.2%)
Effect on homes (value & appearance) in the area immediately adjacent to adult entertainment businesses:	37(6.9%)	472(81.2%)	26(4.5%)

	<u>Positive</u>	<u>Negative</u>	<u>No effect</u>
Effect on homes (value & appearance) in the area located 500 feet or more from adult entertainment businesses?	35 (6.0%)	446 (76.8%)	19 (3.3%)

2. Do you believe the establishment of adult entertainment facilities in the vicinity of your business has had any of the following effects? (Please check all those effects which you feel have occurred.)

<u>26</u> (4.5%) no effect	<u>305</u> (52.5%) decreased property values
<u>206</u> (35.5%) lower rents	
<u>275</u> (47.3%) vacant businesses	<u>13</u> (2.2%) increased property values
<u>288</u> (49.6%) tenants moving out	<u>16</u> (2.8%) lower taxes
<u>224</u> (38.6%) complaints from customers	<u>98</u> (16.9%) higher taxes
<u>3</u> (-) less crime	<u>489</u> (84.2%) decreased business activity
<u>370</u> (63.7%) more crime	
<u>1</u> (-) improved neighborhood appearance	<u>8</u> (1.4%) increased business
<u>416</u> (71.6%) deteriorated neighborhood appearance	<u>312</u> (53.7%) more litter
<u>8</u> (1.4%) other (please specify)	

3. (Not applicable for tally.)

4. Have you seriously considered moving your business elsewhere because of nearby concentrations of adult entertainment businesses?

167 (28.7%) Yes 165 (28.4%) No

5. Would you consider expanding in your current location?

83 (14.3%) Yes 177 (30.5%) No

6. What types of adult entertainment establishments are there in your area (Please check appropriate boxes.)

<u>410</u> (70.6%) adult bookstores	<u>179</u> (30.8%) nude or topless dancing
<u>310</u> (53.4%) massage parlors	<u>389</u> (67.0%) adult theatres
<u>190</u> (32.7%) peep shows	<u>240</u> (41.3%) adult motels
<u>237</u> (40.8%) bars with X-rated entertainment	
<u>3</u> other sex shops	

How far from your business is the nearest adult entertainment establishment?

(Not tabulated due to limited response.)

Responses to the foregoing questions reveal that adult entertainment businesses are perceived by the majority of respondents as exerting a negative impact on surrounding businesses and residential properties.

Whether or not such negative impacts have actually occurred, or only perceived to have occurred, cannot be readily determined, empirically, on the basis of this survey. However, in terms of the attitudes of the respondents toward such businesses, the conclusion must be drawn that the overall effect on surrounding properties is considered to be negative.

Among the adverse effects of adult entertainment establishments cited by businessmen are:

- Difficulty in renting office space
- Difficulty in keeping desirable tenants
- Difficulty in recruiting employees
- Limits hours of operation (evening hours)
- Deters patronage from women and families; general reduced patronage

Of those businessmen indicating that they have not seriously considered moving because of nearby concentrations of adult entertainment business, the most frequent response was that they had been in the area a great many years, and to establish elsewhere would be too risky and/or that their investment was too great to move. A few respondents indicated that it is the adult entertainment businesses that should move, not they.

The few businessmen commenting that they would not consider expanding in their current location indicated that their business did not warrant expansion.

Several businessmen indicated that their businesses are relatively unaffected by nearby adult entertainment establishments. Among the businesses cited are a commercial art studio; a building trades contractor; a mail order business; a telephone answering service and a wholesaler.

Among the few positive effects cited by businessmen is the increase in business for certain non-adult entertainment businesses such as tourist-serving businesses (e.g. car rental agencies). "The bad effect it might have is cancelled out by the business it does attract; x-rated theaters attract tourists."

Many respondents commented on the crimes associated with adult entertainment establishments: prostitution, dope, theft, robbery, etc. A high percentage of respondents report they do not feel safe in such areas.

1226
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A high percentage of respondents commented on their concern for the effects of adult entertainment environment on the morals and safety of children.

A high percentage of respondents commented on the aesthetics of adult entertainment establishments: garish, sleazy; shabby, blighted, tasteless, etc. Also, many commented on the increased incidence of litter and graffiti.

APPRAISER QUESTIONNAIRE

- RESPONSES -

Total no. of responses = 81 = 20% return
 Total no. of questionnaires 400

Question	Response
1. What effect does the concentration of adult entertainment establishments have on the <u>market value</u> of business property (land, structures, fixtures, etc.) located in the vicinity of such establishments?	increase in value <u>1</u> (-)
	decrease in value <u>71</u> (87.7%)
	no effect <u>5</u> (6.2%)
2. What effect does the concentration of adult entertainment establishments have on the <u>rental value</u> of business property located in the vicinity of such establishments?	increase in value <u>1</u> (-)
	decrease in value <u>55</u> (67.9%)
	no effect <u>4</u> (4.9%)
3. What effect does the concentration of adult entertainment establishments have on the <u>rentability/saleability</u> of business property located in the vicinity (length of time required to rent or sell property; rate of lessee/buyer turnover; conditions of sale or lease, etc.)?	increase in rentability/ saleability <u>3</u> (3.7%)
	decrease in rentability/ saleability <u>48</u> (59.3%)
	no effect <u>3</u> (3.7%)
4. What effect does the concentration of adult entertainment establishments have on the <u>annual income of businesses</u> located in the vicinity of such establishments?	increased income <u>2</u> (2.5%)
	decreased income <u>59</u> (72.8%)
	no effect <u>7</u> (8.6%)
5. Have any business owners or proprietors considered relocating or not expanding their businesses because of the nearby concentration of adult entertainment establishments?	yes <u>23</u> (28.4%)
	no <u>4</u> (4.9%)
	not known <u>28</u> (34.6%)
6. In recent years, has the commercial vitality (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 <u>45</u> (55.6%)
	no <u>29</u> (35.8%)
	not known <u>-</u> (-)

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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 (90.6%)	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 (10.5%)	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 rentability/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 set forth above, please describe the effects which you believe the concentration of adult entertainment business has on each of the following:

Property values of surrounding:

	Decrease	Unknown	No effect	Increase
Commercial property	46 (56.8%)	32 (39.5%)	1	2 (2.5%)
Residential property	42 (51.9%)	38 (46.9%)	-	1
General	16 (19.8%)	65 (80.2%)	-	-

Rental values of surrounding:

	Decrease	No response	No effect	Increase
Commercial property	39 (48.1%)	42 (51.9%)	-	-
Residential property	37 (45.7%)	44 (54.3%)	-	-
General	12 (14.8%)	69 (85.2%)	-	-

Vacancies

Number	1	56 (69.1%)	1	23 (28.4%)
Length	1	72 (88.9%)	2 (2.5%)	6 (7.4%)
Rate of tenant turnover	-	49 (60.5%)	1	31 (38.3%)
Annual business income	24(29.6%)	53 (65.4%)	2 (2.5%)	2 (2.5%)

Complaints from customers and residents due to concentration Yes 24(29.6%) 57 (70.4%)

Neighborhood appearance 24(29.6%) 3 (3.7%)

Crime 1 1 - 48 (59.3%)

Litter - 1 1 44 (54.3%)

Other (please specify)

GENERAL QUESTIONNAIRE

- REALTOR RESPONSES -

Total no. of responses = 32

NOTE: Due to distribution, certain realtors received the General Questionnaire rather than the Appraiser Questionnaire. For analysis purposes, the subject responses were tabulated separately and analyzed together with the responses to the Appraiser Questionnaire.

Question

1. What overall effect do you feel that adult entertainment establishments have had on a neighborhood:

	<u>Positive</u>	<u>Negative</u>	<u>No effect</u>
Effect on the business condition (sales & profits) in the area:	-	31 (97%)	1
Effect on homes (value & appearance) in the area immediately adjacent to adult entertainment businesses:	-	31 (97%)	1
Effect on homes (value & appearance) in the area located 500 feet or more from adult entertainment businesses:	-	29 (91%)	2

2. Do you believe the establishment of adult entertainment facilities in the vicinity of your business has had any of the following effects? (Please check all those effects which you feel have occurred.)

<u>1</u> (31.3%) no effect	<u>29</u> (91%) decreased property values
<u>23</u> (71.9%) lower rents	
<u>25</u> (70%) vacant businesses	<u>0</u> increased property values
<u>25</u> (70%) tenants moving out	<u>3</u> (9.4%) lower taxes
<u>25</u> (70%) complaints from customers	<u>7</u> (21.9%) higher taxes
<u>0</u> less crime	<u>23</u> (91%) decreased business activity
<u>26</u> (81.3%) more crime	<u>0</u> increased business

30 (94%) deteriorated 27 (84%) more litter
neighborhood
appearance

 Other (please specify)

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 (37.5%) No

6. What types of adult
entertainment estab-
lishments are there
in your area?
(Please check
appropriate boxes.)

27 (84.4%) adult
bookstores

13 (40.6%) nude or
topless dancing

17 (53.1%) massage
parlors

24 (75%) adult
theatres

15 (46.9%) peep shows

15 (46.9%) adult
motels

12 (37.5%) bars with X-rated
entertainment

How far from your business
is the nearest adult entertainment
establishment?

(Not tabulated due to limited
response.)

D. U.S. CENSUS AND RELATED DATA

1. Cluster Analysis "Used by Community Analysis Bureau to Describe Various Parts of the City"

The last U.S. Decennial Census was conducted on April 1, 1970. With the proliferation of adult entertainment business it would seem appropriate to include as background information a description of the socio-economic and physical characteristics of the areas under study, as revealed by census data. Such a description may provide insight as to the underlying factors contributing to the concentration of sex-oriented business in the areas under study.

An excellent available source providing such a description is a 1974 report prepared by the City's Community Analysis Bureau (CAB) concerning the "State of the City".* In this document, the CAB has utilized a statistical technique known as "cluster analysis" to identify specific areas within the City which have common characteristics, as revealed by census data. In conducting this study, the CAB made use of 66 census data items (or variables) which were selected from the entire spectrum of socio-economic and physically descriptive data items available for all census tracts in the City.

The U.S. Census Bureau reports data on numerous geographical levels, the "census tract" being the smallest geographical area for which data is maintained and reported on a regular basis. There are 750 such census tract areas in the City, each containing a population of slightly fewer than 4,000 persons, on the average. The five study area nodes and four control areas under study herein are contained within portions of 25 census tracts.

The particular variables which most accurately describe a particular census tract were used by the Community Analysis Bureau in such a manner as to combine those areas which have the most similar characteristics. As a result of this procedure, thirty cluster groups were established throughout the City, each such cluster consisting of one or more census tracts, each census tract within a particular cluster being more similar to other parts of that cluster than to any other geographical section of the City.

* The State of the City - A Cluster Analysis of Los Angeles - City of Los Angeles Community Analysis Bureau, June 1974.

1233
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Description of Hollywood Area

The three study areas in Hollywood containing concentrations of adult entertainment businesses are included within portions of 11 census tracts. Their three associated "control areas" are partially contained within nine census tracts. These 20 tracts are all included within a larger area identified in the CAB's report as "Cluster 15", entitled "The Apartment Dwellers", consisting of 34 tracts. A description of this area, as quoted from the previously cited CAB report, is set forth below. 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 to flourish in the 1969-70 period.

" Cluster 15 is a lower income, predominately-- old apartment 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 is below the average for the City. This lower income does not translate into an abnormally high poverty distribution. One in ten families and a smaller proportion of 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 common. Of the older apartment complexes many have no garage facilities..."

"...Old apartments comprise 42% of the multiple units. One of the heaviest concentrations occurs east of Western Avenue and north of Olympic Boulevard. These are high density, closely packed, rectangular shaped, stucco units which line the streets approaching Wilshire Boulevard. South of Olympic Boulevard, the pattern remains one of multiple family units, but these are generally interspersed with homes or are the end product of converted two and three story frame houses. Hollywood is similar, but it has several single family residential areas and apartment encroachment appears to have more of an impact..."

"...Most of the cluster's 102,700 dwellings are renter occupied, including a majority of the homes. Median rent averages \$108, but 17% of the multiple dwellings are available for less than \$80..."

"...Single family residences are a small proportion of the total housing stock and like the area's apartments, many predate World War II. Few of the essentially single family residential neighborhoods have the kind of zoning protection which requires that new construction be single units. Replacement housing has tended to be large apartments. Homes averaged \$26,000 in median value, which is more a factor of the land than the improvements. Much of the land west of Western Avenue adjoins the more expensive Hancock Park area..."

"...Cluster 15 has one of the highest population densities in the City, 19,080 persons per square mile, not exceptional for an apartment area. It also has the highest cluster average of elementary school transiency rates--46% for incoming students and 34% for students leaving. This mobility of the residents did not seem to affect the median sixth grade reading score. It was above the City average. The cluster has 8 park sites within its boundary and is also served by the more regional recreation areas of Echo Park; MacArthur Park and Griffith Park all of which are within access..."

"...The incidence of burglary per 100 improved parcels is high, a partial reflection of the large number of dwelling units per land parcel. One of the more disturbing aspects of the cluster is the suicide rate. Outside of Downtown, only three of the clusters had higher rates..."

2. Use of 1970 Census Data to Describe Studio City and North Hollywood Areas

There are four census tracts which comprise the Studio City study area; two such tracts in North Hollywood; and three census tracts representing the "control area" for the San Fernando Valley. (One of the "control area" tracts also forms part of the Studio City study area.)

The CAB's cluster analysis reveals that these eight different census tracts are all quite dissimilar, inasmuch as the seven tracts are contained within six different "clusters". A detailed description of each of these six clusters would not be practical for purposes of this study. However, a summary of certain key variables attributable to the two study areas in Studio City and North Hollywood, 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
 Comparison of 24 Variables from 1970 Census
 Describing Studio City and North Hollywood Nodes
 and Corresponding Control Area

VARIABLES	AREAS-----AND-----			VALUES
	Studio City (Tujunga & Ventura)	North Hollywood (Lankershim & Vineland)	Control (Lankershim & Whipple)	Entire City
<u>Population</u>				
Population per sq. mile	5,742	8,265	5,893	6,041
% Persons 0-17	18.4	18.2	16.7	30.2
% Persons 65+	10.6	17.9	15.2	10.1
% White (non-Spanish)	92.0	85.3	90.7	60.3
% Black	0	0	0	17.2
% Spanish-American	6.5	13.7	7.7	18.4
% Families w/female head	10.6	16.4	16.4	16.2
<u>Education</u>				
% High School dropouts, 25 & older	22.1	38.6	25.3	38.1
% 25+ who have finished 4+ years college	22.0	10.2	18.3	13.9
<u>Economics</u>				
Approximate median family income	\$15,672	\$ 9,471	\$12,575	\$10,535
% White collar employed	80.4	60.6	77.3	57.4
% unemployed	7.8	6.1	9.1	7.0
% families in poverty	3.7	10.0	6.6	9.9
% families receiving welfare	4.3	7.6	4.7	9.9
% 1-unit structures	50.6	48.9	34.2	51.7
Approximate median value, owner occupied units	\$39,141	\$25,335	\$35,530	\$26,700
Approximate median monthly rent, renter occupied units	\$ 135	\$ 123	\$ 129	\$ 107
% of owner occupied, 1 unit, structures built before 1940	24.1	52.4	52.2	28.5
% of renter occupied, 2+ unit structures built before 1940	10.9	13.9	21.8	30.7

1237
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TABLE V (cont'd)
 Comparison of 24 Variables from 1970 Census
 Describing Studio City and North Hollywood Nodes
 and Corresponding Control Area

VARIABLES	AREAS-----AND-----			VALUES
	Studio City (Tujunga & Ventura)	North Hollywood (Lankershim & Vineland)	Control (Lankershim & Whipple)	Entire City
<u>Crime Rates</u>				
Assaults per 100 population	.465	.374	.478	.857
Robberies per 100 population	.172	.267	.170	.454
Burglary per 100 improved parcels	13.86	10.94	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 the foregoing 1970 Census data, it is possible to develop a general description of the two study area nodes containing adult entertainment businesses in the Valley. As indicated above, such a description must necessarily be based on data applying 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 upper middle income group, with a relatively high percentage of college graduates. High school dropouts were considerably below the citywide norm. Eight out of ten employed persons were in "white collar" jobs. The percentage of families receiving welfare or in poverty status was considerably below the citywide percentage. The unemployment 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 per 100 population in the Studio City area were below the rate for the city as a whole (.172 and .454, respectively), although the number of burglaries per 100 improved parcels (13.86) was close to the citywide rate of 14.96. Total arrests per 100 population (4.23) were about one-half of the 8.26 rate which prevailed citywide.

The North Hollywood study area contrasts rather sharply with the above described Studio City area. In North Hollywood, median family income was \$9,471 in 1970--lower than the citywide median of \$10,535--and considerably lower than the \$15,672 median income of residents in the Studio City study area. Sixty-one percent of employed persons were in "white collar" jobs in North Hollywood, compared with 80 percent in Studio City and 57 percent in the entire city. The percentage of families in a poverty status in North Hollywood was considerably higher than in Studio City (10.0 percent and 3.7 percent, respectively). The percent of families in North Hollywood receiving welfare was higher than in Studio City, but lower than in the entire city. Unemployment rates, however, were lower in North Hollywood than in Studio City and the entire City.

Housing values were considerably lower in North Hollywood than in Studio City, and slightly lower than average values throughout the entire city. Median monthly rents were lower in North Hollywood than in Studio City but higher than in all of Los Angeles. Of all owner-occupied one-unit structures, 52.4 percent were built prior to 1940 in the North Hollywood study area, compared with only 28.5 percent in the entire city. Single-family homes in North Hollywood are older than in Studio City.

As revealed in Table V, 1970 crimes rates for the seven variables tabulated were lower in North Hollywood than in the city as a whole. Except for "robberies per 100 population" and "total arrests per 100 population" all other rates in North Hollywood were lower than in the Studio City study area.

Tabulation of U.S. Census Trends from 1960 to 1970

Time series (trend) data can often be of value in identifying underlying socio-economic or physical characteristics which may have contributed to the change in an area. During the course of this study, the staff prepared a tabulation of the 1960-70 change in selected socio-economic variables as reported in the U.S. Census, covering the five study areas, the four "control" areas, and the City as a whole. This was done in order to determine if changes in the study area nodes were significantly different than the "control areas", or from citywide norms.

A tabulation of this data is contained in Appendix E. A review of this data revealed that the 1960-70 trends in the variables selected (relating to population, economics and housing) were not significantly different for the study areas than for the "control areas". In general, numerical or percentage changes in the data were also similar to citywide trends and no firm conclusions of particular relevance to the study could be developed.

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POLICE DEPARTMENT STUDY OF HOLLYWOOD

This section of the report considers the number and percentages of adult entertainment businesses in the City, changes in these businesses since 1975, and more specifically, crime rates in the Hollywood area as compared to crime rates, citywide.

The following 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 of 1975 and December 31, 1976. The statistics show a decrease in massage parlors, bookstores, arcades and theaters and 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 Hollywood area provides what may be a positive correlation between crime and the presence of adult entertainment facilities.

<u>TYPE OF ACTIVITY</u>	<u>Nov. 1975</u>	<u>Dec. 1976</u>	<u>Percent of Change</u>
Adult Motels	37	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

<u>TYPE OF ACTIVITY</u>	<u>CENTRAL BUREAU</u>	<u>SOUTH BUREAU</u>	<u>WEST BUREAU</u>	<u>VALLEY BUREAU</u>
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 (2%)	28(64%)	8(18%)
TOTAL	27(23%)	29(14%)	99(48%)	52(25%)

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The information in this section is an extract from a report to the Planning Department on "The Impact of Sex Oriented Businesses on the Police Problems in the City of Los Angeles*", prepared by the Los Angeles City Police Department. The City Council in instructing the Planning Department to conduct the Adult Entertainment study has also instructed other City agencies to cooperate with and contribute as necessary to the report process. In accordance with such instructions, the Police Department conducted an analysis of the relationship between the concentration of adult entertainment establishments and criminal activity in the Hollywood area as compared to the citywide crime rates for the period beginning 1969 and ending 1975. This period of comparison covers the years during which adult entertainment establishments appeared and proliferated in the Hollywood area.

Part I crimes are those criminal acts which most severely affect their victims; they include homicide, rape, aggravated assault, robbery, burglary, larceny, and vehicle theft. During the period of 1969 through 1975, reported incidents of Part I crimes in the Hollywood Area increased 7.6 percent while the City showed a 4.2 percent increase. Thus, Hollywood's Part I crimes increased at nearly twice the rate of the City's increase. In conformance to the overall trend, every Part I crime committed against a person, not against property, increased at a higher rate in Hollywood Area than in the citywide total. Street robberies and 484 Purse Snatches, wherein the victim was directly accosted by their assailant, increased by 93.7 percent and 51.4 percent, respectively; the citywide increase was 25.6 percent and 36.8 percent.

Suspects arrested for Part I criminal acts in Hollywood Area increased 16.2 percent while the City dropped by 5.3 percent. This reveals that Hollywood Area was 21.5 percent over the City's total in the apprehension of serious criminals during the seven year period.

Equally alarming as the increase in Part I arrests, is the increase in Part II arrests (described on Table VI, pages 53-54) in Hollywood Area as opposed to the rest of the City. Hollywood increased in this category by 45.5 percent while the City rose but 3.4 percent.

Prostitution arrests in Hollywood Area increased at a rate 15 times greater than the city average. While the City showed a 24.5 percent hike, Hollywood bounded to a 372.3 percent increase in prostitution arrests.

Similarly, pandering arrests in Hollywood Area increased by 475.0 percent, 3-1/2 times the city increase of 133.3 percent. (See note p. 54.)

*The complete report prepared by the Los Angeles City Police Department is available for review in the official files under City Plan Case No. 21475 in the Los Angeles City Planning Department.

Table VI

1969 THROUGH 1975 SURVEY PERIOD
REPORTED CRIMES AND ARRESTS

<u>Part I Offenses</u>	<u>Hollywood Area</u>			<u>Citywide</u>		
	<u>1969</u>	<u>1975</u>	<u>% Change</u>	<u>1969</u>	<u>1975</u>	<u>% Change</u>
Homicide	19	37	+94.7	377	574	+52.3
Rape	214	199	-7.0	2115	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	93478	+4.0
Auto Theft	2621	2608	-0.5	32149	30861	-4.0
TOTAL	17911	19268	+7.6	216756	225857	+4.2
St. Robberies	381	738	+93.7	5321	6684	+25.6
484 Purse Snatches	185	280	+51.4	1951	2668	+36.8

ARRESTS

<u>Part I Offenses</u>	<u>Hollywood Area</u>			<u>Citywide</u>		
	<u>1969</u>	<u>1975</u>	<u>% Change</u>	<u>1969</u>	<u>1975</u>	<u>% Change</u>
Homicide	21	26	+23.8	475	573	+20.6
Rape	67	47	-29.9	858	552	-35.7
Agrav. Assault	239	348	+45.6	6250	3163	-49.4
Robbery	368	285	-22.6	4855	5132	+5.7
Burglary	864	514	-40.5	7823	6032	-22.9
Larceny	546	1371	+151.1	6877	11706	+70.2
Auto Theft	319	226	-29.2	4820	3121	-5.3
TOTAL	2424	2817	+16.2	31958	30279	-5.3

<u>*Part II Offenses</u>	<u>Hollywood Area</u>			<u>Citywide</u>		
	<u>1969</u>	<u>1975</u>	<u>% Change</u>	<u>1969</u>	<u>1975</u>	<u>% Change</u>
TOTAL	10660	15503	+45.4	179233	185417	+3.4

*(Part II arrests include: other assaults, forgery and counterfeiting, embezzlement and fraud, stolen property, prostitution, narcotics, liquor laws, gambling, and other miscellaneous misdemeanors.)

<u>Prostitution Arrests</u>	<u>1969</u>	<u>1975</u>	<u>% Change</u>
Hollywood Area	433	2045	+372.3
Citywide	2864	3564	+24.5

1242
2-1267

Table VI (cont'd)

<u>Pandering Arrests</u>	<u>1969</u>	<u>1975</u>	<u>% Change</u>
Hollywood Area	8	46	+475.0
Citywide	42	98	+133.3

NOTE: (The prostitution arrests made in Hollywood Area in 1975 represents 57.3 percent of all arrests for prostitution made in the city. The pandering arrests made in Hollywood Area in 1975 represents 46.9 percent of all pandering arrests made in Los Angeles during that year.)

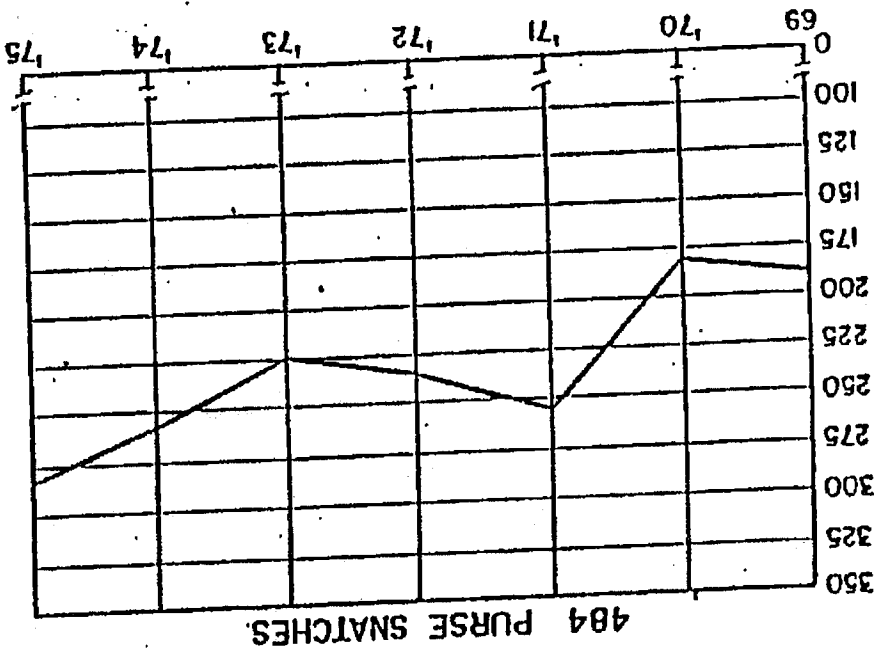
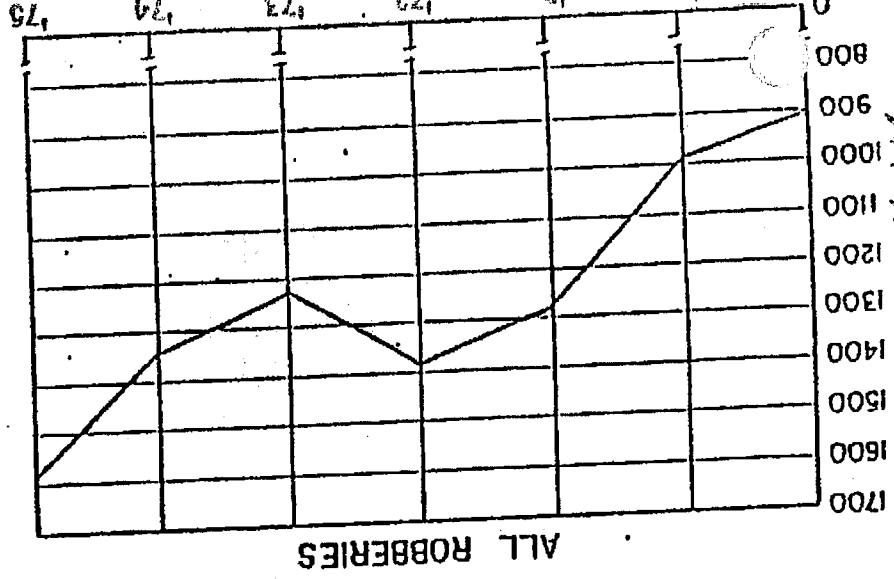
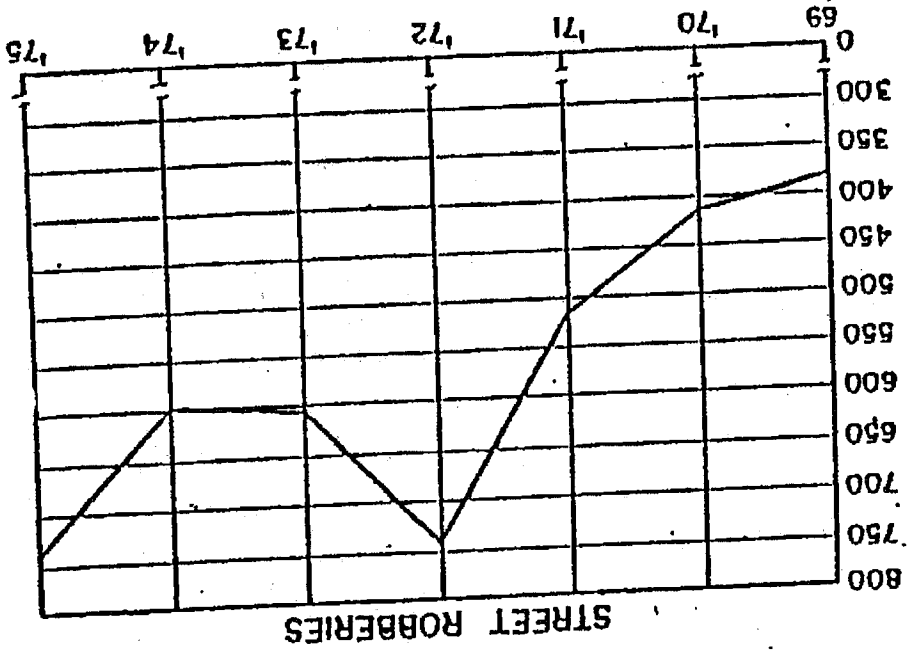
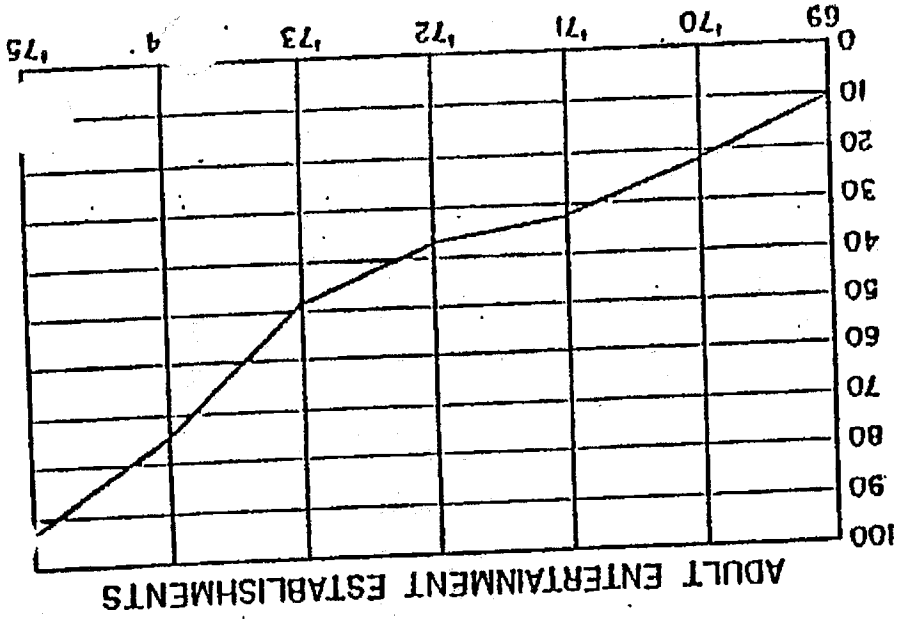
<u>DEPLOYMENT</u>			
<u>Hollywood Area</u>	<u>1969</u>	<u>1975</u>	<u>% Change</u>
Patrol	197	255	+29.4
Investigators	45	61	+35.6
TOTAL	242	316	+30.6
Citywide	6194	7506	+21.1

ADULT ENTERTAINMENT ESTABLISHMENTS
HOLLYWOOD AREA

1969 through 1975

<u>1969</u>	<u>1975</u>
1 Hard-core motel	3 Hard-core motels
2 Bookstores	18 Bookstores
7 Theaters	29 Theaters
1 Massage parlor/scam joint	38 Massage parlor/scam joints
11 Locations (Total)	88 Locations (Total)

HOLLYWOOD AREA



12424
2-1269

During the period included in this report, the Citywide deployment of police 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 not 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 officers and are in the file and available for inspection upon request. The following paragraph summarizes this section of the Police Department report.

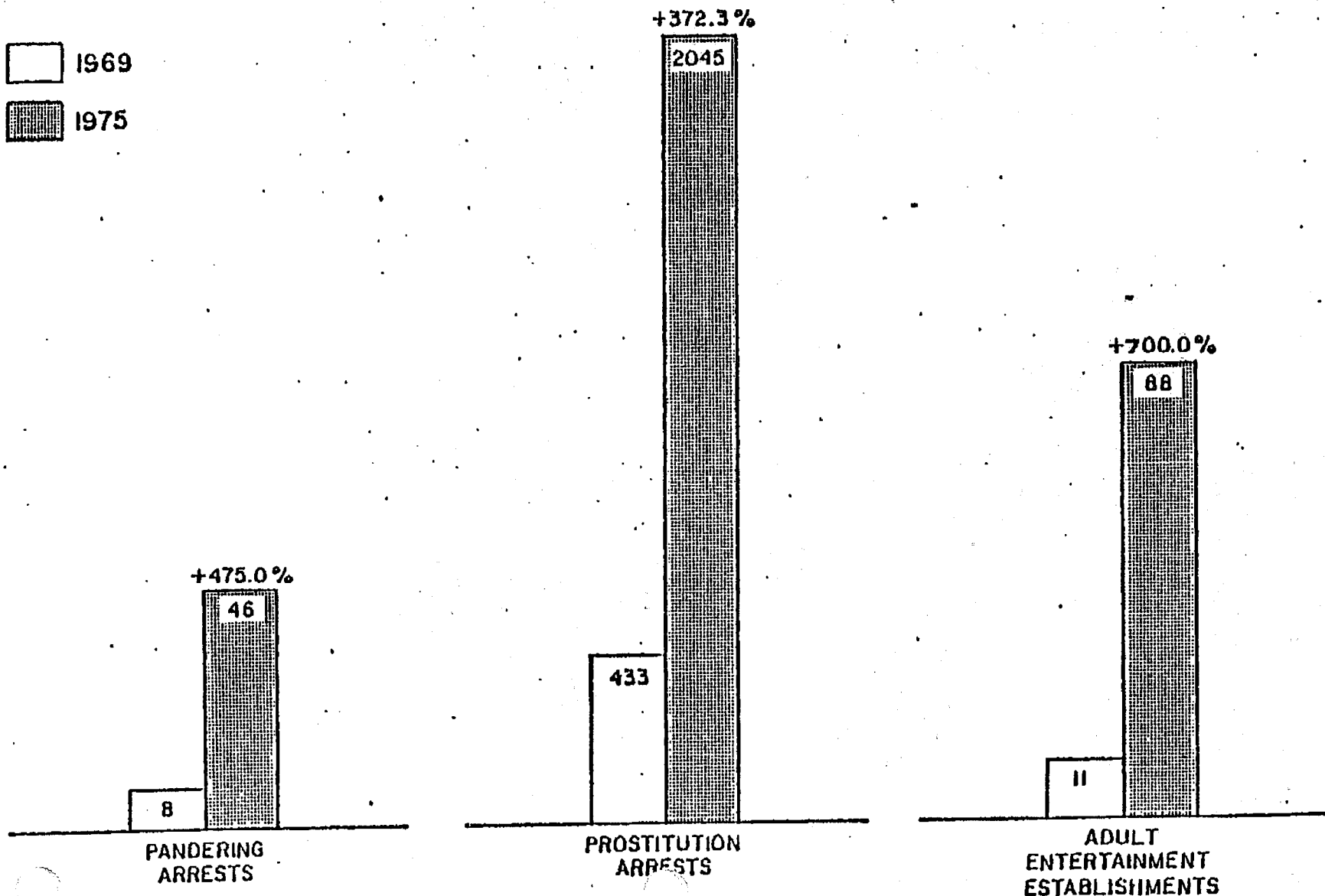
The police officer reports can be summarized as follows: all officers felt the sex-oriented businesses either contributed to or were directly responsible for the crime problems in the Hollywood area. The officers felt the sex shops were an open invitation to undesirables and thereby directly caused the deterioration of neighborhoods. Also, it was suggested that these businesses purposely 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





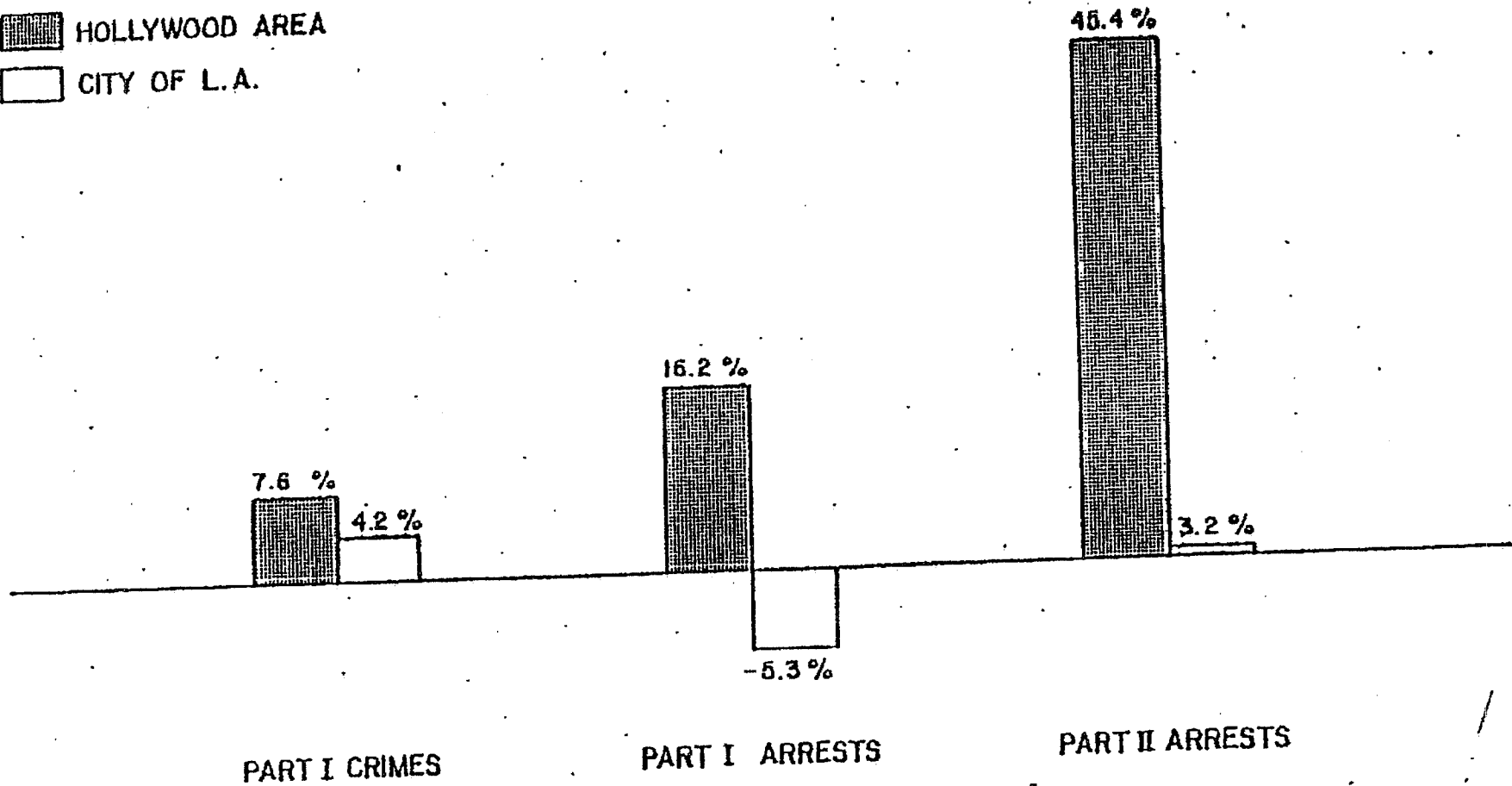
11-21-8
1974



HOLLYWOOD AREA VS. CITY OF L.A. RATE OF INCREASE 1969-1975

12.47
2-1272

 HOLLYWOOD AREA
 CITY OF L.A.



53-B

2-1272

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 O. Johnson, Division Head

Code Studies Section

Jack C. Sedwick, Senior City Planner
Robert Janovici, City Planner
Charles S. Rozzelle, 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 Odell, Cartographer
Gilbert Castro, Cartographer
Barbara Reilly, Typist
Corrine Gluck, Typist
Mary Volz, Typist
Mewland Watanabe, Typist
Jeanne Crain, Typist
Audrey Jones, Typist
Mason Dooley, Photographer

APPENDICES.

1249
~~2-1274~~

APPENDIX A
(Sheet 1)

Changes in Assessed "Market" Value of Residential and Commercial Property 1970-76; Areas of Concentration of Adult Entertainment Businesses; Corresponding Control Areas, and City of Los Angeles

Areas of Concentration ("Nodes") and Control Areas	Assessed "Market" Values					
	Land 1970	Land 1976	Improvements 1970	Improvements 1976	Total 1970	Total 1976
Santa Monica & Western	12,955,100	12,926,800	12,945,620	13,697,620	25,900,900	26,624,420
Control Area - Santa Monica and Vermont	11,549,300	10,990,500	9,971,400	13,227,900	21,520,700	24,218,400
Hollywood & Western	17,618,700	18,237,710	20,361,040	23,015,660	37,979,740	41,289,370
Control Area - Hollywood & Highland	21,956,500	26,197,880	39,051,920	35,992,140	61,008,420	62,190,020
Selma & Cahuenga	28,720,280	34,785,080	31,852,740	27,856,660	60,573,020	62,641,740
Control Area - Hollywood & Gower	14,502,880	17,078,900	13,411,880	12,256,520	27,914,760	29,335,420
Tujunga & Ventura (Studio City)	7,115,460	11,890,900	8,493,260	13,852,800	15,608,720	25,743,700
Lankershim & Vineland (North Hollywood)	13,789,200	15,979,300	15,287,340	16,763,160	29,076,540	32,742,460
Control Area - Lankershim & Whipple	11,168,200	18,169,000	14,744,280	18,823,200	25,912,480	36,992,200
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

2-1275
1250

CITY OF LOS ANGELES
CALIFORNIA



TOM BRADLEY
MAYOR

DEPARTMENT OF
CITY PLANNING
581 CITY HALL
LOS ANGELES, CALIF. 90012
—
CALVIN S. HAMILTON
DIRECTOR
—
FRANK P. LOMBARDI
EXECUTIVE OFFICER

CITY PLANNING
COMMISSION
—
SUZETTE NEIMAN
PRESIDENT
—
FRED E. CASE
VICE-PRESIDENT
—
DANIEL P. GARCIA
LESTER B. KING
LEONARD LEVY
—
RAYMOND I. NORMAN
SECRETARY

APPENDIX B

March 14, 1977

REQUEST FOR YOUR ASSISTANCE IN OBTAINING INFORMATION REGARDING
"ADULT ENTERTAINMENT ESTABLISHMENTS"

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 address, 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

CALVIN S. HAMILTON
Director of Planning

CSH:CSR:cd -
0417B/0029A

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2-12-76

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)

B-1

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2-1277

2. Do you feel the establishment of adult entertainment facilities in the vicinity of your business has had any of the following effects? (Please check all those effects which you feel have occurred.)

- | | |
|---|--|
| <input type="checkbox"/> no effect | <input type="checkbox"/> decreased property values |
| <input type="checkbox"/> lower rents | <input type="checkbox"/> increased property values |
| <input type="checkbox"/> vacant businesses | <input type="checkbox"/> lower taxes |
| <input type="checkbox"/> tenants moving out | <input type="checkbox"/> higher taxes |
| <input type="checkbox"/> complaints from customers | <input type="checkbox"/> decreased business activity |
| <input type="checkbox"/> less crime | <input type="checkbox"/> increased business |
| <input type="checkbox"/> more crime | <input type="checkbox"/> more litter |
| <input type="checkbox"/> improved neighborhood appearance | |
| <input type="checkbox"/> deteriorated neighborhood appearance | |
| <input type="checkbox"/> other (please specify) _____ | |

Please list specific examples relating to any box checked, immediately above.

3. What are the hours of operation of your business? _____

4. Have you seriously considered moving your business elsewhere because of nearby concentrations of adult entertainment businesses?

yes no

Why?

5. Would you consider expanding in your current location?

yes no; if not, why? _____

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2-1278

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 _____

1254
~~1279~~
2-~~1278~~

CALIFORNIA



TOM BRADLEY
MAYOR

DEPARTMENT OF
CITY PLANNING
561 CITY HALL
LOS ANGELES, CALIF. 90012

CALVIN S. HAMILTON
DIRECTOR

FRANK P. LOMBARDO
EXECUTIVE OFFICER

APPENDIX C

March 14, 1977

REQUEST FOR YOUR ASSISTANCE IN OBTAINING INFORMATION
REGARDING "ADULT ENTERTAINMENT" ESTABLISHMENTS

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 address, 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 485-3503.

We greatly appreciate your cooperation in assisting us in this survey.

CALVIN S. HAMILTON
Director of Planning

CSH:CSR:lmc

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2-1279

Los Angeles City Planning Department

March 14, 1977

Please give your opinion regarding questions set forth below by checking the appropriate spaces and providing comments in the space provided or on a separate 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 shows"; so-called adult motels and bars 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 _____ no 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 rentability/saleability _____

no effect _____

Comments/examples: (Please cite specific examples, including available data.)

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 _____ no effect _____

Comments/examples: (Please cite specific examples, including available data.)

5. Have any business owners or proprietors considered relocating or not expanding their businesses because of the nearby concentration of adult entertainment establishments?

Yes _____ No _____ Not known _____

If yes, please indicate the specific reason, if known.

6. In recent years, has the commercial vitality (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 _____ No _____ Not known _____

If yes, which areas?

Comments/examples: (Please cite effects and provide available data.)

EFFECT ON SURROUNDING RESIDENTIAL PROPERTIES

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
Less than 500 feet	_____	_____	_____
500 - 1000 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 rental 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
Less than 500 feet	_____	_____	_____
500 - 1000 feet	_____	_____	_____
More than 1000 feet	_____	_____	_____

Comments/examples: (Please cite specific examples, including available data.)

1258
2-1283

OVERALL EFFECTS

10. In regard to the questions set forth above, please describe the effects which you believe the concentration of adult entertainment businesses has on each of the following:

Property values of surrounding:

Commercial property _____

Residential property _____

Rental values of surrounding:

Commercial property _____

Residential property _____

Vacancies

Number _____

Length _____

Rate of tenant turnover _____

Annual business income _____

Complaints from customers and residents due to concentration _____

Neighborhood appearance _____

Crime _____

Litter _____

Other (please specify) _____

Thank you for your cooperation. Please return this questionnaire to:

City of Los Angeles
Department of City Planning
200 North Spring Street
Room 516, City Hall
Los Angeles, CA 90012

Name _____

Organization _____

Address _____

1259
~~2-1284~~

Do you wish to be notified of the public hearing on this matter?

Yes _____ No _____

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. Specifically, 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 485-3968.

(Original signed by)

CALVIN S. HAMILTON
Director of Planning

CSH:RJ:mw

1260
2-1285
~~2-16~~

in the Desk of
MORT ALLEN

URGENT.....

Studio City (Ventura Blvd) has one of the largest concentrations of "ADULT ENTERTAINMENT MOTELS" in Los Angeles.

The attached Press Release and Questionnaire was not, to our knowledge, published in ANY locally circulated newspaper.

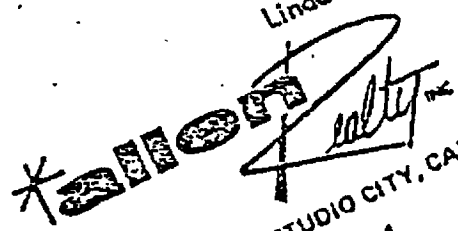
The hearings will be held in Hollywood & Northridge - WHY not in the Studio City area? (need we say more)

We URGENTLY request that you and your neighbors attend BOTH meetings and ALSO call or send telegrams to our elected leaders:

- Joel Wachs, City Councilman
- Tom Bradley, Mayor
- Burt Pines, City Attorney
- John Van de Camp, District Attorney
- Ted Goldberg, President of Studio City Chamber of Commerce

WE ALL HAVE TOO MUCH INVESTED IN OUR PROPERTIES TO ALLOW ANY "RED LIGHT DISTRICTS" ANYWHERE IN THE CITY OF LOS ANGELES, AND ESPECIALLY IN THE SAN FERNANDO VALLEY.

- Mort Allen
- Dori Phillips
- Karen Misraja
- Karen Rosen
- Linda Tarlow



12516 VENTURA BLVD. • STUDIO CITY, CALIF. 91604
POPLAR 9-4444

CC opposes X-rated Ventura Blvd. zone

A proposal to designate certain areas of Ventura Boulevard as an "adult entertainment zone" shocked members of the Studio City Chamber of Commerce Board of Directors when announced at their Wednesday meeting.

Community activist Mort Allen read a notice from the Los Angeles City Planning Department announcing public meetings to be held on the proposal to create special districts for X-rated entertainment.

Howard Raphael, field deputy for Second District Councilman Joel Wachs, said Wachs would oppose designating a portion of Ventura Boulevard as an adult entertainment zone.

1261
2-1286

APPENDIX D-3

PRIVATELY DISTRIBUTED QUESTIONNAIRE
(Note: Not a portion of Planning Department Study)

- RESPONSES -

Total no. of responses = 197

<u>Question</u>	<u>Response</u>
1. What effect does the concentration of adult entertainment establishments have on the <u>market value</u> of business property (land, structures, fixtures, etc.) located in the vicinity of such establishments?	increase in value <u>2</u>
	decrease in value <u>178</u> (90.4%)
	no effect <u>2</u>
2. What effect does the concentration of adult entertainment establishments have on the <u>rental value</u> of business property located in the vicinity of such establishments?	increase in value <u>2</u>
	decrease in value <u>169</u> (85.8%)
	no effect <u>3</u>
3. What effect does the concentration of adult entertainment establishments have on the <u>rentability/saleability</u> 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 <u>2</u>
	decrease in rentability/ saleability <u>161</u> (81.7%)
	no effect <u>3</u>
4. What effect does the concentration of adult entertainment establishments have on the <u>annual income of businesses</u> located in the vicinity of such establishments?	increased income <u>2</u>
	decreased income <u>149</u> (75.6%)
	no effect <u>5</u>
5. Have any business owners or proprietors considered relocating or not expanding their businesses because of the nearby concentration of adult entertainment establishments?	yes <u>71</u> (36.9%)
	no <u>4</u> (4.9%)
	not known <u>96</u> (48.7%)
6. In recent years, has the commercial vitality (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 <u>100</u> (50.8%)
	no. <u>57</u> (28.9%)
	not known <u>37</u> (18.3%)

1262
2-1287

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	-	148 (100%)	-	148
500 - 1000 feet	-	145 (100%)	-	145
More than 1000 feet	-	142 (95.9%)	-	148

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	-	143 (99.3%)	1	144
500 - 1000 feet	-	138 (98.6%)	2 (1.4%)	140
More than 1000 feet	-	133 (95%)	7 (50%)	140

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	Total
Less than 500 feet	-	147 (100%)	-	147
500 - 1000 feet	-	141 (99.3%)	-	142
More than 1000 feet	-	141 (97.2%)	-	145

10. (Not tabulated)

In summary, the respondents felt that the subject businesses have a decidedly adverse impact on surrounding businesses and residential properties and the large majority believe that the adverse effect extends beyond the 1000-foot radius.

1263
2-1288

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, newspapers, 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

<u>POPULATION</u>	<u>NODE</u>		<u>CITYWIDE</u>	
	<u>1960</u>	<u>1970</u>	<u>1960</u>	<u>1970</u>
Total Population	18,484	19,033	2,479,015	2,811,801
Black	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	20.1	10.5	18.5
Median Age	42.1	38.0	33.2	30.6
Persons 0-17	2,190	3,126	756,640	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
 <u>HOUSING</u>				
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 Pre-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
 <u>ECONOMICS</u>				
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	912	6,914	86,802
Percentage	9.6	10.0	5.5	7.5

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LANKERSHIM BOULEVARD & WHIPPLE STREET
(Valley Control Area)

<u>POPULATION</u>	<u>NODE</u>		<u>CITYWIDE</u>	
	<u>1960</u>	<u>1970</u>	<u>1960</u>	<u>1970</u>
Total Population	5,497	5,897	2,479,015	2,811,801
Black	9	2	334,916	503,606
Percentage	0.0	.1	13.5	17.9
Spanish	100	439	260,399	518,791
Percentage	1.8	7.4	10.5	18.5
Median Age	42.1	41.6	33.2	30.6
Persons 0-17	1,106	1,091	756,640	849,246
Percentage	20.1	18.5	30.5	30.2
Persons 65+	729	1,076	253,993	283,395
Percentage	13.3	18.2	10.2	10.1
No. of Husband & Wife Families	1,371	1,301	545,109	553,564
No. of Unrelated Individuals	841	1,337	329,977	421,701
Average Household Size	2.36	2.11	2.77	2.68

HOUSING

Total Units	2,520	2,865	935,507	1,074,173
Singles	1,289	1,082	559,745	560,378
Percentage	51.2	37.8	59.0	52.0
Multiples	1,231	1,783	375,762	510,261
Percentage	48.8	62.2	40.0	47.4
Built Pre-1939	898	813	481,797	328,988
All Occupied Units	2,328	2,790	876,010	1,024,835
Owner	1,076	989	404,652	419,801
Percentage	46.2	35.4	50.0	39.0
Renter	1,252	1,801	471,358	607,573
Percentage	53.8	64.6	43.0	56.4

ECONOMICS

Median Family Income	8,086	13,154	6,896	10,535
Median School Years Completed	12.6	12.6	12.1	12.4
Median Value Owner Occupied in \$	22,350	37,700	17,300	26,700
Median Rent in \$	92	136	78	114
Total Employed	2,574	2,736	126,276	1,150,796
Unemployed	177	280	6,914	86,802
Percentage	6.9	10.2	5.5	7.5

HOLLYWOOD & WESTERN

<u>POPULATION</u>	<u>NODE</u>		<u>CITYWIDE</u>	
	<u>1960</u>	<u>1970</u>	<u>1960</u>	<u>1970</u>
Total Population	6,860	8,438	2,479,015	2,811,801
Black	3	72	334,916	503,606
Percentage	-	.1	13.5	17.9
Spanish	183	909	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	19.4	10.2	10.1
No. of Husband & Wife Families	1,306	1,408	545,109	553,564
No. of Unrelated Individuals	2,805	3,602	329,977	421,701
Average Household Size	1.76	1.62	2.77	2.58

HOUSING

Total Units	6,773	8,044	935,507	1,074,173
Singles	764	702	559,745	560,378
Percentage	11.3	8.7	59.0	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 Occupied Units	5,996	7,506	876,010	1,024,835
Owner	394	420	404,652	419,801
Percentage	6.6	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	37,333	17,300	26,700
Median Rent in \$	92	123	78	114
Total Employed	6,535	6,745	126,276	1,150,796
Unemployed	481	575	6,914	86,802
Percentage	7.4	8.5	5.5	7.5

SANTA MONICA BOULEVARD & VERMONT AVENUE

<u>POPULATION</u>	<u>MODE</u>		<u>CITYWIDE</u>	
	<u>1960</u>	<u>1970</u>	<u>1960</u>	<u>1970</u>
Total Population	16,855	15,736	2,479,015	2,811,801
Black	510	1,287	334,916	503,606
Percentage	3.0	8.2	13.5	17.9
Spanish	869	3,936	250,399	518,791
Percentage	5.2	25.0	10.5	18.5
Median Age	38.8	34.2	33.2	30.6
Persons 0-17	2,482	2,751	756,640	849,246
Percentage	14.7	17.5	30.5	30.2
Persons 65+	2,830	2,432	253,993	283,395
Percentage	16.8	15.5	10.2	10.1
No. of Husband & Wife Families	3,343	2,720	545,109	553,564
No. of Unrelated Individuals	4,881	4,818	329,977	421,701
Average Household Size	2.04	2.01	2.77	2.68
 <u>HOUSING</u>				
Total Units	8,866	7,982	935,507	1,074,173
Singles	2,655	1,913	559,745	560,378
Percentage	30.0	24.0	59.0	52.0
Multiples	5,531	6,081	375,762	510,261
Percentage	62.4	76.2	40.0	47.4
Built Pre-1939	6,589	4,093	481,797	328,988
All Occupied Units	8,274	7,636	876,010	1,024,835
Owner	1,404	896	404,652	419,801
Percentage	17.0	11.7	50.0	39.0
Renter	6,870	6,748	471,358	607,573
Percentage	83.0	88.4	43.0	56.4
 <u>ECONOMICS</u>				
Median Family Income	5,901	8,142	6,896	10,535
Median School Years Completed	12.2	12.5	12.1	12.4
Median Value Owner Occupied in \$	15,975	24,100	17,300	26,700
Median Rent in \$	76	103	78	114
Total Employed	9,073	6,528	126,276	1,150,796
Unemployed	595	465	6,914	86,802
Percentage	6.6	7.1	5.5	7.5

SANTA MONICA BOULEVARD & VERMONT AVENUE

<u>POPULATION</u>	<u>NODE</u>		<u>CITYWIDE</u>	
	<u>1960</u>	<u>1970</u>	<u>1950</u>	<u>1970</u>
Total Population	16,855	15,736	2,479,015	2,811,801
Black	510	1,287	334,916	503,606
Percentage	3.0	8.2	13.5	17.9
Spanish	869	3,936	250,399	518,791
Percentage	5.2	25.0	10.5	18.5
Median Age	38.8	34.2	33.2	30.6
Persons 0-17	2,482	2,751	756,640	849,246
Percentage	14.7	17.5	30.5	30.2
Persons 65+	2,830	2,432	253,993	283,395
Percentage	16.8	15.5	10.2	10.1
No. of Husband & Wife Families	3,343	2,720	545,109	553,564
No. of Unrelated Individuals	4,881	4,818	329,977	421,701
Average Household Size	2.04	2.01	2.77	2.68

HOUSING

Total Units	8,866	7,982	935,507	1,074,173
Singles	2,655	1,913	559,745	560,378
Percentage	30.0	24.0	59.0	52.0
Multiples	5,531	6,081	375,762	510,261
Percentage	62.4	76.2	40.0	47.4
Built Pre-1939	6,589	4,093	481,797	328,988
All Occupied Units	8,274	7,636	876,010	1,024,835
Owner	1,404	896	404,652	419,801
Percentage	17.0	11.7	50.0	39.0
Renter	6,870	6,748	471,358	607,573
Percentage	83.0	88.4	43.0	56.4

ECONOMICS

Median Family Income	5,901	8,142	6,896	10,535
Median School Years Completed	12.2	12.5	12.1	12.4
Median Value Owner Occupied in \$	15,975	24,100	17,300	26,700
Median Rent in \$	76	103	78	114
Total Employed	9,073	6,528	126,276	1,150,796
Unemployed	595	465	6,914	86,802
Percentage	6.6	7.1	5.5	7.5

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SELMA AVENUE CAHUENGA BOULEVARD

<u>POPULATION</u>	<u>NODE</u>		<u>CITYWIDE</u>	
	<u>1960</u>	<u>1970</u>	<u>1960</u>	<u>1970</u>
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	17.9
Spanish	840	1,822	260,399	518,791
Percentage	5.6	13.2	10.5	18.5
Median Age	43.3	39.8	33.2	30.6
Persons 0-17	1,309	1,248	756,640	849,246
Percentage	8.8	9.0	30.5	30.2
Persons 65+	2,896	2,712	253,993	283,395
Percentage	19.5	19.6	10.2	10.1
No. of Husband & Wife Families	2,406	1,876	545,109	553,564
No. of Unrelated Individuals	6,631	5,951	329,977	421,701
Average Household Size	1.68	1.60	2.77	2.68
 <u>HOUSING</u>				
Total Units	10,022	9,680	935,507	1,074,173
Singles	1,714	1,140	559,745	560,378
Percentage	17.1	11.8	59.0	52.0
Multiplés	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 Occupied Units	8,958	8,658	876,010	1,024,835
Owner	812	683	404,652	419,801
Percentage	9.1	7.9	50.0	39.0
Renter	8,164	7,965	471,358	607,573
Percentage	91.1	92.1	43.0	56.4
 <u>ECONOMICS</u>				
Median Family Income	5,535	7,584	6,896	10,535
Median School Years Completed	12.2	12.5	12.1	12.4
Median Value Owner Occupied in \$	20,125	30,925	17,300	26,700
Median Rent in \$	80	111	78	114
Total Employed	8,112	6,990	126,276	1,150,796
Unemployed	998	943	6,914	86,802
Percentage	12.3	13.5	5.5	7.5

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TUJUNGA BOULEVARD & VENTURA BOULEVARD

<u>POPULATION</u>	<u>NODE</u>		<u>CITYWIDE</u>	
	<u>1960</u>	<u>1970</u>	<u>1960</u>	<u>1970</u>
Total Population	17,544	11,599	2,479,015	2,811,801
Black	50	44	334,916	503,506
Percentage	.3	.4	13.5	17.9
Spanish	398	758	260,399	518,791
Percentage	2.3	6.5	10.5	18.5
Median Age	39.6	38.7	33.2	30.6
Persons 0-17	3,638	2,137	755,640	849,246
Percentage	20.7	18.4	30.5	30.2
Persons 55+	1,368	1,232	253,993	283,395
Percentage	7.8	10.6	10.2	10.1
No. of Husband & Wife Families	4,526	2,664	545,109	553,564
No. of Unrelated Individuals	3,100	2,832	329,977	421,701
Average Household Size	2.36	2.17	2.77	2.68

HOUSING

Total Units	8,110	5,529	935,507	1,074,173
Singles	4,520	2,716	559,745	560,378
Percentage	55.7	49.1	59.0	52.0
Multiples	3,590	2,813	375,762	510,261
Percentage	44.3	50.9	40.0	47.4
Built Pre-1939	2,058	1,009	481,797	328,988
All Occupied Units	7,548	5,367	876,010	1,024,835
Owner	3,904	2,463	404,652	419,801
Percentage	51.4	45.9	50.0	39.0
Renter	3,644	2,904	471,358	607,573
Percentage	48.3	54.1	43.0	56.4

ECONOMICS

Median Family Income	9,956	15,672	6,896	10,535
Median School Years Completed	12.6	12.9	12.1	12.4
Median Value Owner Occupied in \$	23,700	39,650	17,300	26,700
Median Rent in \$	98	142	78	114
Total Employed	8,800	5,965	126,276	1,150,796
Unemployed	584	504	6,914	86,802
Percentage	6.7	8.4	5.5	7.5

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HOLLYWOOD BOULEVARD AND HIGHLAND AVENUE

<u>POPULATION</u>	<u>NODE</u>		<u>CITYWIDE</u>	
	<u>1960</u>	<u>1970</u>	<u>1960</u>	<u>1970</u>
Total Population	11,438	12,016	2,479,015	2,811,801
Black	38	325	334,916	503,606
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	1.55	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	328,988
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

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HOLLYWOOD BOULEVARD AND GOWER STREET

<u>POPULATION</u>	<u>NODE</u>		<u>CITYWIDE</u>	
	<u>1960</u>	<u>1970</u>	<u>1960</u>	<u>1970</u>
Total Population	7,067	2,342	2,479,015	2,811,801
Black	9	53	334,916	503,606
Percentage	.1	2.3	13.5	17.9
Spanish	292	311	260,399	518,791
Percentage	4.1	13.3	10.5	18.5
Median Age	45.2	37.3	33.2	30.6
Persons 0-17	567	227	756,640	849,246
Percentage	8.0	9.7	30.5	30.2
Persons 65+	1,445	325	253,993	283,395
Percentage	20.4	13.9	10.2	10.1
No. of Husband & Wife Families	1,316	336	545,109	553,564
No. of Unrelated Individuals	2,707	1,155	329,977	421,701
Average Household Size	1.74	1.64	2.77	2.68

HOUSING

Total Units	4,334	1,571	935,507	1,074,173
Singles	669	226	559,745	560,378
Percentage	15.4	14.4	59.0	52.0
Multiples	3,463	1,365	375,762	510,261
Percentage	84.6	85.6	40.0	47.4
Built Pre-1939	2,778	726	481,797	328,988
All Occupied Units	3,924	1,446	876,010	1,024,835
Owner	345	93	404,652	419,801
Percentage	8.8	6.4	50.0	39.0
Renter	3,579	1,353	471,358	607,573
Percentage	91.2	93.6	43.0	56.4

ECONOMICS

Median Family Income	6,102	8,515	6,896	10,535
Median School Years Completed	12.4	12.4	12.1	12.4
Median Value Owner Occupied in \$	21,750	27,600	17,300	26,700
Median Rent in \$	84	112	78	114
Total Employed	3,885	1,430	126,276	1,150,796
Unemployed	380	148	6,914	86,802
Percentage	9.8	10.3	5.5	7.5

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LANKERSHIM BOULEVARD & VINLAND AVENUE

<u>POPULATION</u>	<u>NODE</u>		<u>CITYWIDE</u>	
	<u>1960</u>	<u>1970</u>	<u>1960</u>	<u>1970</u>
Total Population	7,600	9,344	2,479,015	2,811,801
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	329,977	421,701
Average Household Size	2.35	1.70	2.77	2.68

HOUSING

Total Units	3,558	4,897	935,507	1,074,177
Singles	1,705	1,359	559,745	560,370
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 Units	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

**STAFF REPORT
AMENDMENT TO ZONING REGULATIONS
ADULT BUSINESSES IN C-2 ZONE WITH CONDITIONAL USE PERMIT
CASE NO. 153.015
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.)

EXISTING USES

Currently, there are adult businesses at the following locations:

<u>Address</u>	<u>Type of Business</u>
10529 Whittier Blvd.	Model studio
10555 Whittier Blvd.	Model studio
10619 Whittier Blvd.	Model studio
10703 Whittier 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 Whittier 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

1276
2-1304

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 years.

The study compared two areas on Whittier 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 Whittier Boulevard, and was used as a control. Area Four was selected because of its similar street patterns, lot sizes, and number of homes, to those of the first, where the adult businesses were concentrated.

The ten years compared were 1968 through 1977 (including some 1967 date where 1968 was not available). The first adult business on Whittier Boulevard was licensed on November 29, 1971, but the first in the study area appeared in 1973, and by late 1974, more than half of the 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:

1277
2-1302

	<u>Study Area One</u>		<u>Study Area For</u>	
	<u>Number</u>	<u>Per cent</u>	<u>Number</u>	<u>Per cent</u>
1. Number of homes	160		175	
2. Number of businesses				
1967	17		0	
1976	19			
3. (a) Number of changes of occupant				
Homes	154	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				
Homes	67	41	79	
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				
1968	\$19,100	7	\$18,750	5
1969	17,000	2	19,000	6
1970	21,000	2	20,500	3
1971	25,400	5	20,000	3
1972	20,500	4	20,650	7
1973	21,500	2	20,500	9
1974	28,300	4	22,125	7
1975	26,100	7	26,000	9
1976	31,100	9	30,800	14
1977*	36,500	8	37,227	18
*Projected from 6 month data				
6. Median Home Value (1970)	\$18,214		\$18,280	
7. Per cent owner occupied				
1970		64		
1977		84		
8. Ages of housing	39 years		27 years	

1278
2-1303

A further breakdown of the study area one, into the first and second blocks northerly of Whittier 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 per cent.

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 Whittier 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,

~~125~~ 1279
2-1304

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.

For 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 frustrations 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 frequenting 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 38 types of criminal activity and the data compared with the City 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	-	<u>29</u>	1977	-	<u>49</u>
1970-73	-	133	1974-77	-	269

1280
2-1305

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:

CRIME	1970-1973	1974-1977	% increase
All Assaults	8	39	387
Theft (Petty)	13	29	123
Robbery	8	13	63
Burglary (Residential)	15	23	53
Malicious Mischief	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	5	
Prowling	0	5	

Some crimes, on the other hand, decreased in frequency, such as felony narcotics, which decreased from 16 to 9, but due primarily 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 some distance from the adult businesses, spoke on behalf of those who lived closer, but feared reprisals if they testified.

1281
2-1306

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 ordinance, 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 beginning to change their images from the bright roofs, big signs and giant logos, to the softer, 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 seek 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,

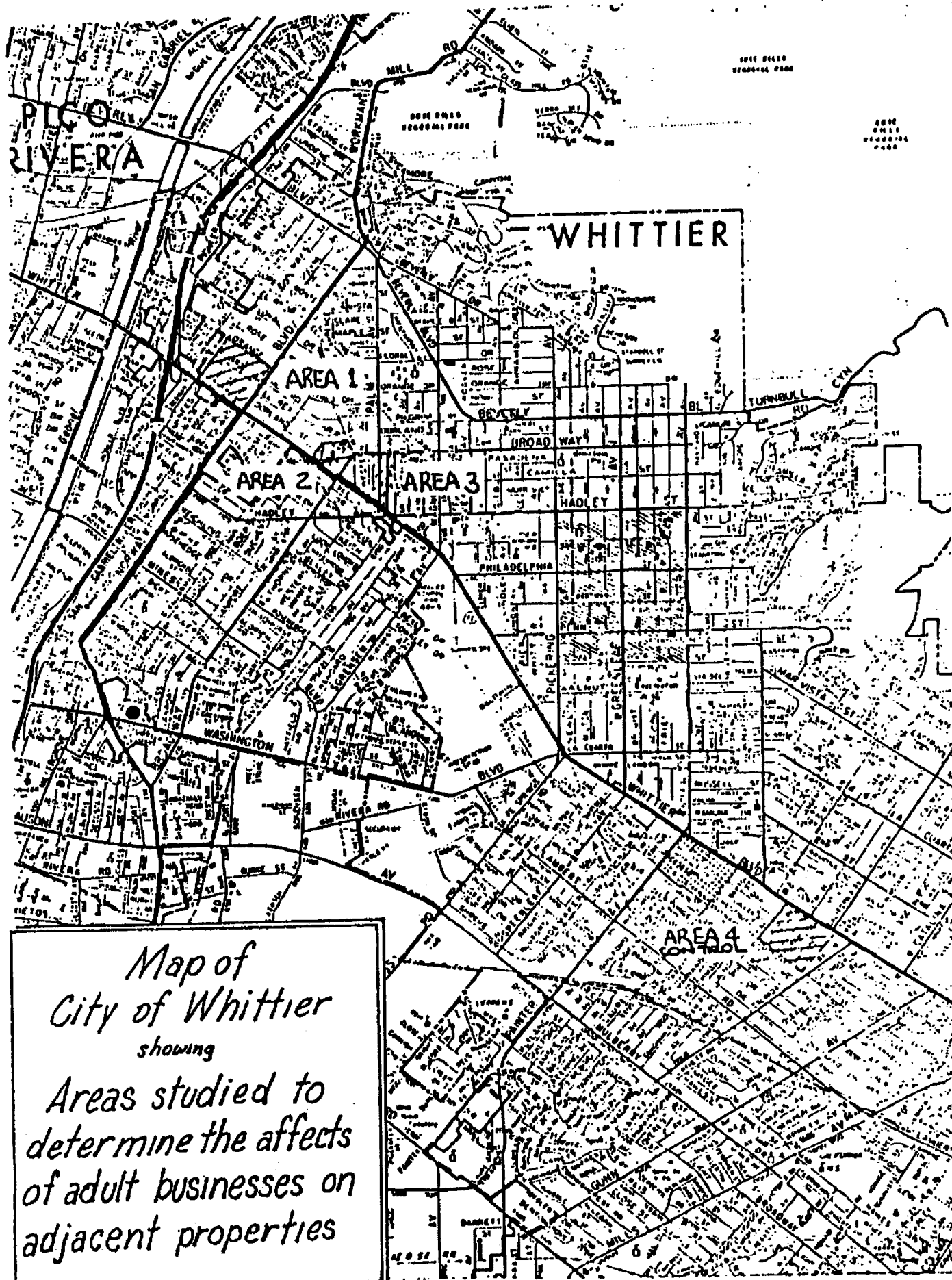
bars, strip joints, etc., as well as the "non-porno" businesses. Property owners, attracted by the high rents, willingly paid by the adult businesses, eventually forced many legitimate businesses to close, move, or go broke by increasing rents.

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:

	<u>Changes Per Year Before A.B.'s</u>	<u>Changes Per Year After A.B.'s</u>
Area 1	9.4	22 (1974+)
Area 2	.1	.1 (1972+)
Area 3	5.3	11 (1974+)
Area 4 (Control)	20	11 (1974+)

1284
2-1309



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 Whittier 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. Both were 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 McNeese Park, at Whittier and Hadley, in the unincorporated County area. Whittier 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 ordinance would allow adult businesses. Other churches are within 250 feet of the area uptown where such businesses could be located. Whittier High School is also within 250 ft. of allowable location in the M zoned area and St. Mary's parochial school is within 500 feet. Central Park (Bailey and Washington) 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

1287
2-1312

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 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. 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 Whittier 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 large cities and do not exist in Whittier nor are they expected to.

None of these uses are inherently 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 Whittier's situation and staff cannot substantiate the need for any further regulation 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 over 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.

1289
27314

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.

"Massage Parlor" shall mean an establishment or business which is required to be licensed pursuant to Section 6280 et seq of the Whittier 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

1290
2-1315

of photography, painting, sketching, drawing, or otherwise.

"Specified Anatomical Areas" shall mean:

- (a) less than completely and opaquely covered:
 - (i) 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:

1291
2-1376

"...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 Municipal 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 difficulty at this point in time with a general definition is that litigation is still pending on one such ordinance whereas the court has sanctioned, though on a 5 - 4 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 if 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 locational 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 might 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 zone, as well as the C-1 zone, act somewhat as transitional or buffer zones, often separating heavier C-2 zones from residential zones and allowing residential uses as

1293
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as well. Adult businesses in the C-0 and C-1 zones would not be able to meet any reasonable separation criteria. The C-2 zones, though often separated from residential districts by C-0 and C-1 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 Nonconforming 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 \$3,185 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

1294
2-1319

fire damage. These amounts are not, in staff's 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.

1295
2-1320

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 individual, 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 foot 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 become nonconforming under the provision of the proposed ordinance and 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.

1296
2-1321

**Whittier City Planning Commission
January 9, 1978
Whittier City Council
January 24, 1978**

**Spokane, Washington
Proposed Amendment to County Zoning Code**

**Spokane City Plan Commission
November 29, 2000**

Declaration of Patricia Connolly Walker

Declaration of Londi K Lindell

**Summary Of Review & Conclusions Regarding the
City of St. Cloud's Regulation of Adult Use
Businesses by John W. Shardlow**

Littleton, Colorado Police Department Reports

**Oklahoma City, Oklahoma Community
Development Department
Survey of Real Estate Appraisers
March 3, 1986**

**Dallas, TX
Analysis of the Effects of SOBs
on
The Surrounding Neighborhoods
April 1997**

1297
2-1322

Notebook #1 22 Cities Studies (0 cases)

Notebook #2 Indianapolis, IN Study (2)

Notebook #3 Garden Grove (3)
Houston, TX (4a)
Houston, TX (4b)
Phoenix (5a)
Phoenix Affidavit (5b)
Phoenix P.D. Reports (5c)

Notebook #4 Chattanooga, TN (6)
Minneapolis, MN (7)
L.A., California (8)

Notebook #5 C.A. Whitter (9)
Spokane, WA. (10 Pg. 1-8)
Spokane, WA. (10 Pg. 9-20)
Spokane, WA. (10 Pg. 21-42)
Spokane, WA. (10 Pg. 43-59)
Spokane, WA. (10 Pg. 91-112)
St. Cloud (11)
Littleton, CO. (12)
Oklahoma City, OK. (13)
Dallas, TX. (14)

Notebook #6 Greensboro (15)
Amarillo, TX (16)
Abilene, KS DK.CO. Roncek (17a)
Abilene, KS Dk.Co. McCleary (17b)
N.Y. Time Square (18)
MN State (19)

1298
~~2-1323~~

Citation #1
124 S.Ct. 2219

1299
2-1324

DEPARTMENT OF CITY PLANNING
ROOM 561 CITY HALL
LOS ANGELES, CALIFORNIA 90012
CITYWIDE PLANNING &
DEVELOPMENT DIVISION

**STUDY OF THE
EFFECTS OF THE
CONCENTRATION OF
ADULT
ENTERTAINMENT
ESTABLISHMENTS
IN THE CITY OF LOS ANGELES**

DEPARTMENT OF CITY PLANNING
CITY OF LOS ANGELES
JUNE 1977

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2-1325

CITY PLAN CASE NO. 26475
Council File No. 74-4521-S.3

STUDY OF THE EFFECTS OF THE CONCENTRATION OF ADULT
ENTERTAINMENT ESTABLISHMENTS IN THE CITY OF LOS ANGELES

Prepared for:

Planning Committee of
the Los Angeles City Council

Prepared by:

Los Angeles City Planning Department

June, 1977

Exhibit D

2-1326 1301

TABLE OF CONTENTS

	<u>Page</u>
Summary and Recommendations	1
I. Findings	4
II. Purpose and Scope	7
III. Methods Currently Used to Regulate Adult Entertainment Businesses	9
A. Approaches to the Regulation of Adult Entertainment by Land Use Regulation	9
1. Boston Approach	9
2. Detroit Approach	10
3. Variations Adopted by Other Cities	10
B. Alternate or Supplementary Forms of Regulation Currently Available Under State and Municipal Law	14
1. Red Light Abatement Procedure	14
2. Police Permit Requirements	15
C. Other Regulations of Adult Entertainment in Los Angeles	18
IV. Methodology and Analysis	20
A. Changes in Assessed Valuation Between 1970-1976	22
1. Study and Control Areas	22
2. Conclusion	25
B. Public Meetings	27
C. Questionnaires	32
1. Description of Survey	32
2. Results of Survey	33
D. U.S. Census and Related Data	44
1. Description of Hollywood using "Cluster Analysis"	44

1302
2-1327

TABLE OF CONTENTS (cont'd)

2. Description of Studio City and North Hollywood using Census Data 47

V. Police Department Study of Hollywood 51

TABLES

I. No. of Ordinances Regulating Adult Entertainment Uses 11

II. Ordinances Regulating Adult Entertainment Uses by Dispersal 13a

III. City Council Files Relating to Adult Entertainment 19a

IV. 1970-76 Changes in Assessed Valuation 24a

V. Studio City, North Hollywood and City of Los Angeles Comparison of Census Data 48

VI. Reported Crimes and Arrests 1969-75 - Hollywood and City of Los Angeles 53

EXHIBITS

Exhibit A - Generalized Location of Adult Entertainment Sites in Hollywood and Central City, by Census Tract 22a

Exhibit B - Generalized Location of Adult Entertainment Sites in Studio City and North Hollywood, by Census Tract 22b

APPENDICES

A. Assessment Data - 1970 and 1976

B. Form - General Questionnaire

C. Form - Appraiser Questionnaire

D. Response and Summary of Privately-Distributed Questionnaire (not a portion of study)

E. Data from U.S. Census - 1960 and 1970

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PRIMARY 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. They 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).

B. Effect of "Adult Entertainment" Businesses on the Community

There has been some indication that the concentration of "adult entertainment" uses results in increased crime and greater police enforcement problems. In the City of Los Angeles, the Los Angeles Police Department has found 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 adopted ordinances similar to the Detroit ordinance, no other major city has, to 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 their hours of operation; and that they are fearful of children being confronted by unsavory individuals or of being exposed to sexually explicit material. 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.

The 1970-76 change in the assessed value of residential and commercial properties containing concentrations of adult entertainment businesses was compared with other areas without such concentrations, and with the City as a whole. On the basis of this comparison, it cannot be concluded that properties containing concentrations of adult entertainment businesses have directly influenced the assessed valuations of such properties.

Data and analysis based on the U.S. Census of 1970 and certain trend data from the censuses of 1960 and 1970 as applied to areas of the City containing concentrations of adult entertainment businesses are included in the body of the report and in the Appendix.

C. Scope of the Ordinances Enacted by Other Jurisdictions

The scope of "adult entertainment" ordinances encompasses a variety of adult activities. For example, the Los Angeles Study has considered "adult entertainment" establishments to include adult bookstores and theaters, massage parlors, nude modeling studios, adult motels, arcades, and certain similar businesses. Many other ordinances studied, however, are less broad in their coverage. The Detroit ordinance, for instance does not regulate massage parlors or adult motels, nor does it provide for the closing of any such businesses by amortization, which would be necessitated by the retroactive application of such an ordinance. Table I on page 11 indicates the ordinances reviewed and the major categories of uses they regulate.

Effect of Ordinances Enacted by Other Jurisdictions: The U.S. Supreme Court in Young vs. American Mini-Theaters pointed out, as one of the bases for upholding the Detroit ordinance, that the regulation did not limit the number of "adult entertainment" businesses. Our study has indicated that the practical effect of literal adoption of "Detroit" language without modification in the City of Los Angeles would be to limit the potential locations for such businesses rather severely. Due to the predominance of commercial zoning in "strips" along major and secondary streets, an ordinance preventing "adult entertainment" business from locating within 500 feet of residentially zoned property would, in effect, limit such businesses to those areas of the City where there is commercial zoning of greater than 500 feet in depth. Areas with such commercial frontage would include downtown Los Angeles, a small part of Hollywood, Westwood, and Century City. A few industrial areas would also afford a separation of this distance from residential properties. The limitation of 1,000 feet between establishments (as provided in the Detroit ordinance) would likely be inappropriate in the City of Los Angeles inasmuch as commercial zoning is located in a strip pattern along most of the City's approximate 1,400 miles of major and secondary highways. (It is estimated that approximately 400 miles of such "strip" commercial zoning exists in the City.)

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.
 - c. the possibility of enacting additional provisions to regulate signs and similar 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 regulations applying to the C4 zone which currently prohibits "strip tease shows" and that the Zoning Administrator, through interpretation, consider expanding the list of prohibited uses in said zone to include additional adult entertainment uses as herein indantified.

6. To assist in the regulation of "adult entertainment" businesses, the City should continue to vigorously enforce all existing provisions of the Municipal Code relating to the subject, including Zoning regulations.

I.

FINDINGS

1. A Boston-type ordinance (concentration) to control adult entertainment businesses would not be acceptable nor desirable in the City of Los Angeles.
2. In the event legislation is enacted in the City of Los Angeles there is adequate basis for a Detroit-type ordinance (dispersion) which requires a distance of 1000 feet between establishments and 500 feet from residential zones.
 - Existing locational patterns of adult entertainment businesses (in Hollywood, Studio City, North Hollywood) actually represent a concentration rather than a dispersion of establishments. (Such patterns are contrary to the Detroit concept and are due, in fact, to the City's strip commercial zoning pattern.)
3. If dispersion is desired in Los Angeles, an ordinance should be designed specifically for the City. (Direct application of the Detroit ordinance would not be desirable or appropriate in Los Angeles and would, in part, tend to result in a concentration of such businesses.)
4. Statistics provided by the Los Angeles Police Department (LAPD) indicate a proportionally larger increase in certain crimes in Hollywood from 1965-75, as compared with the City of Los Angeles as a whole. (Hollywood has the largest concentration of adult entertainment businesses in the City.)
5. Statistics provided by the LAPD indicate that there has been a large increase in adult entertainment enterprises since 1959, particularly in Hollywood. From December 1975 to December 1976, however, there has been a decrease in such establishments.
6. Testimony obtained at two public meetings on the Adult Entertainment study conducted on April 27 and 28, 1977 indicated that:
 - Many persons, including the elderly, are afraid to walk the streets in Hollywood.
 - Concern was expressed that children are being exposed to sexually explicit materials and unsavory persons.
 - Some businesses no longer remain open in the evenings and others have left the area allegedly directly or indirectly due to the establishment of adult entertainment businesses.
 - In Hollywood, some churches drive the elderly to services and others provide private guards in their parking lots.
 - Nearly all persons opposed the concentration of adult entertainment activities.

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Responses to questionnaires of the City Planning Department indicated that:

7e

Appraisers, 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 rentability/saleability; that the adverse economic 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 attracting 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 1970 and 1976 for the study areas containing concentrations 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 the 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 increased 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.

9. There are various existing laws and regulations (other than zoning) - available to effect proper regulation of adult entertainment businesses.



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**House Federal and State Affairs Committee
March 18, 2010**

**Testimony in Support of HB 2633 – The Community Defense Act
Michael Schuttloffel, Executive Director, Kansas Catholic Conference**

Chairman Neufeld and members of the committee, I am testifying in support of HB 2633 on behalf of the Kansas Catholic Conference, the public policy arm of the Catholic Church in Kansas.

The Catholic Church does not seek to legislate its religious preferences upon the people of Kansas. Instead, it is our objective to bring attention to the moral principles at stake in debates over public policy such as the one occurring today. Many of the political issues debated by the Legislature have a moral dimension, and the legislation before you is no exception. One need not be a person of the Catholic faith, or any faith, to recognize the need for this legislation.

We believe it is important for the people's elected representatives to ensure that space remains in our society for decency to flourish. If there can be no possible regulation of the establishment of so-called "adult entertainment centers" next to our homes, schools, churches, and playgrounds, then what space will be left to the great majority of us that are deeply offended by their presence? It strains credulity to believe that our Founding Fathers intended the Constitution to be an instrument of protection for sexually oriented businesses that wish to operate whenever, wherever, and however they like.

We are confident that it has been established that regulation of sexually oriented business is constitutional. We believe that the deleterious effects of these businesses on society's moral fabric have been persuasively demonstrated as well.

Pornography is a cancer eating at our nation's soul. It destroys the marriages of those who become addicted to its consumption. It destroys the lives of those lured into the industry through drugs, disease, and the evisceration of self-esteem and self-respect. It destroys the innocence of children who are exposed to it at ever younger ages.

MOST REVEREND RONALD M. GILMORE, S.T.L., D.D.
DIOCESE OF DODGE CITY

MOST REVEREND MICHAEL O. JACKELS, S.T.D.
DIOCESE OF WICHITA

MOST REVEREND EUGENE J. GERBER, S.T.L., D.D.
BISHOP EMERITUS – DIOCESE OF WICHITA

MOST REVEREND JOSEPH F. NAUMANN, D.D.
Chairman of Board
ARCHDIOCESE OF KANSAS CITY IN KANSAS

MICHAEL M. SCHUTTLOFFEL
EXECUTIVE DIRECTOR

MOST REVEREND PAUL S. COAKLEY, S.T.L., D.D.
DIOCESE OF SALINA

House Fed & State Affairs
Date: 3-18-2010

Attachment 3

It would be difficult to purposely design a medium that more perfectly targets the vulnerabilities of men and women than pornography. This industry preys on the worst instincts of us all. The fact that people routinely consent to their own exploitation does not render those choices harmless to themselves or society. Our laws should be written to reflect and to empower our better angels. Our vices need no aid.

Beyond the moral decay encouraged by pornography, sexually oriented business facilities like those contemplated by this legislation generate increased crime, decreased property values, prostitution, drug trafficking – the list goes on and on. The question is not whether their presence has negative effects on a community – this has been well documented. Rather, do these businesses hold any redeeming value for their communities at all? Few Kansans would answer in the affirmative.

Instead, these businesses can be counted on to hold hostage small towns without the financial means to defend themselves against their bullying tactics. Perhaps it should come as no surprise that an industry whose business model is exploitation would employ similar legal methods. Will the Legislature side with big porn against the state's small towns? Or will it side with the mothers and fathers who do not want a smut shop near their children's school or playground?

If we can and do prohibit prostitution, how can it be said that we cannot or should not place mild regulations on the location and operation of other forms of sexually oriented enterprise? Or does every regulation placed upon this industry traduce the Constitution? How long will it be before we are next told that even restrictions on the age of employees at adult entertainment facilities are a violation of the fundamental rights of customer and service provider alike?

HB 2633 places sensible, constitutional regulations on the operation of sexually oriented businesses. For those concerned that this legislation will fatally cripple the adult entertainment industry, have no fear. The industry – which nets more than the NHL, NBA, and Major League Baseball combined – will survive this legislation, rest assured.

Please support HB 2633. Thank you for your consideration.

**Negative Secondary Effects of
Sexually Oriented Businesses**

HB 2633

By Scott D. Bergthold

presented to

House Federal &

State Affairs Committee

Kansas Legislature

2010 Session

Speaker background:

**Co-author, *Local Regulation of Adult Businesses,*
2008 Ed. (Thomson West)**

Cases:

- **City of Littleton v. Z.J. Gifts D-4, L.L.C.,
541 U.S. 774 (2004)**
- **5634 East Hillsborough v. Hillsborough County,
294 Fed. Appx. 435(11th Cir. 2008)**
- **Sensations, Inc. v. City of Grand Rapids,
526 F.3d 291 (6th Cir. 2008)**
- **Daytona Grand, Inc. v. City of Daytona Beach,
490 F.3d 860 (11th Cir. 2007)**
- **Heideman v. South Salt Lake City,
165 Fed. Appx. 627 (10th Cir. 2006)**

House Fed & State Affairs

Date: 3-18-2010

Attachment 4

***Renton v. Playtime Theatres,
Inc., 475 U.S. 41 (1986)***
(upholding 1,000-ft. rule)

- 1. Legislatures can be proactive to prevent negative effects**
- 2. Any evidence “reasonably believed to be relevant” is sufficient**
- 3. Government is given leeway to address negative effects**

**Sources of Secondary Effects
Information**

- 1. Land Use Studies**
- 2. Crime Reports**
- 3. Judicial Opinions**
- 4. Investigator Affidavits**
- 5. Anecdotal Reports**

Types of Secondary Effects

- 1. Adverse impacts on surrounding properties**
- 2. Crime and its attendant public safety risks**
- 3. Illicit sexual conduct and potential disease**
- 4. Illicit drug use and trafficking**
- 5. Litter, aesthetic impacts, noise, blight**

Cases upholding similar regulations:

- 1. *People ex rel. Deters v. Lion's Den*, No. 5-05-0413 (Ill. Ct. App. 2007) (1,000-ft. setback)**
- 2. *City of Erie v. Pap's A.M.*, 529 U.S. 277 (2000) (nudity prohibition)**
- 3. *Heideman v. South Salt Lake City*, 165 Fed. Appx. 627 (10th Cir. 2006)**
- 4. *Jake's Ltd., Inc. v. City of Coates*, 284 F.3d 884 (8th Cir. 2002) (6-ft. rule)**
- 5. *Richland Bookmart, Inc. v. Nichols*, 137 F.3d 435 (6th Cir. 1998) (statewide hours)**

HB 2633 includes common-sense regulations that have been repeatedly upheld by the courts.

Every federal appellate case to consider dancer-patron buffers, no-touch rules, hours of operation, and open-booth regulations has upheld them as constitutional.

Secondary effects data relevant to regulating sexually oriented clubs and bookstores:

- 1. Summaries of Key Reports**
- 2. Phoenix, Arizona**
- 3. Indianapolis, Indiana**
- 4. Garden Grove, California**
- 5. Whittier, California**

**Secondary effects data
relevant to regulating
sexually oriented businesses:**

- 6. Austin, Texas**
- 7. Greensboro, North Carolina**
- 8. Amarillo, Texas**
- 9. Kennedale, Texas**
- 10. Spokane, Washington Evidence re: Retail
Adult Bookstores**
- 11. 2008 Jackson County, Missouri Expert Report
(describing flaws in industry reports)**

Findings of expert witnesses:

- 1. Finding of secondary effects from sexually oriented businesses is scientifically robust, being confirmed in wide variety of data sources**
- 2. The legislature has a substantial government interest in regulating adult businesses to prevent the identified negative secondary effects**
- 3. Industry "counter-studies" based on ever-changing methodologies and faulty data (calls-for-service (CFS) to the police)**
 - CFS are weakly correlated to actual crime**
 - Most vice crimes never result in CFS**

**Industry experts' attacks
insufficient:**

- 1. *City of Erie v. Pap's A.M.*,
529 U.S. 277 (2000) (Linz)**
- 2. *Daytona Grand, Inc. v. City of Daytona Beach*,
490 F.3d 860 (11th Cir. 2007) (Linz, Fisher)**
- 3. *Doctor John's, Inc. v. Wahlen*,
542 F.3d 787 (10th Cir. 2008)**
- 4. *Heideman v. South Salt Lake City*,
165 Fed. Appx. 627 (10th Cir. 2006)**
- 5. *SOB, Inc. v. County of Benton*,
317 F.3d 856 (8th Cir. 2003) (Linz)**

**Industry experts' attacks
insufficient (cont'd):**

- 6. *Gammoh v. City of La Habra*,
395 F.3d 1114 (9th Cir. 2005) (Linz)**
- 7. *G.M. Enterprises, Inc. v. Town of St. Joseph*,
350 F.3d 631 (7th Cir. 2003) (Linz)**
- 8. *World Wide Video of Washington v. Spokane*,
368 F.3d 1186 (9th Cir. 2004) (McLaughlin)**
- 9. *Fantasy Ranch, Inc. v. City of Arlington*,
459 F.3d 546 (5th Cir. 2006) (Morris)**
- 10. *Fantasyland Video, Inc. v. County of San
Diego*, 505 F.3d 996 (9th Cir. 2007) (Linz,
Goldenring)**

STATE OF KANSAS

ANTHONY R. BROWN
REPRESENTATIVE, 38TH DISTRICT
799 E. 2200 ROAD
EUDORA, KANSAS 66025
(785) 542-2293

300 SW 10TH AVE.
TOPEKA, KANSAS 66612
(785) 296-7679
(1-800) 432-3924
anthony.brown@house.ks.gov



TOPEKA

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(Testimony provided by Representative Anthony R. Brown, 38th District - written testimony only)

Article from the Kansas City Star, March 14, 2010

Two men stabbed outside strip club

Two area men were stabbed outside a strip club early this morning near Lawrence.

They were treated at Overland Park Regional Medical Center, neither for life-threatening injuries, said Sgt. Steve Lewis of the Douglas County Sheriff's Department.

Lewis said the stabbing occurred around 12:30 a.m. outside the Outhouse, located just east of Lawrence. No suspect is in custody, but authorities are searching for a white male with short brown hair. He was a passenger in a dark SUV.

Anyone with any information is urged to call the Lawrence TIPS hotline at 785-843-8477 or 785-843-TIPS.

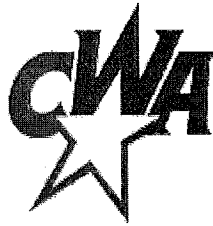
Randy Heaster, rheaster@kcstar.com

Posted on Sun, Mar. 14, 2010 11:26 AM

House Fed & State Affairs

Date: 3-18-2010

Attachment 5



TESTIMONY IN FAVOR OF HB 2633

The Community Defense Act

Diminishing the opportunity for subjugation of women is good public policy for Kansas

House Federal & State Affairs Committee

Concerned Women for America of Kansas

March 15, 2010

Chairman Neufeld and Members of the Kansas House Federal & State Affairs Committee:

Concerned Women for America of Kansas is testifying in favor of HB 2633, the Community Defense Act. As the largest public policy women's organization in the United States, we have a vested interest in furthering public policy that puts boundaries around businesses that subjugate women. A society that regulates tobacco products, drugs, and even proposes to regulate American's diets by limiting fats and salt should have no problem in regulating an industry that is the source of drugs, prostitution, disease and misery not to mention the destruction of families and marriages.

We are concerned about the young women who enter the industry of sexually-oriented businesses, often as waitresses, hostesses, etc. but then are lured into dancing by managers who entice them with promises of money and admiration by the patrons. According to testimony given to the Michigan House Committee of Ethics and Constitutional Law on January 12, 2000, by David Sherman, former manager of various strip clubs, drug and alcohol abuse are rampant among the employees of these establishments. By self-admission the women dancers (usually girls 18-21) take drugs to "numb themselves", "to fill a void"; this drug use usually escalates as they grow older and encounter more competition for patron's favors. He testified that part of the "management's" job is to groom young girls as potential dancers, to get them to feel at home and among friends before they ask them to dance "as a favor." Abuse by managers and patrons is common; women and girls are often coerced into performing "favors" for special customers by managers who don't want to lose their business. Women who strip are usually considered independent contractors, renting their dancing space or booths. Sometimes they end up paying up to 30 percent of their income just to work, not counting the tips they must pay to busboys, bouncers, bar-tenders, etc. They pay their own insurance, social security, taxes, etc. This former manager freely admits in his testimony that girls as young as 14 or 15 are working in these clubs; often they are the victims of human trafficking. As the clubs proliferate, the need for dancers and prostitutes escalates; the demand cannot be met by normal supply so traffickers bring in new supplies of girls. Sexually-oriented businesses contribute to crime, drug abuse, and facilitate sexual offenders who often own these businesses, not to mention the desensitization, degradation and destruction brought upon the young girls and women who work in them.

The restriction in hours of operation will help curb many of the illegal activities such as drug-dealing, solicitation and illegal dances brought about by the intoxication of both dancers and patrons. It will also help ensure that entertainers and employees will have safer places to work, and communities will be safer places to live and work. Many of the women feel they are forced by lack of education or lack of other job opportunities to work in these establishments. By limiting work hours, they could have the time to complete their education, find other job opportunities or be able to spend more time with their children and families. It will curb the enormous amount of cash flowing away from the families of patrons into club owner's pockets.

In closing, CWA of Kansas urges the Kansas Legislature to put in place public policies such as the Community Defense Act to protect women and young girls, to curb the detrimental effect these establishments have on families and to make Kansas a better place to live and work.

Judy Smith, State Director
Concerned Women for America of Kansas

House Fed & State Affairs

Date: 3-18-2010

Attachment 6

Thank you for the opportunity to address you today.

My name is Serena Hein, I'm the Co-Chair of the Kansas State Progressive Caucus, Kansas Legislative director for the Greater Kansas City Women's Political Caucus, President and founder of the Women's Liberation Foundation which is a 501c3 charity in Kansas City focused on women's rights. I'm on the executive committee for the Kansas State Democratic Party, and a two term precinct committeeperson as well as captain of my ward. I've also been working as an exotic dancer for the past 11 years. Today I am talking to you as a Christian.

The question of "Should the government be allowed to control an individual's life and what is the intended role of the government" is an ongoing debate within Christianity today. There are two opposing views on the Christian side of this answer the first is from the liberation minded Christians who see government as an oppressive institution and the Church as a new way to provide for the needs of the people that would make government obsolete.

And the other side that unfortunately is the more popular Christian philosophy in America these days is that of the morality Christians who define a Christian and Christianity as adhering to a set of moral behaviors and within that framework the government can be used as a tool to make the people behave in what they consider a Christian manner. For the sake of a church and a unified nation these two conflicting Christian approaches need to be reconciled.

The main problem with using the government as an enforcer/preventer of a particular behavior is that every time you create a law that violates the rights of the citizens you are not only creating a criminal in the eyes of the government but turning the government into a tyrant in the minds of the citizens. It's not as if a law is created against smoking weed or stripping or gambling or underage drinking and the people who were previously doing those activities are just going to stop, no they continue at greater danger to themselves and just have the opinion that the government isn't really there to help look after the people but just to control them.

The other problem with this kind of legislation is that it sets a bad example of a Christian in the eyes of the people and makes the whole vine look faithless. What this kind of legislation says is that you've lost your faith in the Word of God and your faith that living as an example of a moral Christian will help create a more moral society and that you have now turned your faith over to a governmental authority in hopes that they can force the people to do what you'd like them to do since you've lost faith in yourself and the scripture. It's not just that we have allowed politicians to come into the churches to manipulate votes out of the faithful but it looks to outsiders as if it's not God's authority we believe in but governmental authority.

When people talk of our liberties being taken away in this country I used to think that was crazy, until I was told that I'd have testify before the state congress on why I should be allowed to keep my job and now the saying that keeps coming to mind is "tyranny of the majority" and I'm not even a fan of Hamilton, I've always been a Jefferson girl. But the argument against a free and democratic society is and has always been that the people can not rule themselves justly. The majority opinion would have the ability to oppress the minority view. Now I don't consider myself as a minority here because of my profession because I know that most people are tolerant and while they may not do what I do they respect my right to earn a living in a way if I want to. I don't think this dissent is even in the minority, I think it is being manufactured by an out of state company selling ethical control to us like coke sells soda.

The point I'm making is that even if everyone in the state doesn't like what I'm doing, your job is to protect me from them, not be the instrument of their oppression. Not liking what I do does not give the people the right to deny my rights no matter how many people they can get to sign a petition.

And it's not really about protecting my rights but protecting the idea that democracy can work and that it isn't just another instrument of oppression.

On a different note I've been told the businesses really targeted in this bill are the adult bookstores. may I humbly request that you simply remove all exotic dancer regulations out of the bill.

Thank you for your time today

House Fed & State Affairs

Date: 3-18-2010

Attachment 7

Testimony of Marisa Jefferis

This testimony is in reference to the Community Defense Act currently in the Kansas House. I currently am a self-employed, adult entertainer in a Kansas adult entertainment establishment. I have been working in the adult entertainment business for six months. I am concerned with the effects that the bill would have on women, my co-workers, and me.

I can understand because of how adult entertainment is portrayed that you may have negative preconceived notions of the life and background of an entertainer; therefore, let me tell you my background. I currently am a college student with a 3.8 GPA, no criminal background, nor have I ever engaged in any form of prostitution. The majority of my co-worker are also college students, single mothers, or business woman trying to save capital for a future investment.

The job I have currently have gives me independence and the hope of a brighter future. I have the financial independence to continue going to college. I have high self- esteem because I know that I can afford to live on my own. My plan is to get my Master's degree in business at St. Mary's University, to save capital for a future business, and to use that capital to open an aerobic studio.

If the Community Defense Act passes then my future plans will be completely disrupted. The majority of income that I earn is between midnight and four in the morning. My income will significantly decrease or be completely eliminated. In addition, I believe that customers are more likely to go across the state line in order to attend another club; therefore, would completely put me out of a job.

If I am to not able to work, my life will be significantly affected. In order to continue my education, I would have to apply for financial aid, which I currently am not using. In addition, I may not be able to continue going college because I would have to work two full-time jobs in order accomplish what I am trying to do now, assuming I could even find a job. Moreover, my dreams of saving capital for my future investment would be demolished with the current bill being brought forth. Furthermore, it is possible that I may have to apply for government assistance if I am not able to make the same amount of money that I currently am able to make. I also would most likely have to file for bankruptcy because I would not be able to pay my debts if my income was reduced or eliminated.

This job allows women who might not otherwise be able to surpass financial obstacles the ability to do so. My mother was a single mother and she also was an adult entertainer, she used the money to go to college, and now is a licensed therapist. My mother told me a story of when I needed a six-thousand dollar surgery, and she was able to afford it with the money she made from the club. I remember I lived a normal childhood and all my needs were met. I remember my mom was able to spend the entire day with me, which most entertainers are able to spend a lot of time with their children because they only have to work three-five nights a week. I can not imagine what my childhood would have been like if my mother was unable to work as an entertainer. I believe if women are put out of work then their children may not get their needs met. WIC, SCHIP, and OARS are already stressed, if women are put out of work they may have no other alternative but to apply for state assistance, which they may or may not receive.

I currently have a safe and secure job that provides me an opportunity to further my dreams and education. I work in an environment that allows me to build friendships with other women. This job allows me to have the income to live an ordinary lifestyle with the ability to use the majority of my time to study and pursue my interests. I now have a job that gives me ability to pay for my own health care, housing, food, and transportation. I oppose House Bill 2633 and ask you not to vote for it.

House Fed & State Affairs

Date: 3-18-2010

Attachment 8

Testimony of Heather Hein

My daughter is, and has been an employee of a sexually oriented business as defined in Bill 2633 for the last eleven years, in other words she is an exotic dancer. She earned an associates degree from Kansas City Kansas Community College and has been able to fully repay all student loans she received from the Government by working as an exotic dancer. She bought a home in Wyandotte County, also working as an exotic dancer.

She enjoys her work, and does not have any plans to change her chosen vocation as an exotic dancer. If Bill 2633 is passed she, and thousands of other young women will not have a job, since the strict guidelines of the bill would put clubs featuring exotic dancers out of business. That means these women will not be able to provide for their families, and will no longer be tax paying citizens, but a further burden on an already drained economy. These women are not in gangs running around trying to solicit customers, or ruin small towns as the bill contends. A lot of tax paying citizens of Kansas want to be able to enjoy going to see exotic dancers, if this bill is passed instead of dancing in clubs where safety can be monitored for both the dancers, and their customers, by club employees, women will be dancing at private parties where if problems develop the police will have to be called, these parties could be at your next door neighbors house or anywhere. Right now unless someone is interested in going to a club to see exotic dancers they might not even know that a club exists in their area. In closing I ask you in a state where there are not enough jobs now for the people that are unemployed do we want to take away thousands of honest taxpaying jobs?

Alaina Lamphear
5150 Rockenham Rd.
St. George, KS 66535
Alaina@ksu.edu

Dear Representative:

First of all, I would like to thank you for your time and the ability to share my questions with you. I am an opponent of H.B. 2633 based on the omission of information and the narrow nature to which this bill applies.

The first item I would like to address is in the Fiscal note and the application to KSA 75-3715a. The fiscal note did address the first half of this statute, although not in specific detail, but it did omit the second half which states, "...and with the sources and amount of revenue and other receipts of the state." While reading H.B. 2633, although it does not shut down adult establishments, it does strictly limit their operating hours, and the scope of their business which will have an effect on revenues both for the business itself and for the state in the returns of taxes, especially liquor taxes. The question I have, is that in this time of fiscal loss, does the cost we are currently spending or will be spending in the future on enforcement outweigh the revenue that the state would obtain via these establishments?

The second item I would like to address is the applicability of the laws, especially in respect to the semi-nudity clauses (New Sec 5 a,b,c). In a sexually oriented business, like a cabaret, this is an expectation but, for example, in a college town like Manhattan, I will often see examples such as these on a regular basis in Aggieville on a Friday or Saturday night. As a community member, by going to Aggieville, I do not have the expectation that I will see these acts, but if I were to frequent a cabaret I would have the expectation. The Community Defense Act is "to regulate sexually oriented businesses in order to promote the health, safety and general welfare of the citizens of Kansas." As a citizen of Kansas, I would much rather have this law apply specifically to places of business where I would not have an expectation of these acts, as opposed to a place that carries an expectation of sexually oriented acts being performed.

Finally, I would like to address the constitutionality of this bill at a state level. Based on the case United States v. O'Brien (391 U.S. 367) Judge Warren wrote: that when a regulation prohibits conduct that combines "speech" and "nonspeech" elements, "a sufficiently important governmental interest in regulating the nonspeech element can justify incidental limitations on First Amendment freedoms." The regulation must 1) be within the constitutional power of the government to enact, 2) further an important or substantial government interest, 3) that interest must be unrelated to the suppression of speech (or "content neutral", as later cases have phrased it), and 4) prohibit no more speech than is essential to further that interest." As a community member, I feel that the prohibition of semi-nudity, especially in art studios and cabarets, could be seen as an infringement on the First Amendment rights because substantial evidence is not shown as to the crime statistics, or health statistics. This could be established first on a local level and then possibly to a state level if substantial evidence could be shown that these establishments are a threat to the community. Allowing communities to establish their own laws and acts would also allow there to be no question regarding Miller v. California and their individual definition of community standards for obscenity.

As an alternative, I do feel that although this bill is too narrow, it could be adapted to set state level laws for the health and safety of both the employees and patrons. Including, maintaining health inspections or imposing set regulations for security and tax standards. I also believe that the bill is correct in maintaining the 1,000 foot barrier between schools as it is important to protect our youth.

Thank you for your time and allowing me to speak on behalf of my opposition to this law.

Sincerely,

Alaina Lamphear

House Fed & State Affairs
Date: 3-18-2010

Attachment 10

Congress in 1965, 79 Stat. 586 (adding the words italicized below), so that, at the time O'Brien burned his certificate, an offense was committed by any person,

who forges, alters, *knowingly destroys, knowingly mutilates*, or in any manner changes any such certificate. . . .

(Italics supplied.) In the District Court, O'Brien argued that the 1965 Amendment prohibiting the knowing destruction or mutilation of certificates was unconstitutional because it was enacted to abridge free speech, and because it served no legitimate legislative purpose.^{ln31} The District Court rejected these arguments, holding that the statute, on its face, did not abridge **First Amendment** rights, that the court was not competent to inquire into the motives of Congress in enacting the 1965 Amendment, and that the [p371] Amendment was a reasonable exercise of the power of Congress to raise armies.

On appeal, the Court of Appeals for the First Circuit held the 1965 Amendment unconstitutional as a law abridging freedom of speech.^{ln41} At the time the Amendment was enacted, a regulation of the Selective Service System required registrants to keep their registration certificates in their "personal possession at all times." **32 CFR § 1617.1** (1962).^{ln51} Willful violations of regulations promulgated pursuant to the Universal Military Training and Service Act were made criminal by statute. 50 U.S.C.App. § 462(b)(6). The Court of Appeals, therefore, was of the opinion that conduct punishable under the 1965 Amendment was already punishable under the nonpossession regulation, and consequently that the Amendment served no valid purpose; further, that, in light of the prior regulation, the Amendment must have been "directed at public, as distinguished from private, destruction." On this basis, the court concluded that the 1965 Amendment ran afoul of the **First Amendment** by singling out persons engaged in protests for special treatment. The court ruled, however, that O'Brien's conviction should be affirmed under the statutory provision, 50 U.S.C.App. § 462(b)(6), which, in its view, made violation of the nonpossession regulation a crime, because it regarded such violation to be a lesser included offense of the crime defined by the 1965 Amendment.^{ln61} [p372]

The Government petitioned for certiorari in No. 232, arguing that the Court of Appeals erred in holding the statute unconstitutional, and that its decision conflicted with decisions by the Courts of Appeals for the Second^{ln71} and Eighth Circuits^{ln81} upholding the 1965 Amendment against identical constitutional challenges. O'Brien cross-petitioned for certiorari in No. 233, arguing that the Court of Appeals erred in sustaining his conviction on the basis of a crime of which he was neither charged nor tried. We granted the Government's petition to resolve the conflict in the circuits, and we also granted O'Brien's cross-petition. We hold that the 1965 Amendment is constitutional both as enacted and as applied. We therefore vacate the judgment of the Court of Appeals and reinstate the judgment and sentence of the District Court without reaching the issue raised by O'Brien in No. 233.

WARREN, C.J., Opinion of the Court

SUPREME COURT OF THE UNITED STATES

391 U.S. 367

United States v. O'Brien

**CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE
FIRST CIRCUIT**

No. 232 Argued: January 24, 1968 --- Decided: May 27, 1968 [*]

MR. CHIEF JUSTICE WARREN delivered the opinion of the Court.

On the morning of March 31, 1966, David Paul O'Brien and three companions burned their Selective Service registration certificates on the steps of the South Boston Courthouse. A sizable crowd, including several agents of the Federal Bureau of Investigation, witnessed the event.^[in1] Immediately after the burning, members of the crowd began attacking O'Brien and his companions. An FBI agent ushered O'Brien to safety inside the courthouse. After he was advised of his right to counsel and to silence, O'Brien stated to FBI agents that he had burned his registration certificate because of his beliefs, knowing that he was violating federal law. He produced the charred remains of the certificate, which, with his consent, were photographed.

For this act, O'Brien was indicted, tried, convicted, and sentenced in the United States District Court for the District of Massachusetts.^[in2] He did not contest the fact [p370] that he had burned the certificate. He stated in argument to the jury that he burned the certificate publicly to influence others to adopt his anti-war beliefs, as he put it,

so that other people would reevaluate their positions with Selective Service, with the armed forces, and reevaluate their place in the culture of today, to hopefully consider my position.

The indictment upon which he was tried charged that he

willfully and knowingly did mutilate, destroy, and change by burning . . . [his] Registration Certificate (Selective Service System Form No. 2); in violation of Title 50, App. United States Code, Section 462(b).

Section 462(b) is part of the Universal Military Training and Service Act of 1948. Section 462(b)(3), one of six numbered subdivisions of § 462(b), was amended by

My name is Anna Lawrence (DBA). I am a citizen of Lawrence, Kansas, where I am self-employed as an exotic dancer and currently work at the famous Outhouse strip club.

I grew up on the east coast in a wonderful family with loving parents and a handful of siblings whom I love very much. Being both academically gifted and a child from a very wealthy family, I had the privilege of attending some of the most prestigious schools in the world through which I received an excellent education. Throughout the course of my schooling, I was heavily involved in extra-curricular activities. At one time, I was editor-in-chief of a student newspaper, wrote letters with the Amnesty International club, and played soccer for my school. I was well supported by my peers and was active in student government. I also studied dance at a high level and successfully competed in dance competitions in my free time, winning many gold medals in both jazz and ballet.

After graduating from high school, I went on to attend an east coast women's college, where I remained active in student government and other extra-curricular activities including STAND, and earned my degree in international politics. In addition to my coursework, I did several nonprofit and policy-focused internships that made use of my exceptional writing skills and passion for social justice. My work was noticed, and at the age of 20, I was recruited to join the board of directors at a women's organization in a major city.

After graduation, I backpacked across Europe and North Africa for pleasure, and eventually took a job in fundraising at an Ivy League university on the east coast. When I unexpectedly lost this job in December 2008, I moved in with a college friend in Kansas and began to look for nonprofit fundraising jobs out here. After five months, I found a job at a small nonprofit focused on financially vulnerable and homeless families.

Though the job was non-paying, I was thrilled and grateful to have it. Not only was it a chance to effect change at a local level in a town that needed help, the position offered a chance to continue in my field of nonprofit management, which I thought was my dream. To make this endeavor possible, I decided to take a job dancing at North Lawrence's Paradise Saloon at night.

As I made my plans to start this job, I was fully aware of the stereotypes of strip clubs, of exotic dancers, and the clients who patronize sexually oriented businesses. To make sure I had the best information possible, I did my own research and discovered that strip clubs are actually not that scary, and the only people who tried to convince me that my every waking moment would be lived in terror were people with little or no experience even as a customer at a strip club. I did listen to their cautionary tales anyway, and decided I wanted my day job with the nonprofit so badly that I'd move ahead with my plan to start this job no matter what.

On May 5th, 2009, I donned the sexiest lingerie I owned and took off everything but my panties in front of strangers for the first time in my life. Drawing creatively on the dance training I'd had with some of the best teachers available today, I strut my stuff with a nervous smile and went home happy, if a bit overwhelmed, with hundreds of dollars in cash to show for it.

For the following eight months, I lived two lives. By day, I was a director-level employee in a pencil skirt at a wonderful organization, where I threw myself into our mission to help the vulnerable people who needed us. By night, I switched outfits, made my dinner to go, and worked as a dancer at the Paradise Saloon.

Through experience, I discovered that the nightmare I imagined was simply not the reality of working at a strip club. Most of what I'd been told about strippers and the clubs they work at was patently false. Instead of drowning in a shark tank, I was surrounded mostly by friendly faces who supported me as I adjusted to this taboo new job. Given that it is a sales environment in which dancers are all competing for the same dollars, I would rank the work environment even higher. Girls patiently answered my questions about rules, laws, and how to dress. They hugged me when I felt nervous. The manager at the time, Steve, even sat with me for two hours before I started and made sure I understood the job, emphasizing that I never had to do anything I didn't want to do.

Rather quickly in this supportive environment, I made friends with the girls, the bouncers, and the bar staff. I came to look forward to getting on stage and showing off my dance skills and athletic body. I also looked forward to learning new pole tricks and meeting new people who live in the area and came into the club as customers. They were not the monsters that stereotypes would have you believe; rather, they are normal men and women who enjoy good conversation, a good lap dance, and a pretty girl. I am now closing in on my first year anniversary of being a stripper, and none of the novelty has worn off. I still dance in my seat as I drive to work, I still hang out with my girlfriends outside work, and, continuing a tradition I started very soon after I began stripping, I still make chocolate chip muffins for everyone I work with on the weekends.

Yes, there were tough moments (which I will readily tell to anyone who wants to know about them), but in almost a year of stripping, I'm glad to report I've personally experienced only two incidents (and witnessed one other) that can be classified as truly egregious behavior of a customer trying to compromise me. A small minority of customers, who assume, incorrectly, that dancers are also prostitutes, come in and make my job difficult. In that same small group of troublemakers are men who think that the social stigma of my job makes them a better person than I am also try to take advantage of me. Fortunately, their attempts are obvious, and I block them and report their behavior consistently.

With the good so overwhelmingly eclipsing the tougher moments, I fell so in love with this job and everyone I met that when it became impossible to continue with both my day and my night work, I resigned my nonprofit day job and became a full-time stripper. I've happily waltzed into this world and have no immediate plans to leave it. Rather than aspiring to become a director of development at a nonprofit, I now aspire to work as a stripper, save for law school, and become an attorney in the sex industry, and perhaps go on to become a college professor of women's studies or anthropology.

For now, I wake up every day excited to go to work, put on racy lingerie, and strut out onto the floor with my signature belt (of vicious discipline and fury!) draped over my shoulders, ready to make a smiling, giggling, excited customer's night dance skills and customer service skills I developed elsewhere.

With the March 11, 2010 headline on LJWorld.com reporting that the Kansas unemployment rate climbed upward frustrates me that House Bill #2633 will put me out of this job that I truly love. Not only are there few other options in this economy that I am interested in, but I have committed no crime to prompt a need for these additional rules.

ake most of my money on Thursdays, Fridays, and Saturdays between 12:00 a.m. and 4:00 a.m., when the party atmosphere is strongest. Requiring strip clubs to close at midnight will cut out my most lucrative hours.

House Bill #2633 will also require my customers to stand six feet away from my stage when I'm showing off my dance skills. During my two-song set, then, they are unable to tip me and express their appreciation when I'm dancing in front of them. When the next girl gets up on stage, it will be too late. Their attention will be focused on another dancer, and I will never get that money that I deserve for my hard work.

I've long appreciated the phrase: 'If it ain't broke, don't fix it,' and I believe it applies here.

Beyond that, I think that what bothers me most about this bill is that no one came and talked to me about it when they drafted it. They should feel embarrassed that I, along with a large group of other women, work at the most famous club in Kansas, and no one on their team thought to come and ask me what my job is like. Perhaps they suffer from 'damsel in distress' syndrome. Perhaps they think that primary sources are not worth the effort.

It is unreasonable to support a bill that clearly reflects a lack of understanding of my job as a local exotic dancer—and my life. House Bill 2633 is such a bill. It is authored by a party who has not only failed to come ask me about my experiences and my views about whether my job and my situation even *needs* improvement, but someone whose idea of what stripping is like in Lawrence, Kansas appears at best borrowed from someone else's life in another state, and at worst frozen in time in the mid-1980's or -1990's.

Here and now, in Lawrence, Kansas, in 2010, I am a happy, healthy, talented dancer who enjoys her sales job. Thank you for your time.

11-2

Testimony of Lauren Hergott

House district 30

My name is Lauren. I am 19 years old and am attending college at Johnson County Community College. I am going to school for early childhood education, wanting to be a fifth grade teacher. While attending college I am dancing at The Outhouse on the side to earn money.

I am a dancer that follows all of the rules of the club. This job is strictly a way of entertainment. You must be an adult to work in the dancing industry as well as be an adult to enjoy the entertainment. I feel very comfortable doing this line of work in a secure place where there are many men that are paid to protect me rather than on the street where my life would be at risk every second of every shift.

This is a great job for me while attending college because of the fact that I only have to work a few days a week, make very good money, and do not have to stress out about school because I don't have to work all the time just to survive. Before I started dancing I worked in the restaurant business when I first started college. I was stressed out all the time. My shifts were not terribly long but they were late at night, not getting off until around 11, and then I would have to go home and study. I worked four to six days a week, every week and still didn't make as much money as I do now. I was on a schedule so I couldn't just not go into work. Dancing makes things so much easier. I get to pick the days that I work so I can make it where it does not conflict with school. Also if I have a test coming up I can choose, without having to talk to anyone with a higher power such as a manager, to not go into work.

In my strongest opinion is that there is absolutely no reason to take my job away from me and the other girls that I work with and even the ones that I do not work with who are also just trying to make money. We are beautiful girls who are just trying to make money entertaining people and that's it.

House Fed & State Affairs

Date: 3-18-2010

Attachment 12

Testimony of Kathleen Lozano

To Whom It May Concern

I am enraged at the very idea of this bill being allowed to pass. This job is something that I have chosen to do for myself- there was no man or "pimp" pressuring me into it. I am an educated woman with two small children ages three and two. I earned my degree in Biology in the year of 2008, but the economy took a nose dive as did my current job with state and the economy itself.

This job is quite possibly one of the best things I have come across in my life. When I started dancing I was married to a verbally abusive husband and was stuck in a very unhappy and new marriage. Dancing gave me the opportunity to earn funds so that I could actually afford to get a lawyer and begin the process of a divorce.

Dancing has also allowed me a most wonderful gift that no single mother I know, aside from other dancers, can achieve. I am able to support myself, my brother, and my two children on my own. I use no government assistance whatsoever and I do not even receive child support from my ex-husband. I can do this and stay home with my children, give them my full attention 5 days every week. I work Thursday thru Sunday nights. During the weekend my ex watches the children.

My dancing is also financially supportive because I am a taxpayer. I save 35% of everything I earn so that I can afford to send in my tax forms and pay what I owe. On that same note, hundreds of people visit the club every weekend. Those people spend money in our state, they buy gas from our gas stations, rent out our hotels, spend money in our restaurants, shop at our markets, and support single mothers.

If this bill were to pass it would most definitely mean the end of a very happy and self chosen way of survival for me and hundreds of other women. Every day I am thankful for the job that I have and the ability I have that I can support my family on my own. For the ignorance of the people that want to send this bill through I am saddened. I have done nothing wrong in my community. Yet here I am with fellow dancers being attacked by people who have little to no idea as to how safe and comfortable I feel with my job and how many dire consequences would go along with the passing of this bill.

House Fed & State Affairs

Date: 3-18-2010

Attachment 13



**Equal
Entertainment
Group**



**Kansas
Licensed
Beverage
Association**

**CEO
Philip Bradley**

**P.O. Box 442066
Lawrence, KS 66044**

**V: 785.766.7492
F: 785.331.4282
www.klba.org
info@klba.org**

March 16, 2010 Testimony on HB 2633, House Federal and State Affairs

Mr. Chairman, and Members of the Committee,

I am Philip Bradley representing the Equal Entertainment Group (EEG) and Kansas Licensed Beverage Assn.(KLBA), the men and women, in the hospitality industry, who own, manage and work in Kansas bars, breweries, clubs, caterers, hotels and restaurants where beverage alcohol is served. These are the over 3000 places you frequent, enjoy and the tens of thousands of employees that are glad to serve you. Thank you for the opportunity to speak today.

We oppose **HB 2633** and ask you to not advance or support this act. This measure addresses many issues that appear simple on the surface but are very complex attempting to further expand government regulations. While one may or may not agree with current law and the courts interpretations of that law, those elements together have attempted to find a balance; the very important and critical balance. One between the individual rights, personal responsibilities and individual freedoms citizens are guaranteed and the duties of the government to protect its citizens. Our country is founded on the principles and beliefs that although certain practices and beliefs may not be shared by all and even be disapproved by some, they are worthy of protecting in the greater cause of our rights and freedoms.

These subjects are difficult to discuss objectively, and especially difficult to discuss in a forum such as this on a short schedule. They may be embarrassing to some. These issues are complex and need a thoughtful considered, deliberation before altering the status quo. This measure covers several areas including retail establishments and also entertainment venues that may and should be split into separate measures and considered individually.

HB 2633 proposes serious issues and need serious consideration. My testimony won't be covering the legal arguments that others have already addressed. My members are primarily concerned with the businesses defined in this measure as (c) *"Adult cabaret" means a nightclub, bar, juice bar, restaurant, bottle club or other commercial establishment, regardless of whether alcoholic beverages are served, which regularly features persons who appear semi-nude.*, and we generally limit ourselves to those places serving/selling beverage alcohol.

This appears to be a proposed solution looking for a non-existent problem. We have at the very least, object to the proposed hours of operation, requiring the changing of floor plans, interior rebuilds, installation of cameras/spying devices, hiring of additional personnel, and new additional operation procedures. We object that all of these new requirements be completed within 180 days. We also feel that the word "habitual", is open to subjective and varied interpretations.

We urge you to not advance this bill. However if the committee wishes to pursue this wide reaching and comprehensive act, we ask that the bill be split into 2 measures, one for bookstores and another for on premise entertainment establishments, and suggest that a sub-committee be appointed. We offer to work with such a group.

Thank you for your time.
Philip B. Bradley

The difficulty in life is the choice. The Bending of the Branch Act I

**Drink Responsibly.
Drive Responsibly.**

House Fed & State Affairs

Date: 3-18-2010

Attachment

14

**Background Material
Opposing HB 2633
for the Committee on
Federal and State Affairs
from
The Equal Entertainment Group**

House Fed & State Affairs

Date: *3-18-2010*

Attachment *15*

**Background Material Opposing HB 2633
for the Committee on Federal and State Affairs
from The Equal Entertainment Group**

Table of Contents

1. Reasons for Opposition to Sections of Kansas House Bill No. 2633

Understanding Adult Entertainment Exotic Dance

2. Right to Dance
3. Exotic Dance Adult Entertainment, A Guide for Planners and Policy Makers
4. Legislative Talking Points

Secondary Effects Studies

5. Fort Wayne, Indiana
6. Charlotte, North Carolina
7. Union, New Jersey
8. Fulton County Studies by Fulton County Police Officers
9. Examining the Link Between Sexual Entertainment and Crime in Florida
10. Ohio, Four City
11. Glazer Report
12. Debunking the Legal Myth of Negative Secondary Effects

Court Decisions Negating Regulations of Adult Entertainment Exotic Dance

13. Wet Sands vs. Prince George's County, Maryland

REASONS FOR OPPOSITION TO SECTIONS OF HOUSE BILL No. 2633

By Committee on Federal and State Affairs, Legislature of the State of Kansas

JUDITH LYNNE HANNA, Ph.D.

I am Judith Lynne Hanna. I earned a Ph.D. from Columbia University, and I am currently a Senior Research scholar in the Dept of Dance and a Senior Research Scientist at the University of Maryland.

I have been conducting research on dance as nonverbal communication, and thus communication protected by the First Amendment, since 1963. And since 1995 I have been conducting research on adult entertainment exotic dance. As in my other dance research, I examine the dance and its relationship to the community in which it is located. For example I conducted a study in Maryland and a study in North Carolina on of the impact of the clubs on their neighborhoods.

I have published scholarly peer-reviewed books and articles and have been an expert court witness for 140 cases in 27 states and the District of Columbia. My research is quoted in court decisions that have overturned such laws as the proposed House Bill No. 2633. The judges in these cases understand what valid research is and dismiss the myth that the clubs cause negative effects.

See my website, www.judithhanna.com on my background.

There are serious problems with these new sections in the community defense act; amending K.S.A. 2009 Supp. 22-3901 and repealing the existing section:

HB No. 2633 New Section 5.

- (a) No person shall knowingly or intentionally, in a sexually oriented business, appear in a state of *nudity*.
- (b) No employee shall knowingly or intentionally, in a sexually oriented business, appear in a semi-nude condition unless the employee, while semi-nude, shall be and remain on a fixed stage at least *six feet from all patrons* and at least 18 inches from the floor in a room of at least *600 square feet*
- (c) No employee shall knowingly or intentionally, in a sexually oriented business, while semi-nude, *touch a patron* or the clothing of a patron.

HB No. 2633 New Section 8.

- (a) No operator shall allow or permit a sexually oriented business to be or remain open between the hours of *12:00 midnight* and 6:00 A.M. on any day.

Contrary to the stated intent of the preamble to HB 26331, the proposed law seriously restricts the content of the exotic dance theater art and denies patrons access to a form of expression that has been popular since the mid 20th century.

In short the law would

1 *violate the United States Constitution's First Amendment free speech rights* in abolishing a genre of dance by suppressing essential and integral expressive and communicative components of exotic dance that are not merely incidental conduct associated with it, namely the use of space, touch, and nudity.

Exotic dance is a form of dance and theater art that is, by definition, somewhat "risqué" adult play, a fanciful teasing in which more of the body is disclosed and more sexually suggestive movements are performed than are usually seen in public. An adult entertainment exotic dancer begins (part 1) with a stage dance for the entire audience. After it ends, she offers (part 2) a dance for a patron who pays a fee for a spatially-close personal dance in a romantic ambience to create the patron's own fantasy.

Nudity in exotic dance conveys the message, "this is the adult entertainment of contemporary artistic theatrical exotic dance." Nudity not only conveys eroticism but divine manifestation, godliness, affirmation of life and sexuality intertwined with spirituality: Many Christians and members of other religions consider the body is the beneficent gift of the Creator and worthy of the attentive gaze. Indeed, bodies are considered temples of the Holy Spirit and people.

2 *deprive dancers of artistic choice of communication* using proximity, touch and nudity. Proximity to a patron and touch communicate many feelings and ideas -- from comfort, pleasantness, friendliness/fellowship, warmth/love, rapport, empathy, humor, playfulness, sentience, and immediacy to sensuality. Nudity is a form of costume, that is, a way to present oneself that conveys a message.

3 *discriminate against a form of dance, dancer and legal entertainment* by banning, nudity, dancer-patron proximity and touch only in exotic dance. In social and theatrical dance men and women hold each other, and nudity has long been part of mainstream ballet and contemporary dance. Exotic dance, but not other theater arts venues is required to have specific room sizes.

4 *deprive patrons of choice of entertainment and freedom of expression* of appreciation in being proximate to a dancer and tipping her

Through direct tipping and purchasing private dances, the patron communicates appreciation of the dancer's physical appearance (attractive body shape and tone hair, makeup, etc.), dancer's costume (4 to 5 inch heels, attire, props), dancer's movement (graceful strut and posture; standard bumps, grinds, shimmy, etc., smooth transitions between movements and positions: prone, kneel, stand, elevated on pole; disrobes with attitude; variety; balanced use of stage; interprets music, proximity to patron), personal style (creative uniqueness) and connection with patron (personality, proximity, smile, eye contact, touch, charisma). The patron's tipping encourages a dancer to continue to perform in a way that pleases.

5 *insult and stigmatize women and men*, giving the false impression that women instigate crime, men cannot control themselves, and dancers have a contagious disease.

7 *discriminate against women and a form of business in violation of the Equal Protection Clause of the Fourteenth Amendment* by imposing upon adult entertainment more stringent hours of operation than those imposed on businesses selling alcoholic beverages with (or without) other types of entertainment.

9 *chill the arts as a whole* because different dance forms influence each other and other art forms

10 *harm the dancer's livelihood as well as the livelihoods of others who work in the exotic dance business*, all contributing to the economy (clearly, patrons' unfulfilled expectations of receiving the messages of exotic dance result in fewer dances being sold and tips received),

11 *eliminate the social, psychological and health benefits* of (a) dancers gaining self-esteem for successfully controlling their own artistic expression, facing strangers and winning their appreciation for their dance skills and physical attractiveness, (b) working with flexible hours to attend school or care for a child and (c) the health (e.g., reduced stress) and social benefits of patrons being accepted, having a nonjudgmental listener.

In summary, there are **constitutional and moral reasons to delete New Section 5 (a), (b), (c), and New Section 8 (a)**. Moreover there has been no study of the impact of dancer-patron proximity or touch, direct tipping or hours of club operation although there have been studies that show that the clubs themselves benefit the neighborhoods in which they are located. Some people do not approve of the clubs, but they do not have to frequent them.

Attached to elaborate on my presentation:

- 1 "Right to Dance: Exotic Dancing in the U.S.," in Naomi Jackson and Toni Shapiro-Phim, eds., Dance, Human Rights and Social Justice: Dignity in Motion. Lanham, MD: Scarecrow Press, pp, 86-107, 2008
- 2 "Adult Entertainment Exotic Dance: A Guide for Planners and Policy Makers" (CPL [Council of Planning Librarians] Bibliography 375), Journal of Planning Literature 20(2):116-134, 2005
- 3 Legislative Talking Points, 2010

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15-5

Right to Dance

Exotic Dancing in the United States

JUDITH LYNNE HANNA

I began my research on exotic dance adult entertainment in 1995 when I was asked to be an expert court witness in a First Amendment case.¹ I was contacted by an expert on the location and effects of exotic dance from the American Institute of Certified Planners and a lawyer representing dancers and owners of exotic dance clubs in Seattle, Washington, because they had discovered my anthropological research on dance as nonverbal communication through *Books in Print*.² They asked me to apply to exotic dance the semiotic, sociolinguistic paradigm I had used to study dance in Africa, on school playgrounds, and in American theaters. Since then, I have worked with fifty-five attorneys in regard to 117 legal cases in twenty-six states and the District of Columbia, and in the process I have observed and interviewed dancers (in more than 140 clubs), as well as members of their communities, including those in city and county council meetings and courtrooms.³

The Supreme Court of the United States recognizes artistic dance as protected expressive behavior, as a kind of “speech” that therefore falls under the First Amendment to the U.S. Constitution. (See Appendix 1.) As I will explain, it follows that the same protection should apply to exotic dance (also called striptease, stripping or erotic, topless, nude, table, couch, lap, go-go, juice bar, sports bar, and “gentleman’s club” dance). Civil libertarians believe that exotic dancers, like other performers, should have the freedom to control their own artistic communication without state interference, police harassment, or the attacks of community members who try to impose their version of morality on everyone.

Despite the “protected expressive behavior” and “speech” connection, hundreds of local and state governments nationwide use the coercive power of regulations to limit exotic dance, to force it out of existence, or to prevent new exotic dance clubs from opening.⁴ Laws against adult clubs include banning nudity or partial nudity, “simulated nudity,” “simulated sex,” touching another person or self-touch, and “obscene” and “lewd” behavior—terms that are, of course, open to wide interpretation. Some laws have placed restrictions on direct tipping or require bright lighting, specific hours of operation, and licensing of dancers. Fighting such laws is costly, and not all clubs or dancers can afford to litigate them.

It is significant to note that some anti-exotic-dance laws are so broad they could easily be applied to other dance styles in different contexts. Nudity, touching another person or self-touch, “simulated nudity,” and “simulated sex” occur in choreography shown in mainstream theaters. Had censorship succeeded, such past shockers and present classics as Maud Allan’s *Dance of Salomé*, Michel Fokine’s *Schéhérazade*, Isadora Duncan’s modern dance, George Balanchine’s *Prodigal Son* and *Bugaku*, Jerome Robbins’s *The Cage*, Martha Graham’s *Phaedra*, Anna Halprin’s *Parades and Changes*, Glen Tetley and Hans van Manen’s *Mutations*, or Rudi van Dantzig’s *Monument for a Dead Boy* would have been lost.⁵

Ironically, these restrictive laws are not applied to social dancing in public, so that performers in licensed adult businesses could be arrested for dancing the way couples in many nightclubs do, or the way kids routinely dance at school dances today. Although some schools have banned so-called “freak dancing,” it is still common to see young people perform variations of social dance that are called booty dancing, da butt, doggy dancing, front piggy-backing, and hot salsa. These variants include moments when pelvises touch and rotate, upper torsos meet, and thighs entwine. Females often bend over until their hands are on the floor, then press and grind their buttocks against a male’s thighs and crotch, much like adults engaged in lap dancing.

Especially when compared to tolerance for sexuality and nudity in stage dance, the targeted attacks on exotic dance can be seen as class related; that is, different standards are applied to dance not considered “high art”—dance not taught in schools and not privileged by the dance community or the general public. But the enforcement of anti-exotic-dance laws sets a problematic precedent for censorship in general, in that these laws might eventually be applied to other forms of dance and art, forcing them out of existence. The wider principle is the infringement upon the civil liberties of all people in the United States.

In the following article, I will discuss the myths and realities of exotic dance as I have discovered them through my research. Included will be reports

of performers' attitudes toward their work, legal treatment of exotic dance, and the tactics and reasoning used by adversaries of exotic dance. I will explain why their objections are ultimately limited and why all of this matters in the realm of dance and democracy.

EXOTIC DANCE IS DANCE

Exotic dance shares with virtually all dance genres the fact that it is a purposeful, intentionally rhythmical, culturally patterned, nonverbal, body movement communication in time and space, using effort and having its own criteria for excellence.⁶ Like other kinds of dance, exotic dance conveys meaning by the use of space, touch, proximity to an observer, nudity, stillness, and specific body movements.⁷ To use a ballet example, recall any number of versions of *Romeo and Juliet*, where the dancers' bodies are barely draped, and love is shown by touching hands, stroking a face, arching backward or falling into each other's arms. When Juliet's parents are urging her to marry Paris against her will, there's a moment when standing near him, her eyes coolly survey him from toe to head. Then her eyes turn away, and, rising on pointe, she briskly travels away from him.

In exotic dance, a performer might also emphasize lines of the body and use stroking and arching, eye contact, and proximity to a patron, but in this genre usually to indicate a more explicitly sexual way in which love is expressed, equally recognizable and also requiring choreographic creativity. Exotic dance also conveys a multitude of meanings, such as health, nature, beauty of the body, and feminine power. The meanings conveyed in contemporary exotic dance may be erotic, but erotic expression certainly does not exclude artistry. Indeed, some outstanding exotic dancers have attended performing arts high schools and performed in ballet companies and on Broadway. The excellent pole dancers have often trained in gymnastics.

All forms of dance have a range of amateur to professional, and an excellent performance can arouse emotions or suggest ideas for audience members. "Artistry," according to many dictionaries and choreographers, refers to the quality found in a performance that has creative imagination and knowledge and skill acquired by experience, study or observation, and communication. Dance writer Walter Sorell referred to artistry as "bringing dynamics and responsiveness to the craftsmanship."⁸ These levels of mastery pertain to exotic dance. Artistic merit in exotic dance is recognized according to specific criteria applied in competitions, as well as when patrons remunerate dancers with individual tips and fees during performances. These criteria include talent,

individual creativity, personality, appearance and costume, musicality, athletic strength and flexibility, and audience appeal.

In the course of studying many exotic dance performances, I could see that there was/is often more going on than sexual fantasy. One aspect that relates to the criteria for artistic expression is parody, when a dancer makes fun of the pretext of clothing, such as a police uniform or a cowboy outfit, and gender identity, female stereotypes, or femininity by exaggerating them. As adult theatrical entertainment, exotic dance involves play, fantasy, and acting; by definition it is supposed to be risqué, disclosing more of the body and kinds of movements than seen in public. We see minimal breast coverings and thongs that expose much of the body in public swimming areas, and sexually suggestive movements on MTV and social dance floors. These forms of dress and behavior are not policed in the same way exotic dancing often is, nor are many stage performers in so-called legitimate theatre harassed the way adult entertainment participants are.

Exotic dance, also like other dance forms, has its own history. Its roots can be seen in various styles of shimmying and hip-rotating Middle Eastern dance, especially in its incarnation as belly dance, which has also been called *danse du ventre*, *danse orientale*, hootchy-kootchy, or cooch. After Egyptian dancers were a sensation at the 1893 Chicago World's Columbian Exposition, aspects of this kind of dancing, previously a folk form in the Middle East, were appropriated widely.⁹ It influenced not only many amateurs and pioneers of modern dance such as Maud Allen and Ruth St. Denis, but performers on the stages of American burlesque theaters. While many dancers tried to distance themselves from the sexual aspects of belly dance by emphasizing spiritual and artistic associations, exotic dancers developed their own forms in strip clubs, until their decline after World War II. Exotic dance began to flourish anew in the 1980s as upscale "gentlemen's clubs," managed by businesspeople and corporations, increasingly supplanted the old-style strip bars. This transformation was like going from greasy spoons to four-star gourmet restaurants. Indeed, some clubs serve excellent food.

Contemporary exotic dance has also been influenced by many important twentieth-century artistic developments, such as African American social dance forms, nudity in mainstream theater, and dance showcases. The development of exotic dance can be seen as part of a western art aesthetic mandate to explore what has been deemed off limits, such as gay themes, to find new objects to look at, such as multi-media productions, and new ways to look at familiar ones, such as Pilobolus dancers appearing as moving fungi. Pole dancing and lap dancing (extending the tradition of taxi dancing) are recent exotic dance innovations.

Exotic dance usually has two sequential parts. First, a dancer performs onstage for the audience as a whole to entertain and then to showcase herself for the second part of the dance. Generally, nudity climaxes the last of a three-song performance in which the dancer appears on stage clothed for the first song, partially removes her clothes during the second, and strips to nudity at the end. The dance varies depending on the dancer, club, and locality. Performed in six- to eight-inch heels, the movements derive from belly dance, burlesque, popular dance, Broadway theater, music videos, jazz, hip-hop, cheerleading, and gymnastics. The common pole onstage serves as a prop and permits athletic stunts. Demi Moore's dance in *Striptease* is illustrative of some of this type of dancing. Dancers commonly gyrate hips and torso, thrust hips back and forth and rotate them ("bump & grind"), rotate hips into a squat (like a screw), undulate body or body parts, shimmy breasts, and bend torso to peek through one's legs.

The following is a description of a performer pole dancing to the music in a club in Albany, New York. First Song: Dancer walks onstage. Wipes mirror with cloth to best reflect her image. Twirls on her own axis while circling around the pole. Holds pole with right hand as support to twirl around pole, right thigh lifted. Places back to pole and extends right leg. Turns around, grabs pole and shimmies up, right leg extended outward, leans back, straightens up, leans back with legs outward horizontally, brings them up to chest. Flips body upside down on pole, extends legs in a split, slides to floor. Hooks right leg around pole as support to twirl around pole. Sits down, arches backward, unfastens hair tie to let hair flow with movement. Twirls around pole, shimmies up pole with both legs, hangs upside down by legs. Slides to knees, extends torso forward, legs bent outward. Stands with back to pole, arches head back. Swings up pole with one foot on stage rail, one hand on ceiling hook. Descends to floor, knees swivel toward and away from each other. Leans back against the mirror, extends hands upward, turns around, moves hands down body, faces mirror, twirls, creating self images twirling along mirror to right and then reversing direction. Sits down, flips head back. Walks to pole, twirls around it with right foot up. Lifts body onto pole with hands, flipping legs back and out. Hangs by one leg, the other extended outward, splits legs, descends to floor head first. Places hand modestly over pubic area. Shimmies up pole, turns upside down holding on with thighs, bounces buttocks sliding down. Twirls about pole, bends backward, one leg bent at knee. Shimmies up pole, moves body toward and away from pole, splits legs. Descends and twirls around pole; music accelerates as does movement. Slides back against pole, hands go up side of torso. Moves to edge of stage for patron to reward her performance by putting bill in her garter.

Second Song: Wipes mirror. Walks to pole, twirls about it, leg hooked. Shimmies up pole, turns upside down holding with one leg hooked around pole, the other in bent shape extends outward. Stands with back to pole and removes her top. Shimmies up pole, spins in backbend, brushes her hair, upside down splits legs, extends them vertically and together, grasps pole. Descends to floor, flips hair back and forth, on hands and knees bounces buttocks, kneels, stands. Twirls about pole.

Third Song: Takes thong off. Backs up to mirror, creates S shape, slides to seated position, opens and closes legs. Walks to pole, hooks leg and twirls around pole, tosses head back, shakes hair. Descends pole into split, then rises with legs vertical to floor, buttocks first with torso bent forward, stands upright, tosses hair. Leans against pole, swings up with hands, body flung outward, and then legs grab pole. Vibrates legs in descent to floor. Circles pole. As foot pushes off from stage rail and one hand grasps a ceiling hook, swings up pole. Descends to floor with one, then another leg. Leans against pole, twirls, head arched backward. Shimmies up pole, splits legs outward, extends arms outward as thighs grip pole. Descends. Receives tips. Walks offstage.

In the second part of exotic dance, for a fee a performer dances for individual patrons next to where they are seated (or in lap dancing a performer dances on, straddling, or between a patron's legs). The dancer "says" through body and facial movement, proximity, and touch, the fantasy of "I am interested in you, I understand you, you're special and important to me." The patron's purchased "commodity" is a license to dream.

In many ways, the performance venues for exotic dance parallel those of mainstream dance forms. Gentlemen's clubs are theaters with an entrance fee that provides access to a place where professionals perform on a raised stage with special lighting, a commercial music system, and a master of ceremonies and/or disc jockey. Similar to mainstream dinner theaters, tables and chairs for audience members are arranged in areas where exotic dancers also perform. "Ushers" (floor managers or doormen) seat patrons, answer questions, and ensure proper audience behavior. As has traditionally been a feature of many major opera houses, clubs often have a special "VIP" room for audience members who pay for special ambience, alcoholic beverages, and attention. Backstage, there is a dressing area for performers.

Currently, there are approximately 4,000 clubs where exotic dance is performed, and the industry is estimated to be a multibillion-dollar concern, with clubs on the NASDAQ Stock Exchange (National Association of Securities Dealers Automated) and the American Stock Exchange. Annual individual club revenues may reach five million dollars, and clubs pay substantial local and state taxes. The industry boasts a host of organizations, schools, publications, and

national trade expositions. Among the patrons are businessmen and women who frequent exotic dance clubs to put their clients in the mood to close commercial deals. Onstage, performers include those who are also college students, lawyers, accountants, stockbrokers, artists, athletes, single moms, married women, ballet and modern dancers, and high-school dropouts. What they all share is that they are all professionals, all earning income, all doing a job.

EXOTIC DANCERS' PERCEPTIONS OF THEIR WORK

My interviews with hundreds of exotic dancers since 1995 reveal multiple reasons for choosing to perform. Earning money from this legitimate work is key. Some women become dancers through serendipity, meeting someone who does it or who knows a dancer. Being an exotic dancer offers women the opportunity to work fewer hours and earn more income than they would in doing many other jobs. Choosing their own schedules gives them time to attend college or bring up children.

While the exotic dance industry, like many other businesses, has its share of good bosses and bad bosses, and of illegal behavior, it has no monopoly. Most dancers in the clubs I have visited (and others who have written about their experiences) assert that they are independent subjects creating art, not submissive objects. They feel empowered by the financial independence they achieve and talk about the increased self-confidence and self-esteem gained from successfully facing strangers and winning their appreciation. Many identify themselves as feminists and think that dancers should be the ones to decide if, when, and under what circumstances they feel oppressed. A number of exotic dance supporters consider that the dancer's choice to place her body within a financial transaction does not reduce her to a commodity any more than a model, actor, or athlete would be by choosing their respective professions. Conversations with dancers and audience members alike have revealed an awareness that exotic dance merely taps into contemporary attitudes toward the body as something to be cultivated, used, and presented.

Dancers say the biggest problem they face is the stigma attributed to exotic dance. Doors held by employers who are biased against exotic dance may be closed to those who have had a career in this industry. The dancers may not only be stigmatized as instigators of crime when government regulations have been imposed on their industry, but their civil liberties are also threatened and their freedom of speech curtailed by their inability to speak about their work widely without fear of prejudice. Stigmatization of dancers can easily bleed into their private lives as well. It has proved to be a negative factor in cases of child custody or rape, for example, and in being denied access to housing. As

a result of the stigma, many dancers feel compelled to perform incognito, not only using stage names, wearing heavy make-up and wigs, but also changing their contact lens color and way of speaking. For some women, exotic dance is an alternative path to success, but it is paved with the pain of public misperception. Yet from my research, I could see that performing in exotic dance clubs is far from a one-way trip to hell.

THE LAW: MORALS, OBSCENITY, AND ADVERSE EFFECTS

The U.S. Constitution, Supreme Court decisions, and subsequent case law provide constraints for regulating exotic dance.¹⁰ Although the Supreme Court has recognized exotic dance as expression, or “speech,” with First Amendment protection, in 1991, a fractured Supreme Court allowed exotic dance regulation on moral grounds (*Barnes v. Glen Theatre*). But that “morality” justification has since fallen by the wayside. An expression-restricting law based on public morality reflects a political consensus among a majority of elected representatives, not necessarily the moral preferences of a majority of citizens. In the more recent case of *City of Erie v. Pap’s A.M.* (2000), the Supreme Court held that government could regulate adult-entertainment clubs if the aim is to prevent crime, property depreciation, and sexually transmitted disease—the legal doctrine of “adverse secondary effects.” Content neutral (not impinging upon meaning) time, place, and manner regulations of exotic dance were permitted, the amount of regulatory control dependent upon whether or not alcohol was sold. In general, speech that aims to reconcile the individual’s and society’s interests must be justified by evidence that expression creates a clear, present danger, or that it is “obscene” under the difficult three-pronged “Miller test” (*Miller v. California*, 1973),¹¹ or that the restrictions otherwise further a compelling government interest. Furthermore, restrictions on speech generally must combat the danger by the least restrictive means.

Up until at least 2002, the federal, state, and local courts did not question local and state legislatures’ specified intentions for regulations to deal with the “negative” effects of exotic dance. However, *Pap’s*, *City of Los Angeles v. Alameda Books* (2002), and subsequent cases now allow the merit of a government’s evidence for the need to control exotic dance to be challenged in court. “Shoddy” evidence or reasoning does not suffice, the Supreme Court said. Consequently, exotic dance clubs and associations have commissioned social scientists not only to critique “studies” that localities previously had been permitted to rely upon to justify their legislation, but also to conduct new research.

Social scientists in the twenty-first century have critiqued the “studies” that governments have relied on as evidence to justify regulations that strangle exotic dance.¹² The “studies” typically include these faults: most do not follow professional standards of inquiry or meet the basic requirements for acceptance of scientific evidence. No control site is matched with an exotic dance cabaret site to ascertain if the latter is different regarding negative behavior, such as crime. No determination is made as to what exists before and what exists after a cabaret is opened in a particular location. No data are collected over several years to distinguish a relatively unstable or a one-time blip from what is usually the case. Studies conducted over a single time period and at a specific site are not applied to gentlemen’s clubs located in adjacent counties and in other places. Studies focused on concentrations of a combination of different kinds of adult businesses, such as bookstores, peep shows, and massage parlors, are not necessarily applicable to cabarets. And there have been no studies examining the impact of a particular type of dance or kind of expression (whether nudity, semi-nudity, simulated nudity, stage design, or dancer-patron interaction) taking place inside an adult business.

Although adult entertainment cabarets in poor neighborhoods have more crime than businesses in other neighborhoods, this does not prove that the clubs cause crime (correlation is not causation). Change in police surveillance may also account for crime rates. Police calls by a cabaret may not indicate a troublesome business, but rather its commitment to maintain a safe and lawful establishment. Some police reports are proven false in court or do not reflect convictions. Charges for prostitution are at times merely based on the perception of “sexy” dancing or “come-on” fantasy talk. Opinions of appraisers constitute speculation, not empirical evidence of a valid relationship between exotic dance cabarets and their actual impact on property values. A “potential” negative impact is not a real impact. People presume nightclubs in general also cause noise, drunkenness, and litter. However, despite the intuitive appeal of these assumptions, there is a surprising absence of proof.

Most importantly, recent valid and reliable research has disproved the adverse secondary effects of exotic dance.¹³ Of course, clubs may have crime, but not disproportionate to other businesses that are public places of assembly, and clubs often have positive effects. Clubs frequently benefit communities by attracting new business, providing employment, and paying taxes.

Typically, government regulates every exotic dance club the same way, regardless of their differences in operational character or their economic contribution to the community. Zoning is the first line of government control of adult entertainment. Areas are often set aside for clubs and distances from school and churches specified. Yet there is no evidence that it makes a difference if clubs are clustered or dispersed. Clubs may be eliminated

through eminent domain, which is the government purchase of land for the public interest.

In general, the courts have tended to be unaware of how dance conveys content symbolically and thus have permitted problematic "content-neutral" regulations. Some judges who recognize exotic dance as "speech" or "artistic expression" view it as less important than political speech in the hierarchy of First Amendment protection. Again, the problem is lack of knowledge about dance in general and exotic dance in particular, as well as the reigning supremacy of the verbal over the nonverbal.

ADVERSARIES OF EXOTIC DANCE

To begin my research in preparation for testifying in my first exotic dance court case, I had to break through demonstrators to get inside an exotic dance club. Adults and children who were picketing the club held banners that screamed, "Washington Together against Pornography!" I could see that a particular strain of Christian church was behind the opposition to adult entertainment, and I learned more about such hostility as I went along.

My research enabled me to prepare study reports, affidavits, and testimony to prevent the enactment of laws or to challenge laws that infringe upon the First Amendment of the U.S. Constitution (freedom of expression), the Fifth Amendment (due process related to arrests without warrants and regulatory and court proceedings) and/or Fourteenth Amendment (discrimination by singling out one kind of dance, nightclub, or business for regulation), or to defend dancers against charges of prostitution, lewdness, indecency, or obscenity. In every case, a pastor or church group was also involved, spearheading efforts to wipe out exotic dance. At first it seemed that these Protestant churches were acting independently in the tradition of local control; but eventually I realized they were part of a web of connection in a powerful Christian Right political alliance. I began to study these groups.¹⁴

In 1973, the politically active Christian Right was a small group of people with a grand design for the nation. Since then, a thirty-year effort using dynamic organizational momentum has led to religious conservatives gaining office at the local, state, and Supreme Court levels, to their taking control of Congress for the first time in forty years, and the elevation of George W. Bush, a born-again evangelical, to the White House. One of the major players I repeatedly saw in courtrooms across the country was attorney Scott Bergthold, who had been a member of several Christian Right political organizations, such as the Alliance Defense Fund, which are devoted to fighting adult entertainment. Now he carries on the fight through his own firm.¹⁵

Through an organizational network fueled by money, lawyers, and technology, an emboldened division of the Christian Right fights adult entertainment as part of a political religious movement called Dominionism. Its goals are to supplant constitutional democracy with a bible-based Christian-governing theocratic elite.¹⁶ Fights against exotic dance occur on merely one front in a broader culture war,¹⁷ with other battles concentrating on abortion and prayer in the schools, for instance. Composed of evangelical traditionalists, centrists, and modernists, Christian Right divisions fight to have their voice and ideology prevail. My focus here is on the segment of political activists who have a thirst for eliminating the separation of church and state in order to create a scripture-guided nation, not the other divisions that concentrate on social welfare and global warming. However, if there are differences of opinion within the Christian Right regarding some “hot-button” issues, it is doubtful that they extend to exotic dance, which is broadly demonized.

Attempts to ban dance, of course, are not new.¹⁸ The current rhetoric of the Christian Right echoes some past objections to dance based on the perceived threat it is seen to pose, in that the instrument of dance and sexuality are one and the same, namely, the human body. Eroticism has unleashed passions that have defied the dictates of many religious and political groups. As with theater, dance has been the object of suppression not only because of its perceived sexual nature, but because it has been associated with what is seen as “deceit and pretense,” which is interpreted as “bearing false witness.” In some religious interpretations, mimesis is linked to sin and blasphemy, in that it mocks nature and God. In other words, theatrical spectacle calls into question the very nature of truth by exaggerating it. Moreover, dance is considered to dissipate God’s gift of time and money, because it is thought to serve no Christian purpose and to be poor preparation for death and eternity.

Moral crusades against dance are part of America’s heritage, especially when dancers reveal evermore flesh and experiment with movement in ways that seem to flaunt traditional notions of modesty. Even ballet, perhaps the quintessential conception of high art dance today, was widely considered disreputable in the nineteenth century, because it publicly displayed the female body and provided a venue for rich gentlemen to pick up mistresses.¹⁹ The current objections of the Christian Right repeat much of the anti-dance religious rhetoric of the past, in that Biblical injunctions concerning the use of the body and modesty recur,²⁰ and there is an emphasis on patriarchy, male-female polarity, and the belief that men have an inherently uncontrollable nature.²¹

Believing that people are tempted by sin and cannot be trusted with liberty, the Christian Right targets the publicly expressive body. Broadly speaking, white middle-class evangelical Christians who are socially, theologically, and economically conservative believe that a woman’s place is in the home

and only the husband should see the wife's nude body. They express outrage when a woman goes into the workplace and strips.

While many of these arguments may sound familiar, today's anti-exotic-dance brigade is different from those in the past because of the Christian Right's grasp of government policy and use of modern technology. A segment of the Christian Right is determined to reorganize American life more broadly.²² Civil liberties constrain the movement's use of government to ban exotic dance outright; therefore, in the name of the "public good" and "protecting our children," which the Christian Right proclaims in public hearings and in legislative preambles, some members become legislators or enlist legislators to enact regulations that censor key elements of exotic dance, harm the business by eating away at its essence, and trample many people's civil liberties.

Wittingly or unwittingly, members of the Christian Right are joined by some feminists and the American Planning Association (APA) in the attempt to strip the First Amendment, corset the exotic dancer, and dismantle the industry. Concerned with protecting women, they consider exotic dancers to be objects of the "degrading" male gaze, said to hurt all women whether they know it or not. In this scheme, exotic dancers are infantilized by being characterized as hapless, exploited victims of patriarchy and unbridled male control, lust, and avarice. Yet my research indicates that most dancers are savvy entrepreneurs and, if they are subjects of the erotic gaze, they return that gaze in order to assess the monetary spending potential of patrons.²³ The female adversaries do not seem to recognize that male legislators who try to control exotic dance might be attempting to control women to reinforce patriarchy. In the economic realm, some businesses and property owners ally themselves with the moralists, fearing exotic dance in their neighborhoods would jeopardize safety and depreciate property values. Again, there is no scientific evidence to justify these fears.

Many people may join the anti-exotic-dance bandwagon in good faith, because they believe conservative propaganda and the stereotypes perpetuated by the media, or because they might remember past allegations that "strip joints" were run by organized crime and are unfamiliar with today's modern, well-run gentlemen's clubs. Easy to demonize because it is misunderstood, exotic dance adult entertainment is a lightning rod for culture conflicts in America and an easy scapegoat for fear of change in society. Exotic dance easily provokes public denunciation and governmental suppression for "the public good." Historically, those who perceive dance as a threat have responded in ways that have led to abuses of American and Fourth Geneva Convention human rights of autonomy, dignity, and justice. These abuses have challenged women's choice of work, freedom from exploitation and control, and choice of artistic expression. The NIMBY (not-in-my-backyard) issue also pits

segments of the community against exotic dance stakeholders (dancers, patrons, club owners, and personnel).

TACTICS USED AGAINST EXOTIC DANCE

Strategies to promote the anti-exotic-dance agenda include the APA providing local governments with faulty, biased, outdated studies that claim exotic dance clubs cause harm.²⁴ One of their publications appears to call on the resources of academic experts, but, in fact, is inaccurate and misleading.²⁵ In addition, the APA files amicus curiae or friend-of-the-court briefs (namely, information provided on points of law or other aspects of a case to assist a court in its decision) against the adult industry.

More dire tactics against exotic dancers, including death threats and harassment of exotic dance stakeholders, are similar to those used against abortion service providers. The Christian Right also uses agitprop tactics by mobilizing the forces of highly organized church groups who respond to calls for massive letter-writing campaigns and become more visible through its media empire.²⁶ Not only do they attack exotic dance, but they assault the National Endowment for the Arts' existence and funding, disapproving of some grantees' work on moral grounds.

To help in these crusades, a number of religious conservative political action groups provide a model for anti-exotic-dance legislation²⁷ and other legal services to local governments. For example, the Community Defense Counsel (CDC) was set up by members of the Christian Right specifically to fight adult businesses and has offered national legal conferences, training seminars for prosecutors or city attorneys, drafting services for statutes or ordinances and testimonies, trial assistance, and appellate and amicus curiae briefs. It also provides a law library with "studies of secondary effects," a legal manual, model city ordinances, and workshops for church members held around the country to teach people how to keep adult businesses out of neighborhoods. The organization has been training a thousand attorneys to develop "secure cities" to improve the "the quality of life" in their communities. The CDC publishes articles in law journals and the popular media and puts out slick multicolored flyers that feature statements such as "We can help you draw the line for decency," "How can I get involved?" "You call this victimless?" "How to keep sex businesses out of your neighborhood," and "There's no place like home . . . for pornography?" (The Christian Right confounds exotic dance with pornography.)

The Christian Right also seeks to impose its views through lobbying, voter guides, and organizational structures, such as prayer-action groups that

become political action committees. Christian Right stay-at-home women have become available platoons to further the conservative agenda.

In addition, the Christian Right pressures and also participates in government. A tactic against exotic dance clubs is for governments to require clubs to hire police for security, more expensive than private guards. Jurisdictions may turn to discriminatory licensing of exotic dancers (but not other dancers), clubs, and managers. Licensing, often expensive and cumbersome to the licensee, enables a locality to refuse, suspend, or revoke a license, often at a government official's discretion and without equitable appeal procedures. There may be special entertainment taxes ("sin" taxes) on adult clubs.

Criminal "obscenity," "public indecency," and "lewd conduct" laws tie the noose tighter. Governments may set hours of operation and require specific configurations of stage and seating. Some localities mandate bright lighting and patron-dancer distance requirements "to facilitate law enforcement against drugs and prostitution" and further impede dancers' creativity by specifying costumes, dictating what body parts can be exposed, and determining exotic dance styles, movements, the use of self-touch, and the manner in which patrons may tip dancers. Adversaries attempt to ban simulated nudity and simulated sex even though they do not define them.

Another tactic is to change the rules as soon as exotic clubs comply with a regulation ordinance and still thrive or the court overturns a restrictive law. If during a court hearing a government realizes a challenge to its ordinance will most likely succeed, it amends the restriction to render the court case moot and to avoid paying the challenger's attorney's fees. Fearful of losing in court and paying costs and damages, some local governments are becoming cautious about passing anti-exotic-dance ordinances. They may require adversarial church groups to first create a legal defense fund of one hundred thousand dollars to cover the expected cost of club challenges to the ordinances.

Law enforcement may root out, prosecute, and render stiff penalties for violations of adult business regulations.²⁸ Asking inspectors from fire, health, building, alcohol, or public works agencies and the Internal Revenue Service or state tax authority to find any kind of code violation is another form of harassment. Club Exstasy in Prince Georges County, Maryland, experienced four raids in thirty days in 2006, and customers received citations for jay-walking and not parking between a private parking lot's lines. Intimidating threats of undercover operations and vice-squad raids exert control. In some localities, law enforcement has prevented entry into a club and deterred patrons under the pretext of protecting demonstrators against the club, at the same time permitting the demonstrators to trespass. A Kansas law mandates a grand jury investigation if enough names (3,300 signatures) can be gathered through a petition process. Thus the Christian Right in several cities forced

grand jury investigations of sexually oriented businesses. However, grand juries refused to issue indictments in most cases.

Tactics against exotic dance also include a kind of psychological assault on specific exotic dancers and patrons and on the reputation of the exotic dance industry in general. At public hearings, on websites, and in publications, Christian Right talk show hosts, writers, and organizers often characterize the exotic dance world as dangerous, suggesting along the way that the rights women have gained through the feminist movement and 1960s sexual revolution are causing their lives to fall apart. Former strippers who are "born-again" Christians commonly tell dark tales, which, even if true, serve mostly to exaggerate outsider fears, the way much stereotyping does.

Along with picketing exotic dance clubs, members of the Christian Right note patrons' license plate numbers and phone their families and employers. One Christian group sent a letter to parents living within three blocks of a club, alerting them to the recently opened business and making negative allegations against the owners and their wives; this led to club owners' children being harassed in school. Club customers have received postcards mailed by a church group. The text read, "Observed you in the neighborhood. Didn't know if you were aware there is a church in the area." Patrons were sent photos of their cars parked outside the club and had their faces and license plate numbers photographed by picketers posted on a website called "seewhosthere." A group called People Advocating Decency videotaped patrons entering a club. "We just wanted to make people think twice before they go in," a spokesperson said. "They might think, 'I don't want the world to know about this.'"

Going even further, the Carolina Family Alliance used patrons' car tags to track their identity and contact them by phone or mail to encourage them to seek professional help. They also notified their family and friends about the potential "danger" the clubs pose to loved ones. Protesters have used bullhorns on a club's property. The Family Coalition protested outside a club for over a year with a billboard that read, "Pornography Breeds Rapists," although exotic dance is not pornography; nor is there evidence it causes rape.²⁹ Anti-club protesters also engage in assaults on property and physical threats. Some slash tires in club parking lots. A club called Delilah's Gone Platinum was vandalized twice. Vandals made sledgehammer-sized holes throughout the building; substantially smashed block-glass windows, mirrors, ceramic statues and the stereo system; flooded several hallways and rooms with an inch of water; and tore up the dance stage floor.³⁰ In another case in upstate New York, a couple that owned a club under attack sent their daughter to live with relatives for safety after threats to her life.

Stigmatization of dancers is yet another means of assaulting an industry. Groups trying to "save" dancers are stigmatizing them, assassinating

their characters as independent decision-making women, and re-sowing false myths. When governments require a six-foot buffer zone between the dancer and her audience—or even a clear unbreakable glass or Plexiglas wall prohibiting physical contact between the entertainer and her audience—this dehumanizes the dancer and sends patrons the message that she is like an infectious patient in a hospital isolation ward, or a prisoner or caged animal in a zoo. The rights of patrons are also affected when draconian laws prevail; when direct tipping is banned, they cannot say thank-you to the dancer and express their opinions about the merit of the performance. The impact of the ordinance is like a salesperson not being able to hand a customer a receipt or a maître d' not being able to receive a tip.

DEFENDERS

People who challenge the religious, feminist, economic interest, social, and governmental assaults on exotic dance include equally passionate liberal feminists and civil rights activists. Many citizens object to singling out exotic dance clubs for special regulations because these regulations not only infringe on civil liberties, but they cost taxpayer money to develop, enact, enforce, and defend. Government jurisdictions have spent millions of dollars in litigation and damages, and the exotic dance regulations divert needed resources from real problems and cut the local government tax income. After all, the clubs pay taxes, employ people, support legitimate businesses through purchasing a range of goods and services, and attract new businesses to their neighborhoods, including upscale women's dress stores. As well, there are some businessmen who do not like the idea of government micromanaging any business.

Exotic dancers and clubs have fought opponents with the help of members of the First Amendment Lawyers Association, Association of Club Executives National Trade Association, American Civil Liberties Union, other civil liberties organizations, as well as Dance USA among arts groups.³¹ In countering attacks on their businesses, exotic dance clubs take offensive and defensive action in the courts of public opinion and law. Lobbying, presentations to local councils and state committees, as well as support for open-minded political candidates, are preemptive efforts to halt the passage of restrictive ordinances. Some club owners and dancers run for political office. Clubs have organized successful referenda against club regulations in California, Washington, and Arizona. Litigation over exotic dance is ongoing in local, state, and federal courts with wins and losses.³² However, the highly organized, religiously motivated adversaries of exotic dance are persistent and dangerous, requiring equal persistence in efforts to uphold the U.S. Constitution.

IMPLICATIONS

The Christian Right, viewing exotic dance as a cancer to be eliminated as part of creating a scripture-based society, acts against it with much muscle. Adversaries of exotic dance try to keep it out of their neighborhoods on the basis of a widespread mythology that recently has been shown to be false. In the conflict, antagonists infringe on the First Amendment and other civil liberties of the exotic dance stakeholders. When local governments single out exotic dancers to be licensed, without requiring licenses for other kinds of dancers, the governments discriminate against exotic dancers and violate their Fourteenth Amendment rights. Planners and legislatures mandate distance requirements, including raised platforms, between dancers and patrons on the presumption that it will prevent illegal behavior. Yet by using the logic that planners and legislatures apply to exotic dance for monitoring misbehavior, there should be similar requirements to separate children and priests and pastors in church or teachers at school, because the adults might sexually molest the children. In fact there is substantial evidence of clerical sexual abuse of children and adults, with convictions and churches paying billions of dollars in settlements, whereas no such evidence has been produced regarding the dangers of exotic dance.

Inherent in the debate over exotic dancing is a class and social status issue, in that so-called "high art" dance is not similarly controlled and censored. To cite just one example, on January 31, 1978, April 28, 1982, and January 25, 1992, the community of theater-goers in Roanoke, Virginia, accepted nudity in the touring Broadway show *Oh! Calcutta*, with male and female nude bodies touching. But in 1997 a Roanoke jury did not accept nude female soloists in the exotic dance club *Girls, Girls, Girls*, and charged them with obscenity. As well, there is a contradiction in terms of regulation when it comes to social dancing; while exotic dancers are censored or harassed, there is relative acceptance of adults or teenagers who are similarly attired and engaged in sexually explicit dancing.

Various kinds of government-imposed burdensome regulations diminish the multifaceted messages of exotic dance and constrain the free market. This effectively denies both dancers and audience members access to free artistic expression. The restrictions imposed on exotic dance have the potential to impact other dance and performing arts, and, indeed, all Americans. Had dance been successfully censored in the past, many dance forms and masterworks recognized today would have been lost.³³ Throughout history, battles have been waged over the shock of unconventional sexuality, miscegenation, bodily disclosure, touching, and homosexuality in ballet, modern, postmodern, and performance art dance. A censorship assault on any form of dance, even the

stigmatized exotic dance, harms all art. For example, the Christian Right's intimidation causes some choreographers to self-censor and shrinks public and private dance funding for "controversial" work.

Moreover, the art of dance develops with inspiration from, and porous boundaries between, various kinds of dance, especially if they are sexual and shocking. Jerome Robbins directed and choreographed the Broadway show *Gypsy* in 1959 based on the life of stripper Gypsy Rose Lee; modern dancer Mark Morris choreographed *Striptease*; renowned choreographer and founder of the New York City Ballet George Balanchine featured a striptease dancer in *Slaughter on Tenth Avenue*. Broadway star Bob Fosse produced renditions of exotic dance in Broadway musicals (the comic "Hernando's Hideaway" in *The Pajama Game* and "Whatever Lola Wants" in *Damn Yankees*) and the film *All That Jazz* (a suggestive ballet). Jawole Willa Jo Zollar, a modern dancer based in New York City and head of the Urban Bush Women company, has spoken of the influence of the strippers she saw in her childhood on her dances.

Assaults against dance eerily recall tactics by fascist and totalitarian governments whose legislation gradually eats away at human rights. The banning of dance in Afghanistan by the Taliban was only one of the most recent examples of how human rights are curtailed. It only takes one look at anti-dance rhetoric of the past to see the dangers. A famous man once wrote that "our whole public life today is like a hothouse for sexual ideas and stimulations. Theater, art, literature, cinema, press, posters, and window displays must be cleaned of all manifestations of our rotting world and placed in the service of a moral, political, and cultural idea." The man was Adolf Hitler.³⁴

In sum, the opprobrium targeted at exotic dance threatens all dance, and more importantly, places everyone's civil liberties at risk. Nadine Strossen, New York University law professor and president of the American Civil Liberties Union, said, "Once we cede to the government the power to violate one right for one person, or group, then no right is safe for any person or group."³⁵

APPENDIX 1: PROTECTION UNDER THE CONSTITUTION OF THE UNITED STATES OF AMERICA

Amendment I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Amendment V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb, nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

Amendment XIV

Section 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

NOTES

1. I wish to acknowledge the helpful comments of Pamela Squires, Naomi Jackson, Toni Shapiro-Phim, and Jennifer Fisher on this article. All arguments and interpretations are, ultimately, mine. This essay is biased in favor of the U.S. Constitution—free speech, due process of the law, and nondiscrimination—and evidence over misperception and myth.

2. Judith Lynne Hanna, *To Dance Is Human: A Theory of Nonverbal Communication* (Chicago: University of Chicago Press, 1987); *Dance, Sex, and Gender: Signs of Identity, Dominance, Defiance and Desire* (Chicago: University of Chicago Press, 1988); *Disruptive School Behavior: Class, Race and Culture* (New York: Holmes & Meier, 1988); *The Performer-Audience Connection: Emotion to Metaphor in Dance and Society* (Austin: University of Texas Press, 1983); and a 1988 preliminary version of *Dancing for Health: Conquering and Preventing Stress* (Lanham, Md., AltaMira Press, 2006). Since 1995, I have continued my work on dance as nonverbal communication: *Partnering Dance and Education: Intelligent Moves for Changing Times* (Champaign, Ill.: Human Kinetics, 1999); “The Language of Dance,” *JOPERD* 72, no. 4 (2001): 40–45, 53; numerous peer-reviewed articles and nearly one hundred fifty articles for dance magazines (see www.judithhanna.com).

3. A listing of most of the forty-four cases in which a court swore me in as expert court witness appears in Hanna, “Adult Entertainment Exotic Dance: A Guide for

Planners and Policy Makers" (CPL [Council of Planning Librarians] Bibliography 375), *Journal of Planning Literature* 20, no. 2 (2005): 116–34. I also gave presentations at public hearings and regulatory boards and wrote reports for cases that precluded a lawsuit or were settled.

4. Since 1995, I have come across more than four hundred jurisdictions fighting exotic dance, and often more than once. Angelina Spencer, National Executive Director of the Association of Club Executives, reported that two hundred state legislative bills were leveled at the industry in 2007.

5. Poseyville and New Harmony, Indiana, for instance, have passed ordinances that ban nudity in "performances," including any play, motion picture, dance, or other exhibition or presentation, whether it is pictured, animated, or live, performed before an audience of one or more. This means libraries, museums, and movie theaters could all be breaking the law.

6. Hanna, "Undressing the First Amendment and Corsetting the Striptease Dancer," *The Drama Review* 42, no. 2 (Summer 1998): 38–69; Hanna, "Toying with the Striptease Dancer and the First Amendment," in *Play and Culture Studies, Vol. 2*, ed. Stuart Reifel (Greenwich, Conn.: Ablex, 1999), 37–55. Over the past six decades, numerous dancers have written about their lives as strippers, there are how-to books, journalists have given us reports, scholarly articles abound, and recently revised dissertations, some by former exotic dancers, have appeared: Katherine Frank, *G-Strings and Sympathy: Strip Club Regulars and Male Desire* (Raleigh, N.C.: Duke University Press, 2002); Katherine Liepe-Levinson, *Strip Show: Performances of Gender and Desire* (New York: Routledge, 2002); Christine Bruckert, *Taking It Off, Putting It On: Women in the Strip Trade* (Toronto: Women's Press, 2002); R. Danielle Egan, *Dancing for Dollars and Paying for Love* (New York: Palgrave Macmillan, 2006); Bernadette Barton, *Stripped: Inside the Lives of Exotic Dancers* (New York: New York University Press, 2006); and Catherine M. Roach, *Stripping, Sex, and Popular Culture* (New York: Berg, 2007).

7. Hanna, "The Language of Dance," *JOPERD* 72, no. 4 (2001): 40–45, 53; Hanna, "Body Language and Learning: Insights for K–12 Education," in *Dance: Current Selected Research, Vol. 5*, ed. Lynnette Y. Overby and Billie Lepczyk (New York: AMS Press, 2005), 203–20.

8. Valerie Preston-Dunlop, compiler, *Dance Words* (Chur, Switzerland: Harwood Academic Publishers, 1995), 139.

9. See Anthony Shay and Barbara Sellers-Young, eds., *Belly Dance: Orientalism, Transnationalism, and Harem Fantasy*, *Biblioteca Iranica: Performing Arts Series*, 6 (Costa Mesa, Calif.: Mazda Publishers, 2005).

10. For a listing of such cases, see Hanna, "Adult Entertainment Exotic Dance: A Guide for Planners and Policy Makers" (CPL [Council of Planning Librarians] Bibliography 375), *Journal of Planning Literature* 20, no. 2 (2005): 116–34.

11. All three prongs of the definition must be satisfied for a work to be constitutionally obscene: 1) whether the average person, applying contemporary community standards, would find that the work, taken as a whole, appeals to the prurient interest; 2) whether the work depicts, or describes in a patently offensive way, sexual conduct specifically defined by the applicable state law; and 3) whether the work, taken as a whole, lacks serious literary, artistic, political, or scientific value.

12. Bryant Paul, Daniel Linz, and Bradley J. Shafer, "Government Regulation of Adult Businesses through Zoning and Anti-Nudity Ordinances: Debunking the Legal Myth of Negative Secondary Effects," *Communication Law and Policy* 6, no. 2 (2001): 355–91.

13. For example, Hanna, "Reality and Myth: What Neighbors Say about Exotic Dance Clubs: A Case Study on Charlotte, North Carolina," (Charlotte, N.C.: Tarheel Entertainment Association, 2001), submitted to the City of Charlotte Zoning Board; Roger Enriquez, Jeffrey Cancino, and Sean Varano, "A Legal and Empirical Perspective on Crime and Adult Establishments: A Secondary Effects Study in San Antonio, Texas," *American University Journal of Gender, Social Policy and the Law* 15, no. 1 (2006): 1–41; Jeffrey Cancino, "Assessing the Effects of Human Display Establishments on Property Values: An Empirical Study in San Antonio, Texas" (2004); Kenneth C. Land, Jay R. Williams, Michael E. Ezell, Bryant Paul, and Daniel Linz, "An Examination of the Assumption That Adult Businesses Are Associated with Crime in Surrounding Areas: A Secondary Effects Study in Charlotte, North Carolina," *Law and Society Review* 38, no. 1 (2004): 69–103; J. R. Greenwood, "A Public Health Analysis of Rancho Cordova," submitted to Rancho Cordova concerning its proposed adult business ordinance number 22-2004, 2004.

14. Hanna, "'Toxic' Strip Clubs: The Intersection of Religion, Law and Fantasy," and "Naked Truth: A Christian Right, Strip Clubs and Democracy" (under publication review).

15. See www.sbergthold@adultbusinesslaw.com.

16. See Paul Apostolidis, *Stations of the Cross: Adorno and Christian Right Radio* (Durham, N.C.: Duke University Press, 2000); Robert Atkins and Svetlana Mintcheva, *Censoring Culture: Contemporary Threats to Free Expression* (New York: New Press, 2006); Randall Balmer, *Thy Kingdom Come: How the Religious Right Distorts the Faith and Threatens America; An Evangelical's Lament* (New York: Perseus Books, 2006); Judy Brink and Joan Mencher, *Mixed Blessings: Gender and Religious Fundamentalism Cross Culturally* (New York: Routledge, 1997); Paula Cooley, *Religious Imagination and the Body: A Feminist Analysis* (New York: Oxford University Press, 1994); Catherine Crier, *Contempt: How the Right Is Wronging American Justice* (New York: Rugged Land Books, 2005); Marie R. Griffith, *Born Again Bodies: Flesh and Spirit in American Christianity* (Berkeley: University of California Press, 2004); Marci A. Hamilton, *God vs. the Gavel: Religion and the Rule of Law* (Cambridge and New York: Cambridge University Press, 2005); Susan Friend Harding, *The Book of Jerry Falwell: Fundamentalist Language and Politics* (Princeton, N.J.: Princeton University Press, 2000); Chris Hedges, *American Fascists: The Christian Right and the War on America* (New York: Simon & Schuster, 2006); Catherine Clark Kroeger and James R. Beck, eds., *Women, Abuse, and the Bible: How Scripture Can Be Used to Hurt or Heal* (Grand Rapids, Mich.: Baker Books, 1996); David Kuo, *Tempting Faith: An Inside Story of Political Seduction* (New York: Free Press, 2006); Tim LaHaye, *How to Be Happy Though Married* (Wheaton, Ill.: Tyndale House, 1963); Michael Lienesch, *Redeeming America: Piety and Politics in the New Christian Right* (Chapel Hill: University of North Carolina Press, 1993); Barbara A. McGraw, *Rediscovering America's Sacred Ground: Public Religion and Pursuit of the Good in a Pluralistic*

America (Albany: State University of New York Press, 2003); Brian Malley, *How the Bible Works: An Anthropological Study of Evangelical Biblicism* (Lanham, Md.: AltaMira Press, 2004); Catherine Margaret Miles, *Carnal Knowing: Female Nakedness and Religious Meaning in the Christian West* (Boston: Beacon, 1989); James Rudin, *The Baptizing of America: The Religious Right's Plans for the Rest of Us* (New York: Thunder Mouth's Press, 2006); and Elaine B. Sharp, *Morality Politics in American Cities* (Lawrence: University Press of Kansas, 2005).

17. See Marty Klein, *America's War on Sex: The Attack on Law, Lust and Liberty* (Westport, Conn.: Praeger, 2006) for numerous examples.

18. See Ann Wagner, *Adversaries of Dance: From the Puritans to the Present* (Urbana: University of Illinois Press, 1997). Also see Elizabeth Aldrich's article in this volume.

19. John Elsom, *Erotic Theatre* (New York: Taplinger, 1974); Ivor Forbes Guest, *The Romantic Ballet in Paris* (Middletown, Conn.: Wesleyan University Press, 1966); Parmenia Migel, *The Ballerinas: From the Court of Louis XIV to Pavlova* (New York: Macmillan, 1972); Lynn Matluck Brooks, ed., *Women's Work: Making Dance in Europe before 1800* (Madison: University of Wisconsin Press, 2007).

20. Jeff Pollard, *Christian Modesty and the Public Undressing of America* (San Antonio, Tex.: Vision Forum, 2004); see Jim C. Cunningham, *Nudity & Christianity* (Bloomington, Ind.: AuthorHouse, 2006), on the historical and geographical contexts of modesty and various biblical interpretations of nudity.

21. Tim LaHaye, *How to Be Happy Though Married* (Wheaton, Ill: Tyndale House, 1963).

22. Several of the many organizations that have leaders who speak out against exotic dance are: American Decency Association, American Family Association, Americans United to Preserve Marriage & American Values (formerly Family Research Council), Child Welfare Foundation, Christian Broadcasting Network, Citizens for Community Values, Concerned Women for America, Concerned Women for America's Culture and Family Institute, Coral Ridge Ministries, Eagle Forum, Family Research Council, Florida Family Association, Focus on the Family, Free Congress Foundation, National Association of Evangelicals, National Center for Law and Families, National Empowerment Television, Southern Baptist Convention, Traditional Values Coalition, and Wall Builders.

23. Hanna, "Empowerment: The Art of Seduction in Adult Entertainment Exotic Dance," in *Music, Dance and the Art of Seduction*, ed. Frank Kouwenhoven and James Kippen (Leiden, the Netherlands: Chime, 2008).

24. I identified these tactics during thirteen years of field research across the country, conducting interviews with dancers, club management, patrons, community members, government representatives; reading letters from strangers who wanted to share their stories with me; observing behavior; watching television; and reading newspapers and reports on several listservs, websites, and chatrooms dealing with sexuality in society, adult entertainment, Christianity, and civil liberties.

25. Hanna, "Review of Eric Damian Kelly and Connie Cooper, *Everything You Always Wanted to Know About Regulating Sex Businesses*," *Journal of Planning Literature* 17, no. 3 (2003): 393-94.

26. Linda Kintz, *Between Jesus and the Market: The Emotions That Matter in Right-Wing America* (Durham, N.C.: Duke University Press, 1997).

27. Len Munsil, *The Preparation and Trial of an Obscenity Case: A Guide for the Prosecuting Attorney and How to Legally Stop Nude Dancing in your Community* (Scottsdale, Ariz.: National Family Legal Foundation, 1988; 1994).

28. U.S. Attorney General John Ashcroft used the Patriot Act to enter the fray in "Operation G-String." Attorney General Alberto Gonzalez made war on pornography (exotic dance is erroneously placed in this category) a top priority of his office. One FBI agent anonymously said, "I guess this means we've won the war on terror. We must not need any more resources for espionage." See Barton Gellman, "Recruits Sought for Porn Squad," *Washington Post*, September 20, 2005, A21.

29. R. A. Baron, "Sexual Arousal and Physical Aggression: The Inhibiting Influence of 'Cheesecake' and Nudes," *Bulletin of the Psychonomic Society* 3 (1974): 337-39. The criminal justice system has no evidence of a correlation between watching exotic dance and raping women.

30. "Strip Club Vandals Return," *Indianapolis Star*, October 10, 2001.

31. In addition to Dance USA, Alley Theatre, Association of Performing Arts Presenters, Kathleen Chalfant, Tony Kushner, The Looking Glass Theatre Company, Terrence McNally, Oregon Shakespeare Company, Yvonne Rainer, Rachel Rosenthal, Theater Artaud, Theatre Communications Group, and the Walker Art Center also contributed to an amicus brief to the U.S. Supreme Court in *City of Erie v. Pap's A.M.*

32. This paper has focused on female dancers who perform for men and also for women, who are increasingly attending exotic dance clubs. Some clubs may have an occasional night featuring male dancers and there are a few clubs that cater to women patrons and put on all-male shows. Exotic dance regulations apply to both female and male dancers, and litigation in a 2006 case in Prince Georges County, Maryland, included clubs featuring female dancers and a club featuring male dancers.

33. Hanna, "Ballet to Exotic Dance—Under the Censorship Watch," in *Dancing in the Millennium: An International Conference; Proceedings*, Juliette Crone-Willis and Janice LaPointe-Crump, compilers (Washington, D.C.: 2000), 230-34; "Dance under the Censorship Watch," *Journal of Arts Management Law and Society* 29, no. 1 (2002): 1-13.

34. Adolf Hitler, *Mein Kampf* [My Struggle] (New York: Houghton Mifflin, 1943), 254-55.

35. World Pornography Conference, Center for Sex Research at California State University, Northridge, 1998.

Exotic Dance Adult Entertainment: A Guide for Planners and Policy Makers

Judith Lynne Hanna

Because exotic dance adult entertainment is a nationwide lightning rod for conflict, a comprehensive knowledge base is necessary. This bibliographic summary of literature addresses some misperceptions and notes new United States Supreme Court cases that can lead planners, policy makers, and government attorneys into legal difficulties over restrictions they try to impose on this industry. Costs to enact, enforce, and defend the restrictions may divert scarce resources. The multi-disciplinary literature encompasses books, articles, court testimony, and court rulings on exotic dance written by researchers in anthropology, architecture, biology, criminology, economics, journalism, law, photography, planning, police work, psychology, real estate, and sociology, as well as accounts presented by former exotic dancers. Topics include First Amendment-related characteristics of exotic dance, its expressive components, performers, patrons, adversaries, and supporters; the validity of studies used to justify zoning, alcohol beverage control, and other restrictive ordinances; and legal justifications and limitations on regulating exotic dance.

Keywords: adult entertainment; court decisions; effects; misconceptions; regulations

TABLE OF CONTENTS

- I. Introduction
- II. Bibliography
 - A. Exotic Dance
 - 1. Dance, Communication, Art, Theater, and Adult Entertainment
 - 2. Dancers, Patrons, and Managers

JUDITH LYNNE HANNA (jlhanna@hotmail.com) (Ph.D., anthropology, Columbia University) is a senior research scholar in the Department of Dance at the University of Maryland, College Park. Author of more than three hundred articles, her eight books include *To Dance Is Human* and *Dance, Sex and Gender* (both University of Chicago Press) and *The Performer-Audience Connection* (University of Texas Press). Since 1995, she has conducted empirical research nationwide on exotic dance adult entertainment and served as an expert court witness in more than eighty related cases, from "obscenity" to a quadruple shooting resulting in two deaths. Her articles on exotic dance have appeared in, for example, *The New York Times*; *The Drama Review*; *Journal of Arts Management, Law and Society*; *City and Society*; and *Minnesota Law & Politics Web Magazine*.

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- a) Academic Studies
- b) Dancer Autobiographies and Reporter Accounts
- 3. Dance Adversaries and Supporters
- B. Studies of the Impact of Exotic Dance
 - 1. Meta-Analysis of Studies Cited by Local Governments
 - 2. General Studies
 - 3. Crime
 - 4. Economic Impact
 - 5. Health
 - 6. Zoning
- C. Regulations and Legal Cases with National Importance
 - 1. Evidence for Justifying Governmental Interest
 - 2. Zoning
 - 3. Alcohol
 - 4. Obscenity
 - 5. Time, Place, Manner, and Incidental Burden
 - 6. Licensing
 - 7. Morality
 - 8. Overbreadth
 - 9. Dance Movements and Gestures

I. INTRODUCTION

Exotic dance adult entertainment is controversial and not widely understood. Because it is a lightning rod for conflict in many parts of the United States, a comprehensive knowledge base is necessary. There are prevailing *fallacies* that exotic dance causes the adverse secondary effects of crime, property depreciation, and disease (e.g., Paul, Linz, and Shafer 2001; Freeman and Linz 2002; Land et al. 2004). There may also be intemperate rhetoric (Munsil 1988, 1994), sensationalist media portrayals (e.g., the film *Showgirls*), and uninformed legislation and judicial findings. Countering these are scholarly studies of exotic dance, its nonverbal communication, and its impact on society that have appeared within the past decade (see bibliography below on exotic dance). Misperceptions lead planners, policy makers, and government attorneys into difficulties over the restrictions they try to impose on the exotic dance adult entertainment industry to protect "the public health, safety, morals, comfort, and neighborhood property values" or the "general welfare of the populace." This review argues that such restrictions serve no compelling government interest in a democracy. Laws usually already exist against crime; thus, singling out exotic dance club businesses among other businesses for special regulations may appear to be discriminatory.

Deliberations about exotic dance have been hampered by the absence of the results of relevant research (drawn from the arts, humanities, and social and behavioral sciences) on the relationship of the First Amendment to nonverbal communication, dance, and exotic dance. Several visits to a club, or titillating portrayals in cinema, television, or talk shows, provide insufficient bases for understanding exotic dance (Hanna 2004).

At issue are the reasons for regulating exotic dance clubs; the constitutionality of these regulations in light of recent U.S. Supreme Court decisions; whether exotic dance is "conduct" or "communication" and "expression" (Tiersma [1993] explains the distinction that affects its First Amendment—free speech—protection); what is obscene (determining community standards when multiple standards most likely exist, tolerance versus acceptance, and a juror's personal standards, Scott [1991]; indecency protection, Robbins and Mason [2003]); economic ramifications; who advocates regulations; and costs to enact, enforce, and defend the regulations. Disputes also arise about, for example, government use of unscientific negative effects studies; government use of studies of other jurisdictions that are irrelevant to time, place, and specific kind of adult business within its own jurisdiction; overbroad and vague regulations; what constitutes dance, theater, and artistic merit; and licensing and appeal procedures.

The "not in my backyard" (NIMBY) syndrome envelops adult entertainment. Some neighborhood residents claim exotic dance clubs cause problems and thus are an unwelcome development in their neighborhoods. Local governments cannot outright ban the clubs, which have some measure of First Amendment protection. So residents employ alternative mechanisms to curtail the clubs. They engage in an array of confrontational strategies. For example, some people picket clubs, call patrons' families and employers, slash tires in club parking lots, and make threatening calls to club owners. People work through their local governments to enact ordinances that try to eliminate the clubs or prevent them from opening (Munsil 1988, 1994; Kelly and Cooper 2000; Hanna 1999). Governments can also authorize vice squad raids, sting operations, stringent licensing requirements, and high criminal penalties for regulatory violations. When exotic dance club owners litigate and courts void laws, many localities may enact new legislation, which could lead to further lawsuits and more regulations.

However, there are examples of community support for exotic dancing. In response to Los Angeles regulations of exotic dance adult entertainment in 2003, 107,000 citizens signed petitions for a referendum against the regulations, resulting in Los Angeles

15-30

rescinding the regulations (Pierson 2003). Citizens in Glendale, Colorado, voted lawmakers supporting regulations out of office. A former exotic dancer became mayor in Georgetown, Colorado. Grossman (2003) reported professional trend spotter Irma Zandl's recent forecast based on the responses of three thousand young people who are ethnically and geographically diverse and gender balanced: "Strippers are really setting the trends right now. I think strippers have become hugely important" (p. 52). The respondents said, "Striptease is cool."

Many citizens may not only object to regulations of exotic dance clubs because they infringe on civil liberties but may also object to the cost of regulations. "Dance police" can divert scarce resources from fighting crime that has victims. Forcing exotic dance adult entertainment clubs to comply with or litigate regulations can decrease the clubs' contribution to the economy (they pay taxes, employ people, purchase a range of goods and services, and sometimes attract new businesses to the neighborhood). Furthermore, resources paid by taxpayers are required to develop, enact, and enforce laws. If laws are challenged and government loses, the government pays court costs, attorney fees of the challenger (which have ranged from \$35,000 to more than a million dollars), and often damages. For example, in *Gammoh v. City of Anaheim* (Superior Court, Orange County, California, Case 736182, 2004), a settlement for Anaheim's unconstitutional zoning ordinance cost the city two million dollars. (There was a prior related decision, 73 Cal.App.4th 186, 86 Cal.Rptr.2d 194 [1999], as well as an unreported decision from 2003.) In addition, a jury awarded a club owner \$1.4 million for profits lost because the city of San Bernardino closed his club for four years, claiming the property was not an area zoned for adult cabarets. The city was liable under the Federal Civil Rights Act and had to pay attorney fees as well (*People v. Manta Management*, San Bernardino Superior Court, No. SCV 18157, 2004).

Conflict over exotic dance plays out in the courts. Overriding state law, the U.S. Supreme Court's decisions related to exotic dance adult entertainment (see section II.C for an explanation, list, and annotation of specific cases) have primarily been rooted in the governmental interest to protect the populace, alcoholic beverage regulations, zoning ordinances, and morality.

However, recent cases have changed the landscape for regulating adult businesses. Negative effect studies that localities have used in the past to justify ordinances recently have been challenged as to the quality and relevance to the specific jurisdiction. Critiques and new research have shown the past studies to be invalid as explained below (section II.B). The result is that it is

now much harder for governments to overcome the many hurdles to withstand First Amendment challenges to their ordinances.

This multidisciplinary bibliography is based on a comprehensive reading of theoretical, descriptive, and empirical work by researchers in anthropology, architecture, biology, criminology, economics, journalism, law, photography, planning, police work, psychology, real estate, social work, and sociology related to exotic dance, as well as accounts by former dancers. The items were identified through library databases, bibliographies of published work, networking among researchers and attorneys, and several list-servs.

The bibliography follows this format: a summary annotation of the consensus of the citations in each section. Because the titles of references are self-explanatory within a topical grouping, an annotation for each specific reference would be redundant. However, major legal cases that have regulatory impact beyond a jurisdiction are annotated separately in section II.C.

Placing exotic dance adult entertainment in historical context contributes to its understanding. Using the human body as the instrument for both dance and sex has long made dance, generally, suspect or immoral in some people's eyes. Since early American history, there has been debate against all manner of dance and allegations of its dangers, such that one may wonder if anyone dared to dance (Wagner 1997). Ballet, recognized today as a fine art, was until the mid-1950s stigmatized and associated with the *demi-monde* (Hanna 1988, 2002). Foster (1996) shows the common thread of sexuality in ballet and exotic dance. Hostility to and titillation by dance continue today, especially with exotic dance adult entertainment (also called erotic, striptease, titty bar, topless, nude, table, couch, lap, go-go, and "gentleman's club" dance).

The 1980s saw a proliferation of upscale exotic dance establishments. The United States now has about three thousand adult entertainment clubs, as well as an annual national trade exposition and several exotic dance organizations and publications for club owners and for dancers. These organizations deal with issues such as litigation, club management, employee relations, sexual harassment, fire safety, theft, equipment, lighting and sound systems, and beverage and other services. The industry is estimated to be a \$15 billion business. Average annual individual club revenues are estimated to be more than \$500,000. Top-end clubs may net \$100,000 monthly. See *Exotic Dancer's Club Bulletin* (ED Publications) and *White Paper 2005: A Report on the Adult Entertainment Industry [in California]* (Free Speech Coalition). Clubs pay substantial local and state taxes, and some contribute to local charities and work with their local Chambers of Commerce for the commu-

15-31

nity welfare. The stocks of some exotic dance clubs are traded on the NASDAQ Stock Exchange (Schlosser 1997). PT Showclubs chain, with sixteen clubs in eight states, was traded on the American Stock Exchange in 2004.

Exotic dance fits within the broader context of art forms that have moved (or are moving) from the margin into the mainstream (e.g., hip-hop). Dance forms on the margins often contribute to the Western aesthetic for innovation, and exotic dance is no exception. Exotic dance expression has influenced communication in other forms of dance. Renowned founder of the New York City Ballet George Balanchine featured a sexy burlesque striptease queen in "Slaughter on Tenth Avenue" (1936). He was inspired by his penchant after ballet performances when on tour in Paris to visit the Crazy Horse Saloon for the midnight striptease show (Bentley 2002). Jerome Robbins directed and choreographed the Broadway show "Gypsy" in 1959 based on the life of stripper Gypsy Rose Lee; revivals of "Gypsy" continue to be staged (one appeared in 2003 on Broadway). Modern dancer Mark Morris choreographed "Striptease." Broadway star Bob Fosse produced renditions of exotic dance in Broadway musicals. Jawole Willa Jo Zollar, head of the Urban Bush Women Company, has spoken of the influence on her dances of the strippers she saw in her childhood. The Papatian troupe presented "Como Desnudarse" ("How to Undress") and "El Striptís" at the 92d Street Y in New York City. Some of Madonna's backup singers have used moves borrowed from strippers, while Madonna touches her crotch and grinds. Sensual stripper workouts surfaced at gyms, and students enroll in classes at universities and community centers to learn to love their bodies, to get in touch with their femininity and denied sexuality, and to feel comfortable with various stages of undress. Nudity has become pervasive on mainstream stages (beginning in 1842), in film, and on television.

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II. BIBLIOGRAPHY

A. Exotic Dance

1. DANCE, COMMUNICATION, ART, THEATER, AND ADULT ENTERTAINMENT

Under the umbrella of the First Amendment (see section II.C), exotic dance is a form of dance, art, and adult entertainment performed by a loosely organized dance company in a cabaret theater with mirrors to show dancers from different perspectives. Contemporary exotic dance usually has two sequential parts. In the first part, a dancer performs onstage for the audience as a whole to entertain and to showcase herself as an advertisement for the second part of the exotic dance. Generally, nudity climaxes a three-song performance in which the dancer appears on stage clothed for the first song, partially removes her clothes during the second, and strips to nudity at the end. In the second part of exotic dance, a performer dances in the audience area for individual patrons for a fee. This individual patron-

15-32

focused dance takes place next to where the patron is seated, or in lap dancing (common in some clubs), also on a patron's thighs. The dancer artistically communicates to a patron, through body movement, proximity, touch, and dim light, the fantasy of "I am interested in you and you alone, I understand you, you're special and important to me." Most strippers are women, but some transvestites perform among them. Men also strip for women and for other men.

Stripping also occurs in peep shows, in which dancers perform in an enclosed space (e.g., the Lusty Lady in San Francisco and Seattle). But peep shows differ from exotic dance clubs in that exotic dance clubs are open theaters serving beverages and sometimes gourmet meals.

Dance is a form of nonverbal communication, a kind of "speech," more like poetry than prose that expresses emotions and ideas. Just as verbal language has vocabulary, semantics, syntax, and symbolism, so too does dance. Exotic dance, with its nudity and sexy movements, communicates the message that it is adult entertainment. There is a distinction between adult entertainment, usually subject to regulation, and other forms of stripping, for example, the revival of old-style strippers skilled in the art of seduction, who leave more to the imagination (see "The New Burlesque," *Los Angeles Times Calendar Weekend*, March 14, 2002, cover and pages 6-8). About 20 burlesque troupes from around the country recently gathered at two New Orleans nightclubs for Tease-O-Rama, a three-day celebration of the allure of old-fashioned striptease. Across the continent in Helendale, California, is the Exotic World Burlesque Museum Hall of Fame that hosts the Annual Striptease Reunion & Miss Exotic World to honor the past and present revival. Legends, such as Tempest Storm, join newcomers at these annual events.

In one nouvelle rendition of striptease, Americans can get a sensual toning, tightening, and titillating stripper workout at gyms from Los Angeles and San Francisco to New York and Miami. In *The New York Times Magazine*, Mary Tannen in "Pole Cats" (April 28, 2002, p. 82) reported that stripper-style pole dancing had become an exercise craze. Crunch Fitness in New York has been offering cardio striptease classes since October 2001, with mirrors and stripper moves, including sliding clothes back and forth between legs and pole work (performing erotic and acrobatic movements on a vertical pole in the middle of the stage). Those ashamed of their bodies or self-conscious people may prefer another nouvelle tradition, for example, a "therapeutic" class in "The Art of Exotic Dancing for Everyday Women" at the Learning Center in Malvern, Pennsylvania. The class has a companion 86-minute instructional video, a best-seller on Amazon.com.

So, as stripping flourishes in museums, gyms, colleges, and community centers, and seemingly no longer transgressive, the exotic dance called *adult entertainment* needs distinguishing characteristics. Otherwise, what makes it an adult business and subject to regulation? Note that nudity in exotic dance, as in other dance and art forms, communicates an array of messages depending on the performer and the patron's perception: eroticism, yes, but also nature, health, simplicity, beauty of the body as an art form, honesty, the body as God's gift and worthy of the gaze, innocence, independence, empowerment, demystification of the natural body, status of a popular culturally defined well-maintained body, parody of pretension, and being human (Wheeler and O'Neil [1999] provide illustrations of these multiple meanings of nudity in the performing arts).

Exotic dance movements are not sex but are choreographed to create sexual fantasy through patrons' "ocular penetration" (Hanna 1998b, 2002a, 2002b; Liepe-Levinson 1993, 1998, 2002 in II.A.2a; and references below). The movements, performed in high heels, derive from belly dance, burlesque, popular, Broadway theater, music video, jazz, and hip-hop, dance, cheerleading, and gymnastics. The common pole onstage serves as a prop and permits athletic stunts.

Rooted in an American tradition of parody, namely, American burlesque striptease entertainment and the pelvic and shimmy movements of Middle Eastern belly dance (first seen publicly at the 1893 Chicago World's Columbian Exposition), exotic dance is, by definition, supposed to be "naughty" adult play, a fanciful teasing that transgresses social decorum and dress codes in an ambience ranging from sedate to carnival-like (Allen 1991; Jarrett 1997). To be risqué, exotic dance discloses more of the body and uses different movements than are usually seen in public. Striptease (its first generation was from 1918 to 1945) most likely began when dancer Hinda Wassau's accidental strip to full nudity during a shimmy in 1928 evoked such a positive audience response that she incorporated her accident into future performances. Striptease became so popular that in 1937, the Minsky brothers, theater owners, convinced the U.S. House Immigration Committee to rule that the burlesque "striptease is an American art" and thereby prevent foreigners from practicing it in the United States.

When television captured public attention, support of lavish striptease productions diminished. Their full orchestras transformed into small bands, bands became jukeboxes, and elaborately choreographed routines and striptease to pasties and G-string turned into more daring full nudity (Urish 2004). Since the 1980s, traditional burlesque has spawned exotic dance in upscale, well-managed "gentlemen's clubs" run by successful

15-33

businesspeople, in addition to a classical burlesque revival and the nouvelle renditions of sensual stripper workouts in gyms and classes for mainstream women.

Exotic dance can be viewed on three continua: art, play, and sexuality (Hanna 1998b). The continuum of art is from exotic dance, considered by some as "low brow art" (another example is popular social dance onstage), to "high brow art" (such as ballet). Exotic dance meets the criteria of art: skill acquired by experience, study, or observation; creative imagination; and communication. Each dance form has its own criteria for artistic merit. Exotic dance aesthetics center on physical appearance (body shape and tone, hair, makeup), costume (distinctiveness), movement (sexy, flexible, spirited, seductive, graceful strut and posture, balance on spiked heels, standard bumps-grinds-shimmy [pelvic thrusts and rotations and upper shoulder-torso vibration], smooth transitions between movements and positions whether prone, kneeling, standing, or elevated on the common floor-to-ceiling pole used for gymnastic movements, variety, balanced use of stage and interpretation of music), and personal style (creative uniqueness, connection with audience through personality, smile, eye contact, and charisma). Exotic dance competitions at local, state, and national levels, and patron tips and fees (for a dancer performing for an individual patron) recognize excellence.

Several court cases have recognized exotic dance as a theater art. For example, in *Iowa v. Marshall* (Iowa District Court for Scott County, Case No. SRCR202583, May 8, 1998), "the Court does conclude that dance, even nude dance, may be an art. . . . That the dance performed at the Southern Comfort Free Theater for the Performing Arts is not dance as performed at Hancher Auditorium, the Galvin Fine Arts Center, or the Adler Theater is a difference of degree or quality, not a difference of kind." In 2004, a company's self-identification as a Performing Arts Theater in Mills County, Iowa, kept it from falling within the jurisdiction of an ordinance for sexually oriented businesses.

The play continuum ranges from child and family play to adult fantasy play and entertainment (including exotic dance). The sexuality continuum goes from fantasy (including exotic dance) to sex. The meanings of exotic dance come from the meanings of social behavior, movements, and sensory elements in contemporary mainstream everyday life. These meanings have a history.

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- Note, in the following litigation (affidavits, reports, depositions, testimony, and court proceedings), Hanna reported her research on the First Amendment implications of ordinances designed to regulate exotic dance: the nonverbal communicative dimensions of dance that convey meaning (use of time, space, and effort, parts of the body moved and how, costume, lighting, distance between dancer and patron, and touch); how exotic dance is a form of dance, theater art, and adult entertainment; and criteria for artistic merit in exotic dance. In 1995, an American Institute of Certified Planners expert on the effects of exotic dance and a lawyer representing dancers and owners of exotic dance clubs discovered Hanna's anthropological research on dance as nonverbal communication through *Books in Print*. They asked her to be an expert court witness in a First Amendment case and apply to exotic dance the semiotic, sociolinguistic paradigm she had used to study dance in Africa, on school playgrounds, and in American theaters. Since then, she has visited more than 104 clubs and worked on more than eighty legal cases. Hanna has conducted research not only in exotic dance clubs but also in courtrooms, judge's chambers, city and county council meetings, club neighborhoods, newspapers, radio, and television. As part of this process, she analyzed court cases and legislation and interviewed dancers, club owners, personnel, patrons, dance club neighbors, and other community members. The court cases are listed chronologically.
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15-34

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Lighthouse Restaurant Services, Inc. v. Township of South Hackensack, No. BER-L-5025-3, 2004.

2. DANCERS, PATRONS, AND MANAGERS

Socially redeeming values exist for many participants engaged in legal exotic dance performances. About one-third of the performers are putting themselves through college and graduate school with earned income and flexible schedules. Single women, single mothers, and married women dance, all doing an artistic role-playing job (Hanna 1998b). Former dancers have written doctoral dissertations in social work, anthropology, women's studies, and theater arts on "gentlemen's clubs," disproving misconceptions about exotic dance and contributing to the destigmatization of dancers (e.g., Frank 2002; Liepe-Levinson 2002). Some exotic dancers and patrons say exotic dancing is safe sex—fantasy—in an era of AIDS and other sexually transmitted diseases. Dancers provide a kind of therapy for some patrons who need someone to listen to their problems nonjudgmentally. Watching and fantasizing about exotic dancers, or getting suggestions from dancers on how to please a woman, sometimes can save a marriage by rekindling a romantic flame. Of course, attractive women in any setting can threaten a weak marriage. Peter S. Statts, Division of Pain Medicine at Johns Hopkins University, reported to the American Pain Society meeting, October 1999, that envisioning pleasurable sexual fantasies increased pain tolerance,

improved mood, reduced worry and tension, and enhanced participants' feelings of self-worth.

Today's well-managed exotic dance clubs provide sexual fantasy, entertainment, and aesthetic appreciation. Laws, club rules, and circulating floor managers work to maintain law-abiding establishments and to promote positive experiences for dancers and patrons. Many club owners and managers try to work with their neighbors to solve problems that arise, for example, trash, noise, parking, or signage.

In the past, some exotic dancers had performed in carnival tents (Meiselas 1975) and small "dives" where illegal acts were alleged to have occurred, and dancers had negative experiences (such sleazy establishments still remain in some places). Some dancers were verbally abused, targets of tossed objects, and physically groped by patrons and managers. "Has-been" dancers performed in what was called "varicose alley."

Contemporary exotic dance clubs are said by some people to exploit, oppress, and degrade performers. But most exotic dancers freely choose to dance and control their own artistic communication, as noted in both the academic studies and dancer autobiographies below. These entertainers consider themselves independent subjects, not submissive objects. The exotic dancer placing her body within a financial transaction reduces herself to a commodity no more than a model's, actor's, or athlete's choice to be professional and earn a livelihood using his or her body.

Throughout the history of exotic dance, some dancers have been hurt by comments on their physical appearance. For example, a patron asked a flat-chested dancer, "Why the hell are you dancing?" Dancers who have bad nights receiving little remuneration from tips or private dances often have hurt egos and anxiety about paying their bills. Many dancers, however, say social stigma causes them the most grief. Some cannot tell people in their family, school, or community about their dancing. Dancers' contributions to good causes may be rejected. For example, in Washington, D.C., Deloris Dickson has owned an exotic dance club for more than 40 years. She and a number of the club's 100 dancers and their families have struggled with the trauma of breast cancer. Yet, when the women tried to give \$5,000 from an entire day's work to the National Breast Cancer Coalition, the coalition wanted nothing to do with it (Marc Fisher, "Charity's Gaffe Smacks of Burlesque Act," *Washington Post*, June 3, 2004, p. B1). Physical and psychological violence against exotic dancers has come primarily from some vice squad misbehavior (Hanna 1998a) and radical moralists. The press perpetuates social stigma by identifying a woman involved in a crime by her stripper profession, even if she left it long ago. Even research data about pornogra-

phy (which does not include exotic dance, although some Americans call it soft porn) and rape from four countries—the U.S., Denmark, Sweden, and West Germany—suggest that pornography does not represent a blueprint for rape. Rather, it is an aphrodisiac, food for sexual fantasy (Kutchinsky 1991). Aggression against dancers occurs for the same reasons as violence against women in general (e.g., in the armed services, law offices, churches, corporations, automobile plants, and elsewhere).

Of course, as in any industry, there can be misbehaving, rude performers, patrons, and managers (e.g., Angier 1976; Mattson 1995; Burana 2001; Dee 2002; Eaves 2002). Dancers usually ask patrons to desist from inappropriate behavior, and if the patrons are uncooperative, the dancers alert managers, who ask the patrons to leave. Dancers may be penalized or fired for misbehavior.

Dancers often complain to owners or leave clubs where there is poor management. Issues arise over independent contractor versus employee status (Fischer 1996); the amount dancers pay to perform (as artists rent space for an art show); overbooking of dancers; and clubs fining dancers for violating club policies, and at times even requiring sexual favors for preferred performance schedules or other perks. At least one dancer successfully sued for sexual harassment (the owner wrongly assumed that because dancers performed nude, men could enter the dancer's dressing room at will—however, dancers act onstage but are women entitled to their privacy offstage).

Ownership of exotic dance clubs varies: single proprietors, partnerships that may include doctors and lawyers, and corporations with a chain of clubs. Some owners/managers have worked up the ladder from being doormen, ushers (bouncers), bartenders, or dancers. More owners of upscale establishments are businesspeople, for whom the club is but one of their several enterprises. As in any business, the quality of management varies.

Patrons, mostly men but increasingly women and couples, vary by age, income, profession, ethnicity, religion, and motivation for attending exotic dance clubs. They have social, aesthetic, and therapeutic reasons. Some patrons are lonely, unhappy, shy, or lacking relationship skills who need understanding listeners and/or attention from attractive women, perhaps as a spouse once was. Some men gain a sense of safety with exotic dancers who are perceived as "vulnerable" in their nudity and not competitors or judges. A one-on-one experience with a beautiful showgirl is a magnet for some patrons. Clubs provide a refuge, a place to hang out, relax, and be entertained. Some patrons just like to view and/or fantasize about a variety of women and

still remain faithful to their own partner. A man can feel manly and dominant when he pays for a dance, without having to try to relate to a woman and risk failure. Bachelor parties celebrate and "educate" the groom by arranging for him to be onstage with the dancers who poke fun at marital consummation. Macho men find male identity, bonding, and dominance through fantasy. Many men (and increasingly women) who frequent the clubs seek aesthetic pleasure in the beauty and gracefulness of the nude female body. Some businessmen and women bring clients to what they perceive as the pleasant ambience of upscale establishments to seal business deals. While some women may feel uncomfortable in these environs, others enjoy them.

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15-37

3. DANCE ADVERSARIES AND SUPPORTERS

Exotic dance is a moral and emotional powder keg. Localities across the United States, with the urging of some of their constituents (such as the Religious Right and some feminist groups), attack exotic dance on the bases of alleged crime, property depreciation, disease, obscenity, being a public nuisance, and demeaning women—without reliable, trustworthy evidence that exotic dance causes these problems. For some antagonists, the fight against the clubs is a crusade.

On the grounds of alleged negative effects, adversaries pressure governments to pass ordinances designed to force exotic dance clubs out of business and prevent others from opening. Examples include laws hostile to exotic dance that prescribe zoning requirements and land use regulation; rezoning areas previously zoned for adult entertainment clubs and giving the power to a review board to deny a business because of lack of "wholesomeness"; and requiring extensive procedures for licensing of dancers, clubs, and managers. Regulations can include hours of operation, amount of body disclosure, types of exotic dance movements permitted, whether and how dancers may touch themselves and patrons, visibility of dancing onstage and offstage at a patron's table side; club illumination and other physical configuration characteristics of a facility, distance and buffer zone between dancer and patron, and manner of tipping. The amount of regulatory control over exotic dance clubs depends on whether or not alcohol is sold on the premises. Efforts are made to declare exotic dancing a public nuisance. Utah passed a gross receipts "sin tax" on adult cabarets, on the false assumption of a cause-and-effect relationship between adult business and persons who commit sex crimes; the tax is earmarked for treatment of sex offenders (McCullough 2004).

Laws are often written so vaguely or with overbreadth that people do not know what is permitted so as to act accordingly. Government officials have options of using different measurements for distance between clubs and, for example, schools (door to door or boundary line to boundary line), police have wide discretion, and arrests are made by officers without taking notes or agreeing on the rationale for the arrests.

Violation of ordinances regulating adult entertainment may result in the arrests of the dancer, club owner and manager, and patron; criminal charges; closing of clubs; and defensive legal action. The result is costly to taxpayers and exotic dance stakeholders (dancers, club owners and staff, club food, beverage, sound, lighting, and furnishings suppliers).

In part a backlash against the 1960s sexual revolution, adversaries of sexuality have not been able to elim-

inate nudity and sensuality on mainstream stages, television, or the cinema. Thus, many turn to the weaker target veiled in mythology, namely, local exotic dance clubs. Some religious and conservative groups (such as the American Decency Association, American Family Association, Community Defense Counsel, Family Research Council, Focus on the Family, Leadership Institute, National Family Legal Foundation, and National Law Center for Children and Families) provide model legislation to try to eliminate exotic dance clubs, help draft legislation, and help defend legislation in court (Munsil 1988, 1994). Their attorneys, Bruce Taylor and Scott Bergthold, are seen in numerous courts.

A social class basis appears to exist. Several courts and numerous observers have noted that nudity is usually acceptable in opera and "high art" theaters, for the "wine-drinking quiche eaters," but not in exotic dance clubs for what used to be "beer-drinking pretzel eaters." Yet today, some gentlemen's clubs serve high-end alcoholic beverages and four-star meals. Club advertisements and signs (e.g., a silhouette of a nude dancer) are sometimes at issue when parents drive their children past the clubs and do not want to discuss sexuality with the youngsters. Well-managed clubs try to accommodate their neighbors.

Supporters of exotic dance (see references II.A) defend women's freedom to control their own exotic dance work without state interference, police harassment, or male dominance. Attacks against exotic dancing, supporters remind us, recall the rationalization of totalitarian countries that eat away at human rights (Ellis, O'Dair, and Tallmer 1988, 8). Exotic dancers have also defended their occupation on the grounds of values, art, entertainment, celebration of the female body and sexuality, self-empowerment, economic opportunity, and legitimate work. They rebut the charge of female dancers being subject to abuse any more than women in society at large.

Contrary to the opinions of adversaries of adult entertainment, architect Arthur Cotton Moore believes exotic dance clubs are an asset to cities. In his book, *Powers of Preservation: New Life for Urban Historic Places* (Moore 1998), he says that exotic dance clubs in the city contribute to the quality of life. They make the city an exciting place to go: "There are functions of a city which rarely make it inside the covers of city planning treatises. These functions have two characteristics: They gain their appeal being sharply different from (discontinuous) and more permissive than the general ethos and morality of the surrounding area and they are elemental, genetic, and as old as the first human settlement" (p. 204). Moore continues, "Human contact is the most powerful and represents the last basic advantage of the city in an anti-urban, electronically equipped

15-38

fearful world. Clearly, the most common manifestation of human contact is represented by perfectly respectable theaters, nightclubs, bars, dance halls, and restaurants where the mating and dating rituals of relationships can take place. People want to go on dates 'where it's happening' and that still is somewhere in the city. This suggests that in this population the underlying driving force for going to the city is a sexual force" (p. 204). Moore notes that tourists and conventioners visit cities that have such excitement. The "empty nesters," mostly older and affluent people, are also drawn by the excitement of the city, which makes them feel young again (p. 209). "My idea is to use permissive activity as one more arrow in the badly depleted quiver of the dedicated preservationist and urbanist" (p. 207). Moreover, he observes, "The preservation of old buildings and sexually permissive activities have a scenographic affinity which can be exploited so that together they become another reliable economic rehabilitation resource for the city of the future" (p. 209).

The defense of exotic dance includes the participation of such organizations as the First Amendment Lawyers' Association (FALA), American Civil Liberties Union (ACLU), People for the American Way, National Coalition Against Censorship, Coalition for Free Expression, Free Speech Coalition, Thomas Jefferson Center for the Protection of Free Expression, Association of Performing Arts Presenters, and Dance/USA.

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B. Studies of the Impact of Exotic Dance

Singled out among businesses, exotic dance has been charged with causing adverse secondary effects. A

review of the *Washington Post*, the *New York Times*, U.S. Department of Justice Office of Justice Programs' reports, and several list-servs dealing with adult entertainment, prostitution, and other crime since 1995 reveal no evidence of such problems disproportionate to exotic dance businesses. The literature related to exotic dance adult entertainment shows that even with complete nudity, alcohol, and contact between dancer and patron, exotic dance is no more likely to be linked with prostitution, drugs, sexually transmitted diseases, property depreciation, or harm to children and juveniles (who are not admitted to adult entertainment venues in any case) than dancing in restaurants, community centers, municipal theaters, and hotels. Every business or organization has its "bad apples" and illegal transgressions, and exotic dance clubs are not immune. What transpires outside the business property is unknown. The Catholic church is not blamed for the convictions for pedophilia and rape by some clergy; rather, efforts are made to stop and punish the transgressions.

In a three-part study in Charlotte, North Carolina, Land et al. (2004), McCarthy and Renski (2001), and Hanna (2001) found exotic dance clubs caused no negative effects. None of the 100 residents and business operators located within 1,000 feet of each of three exotic dance clubs reported any negative effects from the clubs. Several businesses in the clubs' neighborhoods said the clubs brought in business. Some businesses used the club as a landmark to find their establishment.

Most studies cited by localities nationwide as evidence that exotic dance clubs cause adverse primary or secondary effects do not meet the basic requirements for the acceptance of scientifically valid evidence prescribed in *Daubert v. Merrell Dow*, 509 U.S. 579 (1993) or the research methodology in Darwin G. Stuart's *Urban Indicators: Their Role in Planning*, published by the American Society of Planning Officials [now the American Planning Association], Planning Advisory Service, Report No. 281, Chicago, June 1972. The few studies that meet Daubert or social science criteria for evidentiary value demonstrate either no deleterious impact associated with adult businesses or, in fact, positive effects (economic development in their neighborhoods).

Paul et al. (2001) analyzed for scientific validity more than 110 studies that local governments most frequently cite. Freeman and Linz (2002) critiqued studies of property value. The methodological problems with the studies (noted in the meta-analysis account below) include the lack of evidentiary literature on negative effects of exotic dance clubs.

Linz's work in articles and court cases identifies four requirements for a valid study of secondary effects caused by adult businesses: Do the studies answer or violate the following principles: (1) "Compared to

what?" Did the study employ a properly selected control or comparison point? (2) "Is this just a one-time fluke?" Did the study employ a time frame long enough to detect a stable pattern of secondary effects? (3) If crime is measured, "is the crime measured according to a reliable source?" and "did the government go looking for more crime to justify its legislation?" (4) "Did the investigators talk only to people who would give them answers they wanted to hear?"

The problems (noted by many methodologists) that have diminished findings that exotic dance clubs cause a deleterious impact include the following: Studies usually lack control sites matched with exotic dance club sites as well as measures before and after the presence of a club in a particular location. Data are not collected over several years to distinguish a relatively unstable or a onetime blip in increases or decreases in crime. Studies of sexually oriented businesses conducted in the 1970s are not applicable to "gentlemen's clubs" that first developed in the 1980s. Studies have not demonstrated that a single adult business, standing alone, has any negative secondary effects. Indeed, studies have focused on concentrations of adult businesses.

There is no study that has specifically examined the impact of a particular dance or type of dance or kind of expression taking place inside an adult business. None of the studies explored, for example, whether nudity, seminudity, simulated nudity, stage design, or dancer-patron interaction had an impact on a neighborhood's quality of life.

Adult entertainment clubs in poor neighborhoods have higher crime than establishments in other neighborhoods, but correlation is not causation, as noted in any methods textbook. Change in police surveillance may account for crime rates. Police calls by a club, especially in a high-crime neighborhood, may not indicate a troublesome club but, rather, club policy to maintain a safe and lawful establishment. (In fact, police often encourage such calls so potential problems are not permitted to develop.) Although some studies group a variety of adult businesses together and find they cause problems, there is no evidence that exotic dance clubs are responsible for any of them. Sometimes police reports are proven false in court. Some crime reports used in studies do not reflect convictions. Charges for prostitution sometimes mean sexy dancing for money or "come on" fantasy talk about solicitation and sex.

Opinion surveys of appraisers constitute speculation, not empirical evidence of a valid relationship between exotic dance clubs and their actual impact on property values. A "potential" negative impact is not a real impact.

Whereas in the past, local governments did not have to conduct their own studies to justify their ordinances,

the *City of Erie v. Pap's A.M.* (2000) Supreme Court decision (and, especially, the opinion of Judge Souter) held that the validity of the underlying proof of the need for regulations can be challenged. Evidence local governments provide to justify regulations to combat the allegedly harmful side effects of exotic dance (the judicially created secondary-effects doctrine) has to be relevant to the locality in question.

1. META-ANALYSIS OF STUDIES

McLaughlin, R. Bruce. 1994. *Adult uses: Zoning and land use issues, a technical update* [MDII Entertainment, Inc. v. City of Dallas, 393CV2093T, U.S. District Court].

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2. GENERAL STUDIES

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3. CRIME

Exotic dance is alleged to be a prelude to or an advertisement for prostitution. However, there is no evidence of convictions disproportionate to the adult entertain-

15-40

ment industry. Exotic dance and prostitution are distinct activities in the United States. In well-run clubs in most jurisdictions, omnipresent security (doormen, floor men, and video monitors) oversees the facility to be in compliance with the law. In addition, performers monitor each other, and managers terminate a dancer who has contact with a patron outside the club. Men who misbehave are asked to leave the club.

In some localities, such as San Francisco, local government leaders have tolerated prostitution that is not on the street. (Kay [1999] interviewed ten dancers in three clubs.) However, prostitution cases that attract media attention are police charges, often not leading to convictions, and allegations about athletes. For example, in Atlanta's multimillion-dollar Gold Club 2001 case, employees testified that celebrities and professional basketball, baseball, and football players often received sexual favors from strippers. (A television show was made about the sex scandal.)

There is also a myth that exotic dance attracts illegal drugs. However, again, this problem is not disproportionately present in the adult entertainment industry. For example, illegal drugs are present in numerous schools and universities. Exotic dance security staff members usually monitor club activity; some managers periodically check dancers' lockers and even employ drug-sniffing dogs to be absolutely certain drugs are not on the premises.

The studies below demonstrate that crime is not any more problematic in the exotic dance industry than in most other businesses. In fact, two police studies conducted at different times found that exotic dance clubs that served alcohol and had live nude dancing had no negative impact on crime, although there were problems with clubs that only served alcohol and had no nude dancing (Fuller and Miller 1997; Phifer and Fulton County Police Department 2001). A comparison of crime-related and public order-related calls for police service between three exotic dance adult entertainment clubs (a total of 27 calls) and three licensed alcohol beverage establishments (a total of 138 calls) in Prince George's County, Maryland, in 2002, found no association between the presence of exotic dance clubs and crime-related secondary effects. Although there was a triple homicide in the parking lot of one exotic dance club, the detective handling the case said this incident could have happened anywhere.

The Land et al. (2004) empirical study sought to determine whether a relationship exists between adult exotic dance clubs and increased numbers of crimes reported in the areas surrounding the adult businesses in Charlotte, North Carolina. For each of 20 businesses, a control site (matched on the basis of demographic

characteristics related to crime risk) was compared for crime events during a period of three years (1998-2000) using data on crime incidents reported to the police. The study found that the presence of an adult nightclub does not increase the number of crime incidents reported in localized areas surrounding the club (defined by circular areas of 500- and 1,000-foot radii) compared with the number of crime incidents reported in comparable localized areas that do not contain such an adult business. Indeed, the analyses imply the opposite, namely, that the nearby areas surrounding the adult business sites have smaller numbers of reported crime incidents than do corresponding areas surrounding the three control sites studied. These findings are interpreted in terms of the business mandates of profitability and continuity of existence of the businesses.

There have been some unusual exotic-dance-specific charges. A patron has alleged harm from a dancer's breast hitting his face. At his bachelor party in a Fort Wayne, Indiana, club, Justin Scheidt claims that while he was onstage for the ritual of being teased, two dancers held him down at the base of the strip pole, while a third dancer cannon-balled down the pole from about six feet up and landed on his genitals. Although he said to stop, the two other dancers did the same, causing him excruciating pain and inability to consummate his marriage on his honeymoon due to "serious and permanent injuries."

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15-41

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4. ECONOMIC IMPACT

Exotic dance clubs are alleged to cause property depreciation. But the studies below (critiques of studies localities have used and ones that provide new site-specific research) show no evidence that exotic dance clubs have a negative impact on real estate values near them. Indeed, exotic dance clubs often attract business. For example, car repair facilities take advantage of patrons who stop at the clubs for lunch; in Ft. Lauderdale, Loehmann's, an upscale women's discount dress store, opened up across the street from the Gold Club. Law-abiding adult entertainment clubs may be woven into the mainstream of everyday life. If so, it certainly raises questions about the need for special zoning for them.

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5. HEALTH

Some ordinances have preambles to justify regulations that are "necessary" to prevent exotic dancers from causing disease. But there is no verifiable evidence of a relationship between exotic dance and disease. They may cause no more health problems than restaurants, shopping malls, or churches.

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15-42

6. ZONING

Zoning is used to designate areas where adult entertainment may operate. There are centralized and dispersal models, where communities either try to concentrate adult entertainment activities in one central area, or attempt to scatter them throughout the community. Controversy arises over proposed changes in required distances of exotic dance clubs from schools, churches, and residential areas, and definitions of these, as well as economic development that changes an area designated for exotic dance clubs, as indicated in the work cited below. Federal law says exotic dance clubs cannot be banned and sites for them are required, excluding sites such as in the ocean or other area that lacks infrastructure for a business.

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McLaughlin, R. Bruce. 2003. *City of Rockford, Illinois, alternative avenues of communication for adult uses planning review* [U.S. District Court, Northern District of Illinois, Eastern Division, *R.V.S., LLC. v. City of Rockford*, 03-C-50048].

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C. Regulations and Legal Cases with National Importance

This section presents legal cases that have guided the national debate. Not trained in law, I have drawn upon the interpretations that appear in legal pleadings, analyses, and decisions on cases with which I have been involved. The U.S. Constitution, Supreme Court's decisions related to exotic dance adult entertainment, and circuit courts following the Supreme Court override state law. Sometimes it takes time for the impact of these decisions to take shape. Listed below are first the most recent Supreme Court decisions within each category that prevail over earlier cases.

Under the umbrella of the First Amendment, dance is the communication of expressive content. A regulation directed at content or viewpoint will not withstand judicial scrutiny. Courts have upheld reasonable time, place, and manner regulations that are content neutral, for example, *Kev, Inc. v. Kitsap County* (1986). The Fourteenth Amendment antidiscrimination and due process clauses also protect exotic dance adult entertainment.

The U.S. Supreme Court's decisions concerning exotic dance adult entertainment have been primarily rooted in, for example, governmental interest to protect the populace, *United States v. O'Brien* (1968); alcoholic beverage regulations, *California v. La Rue* (1972); the Supreme Court's first recognition of First Amendment rights for exotic dance as communication, albeit at a

superficial level, obscenity, *Miller v. California* (1973); zoning ordinances to cope with adverse secondary effects, *Young v. American Mini Theatres* (1976); and morality, *Barnes v. Glen Theatre* (1991).

There are three recent court cases related to regulating exotic dance adult entertainment that change what governments can do and make it more difficult to overcome the many hurdles to withstand challenges to their ordinances:

City of Los Angeles v. Alameda Books (2002): See C.1, Evidence for Justifying Governmental Interest, below, for further discussion.

Now governments must provide a factual basis for their regulations that plaintiffs can challenge by demonstrating that the government's evidence does not support the regulations or furnishing evidence that disputes the government's factual findings. This case weakens *City of Renton v. Playtime Theatres* (1986), which held the government could use studies of other jurisdictions if the local government reasonably believed the studies to be applicable to its own circumstances.

City of Erie v. Pap's A.M. (2000)

The secondary effects rationale for regulations replaced the moral rationale of *Barnes v. Glen Theatre* (1991).

44 *Liquormart v. Rhode Island* (1996)

When Prohibition ended, the Twenty-First Amendment gave state and local governments the authority to regulate establishments that serve alcohol. However, this authority does not override the First Amendment.

Although nude dancing has been recognized as expressive and at the outer margins of First Amendment protection, the courts have not, until recently, addressed other nonverbal communicative dimensions of dance: use of time, space, and effort, parts of the body moved and how; costume; distance between dancer and patron; and touch—all of which can convey meaning.

1. EVIDENCE FOR JUSTIFYING GOVERNMENTAL INTEREST

R.V.S., L.L.C. v. City of Rockford, 361 F.3d 402 (7th Cir. 2004).

See Zoning below.

City of Los Angeles v. Alameda Books Inc., 535 U.S. 425 (2002).

1543

Although a five-four decision upheld the city ban on multiple adult businesses in one building, the majority did not agree on a single rationale. Only four found that Los Angeles could rely on a 1977 study of adult businesses in general to justify the ordinance at issue. The others supported the position, noted above, that governments must fairly support the rationale for an ordinance, show a factual basis for their regulations, and consider "how speech will fare" (not attack speech). Plaintiffs challenging an ordinance must have the opportunity to cast doubt on its rationale by demonstrating that the government's evidence does not support its rationale or by furnishing evidence that disputes the government's factual findings. Justice Souter, in formulating a legal test based on empirical verification, argues that the weaker the empirical evidence concerning secondary effects, the more likely the governmental action is not content neutral.

Flanigan's Enterprises Inc. v. Fulton County, 242 F.3d 976 (11th Cir. 2001).

Nude dancing in establishments licensed to sell liquor may not be banned without a factual basis to support the claim that they are connected with negative secondary effects. A city cannot reasonably rely upon data from other localities that contradicts good local data.

City of Erie v. Pap's A.M., 529 U.S. 277 (2000).

Governments may ban secondary effects-justified (not morality-based) nude dance with time, place, and manner regulations as a way to combat negative secondary effects. Although a locality may rely on secondary effects studies done by other cities or judicial opinions that discussed them, their evidence now can be challenged as to its quality and relevance to the locality's own jurisdiction.

Daubert v. Merrell Dow, 509 U.S. 579 (1993).

This case against a pharmaceutical company held that the trial judge is responsible to ensure that experts' testimony both rests on a reliable foundation and is relevant to the contested issue. (See Federal Judicial Center. 1994. *Reference manual on scientific evidence*. Rochester, NY: Lawyers Cooperative Publishing, for case law on the use of surveys.)

United States v. O'Brien, 391 U.S. 367, 377 (1968).

A government regulation is justified if (1) it is within the constitutional power of the government, (2) it fur-

thers an important or substantial governmental interest, (3) the governmental interest does not suppress free expression, and (4) the incidental restriction on alleged First Amendment freedoms is no greater than is essential to further that interest. Statutes should be narrowly tailored and not be irrational, arbitrary, or capricious.

2. ZONING

R.V.S., L.L.C. v. City of Rockford, 361 F.3d 402 (7th Cir. 2004).

A locality may not use its zoning power to regulate any type of dancing without offering sufficient evidence to support its rationale that the dancing causes adverse secondary effects. The governmental interest for imposing content-based time, place, and manner restrictions may only be upheld if a connection can be made between the negative effects and the regulated speech. Otherwise the regulations violate the First Amendment. Open and explicit hostility toward and disapproval of the speech itself is not a permissible purpose for a regulation.

Peek-A-Boo Lounge of Bradenton, Inc. v. Manatee County, Florida, 11th Cir. (2003).

Regulations that dictated the physical layout of a club, permitted the sheriff to search the premises without a warrant, and banned nudity were overturned. The court emphasized the differences between zoning ordinances (evaluated under standards for time, place, and manner) and public nudity ordinances (evaluated under the four-part test set forth in *O'Brien*) and used in *Barnes and Pap's A.M.* A key issue in the analysis of a secondary effects-justified "content-based zoning ordinance" is "how speech will fare" under the ordinance, a new requirement in a time, place, and manner analysis. To meet its burden of justification imposed by *City of Renton v. Playtime Theatre, Inc.* (1986), a city must have studies or other evidence submitted preenactment and allow its evidence to be challenged.

Topanga Press, Inc. v. City of Los Angeles, 989 F.2d 1524 (9th Cir. 1993).

The court said that the economics of site location is a valid consideration.

Woodall v. City of El Paso, 959 F.2d 1305 (5th Cir. 1992)

It is illegal for cities to attempt to ban, regulate, or impose excessive location requirements because they object to their sexually explicit messages.

15-44

City of Renton v. Playtime Theatres, 475 U.S. 41, 106 S.Ct. 925 (1986).

An ordinance must serve a substantial governmental interest. Government must rely on evidence to justify content-neutral restrictions of time, place, and manner on expressive conduct. A local government may rely on studies from other jurisdictions documenting "adverse secondary effects" of adult uses, if the local government reasonably believes the studies to be applicable to its own circumstances. Renton had no adult entertainment and consequently had no alternative but to look to outside studies. Requiring a set distance of a club from the location of any residential area, school, park, or church also requires that there be alternative locations.

Schad v. Borough of Mount Ephraim, 452 U.S. 61 (1981).

A zoning law cannot be overbroad in proscribing all live entertainment, including nude dancing.

Young v. American Mini Theatres Inc., 427 U.S. 50, 96 S.Ct. 2440 (1976).

Zoning to disperse entertainment and require separation from any residential area is permissible if governments can show proof of adverse secondary effects. This is the beginning of the secondary-effects doctrine. Governments must allow for reasonable alternative locations.

3. ALCOHOL

44 *Liquormart v. Rhode Island*, 517 U.S. 484 (1996).

Liquor regulation permitted by the Twenty-First Amendment does not override the First Amendment.

New York State Liquor Authority v. Bellanca, 452 U.S. 714 (1981).

The state can regulate establishments serving alcohol.

Doran v. Salem Inn, Inc. 422 U.S. 922 (1975).

The justices view nude dancing as expression warranting constitutional protection in establishments without alcohol.

California v. La Rue, 409 U.S. 109 (1972).

When prohibition ended with the Twenty-First Amendment, state and local governments were given authority to regulate establishments that serve alcohol.

The Alcohol Board of Control could ban nude dancing at premises licensed by it. Prohibition is nothing more than a time, place, or manner regulation of speech.

4. OBSCENITY

The People [City of Anaheim] v. Janini, Super. Ct. No. AP-11129 (1999).

The People [City of Anaheim] v. Ly, Super Ct. No. AP-11130 (1999).

Lap dancing is legal, not prostitution. Anaheim's ordinance banning lap dancing was preempted by the state penal code, which already outlaws prostitution and lewd conduct. The court referred to the 1920s' taxi dancing, the sale of a body-rubbing dance for a dime, that continues to this day but at a higher price.

Pope v. Illinois, 481 U.S. 497 (1987).

A determination of obscenity must assess the social value of the material from the standpoint of a "reasonable person" using national standards rather than local community judgments.

Brockett v. Spokane Arcades Inc., 472 U.S. 491 (1985).

The Court did not intend to characterize as obscene material that provided only normal, healthy sexual desires. Justice White said "lust" implied a normal, healthy interest in sex.

Miller v. California, 413 U.S. 15 (1973).

Obscenity is one of the few categories of expression the First Amendment does not safeguard, but the Court laid out guidelines for determining whether a dance qualifies as legally obscene. All three prongs of the definition must be satisfied for a work to be constitutionally obscene: (1) whether the average person, applying contemporary community standards, would find that the work, taken as a whole, appeals to the prurient interest; (2) whether the work depicts, or describes in a patently offensive way, sexual conduct specifically defined by the applicable state law; and (3) whether the work, taken as a whole, lacks serious literary, artistic, political, or scientific value.

Supreme Court decisions following *Miller* have held that the states may provide their own geographic definition of the community or not define it at all.

Roth v. United States, 354 U.S. 476 (1957).

"Obscene utterance" as determined by community standards was not protected by the First Amendment.

15-45

5. TIME, PLACE, MANNER, AND INCIDENTAL BURDEN

See *Peek-A-Boo* under Zoning above (C.2).

Colacurcio v. City of Kent, 163 F.3d 545 (9th Cir. 1998).

The Court upheld a 10-foot buffer zone between patron and performer, failing to recognize that stage dances (performed for everyone) and private table dances (dances performed for a specific patron) convey different messages. The Court left open the issue of the buffer zone causing financial harm to businesses.

Ward v. Rock Against Racism, 491 U.S. 781, 109 S.Ct. 2746, 2753, 104 L.Ed.2d 661 (1989).

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.

City of Renton v. Playtime Theatres, 475 U.S. 41, 106 S.Ct. 925 (1986).

Government must rely on evidence to justify its decision that there is an important governmental interest in reasonable time, place, and manner restrictions on expressive conduct. A local government may rely on studies from other jurisdictions documenting "adverse secondary effects" of adult uses, if the local government reasonably believes the studies to be applicable to its own circumstances.

Keo, Inc. v. Kitsap County, 793 F.2d 1053 (9th Cir. 1986).

Government may impose reasonable restrictions on the time, place, and manner of protected activity under the First Amendment.

6. LICENSING

Dream Palace v. County of Maricopa (AZ), CV-97-02357 SMM (9th Cir. September 27, 2004).

A county could not publicly release sensitive information (dancers' stage names, addresses, and phone numbers) submitted by employees on their permit applications because this could expose them to harassment from "aggressive suitors" or people opposed to the industry.

City of Littleton, Colorado v. A.J. Gifts, D-4, LLC, 2004 WL 1237360 (2004).

For an "adult business" licensing scheme to satisfy First Amendment requirements, the licensing scheme must provide assurance of speedy access to the courts for review of adverse licensing decisions and also provide assurance of a speedy court decision. However, judicial review of adverse licensing decisions in accordance with states' ordinary review procedures was sufficient to satisfy First Amendment requirements.

FW/PBS, Inc. v. City of Dallas 493 U.S. 215 (1990).

Licensing provisions may not constitute a prior restraint on freedom of expression. Government should make a licensing decision in a specific brief time period and provide the possibility of challenge of its determination through prompt judicial review and judicial decision; free speech rights would be denied through inaction.

7. MORALITY

See *City of Erie v. Pap's A.M.* in II.C.1, Evidence for Justifying Governmental Interest, overriding *Barnes*.

Barnes v. Glen Theatre, 111 S.Ct. 2456 (1991).

Nude dancing is a form of expression entitled to a measure of First Amendment protection, but states may ban it in the interest of "protecting order and morality" without proof of localized effects. Justice Byron R. White said that by prohibiting nude dancing, a state inevitably prohibited the communication of an idea because "the nudity itself is an expressive component of the dance. . . . 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." Justice David Souter said it was the "secondary effects," prostitution, sexual assault, and associated crimes, of clubs like the Kitty Kat Lounge that justified Indiana's rule. The Fifth, Sixth, Seventh, Eighth, and Eleventh Circuit Courts treated Justice Souter's opinion as holding in *Barnes*. Subsequently, *Erie v. Pap's A.M.*, 529 U.S. 277 (2000) further placed the rationale for regulation on secondary effects.

8. OVERBREADTH

Spoons v. Kenneth Morcke, 1:04CV0314 (2004). U.S. District Court for the Northern District of Ohio Eastern Division.

The ban on nudity, simulated sex, self-touch, and "improper conduct of any kind . . . that would offend the public's sense of decency" is unconstitutional under the First and Fourteenth Amendments and overbroad.

15-46

Lacking evidence of adverse secondary effects, the regulation serves no governmental interest.

Giovani Carandola v. George Bason, 303 F.3d 507 (4th Cir.2002).

The regulations on exotic dance adult entertainment had overbroad application.

Ways v. City of Lincoln, 274 F.3d (8th Cir. 2001).

The prohibition of "sexual contact" was overbroad because it covered any business or commercial establishment.

Déjà vu of Nashville, Inc. v. Metro Government, 274 F.3d (6th Cir.2001).

The ordinance was not upheld on grounds of overbreadth.

Triplett Grille v. City of Akron, 40F.3d 129, 136 (6th Cir. 1994).

A ban on public nudity cannot sweep within its ambit expressive conduct not generally associated with prostitution, sexual assault, or other crimes.

9. DANCE MOVEMENTS AND GESTURES

Dream Palace v. County of Maricopa (AZ), CV-97-02357 SMM (9th Cir. September 27, 2004).

A regulation that bans "sex acts, normal or perverted, actual or simulated" amounts to a ban on nude dancing, a constitutionally protected activity. "If Elvis' gyrating hips can fairly be understood to constitute a simulated sex act, one can fully appreciate the potential scope of the restrictions placed on erotic dancers in Maricopa County," Judge Diarmuid F. O'Scannlain wrote for a three-judge panel.

Schultz v. City of Cumberland, 228 F.3d 831 (7th Cir. 2000).

Government cannot outlaw particular movements and gestures of exotic dance because they would deprive the dancers of a repertoire of expressive elements with which to communicate an erotic, sensual message. Protected expression cannot be unconstitutionally burdened.

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Legislative Talking Points (3-18-10)

Regulating Adult Entertainment Exotic Dance Clubs

(including clubs with alcohol, nudity & incidental touch between dancer & patron)

Judith Lynne Hanna, Ph.D.
University of Maryland
8520 Thornden Terrace, Bethesda, MD 20817
301-365-5683 (voice & fax), jlhanna@hotmail.com, jlhanna@umd.edu

Background:

Adult entertainment exotic dance, rooted in belly dance seen in America in 1893 and in burlesque thereafter, is a form of dance and theater art that is somewhat "risqué" adult play, a fanciful teasing. More of the body is disclosed than is seen in public. Like a joke's punch line, exotic dance has stripping to nudity. First there is a stage dance for the entire audience, and second, there is usually a dance for a patron who pays a fee for a personal dance to create his own fantasy. This activity, which has changed over time, evokes considerable misunderstanding.

Main Talking Points:

1. Governmental interest and public welfare.

Special regulations for adult entertainment exotic dance clubs serve **no governmental purpose** for these reasons:

No evidence (scientifically reliable and valid) exists that exotic dance clubs cause problems ("adverse secondary effects") disproportionate to other businesses or institutions of public assembly (crime in schools and sexual abuse of priests against children and adults females do not mean schools and churches cause crime and require special government regulations).

E.g., in Prince George's County, Maryland, a comparison of crime-related and public order-related calls for police service between three strip clubs (a total of 27 calls) and three licensed alcohol beverage establishments (a total of 138 calls) found no association between the presence of strip clubs and crime-related secondary effects.

E.g., in Fulton County, Georgia, police reported clubs with alcohol and nudity had fewer problems than clubs without nudity (*Flanigan's Enterprises Inc. v. Fulton County*, 242 F.3d976, 11th Cir. 2001). A subsequent police study revealed the same finding.

E.g., in Charlotte, North Carolina, interviews with residents and business operators within a 1,000 foot radius of three clubs revealed those with first-hand knowledge of what takes place at and around the clubs did not experience problems emanating from them.

No evidence exists that the exotic dance industry and nudity exploit/degrade women.

Approximately 800 interviews with dancers in 140 strip clubs nationwide and an extensive literature suggest stripping is generally not demeaning. Most dancers feel empowered through financial independence, flexible schedules allowing them to attend school and to care for their children, and self-esteem gained from successfully controlling their own artistic expression, facing strangers and winning their appreciation. Working out of economic necessity, as do most people, dancers placing their bodies within a financial transaction reduces them to a commodity no more than professional models, actors or athletes who earn a livelihood using their bodies. But dancers feel that society's stigmatization of the "stripper" hurts them.

2. Requirement for legislative predicate (reasons for legislation).

The U.S. Supreme Court ruled that a government **must show evidence related to the current situation of its own jurisdiction, and the quality of that evidence can be challenged.**

(City of Erie v. Pap's A.M., 529 U.S. 277, 2000; City of Los Angeles v. Alameda Books Inc., 535 U.S. 425, 2002; Peek-A-Boo Lounge v. Manatee County, 11th Cir., FL, 2003)

3. Constitutionality.

The **First Amendment protects expression** (nudity, spatial distance, touch and nudity are expression).

The **First Amendment overrides the Twenty-first Amendment** (*Liquormart v. Rhode Island*, 517 U.S. 484, 1996).

Regulations singling out exotic dance for regulation **violate the Fourteenth Amendment by discriminating against a specific kind of dance.**

Civil liberties, defining our democracy, override tyranny of the majority, personal, moral, or NIMBY ("not in my backyard") preferences.

4. Cost to enact, defend and enforce special regulations.

Redundancy: laws against crime (e.g., assault, drugs and prostitution) already exist.

If **unconstitutional**, laws are challenged and government loses, it pays **court costs, attorney fees of the challenger and damages** (up to millions of dollars).

Déjà Vu of Kentucky, Inc. et al. v. Lexington Fayette Urban County Government (\$62,426.27 to plaintiff)

Kentucky Restaurant Concepts, Inc., et al. v. City of Louisville (\$144,573.64 to plaintiff)

A settlement in 2004 called for City of Anaheim to pay a club owner \$2 million for having violated his constitutional rights and caused business loss because the city prevented him from opening Taboo Gentlemen's Club from 1994 to 1999. The city also had to pay court and plaintiff attorney's fees.

In 2005, Judge William Rea of the U.S. District Court in Los Angeles ordered the SimiValley City to pay about \$100,000 in damages and attorney fees to an entrepreneur for violating his right to open a nude dancing club. Simi Valley's 1993 ordinance regulating nude entertainment clubs was unconstitutional.

The Supreme Court has (*Palazzolo v. Rhode Island*) expanded the Fifth Amendment concept that private property may not be "taken" without just compensation to include partial "regulatory" takings. If a regulation deprives the owners of the businesses of their expected return on investment, government must pay compensation.

"Dance police" divert scarce resources from fighting crime that has victims.

5. Cost to economy.

Regulations usually **hurt the economy** by diminishing or driving out of business exotic dance clubs. The clubs contribute local and state property taxes, provide employment, purchase goods and services (napkins to furniture and utilities) as well as attract legitimate business to their neighborhoods.

6. Opposition to regulation of exotic dance clubs.

Clubs in Los Angeles mobilized to obtain 450,000 citizens' signatures to put regulations on the ballot; Los Angeles rescinded the regulations.

Citizens in Glendale, Colorado, voted out of office lawmakers supporting regulations.

A former exotic dancer became mayor in Georgetown, Colorado.

Time magazine reported a forecaster's 3,000-person nationwide survey that found "striptease is cool."

Many citizens of Benton County, MN, expressed outrage at cases against an exotic dance clubs. See, "The First Amendment, Artistic Merit and Nudity in Minnesota: Dance, Criminal Public Indecency and Evidence. *Minnesota Law and Politics Web Magazine* www.lawandpolitics.com (click on MN & then web magazine)

Referenda in Seattle, Los Angeles and Scottsdale opposed government regulations harmful to clubs.

7. Community-Business Relations

Communities upset by exotic dance clubs, e.g., due to building appearance, can work with clubs to address issues of concern.

Running Head: SECONDARY EFFECTS

**Testing Assumptions Made by the Supreme Court Concerning the
Negative Secondary Effects of Adult Businesses: A Quasi-Experimental Approach**

By

Bryant Paul
Ph.D. Candidate
University of California at Santa Barbara
Department of Communication
Santa Barbara, CA 93106
long_time@msn.com
Phone: (805) 983-3887

and

Daniel Linz
Professor of Law and Society, and Communication
University of California at Santa Barbara
Department of Communication
Santa Barbara, CA 93106
Linz@comm.ucsb.edu

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15-51

Testing Assumptions Made by the Supreme Court Concerning the Negative Secondary Effects of Adult Businesses: A Quasi-Experimental Approach

Abstract

In order to test the foundational assumptions made by the Supreme Court that communities may regulate adult businesses because they are associated with negative secondary effects, an empirical study of criminal activity surrounding exotic dance nightclubs¹ in a Midwestern community contemplating legislation regulating exotic dance clubs (Fort Wayne, Indiana) was undertaken. Unlike previous studies, conducted in other municipalities, specific attention was given to developing an empirical approach that fulfilled the requirements set out by the Supreme Court for the proper conduct of a social scientific inquiry. A 1000 feet circumference surrounding each of eight exotic dance nightclubs in Fort Wayne was established. Comparison areas were selected in the city of Fort Wayne and matched to the club areas on the basis of demographic features and commercial property composition. The number of calls to the police from 1997-2000 in the areas surrounding the exotic dance nightclubs was compared to the number of calls found in the matched comparison areas. Our analysis showed little difference, overall, between the total number of calls to the police reported in the areas containing the exotic dance nightclubs and the total number of offenses reported in the comparison areas.

¹ The Ft. Wayne clubs studied in this paper do not operate in a form of what is traditionally considered to be an "adult" entertainment business. The entertainers at these nightclubs perform wearing "pasties" and "g-strings" consistent with Indiana statute and the United States Supreme Court's decision in Barnes v. Glen Theatre, Inc., 501 U.S. 560 (1991). For this reason, while we refer to previous reports and studies as attempting to analyze the relationship of "adverse secondary effects" and "adult" businesses, we generally refer to the studied facilities here either as "nightclubs" or "exotic dance" establishments.

**Testing Assumptions Made by the Supreme Court Concerning the
Negative Secondary Effects of Adult Businesses: A Quasi-Experimental Approach**

THE SUPREME COURT AND THE ASSUMPTION
OF NEGATIVE SECONDARY EFFECTS OF
ADULT BUSINESSES

Since 1976, the United States Supreme Court has decided a series of cases focusing on whether the free speech clause of the First Amendment allows cities and states to enact legislation controlling the location of "adult" businesses.² "Zoning" regulations (e.g., laws or ordinances that prevent a sex-related business from operating within a certain number of feet from residences, schools and houses of worship or a given distance from one another) have been predicated on the notion that cities and other municipalities have a substantial interest in combating so-called "negative secondary effects" on the neighborhoods surrounding exotic dance businesses. These secondary effects are generally said to include alleged increases in crime, decreases in property values, and other indicators of neighborhood deterioration in the area surrounding the exotic dance business. Typically, communities have either conducted their own investigations of potential secondary effects or have relied on studies conducted by other cities or localities.

In more recent years, the Court has considered the constitutionality of anti-nudity ordinances passed by municipalities or states that have relied on negative secondary effects to justify the legislation.³ In a fractured decision, the Court in *Barnes v. Glens Theatre Inc.* held that the State of Indiana could regulate public nudity.⁴ Justice Souter in a concurring opinion ruled that the government

² See e.g., *Young v. American Mini Theatres, Inc.*, 427 U.S. 50 (1976); *City of Renton v. Playtime Theatres Inc.*, 475 U.S. 41 (1986).

³ See e.g., *Barnes v. Glens Theatre Inc.*, 501 U.S. 560 (1991); *City of Erie v. Pap's A.M.*, 529 U.S. 277 (2000).

⁴ *Barnes v. Glens Theatre Inc.*, 501 U.S. 560 (1991) [hereinafter *Barnes*].

could undertake such regulation on the basis of the presumed negative secondary effects on the surrounding community.⁵

Most recently, in *City of Erie v. Pap's A.M.* the Court again held that municipalities have the right to pass anti-nudity ordinances.⁶ And, again, the Court was fractured. However, three Justices agreed with Justice O'Connor's opinion that in conformity with Justice Souter's concurrence in *Barnes*, combating negative secondary effects associated with adult businesses was a legitimate basis for the imposition of anti-nudity regulations. Most notable for the current study, was Justice Souter's partial concurrence and partial dissent in the *Pap's* decision. He significantly revised the position he took regarding secondary effects in *Barnes*. In *Pap's*, Justice Souter admitted that the evidence of a relationship between adult businesses and negative secondary effects is at best inconclusive.⁷ He called into question the reliability of past studies that purported to demonstrate these effects and suggested that municipalities wishing to ban nudity must show evidence of a relationship between adult businesses and negative effects.⁸

In addition, writing on behalf of four of the other Justices in *Pap's*, Justice O'Connor noted that the nightclub at issue there "has had ample opportunity to contest the council's findings about secondary effects -- before the council itself, throughout the state proceedings, and before this [the Supreme] Court. Yet, to this day, [the club] has never challenged the city council's findings or cast any specific doubt on the validity of those findings." The four-member plurality of the Court therefore rejected the club's challenge to the assertion that the facility engendered adverse secondary effects, because the business itself had not submitted any evidence to refute such an asserted connection.

⁵ As will be discussed in depth below, restrictions on erotic dance have typically included requiring dancers to wear at least pasties and a G-string when performing.

⁶ *City of Erie v. Pap's A.M.*, 529 U.S. 277 (2000) [hereinafter *Pap's*].

⁷ *Id.* at 6-7 (Souter, D. concurring in part dissenting in part).

⁸ *Id.* at 5 n.3.

The purpose of the present study is to develop the type of evidence demanded by Justice Souter and noted to be relevant by Justice O'Connor and the other Justices, in order to determine if a relationship exists between the exotic dance clubs in Fort Wayne, Indiana and negative secondary effects. Further, this evidence is obtained in accordance with established methodological procedures so as to insure the highest levels of scientific reliability.

This study was undertaken in response to an ordinance being considered by the Fort Wayne City Council that would expand the city's law on how close adult businesses (including adult cabarets) can be to schools or churches. The distance would increase from 500 feet to 750 feet. The city also considered early closing times for adult businesses and a ban on so called "lap dancing" at exotic dance clubs. The city justified the expansion of regulations on the existence of negative effects associated with these businesses that were reported to have occurred in other municipalities.

THE SCIENTIFIC STUDY OF NEGATIVE SECONDARY EFFECTS

Unfortunately, when most municipalities have conducted studies of crime and adult businesses in the past there has not been a set of methodological criteria or minimum scientific standards to which the cities were required to adhere. Without such standards we have argued most cities that have passed legislation are relying on flawed databases.⁹

The basic requirements for the acceptance of scientific evidence for legal decision-making were prescribed by the Supreme Court in the 1993 case of *Daubert v. Merrell Dow*.¹⁰ In *Daubert*, Justice Blackmun, writing for the Court, held that there are certain limits on the admissibility of scientific evidence offered by "expert witnesses" in federal courts.

⁹ See, Bryant Paul, Daniel G. Linz, and Bradley J. Shafer. *Government regulation of adult businesses through zoning and anti-nudity ordinances: Debunking the legal myth of negative secondary effects*. Comm. L. & Pol'y 355-392 (2001).

¹⁰ *Daubert v. Merrell Dow*, 509 U.S. 579 (1993) [hereinafter *Daubert*].

In an attempt to prevent the proliferation in courtrooms of what Peter Huber has called "junk science," the Supreme Court in *Daubert* opined that scientific knowledge must be grounded "in the methods and procedures of science," and must be based on more than "subjective belief or unsupported speculation." Thus, the Court said, "the requirement that an expert's testimony pertain to 'scientific knowledge' establishes a standard of evidentiary reliability."¹¹ The Court observed that "[i]n a case involving scientific evidence, evidentiary reliability will be based upon scientific validity."

Offering "some general observations" as to how this connection can be made, the Court provided a list of factors that federal judges could consider in ruling on a proffer of expert scientific testimony: 1.) The "key question" is whether the theory or technique under scrutiny is testable, borrowing Karl Popper's notion of falsifiability. 2.) Although publication was not an absolute essential, the Court noted that peer review and publication increased "the likelihood that substantive flaws in methodology will be detected." 3.) Error rate. 4.) Adherence to professional standards in using the technique in question. 5.) Finally, though not the sole or even the primary test, general acceptance could "have a bearing on the inquiry."¹²

While it may not be necessary to hold a single study of adverse secondary effects to each of these considerations when weighing the validity of evidence substantiating the existence of such effects, at least two factors, error rate and adherence to professional standards are indispensable. Before discussing those two elements, we will briefly address the other factors as well.

Criteria for Insuring a Scientifically Valid Study of Secondary Effects

We presume that it is at least a testable position that secondary effects may exist, and may be connected to certain businesses, or else a study would not be undertaken in the first place. More to the

¹¹ *Id.* at 590 n. 9.

point, however, in *Pap's*, both the opinion by Justice Souter and that authored by Justice O'Connor on behalf of four Justices (therefore constituting a combined majority of the Court) presume that such a connection or nexus is testable. In fact, Justice Souter states specifically that "[t]he proposition that the presence of nude dancing establishments increases the incidence of prostitution and violence is amenable to empirical treatment"¹³ In addition, the procedures and methodologies that we use here are no different than our previous review and critical analysis of the existing "secondary effects" literature; which itself has been both peer-reviewed and published. *See*, n.9, *supra*. Finally, the analysis that we undertake here -- comparing specified locations with regard to calls for service -- is neither novel, unique, nor groundbreaking. It is a form of research that receives general acceptance in the scientific community. It is only the nature of the businesses that makes this study different.

The third and fourth factors, the calculation of an error rate and adherence to professional standards in using techniques or procedures are the most critical factors that need to be applied to any secondary effects study in order to ensure "evidentiary reliability." Without this reliability, there is no basis to determine whether there is a substantial or important governmental interest involved or whether a specific piece of legislation is "necessary" in order to further that interest, or whether it is "reasonable" for a municipality to rely upon such a study as a basis for enacting legislation.¹⁴

¹² *Id.* at 593-594.

¹³ *Pap's*, 120 S.Ct. 1382, 1404 n.3 (Souter, J. concurring in part and dissenting in part).

¹⁴ These are the factors that the United States Supreme Court has established in order to analyze the constitutionality of legislation under what is known as "intermediate" scrutiny. In *United States v. O'Brien*, 391 U.S. 367 (1968), the Supreme Court established a four-part test for such scrutiny, which requires a court to analyze, for example, "whether the regulation furthers an important or substantial governmental interest," and "whether the incidental restriction on alleged First Amendment freedom is no greater than is essential to the furtherance of that interest." *Id.* at 377. In addition, when determining whether a regulation furthers an important or substantial governmental interest in the context of a "secondary effects" analysis, a municipality may rely upon previous studies "so long as whatever evidence the [government] relies upon is reasonably believed to be relevant to the problem that [it] addresses." *Renton v. Playtime Theatres, Inc.*, 475 U.S. 41, 51-52 (1986) (clarification added).

In a scientific study, the error rate refers to the probability of accepting a result as true, when in fact it is false.¹⁵ It is an indication of the reliability of a finding. An error rate is determined by first calculating an estimation of a population characteristic (a statistic) that summarizes the data that has been collected, and then asking how likely it is that that statistical value would be obtained by chance alone. The error rate is the degree of chance a scientist will allow. In the social sciences it is conventional to set the error rate at five percent or less (i.e., we will tolerate an error rate that 5 times out of 100, the results may be obtained by chance and that we may be wrong).¹⁶

Unless certain assumptions are met, statistical tests cannot be applied to the data and an error rate cannot be calculated. Most important of these assumptions in regard to, for example, survey research, is that the units of analysis (e.g., survey respondents) are randomly selected from the population, or in regard to an experiment, that the units of analysis (e.g., subjects) are randomly assigned to experimental (or study) and control (or comparison) groups.¹⁷ The results of properly conducted experiments and surveys are always couched in terms of an error rate.

However, in many cases, especially in field research, it is not possible to randomly assign units of analysis to an experimental group and a control group.¹⁸ This is universally true of "secondary effects" studies.¹⁹ It is not feasible to randomly assign exotic dance nightclubs to some locations in the

¹⁵ See, Robert R. Pagano, *Understanding Statistics in the Behavioral Sciences*. 215-216, 384 (5th ed. 1998). See also Geoffrey Keppel, *Design and Analysis: A Researcher's Handbook*. 164-165 (3rd ed. 1991); David C. Howell, *Statistical Methods for Psychology*. 349-350 (4th ed. 1997). See generally, Jacob Cohen & Patricia Cohen, *Applied Multiple Regression/Correlation Analysis for the Behavioral Sciences*. 166-176 (2nd ed. 1983) (discussing causes of type I and type II error and ways to correct for each).

¹⁶ Jacob Cohen & Patricia Cohen, *Applied Multiple Regression/Correlation Analysis for the Behavioral Sciences*. at 21 (2nd ed. 1983).

¹⁷ Earl Babbie, *The Practice of Social Research*. 202-210 (8th ed. 1998). See also, Royce A. Singleton, Jr., Bruce C. Straits, & Margaret Miller Straits, *Approaches to Social Research*. 136-151 (2nd ed. 1993).

¹⁸ Donald T Campbell & Julian C. Stanley, *Experimental and Quasi-experimental Designs for Research*. 34 (1963).

¹⁹ Obviously, it is not possible to randomly assign certain businesses to some neighborhoods and hold other neighborhoods as controls.

city and randomly assign other areas as control areas and then take account of whether crime increases or decreases around the clubs relative to the control areas.

When this is the case, adherence to a set of professional standards that have been devised by scientists in a particular area of inquiry to insure methodological integrity and thus the validity of a study is all the more necessary. These standards vary somewhat depending on the area of inquiry or social science discipline, but they are generally known as professional standards for conducting "quasi-experiments."²⁰

Secondary Crime Effects

The majority of the secondary effects studies reviewed generally assume the following form. Researchers assemble crime statistics and calculate average property values and other general measures of neighborhood quality or deterioration (e.g. residential turnover rate, local tax revenue, etc.) in the geographical area surrounding exotic dance entertainment businesses. In a few studies these measures are compared to other areas that do not contain an adult business. Another popular data gathering methodology is to perform a survey in which residents or business owners are asked for their opinions of the likely impact of adult entertainment businesses on their neighborhoods. The former type of study may be relevant to determining whether certain forms of establishments cause "adverse secondary effects" if conducted in accordance with sound scientific principles, while the latter arguably does not provide any empirical insight to this issue.²¹

In the present study, the impact of exotic dance clubs on the occurrence of crime is specifically considered. The discussion of acceptable scientific procedures is limited to those necessary to insure the proper implementation of such a crime study.

²⁰ See, Campbell & Stanley, *supra* note 68 at 34-71.

Three criteria are crucial in insuring that a scientifically valid study of secondary crime effects has been conducted. First, in order to insure accurate and fair comparisons, a control area must be selected that is truly "equivalent" to the area containing the exotic dance entertainment business(es).²² Since most analyses of secondary effects attempt to uncover increases in crime, professional standards dictate that the control (non-exotic dance) site must be comparable (matched) with the study (exotic dance) site on variables related to crime. Of particular importance are that the study and control areas are matched for ethnicity and socioeconomic status of individuals in both areas. A concerted effort should also be made to include only comparison areas with similar real estate market characteristics such as proportion of commercial and industrial space in either area. The study and control areas should also approximately equal in total population. Finally, because of the effect of businesses that serve alcoholic beverages on crime and neighborhood deterioration, the study and control area should be matched on the presence of alcohol serving establishments.²³ The reasons for these concerns are discussed later in this paper.

In summary, studies which employ a test group or area and a matched control group or area, are commonly referred to as "quasi-experimental" designs and the most important consideration in such a design is whether the comparison group or control group are well matched.

Second, a sufficient period of elapsed time, following the establishment of an exotic dance entertainment business, is necessary when compiling crime data in order to ensure that the study is not merely detecting an erratic pattern of social activity. Generally, the longer the time period for

²¹ See, n.9, *supra*.

²² See, Campbell and Stanley, *supra* note 68. See also, Babbie, *supra* note 67 at 213-214.

²³ See e.g., City of St. Paul, Minnesota, Neighborhood deterioration and the location of adult entertainment establishments in St. Paul. (1978).

observation of the events under consideration, the more stable (and more valid) the estimates of the event's effects tend to be.²⁴

Third, the crime rate must be measured according to the same valid source for all areas considered.²⁵ Studies of secondary effects typically focus on two general types of crime in relation to exotic dance entertainment businesses. These two types of crime are "general criminal activity" (including, but not limited to, robbery, theft, assault, disorderly conduct, and breaking and entering) and "crimes of a sexual nature" (including, but not limited to, rape, prostitution, child molestation, and indecent public exposure). It is especially important that the measurement of these crimes is based on the same information source for both sites and throughout the entire study period. For example, if the study area measures crime by the number and type of calls made to the police department, the comparison area must also rely on such a measure when the two areas are compared.

In addition, the crime information source must be factually valid and reliable such as a daily log kept by police, or a compilation of the number of calls for service made in a municipality recorded by street address or similar geographical locators.

Any change in police surveillance techniques regarding exotic dance entertainment businesses in a particular community must also be noted. Obviously, increased surveillance of an area simply because an exotic dance club is located there will have an impact on the amount of crime detected by the police. If increased police surveillance and the presence of an exotic dance club in a particular area are confounded in this way, it is impossible to tell whether crime has increased due to the presence of the club or simply because of the increased police activity.

²⁴ Royce A. Singleton, Bruce C. Straights, & Margaret M. Straights, *Approaches to Social Research*, at 213-241 (1993).

²⁵ See, Campbell & Stanley, *supra* note 68 at 5, 9.

Finally, an error rate must be calculated. The error rate is the degree of chance a scientist will allow. In the social sciences it is conventional to set the error rate at five percent or less (i.e., we will tolerate an error rate of 5 times out of 100 the results may be obtained by chance).

The Study of Negative Secondary Crime Effects in Fort Wayne, Indiana

The following criteria were applied to insure that a scientifically valid quasi-experimental study of secondary effects would be conducted in the city of Fort Wayne. First, in order to insure accurate and fair comparisons, comparison areas were selected that were equivalent to the areas surrounding the exotic dance entertainment businesses. Second, a sufficient period of time (over three years) was employed when compiling the crime data used in this investigation in order to ensure that the study was not merely detecting a temporary and erratic pattern of criminal activity. Third, the crime rate was measured according to the same valid source for all areas of the city considered and the crime information source was a factually valid compilation of the calls for service supplied by the City of Fort Wayne. Statistical analysis is undertaken where appropriate and an error rate is calculated to determine if any differences found between club and comparison areas are due to chance or true differences.

METHODS

A Quasi-Experimental Approach

It was not possible to randomly assign units of analysis to an experimental group and a control group to perform a "true" experiment to test the hypothesis that exotic dance nightclubs in Fort Wayne engender negative effects. However, as noted above, there is a set of professional standards that have been devised by social scientists to insure "methodological rigor" (procedural validity) in this situation. These standards are generally known as professional standards for conducting "quasi-experiments."

In order to insure accurate and fair comparisons, a control area must be selected that is truly “equivalent” to the area containing the adult entertainment business(es). Since in this study an attempt was made to uncover whether crime had increased in the areas surrounding the exotic dance nightclubs, professional standards dictate that the control (non-exotic dance) site must be comparable (matched) with the study (exotic dance) site on demographic and other variables that are generally regarded as being related to crime rates.

Matching club and comparison areas on demographic variables related to crime

In order to insure confidence in our results, it is particular importance that the study and comparison areas be matched for population ethnicity and age, two factors that are known to be related to crime rates. The socioeconomic status of individuals in both areas must also be considered and the study and comparison areas must be matched on these variables as well. For example, Cohen, Gorr, and Olligschlaeger²⁶ have found that crime hotspots tended to be in areas with higher levels of poverty.

The number of female-headed households and total divorced residents in each area should also be taken into account. This is because Cohen, Gorr, and Olligschlaeger found that crime hotspots tended to be associated with low family cohesion.²⁷

The study and control areas should also be approximately equal in total population both in order to control for the effects of population density on crime and to correct for rate of crime.

A concerted effort should also be made to include only comparison areas with similar real estate market characteristics, such as proportion of commercial and industrial space in either area. Higher levels of crime tend to plague places with certain types of facilities and not others. In some

²⁶ Jacqueline Cohen, Wilpen Gorr, and Andreas Olligschlaeger. *Modelling street-level illicit drug markets*. Working paper 93-64, The H. John Heinz III School of Pub. Pol. and Mngmt., Carnegie Mellon University, Pittsburgh (1993).

²⁷ See, Id.

cases, for example, crimes seem to be elevated by a target rich environment—for example, thefts of 24-hour convenience stores, auto thefts from large parking lots, or robberies from shoppers in heavily frequented commercial areas.²⁸ (Engstad 1975; Duffala 1976).

Finally, because of the effect of businesses that serve alcoholic beverages on crime and neighborhood deterioration, the study and control area should be matched on the presence of alcohol serving establishments such as bars and taverns. Certain activities such as alcohol consumption seem to contribute to levels of violence²⁹

All of these various attempts to “match” the subject and control areas are critical in order to insure that the results we obtain can be ascribed to the presence or absence of (in this case) an exotic dance nightclub, and not to some other irrelevant factor.

Establishing Matched Comparison Locations

In order to insure that the research reported here utilized appropriately “matched” exotic dance club (study) and non-club (comparison) areas, a crime mapping approach was utilized. A 1000 feet area was identified as surrounding each of eight exotic dance nightclubs in Fort Wayne, Indiana.

Comparison areas, each 1000 feet in radius were selected by using a set of neighborhood demographic features that matched with the exotic dance business areas on the basis of demographic features known to be related to crime, and by further matching areas on the basis of commercial property composition.

²⁸ P. A. Engstad. *Environmental opportunities and the ecology of crime*. Crime in Canadian Society. (1975); D. C. Duffala. Convenience stores, armed robber, and physical environmental features. *American Behavioral Scientist*, 20: 227-246. (1976).

²⁹ Dennis W. Roncek and M. A. Pravatiner. Additional evidence that taverns enhance nearby crime. *Sociology and Social Research*, 70; 185-188; Richard Block and Carolyn Block. Space, place, and crime: Hot-spot areas and hot places of liquor-related crime. In *Crime and Place*, edited by J.E. Eck and D. Weisburd. Vol. 4 of *Crime prevention studies*. Monsey, New York: Criminal Justice Press.

The following demographic variables were chosen for matching control and exotic dance club sites because of their established empirical relationship with criminal activity: Number of female headed households, total population (1997), total number of white residents, total number of black residents, residents aged 18-29, total divorced residents and median household income. Each of these variables was identified at the U.S. Census block level.

The geographic information system computer program, Maptitude, was used to locate the census block within which each club was located. The values on each of the demographic variables were identified for the census block within which the exotic dance nightclub was located. A comparable block, matched for values on the crime variables, was then selected via Maptitude. When study or comparison areas fell across more than one census block, a mean for all of the blocks involved was calculated to determine the value of each demographic variable. All control areas were selected before the crime data was obtained and thus before any analysis of the crime data was undertaken.

Table 1 displays a comparison of the values for the demographic characteristics measured at the census block level for the club locations and the control locations to which they were matched. The average level of each variable (summed across locations) for the club areas and the control areas are presented in **Table 2**. Looking at the table reveals, for example, that the exotic dance nightclub area census blocks had an average of 88 female-headed households, while the comparison or control area blocks had approximately 73 similar households. Or, to take another example from the Table, the 1997 median household income level for the comparison area was approximately \$34,270, while the club area income level was approximately \$33,505.

A statistical analysis was undertaken to insure that the eight club and eight comparison locations did not differ significantly from each other in terms of the demographic variables chosen for matching. A t-test for equality of means for independent samples was undertaken for the comparison

and club areas for each demographic variable. None of these tests reached statistical significance ($p < .05$) (see **Table 3**) meaning that, on average, the comparison and exotic dance club areas did not statistically differ from one another, and were therefore well matched. This helps ensure that any differences that we might later uncover in the number of calls for service are the result of the presence or absence of these exotic dance clubs, and not the result of some other factor.

Figure 1 presents a map of the central Fort Wayne area and shows the location of the exotic dance clubs in the Fort Wayne area; including the 1000 feet radius around each club location. Also displayed in **Figure 1** are the areas located by Maptitude that are matched to the club areas by the demographic variables related to crime.

Measuring Crime

Calls for service for crimes that were presumed to be related to exotic dance establishments in several of the more methodologically sound studies conducted by other municipalities were included in our examination. These included: 1) Sex crimes (rape, molestation, indecent exposure, sexual battery), 2) aggression related non-sexual offenses (shootings, fights, non-sexual battery, disturbances), and 3) thefts, burglaries and robberies. Over 39,000 calls for service to the police for a three-year-ten-month period from January 1997 to October, 2000, were obtained from the City of Fort Wayne crime records division and examined. Only those incidents for which calls for service were made and later not based on unfounded charges were included in the study. A listing of all crimes included in the study and their location are available by computer disk from the authors.

RESULTS

Table 4 displays the calls for service undertaken by the Fort Wayne police within a 1000 feet radius of the eight exotic dance nightclubs and the matched comparison areas. For two of the overall

arrest categories, a) sex crimes, and c) thefts, burglaries and robberies, the number of calls for service were remarkably similar. The additional arrest category, aggression related non-sexual offenses, displayed a markedly different pattern.

Inspection of the table reveals that for crimes presumed to be especially likely to be related to exotic dance entertainment establishments, such as rape, molestation, indecent exposure and sexual battery, the number of crimes was nearly identical in the areas surrounding the exotic dance nightclubs and the comparison areas (a total of 42 in the club areas and 43 in the matched comparison areas).

In order to form a visual representation of the pattern of calls for service for sex-related crimes in Fort Wayne, generally, and the location of sex crime calls for service within the 1000 foot radius of the exotic dance clubs calls for service and in the matched comparison areas, the geographical location of the sex related calls for service were plotted on a map of the city. These locations are presented in **Figure 2**. A closer inspection of the street addresses for calls for service in the vicinity of an example club and its comparison area can be found in **Figure 3**.

For the aggression related non-sexual offenses, categories including shootings, fights, nonsexual battery and disturbances, the results indicated greater frequencies of arrest in the comparison areas compared to the club areas (a total of 111 in the club areas and 245 in the matched comparison areas). However, calls for service for thefts, burglaries and robberies were more comparable to one another in the club and comparison areas (a total 467 for the club areas and 424 in the matched comparison areas).

Overall, summing across all of the crime categories there were a total of 620 calls for service in the exotic dance club areas and 712 calls for service in the comparison areas.

Table 5 displays the citywide total for calls for service within each crime category for the three-year period. It is useful to calculate the number of calls for service that are attributed to the exotic

15-67

dance club areas as a percentage or proportion of the total number of calls for service for the city of Fort Wayne as a whole. Expressed this way, it may be noted that the areas surrounding the exotic dance clubs accounted for only 42 of a total of 1732 sex crimes in Fort Wayne, or approximately 2 percent of the total. The areas around the exotic dance clubs were locations for approximately four-percent of the total aggression related nonsexual offenses, while the comparison areas were the locations for twice as many calls for service over eight percent of the total calls for service in this crime category. Finally, the areas around the exotic dance clubs accounted for approximately three-percent of the total number of thefts burglaries and robberies in the city. This percentage was a similar proportion of the total as that accounted for by the comparison areas.

SUMMARY AND IMPLICATIONS

An empirical study of criminal activity surrounding exotic dance nightclubs in Fort Wayne, Indiana, was undertaken. The present investigation, unlike most others of adverse secondary effects, adhered to the basic requirements set out by the Supreme Court for the proper conduct of a social scientific inquiry. A quasi-experimental approach was undertaken in which areas surrounding the exotic dance clubs and comparison (control) areas were examined. In order to insure accurate, fair and useful comparisons, control areas were selected that were equivalent to the areas surrounding the exotic dance entertainment businesses. A sufficient period of elapsed time was employed when considering arrest data to ensure that the study did not merely detect a temporary or erratic pattern of crime activity. To this end, information on calls for service for a three-year period was obtained from the City of Fort Wayne.

A 1000 feet circumference surrounding each of eight exotic dance nightclubs in Fort Wayne was examined for the number of police calls for service occurring over a three-year period.

15-68

Comparison areas were selected in the Fort Wayne area and matched to the club areas on the basis of demographic features known to be related to crime.

The number of calls for service in the areas surrounding the exotic dance nightclubs was then compared to the number of calls for service found in the matched comparison areas. The crimes in our examination included: 1) Sex crimes (rape, molestation, indecent exposure, sexual battery); 2) aggression related non-sexual offenses (shootings, fights, non-sexual battery, disturbances); and 3) thefts, burglaries and robberies.

An analysis showed that for crimes presumed to be especially likely to be related to adult entertainment establishments, such as rape, molestation, indent exposure and sexual battery, the number of calls for service for such crimes was nearly identical in the areas surrounding the exotic dance nightclubs and the comparison areas. For the aggression related non-sexual offenses, the results indicated greater frequencies of arrest in the comparison areas compared to the club areas. In fact, the percentage of calls for service as a function of the total calls for service made in the city for these crimes was twice as high in the comparison areas as in the club areas. However, the thefts, burglaries and robberies arrest frequencies were more comparable to one another.

It must be concluded that there is no empirical evidence for the presence of adverse secondary effects, in the form of crime, surrounding exotic dance businesses in Fort Wayne. The assumption that such effects exist and that a community may regulate these establishments on the basis of adverse secondary effects is therefore not substantiated in the present study.

In addition, it is further concluded that unlike the general types of alcohol facilities (bars and taverns) which do not present "adult" or exotic forms of entertainment, but which are generally associated with elevated levels of criminal activity, the exotic dance nightclubs in Fort Wayne do not demonstrate any empirical connection to the "adverse secondary effect" of elevated crime rates.

Social Theories of Crime Location

There is neither sound sociological theorizing nor empirical research to substantiate the idea that crime would occur disproportionately in the areas immediately surrounding “adult” businesses.

Recently, there has been a resurgence of interest in crime “places”-- the geographical location of crime -- among criminologists. This interest spans theory from the perspective of understanding the etiology of crime, and practice from the perspective of developing effective criminal justice interventions to reduce crime. For example, in Routine Activities Theory, first introduced in Cohen and Felson (1979), later refined in Felson (1986, 1994), and extended to crime pattern theory in Brantingham and Brantingham (1993), location or “place” is central to an understanding of crime patterns. A particular geographical location may serve as a locus where motivated offenders come together with desirable targets in the absence of crime suppressors (who include guardians, intimate handlers (Felson 1986), and place managers (Eck, 1994). In this theorizing, the convergence of crime opportunities in certain places is facilitated by both physical and social features. These features provide a context or setting that is more or less conducive to crime (Clarke 1992).

The data obtained in the present study, consistent with these ideas about features of certain places and increased crime, indicate that there is little difference between the exotic dance nightclub areas and comparison areas especially in regard to sex-related crimes and property crimes. These clubs do not appear to be locations where, as criminologists term it, potential sex offenders gather to prey on desirable targets in the absence of crime suppressors, such as place managers.

The extensive management of the parking lots adjoining the exotic dance nightclubs, in many cases including guards in the parking lots, valet parking and other control mechanisms, reduces the possibility of disputes in the surrounding area. In addition, unlike other liquor serving establishments (bars and taverns), disputes in the areas surrounding these exotic dance clubs between men regarding

unwanted attention by other males to dates or partners are minimal due to the fact that the majority of patrons attend the clubs without female partners. Further, security measures inside the clubs reduce the potential for skirmishes among customers.

The possibility of interpersonal aggression may be greatly reduced in the vicinity of exotic dance clubs, compared to most other locations where adults congregate, such as bars or taverns that do not feature exotic dancing. The finding of a greater frequency of calls for service for nonsexual offenses in the comparison areas, compared to the club areas, suggests that the control mechanisms found in the exotic dance locations that may prevent criminal activity may not be present in the comparison locations. Liquor serving establishments in the comparison areas may not maintain high levels of parking lot and other customer security measures. This lack of crime suppressing features for bars and taverns may account for the higher levels of arrest in the comparison areas.

Implications of the Pap's A.M. Decision for the Consideration of Secondary Effects Studies

It has been demonstrated through this study that there is a sufficient basis for a serious challenge to the assumption that there is an empirical relationship between exotic dance businesses and at least one kind of negative secondary effect, specifically increases in crime. Further, this conclusion is based on research procedures that adhere to long-standing and well-accepted methodological procedures for insuring sound scientific conclusions.

In *Pap's*, Justice O'Connor provides room for challenges, based on the collection of empirical evidence, to the assertions made by municipalities regarding a relationship between adverse secondary effects and nude dancing. She noted that the adult business in question in *Pap's* (Kandyland) could have challenged the city of Erie's assertion that nudity led to ill effects, but did not do so.²³ This leaves room for the introduction of secondary effects evidence, such as that collected in the present quasi-

²³ *Pap's*, *supra* note 5 at 17 (plurality opinion).

experimental investigation, by businesses both in city council hearings and in any subsequent court litigation.

In order to remain consistent with the Supreme Court's holding in *Pap's*, lower courts will be required to consider the methodological legitimacy of evidence of a relationship between negative secondary effects and the subject businesses collected both by governments and by those business owners who attempt to challenge government ordinances restricting their establishments.

In evaluating the admissibility of this evidence, the courts are best served by turning to standards laid out in *Daubert* for the admissibility of scientific evidence. The study presented here meets such standards for admissibility. The application of such standards, bolstered by Justice Souter's opinion in *Pap's*, may force courts to reject studies that have been previously relied upon as evidence of negative secondary effects, and require new, more methodologically sound, studies to demonstrate the necessity for regulations directed at the exotic dance industry. The courts should be mindful of the criteria laid out above for collecting empirical evidence in a methodologically sound manner. Specifically, only evidence obtained using relatively closely matched comparison and study areas, or a comparable procedure, may be acceptable.

Table 1: Comparison of the club locations and the matched control locations on the variables related to crime.

	CONDITON	FEMALE HEAD OF HOUSE HOLD	TOTAL POPULATION 1997	WHITE	BLACK	AGE 18-29	TOTAL DIVORCED IN POPULATION 1997	INCOME 1997
randy's	1.00	177.00	5503.00	5309.00	128.00	1005.00	579.00	37488.00
randy's control	.00	112.00	4055.00	3667.00	275.00	902.00	379.00	46716.00
agney's Showclub	1.00	61.00	2233.00	2103.00	78.00	350.00	164.00	38547.00
agney's Showclub control area	.00	70.00	1374.00	1516.00	104.00	211.00	137.00	34912.00
li's	1.00	20.00	1582.00	1426.00	90.00	456.00	172.00	39025.00
li's control area	.00	30.00	1455.00	1332.00	74.00	364.00	168.00	36973.00
air A Dice	1.00	82.00	895.00	453.00	411.00	145.00	83.00	27798.00
air A Dice control area	.00	71.00	897.00	364.00	492.00	141.00	77.00	26293.00
oor John's	1.00	18.50	284.00	195.00	74.00	57.00	43.00	21900.00
oor John's control area	.00	15.00	310.00	195.00	109.00	40.00	51.00	20190.00
howgirl 1	1.00	177.00	5503.00	5309.00	128.00	1005.00	579.00	37488.00
howgirl 1 control area	.00	112.00	4055.00	3667.00	275.00	902.00	379.00	46716.00
howgirl 3	1.00	109.00	1649.00	1501.00	85.00	265.00	191.00	33147.00
howgirl 3 control area	.00	119.00	1599.00	1449.00	93.00	125.00	212.00	31408.00
tewie's	1.00	60.00	681.00	604.00	57.00	178.00	96.00	32647.00
tewie's control area	.00	56.00	624.00	577.00	32.00	146.00	92.00	30959.00

15-73

Table 2. Average values (means) for demographic variables averaged across exotic dance nightclub and comparison areas.

	Condition	N	Mean	Std. Deviation	Std. Error Mean
Female Head of Household 1990	Comparison area	8	73.1250	39.0474	13.8053
	Club area	8	88.0625	62.4342	22.0738
Estimated 1997 population	Comparison area	8	1796.1250	1460.3971	516.3283
	Club area	8	2291.2500	2074.3695	733.4004
Number of households 1997	Comparison area	8	772.1250	583.7914	206.4014
	Club area	8	946.0000	824.2210	291.4061
WHITE	Comparison area	8	1595.8750	1372.9412	485.4080
	Club area	8	2112.5000	2069.7428	731.7646
BLACK	Comparison area	8	181.7500	154.4092	54.5919
	Club area	8	131.3750	115.7262	40.9154
People aged 18 - 29	Comparison area	8	353.8750	350.6783	123.9835
	Club area	8	432.6250	374.0424	132.2439
Divorced males and females in 1997	Comparison area	8	186.8750	129.1925	45.6764
	Club area	8	238.3750	216.0740	76.3937
1997 median household income	Comparison area	8	34270.8750	9247.0605	3269.3296
	Club area	8	33505.0000	6044.2528	2136.9661

Table 3. Statistical tests (t-tests) for demographic variables used to match club and comparison areas.

	t value	df	Sig. (2-tailed)	Mean Difference
Female Head of Household 1990	-.574	14	.575	-14.9375
Estimated 1997 population	-.552	14	.590	-495.1250
Number of households 1997	-.487	14	.634	-173.8750
WHITE	-.588	14	.566	-516.6250
BLACK	.738	14	.472	50.3750
People aged 18 – 29	-.434	14	.671	-78.7500
Divorced males and females in 1997	-.579	14	.572	-51.5000
1997 median household income	.196	14	.847	765.8750

15-75

Table 4. Calls for service in the city Fort Wayne generally and in exotic dance nightclub and matched comparison areas by crime type.

Sex Crimes	Club	Comparison	City-wide Total
Rapes	6	10	432
Molesting	6	6	677
Indecent exposure	29	22	590
Sexual battery	1	5	33
Total	42	43	1732
Additional Aggression Related Non-sexual Offenses			
Shootings	2	6	284
Fights	14	75	341
Non-sexual battery	18	61	887
Disturbance	77	103	1398
Total	111	245	2910
Thefts, Burglaries & Robberies			
Theft from buildings	277	226	3476
Theft -bikes	10	16	1232
Burglaries	116	129	7238
Robberies w/ firearm	39	33	882
Robberies w/o firearm	25	20	1215
Total	467	424	14043
Overall Reported Offenses	620	712	18685

Table 5. Percentage of calls for service in club and comparison areas as a function of total calls for service for sex crimes; additional aggression related non-sexual offenses; and thefts, burglaries and robberies.

	Club	Comparison	Total
Sex Crimes			
Total	42	43	1732
Percentage of sex crimes total	2.4%	2.4%	
Additional Aggression Related Non-sexual Offenses			
Total	111	245	2910
Percentage of aggression related non-sexual total	3.8%	8.4%	
Thefts, Burglaries & Robberies			
Total	467	424	14043
Percentage of thefts, burglaries & robberies	3.3%	3.0%	
Overall Reported Offenses			
Percentage of overall reported offenses	3.3%	3.8%	

15-77
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Figure 1. Location of the exotic dance clubs in the Fort Wayne area (including the 1000 feet radius around each club) and areas matched to the club areas by the demographic variables related to crime.

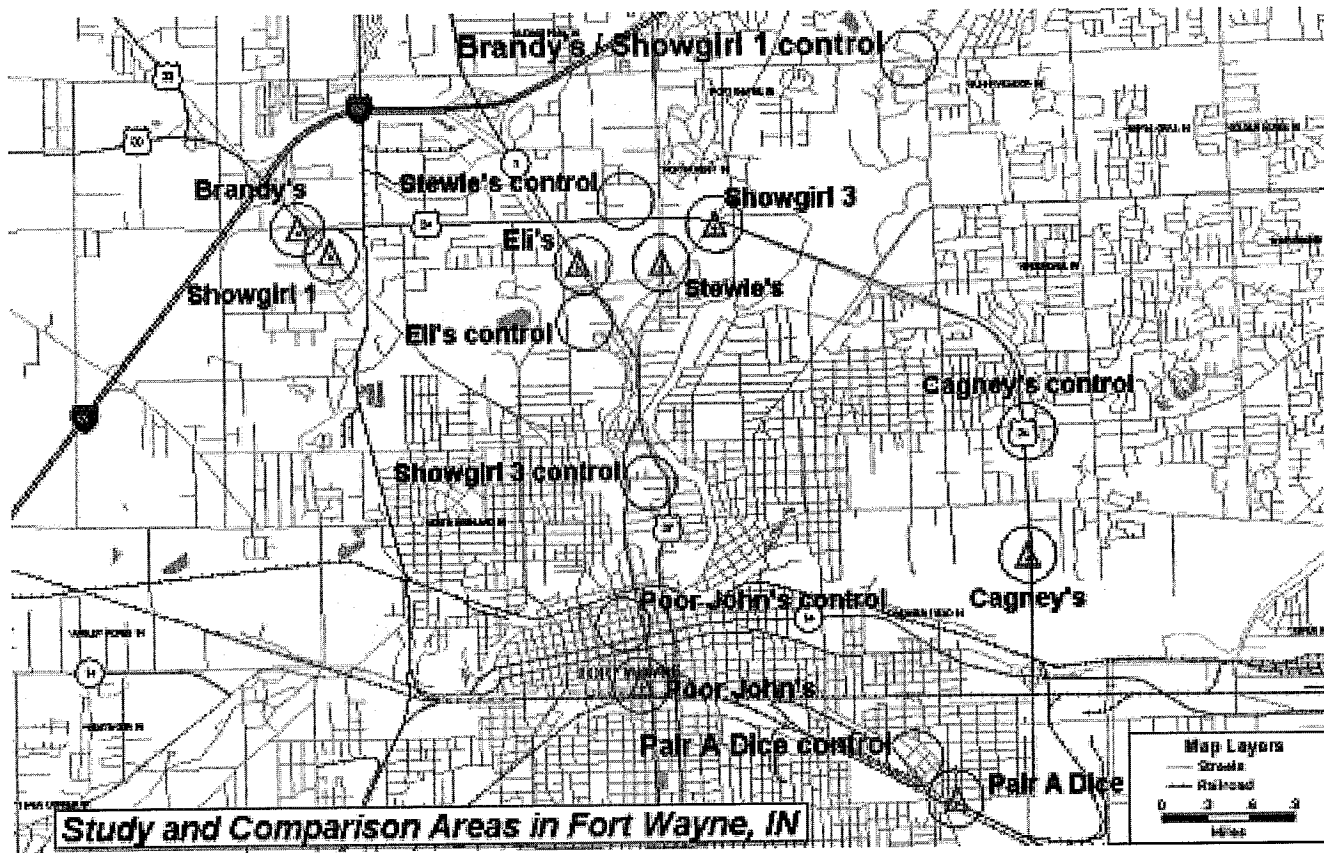
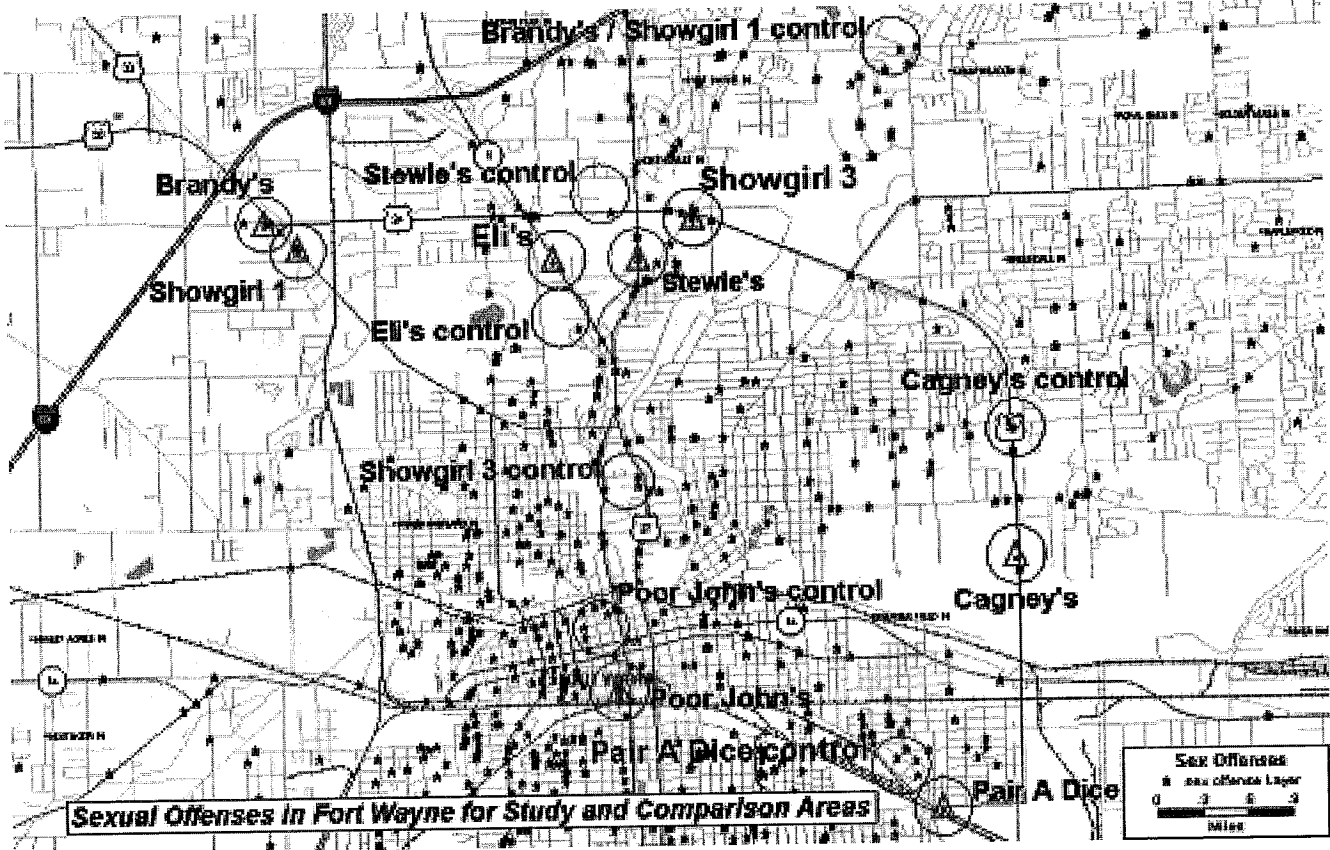
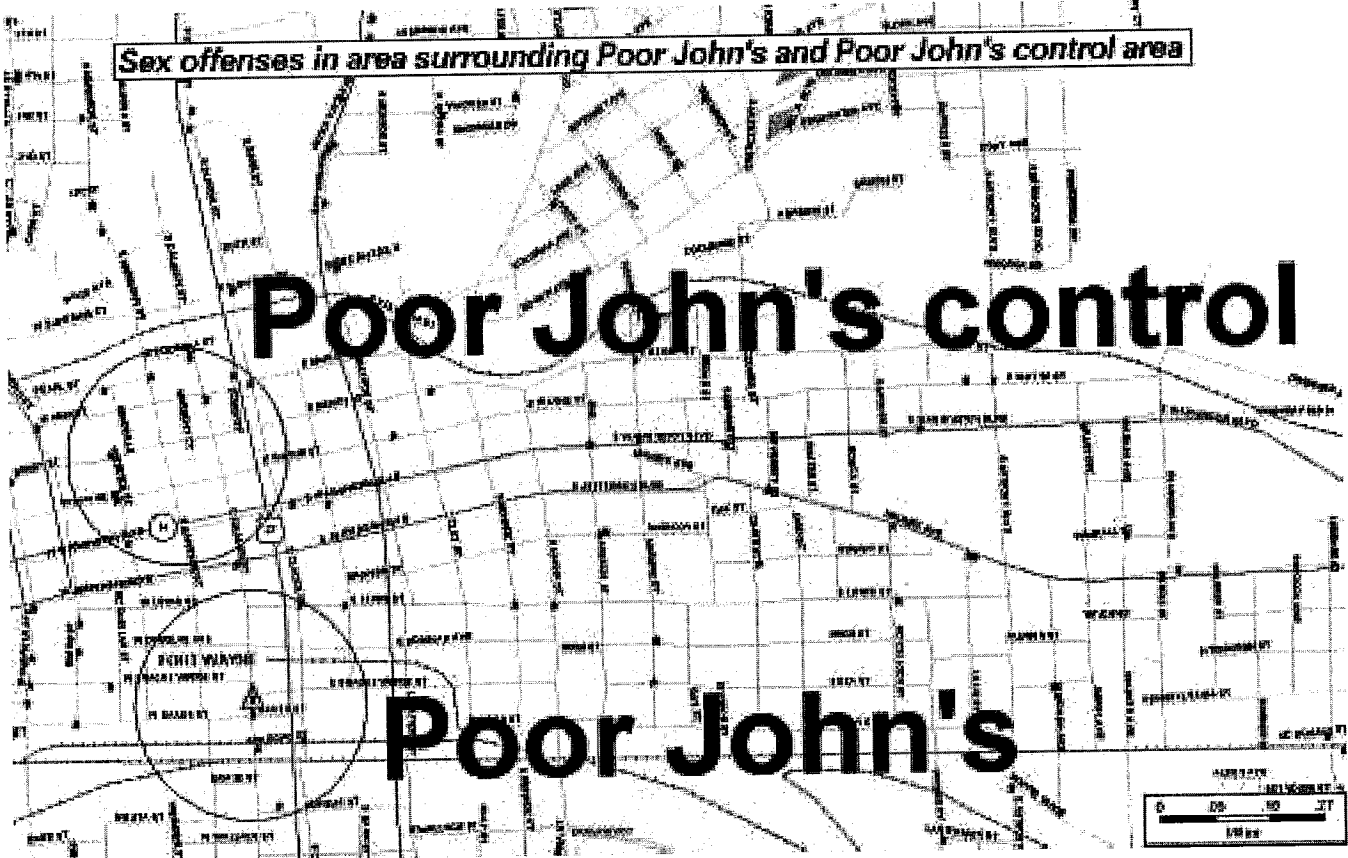


Figure 2. Geographical location of the of calls for service for sex-related crimes in Fort Wayne, generally, and the location of sex crime calls for service within the 1000 feet radius of the exotic dance clubs calls for service and in the matched comparison areas.



15-79

Figure 3. Geographical location of the calls for service for sex-related crimes in Fort Wayne for a selected exotic dance club and its matched comparison area.



15-80

An Examination of the Assumption that Adult Businesses Are Associated with Crime in Surrounding Areas: A Secondary Effects Study in Charlotte, North Carolina

Daniel Linz
Kenneth C. Land
Jay R. Williams

Bryant Paul
Michael E. Ezell

Recent Supreme Court decisions have signaled the need for sound empirical studies of the secondary effects of adult businesses on the surrounding areas for use in conjunction with local zoning restrictions. This study seeks to determine whether a relationship exists between adult erotic dance clubs and negative secondary effects in the form of increased numbers of crimes reported in the areas surrounding the adult businesses, in Charlotte, North Carolina. For each of 20 businesses, a control site (matched on the basis of demographic characteristics related to crime risk) is compared for crime events over the period of three years (1998–2000) using data on crime incidents reported to the police. We find that the presence of an adult nightclub does not increase the number of crime incidents reported in localized areas surrounding the club (defined by circular areas of 500- and 1,000-foot radii) as compared to the number of crime incidents reported in comparable localized areas that do not contain such an adult business. Indeed, the analyses imply the opposite, namely, that the nearby areas surrounding the adult business sites have smaller numbers of reported crime incidents than do corresponding areas surrounding the three control sites studied. These findings are interpreted in terms of the business mandates of profitability and continuity of existence of the businesses.

Introduction

In a 1977 ABC News Special entitled *Sex for Sale: The Urban Battleground*, Howard K. Smith concluded a segment with the following:

We thank John Couchell, Assistant Director, Strategic Planning & Analysis, Charlotte-Mecklenburg Police Department for providing the data analyzed in this study and for helpful advice. Any inadequacies of analysis or errors of interpretation are, however, solely the responsibility of the authors of this article. Address all correspondence to Daniel Linz, Professor, Department of Communication and the Law and Society Program, University of California, Santa Barbara, CA 93106; e-mail: linz@comm.ucsb.edu.

Commercial sex is often called a victimless crime. We have shown that a glomeration of sex businesses, in fact, have many victims. Residents move out of the areas from fear, customers desert legitimate shops which have to sell out at a loss. City dwellers are victimized by having to pay more taxes to make up for the areas that are in arrears because of sex businesses. In the spreading decay, muggers, dope pushers move in. It's harder to spot their crimes in a general sea of rot. Police and courts tend to give up. Civilization living by rules moves out and we're all victims. Better solutions may emerge, but for now the Detroit plan is the best in sight. Leave aside individual arrests for obscenity, which the law seems to have an impossible time defining. Pass a zoning law allowing no sex-related establishment or service to exist within three blocks, say, of any other. Let none become the nucleus for a cancerous spread.

In the summer of 1976, the city of Detroit, Michigan introduced zoning laws designed to break up the concentrated areas containing sex-related "adult" businesses.¹ The assumption driving the dispersion of concentrated adult businesses was the presumed negative "secondary effects" of these businesses on the surrounding neighborhood. Enthusiasm for the Detroit zoning approach quickly spread to other cities.

This diffusion of the Detroit zoning approach throughout the nation over the last 25 years has produced a continuing history of constitutional litigation. Since 1976, the Supreme Court has decided a series of cases focusing on whether the free speech clause of the First Amendment allows cities and states to enact legislation controlling the location of adult businesses on the basis of presumed negative secondary effects.²

The Court's Presumption of Adverse Secondary Effects

The rationale for the secondary effects doctrine was most completely laid out in *Renton v. Playtime Theatres, Inc.*, in 1986. In *Renton*, the Supreme Court considered the validity of a Renton municipal ordinance that prohibited any adult theater from locating within 1,000 feet of any residential zone, family dwelling, church, park, or school. The Court's analysis of the ordinance proceeded in three steps. First, the Court found that the Renton ordinance did not ban adult theaters altogether, but merely required that they be a certain distance from so-called "sensitive locations." The ordinance, the Court said, was properly considered

¹ "Adult" or "adult-oriented" or "sex-related" businesses may include pornography stores, massage parlors, and topless or nude dance nightclubs. In the present study, the adult businesses studied are topless nightclubs, also known as "gentlemen's clubs."

² See, e.g., *Young v. American Mini Theatres, Inc.*, 427 U.S. 50 (1976); *City of Renton v. Playtime Theatres Inc.*, 475 U.S. 41 (1986).

to be a time, place, and manner regulation. The Court next considered whether the ordinance was content neutral or content based. If the regulation were content based, it would be considered presumptively invalid and subject to the "strict scrutiny" standard. The Court held, however, that the ordinance was not aimed at the content of the films shown at adult theaters, but rather at the secondary effects of such theaters on the surrounding community, namely at crime rates, property values, and the quality of the city's neighborhoods. Given this finding, the Court stated that the ordinance would be upheld as long as the city of Renton showed that its ordinance was designed to serve a substantial government interest such as a reducing crime rates or maintaining property values.

Further, in *Renton* the Court stated, for the first time, that a city interested in restricting the operation of adult businesses was not required to show adverse impact from operation of adult theaters in its own community if no data on adverse impacts existed, but could instead rely on findings of impacts from other cities as a rationale for supporting passage of an ordinance. The Court ruled that Renton could rely on the experiences of and studies produced by the nearby city of Seattle as evidence of a relationship between adult uses and negative secondary effects. Thus, the Court ruled that the First Amendment does not require a city to conduct new studies or produce new evidence before enacting an ordinance, as long as the evidence relied upon is reasonably believed to be relevant to the problem the city faces.

Since *Renton*, a number of cities, counties, and states have undertaken investigations designed to establish the presence of such secondary effects and their connection to adult facilities. These studies have, in turn, been shared with other municipalities and generally serve as the basis for claims that adult entertainment establishments are causally related to harmful secondary side effects, such as increased crime and decreases in property values. Many local governments have relied on this body of information as evidence of the secondary effects of adult businesses. Further, in most cases, cities and other governmental agencies have used the findings of a core set of studies from other locales as a rationale for instituting regulation of such businesses in their own communities.

In more recent years, the Court has considered the constitutionality of anti-nudity ordinances passed by municipalities or states that have relied on negative secondary effects to justify the legislation.³ In a fractured decision issued in 1991, the Court in *Barnes v. Glens Theatre Inc.* held that the state of Indiana could

³ See e.g., *Barnes v. Glens Theatre Inc.*, 501 U.S. 560 (1991); *City of Erie v. Pap's A.M.*, 529 U.S. 277 (2000).

regulate public nudity.⁴ Justice Souter in a concurring opinion ruled that the government could undertake such regulation on the basis of the *presumed* negative secondary effects on the surrounding community.⁵

In the 2000 decision *City of Erie v. Pap's A.M.*, the Court again held that municipalities have the right to pass anti-nudity ordinances on the assumption that nudity is associated with adverse secondary effects such as crime.⁶ Again, the Court was fractured; however, three justices agreed with Justice O'Connor's opinion that in conformity with Justice Souter's concurrence in *Barnes*, combating negative secondary effects associated with adult businesses was a legitimate basis for the imposition of anti-nudity regulations.

Most notable for our purposes, however, was Justice Souter's partial concurrence and partial dissent in the *Pap's* decision. He significantly revised the position he took regarding the assumption of secondary effects in *Barnes*. In *Pap's*, Justice Souter said he was now of the opinion that the evidence of a relationship between adult businesses and negative secondary effects is at best inconclusive.⁷ He called into question the reliability of past studies that purported to demonstrate these effects and suggested that municipalities wishing to ban nudity must show evidence of a relationship between adult businesses and negative effects.⁸

Most recently (2002) Justice O'Connor, joined by the Chief Justice, Justice Scalia, and Justice Thomas (with Justice Kennedy's concurrence) concluded that the city of Los Angeles may reasonably rely on its 1977 study to demonstrate that its present ban on multiple-use establishments serves the city's interest in reducing crime. In *City of Los Angeles v. Alameda Books, Inc., et al.*, the Court maintained that it was "reasonable for Los Angeles to suppose that a concentration of adult establishments is correlated with high crime rates because a concentration of operations in one locale draws, for example, a greater concentration of adult consumers to the neighborhood, and a high density of such consumers either attracts or generates criminal activity." Justice Kennedy, whose opinion may be the controlling one in the case, reiterated the assumption that adult businesses cause negative secondary effects. In his opinion in *Alameda* he asserts, "municipal governments know that high concentrations of adult businesses can damage the value and integrity of a neighborhood. The damage is measurable; it is

⁴ *Barnes v. Glens Theatre Inc.*, 501 U.S. 560 (1991) (hereinafter *Barnes*).

⁵ As will be discussed in depth below, restrictions on erotic dance have typically included requiring dancers to wear at least pasties and a G-string when performing.

⁶ *City of Erie v. Pap's A.M.*, 529 U.S. 277 (2000) (hereinafter *Pap's*).

⁷ *Id.* at 6-7 (Souter, D. concurring in part dissenting in part).

⁸ *Id.* at 5 n.3.

all too real.” The Court held that a municipality may rely on any evidence that is reasonably believed to be relevant for demonstrating a connection between speech and a substantial, independent government interest.

However, the plurality added an important methodological caveat concerning the evidence necessary to validate the assumption that adult businesses cause secondary effects. The Court warned:

“This is not to say that a municipality can get away with shoddy data or reasoning. The municipality’s evidence must fairly support its rationale for its ordinance. If plaintiffs fail to 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, the municipality meets the *Renton* standard. If plaintiffs succeed 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.”

Empirically Testing the Assumption of Secondary Effects from Adult Businesses

Justice Souter, joined by Justice Ginsburg, Justice Breyer, and Justice Stevens, took the admonishment by the plurality in *Alameda* that municipalities cannot rely on methodologically frail demonstrations of secondary effects a step further. Justice Souter faulted the city of Los Angeles because the city did not demonstrate that its theory that regulation requiring adult establishments disburse and be operated as free standing businesses will reduce crime. Justice Souter asked the city to demonstrate, not merely by appeal to common sense *but also with empirical data*, that adult businesses are associated with crime and that its ordinance will successfully lower crime.

In fact, Justice Souter claims that the only way to avoid a zoning ordinance such as that passed in Los Angeles from being unconstitutional due to the lack of content neutrality, a requirement set out in *Renton*, is to conduct empirical evaluations of whether such effects, assumed in the past, actually exist. He notes in *Alameda*:

“(the) risk of viewpoint discrimination is subject to a relatively simple safeguard, however. If combating secondary effects of property devaluation and crime is truly the reason for regulation, it is possible to show by empirical evidence that the effects exist, that they are caused by the expressive activity subject to zoning, and that the zoning can be expected either to ameliorate them or to enhance the capacity of the government to combat them . . .”

The Present Study

The first purpose of the present study is to conduct the type of empirical study demanded by Justice Souter and noted to be relevant by Justice O'Connor and the other justices in *Pap's*. Also, it is designed to avoid the collection of "shoddy data" or the use of (shoddy) "reasoning" as demanded in *Alameda Books*, in order to determine if a relationship exists between adult businesses and negative secondary effects, or whether, as Justice Souter has contended, such a relationship must not be assumed. Further, this evidence is obtained in accordance with established methodological procedures so as to insure a high level of scientific reliability.

Past studies claim to have found crime but lack the essential methodological features necessary to validly make such a claim. Paul, Linz, and Shafer (2001) found numerous problems among the most frequently cited studies by communities across the United States. For example, the Indianapolis, Indiana study (1986) failed to properly match study and control areas on variables, the Phoenix, Arizona study (1979) relied on crime data collected for only a one-year period, and in the Los Angeles study (1977) authors admitted that the police stepped up surveillance of adult businesses during the study period. Each of these methodological problems severely limits the utility of these studies.⁹

⁹ As we noted above, the Court in *Alameda* warned that a municipality cannot get away with shoddy data or reasoning. The municipality's evidence must fairly support its rationale for its ordinance. What methodological features of an inquiry may prevent the collection of reliable data and sound reasoning concerning secondary effects? Unfortunately, when municipalities have conducted studies of crime and adult businesses in the past, there has not been a set of methodological criteria or minimum scientific standards to which the cities were required to adhere. Paul, Linz, and Shafer (2001) have argued that, without such standards, most cities that have passed legislation are relying on methodologically flawed data and research.

The basic requirements for the acceptance of scientific evidence for legal decision making were prescribed by the Supreme Court in the 1993 case of *Daubert v. Merrell Dow*, 509 U.S. 579 (1993). In *Daubert*, Justice Blackmun, writing for the Court, held that there are certain limits on the admissibility of scientific evidence offered by "expert witnesses" in federal courts. In an attempt to prevent the proliferation in courtrooms of what Peter Huber has called "junk science" and what the Supreme Court is now calling "shoddy data or reasoning," the Supreme Court in *Daubert* opined that scientific knowledge must be grounded "in the methods and procedures of science," and must be based on more than "subjective belief or unsupported speculation." Thus, the Court said, "the requirement that an expert's testimony pertain to 'scientific knowledge' establishes a standard of evidentiary reliability." The Court observed that "[i]n a case involving scientific evidence, evidentiary reliability will be based upon scientific validity."

Offering "some general observations" as to how this connection can be made, the Court provided a list of factors that federal judges could consider in ruling on a proffer of expert scientific testimony: (1) the "key question" is whether the theory or technique under scrutiny is testable, borrowing Karl Popper's notion of falsifiability (Popper 1959); (2) although publication was not an absolute essential, the Court noted that peer review and publication increased "the likelihood that substantive flaws in methodology will be detected"; (3) an error rate or estimate of the probability that empirical relationships are due to chance should be calculated; (4) adherence to professional standards in using the

More recently, Linz and Paul (2002) have undertaken an examination of adult cabarets in the city of Fort Wayne, Indiana, that serve alcoholic beverages and that provide exotic entertainment wherein dancers are required to wear pasties and G-strings. Unlike previous studies conducted in other municipalities, specific

technique in question; and (5) finally, though not the sole or even the primary test, general acceptance could "have a bearing on the inquiry."

In the present study, we specifically consider the impact of adult dance clubs on the occurrence of crimes reported to the police. We will limit our discussion of acceptable scientific procedures to those necessary to insure the proper implementation of such a crime study. Three criteria are crucial in insuring that a scientifically valid study of secondary crime effects has been conducted, as follows. First, in order to insure accurate and fair comparisons, a control area must be selected that is truly "equivalent" to the area containing the adult dance entertainment business(es) (cf. Campbell & Stanley 1963: 34; Babbie 1999:240). Because most analyses of secondary effects attempt to uncover increases in crime, professional standards dictate that the control (non-adult dance) site must be comparable (matched) with the study (adult dance) site on variables related to crime. Of particular importance are that the study and control areas are matched for ethnicity and socioeconomic status of individuals in both areas. A concerted effort should also be made to include only comparison areas with similar real estate market characteristics such as proportion of commercial and industrial space in either area. The study and control areas should also be approximately equal in total population. Finally, because of the effect of businesses that serve alcoholic beverages on neighborhood deterioration and crime (Roncek & Maier 1991), the study and control areas should be matched on the presence of alcohol-serving establishments. The reasons for these concerns are discussed later in this article. In summary, "quasi-experimental" studies employ a test group or area and a matched control group or area. The most important consideration in such a design is whether the comparison group or control group are well matched.

Second, a sufficient period of elapsed time following the establishment of an adult dance entertainment business is necessary when compiling crime data in order to ensure that the study is not merely detecting an erratic pattern of social activity. Generally, the longer the time period for observation of the events under consideration, the more stable (and more valid) the estimates of the event's effects tend to be (cf. Singleton, Straits, & Straits 1993:213-41).

Third, the crime rate must be measured according to the same valid source for all areas considered (Campbell & Stanley 1963: 59). Studies of secondary effects typically focus on two general types of crime in relation to adult dance entertainment businesses. These two types of crime are "general criminal activity" (including, but not limited to, robbery, theft, assault, disorderly conduct, and breaking and entering) and "crimes of a sexual nature" (including, but not limited to, rape, prostitution, child molestation, and indecent public exposure). It is especially important that the measurement of these crimes is based on the same information source for both sites and throughout the entire study period. For example, if the study area measures crime by the number and type of calls made to the police department, the comparison area must also rely on such a measure when the two areas are compared.

In addition, the crime information source must be factually valid and reliable, such as a daily log kept by police, or a compilation of the number of calls for service made in a municipality recorded by street address or similar geographical locators. Any change in police surveillance techniques regarding adult dance entertainment businesses in a particular community must also be noted. Obviously, increased surveillance of an area simply because an adult dance club is located there will have an impact on the amount of crime detected by the police. If increased police surveillance and the presence of an adult dance club in a particular area are confounded in this way, it is impossible to tell whether crime has increased due to the presence of the club or simply because of the increased police activity. Finally, an error rate must be calculated. The error rate is the degree of chance a scientist will allow. In the social sciences, it is conventional to set the error rate at 5% or less (i.e., we will tolerate an error rate that says that up to 5 times out of 100 the results may be obtained by chance).

attention was given to developing an empirical approach that fulfilled the requirements set out by the Supreme Court for the proper conduct of a social scientific inquiry. A 1000-foot circumference surrounding each of eight exotic dance nightclubs in Fort Wayne was established. Comparison areas were selected in Fort Wayne and matched to the club areas on the basis of demographic features associated with crime and commercial property composition. The number of calls to the police from 1997 to 2000 in the areas surrounding the exotic dance nightclubs was compared to the number of calls found in the matched comparison areas. The analysis showed little difference, overall, between the total number of calls to the police reported in the areas containing the exotic dance nightclubs and the total number of offenses reported in the comparison areas.

The present study is also informed by two related bodies of thought about crime and place, social disorganization theory, and routine activity/crime opportunity theory. The second purpose of this study is to examine the impact of adult businesses in a local community in light of these perspectives. These approaches point to variables that predict the frequency and location of criminal activity in a community. This set of ideas is also especially relevant here, first, because they are the implicit theories employed by municipalities addressing the problem of adverse secondary effects, second, because they suggest a number of other variables, predictive of crime events, that must be considered as control variables in any study of the impact of adult businesses on crime, and finally, because these variables have been successful as predictors of crime events.

Routine Activities/Crime Opportunity Theory

While perhaps not the ideal forum for the examination of criminological theory, investigating the secondary effects of adult bars as a stimulus for crime addresses a current and pressing legal policy issue. City planners and other representatives of local governmental bodies have explicitly claimed that adult businesses are associated with crime and disorder and have theorized that the presence of an adult business in a localized area increases the concurrence of offenders motivated to commit crimes together with suitable targets for the crimes.

In Phoenix, for example, the city adopted a zoning ordinance whose restriction of adult business to within 500 or 1000 feet of sensitive land uses such as churches, schools, and daycare centers is predicated on the idea that the presence of adult businesses attracts persons who will engage in crime. The Phoenix ordinance was based on the theory that there are direct impacts that uniquely

relate to this class of land use. In fact, the city planners in Phoenix asked: "are the crime impacts . . . directly related to the adult businesses being there, or to some other societal variables in the neighborhood?" Realizing that these other societal variables need to be controlled for, the Phoenix planners undertook an empirical study in which they considered adult land uses and negative secondary effects in light of other variables related to crime such as number of residents, median family income, percentage of non-white population, percentage of dwelling units built since 1950, and percentage of acreage used residentially and non-residentially (Planning Department of Phoenix 1979:4).

More formal expressions of how certain societal factors that may be related to the commission of crime have come from criminologists propounding routine activities/crime opportunity theory (Cohen & Felson 1979; Cohen, Kluegel, & Land 1981). This approach begins by noting that, in order for a predatory crime (e.g., robbery) to occur, there must be a concurrence in space and time of (1) a motivated offender, (2) a suitable target, and (3) an absence of a guardian that is capable of preventing the crime. This theory then focuses on how changes in the time and space of how people order their lives can change the opportunity structure for crime and thus affect crime rates and rates of criminal victimization—even in the absence of an increase in the structural or psychological factors that produce increases in the number of motivated offenders.

Routine activities/crime opportunity theory has been quite successful in empirical tests (see, e.g., Miethe & Meier 1994). This theory also has been used to guide research by criminologists on so-called hot spots or locations in urban areas that attract large numbers of crime incidents (see, e.g., Roncek & Maier 1991; Smith, Frazee, & Davison 2000). Researchers have found that perpetrators of street crime such as robbery commit their crimes proximate to where they live, on face blocks with which they are familiar or which they traverse in their routine activities.

This approach suggests a number of variables that must be considered in any investigation of the relationship of crime events to adult businesses in a community. It is necessary to control for population size, because, all else being equal, blocks with many people may have more potential crime victims than do face blocks with few people. Somewhat surprisingly, however, the population control variable is often found to be negatively associated with the number of crimes such as street robberies, suggesting that robbers tend to target victims where fewer people reside, and perhaps where fewer witnesses are likely.

In addition, it is necessary to control for neighborhood business and housing characteristics such as multiple apartments, or even

multiple buildings at a given address under the assumption that, all else being equal, the more places, the more likely a robbery victimization will occur on a face block. Higher levels of crime tend to plague places with certain types of facilities and not others. In some cases, for example, crimes seem to be elevated by a target-rich environment—for example, thefts of 24-hour convenience stores, auto thefts from large parking lots, or robberies from shoppers in heavily frequented commercial areas (Engstad 1975; Duffala 1976). The presence of bars, restaurants, and gas stations identifies blocks that might be particularly attractive for potential offenders because of easy accessibility and the presence of people carrying cash, often under the influence of alcohol (Roncek & Maier 1991; Sherman et al. 1989; Stark 1987). The number of other commercial places, such as business offices, industrial buildings, and warehouse facilities on a block is also important in predicting crime events.

Specific land uses are not only important in themselves but also operate in interaction with variables indicative of social disorganization in determining the risk of crime. Variables that have been investigated and been found to be most important as predictors of crime activity include measures of racial composition (number of African Americans and racial heterogeneity), family structure (as measured by number of single-parent households), economic composition (as measured by family income), and the presence of motivated offenders including males between the ages of 18 and 25 (Miethe & McDowall 1993). These social disorganization variables have been examined on the basis of the assumption that a local area's population age structure (especially the presence of young adults) and its race/ethnic composition can affect both the size of the pool of motivated crime offenders and the presence of suitable targets for predatory crimes (see, e.g., Miethe & Meier 1994).

Similarly, the socioeconomic status of individuals in a local area can affect both the prevalence of motivated offenders and crime targets. For example, Cohen, Gorr, and Olligschlaeger (1993) found that crime hot spots tended to be in areas with higher levels of poverty or low income, and were likewise associated with low family cohesion—an indication of the prevalence of both motivated offenders and crime targets.

Research Question

Once variables known to be related to crime events suggested by social disorganization and routine activities theories have been taken into account we may ask: does the presence of an adult business in a localized area increase the concurrence in space and time of offenders motivated to commit crimes together with suitable targets for the crimes in the absence of guardians capable of preventing or deterring the crimes?

The site for the present study was Charlotte, North Carolina. For each adult topless dance club in that community, a control site (matched on the basis of demographic characteristics related to crime risk) is compared for crime events over the period of three years (1998–2000) using data on crime incidents reported to the police. This research is designed to address the questions of whether and to what extent the adult dance clubs contribute to community disorder—that is, increased crime in neighborhoods—compared to their control neighborhoods that do not have adult dance clubs.

Data and Methods

Establishing Matched Comparison Locations

Twenty topless adult nightclubs in Charlotte, North Carolina are the focal points of the present study. It was not possible to randomly assign units of analysis to an experimental group and a control group to perform a “true” experiment to test the hypothesis that adult nightclubs in Charlotte engender negative effects. Instead, a “quasi-experiment” was conducted in which matched “control” areas were found and compared to “test” areas containing the adult business. In order to insure accurate and fair comparisons, a control area must be selected that is as “equivalent” as possible to the area containing the adult entertainment business(es).

The main hypothesis to be tested in the present study is that the presence of an adult nightclub increases the number of crime incidents reported in localized areas surrounding the club as compared to the number of crime incidents reported in comparable localized areas that do not contain an adult nightclub. In order to test this hypothesis, suitable control (non-adult nightclub) sites must be chosen that are comparable (matched) to the test (adult nightclub) sites on key demographic and other variables that are generally regarded as being related to the incidence of crime.

In order to insure that the research reported here utilized appropriately “matched” adult nightclub (test) and non-club (control) areas, a crime-mapping approach was utilized. Two radii—500 feet and 1,000 feet—were used to identify circular perimeters surrounding each of 20 adult nightclubs in Charlotte. These distances were chosen because they represent the city’s presumptions about negative secondary effects. The Charlotte city code, as is the case for hundreds of municipalities across the United States, mandates that adult establishments be no closer than 1000 feet from churches, schools, daycare centers, and other sensitive land uses. Other cities such as New York specify distances of 500 feet.

Comparison areas or control sites (census block groups) of physical size roughly comparable to the areas containing the adult nightclubs, each with 500 and 1000 feet in radius, were selected that matched the adult nightclub areas on the basis of several of the variables known to be related to the risk of crime victimization (on the basis of social disorganization and routine activities theory as reviewed above) and by further informally attempting to equate areas on the basis of commercial property composition. Additional variables were also taken into consideration in order to rule out alternative explanations but were not formally considered for matching purposes.

The following variables were used for the selection of control sites: total population size (1997), percentage of households that are female headed, percentage of the population that is African-American, percentage of the population aged 18–29, percentage of the adult population that is divorced, and median household income. Each of these variables was identified at the U.S. Census block group level. Properly “matching” the subject and control areas is critical in order to insure that the results we obtain can be ascribed to the presence or absence of (in this case) an adult nightclub, and not to some other irrelevant factor.

In addition, although not formally matched on these variables beforehand, measurements were taken of traffic patterns and number of businesses and commercial properties in the areas immediately surrounding the adult and control sites.¹⁰ Traffic patterns may be important to consider because they are an indication of the number of people moving through an area both suitable as targets and as perpetrators of crime. Business composition is important because of the effect of the number of businesses on crime opportunity and neighborhood deterioration. These variables, while technically measured, are not included in the formal model testing. They will be examined to determine simply whether they covary with crime patterns. If it is found that they correspond to the pattern of crime in a particular area, we may have some indication that these features of the environment may be reasonable explanations for the findings we obtain.

The geographic information system computer program Maptitude (1999) was used to locate the census block group within which each club was located. For each census block group, a Maptitude data set provides counts for most of the demographic variables measured by the 1990 U.S. Census. In addition, 1997 supplements are provided for most variables. The values of each of the variables of interest were identified for the census block within

¹⁰ The figures showing the names and locations of business composition are available from the authors.

which the adult nightclub was located. When the 1000-foot area surrounding a club location touched more than one census block, the average value for each of the relevant demographic variables was calculated across the blocks that overlapped with the club perimeters. A comparable area, matched for values on the crime-related variables, was then selected via Maptitude. All control areas were selected before the crime data were obtained and thus before any analysis of the crime data was undertaken. Finally, it should be noted that two variables often associated with social disorganization and routine activity theory, social class and residential mobility, are not available in census block data, and thus they cannot be included in the analysis. To the extent that social disorganization variables included in the model correlate with these unavailable variables, the consequences for our conclusions may be minor.

Table 1 displays a comparison of the values for each of the demographic characteristics measured at the census block level both for the adult nightclub locations and the control sites to which they were matched. Table 1 contains a column for the population size variable, four columns for the four percentage variables, and a final column for the median household income variable. Rows for the 20 adult nightclub sites are ordered alphabetically from top to bottom in Table 1, with rows for the three control sites ordered alphabetically at the bottom of the table. For each of the demographic and income variables in the table, it can be seen that there is a substantial amount of variability among the club and control sites.

To determine which control site to match with which adult nightclub location, the frequency distributions of each of the six demographic variables given in Table 1 were divided into five equally distributed levels (quintiles). For each demographic variable, each of the quintiles was assigned a numerical value that could range from 1 to 5, where 1 indicates that level of the demographic variable that is least likely to be associated with the occurrence of crime events and 5 being equal to the value that is most likely to be related to crime risk. For all but one of the demographic variables in Table 1, this resulted in the assignment of high code numbers for variables that had high values and low code numbers for variables that had low values. The only exception was median household income, for which research suggests that higher levels of household income will be associated with lower crime risk.

Table 2A contains the resulting codes for each of the demographic variables for each of the adult nightclubs and control sites. The right-most column of the table gives the combined means of the quintile codes—ranked from highest (4.0) to lowest (1.67)—where a higher mean quintile code indicates a location with a higher crime risk and a lower mean code indicates a location

46-51

Table 1. Absolute Values for Demographic Variables Related to Crime in Areas Around Club and Control Sites

Club	Population	Percentage of Households that Are Female Headed (%)	Percentage African American (%)	Percentage Age 18-29 (%)	Percentage Total Divorced (%)	Household Income (\$)
Baby Dolls	3881	0	21	72	2	38,624
Club Champagne	2480	19	59	23	11	32,222
Crazy Horse	1026	6	31	28	10	33,772
Diamond Club	1203	7	7	14	7	47,373
Fancy Cat	1483	18	53	22	11	32,486
Gentlemen's Club	45	67	58	13	16	32,188
Just Because	705	34	97	20	7	24,910
Leather 'n Lace N	3438	6	16	29	6	49,065
Leather 'n Lace S	525	17	13	20	10	35,854
Men's Club	5675	10	47	29	10	39,645
Office Lounge	4217	2	37	27	9	39,373
Paper Doll Lounge	761	30	18	16	11	35,298
Platinum Club	1204	7	07	14	7	47,373
Player's Club	1649	44	97	17	7	20,749
Polo Club	649	10	16	17	8	26,616
Tattletales	1008	13	15	19	12	28,746
Temptations	4028	10	38	26	9	41,254
Twin Peeks	4511	3	20	63	2	38,042
Uptown Cabaret	293	0	61	36	9	38,750
VIP Showgirls	1216	15	12	24	11	36,268
Exxon Control	1640	3	9	15	8	74,433
KFC Control	1084	14	95	18	8	32,172
McDonald's Control	3024	4	23	39	10	40,145

1594

Table 2A. Quintile Scores for Demographic Variables in Areas Around Club and Control Sites^a

Club	Population Size Code	% Fem. Head of Household Code	% African American Code	% Age 18-29 Code	% Divorced Code	Income Level Code	Combined Mean of Codes—Ranked
Club Champagne	4	4	5	3	4	4	4.00
Fancy Cat	3	4	4	3	5	4	3.83
Just Because	2	5	5	3	2	5	3.67
Player's Club	4	5	5	2	1	5	3.67
Men's Club	5	3	4	5	3	1	3.50
Gentlemen's Club	1	5	4	1	5	4	3.33
Temptations	5	3	4	4	3	1	3.33
McDonald's Control	4	2	4	5	3	2	3.33
Crazy Horse	2	2	3	4	4	4	3.17
Tattletales	2	3	2	2	5	5	3.17
VIP Showgirls	3	4	1	3	5	3	3.17
Office Lounge	5	1	3	4	3	2	3.00
Twin Peeks	5	1	3	5	1	3	3.00
KFC Control	2	3	5	2	2	4	3.00
Uptown Cabaret	2	5	2	1	4	3	2.83
Paper Doll Lounge	1	1	5	5	3	2	2.83
Baby Dolls	4	1	3	5	1	2	2.67
Polo Club	1	4	1	2	4	3	2.50
Leather 'n Lace S	1	3	2	2	2	5	2.50
Leather 'n Lace N	4	2	2	4	1	1	2.33
Diamond Club	3	2	1	1	2	1	1.67
Platinum Club	3	2	1	1	2	1	1.67
Exxon Control	4	1	1	1	2	1	1.67

^aValues for each variable could fall within one of five equally distributed levels, and were assigned a value for this table that could range from 1 to 5, where 1 was equal to the level of that variable that was least likely to be associated with crime and 5 was equal to the value that was most likely to be related to crime. For all but one variable considered in this table, this resulted in high code numbers for variables that had high values and low code numbers for variables that had low values. The only exception was for income, where a higher value resulted in a lower code score and a lower value resulted in a higher code score, because higher levels of income were expected to be associated with lower levels of criminal activity.

15-95

with a lower crime risk. The adult nightclubs are reordered in Table 2A into three groups corresponding to the three control sites with which the various clubs are associated. The first group in the table identifies seven clubs located in relatively high-crime risk locations—Club Champagne, Fancy Cat, Just Because, Player's Club, Men's Club, Gentlemen's Club, and Temptations. The control site for these clubs is a McDonald's fast food establishment with a mean quintile social disorganization variable score of 3.33. A second group in Table 2A identifies five clubs of medium relative crime risk—Crazy Horse, Tattletales, VIP Showgirls, Office Lounge, and Twin Peeks. The control site for these clubs is a Kentucky Fried Chicken (KFC) fast food restaurant with a mean quintile social disorganization score of 3.0. A third group in Table 2A identifies eight clubs of low relative crime risk—Uptown Cabaret, Paper Doll Lounge, Baby Dolls, Polo Club, Leather 'n Lace South, Leather 'n Lace North, Diamond Club, and Platinum Club. The control site for these clubs is an Exxon gasoline service station with a mean quintile score of 1.67. Note that the average quintile score for each of the control sites is equal to the lowest mean quintile score of the clubs in the group to which it is matched. Because the mean quintile scores are indicative of the criminogenic potential in the areas surrounding the sites, this implies that most of the adult nightclubs to which the control sites are matched should be expected—solely on the basis of the demographics of the surrounding areas—to have higher numbers of crime events recorded.

Table 2B displays the vehicular traffic counts for club and control areas in recent years. As can be seen from the table, the relationship between the volume of vehicular traffic and relative crime risk is not straightforward. The high-crime risk control location has a much higher volume of vehicular traffic than the average of the adult nightclub study sites. This pattern does not hold for the medium- and low-crime risk locations, however. The medium-crime risk location has the lowest volume of traffic. The low-crime risk location has an intermediate level of traffic.

Land use, commercial establishments, and business patterns were also taken into consideration by a simple count of commercial establishments for each control location and the computation of average counts for the club locations. Table 2C displays these counts and averages. No particular pattern was observed here either. The high-crime risk control area has a large number of commercial sites compared to the test area. However, on average, the medium-crime risk area test sites have many more commercial businesses in the area than the medium-crime risk control area. Finally, the low-crime risk area has substantially more commercial establishments than the test sites.

Table 2B. Traffic Patterns at the Nearest Intersection to the Study or Control Sites Counted by the Charlotte-Mecklenburg Department of Transportation (all counts are taken at mid-block volume and are average weekday traffic patterns)

	Volume of Motor Vehicle Traffic	Year Count Taken
Relatively High Crime Risk Locations		
Club Champagne	No data for nearest intersection	
Fancy Cat	26,400	2000
Gentlemen's Club	35,000	2000
Just Because Sports	16,000	2002
Player's Club	12,000	2000
Men's Club	31,400	2002
Temptations	43,900	2000
Average	22,217	
Control Site		
McDonald's	82,100	2000
Medium Relative Crime Risk Locations		
Twin Peeks	34,200	2000
Crazy Horse	No data for nearest intersection	
Tattletales	32,100	2000
VIP Showgirls	32,000	2001
Office Lounge	40,600	2000
Platinum Club 2000	No data for nearest intersection	
Average	34,725	
Control Site		
Kentucky Fried Chicken	20,700	2000
Relatively Low Crime Risk Locations		
Polo Club	32,100	2000
Baby Dolls	24,000	2000
Paper Doll Lounge	37,800	2000
Diamond Club	35,000	2000
Leather 'n Lace S	No data for nearest intersection	
Leather 'n Lace N	No data for nearest intersection	
Uptown Cabaret	26,500	2002
Average	31,080	
Control Site Exxon	45,900	2001

Data on Crimes Reported

With support from the U.S. Department of Justice Office of Community Oriented Policing Services, the Charlotte-Mecklenburg Police Department maintains a computerized "reported incidents" information system for the city of Charlotte and Mecklenburg County, North Carolina. This system is capable of providing geocoded information on all crime incidents reported at or near locations in the Charlotte area. Using this computerized database, brief descriptions of all crime incidents reported at or near each of the adult nightclubs and control sites identified above for the three years 1998-2000 were identified and provided to the authors by the Charlotte-Mecklenburg Police Department. The two perimeters identified above were employed, thus yielding records of incidents that occurred within a 500-foot radius and incidents that occurred within a 1,000-foot radius.

Table 2C. Counts of Number of Businesses at Control and Test Sites Within a 1,000-Foot Radius

	Number of Businesses/ Commercial Properties
Relatively High-Crime Risk Locations	
Club Champagne	21
Fancy Cat	36
Gentlemen's Club	49
Just Because Sports	18
Player's Club	11
Men's Club	61
Temptations	21
Average	31
Control Site	
McDonald's	57
Medium Relative Crime Risk Locations	
Twin Peeks	50
Crazy Horse	48
Tattletales	33
VIP Showgirls	37
Office Lounge	80
Platinum Club 2000	81
Average	55
Control Site	19
Kentucky Fried Chicken	
Relatively Low Crime Risk Locations	
Polo Club	84
Baby Dolls	0
Paper Doll Lounge	23
Diamond Club	67
Leather 'n Lace S	84
Leather 'n Lace N	34
Uptown Cabaret	31
Average	46
Control Site	89
Exxon	

There are no formal measurements of the accuracy with which the officers in the Mecklenburg Police Department or the dispatchers of the Computer Aided Dispatch (CAD) system locate a crime event. The dispatcher is at the mercy of the caller who relates an address. The police department does not keep an account of the discrepancy between the original address reported to the dispatcher and the address noted in any subsequent police report.

For crimes such as rape, robbery, and assault, the address of the actual offense may not be the address of the dispatch. Victims of these crimes sometimes go to other locations and call for service. The discrepancy between call address and actual address of the crime event may therefore be sizable, approximately 10%-20%, according to the Charlotte assistant crime analyst. But, these inaccuracies only occur for these crimes. The address of the crime location and the call location are highly consistent between the

CAD and the location of the crime for property crimes and serious assaults resulting in incapacitation and murder.

The database used for the present study contains only those crime incidents derived from the CAD database for which the police completed a report. This constitutes approximately 25%–30% of the entire CAD database. The accuracy of addresses listed in the report data file is not checked against the CAD, nor is it checked against a map of the city (although a procedure for verifying addresses has recently been implemented by the department). Accuracy is estimated by the crime analyst to be in the 94%–95% range.

For purposes of the present study, the authors grouped the reported crime incidents into six categories, ordered from the most to the least inclusive, as follows: total crimes (i.e., the total of all crime categories listed below), total Uniform Crime Reports (UCR) Index Crimes (i.e., the total of the UCR Violent and Property Crimes identified below), total Uniform Crime Reports Violent Crime Index Crimes (murder, rape, aggravated assault, and robbery), total Uniform Crime Reports Property Crime Index Crimes (burglary, larceny/theft, motor vehicle theft, and arson), sex crimes (the crime reports data had counts listed only as “sex offenses” to which were added rape/attempted rape counts, to define this variable), and all other crimes (minor incidents such as disorderly conduct, hit and run, non-aggravated assault, embezzlement, and forgery).

Counts of the number of incidents reported in each of these six categories for each of the three years of the study for each of the 23 adult nightclub and control sites for each perimeter constitute the dependent variables to be studied.

Statistical Model

In addition to overall estimates of mean numbers of crime incidents surrounding the adult nightclub and control sites, we conducted a panel regression analysis of the data.¹¹ For this,

¹¹ The dependent variable is a positively skewed count variable. Therefore, we experimented with the estimation of either a Poisson or negative binomial regression model that more accurately accounts for such a dependent variable, using specifications identical to the OLS regression models presented in the article. However, due to the limited number of clubs/controls and the relatively large number of parameters in comparison (especially the club-specific fixed-effects that were included to account for unobserved heterogeneity at the club/neighborhood level), we routinely encountered convergence problems and were not able to reliably and robustly estimate these models. This was entirely expected by us given that the Poisson and binomial models are nonlinear models that are estimated via maximum likelihood methods. The maximum likelihood estimation (MLE) method requires, for convergence, a relatively well-defined likelihood surface. If we had access to either more years of crime data or more clubs/controls, these models would have been more feasible and more appropriate, as a larger number of observations would bring asymptotics into play more definitely and stabilize the likelihood surface. Therefore, we chose to work with the OLS estimates, which were statistically stable and substantively interpretable.

we use fixed-effects or least-squares dummy-variable regression models (see, e.g., Hannan & Young 1977; Hsiao 1986) to analyze the Charlotte crime events data arranged in a pooled time-series cross-section with site (club or control)-years as units of analysis. Effects are fixed for years and sites. Site-fixed-effect models eliminate bias created by the failure to include controls for unmeasured characteristics of the sites that have additive effects. Thus, fixed-effects models control for unmeasured characteristics of the sites that may affect the incidence of crime events at or near the adult nightclub and control sites. The regression model is:

$$Y_{it} = \beta_0 + \varepsilon_{it}, \quad (1)$$

where

$$\varepsilon_{it} = u_i + v_t + w_{it}$$

In this model, the regression parameter β_0 denotes an overall constant term for the model, which corresponds to the overall average number of crime incidents of a given type across all sites and years. This overall average number of crime incidents is adjusted up or down for each site i and year t by the overall error term ε_{it} . The overall error term ε_{it} is composed of a cross-sectional (site) component u_i plus a year component v_t plus a purely random component w_{it} . The additive error term effects of the sites are estimated relative to a base nightclub that consistently has low numbers of crime incidents (Fancy Cat), so that most site-specific effects for most crime categories will be positive. Overall year effects on the numbers of reported crime incidents also are estimated for 1999 and 2000, with the year 1998 taken as the base year.

For all models, we used a heteroskedasticity-consistent covariance matrix to estimate the standard errors of the regression coefficients. This method of calculating the standard errors, often referred to in the statistical literature as the HC3 estimator, is a robust estimator similar to the one derived by White (1980), but adding a finite sample correction term to relax the asymptotic requirements of White's original formulation (Davidson & McKinnon 1993; Long & Ervin 2000; McKinnon & White 1985). The finite sample correction term produces a more conservative estimate of the variance of the parameter estimates by adding an adjustment term that accounts for the small sample size (Long & Ervin 2000). The HC3 estimator is an approximation of the jackknife variance estimator (Long & Ervin 2000; McKinnon & White 1985).

Results

Table 3 reports overall results on mean numbers of crime incidents reported to the Charlotte Police Department for local areas (both 500- and 1,000-foot radii) surrounding both the 20 adult nightclubs and the three control sites.¹² The table includes the means for each of the three years 1998, 1999, and 2000, as well as for all three years combined. Means are given for each of the six categories of crime described earlier. For the adult nightclubs, two estimates of the means are given. This is due to the fact that one of the clubs, Baby Dolls, had no reported crimes within 1,000 feet during any of the three years. Therefore, in order to provide an estimate of the mean crimes reported that is not distorted by including a club in the denominators that did not contribute to the incidents in the numerators, two sets of mean estimates are reported—one that includes Baby Dolls and one that does not.

Several results in Table 3 merit comment. First, consider the overall means for our most comprehensive measure of crime incidents—the Total Crimes rows of Table 3. For this crime category, the mean number of incidents for all three years combined in the adult nightclub locations is between 59% and 62% of those reported for the control sites for the 500-foot perimeters and between 45% and 47% of those reported for the control sites for the 1,000-foot perimeters. Roughly similar bounds characterize the means for the combined years for all of the other crime categories in the table. Thus, with respect to all six categories of crime incidents under investigation, it is evident that the overall mean numbers of crime incidents for all three years combined are somewhat less in the areas surrounding the adult nightclubs than in the areas surrounding the control sites.

Next, consider the year-specific means of crime incidents reported in Table 3. For both the 500- and 1,000-foot perimeters and four of the crime categories in the table, namely Total Crimes, Total UCR Crimes, UCR Property Crimes, and Other Crimes, there is an evident difference between the adult nightclub and

¹² Recall that the three control sites were chosen solely on the basis of demographic characteristics of their surrounding neighborhoods that research motivated by crime opportunity/routine activities theory has found to be associated with crime risk. On this basis, we identified the McDonald's control site as a "high-crime risk" control site, the KFC site as a "medium-crime risk" site, and the Exxon station as a "low-crime risk" site. These characterizations of the relative crime risk potential of the sites are, in fact, corroborated by the data on crimes reported to the Charlotte Police Department, as reported in Table 3. For instance, for Total UCR Crimes, the average numbers of crime incidents reported across the three years within the 500-foot (1,000-foot) perimeters are 86.33 (294.67) at the McDonald's site, 69 (156.33) at the KFC site, and 24 (56) at the Exxon site. The orderings of the three sites by numbers of crime incidents reported for all of the other crime categories studied in this article are similar.

Table 3. Mean Number of Crimes Reported to the Police by Crime Type and Radius

Crime Type	Year	500-Foot Radius			1,000-Foot Radius		
		Clubs		Controls	Clubs		Controls
		w/o B.D. ^a	w/ B.D. ^b		w/o B.D.	w/ B.D.	
Total Crimes	1998	62.6	59.5	124.0	130.2	123.7	297.3
	1999	67.7	64.3	101.0	134.5	127.8	282.3
	2000	60.9	57.9	84.0	121.5	115.4	237.3
	All	63.7	60.6	103.0	128.7	122.3	272.3
Total UCR Crimes	1998	38.2	36.3	65.7	78.5	74.6	177.0
	1999	44.4	42.2	63.3	84.7	80.5	181.7
	2000	38.8	36.9	50.3	73.9	70.2	148.3
	All	40.5	38.4	59.8	79.0	75.1	169.0
UCR Violent Crimes	1998	7.0	6.7	17.7	12.0	11.4	34.7
	1999	7.0	6.6	19.0	13.4	12.8	36.7
	2000	6.2	5.9	10.7	11.2	10.7	26.0
	All	6.7	6.4	15.8	12.2	11.6	32.4
UCR Property Crimes	1998	31.2	29.7	48.0	66.5	63.2	142.3
	1999	37.4	35.6	44.3	71.3	67.7	145.0
	2000	32.6	31.0	39.7	62.7	59.6	122.3
	All	33.8	32.1	44.0	66.8	63.5	136.6
Sex Crimes	1998	0.53	0.50	0.33	1.05	1.00	1.00
	1999	0.32	0.30	0.33	0.79	0.75	0.33
	2000	0.26	0.25	0.67	0.63	0.60	3.67
	All	0.37	0.35	0.44	0.82	0.78	1.67
Other Crimes	1998	24.2	23.0	58.3	51.2	48.7	119.7
	1999	23.2	22.0	37.3	49.3	46.9	100.3
	2000	22.0	20.9	33.3	47.1	44.8	87.3
	All	23.1	22.0	43.0	49.2	46.8	102.4

^aThis mean excludes the club Baby Dolls, which had no reported crimes within 1,000 feet during the years 1998, 1999, and 2000.

^bThis mean includes the club Baby Dolls (i.e., the denominator is increased by 3).

control sites. That is, the trend in the means across the three years for the control sites for all of these crime categories is down, whereas there is little, if any, trend across the years for the adult nightclub sites. It is as if the levels of crime incidents in the control site areas are declining toward the already lower levels near the club sites. Even so, however, for all four categories, the mean numbers of crime incidents reported in the last year available, the year 2000, in the nightclub areas remain below those in the control areas. This is especially true when the perimeter around these locations is expanded to 1,000 feet, which, of course, permits the inclusion in the crime counts of incidents further removed from the club and control site premises. For two other crime categories in Table 3, UCR Violent Crimes and Sex Crimes, the trends across the three years are more muted for both the club and the control sites. This is due, in part, to the fact that the numbers of these

crimes are lower, so that even a slight increase in incidents can be influential in the computation of the means.

For a more precise statistical analysis of the crime events data, the regression model described above in Equation 1 was estimated. Table 4 reports parameter estimates and summary statistics for the full version of this regression model wherein the dependent variable is the Total UCR Crimes reported in the 500- and 1,000-foot perimeters of the adult nightclub and control sites.¹³ This model takes the number of crime events reported for 1998 as the omitted year and the number of events reported for the Fancy Cat Club as the omitted adult nightclub site.¹⁴ The coefficients of determination (R-squared) reported in Table 4 show that the fixed-effects regression models succeed in explaining over 90% of the variance in numbers of Total UCR Crimes reported in the two perimeters.

It can be seen from Table 4 that the partial regression coefficients estimated for the year 1999 are 4.78 and 5.74 for events reported within a 500-foot and 1,000-foot radius of the clubs and control sites, respectively. This means that, on average, about five more crime events were reported within 500 feet of all locations in 1999 than in 1998 and about six more within the 1,000-foot radius. By comparison, in the year 2000, the regression coefficients indicate a decrease of one to two crime events from that in 1998 within 500 feet and seven to eight within 1,000 feet of all locations. However, none of these year-specific regression coefficients has an associated *p*-value less than the .05 level of statistical significance, that is, statistically significant from zero. Therefore, it can be inferred that these year-to-year variations from the 1998 base year are sufficiently small that they are statistically meaningless.

Examining next the estimated partial regression coefficients for the adult nightclub and control sites in Group 1, recall that these are in relatively high-crime risk locations. A key comparison is the size of the coefficient estimated for the control site for this group, a McDonald's fast food restaurant, with the coefficients for the club sites in this group. It can be seen that the estimated coefficients for

¹³ Full regression models were estimated for both the 500- and 1,000-foot perimeters and all six of the categories of crime incidents identified earlier in the text. We exhibit the regression model for Total UCR Crimes in Table 4, as this category consists of the most serious crimes reported to the police.

¹⁴ Fancy Cat was chosen as the omitted site, because it has relatively low numbers of crime events within the defined areas. This means that the regression coefficients estimated for the other club and control sites will be positive coefficients, thus indicating the increase in crime events expected for their defined areas relative to those for Fancy Cat. Similarly, the year 1998 was chosen as the omitted year category so that the average number of crime events across all sites reported for 1999 and 2000 can be interpreted as the average increase or decrease expected in those years relative to 1998.

Table 4. Parameter Estimates from Fixed-Effects Dummy Variable Regression Model of Total UCR Crimes

Variable	500-Foot Radius			1,000-Foot Radius		
	Robust			Robust		
	b-Coeff.	HC3 S.E.	p-Value	b-Coeff.	HC3 S.E.	p-Value
Year 1999	4.78	4.61	0.305	5.74	6.07	0.350
Year 2000	-1.52	4.72	0.749	-7.52	6.41	0.247
Group 1						
Club Champagne	22.33	9.63	0.025	38.00	12.54	0.004
Just Because	26.67	13.14	0.048	69.33	21.93	0.003
Player's Club	45.00	8.59	0.000	85.33	11.00	0.000
Men's Club	63.00	21.18	0.005	64.67	23.01	0.007
Gentlemen's Club	101.33	8.47	0.000	94.33	10.42	0.000
Temptations	6.33	7.09	0.376	26.33	12.21	0.037
McDonald's	82.33	5.01	0.000	276.00	8.72	0.000
Group 2						
Crazy Horse	91.00	9.41	0.000	113.67	16.12	0.000
Tattletales	47.67	7.84	0.000	59.33	8.06	0.000
VIP Showgirls	6.00	5.37	0.270	34.33	5.50	0.000
Office Lounge	34.67	9.88	0.001	97.33	12.05	0.000
Twin Peeks	19.33	7.15	0.010	20.33	8.66	0.024
Kentucky Fried Chicken	65.00	16.53	0.000	137.67	23.96	0.000
Group 3						
Uptown Cabaret	93.00	19.65	0.000	109.00	13.62	0.000
Paper Doll Lounge	16.33	5.91	0.008	21.33	7.28	0.005
Baby Dolls	-4.00	5.19	0.445	-18.67	6.96	0.010
Polo Club	28.67	6.31	0.000	65.33	17.76	0.001
Leather 'n Lace South	31.00	6.09	0.000	79.00	11.86	0.000
Leather 'n Lace North	21.33	5.68	0.001	10.67	6.58	0.112
Diamond Club	8.67	5.86	0.146	90.33	14.36	0.000
Platinum Club	30.33	8.30	0.001	68.00	6.68	0.000
Exxon	20.00	5.60	0.001	37.33	11.70	0.003
Constant	2.91	5.20	0.578	19.26	5.93	0.002
R-Squared	0.91			0.95		

NOTE: The reference site is the Fancy Cat Club.

McDonald's are 82.33 and 276 for the 500- and 1,000-foot radii, respectively. These coefficients can be interpreted as indicating that, net of the overall constant and year-specific terms for the regression equations, the McDonald's site is expected to have about 82 and 276 more crime events reported on average per year than the Fancy Cat Club, respectively, for the two perimeters. For the 500-foot perimeter, the coefficient for McDonald's is substantially larger than those for all of the adult nightclubs in Group 1 except for the Gentlemen's Club. In the case of the 1,000-foot perimeter, the McDonald's coefficient is much larger than the coefficients of all of the club sites, including the Gentlemen's Club.¹⁵

¹⁵ The fact that the regression coefficient estimated for the Gentlemen's Club for the 1,000-foot perimeter (94.33) is smaller than that for this club for the 500-foot perimeter (101.33) is not an error. To calculate the unconditional expected value for the club and control site locations, one must add the regression coefficient for the site to the overall constant term for the regression equation. Making this calculation, it can be seen that the average expected number of events across the three years for the 1,000-foot perimeter for the Gentlemen's Club is about 114 as compared to 104 for the 500-foot perimeter.

Consider next the adult nightclub and control sites in Group 2. Recall that these are medium-crime risk locations. In this group, the control site is the Kentucky Fried Chicken restaurant, which has an estimated regression coefficient of 65 for the 500-foot perimeter and 137.67 for the 1,000-foot perimeter. For the 500-foot perimeter around the sites, the KFC regression coefficient is substantially larger than those of all of the club locations in this group except those for the Crazy Horse Club. The same is true for the coefficients for the 1,000-foot perimeter model.

The adult nightclub and control sites in Group 3, the low-crime risk locations, were then examined. In this group, the Exxon service station is the control site. It has an estimated regression coefficient of 20 crime events for the 500-foot perimeter and 37.33 for the 1,000-foot perimeter. For the 500-foot perimeter around the sites, this coefficient is larger than those estimated for three adult nightclubs (Paper Doll Lounge, Baby Dolls, and Diamond Club), about the same as one club (Leather 'n Lace North), somewhat smaller than those for three club sites (Polo Club, Leather 'n Lace South, and Platinum Club), and much smaller than that for one club (Uptown Cabaret). For the 1,000-foot perimeter, the estimated regression coefficient for Exxon is larger than those for three clubs (Paper Doll Lounge, Baby Dolls, and Leather 'n Lace North) and smaller than those for five clubs (Uptown Cabaret, Polo Club, Leather 'n Lace South, Diamond Club, and Platinum Club).

We next turn to an assessment of the statistical significance of the differences between the net effects (i.e., the estimated partial regression coefficients) of the three groups of adult nightclub sites as compared to the corresponding control sites. For this, we estimated a set of constrained regression models, as reported in Tables 5A and 5B. Table 5A reports the results for the 500-foot perimeters around the sites; Table 5B reports the corresponding results for the 1,000-foot perimeters.

Each of these constrained models commenced with a corresponding full model, like that displayed in Table 4 for Total UCR Crime incidents reported within the 500-foot perimeter. We then constrained all of the adult clubs in one of the groups, namely Group 1, to have a common partial regression coefficient. For Total UCR Crimes, this group coefficient, 29.14, is reported in the first column of coefficients in Table 5A. The constrained model also estimated a partial regression coefficient for the Group 1 control site, the McDonald's fast food restaurant. This coefficient, 73.14, is reported in the second column of coefficients of Table 5A. An F-ratio then was computed for the null hypothesis that the common regression coefficient for the Group 1 sites is equal to the coefficient for the corresponding control site. This statistic, 27.60, is given in the third column of coefficients of Table 5A. The fourth

Table 5A. Summary Results of F-Tests Comparing the Equivalence of the Club Group Dummy Variables and the Matched Control Site: 500-Foot Radius

Model	Group	Group Coefficient	Control Coefficient	F-Value	<i>p</i> -Value	Model R-Squared
Total Crimes	1	47.05	128.33	13.40	0.0006	0.65
	2	65.33	106.00	1.70	0.1982	0.73
	3	43.67	44.33	0.00	0.9582	0.67
Total UCR Crimes	1	29.14	73.67	27.60	0.0000	0.59
	2	39.73	65.00	1.96	0.1682	0.73
	3	28.17	20.00	1.36	0.2487	0.66
UCR Violent Crimes	1	8.14	15.00	11.15	0.0016	0.61
	2	4.47	27.67	6.15	0.0167	0.78
	3	4.38	2.67	0.34	0.5623	0.51
UCR Property Crimes	1	21.00	58.67	21.63	0.0000	0.53
	2	35.27	37.33	0.02	0.8790	0.69
	3	23.79	17.33	1.95	0.1682	0.73
Sex Crimes	1	0.29	0.67	0.82	0.3689	0.30
	2	0.20	0.00	1.91	0.1738	0.40
	3	0.50	0.67	0.03	0.8572	0.17
Other Crimes	1	17.71	54.33	4.16	0.0468	0.65
	2	25.47	41.00	1.31	0.2579	0.67
	3	15.33	24.00	1.52	0.2227	0.62

NOTE: For Group 1, the reference site is the Diamond Club. For Groups 2 and 3, the reference site is the Fancy Cat Club.

column of coefficients reports the statistical significance of the F-ratio. For Group 1 Total UCR Crimes, it can be seen in Table 5A that the estimated difference of the partial regression coefficients for Total UCR Crimes for the Group 1 adult clubs and the control site for this group is highly statistically significant, that is, has a *p*-value or estimated probability of occurrence that is equal to zero to four decimal places. In other words, the numerical difference of the estimated partial regression coefficients for the Group 1 sites and the control site for Group 1 is not likely to be due to chance variations. Furthermore, the estimated coefficients show that the adult club sites in Group 1 are highly likely to have a net number of Total UCR Crimes that is much smaller than the control site.

Examining all of the estimated coefficients, F-ratios, and *p*-values in Table 5A, it can be seen that a pattern is readily apparent: for four of the crime categories—Total Crimes, Total UCR Crimes, UCR Violent Crimes, and UCR Property Crimes—the numerical differences of the estimated partial regression coefficients for the Group 1 sites (the adult nightclubs located in relatively high-crime risk areas) and the coefficients for the control site (the McDonald's fast food restaurant) are highly statistically significant. That is, these numerical differences are not likely due to chance fluctuations in the

Table 5B. Summary Results of F-Tests Comparing the Equivalence of the Club Group Dummy Variables and the Matched Control Site: 500-Foot Radius

Model	Group	Group Coefficient	Control Coefficient	F-ratio	p-value	Model R-squared
Total Crimes	1	-55.67	257.67	151.77	0.0000	0.87
	2	104.67	239.00	8.17	0.0063	0.87
	3	78.33	74.33	0.03	0.8561	0.79
Total UCR Crimes	1	-36.33	185.67	408.27	0.0000	0.87
	2	65.00	137.67	7.97	0.0069	0.87
	3	53.13	37.33	1.24	0.2698	0.79
UCR Violent Crimes	1	1.62	23.00	30.57	0.0000	0.67
	2	7.20	51.67	16.13	0.0002	0.89
	3	6.54	3.33	0.89	0.3508	0.76
UCR Property Crimes	1	-37.95	162.67	344.71	0.0000	0.87
	2	57.80	86.00	3.10	0.0849	0.86
	3	46.58	34.00	1.13	0.2936	0.79
Sex Crimes	1	0.67	0.67	0.00	1.0000	0.18
	2	0.67	2.33	0.52	0.4734	0.49
	3	0.67	1.67	0.46	0.4992	0.43
Other Crimes	1	-19.71	71.67	31.32	0.0000	0.81
	2	39.27	100.33	7.75	0.0077	0.82
	3	24.92	36.00	1.11	0.2973	0.74

NOTE: For Group 1, the reference site is the Diamond Club. For Groups 2 and 3, the reference site is the Fancy Cat club.

data. In other words, the expected numbers of crime events for these four categories of crime reported within 500-foot perimeters of the Group 1 adult nightclub locations are much lower than those reported within this perimeter for the control site. And these differences are not likely to be due to random or chance fluctuations.

For these four categories of crime incidents, the numerical differences of the coefficients for the Group 2 (clubs located in medium-crime risk areas) and Group 3 (clubs located in low-crime risk areas) adult nightclub sites and their respective control sites are not nearly as large and tend not to reach statistical significance. An exception is the Group 2 constrained model for UCR Violent Crimes, which has an F-ratio of 6.15. This F-ratio has a p-value or probability of occurrence under the null hypothesis of no difference in the regression coefficients for the club and control sites of .0167, which is statistically significant at the .05 level. Generally, however, the main conclusion from Table 5A for these four crime categories is that, within the 500-foot perimeters, there are significantly lower numbers of crime incidents reported around the Group 1 adult nightclubs than around the corresponding control site. For the Group 2 and Group 3 club sites, the

differences in the partial regression coefficients tend not to be as large and not attain statistical significance.

For the other two crime categories in Table 5A—Sex Crimes and Other Crimes—there is less of a pattern to the group differences. Recall that the number of sex crimes reported per year at any of the adult nightclub or control sites is very small. It is therefore not surprising that none of the numerical differences of regression coefficients for the groups of club sites and their corresponding control sites attain statistical significance. For the Other Crimes category, the numerical differences of the estimated regression coefficients for both the Group 1 clubs and their control site attain statistical significance. Even for these crimes, however, the numerical values of the regression coefficients for the Group 2 club locations (25.47) and their control site (41) indicate a larger expected number of crime incidents—about 16 per year—within the 500-foot perimeters around the club locations than around the control site. But the variability within the Group 2 club locations is sufficiently large that this numerical difference is not statistically significant.

What is the effect on the club group versus control site comparisons of enlarging the perimeters for crimes reported to 1,000 feet around the sites? Recall that this allows for the inclusion of more crime incidents from the neighborhoods around the club and control locations. Table 5B provides the answers. For four of the six crime categories—Total Crimes, Total UCR Crimes, UCR Violent Crimes, and Other Crimes—the estimates in Table 5B show that the adult club sites have estimated partial regression coefficients that are much smaller than those of the corresponding control sites for the Group 1 and Group 2 clubs. And these numerical differences all are statistically significant at the .05 level. Indeed, most of the F-ratios have p -values much smaller than .05. The estimated partial regression coefficients for the UCR Property Crimes category show a similar pattern of differences of club and control sites for the Group 1 clubs. However, while the coefficient difference is in a similar direction for the Group 2 clubs and control site for this crime category for the Group 2 clubs, the corresponding F-ratio has a p -value of .08, which does not exceed the .05 level of statistical significance. For the fifth crime category, Sex Crimes, the numerical differences between expected numbers of incidents reported for the club and control sites again are small and statistically insignificant. In brief, the main effect of enlarging the perimeters around the adult nightclub and control site locations from 500 to 1,000 feet for most categories of reported crime incidents is that the gaps in the expected numbers of crime incidents become very large and highly statistically significant for both the high- and the medium-crime risk locations.

Conclusion

On the basis of the findings reviewed above, it must be concluded that there is little evidence in the data to support the main hypothesis stated earlier. Recall that we asked: once variables known to be related to crime events suggested by social disorganization and routine activities theories have been taken into account, does the presence of an adult business in a localized area increase the concurrence in space and time of offenders motivated to commit crimes together with suitable targets for the crimes in the absence of guardians capable of preventing or deterring the crimes? We found that, at least in Charlotte, North Carolina, it is not the case that the presence of an adult nightclub increases the number of crime incidents reported in localized areas surrounding the club as compared to the number of crime incidents reported in comparable localized areas that do not contain an adult nightclub.

Indeed, the empirical data and analyses reported above imply the opposite, namely, that the nearby areas surrounding the adult nightclub sites have smaller numbers of reported crime incidents than do corresponding areas surrounding the three control sites studied. Furthermore, it must be emphasized again that the control sites were chosen solely by matching set demographic characteristics (which were chosen on the basis of crime opportunity/routine activities theory and research) of the census block or blocks containing the adult nightclubs and control sites. Thus, these findings could not have been biased by the choice of the control sites. Further, although not incorporated into the formal model, examination of the vehicular traffic patterns and number of commercial establishments surrounding the adult businesses yielded no consistent pattern of findings. There were not, for example, consistently more business targets for crime or greater numbers of human traffic passing through the control areas that would account for the greater numbers of crimes in these locations compared to the adult locations.

Our regression analyses help to identify more precisely exactly where the adult nightclubs with relatively low numbers of reported crime incidents are located. Specifically, for local areas around the adult nightclub and control sites defined by 500-foot radii, the regression analyses show that it is in the high-crime risk locations in which the numbers of reported crimes are significantly lower than in the corresponding control site. In the medium- and low-crime risk club and control site locations, the regression models estimate smaller effect coefficients for crime risk of the club locations than for the corresponding control sites. However, the numerical differences of the coefficients for these two more moderate-crime

risk groups versus their control sites generally do not reach standard levels of statistical significance. The regression analyses for the clubs and control sites defined by the 1,000-foot radii (which allow for the inclusion of more crime incidents from the neighborhoods around the sites) show similar results for the high-crime risk locations. In addition, the 1,000-foot perimeter regression analyses similarly show that the medium-crime risk locations generally have significantly lower numbers of crime incidents than those reported for the corresponding control site.

Our analyses of the overall mean numbers of crime incidents (for the adult nightclubs compared to the control sites) for the years 1998–2000 suggest that Charlotte, like many cities across the country and the United States as a whole (U.S. Department of Justice, Federal Bureau of Investigation 2000), was experiencing declining numbers of crime incidents during this period. These analyses show that the overall lower numbers of crime incidents reported in the local areas around the adult nightclubs than around the control sites declined across the three years. That is, the differences decreased, thus indicating that, as the overall level of crime in Charlotte declined from 1998 to 2000, the numbers of crime incidents reported in local areas around the control sites declined toward the lower levels already present in the local areas surrounding the adult club sites. In other words, the areas around the adult club sites already had relatively low levels of reported crime in 1998. Then, as the overall levels of crime in Charlotte declined in 1999 and 2000, the numbers of crime incidents reported around the club sites remained at these low levels. But, during 1999 and 2000, the numbers of crime incidents reported around the control sites declined along with crime levels in the city as a whole and toward the already low levels of the locations around the club sites.

Implications for Crime Opportunity and Social Disorganization Perspectives

What accounts for these findings? In contradiction to the hypothesis stated earlier in this article, why do the local areas surrounding the adult nightclubs in Charlotte have lower numbers of reported crime incidents than corresponding areas around the control sites? Why do we not find empirical evidence of the social disorganization/crime opportunity spillover of these adult establishments of the type cited at the outset of this article?

First, the adult nightclub business in the late-1990s in many respects may be quite unlike that of the 1960s and 1970s when these establishments were relatively new forums of entertainment in American society. As noted in the introduction to this article, adult nightclubs have been subjected to over two decades of

municipal zoning restrictions across the country, and they usually must comply with many other regulations as well. These clubs do not appear to be locations where potential offenders gather to prey on desirable targets in the absence of crime suppressors, such as employees whose role is to ensure the safety of customers and the maintenance of order within the clubs.

The establishments themselves have evolved more closely into legitimate businesses—establishments with management attention to profitability and continuity of existence. To meet these objectives, it is essential that the management and/or owners of the clubs provide their customers with some assurance of safety. Accordingly, adult nightclubs, including those in Charlotte, often appear to have better lighting in their parking lots and better security surveillance than is standard for non-nightclub business establishments. These may be factors producing fewer crime opportunities and lower numbers of reported crime incidents in the surrounding areas of the clubs.

The extensive management of the parking lots adjoining the exotic dance nightclubs, in many cases including guards in the parking lots, valet parking, and other control mechanisms, may be especially effective in reducing the possibility of violent disputes in the surrounding area. In addition, unlike other liquor-serving establishments (bars and taverns that do not offer adult entertainment) that may be present in the control areas, violent disputes in the areas surrounding exotic dance clubs between men over unwanted attention by other males to dates or partners are minimal due to the fact that the majority of patrons attend the clubs without female partners. Thus, the possibility of interpersonal aggression may be greatly reduced in the vicinity of adult dance clubs, compared to most other locations where adults congregate, such as bars or taverns that do not feature adult entertainment.

Findings from a qualitative, anthropological case study of several of the exotic dance clubs included in this study undertaken by Hanna (2001) are consistent with these speculations. Three adult clubs were chosen to reflect three different kinds of economically developed neighborhoods. Neighborhood residents had few complaints about the adult businesses and most neighboring business owners were quick to note that the reason they felt the adult clubs had few negative effects was because of very efficient management of the property and facilities.

A related, but alternative, explanation might also be considered. Perhaps victims of crime in areas surrounding adult clubs are not motivated to report crime incidents to the police. If this were the case, there may not be stable crime reporting across study and control sites. It could be that, compared to the control sites, more of the crime that occurs in the adult dance club zone goes

unreported. It seems plausible that many of the victims of crime in these areas might not want to draw attention to themselves. This may be a plausible alternative explanation for crimes such as personal assault and robbery; it would not be a reasonable explanation for burglary, serious property crimes in adjacent buildings, murder, or serious personal assault.

Finally, it is important to point out that imperfections in matching control and adult club areas may always be advanced to account for the findings here or for any other quasi-experimental study. While we attempted to match the sites on variables known to be related to crime as suggested by criminological theory and further examined business and traffic patterns and found no consistent pattern that could plausibly account for the results, it is never possible, logically, to rule out all alternative explanations based on some unobserved variable to match all possible variables. Indeed, we always fail to match on some unspecified variable. The challenge is to identify that variable before hand which may more reasonably account for the findings.

One specific difference between control and club sites may be worth noting, however, and could be the basis for further study. We chose specific business locations in the center of the control areas for our crime event counts, and this yielded two popular fast food restaurants and a gas station as control sites. There might be more appropriate control sites for comparison given the context of the secondary effects legal arguments.

Conceptually, it may be more appropriate to compare adult club sites with non-adult club sites so that one can determine whether the type of club activity affects the level of crime. This comparison may be implicit (if not explicit) in the minds of citizens and justices when considering whether an adult club should be allowed to locate in a particular area. Methodologically, using basic service type businesses such as fast food restaurants as control sites may confound the comparisons being made in the research, even if they are located in areas equivalent to those in which adult dance clubs are located.

There is an empirical study conducted in another locale, which may allay the concern that the control areas chosen in the present study would yield abnormally high crime rates relative to adult club locations. The Board of Commissioners of Fulton County, Georgia (Atlanta area) attempted to address the assumption that the consumption of alcoholic beverages in adult entertainment establishments may contribute to increased crime in the vicinity of such adult entertainment establishments. This study, conducted by the Fulton County Police Department, compared calls for service to the police that resulted in an arrest or a report in the vicinity of six liquor-serving establishments that featured adult entertainment

and six liquor-serving establishments that did not include adult entertainment (Fulton County Police 1997). The findings indicated substantially more calls for service to the police to liquor establishments that *did not* provide adult entertainment compared to liquor establishments featuring adult entertainment. These findings lend credibility to the outcome of the present study and suggest that the results are not a function of improperly matched control and test sites. Unfortunately, the Fulton County study did not match test and control areas on demographic variables known to be related to crime and is therefore methodologically limited.

The most informative approach would be to examine crime incidents surrounding adult businesses while simultaneously controlling for all other known or suspected causes of crime. This would include taking into account variables such as land use, social disorganization and crime opportunity, traffic patterns, and the presence or absence of alcohol-serving establishments. Future research should be devoted to the study of secondary effects of adult businesses with these methodological refinements.

Legal and Policy Implications

It has been demonstrated through this study that there may be a sufficient basis for a serious challenge to the assumption made by municipalities and the courts that there is an empirical relationship between exotic dance businesses and at least one kind of negative secondary effect, specifically increases in crime. Further, this conclusion is based on research procedures that adhere more thoroughly to long-standing and well-accepted methodological procedures for insuring sound scientific conclusions than previous studies undertaken by municipalities across the country.

In *Pap's*, Justice O'Connor provides room for legal challenges, based on the collection of empirical evidence, to the assertions made by municipalities regarding a relationship between adverse secondary effects and nude dancing. In order to remain consistent with the Supreme Court's holding in *Pap's*, lower courts will be required to consider the methodological legitimacy of evidence of a relationship between negative secondary effects and the subject businesses collected both by governments and by those business owners who attempt to challenge government ordinances restricting their establishments.

Further, in *Alameda*, Justice O'Connor and others further refined her notions of how municipalities' assumptions about adult businesses and secondary effects may be challenged by admonishing cities that they cannot engage in shoddy data collection or reasoning in coming to the conclusion that adult businesses cause these effects. In evaluating the quality of the data collected and the

3/18

reasoning of municipalities, a standard such as that laid out in *Daubert* for the admissibility of scientific evidence may best serve the interests of justice.

The study presented here, we would argue, meets such standards for admissibility. The application of such standards, bolstered by the Court's opinion in *Alameda*, may force courts to reject studies that have been previously relied upon as evidence of negative secondary effects, and require new, more methodologically sound studies to demonstrate the necessity for regulations directed at the exotic dance industry.

Challenging Common Sense Assumptions About Adverse Secondary Effects

This investigation suggests it may be best not to assume adverse secondary effects in the form of greater crime emanate from adult businesses in a community. Further tests of this assumption on a community-by-community basis are not tremendously difficult. Justice Souter noted in his opinion in *Alameda*:

. . . stress should be placed on the point that requiring empirical justification of claims about property value or crime is not demanding anything Herculean. Increased crime, like prostitution and muggings, and declining property values in areas surrounding adult businesses, are all readily observable, often to the untrained eye and certainly to the police officer and urban planner. These harms can be shown by police reports, crime statistics, and studies of market value . . .

And precisely because this sort of evidence is readily available, Justice Souter noted:

Reviewing courts need to be wary when the government appeals, not to evidence, but to uncritical common sense in an effort to justify such a zoning restriction. It is not that common sense is always illegitimate in First Amendment demonstration. The need for independent proof varies with the point that needs to be established, and zoning can be supported by common experience when there is no reason to question it. But we must be careful about substituting common assumptions for evidence, when the evidence is as readily available as public statistics and municipal property valuations, lest we find out when the evidence is gathered that assumptions are highly debatable.

In fact, in the *Alameda* case, Justice Souter has formulated a legal test based on empirical verification. He argues that the weaker the empirical evidence concerning secondary effects, the more likely the governmental action is not content neutral. He states:

. . . The lesson is that the lesser scrutiny applied to . . . zoning restrictions is no excuse for government failure to provide a factual demonstration for claims it makes about secondary effects; on the contrary, this is what demands the demonstration. And finally the weaker the demonstration of facts distinct from disapproval of the adult viewpoint, the greater the likelihood that nothing more than condemnation of the viewpoint drives the legislation. The danger is that without empirical verification the city has a right to experiment with a First Amendment restriction in response to a problem of increased crime that the city has never shown to be associated with adult businesses.

However welcome, this is an admittedly strong position in favor of empirical evidence to substantiate a legal assumption about human behavior. At the very least, however, a study like the one reported here could have the effect of shifting the burden of proof to municipalities to demonstrate that their theory of adverse secondary effects is correct.

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A Study of Secondary Crime Effects in the Township of Union

New Jersey

By

Daniel Linz Ph.D.

Professor, Department of Communication,
Law and Society Program
University of California, Santa Barbara

and

Bryant Paul

Department of Telecommunications
Indiana University, Bloomington

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**A Study of Secondary Crime Effects in the Township of Union
New Jersey**

Executive Summary

In the present study, we ask the following question concerning secondary crime effects in the Township of Union New Jersey: Do crime statistics show that police activity and resources are disproportionately attributed to the address where an adult entertainment business is located compared to other retail, eating and entertainment venues in Union? For the analyses we rely on calls for service (CFS) to the Township of Union Police Department. This included records of dispatches or calls for service that were either police-initiated or calls from the public from 2002 to 2006. An analysis by specific address was undertaken to determine if the adult business "Hott 22" located at 1721 US Highway 22 has required special attention from the police compared to other addresses in the Township of Union,

The results showed that there is no evidence that "Hott 22" is disproportionately more often the source of police attention than other addresses. Crime does not tend to accompany, concentrate around, or be aggravated by this adult business. Likewise, the results of this study show no evidence of an increase in narcotics

distribution and use, prostitution, violence against persons and property around this adult business. We therefore conclude that Hott 22 is not associated with so-called "adverse secondary effects." These results are consistent with and completely predicable from modern criminological theory and with past empirical research.

THE SUPREME COURT AND THE ASSUMPTION
OF NEGATIVE SECONDARY EFFECTS OF
ADULT BUSINESSES

Since 1976, the United States Supreme Court has decided a series of cases focusing on whether the Free Speech clause of the First Amendment allows cities and states to enact legislation controlling the location of "adult" businesses (*See e.g., Young v. American Mini Theatres, Inc.*, 427 U.S. 50 (1976); *City of Renton v. Playtime Theatres Inc.*, 475 U.S. 41 (1986)). "Zoning" regulations (e.g., laws or ordinances that, for example, prevent a sex-related business from operating within a certain number of feet from residences, schools and houses of worship, or a given distance from one-another) have been predicated on the notion that municipalities have a substantial interest in combating so-called "negative secondary effects" on the areas surrounding adult businesses. These secondary effects are generally said to include alleged increases in crime, decreases in property values, and other indicators of neighborhood deterioration in the areas surrounding "adult" businesses. Typically, communities have either conducted their own investigations of potential secondary effects or have

relied on studies, reports or other materials utilized by other cities or localities.

The rationale for the secondary effects doctrine was most completely laid out in *Renton v. Playtime Theatres, Inc.*, in 1986. In *Renton* the Supreme Court considered the validity of a Renton, Washington, municipal ordinance that prohibited any adult theater from locating within 1,000 feet of any residential zone, family dwelling, church, park or school. The Court's analysis of the ordinance proceeded in three steps. First, the Court found that the Renton ordinance did not ban adult theaters altogether, but merely required that they be a certain distance from so-called sensitive locations. The ordinance, the Court said, was properly considered to be a time, place and manner regulation. The Court next considered whether the ordinance was content neutral or content based. If the regulation were content based, it would be considered presumptively invalid and subject to the "strict scrutiny" standard. The Court held, however, that the ordinance was not aimed at the content of the films shown at adult theaters, but rather at the secondary effects of such theaters on the surrounding community, namely at crime rates, property values, and the quality of the city's neighborhoods. Given this finding, the Court stated that the ordinance would be upheld so long as the City of Renton showed that its ordinance was designed to serve a substantial government

interest, such as a reducing crime rates or maintaining property values.

Most recently (in 2002), a plurality of the Supreme Court (Justice O'Connor joined by the Chief Justice, Justice Scalia and Justice Thomas), with Justice Kennedy's concurrence, added an important methodological caveat concerning the evidence necessary to validate the assumption that adult businesses cause secondary effects. The Court warned in *City of Los Angeles v.*

Alameda Books., et al. that:

“This is not to say that a municipality can get away with shoddy data or reasoning. The municipality's evidence must fairly support its rationale for its ordinance. If plaintiffs fail to 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, the municipality meets the Renton standard. If plaintiffs succeed 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.”

THE TOWNSHIP OF UNION ORDINANCE

AND IT'S LACK OF JUSTIFICATION

On April 11, 2006 the Township of Union passed Ordinance No. 4942, an ordinance deleting Article V, entitled

'Sexually oriented businesses" chapter 164 in its entirety and replacing it with a new chapter. This new chapter established a license requirement for adult oriented businesses, limiting hours of operation to 10:00 am until 11:00 pm and restrictions on dancer patron proximity (e.g., dancers must perform on an elevated platform and dances may not occur closer than 6 feet to any patron or customer).

The Township makes no reference to studies conducted by other communities concerning the so-called adverse effects of adult businesses. Had the Township relied on these outside studies however, the ordinance would not have been justified on the basis of these research endeavors as most of the studies conducted by other municipalities do not adhere to professional standards of scientific inquiry necessary in order to insure methodological integrity and thus study reliability and validity. Further, the authors of several of the studies themselves often admit that they do not find evidence of adverse secondary effects associated with adult businesses. Finally, many of the so-called studies are not empirical investigations of secondary effects at all but rehashes of other cities' efforts at collecting evidence or reports from city officials concerning zoning laws or other legal alternatives available to municipalities.

The conclusions stated above are based on the peer-reviewed published paper entitled: Governmental Regulation of “Adult” Businesses Through Zoning and Anti-Nudity Ordinances; Debunking the Legal Myth of Negative Secondary Effects, *Paul, et al.*, Communication Law & Policy, Vol. 6, No. 2, Spring, 2001, pp. 355-391. This paper is attached as **Exhibit A**.

In this paper we examined over 100 reports and “studies” of secondary effects undertaken by municipalities in the United States. We engaged in a detailed examination of the methodological flaws in the “Top Ten” studies cited by municipalities. We conclude that the studies relied upon by other communities throughout the country do not adhere to professional standards of scientific inquiry, and nearly all failed to meet the basic assumptions necessary for methodological validity. Those studies that are scientifically credible demonstrate either no negative secondary effects associated with adult businesses, or a reversal of the presumed negative effects.

The Township of Union conducted no formal secondary effects study of its own. The Township did not examine crime incidents in the areas surrounding the adult cabaret and compare them to other suitably matched locations. In our opinion the only reliable information that could have provided the Township of Union with a reasonable basis for concluding that sexually oriented

business/establishments are related to adverse secondary effects would have been obtained by systematically collecting police call-for-service information or similar data involving crime incidents and adhering to the minimal methodological standards outlined above for a study of such data as described in *Paul*.

This would have included obtaining from the police department the computerized records of calls for service. This information is easily generated as most cities have a computerized aided dispatch (CAD) system. This system logs each call made to the police and each report generated by the police. It is not, therefore, an onerous task for the Township to have obtained these calls for service and analyzed them according to proper methodological standards to determine whether secondary effects existed. Without such evidence, the Township has failed to demonstrate the existence of adverse secondary effects. We have undertaken such a study.

THE PRESENT STUDY

The purpose of the present study is to conduct the type of empirical analysis in the Township of Union that avoids both the collection of "shoddy data" and the use of (shoddy) "reasoning" as demanded in *Alameda Books*. We ask whether a relationship, in fact, exists between the presence of an adult cabaret and negative secondary effects in Township of Union. Further, this evidence is

obtained in accordance with established methodological procedures so as to insure a high level of scientific reliability.

Specifically, in the present study, we ask the following question concerning secondary crime effects in the Township of Union, New Jersey: Do crime statistics show that calls for service to the police occur with disproportionate frequency to the address where an adult entertainment business "Hott 22" is located compared to other retail, eating and entertainment venues in the Township?

DATA AND METHODS

Overview

The methodological approach taken here involves a focused analysis by specific address to determine if the adult business "Hott 22" has required special attention from the police compared to other addresses in the Township. "Hott 22" is an adult cabaret that features exotic dancing but that does not serve alcohol. Patrons are permitted to bring their own bottles of wine or beer.

Choosing the Comparison Locations

Locations defined by businesses that served alcohol, food, offered retail shopping or entertainment were chosen as comparison addresses. In addition, certain public institutions such

as the local high school were chosen for examination. The establishments chosen for the study represent a nearly exhaustive list of neighborhood bars, fast food businesses and shopping locations in the Township of Union.

Adult Business and Comparison Locations

Figure 1a-c displays a map of the adult cabaret “Hott 22” and the comparison locations in the Township of Union. As can be seen from the figures most of the comparison businesses are located along the same major route and comprise retail shopping establishments, fast food restaurants, bars as well as a public institution, the local high school. These businesses are a mix of establishments some located in shopping centers, some free standing.

Measuring Crime and Disorder Incidents

For the analyses below we rely on data collected by the Township of Union Police Department. This included records of dispatches or calls for service (CFS) at “Hott 22” and the comparison locations. We requested data for the period 2001 to 2006. Each record contained the date, location of the call and the classification of the call. For many establishments, including “Hott 22,” the police record keeping was unable to distinguish between calls for service and police dispatches to individual businesses that shared the same address (e.g., businesses located in

shopping malls). “Hott 22,” for example, shares its address with a very popular bowling alley that serves alcohol and a check-cashing establishment. Individualized address data was requested for each of the businesses in the study, however, we were informed that the record keeping system was inoperative and these could not be provided. Upon repeated requests only one individualized calls for service report was issued, this individualized report was for the “Hott 22” establishment.

Table 1 displays the total number of all reported incidents before and after filtering all obviously non-criminally related reports for adult and comparison areas. The number of calls for service ranged from approximately 3000 calls and dispatches during the study period for the high school to approximately 400-700 calls for the businesses “Chuck E. Cheese’s” and “Tiffany Gardens” “Hott 22” was at the low end of the establishments in terms of police attention with 795 calls and dispatches. The largest percentage of the calls to the police or dispatches for all locations were classified as traffic stops, followed by patrol checks and routine patrol checks. **Figure 2** displays histogram of the breakdown of calls for service to the police for all of the study addresses.

In the next step of the analyses we eliminated the categories: Directed Patrol, Parking Violations, Parking Complaints, 911 Excused, Parking Complaints, Traffic Stop, Disabled Vehicle, Accident, Medical Aid, Fire Inspection, Fire Inspection, Duplicate Call, Unfounded Call, Lockout Vehicle, Premise Check, False Alarm, Tow/Private, Sewer. The analyses was then completed with incident categories such as Suspicious Acts, Robbery, Dispute, Disorderly Persons, Vehicle Theft, Assault and other more crime-related activities.

Examination of crime related incidents only reveal that “Hott 22” has 409 instances of these events. Comparing this number to other locations we may infer that the area surrounding the adult cabaret “Hott 22” is approximately as likely to receive police attention for crime related matters as the areas surrounding “Hooters” (411) or Chuck E. Cheese’s (360). The “Hott 22” area is substantially *less* likely to be associated with crime than the area surrounding “Pizza Hut” (698) or “Applebee’s (882). The area surrounding Wal-Mart-McDonald’s was three times as likely to receive police attention for criminal matters and constituted a significantly greater source of police activity than “Hott 22.”

Finally, as noted above we were able to obtain the records for the “Hott 22” individual address Only 16 incidents (or

approximately two incidents per year) specifically occurred at
 “Hott-22” between 2001 and 2006. These are listed below.

1. Dec 23, 01 Dispute
2. March 01, 02 Burglary of M.V
3. March 22, 02 Cooperate Municipality Agency
4. March 26, 02 Suspicious Act,
5. March 27, 02 Criminal Report after the fact
6. Sept. 28, 02 Dispute
7. Oct. 5, 02 Dispute
8. Dec. 9, 02 Suspicious Act in progress
9. Jan. 13, 03 Disorderly person
10. June 20, 03 Armed Robbery
11. Sept. 3, 03 Detective Burglary Investigation, active Burglary
12. Apr. 3, 04 Arrest all others
13. July 17, 04 Harassment report
14. Nov. 6, 04 Local code violation
15. Sept. 17, 05 Dispute
16. Oct. 1, 05 Arrest Warrant

SUMMARY AND CONCLUSIONS

There is no evidence that the adult business “Hott 22” is more often the source of police attention than other addresses in Union. When compared to other locations there is no evidence that crime tends to accompany, concentrate around, and be aggravated by the adult business. In summary, the adult gentleman’s club “Hott 22” are neither more or less likely to require special police attention proportionately compared to other businesses. These results are consistent with modern criminological theory and with evidence from published peer reviewed empirical studies of the adult businesses that show no adverse effects associated with adult businesses in communities across the United States.

THE ROUTINE ACTIVITIES MODEL

That the gentlemen's club "Hott 22" is not a particularly salient source of criminal activity in the Township of Union and in fact requires far less police attention than other businesses such as fast food restaurants, retail shopping locations and alcohol serving bars is completely consistent with Cohen and Felson's (1979) routine activities theory of crime. This theory and its progeny are expertly summarized by criminologist Dr. Terry A. Danner of *Saint Leo University* (see: *Violent Times: A Case Study of the Ybor City Historic District in Criminal Justice Policy Review*, Volume 14, Number 1, March 2003 3-29, 2003). Danner notes that this theory explores the link between social change, routine activities, and criminal opportunities. Based on the assumption of interdependence between legal and illegal routine activities, the essence of this theory can be reduced to the following formula: $(O + V) - G = C$, where O represents the "motivated offender"; V indicates the victim (which can be either the victim's person or property and is thus often referred to as "target."); G denotes "guardianship," which, in this version of the theory, is any person who can deter the criminal act; and C is the probability that a direct contact predatory crime will occur.

The theory emphasizes the idea that whenever the economic, demographic, and social forces that shape a community bring potential offenders and suitable targets together in the absence of effective guardianship, the probability that a criminal event will occur increases. In terms of analyzing possible criminogenic locations, the three essential questions are: How does this location influence the motivation, decision-making, and presence of potential offenders? How does it affect the supply and suitability of potential targets? What physical and social characteristics of the location inhibit or facilitate guardianship?

As will be shown below, exploration of each of these questions shows that there is nothing unique about gentleman's clubs in general, and "Hott 22" located in the Township of Union, in particular, that increases the probability of crime at this location relative to other locations in the community. Modern criminological theory, in contrast to the assumptions made by municipalities and courts in the past, does not support the idea that adult cabarets will any more likely to be associated with criminal activity, and in some cases less likely to be sources of criminal activity in the community compared to other locations.

First, we discuss the theory's explication of offender characteristics, then we describe the theory's notion of victim characteristics, finally we describe what has been termed place,

offender, and target convergence taking special note of the implications of routine activities theory for gentlemen's clubs.

Offender Characteristics

Research studies have identified four relevant characteristics of potential offenders that, through interaction with the situational factors of place, are likely to influence the potential offender's decision-making process. They are 1) lifestyle proximity, 2) offender knowledge, 3) offender anonymity, and 4) offender impairment. The question for each of these factors is: is an adult business such as a gentlemen's club more or less likely to be associated with processes that capitalize on the offender's decision making processes?

Lifestyle proximity. Lifestyles that regularly bring potential offenders into proximity with suitable targets have been found to facilitate crime (Brantingham & Brantingham, 1981; Cohen&Felson, 1979; Eck&Weisburd, 1995; Felson, 1995). If there exists congruence between the lifestyles of populations that tend to be at high risk for crime commission, the lifestyles of people who might be suitable targets for these potential offenders, and the activities that commonly occur at a particular place, then this would tend to increase offender-victim proximity and thus facilitate crime occurrences.

Offenders are theoretically attracted to areas and locations that bring them into proximity with suitable targets. Congruent with this element of the theory we found in the present study that the most likely areas for police activity in the Township of Union would be shopping malls, large retail store parking lots, and fast food restaurants. These locations are far more likely to be both target rich and congruent with lifestyle of people that are likely to committing crime than other locations. The "Hott 22" gentlemen's club does not present an environment as target rich as several fast food restaurants or shopping malls in the Township of Union. "Hott 22" gentlemen's club may be too expensive a location and therefore incongruent with the lifestyles of the most likely offenders. This business charges an expensive entry fee and alcohol service and entertainment fees are likely incongruent with the lifestyles of high risk for crime commission populations.

Offender knowledge. The presence of potential offenders with an extensive knowledge of the areas wherein suitable targets can be found is a facilitator of crime (Brantingham & Brantingham, 1993; Clarke, 1992; Eck & Weisburd, 1995; Reppeto, 1976). Beyond the more obvious advantages of knowing the routes of access and escape, potential offenders who are familiar with the physical layout and social rhythms of a specific environment are also more aware of the local crime opportunity

structure. Familiarity with the criminal opportunities and physical layout of an environment should thus facilitate the criminal activity of potential offenders in the area wherein they possess this level of awareness.

This element of the theory was confirmed in that shopping areas adjacent to neighbor hoods and bars and restaurants located within or adjacent to residential neighborhoods were most likely to be areas of areas of criminal perpetration. Strange areas unknown to criminals would not be favored. Offenders would not know the routes of access and escape, potential offenders who are familiar with the physical layout and social rhythms of a specific environment are also more aware of the local crime opportunity structure. Because adult businesses including gentleman's clubs are often subject to zoning regulations that do not permit them to locate near residential areas the probability of criminal predation may be reduced compared to shopping malls, fast food restaurants, and bars.

Offender Anonymity. The presence of potential offenders whose identity is unknown to possible capable guardians in the area is a facilitator of crime (Felson, 1995; Roncek & Bell, 1981; Roncek & Maier, 1991; Sampson, 1987). This anonymity can result from the sheer volume and turnover of people in an area or its lack of community solidarity, but it may also result from the

potential offender's purposeful actions to remain unknown.

Whatever the source, it is a characteristic of potential offenders that facilitates their criminal activity because it can reduce the effectiveness of whatever capable guardianship (a concept discussed in greater detail below) might exist.

Since anonymity can result from the sheer volume and turnover of people in an area the theory suggests that shopping malls, fast food restaurants and bars that are extremely popular would be the most likely targets for offenders. The study reported here confirms this prediction.

There may be additional implications for adult gentlemen's clubs such as "Hot 22". If there are offenders in the area unknown to potential guardians the probability of crime may increase. Because of the extensive guardianship at the gentlemen's clubs in general and the "Hott 22" location in particular this proved not to a problem.

Offender Impairment

The presence of potential offenders whose decision-making capabilities have been impaired by the ingestion of psychoactive substances is a facilitator of crime (Block & Block, 1995; Clarke, 1992; Roncek & Maier, 1991; Roncek & Pravatiner, 1989)

Obviously, areas in which psychopharmacological disinhibitors are freely distributed and ingested are likely to have a

higher concentration of disinhibited people, and this in turn increases the potential for offending (for a review of the literature examining the connection between alcohol intoxication and aggression, see Fagan, 1990). This suggests that premises that sell alcohol such as liquor stores and bars and some restaurants most likely to be crime targets by offenders. The "Hott 22" gentlemen's club does not sell alcohol. The club is a BYOB establishment and this policy excludes bringing hard liquor onto the premises. Consequently, the possibility that business is the source of predators who are impaired is greatly reduced.

Characteristics of Targets

Routine activities theory also implies that people and their property vary in suitability as targets for predatory crime and that these differences influence which are chosen by offenders, or whether or not a crime even occurs at all (Brantingham & Brantingham, 1993; Felson & Cohen, 1980; Miethe & Meier, 1990). At the aggregate level, given a stable exposure to potential offenders and consistency in capable guardianship, the more a place attracts suitable targets and/or increases their suitability, the greater the frequency of crime that will result. Research has identified three constructs that can be considered characteristics of potential targets that, in interaction with the situational factors of place, are likely to influence the probability of a person or his or

her property becoming a victim of crime.

Target Value

The presence of people or their property that have high value as crime targets is a facilitator of crime (Felson & Cohen, 1980; Roncek & Maier, 1991). The most obvious form of target value is economic. This suggests that fast food customers will be the most likely targets as will bar patrons and indeed the findings of this study bear out the idea that the police are frequently summoned to these locations. These customers are most likely to be carrying cash for their transactions. Further, a range of soft targets such as elderly men and women, mothers with small children in tow carrying cash would be considered theoretically the most valuable targets and these are not frequent patrons of the "Hott 22" establishment.

Perhaps less likely to be attractive targets are Wal-Mart and other retail outlet customers who will probably use credit cards rather than cash, however these locations. However, since credit card transactions are available in gentlemen's clubs and "Hott 22" has an ATM to dispense cash within the premises thus relieving the customer of the need to carry cash there should theoretically be no greater target attractiveness at this location. The findings of this study show that retail outlets are far more likely to attract police attention and utilize police resources than an adult business such as

“Hott 22.”

However, a target’s usefulness as an outlet for retaliation, sexual aggression, or as a means for improving the offender’s self-concept is also possible. Target’s outlet for retaliation implies high school. Indeed, the present study revealed that the local high school is by far the most criminogenic source of police activity in the Township of Union. One would be more likely to expect sexual assault surrounding gentlemen’s club if the theory is correct. However, no evidence of this criminal activity was found in the present study.

Target Visibility

The presence of people or their property that are highly visible as suitable targets is a facilitator of crime (Felson & Cohen, 1980; Roncek & Maier, 1991). Some places attract or produce large concentrations of people with high profile levels of vulnerability. People who are inattentive to their surrounding, appear to lack “street smarts,” are physically incapacitated due to medical conditions or intoxication, or any combination of these characteristics, are at a higher risk of victimization when exposed to potential offenders than are those without such characteristics.

The presence of people who are inattentive to their surrounding is far more likely at bars rather than “Hott 22.” Because “Hott 22” does not serve alcohol and because “Hott 22”

and similar venues are controversial in the community, customers are far more likely to be especially vigilant. The low rate of victimization found in the present study is congruent with these ideas.

Target Guardianship

The presence of people and their property without capable guardianship is a facilitator of crime (Cohen & Felson, 1979; Eck & Weisburd, 1995; Felson, 1995; Riccio, 1976; Roncek & Maier, 1991; Roncek & Pravatiner, 1989; Shannon, 1986; Sherman, Gartin, & Buerger, 1989). Guardianship is defined as the presence of persons who can protect would-be victims through the deterrence power of their potential to intervene in one way or another. Guardians may physically stop the offense from occurring. They may have the potential to report the crime to authorities, identify the offender, or even apprehend or injure the perpetrator. In this sense, guardianship can be a feature of place, but it can also be a characteristic that people bring with them.

Although places that consistently have large numbers of people present are likely to increase contact between potential offenders and suitable targets, they can also provide high levels of guardianship. The presence of an audience should generally increase the probability that a potential offender will choose not to commit a crime. "Hott 22" is an establishment with an

exceptionally high level of guardianship. The establishment employs several male floor hosts and "bouncers" (3-4 employees Sunday through Wednesday and 5 bouncers security personnel Thursday through Saturday). These security personnel also patrol the parking area and the business establishment has a multitude of security cameras that oversee every entry and egress location in the club. These guardianship practices undoubtedly contribute to the relatively low level of police activity found at the "Hott 22" location.

Place of Offender/Target Convergence

As Danner points out it is the essential nature of a place that influences the interaction of potential offenders, suitable targets, and guardianship. The context of where the place is located, what kind of people it attracts, and the routine activities that occur there are essential to its criminogenic potential. Some elements of this backcloth can work to inhibit crime while other features facilitate it.

Danner notes that research into the environments of crime has identified five characteristics of place that, through interactions with the characteristics of the people who frequent the location, influence the probability of a person becoming a victim of crime.

Place Management

Places in which there is little active management of

behavior facilitate crime (Block&Block, 1995; Clarke, 1992; Eck&Weisburd, 1995; Felson, 1995; Mazerolle, Kadleck, & Roehl, 1998; Sherman, 1995). Places where “anything goes” can allow relatively minor incivility to escalate into crime. Conversely, it has been found that places in which managers and employees are assigned guardianship roles that include the consistent enforcement of clear rules of behavior have lower occurrences of crime. As noted above “Hott 22” is an establishment with an exceptionally high level of guardianship. The establishment employs security personnel inside the premises and security personnel also patrol the parking area. These active guardianship practices contribute to the relatively low level of police activity found at the “Hott 22” location.

Ecological Labeling

Places that have been labeled as a “devalued area” wherein deviance is tolerated facilitate crime (Block & Block, 1995; Brantingham & Brantingham, 1991; Sherman et al., 1989). Once a place starts to develop a reputation as an environment in which deviance is tolerated, a deviation amplifying feedback loop can begin. That is, the more deviance occurs, the more normal it appears to be, and the more it is accepted as normal behavior, the more people choose to act in deviant ways. For places, being labeled as an environment of unlimited personal freedom attracts

people who wish to behave without restraint. It is possible that areas with reputations of this type may also repel potential victims who want to avoid dangerous places.

Research has shown that this kind of environmental labeling does tend to attract relatively higher numbers of potential offenders and that this "attractor effect" can increase the probability of crime. The exceptionally high level of guardianship at the "Hott 22" establishment apparently dampens any possibility that such an "anything goes" environment could be created.

Place Proximity

The location of places close to concentrated populations of potential offenders facilitates crime (Brantingham & Brantingham, 1991, 1993; Dunn, 1980; Felson, 1986; Roncek & Maier, 1991; Roncek & Pravatiner, 1989; Sherman, 1995; Sherman et al., 1989). Affluent areas are often victimized by offenders who live in less affluent places that are close by. These more affluent areas attract predatory offenders because they provide a concentration of suitable targets in a conveniently located environment.

Youth Attractors

Areas that attract a high number of young people are facilitators of crime (Block & Block, 1995; Brantingham & Brantingham, 1981, 1993; Roncek & Faggiani, 1985; Roncek & Lobosco, 1983; Roncek & Pravatiner, 1989). Because age is

strongly related to both offending and being victimized, places that attract large numbers of young people concentrate, and thus increase, the contact between offenders and suitable targets. This is not a problem for gentlemen's clubs. Instead, as the data from the present study indicates it may be more of a problem for fast food restaurants and the local high school.

Bars

Areas that contain public establishments that serve alcohol as an important part of their retail activity facilitate crime (Block & Block, 1995; Minnesota Crime Commission, 1980; Roncek & Bell, 1981; Roncek & Maier, 1991; Roncek & Pravatiner, 1989; Shannon, 1986; Sherman, 1995). Not all bars are criminogenic, but certain types of bars and clusters of bars within night entertainment areas can facilitate crime by concentrating a number of the conditions described above. These circumstances can be counteracted through the practice of patron management, providing guardianship, and other types of crime prevention activities. It has also been shown that higher levels of alcohol outlet density are geographically associated with higher rates of violence (Scribner, Cohen, Kaplan, & Allen, 1999; Scribner, MacKinnon, & Dwyer, 1995). This appears not to be a problem for "Hott 22," itself but it suggests that the bar in the adjacent bowling alley could attract people who will be the source of crime.

FURTHER EMPIRICAL SUPPORT FOR ROUTINE
ACTIVITIES THEORY
AND LACK OF EFFECTS FOR ADULT BUSINESSES

Peer reviewed empirical studies that do not suffer from the basic methodological flaws we enumerate in *Paul* have confirmed the routine activities theory of crime.

Dr. Bryant Paul, (currently an assistant professor in the Department of Telecommunications at Indiana University) and I undertook an examination of adult cabarets in the City of Ft. Wayne, Indiana, which serve alcoholic beverages and provide exotic entertainment. The report of this study received a top award from the United States Department of Justice and thus has been vetted for its methodological soundness. This work was awarded "Top Student Paper" at the student paper competition at the conference: Translating Spatial Research Into Practice: The Fifth Annual International Crime Mapping Research Conference, Sponsored by the Crime Mapping Research Center, National Institute of Justice, U.S. Department of Justice. A copy of the award letter is attached as **Exhibit B**. A subsequent version of this report authored by Mr. Paul and myself was presented at the 2002 International Communication Association where is was recognized

as one of the "Top Four Refereed Papers in Communication, Law and Policy." "Using Crime Mapping to Measure the Negative Secondary Effects of Adult Businesses in Fort Wayne, Indiana: A Quasi-Experimental Methodology." This paper is attached to this report as **Exhibit C**.

In this study a 1000 feet circumference surrounding each of eight exotic dance nightclubs in Fort Wayne was established. Comparison areas were selected in the city of Fort Wayne and matched to the club areas on the basis of demographic features associated with crime and commercial property composition. The number of calls to the police from 1997-2000 in the areas surrounding the exotic dance nightclubs that served alcohol was compared to the number of calls found in the matched comparison areas. Our analysis showed little difference, overall, between the total number of calls to the police reported in the areas containing the exotic dance nightclubs and the total number of offenses reported in the comparison areas. We concluded from these findings that there was no evidence of adverse secondary effects associated with this form of adult business,

Also relevant here is an additional study conducted in Charlotte North Carolina which I undertook with my assistant Bryant Paul and Kenneth C. Land, Jay R. Williams and Michael E. Ezell of Duke University. This paper is entitled: *An Examination*

of the Assumption that Adult Businesses are Associated with Crime in Surrounding Areas: A Secondary Effects Study in Charlotte, North Carolina. The report of this study has been published in the peer reviewed scientific journal *Law and Society Review*, March 2004. This report is the only secondary effects study published in a peer-reviewed journal. This published article is attached as **Exhibit D.**

This study sought to determine if a relationship exists between adult erotic dance clubs in Charlotte, North Carolina that feature topless dancing and serve alcohol and negative secondary effects in the form of increased numbers of crimes reported in the areas surrounding the adult businesses. Specifically, the study addressed the following research question: Once variables known to be related to crime events suggested by social disorganization and routine activities theories have been taken into account we asked: does the presence of an adult business in a localized area increase the concurrence in space and time of offenders motivated to commit crimes together with suitable targets for the crimes in the absence of guardians capable of preventing or deterring the crimes? This is the only peer reviewed published study testing routine activity theory as it applies to alleged secondary crime effects and adult businesses.

For each of 20 businesses, a control site (matched on the basis of demographic characteristics related to crime risk) was compared for crime events over the period of three years (1998-2000) using data on crime incidents reported to the police. We found that the presence of an adult nightclub does not increase the number of crime incidents reported in localized areas surrounding the club (defined by circular areas with 500 and 1,000 feet radii) as compared to the number of crime incidents reported in comparable localized areas that do not contain such an adult business. Indeed, the analyses imply the opposite, namely, that the nearby areas surrounding the adult business sites have smaller numbers of reported crime incidents than do corresponding areas surrounding the three control sites studied.

What accounts for these findings? Why did the local areas surrounding the adult nightclubs in Charlotte have lower numbers of reported crime incidents than corresponding areas around the control sites? Why did we not find empirical evidence of the social disorganization/crime opportunity spillover of these adult establishments? First, the adult nightclub business beginning in the late-1990s in many respects may be quite unlike that of the 1960s and 1970s when these establishments were relatively new forums of entertainment in American society. Adult nightclubs have been subjected to over two decades of municipal zoning

restrictions across the country, and they usually must comply with many other regulations as well. These clubs do not appear to be locations where potential offenders gather to prey on desirable targets in the absence of crime suppressors, such as employees whose role is to ensure the safety of customers and the maintenance of order within the clubs. The establishments themselves have evolved more closely into legitimate businesses establishments with management attention to profitability and continuity of existence. To meet these objectives, it is essential that the management and/or owners of the clubs provide their customers with some assurance of safety.

Accordingly, adult nightclubs, including those in Charlotte, often appear to have better lighting in their parking lots and better security surveillance than is standard for non-nightclub business establishments. These may be factors producing fewer crime opportunities and lower numbers of reported crime incidents in the surrounding areas of the clubs. The extensive management of the parking lots adjoining the exotic dance nightclubs, in many cases including guards in the parking lots, valet parking, and other control mechanisms, may be especially effective in reducing the possibility of violent disputes in the surrounding area. In addition, unlike other liquor-serving establishments (bars and taverns that do not offer adult entertainment) that may be present in the control

15-149

areas, violent disputes in the areas surrounding exotic dance clubs between men over unwanted attention by other males to dates or partners are minimal due to the fact that the majority of patrons attend the clubs without female partners. Thus, the possibility of interpersonal aggression may be greatly reduced in the vicinity of adult dance clubs, compared to most other locations where adults congregate, such as bars or taverns that do not feature adult entertainment.

Findings from a qualitative, anthropological case study of several of the exotic dance clubs included in this study undertaken by Hanna (2001) are consistent with these speculations. Three adult clubs were chosen to reflect three different kinds of economically developed neighborhoods. Neighborhood residents had few complaints about the adult businesses and most neighboring business owners were quick to note that the reason they felt the adult clubs had few negative effects was because of very efficient management of the property and facilities.

Another empirical study entitled, *A Secondary Effects Study of Peep Show Establishments in San Diego, California*, by myself and Bryant Paul, Department of Telecommunications, Indiana University, was undertaken to test whether there is a greater incidence of crime in the vicinity of peep show establishments in San Diego, California than comparable "control" areas which do

15-150

not contain peep show establishments, and to determine whether any secondary crime effects of peep show establishments in San Diego are disproportionately greater between the hours of 2 a.m. and 6 a.m. The city of San Diego was chosen for study because of a recently passed ordinance that makes it unlawful for any person to operate a "peep show booth" or "peep show device" between the hours of 2:00 a.m. and 6:00 a.m. The city claimed that the ordinance was needed to further a substantial government interest in combating crime. "Calls for service" to the police within a 1000-foot area on either side of the peep show establishment (i.e., involving an uninterrupted 2000 foot wide area) were compared to comparably sized control areas. The levels of crime within a 1000-foot area on either side of peep show establishments during the 2a.m. to 6 a.m. hours of operation were also compared to levels for the entire day.

We found neither evidence of differences in crime levels, nor any evidence of disproportionately greater amounts of crime within the 2 a.m. to 6 a.m. time period. We conclude that this study constitutes evidence that the city of San Diego does not have a special problem with crime at the peep show establishments generally, nor is there a heightened problem with crime during the 2 a.m. to 6 a.m. period. This study, also ignored by Dickinson County has been peer reviewed and presented at the annual

meeting of the Western Region Conference of the Society for the Scientific Study of Sexuality, in San Diego, California, in April 2004. This study has been peer reviewed once again and is now published in the *Journal of Sex Research*. This study is attached hereto as **Exhibit E**.

Another peer-reviewed paper is now available. It is entitled, *Examining the Link Between Sexual Entertainment and Sexual Aggression: The Presence of Adult Businesses and the Prediction of Rape Rates in Florida*, by Randy D. Fisher, Bryant Paul and myself. This paper was presented to the Law and Policy Division at the 2004 annual meeting of the International Communication Association: New Orleans, LA.

The purpose of this study was to systematically examine whether rates of rape and other crimes are associated with the presence of adult businesses in each of the 67 counties of Florida once other variables known to be related to crime are controlled. Three kinds of crime are examined: UCR Index crimes, rape, and domestic violence. In addition, three measures of adult businesses are included: the total number of adult businesses that offer some form of live nude or semi-nude entertainment, the number of such businesses that provide nude entertainment, and the number of nude dancing clubs. In the case of the crimes of rape and domestic violence, zero order correlations between all three measures of

nude entertainment and rates of rape and domestic violence were essentially zero. In the case of the relationship between index crimes and nude entertainment, there is evidence of a significant correlation between these variables. The statistically significant correlations between measures of nude entertainment and Index crimes disappear when other variables are considered. The results of this study show that a causal link between nude entertainment and secondary effects as measured by crime rates at the county level is extremely improbable. This study is attached hereto as **Exhibit F.**

We have recently undertaken an investigation of crime rates (and contributing factors to the crime rates) in and around four major Ohio cities. Our study shows a lack of correlation between the presences of liquor-serving establishments featuring nude or semi-nude dancing and crime. Hierarchical regression analysis in Toledo revealed that the presence or absence of adult cabarets in a given neighborhood did nothing to explain the presence of crime in that same neighborhood. Similarly, in Columbus, the addition of alcohol-serving adult cabarets as a factor in our analysis resulted in zero explanatory power. The work in Dayton revealed a negative correlation between adult cabarets and incidents of rape, such that the presence of an alcohol-serving adult entertainment establishment is actually indicative of

fewer rather than more rape events. Finally, in Cleveland, we found that the addition of alcohol-serving adult cabarets as a factor in his analysis also added no ability to explain crime incidents. We suggest that the negative correlation between adult establishments and violent crime might be explained by the fact that in alcohol serving establishments that do not feature adult entertainment, people fight with one another particularly men over women. None of that exists in an adult entertainment venue. This peer-reviewed paper is attached as **Exhibit G**.

Finally, in order to test the assumption that adult cabarets are associated with negative secondary effects, an extensive and detailed empirical study of criminal activity in and around these businesses in Daytona Beach, Florida was undertaken utilizing data provided by the Police Department. We first asked: Does the presence of an adult cabaret in a neighborhood increase the occurrence of crime in Daytona Beach?

In order to answer this question we considered the entire city using census blocks as the unit of study. We examined demographic variables previously used by criminologists and found to be related to criminal activity, such as a local area's population, age structure (especially the presence of young adults) and race/ethnic composition. We also examined indicators of social disorganization such as housing vacancies and female-

headed households. Finally, congruent with routine activities theory we included a variable that measured the number of alcohol retail sale establishments in each block.

These variables, as expected, were statistically strongly related to crime events in the final analysis. We are able to account for crime events in Daytona Beach with a relatively high level of accuracy (explaining approximately 60 percent of the variability). The social disorganization and routine activity variables and especially the presence of an alcohol beverage retail sale establishments in the blocks accounts largely for this explanatory power. The presence of an adult cabaret in the census block accounted for an insubstantial amount of explanatory power.

We then asked: Does the presence of adult cabarets contribute to increased crime in the local vicinity of these establishments. We focused on the areas surrounding the adult cabarets (1000 foot radius). We found that far from being the source of crime activity, only one to three and half-percent of the crime events could be attributed to the adult cabarets themselves. Instead, other businesses in the area, primarily alcohol-serving establishments that do not feature adult entertainment, accounted for far more crime events.

Because the City of Daytona Beach specifically maintained that the primary justification for it's regulation of nudity was

because it was associated with increases in prostitution and sexual assaults we undertook a separate set of analyses using each sex crime type as an outcome variable. We found that often the adult cabarets accounted for zero or near zero percent of the sex crime activity in the near vicinity. Consequently, we concluded that there is not support for the City of Daytona Beach's theory that nudity is associated with increases in sex crime incidents such as prostitution or sexual assault. A copy of this study and the subsequent US District Court ruling and opinion concerning this study is attached as **Exhibits H and I**.

SUMMARY

In summary, modern criminological theory and past research that has been peer reviewed and published in scientific journals does not suggest that gentleman's clubs such as "Hott 22" are neither more or less likely to require special police attention proportionately compared to other businesses. That the gentlemen's club "Hott 22" is not a particularly salient source of criminal activity in the Township of Union is completely consistent with Cohen and Felson's (1979) routine activities theory of crime. We conclude that the gentlemen's club "Hott 22" presents no special problems for the police and the community and therefore should not be associated with so-called adverse secondary effects of adult businesses.

Respectfully Submitted.

Daniel Linz

Figure 1a: A map of the adult cabaret "Hott 22" and the comparison locations in the Township of Union.

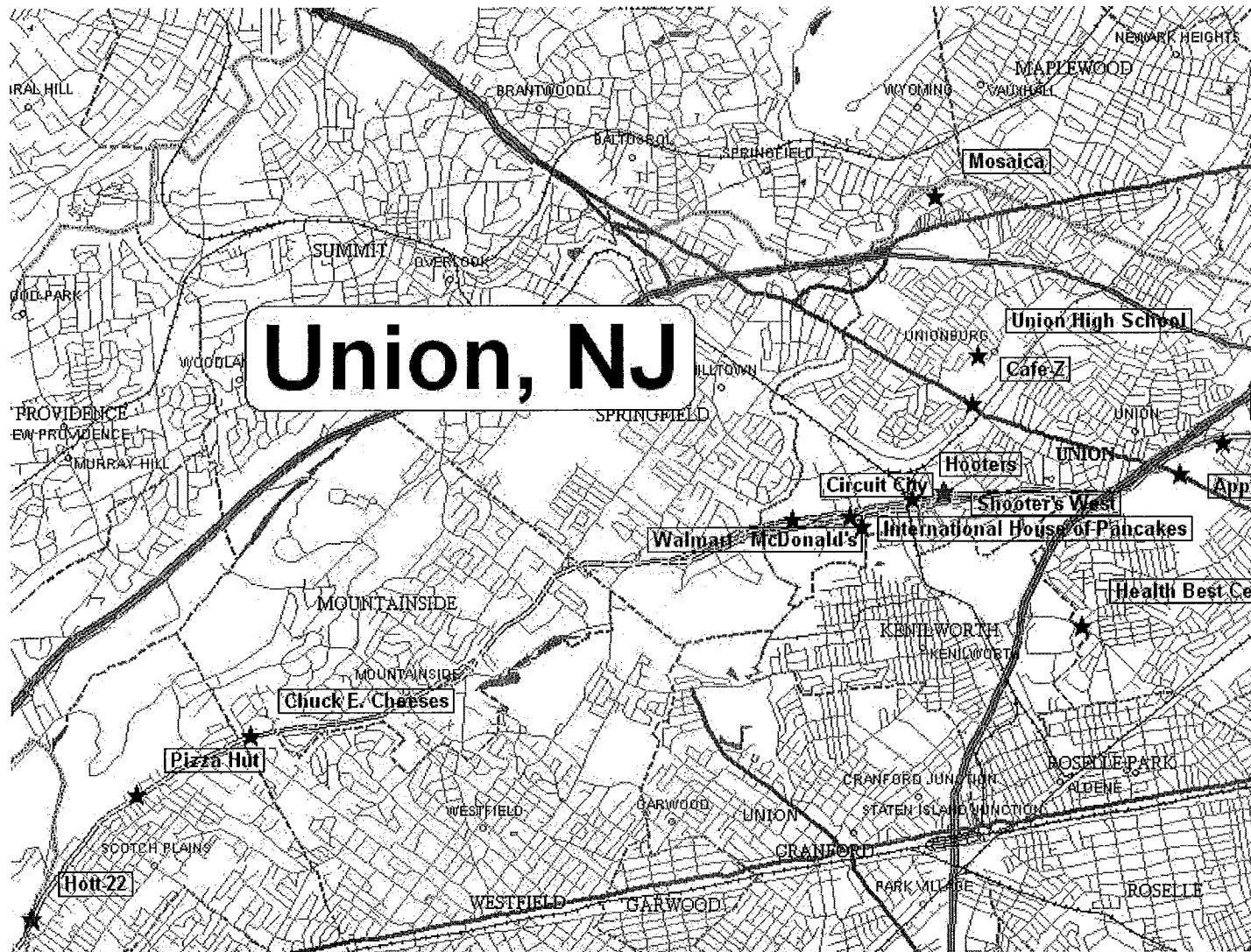


Figure 1b: A map of the adult cabaret “Hott 22” and the comparison locations in the Township of Union.

Businesses in Western Union, NJ

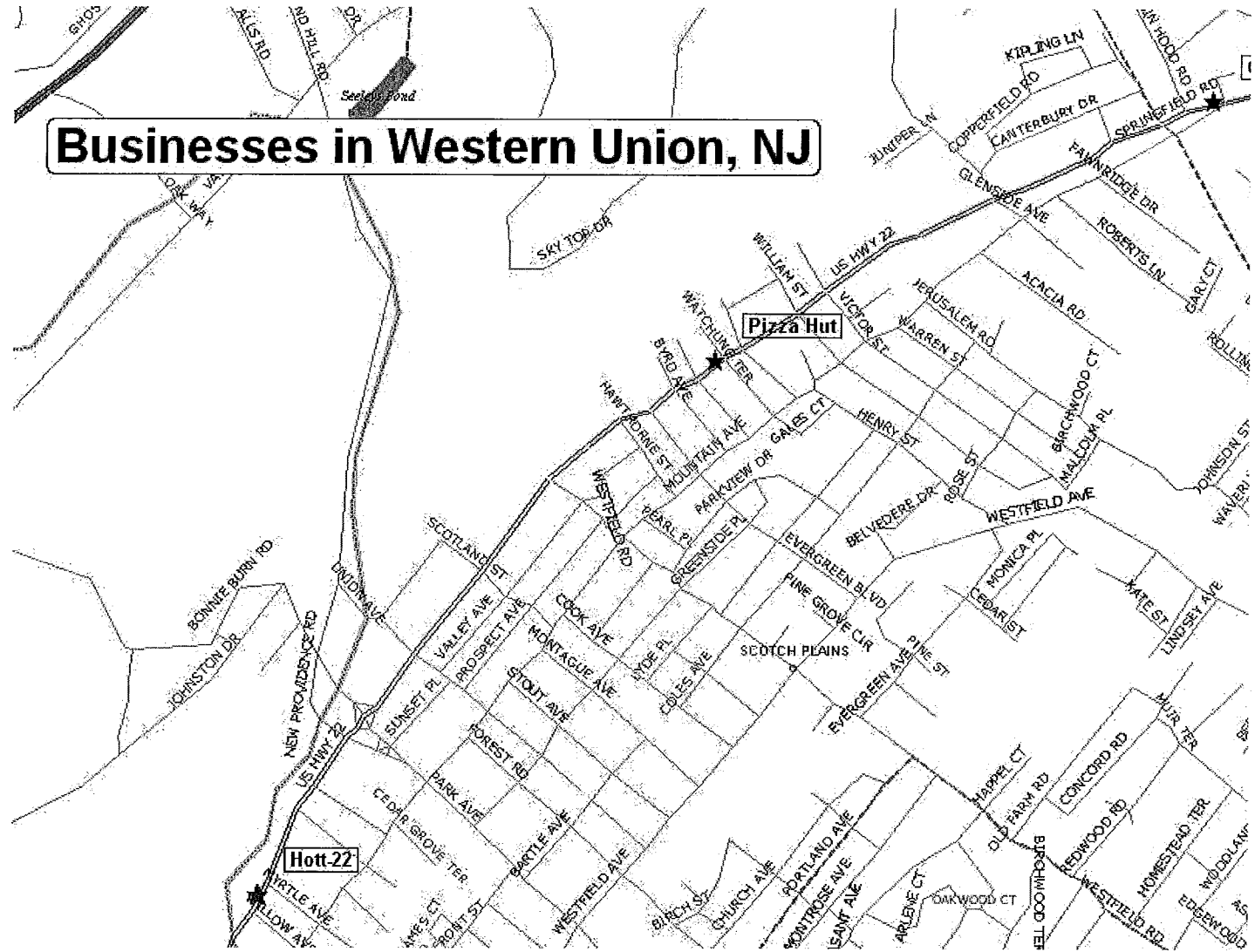
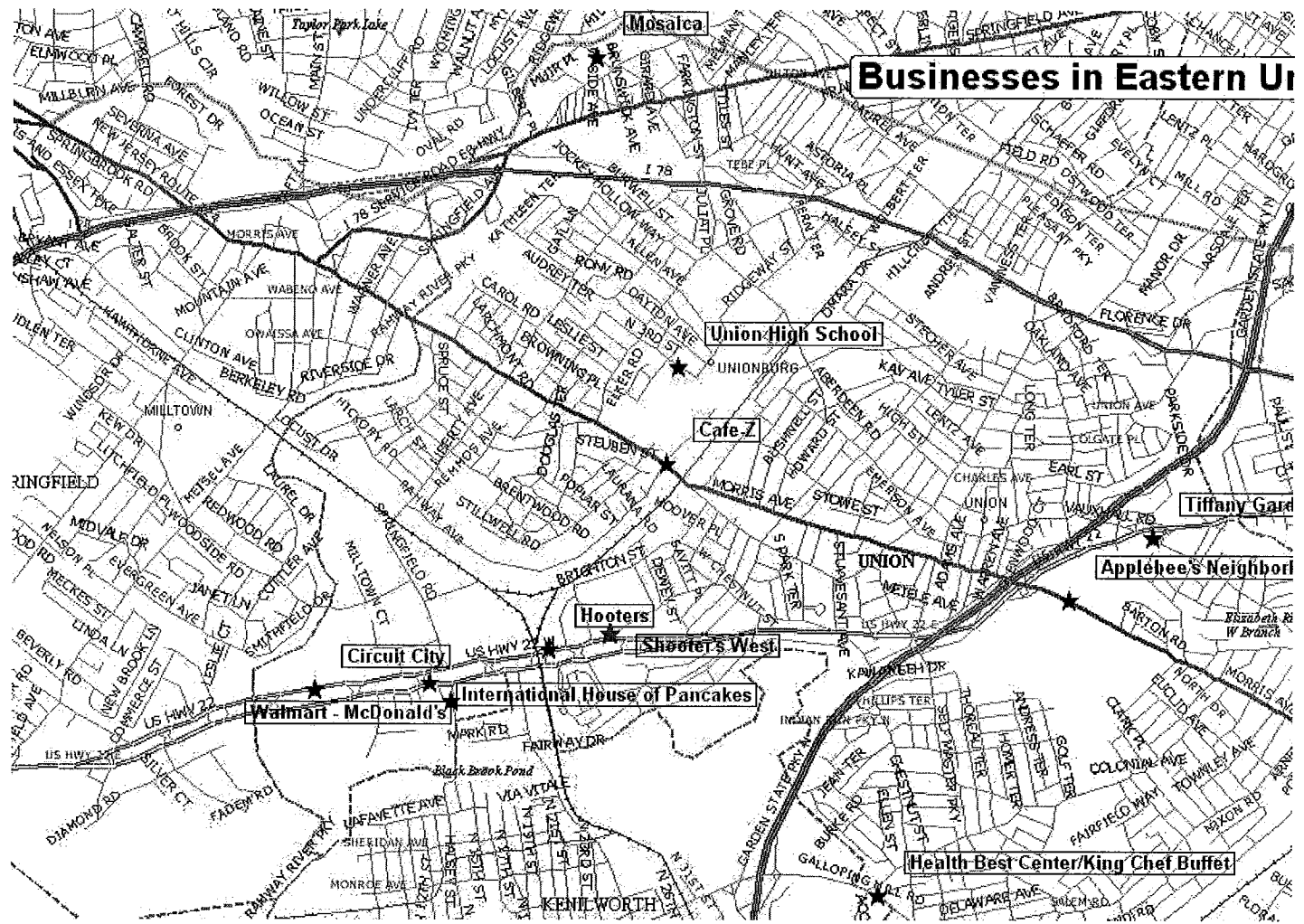


Figure 1c: A map of the comparison locations in the Township of Union.



15-160

Figure 2: A breakdown of calls for service to the police for all of the study addresses.

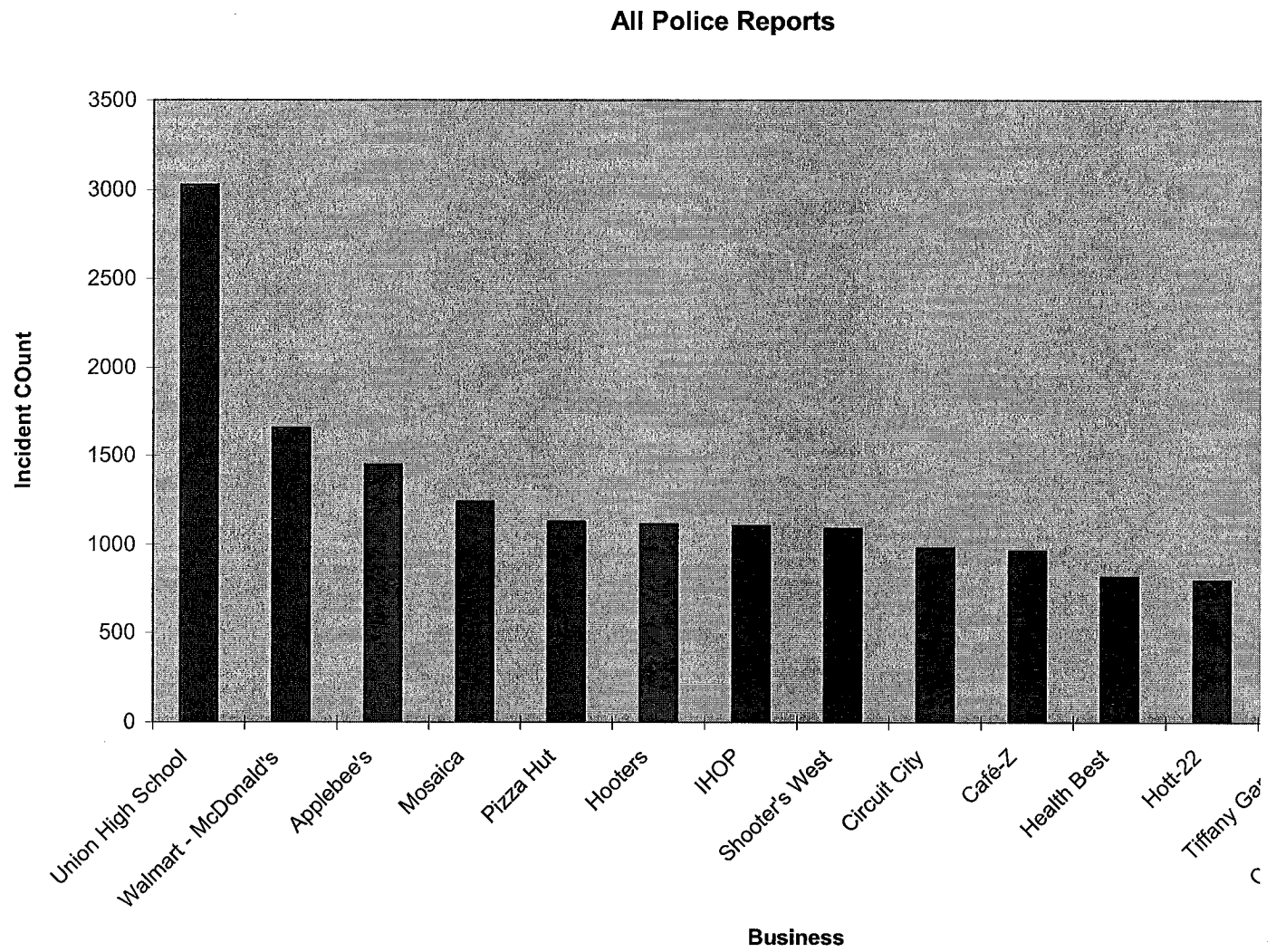


Figure 3:

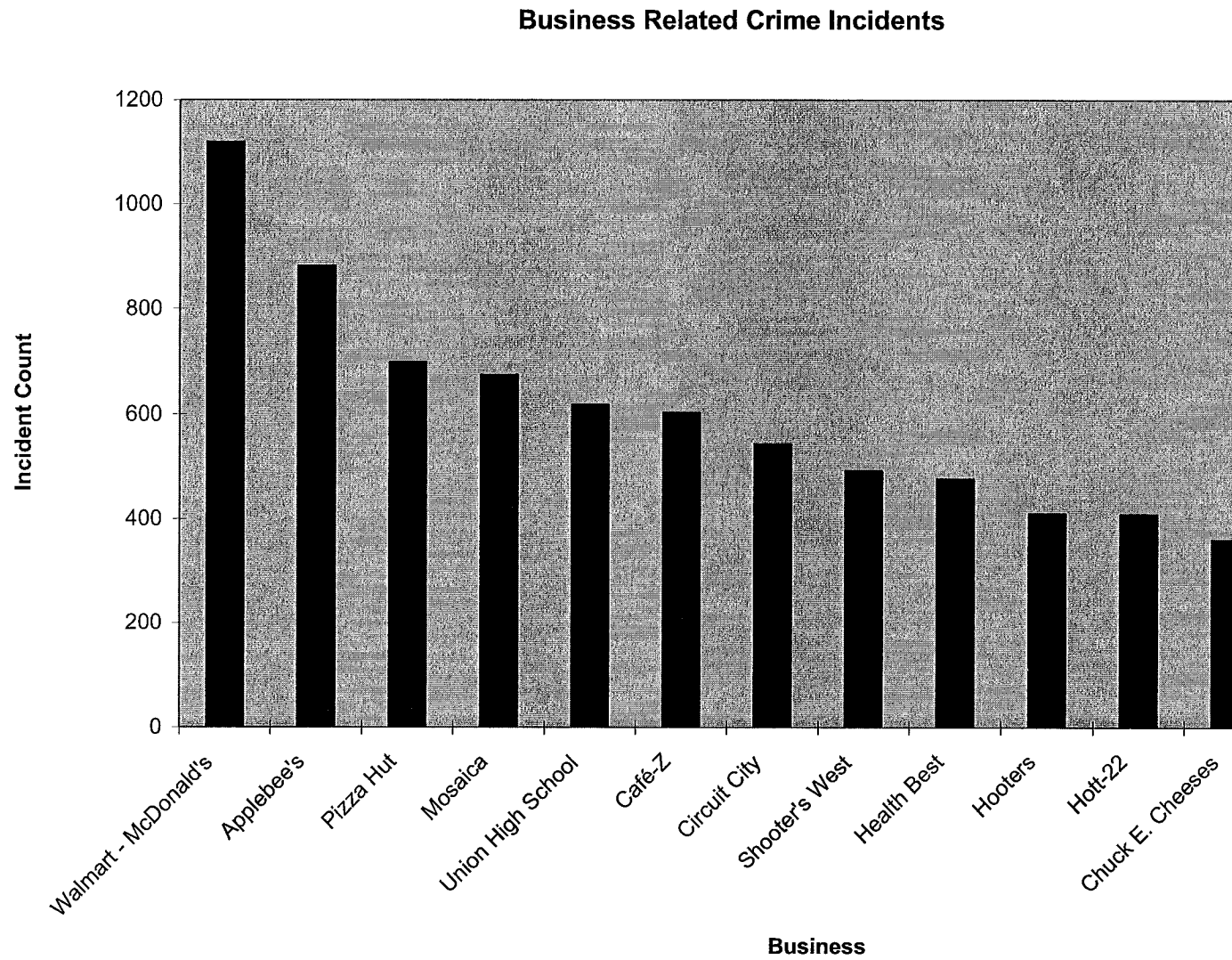


Table 1: Total Number of All Reported Incidents Before and After Filtering All Obviously Non-criminally Related Reports for Adult and Comparison Areas.

Business Name	Address	All Incidents
Union High School	2400 3rd street N, Union, NJ	3027
Walmart - McDonald's	900 Springfield Rd, Union, NJ	1658
Applebee's	1721 Morris Ave, Union, NJ	1447
Mosaica	2933 Vauxhall Rd, Union, NJ	1241
Pizza Hut	2401 US Highway, 22 W/B, Union	1130
Hooters	2319 Route 22 W, Union, NJ	1114
IHOP	2500 Us Highway 22 E, Union, NJ	1106
Shooter's West	1235 W Chestnut St # I, Union, NJ	1090
Circuit City	2700 US Highway 22, Union, NJ	982
Café-Z	2333 Morris Ave, Union, NJ	965
Health Best	1350 Galloping Hill Road, Union, NJ	816
Hott-22	1731 US Highway 22, Union, NJ	795
Tiffany Garden	1637 Vauxhall Rd, Union, NJ	708
Chuck E. Cheese's	1616 US Highway 22, Union, NJ	486

* This value was obtained by filtering the following specific call types out of the data totals: Directed Patrol, Parking Violations, Parking Complaints, 911 Excused, Parking Complaints, Traffic Stop, Disabled Vehicle, Accident, Medical Aid, Fire Inspection, Fire Inspection, Duplicate Call, Unfounded Call, Lockout Vehicle, Premise Check, False Alarm, Tow/Private, Sewer.

15-163

FULTON COUNTY POLICE
Study of Calls for Service to
Adult Entertainment
Establishments
Which Serve Alcoholic Beverages

January 1995 - May 1997

[EXCERPTS]

Prepared by: Capt. Ron Fuller
Lt. Sue Miller
Date: June 13, 1997

RESOLUTION RELATING TO
REGULATION OF ALCOHOL
CONSUMPTION IN ADULT
ENTERTAINMENT ESTABLISHMENTS

WHEREAS, the Board of Commissioners of Fulton County has reason to believe that the consumption of alcoholic beverages in adult entertainment establishments may contribute to increased crime in the vicinity of such adult entertainment establishments; and

15-164

WHEREAS, the Board of Commissioners of Fulton County further has reason to believe that adult entertainment establishments which serve alcoholic beverages may have a negative impact on surrounding real property values; and

WHEREAS, Article III, Section VI, Paragraph VII, Constitution of the State of Georgia, delegates authority to counties and municipalities A. . . for the purpose of regulating, restricting, or prohibiting the exhibition of nudity, partial nudity, or depictions of nudity in connection with the sale or consumption of alcoholic beverages. . .@; and

WHEREAS, the Supreme Court of Georgia, on March 17, 1997, in the consolidated cases of Goldrush II, et. al., v. City of Marietta, et. al.; Varsalona's Italian Restaurant d/b/a Boomer's et. al.; v. City of Marietta, et. al.; and Tudor d/b/a Cyprus Lounge v. City of Marietta, et. al. upheld a City of Marietta, Georgia, ordinance which prohibits the serving or consumption of alcoholic beverages in adult entertainment establishments; and

WHEREAS, the Georgia Supreme Court, in Chambers v. Peach County, 266 Ga. 318 (1996), has previously held that, before enacting an ordinance to combat undesirable secondary effects of adult entertainment, a legislative body is required to consider specific evidence of the undesirable secondary effects that it reasonably believes relevant to the problems it seeks to address by passing the ordinance; and

WHEREAS, the Board of Commissioners desires that the Fulton County Police Department prepare a report concerning calls for police assistance and crimes occurring at, or in the vicinity of, adult entertainment establishments where alcohol is consumed; and

WHEREAS, the Board of Commissioners desires that the Fulton County Police Department and the Department of Planning and Economic Development, in consultation with the County Attorney, assemble any studies available which identify and document negative secondary effects related to the serving and consumption of alcoholic beverages in adult entertainment establishments; and

WHEREAS, the Board of Commissioners further desires that the County Attorney prepare proposed amendments to Sections 33-1-16 through 33-1-23, Code of Fulton County, Georgia, relating to licensing of adult entertainment establishments, and to Article A, Chapter 5, Code of Fulton County, Georgia, relating to alcoholic beverage licenses, and any related proposed ordinance amendments which will have the effect of prohibiting the serving or consumption of alcohol at adult entertainment establishments, and which will be consistent with the above-cited March 17, 1997, ruling of the Georgia Supreme Court, and with the constitutional, statutory, and decisional law of the State of Georgia and the United States; and

15-165

WHEREAS, it is the intent of the Board of Commissioners to enact, if warranted by the said studies, a carefully tailored regulation to minimize the negative secondary effects of the serving and consumption of alcoholic beverages at adult entertainment establishments; and

WHEREAS, it is not the intent of the Board of Commissioners, in enacting any such ordinance amendment, to deny to any person rights to speech or expression protected by the United States or Georgia Constitutions, nor is it the intent to deny or restrict the rights of any adult to obtain or view any sexually oriented performance or materials protected by the United States or Georgia Constitutions, but to adopt a content neutral measure to address the secondary effects of adult entertainment establishments where alcoholic beverages are served or consumed;

NOW, THEREFORE, BE IT RESOLVED that the Fulton County Police Department is hereby directed to prepare within forty-five days hereof a study concerning calls for police assistance to, and crimes occurring at, areas wherein adult entertainment establishments which serve alcoholic beverages are located;

BE IT FURTHER RESOLVED that the Fulton County Police Department and the Planning and Economic Development Department, in consultation with the County Attorney, are hereby directed to assemble within forty-five days any studies available which document the negative secondary effects of the serving and consumption of alcohol in adult entertainment establishments;

BE IT FURTHER RESOLVED that the County Attorney is hereby directed to prepare within sixty days proposed amendments to Sections 33-1-16 through 33-1-23, Code of Fulton County, Georgia, relating to licensing of adult entertainment establishments, and to Article A, Chapter 5, Code of Fulton County, Georgia, relating to liquor licenses, and any related proposed ordinance amendments which will have the effect of prohibiting the serving or consumption of alcohol at adult entertainment establishments, and which are consistent with the March 17, 1997, opinion of the Georgia Supreme Court, and consistent with the constitutional, statutory, and decisional law of the State of Georgia and the United States;

PASSED AND ADOPTED this sixteenth day of April, 1997.

BOARD OF COMMISSIONERS OF FULTON COUNTY, GEORGIA

By: _____

Mitch J. Skandalakis, Chairman

15-166

By: _____
Commissioner Gordon L. Joyner
District 2

ATTEST:

Clerk to the Board

APPROVED AS TO FORM AND LEGALITY:

County Attorney

15-167

Table Of Contents

- Section 1: Introduction to the study
- Section 2: Overview of total number of calls and reports received by Fulton County Police
- Section 3: Calls for Service: Charts & computer print outs for the following locations:
- 5600 Roswell Road, (Frankies)
 - 5495 Old National Hwy. (Crowes [*sic*] Nest)
 - 5840 Roswell Road, (American Pie)
 - 5841 Roswell Road, (Good >Ole= Days)
 - 6300 Powers Ferry Road, (Mardi Gras)
 - 4401 Fulton Industrial Blvd., (Riley=s)
 - 5343 Old National Hwy, (Club Legend)
 - 304 Fulton Industrial Circle, (Babes/Fannies)
 - 6420 Roswell Road, (Flashers)
 - 5825 Roswell Road, (Cabo Wabo)
 - 6071 Old National Hwy, (Club Twenty Grand)
 - 5275 Roswell Road, (Coronet Club)
- Section 4: Reports Taken: Charts & computer print outs for the locations and a sampling of reports from Adult Entertainment Establishments for 1996
- Section 5: Conclusion

SECTION 1

INTRODUCTION

Brief Summery of

Goldrush II, et al., v. City of Marietta, et al.;

15-168

**Varsalona=s Italian Restaurant d/b/a Boomer=s, et al., v.
City of Marietta, et al.; and Tudor d/b/a Cyprus Lounge
v. City of Marietta, et. al.**

1. Amendment to Georgia Constitution provides that counties and municipalities shall have authority A . . . for the purpose of regulating, restricting, or prohibiting the exhibiton of nudity, partial nudity, or depictions of nudity in connection with the sale or consumption of alcoholic beverages...@ [Article III, Section VI, Paragraph VII, Georgia Constitution.]
2. In January, 1995, the City of Marietta amended its adult entertainment license ordinance to prohibit the serving, selling, distributing or consumption or possession of liquor in adult entertainment establishments.
The prohibition ultimately was intended to extend to existing adult entertainment establishments serving alcohol.
3. The Georgia Supreme Court upheld the Marietta ordinance on March 17, 1997, and approved the Marietta ordinance's application to already existing businesses.
4. The Georgia Supreme Court, citing Chambers v. Peach County, 266 Ga. 318 (1996), reiterated that a legislative body must have appropriate studies before it documenting the Anegative secondary effects@ (e.g., such as crime, diminishing property values, and increased urban blight) before legislating any regulation of such negative secondary effects.

Introduction

On April 16, 1987, [*sic*] a Resolution Relating to Regulation of Alcohol Consumption in Adult Entertainment Establishments was passed and adopted.

15-169

This resolution directed the Fulton County Police Department to prepare a report concerning calls for police assistance and crimes occurring at, or in the vicinity of adult entertainment establishments where alcohol is sold and consumed. This was based on the reasonable belief that the consumption of alcoholic beverages in adult entertainment establishments may contribute to increased crime in the vicinity of these establishments.

The statistical information included in this study was obtained through the Fulton County Police Departments [*sic*] computerized incident and calls for service reporting program.

Each call for police assistance, if taken over 911 enhance, is captured by a communication assisted dispatch (CAD) system. This information is available on every address in Unincorporated Fulton County where the police department is dispatched.

Each report that is generated from a police call for service is identified with a departmental case number that is unique to that reported incident. (It should be noted that a police report is not generated for every call for service, and that officer initiated calls are not captured on the CAD system).

The time period covered by this study is for January 1, 1995 through May 31, 1997.

There are twelve (12) establishments included in this study. Six (6) are adult entertainment establishments that serve alcoholic beverages. The others are those establishments that serve alcoholic beverages with no adult entertainment.

Several of the locations B Frankie's, Crow's Nest, Mardi Gras, Riley's, Babes, Fannies and Club Twenty Grand B have addresses that are common to other businesses on the same property. For this reason, the number of police calls for service to these locations cannot be attributed solely to the specific business that serves alcoholic beverages.

15-170

SECTION 5
CONCLUSIONS
Statement of Facts

The following data has been based on several known facts. They are as follows:

From **January 1, 1995, to May 31, 1997** the Fulton County Police Department responded to **199,324** calls for service North and **152,002** calls for service South. The total calls for service being **351.326**.

From **January 1, 1995, to May 31, 1997** the Fulton County Police Department made **34,680** incident reports North and **29,060** incident reports South. The total number of incident reports taken being **63,740**.

From **January 1, 1995, to May 31, 1997** there were **no Murders or Kidnappings** [*sic*] reported at any of the establishments listed in this study. There were **2 Rapes, 11 Robberies and 10 Aggravated Assaults** reported in the establishments that served alcoholic beverages but **do not** have adult entertainment. There was **1 Rape, 16 Robberies and 5 Aggravated Assaults** reported in the adult entertainment establishments that serve alcoholic beverages.

Conclusions

From **January 1, 1995, to May 31, 1997** the Fulton County Police Department responded to **728** calls for service to incidents reported at or in the vicinity of adult entertainment establishments that serve alcoholic beverages in this study. During the same time period the police department responded to **1718** calls for service to establishments in this study that serve alcoholic beverages but **do not** provide adult entertainment.

Conclusion: There were **990** more calls for service to the establishments that **did not** provide adult entertainment.

15-171

The total number of calls for service to establishments in this study totaled 2446. Of those, 259 were alcohol related by call sign only. Signal 28 Public Drunkenness, Signal 29 Drunk and Disorder/Fight, Signal 30 Driving Under the Influence, and Signal 38 Illegal Alcohol/Drugs. 178 of these calls were to non-adult entertainment establishments that serve alcohol. 81 were to adult entertainment establishments that serve alcohol.

Conclusion: There were 97 more alcohol related calls for service to those establishments that did not provide adult entertainment.

Based on this statistical study of calls for service and reported crime at adult entertainment establishments, there is no statistical correlation that shows that there is an increase in crime at adult entertainment establishments that serve alcoholic beverages. However, there is a statistical correlation that would indicate that there is greater instances of calls for service and reported crime at non-adult entertainment establishments that serve alcoholic beverages.

There is nothing in the statistics of this study that would indicate why there is such a discrepancy in the calls to service and reported crimes in these types of establishments.

Entertainment and Crime Rates

Examining the Link Between Sexual Entertainment and Crime:
The Presence of Adult Businesses and the Prediction of Crime Rates in Florida

By

Randy D. Fisher
Department of Psychology
University of Central Florida
rfisher@mail.ucf.edu

Daniel Linz
Department of Communication,
Law and Society Program
University of California, Santa Barbara
linz@comm.ucsb.edu

Charles L. Benton
Department of Psychology
University of Central Florida

and

Bryant Paul
Assistant Professor
Department of Telecommunications
Indiana University

One version of this paper was presented to the Law and Policy Division at the 2004 annual meeting of the International Communication Association: New Orleans, LA and another version was presented to the 2004 annual meeting of the Southeastern Psychological Association in Atlanta, GA.

15-173

Abstract

The Supreme Court of the United States has recently considered the constitutionality of anti-nudity legislation passed by municipalities and states. In *City of Erie v. Pap's A.M.*, the Court held that municipalities may under certain circumstances pass anti-nudity ordinances on the assumption that nudity causes adverse secondary effects such as increased crime. The purpose of the present study was to examine whether rates of crime are associated with the rates of adult businesses in the 67 counties of Florida once other variables related to crime are controlled. Three kinds of crime were examined: UCR property crimes, UCR violent crimes, and rape. Rates per 100K people in the population were also computed for the numbers of nonsexual adult businesses: drinking establishments, gambling establishments, and hotels and motels in each county. These measures, along with measures of social disorganization and demographic variables, were examined for their relative ability to predict the three rates of crime. Regression analyses were performed to determine the unique contributions made by the control variables, rates of nude or semi-nude businesses, and rates of nonsexual adult businesses to prediction of the three rates of crime. Results revealed that rates of nude or semi-nude businesses were not significantly related to rates of property crimes or violent crimes. However, they were significantly, though inversely, related to rates of rape when other variables were taken into account. By contrast, rates of nonsexual adult businesses showed strong positive relationships with rates of both property crimes and rape. These results are consistent with previous research using different methodologies and they support the predictions of routine activity theory. However, they may cast doubt upon the validity of the doctrine of the adverse secondary effects of businesses offering nude or semi-nude entertainment.

Government Regulation of Erotic Expression

Through Anti-nudity Ordinances

The Supreme Court of the United States has over the last fifteen years considered the constitutionality of anti-nudity legislation passed by municipalities, counties and states. The Court in *Barnes v. Glen Theatre, Inc.* (1991) held that the State of Indiana could regulate nudity generally, and in adult cabarets and other adult businesses.

Negative Secondary Effects Justification For the Regulation of Erotic Expression

In a concurring opinion in *Barnes* Justice Souter offered his justification for the State's ban on nudity. He argued that the State could ban nudity on the basis of the *presumed* negative secondary effects on the surrounding community such as the occurrence of sex crimes. Thus, in *Barnes* the secondary effects "doctrine" was expanded to include not only the "zoning" of adult businesses to certain localities in the community but now the regulation of the content of expression within these establishments.

The rationale for the secondary effects doctrine had earlier been laid out in a prior decision *Renton v. Playtime Theatres, Inc.*, in 1986. In *Renton*, the Supreme Court considered the validity of a Renton Washington municipal ordinance that prohibited any adult theater from locating within 1,000 feet of any residential zone, family dwelling, church, park, or school. The Court's analysis of the ordinance proceeded in three steps. First, the Court found that the Renton ordinance did not ban adult theaters altogether, but merely required that they be a certain distance from so-called "sensitive locations." The ordinance, the Court said, was properly considered to be a time, place, and manner regulation. The Court next considered whether the ordinance was content neutral or content based. If the regulation were content based, it would be considered presumptively invalid and subject to the strict "scrutiny" standard. The Court held, however, that the ordinance was not aimed at the content of the films shown at adult theaters, but rather at the secondary effects of such theaters on the surrounding community, namely at crime rates, property values, and the quality of the city's neighborhoods.

Following the *Barnes* ruling the Court once again invoked the secondary effects doctrine in the case *City of Erie v. Pap's A.M.* (2000). The Court again held that municipalities have the right under certain circumstances to pass anti-nudity ordinances. The Court was fractured in its opinion although the secondary effects doctrine figured more prominently in the Court's decision making. Three justices agreed with Justice O'Connor's opinion that combating negative secondary effects (specifically, crime effects) that were supposedly associated with adult businesses was a legitimate basis for the imposition of an anti-nudity regulation.

The Link Between Sexual Entertainment and Crime

Several correlational studies have focused on sex-related crime such as rates of rape across states, as indicated by FBI Uniform Crime Reports, and their relationship to circulation rates of various forms of sexually explicit materials within those same states (Bauserman, 1996). For example, Baron and Straus (1987, 1989) obtained circulation rates of "soft core" men's magazines, such as Penthouse, Oui, and Playboy for each of the 50 states. They then calculated the correlation between these figures and the rates of rape per 100K population for the same states. Their results revealed a significant, positive correlation between circulation rates of "soft core" magazines and rates of rape. This correlation remained statistically significant after other variables related to rape were entered into the regression equation. Other researchers (Jaffee and Straus, 1987; Scott and Schwalm, 1988) have also obtained positive correlations between sex magazine circulation rates and rates of rape.

Despite the positive correlations obtained by different researchers examining data from different years, Baron and Straus (1989) eschew the interpretation that these results indicate consumption of sexually explicit materials increases levels of rape. They note that the experimental literature examining the effects of various sexually explicit media (See Davis and Bauserman, 1993; Linz, Donnerstein, and Penrod, 1987; Linz, 1989 for reviews of this literature.) has consistently found that nonviolent sexually explicit materials do not affect viewers in ways that would encourage them to rape. Second, they note that studies in other countries (Kutchinsky, 1985; Ben Veniste, 1971) examining the rate of sex crimes

following the legalization of sexually explicit materials have failed to find increases in sex crimes, including rape. Third, they note that the circulation rates of Playgirl magazine, which appeals primarily to women and gay men, are also highly correlated ($r=.68$) with rates of rape. They argue that some other factor, which researchers have not measured sufficiently by any of their statistical indices, must be responsible for the correlation between sex magazine circulation rates and rates of rape.

Several additional findings challenge any interpretation that sexually explicit entertainment contributes to increased levels of rape. Gentry (1991) also examined the correlation between sex magazine circulation and rates of rape, but she did so at the level of Metropolitan Statistical Areas (MSAs), rather than states. She found that the significant relationship between rape and sex magazine circulation dropped to zero when several other variables, such as proportion of the population that is youthful (15-24 years of age), were entered into the regression equation. Gentry (1991) argues that the relationship between sex magazine circulation rates and rape rates is spurious. She contends that these two variables are correlated because both are related to the proportion of young people in the population. An additional challenge to the hypothesis that sexual entertainment causes rape comes from the work of Scott and Schwalm (1988) who examined the relationship between rates of rape by states and the number of adult movie theaters showing "hard core" sex films in each state and found no significant relationship.

These studies have either focused on a relatively narrow range of forms of sexual entertainment, such as "soft core" magazines, or adult theaters which have largely disappeared. Many forms of erotic entertainment are now available to anyone with an online computer, and auditory erotica is available to anyone with a telephone and a credit card. The study of the relationship between the extent of consumption of sexual entertainment and rates of rape in a specified geographic area will be improved to the extent that a wider range of sexual entertainment is included in the assessment.

A significant source of erotic entertainment in the United States is provided in so called gentlemen's clubs that feature nude or semi-nude dancers who entertain patrons with live performances.

In many communities, similar entertainment is available on an out-call basis. These forms of entertainment proliferated in the 1970s, along with adult bookstores and theaters. In its earliest form, the "topless bar," the featured entertainment was primarily women dancing bare-breasted. Today, "gentlemen's clubs" provide a wide range of sexual entertainment, from women dancing on stage in bikinis or wearing pasties, to fully nude performances with bodily contact between patrons and dancers, i.e., "lap dances." Similar performances are also provided by performers in "lingerie modeling" or massage salons. These are stand-alone businesses that typically do not serve alcohol, but do feature nude or semi-nude performances in a less public setting.

Empirical tests of the relationship of nude or semi-nude live entertainment on crime in the community have yielded mixed effects. Unpublished reports by municipalities across the county have claimed to find empirical evidence of adverse secondary effects in the form of greater crime in the areas surrounding adult nude and semi-nude entertainment businesses. These studies, relied on by other communities throughout the country, do not adhere to professional standards of scientific inquiry and nearly all fail to meet the basic assumptions necessary to calculate an error rate--a test of the reliability of findings in science. Those studies that are scientifically credible demonstrate either no negative secondary effects or a reversal of the presumed negative effect (Paul, Linz and Shafer, 2001).

Additional empirical studies have yielded results that contradict the claims of municipalities. The only published, peer reviewed study of secondary effects (Linz, Land, Williams, Paul and Ezell, 2004) examined the presence of adult dance clubs featuring topless dancing and possible negative secondary effects in the form of increased crime in Charlotte, North Carolina. They found no more crime incidents in areas surrounding the clubs than in matched control areas that do not contain such an adult business. Indeed, the analyses implied the opposite, namely, that the nearby areas surrounding the adult business sites have smaller numbers of reported crime incidents than do corresponding areas surrounding the control sites studied. Unpublished studies of secondary effects have also yielded no evidence of adverse secondary effects (see for example: Paul and Linz, 2002).

15-178

One other published study, not specifically addressed to the adverse secondary effects of adult businesses, but potentially relevant reports similar findings. Ford and Beveridge (2004) used survey data from over forty-two thousand respondents to estimate the levels of visible drug sales in 1,166 census tracts. Various demographic variables and measures of the presence of various types of businesses, both “desirable” and “undesirable,” were then used in an attempt to account for variation in levels of drug sales. The only type of business that offered sexual entertainment included in their analysis was “massage parlors/escort services.” They found that the presence of massage parlors/escort services was not related to levels of drug sales. They concluded that visible drug sales were generally unrelated to the presence of “undesirable” businesses, such as massage parlors/escort services, liquor stores and pawnshops, but were related to the relative absence of more “desirable” businesses, such as movie theaters, supermarkets, and clothing stores. They also found that visible drug sales tended to be significantly higher in census tracts with high numbers of fast food restaurants.

The present study extends the prior research in several ways. First, this study includes a test of the association of both nude and semi-clothed sex-related entertainment and rape rates as well as other crime events. Previous studies by Linz et al have included only topless or pasties and g-string dancer entertainment facilities. Other researchers such as Ford and Beveridge (2004) limited their research to the presence of massage parlors/escort services. Second, this study investigates several theoretical explanations that may account for either increases or decreases in crime in geographical areas containing adult entertainment venues. Third, the present study is an attempt to provide an empirical test of the claims made about secondary effects and nude and semi nude entertainment on a statewide rather than a more localized basis by investigating the claim that crime in the state of Florida, especially rape and sexual assault is associated with the presence of adult businesses that feature nude and seminude performances. Such statewide analyses are critical in order to inform law and policy makers attempting to formulate statewide legislation to regulate, for example, alcohol service at partially clothed or nude entertainment facilities. The regulation of alcohol serving establishments is often a statewide rather than

localized matter. The legality of statewide regulation of alcohol serving that feature adult entertainment is the subject of recent federal court decisions (see: J.L. Spoons, Inc., et al., v. Kenneth Morckel, et al., 314 F Supp. 2nd 746, ND Ohio, April 1, 2004).

Theoretical Mechanisms

Social learning theory. Implicit in the search for an association between pornography and live sex entertainment and sexual assault is the idea that exposure to erotic performances, sexual messages and other materials either create a desire to engage in sexual activity including forced sex and molestation, or these performances attract individuals who are already predisposed to such antisocial activities. This approach is a variant of the notions put forth by social psychologist Albert Bandura and his original formulations of "social learning theory." Social learning theory emphasizes the effect that vicarious experiences (observation) of actors (models) on the behavior of observers. (See example experiment by Bandura, Ross, and Ross; 1961; also see Bandura, 1973; Mischel & Shoda, 1995; and Seto et al, 2001.)

Very briefly, observing models can have several effects on observers: New responses can be learned or acquired by observing the model. A response that otherwise may be made is changed or inhibited when the observer sees a model being punished. Already learned responses may be disinhibited due to a reduction in fear by observing a model's behavior go unpunished. Or a model may elicit from an observer a response that has already been learned. Observing several models performing and then adapting a combination of characteristics or styles may lead to the creation of completely new behaviors.

A social learning approach is often implicitly embraced by local municipalities and articulated in testimony by citizens who appear before legislators considering zoning regulation of adult businesses. The citizens are concerned that customers of adult businesses will either learn new sexually deviant behaviors, become disinhibited and engage in antisocial behaviors that they would not have save for exposure to sexual performances or are concerned about adult businesses facilitating antisocial behavior

by serving as a magnet for those willing to engage in antisocial activities in their community. The anecdotal testimony of a citizen in New Albany, Indiana serves as an example of the reliance of many municipalities on a social learning justification for restriction of adult businesses. One citizen addresses the city council, which was considering a ban on adult bookstores, with the following plea:

“I urge you, I beseech you, to vote for the delay to this establishment and any other type of business in this field from our community. I urge you to develop policies that for the good of our children will prevent this type of business from opening in New Albany. And I ask you to research the occurrences of -- like things as incest, rape, molestation and abductions and the effect of easy availability of this type material on the behavior of pedophiles who often are known to frequent these businesses (pg.13 lines 5-15).

Social learning theory would point to sex crimes as an especially likely form of adverse secondary effect and the theory would predict that these crimes would be likely to increase in vicinities that included adult erotic performances. The theory would tend to deemphasize other criminal activity such as theft or robbery or even nonsexual violent crimes against persons as modeling may not extend very far beyond the specific sex related messages.

Routine activities theory. A more general crime theory, routine activities theory suggests that the causes of crime may be independent of many of social learning and cultural contexts that are often stressed by other approaches. Cohen and Felson (1979) hypothesized crime clustering as a result of routine activities including the convergence in both space and time of motivated offenders, suitable targets, and the absence of capable guardians against a violation. Criminal activities often cluster in places under certain conditions, and these high-crime areas are referred to as “crime hot spots” (Shermen, 1995).

Places that have been identified in the academic literature as attracting or generating crime include liquor stores and taverns (Roncek and Bell, 1981; Roncek and Maier, 1991), public housing (Roncek et al., 1981), high schools (Roncek and Faggiani, 1985), and certain types of commercial

businesses (Walsh, 1986). Other studies on crime and space have identified “crime hot spots” or “clusters of criminal activities” that include nightlife areas, restaurants, convenience store areas and isolated club or tavern establishments (Sherman et al, 1989; Sherman, 1995; Block and Block, 1995). Sherman et al. (1989) found that crime hot spots (with just 3% of the total places) accounted for more than 50% of the total calls for assistance made to the police in a one-year period in Minneapolis, Minnesota, showing a high degree of crime clustering. He further showed that five of the top ten “hot spots” for per capita crime were alcohol-serving establishments.

High concentration of inner-city males and alcohol consumption may create a place-specific critical mass resulting in violence (Crutchfield, 1989). Norstrom (1998) using time series data spanning over 38 years found that the assault rate is significantly related to consumption of beer and spirits in bars and restaurants, while the homicide rate is linked to spirit(s) consumption in private contexts. Some studies report a strong association between heavy drinking and sexual assault among college-age men and women (Miller and Marshall, 1987; Koss and Dinero, 1988; Nicholson, 1998). In another attempt to identify drinking as a risk factor for robbery, Leppa (1974) noted that people who have been drinking offer attractive targets for robbery because they are often unable to protect themselves or their judgment is impaired.

Adult businesses such as nude and semi-nude entertainment facilities have not been identified as crime hotspots by those researchers most often employing a routine activities approach. Instead, this theoretical approach and the past empirical research employing it would suggest that alcohol serving establishments, hotels and restaurants associated with nightlife activities would most likely be crime hotspots.

McCleary (2004) offers a variation on routine activities theory that applies to adult entertainment establishments. He hypothesizes that sexually oriented businesses, including nude and seminude live entertainment businesses pose high crime risks. McCleary contends that sexually oriented businesses constitute crime “hotspots” both because of the quantity and quality of people drawn to the “hotspot.”

In terms of quantity, McCleary maintains that standard business practices designed to attract customers (sales, advertising, "giveaways," etc.) aggravate the crime risk by making the location more attractive to predatory criminals. In terms of quality, McCleary asserts that sexually oriented business patrons travel to distant locations (presumably far from their own neighborhoods); use aliases; pay in cash; and when victimized, tend not to complain to or seek assistance from the police. According to McCleary the steps that sex business patrons take to maintain their anonymity make them attractive targets for predatory criminals. This theory would predict higher rates of all forms of crime in geographical areas with concentrations of adult cabarets.

Social disorganization theory. Sociologists have enumerated several variables indicative of social disorganization that are useful in predicting the risk of crime. These include measures of racial composition (number of African Americans and racial heterogeneity), family structure (as measured by number of single-parent households), economic composition (as measured by family income), and the presence of motivated offenders including males between the ages of 18 and 25 (Miethe & McDowall 1993). These social disorganization variables have been examined on the basis of the assumption that a local area's population age structure (especially the presence of young adults) and its race/ethnic composition can affect both the size of the pool of motivated crime offenders and the presence of suitable targets for predatory crimes (Miethe & Meier 1994). Similarly, the socioeconomic status of individuals in a local area can affect both the prevalence of motivated offenders and crime targets. For example, Cohen, Gorr, and Olligschlaeger (1993) found that crime hot spots tended to be in areas with higher levels of poverty or low income, and were likewise associated with low family cohesion, an indication of the prevalence of both motivated offenders and crime targets.

This approach, rather than specifically predicting effects for the presence of adult businesses, suggests that demographic variables and household composition variables shown in previous studies to be related to rates of crime and disorder such as total population of the counties, proportion of population between the ages of 15 and 24, the proportion of the population divorced, the proportion of

the population that is nonwhite, the proportion of female headed households, and an index of income inequality need to be considered as control variables.

Summary of Hypotheses

Social learning theory would predict that sex crimes would be most likely to increase in vicinities that included adult erotic performances. The theory would be neutral with regard to other criminal activity such as theft or robbery or even nonsexual violent crimes against persons. Second, the positive relationship between sex crimes and the presence of an adult businesses in a specified geographic area should remain statistically significant after the variance due to demographic and social disorganization variables is taken into account.

Routine activities theory would predict that the presence of liquor stores and taverns or other "crime hot spots" or "clusters of criminal activities" that include nightlife areas, restaurants, convenience store areas and isolated club or tavern establishments would be associated with criminal activities. High concentrations of inner-city males and alcohol consumption may create a place-specific critical mass resulting in violence. Some studies report a strong association between heavy drinking and sexual assault among college-age men and women. People who have been drinking offer attractive targets for robbery because they are often unable to protect themselves or their judgment is impaired.

McCleary's (2004) variation on routine activities theory applied to nude and seminude live entertainment, which states that these businesses constitute crime "hotspots" both because of the quantity and quality of people drawn to the "hotspot" predicts several outcomes. If McCleary's (2004) view is correct, several results should be obtained in our analyses. First, the results should reveal significant, positive correlations between the number of nude or semi-nude businesses and all forms of crime. Second, these positive relationships should remain statistically significant after the variance due to demographic and social disorganization variables and numbers of nonsexual, adult businesses are taken into account. Finally, the proportion of unique variance accounted for in the prediction of crime

rates should be greater for the numbers of nude and semi-nude businesses than for the numbers of nonsexual adult businesses.

Method

Numbers of Nude and Semi-nude Businesses Per County

We attempted to create the most comprehensive and accurate listing possible of adult businesses that feature nude or semi-nude entertainment by female performers. We consulted a total of 16 sources and then cross-referenced the listings they provided. We began our listing with all of the adult cabarets listed in Exotic Dancer's Guide to Adult Nightclubs 2003-2004 for the state of Florida. This industry publication claims to list over 2300 "gentlemen's clubs" in the U. S. We also consulted nine websites that advertise adult businesses, some with listings just for adult businesses in Florida, and others, such as Naughtynightlife.com and Exoticnites.com with listings for the entire U. S. In addition, we consulted several print publications, both mainstream (weekly papers) and those serving the adult industry. The name of each business identified in any of these sources was entered into a data-file that also included the type of business (nude dance club, swing club, lingerie modeling salon etc.), whether it offered nude or semi-nude live performances, and the county, city and MSA of its address. We also included street addresses and telephone numbers to check for duplication.

We focused on those businesses that provide live performances by nude or partially clothed women. We restricted our listing to those businesses that have a fixed location. This is a somewhat arbitrary distinction, and it eliminates some businesses that offer nude entertainment, such as escorts and some "out-call" erotic models, from consideration. Three arguments can be made in favor of this restriction. First, the impact of businesses such as escorts is probably much less than an adult cabaret that has many dancers and many patrons in a given evening. A single escort will presumably have only one or at least only a few patrons in a given evening. Second, escorts or other "outcall" businesses that lack a business address may advertise in several areas of the state. It is difficult or arbitrary deciding which county this "business" is located in. Finally, if an adult business has no address, then it has no

“surrounding community” in which its effects can be felt. Thus the legal arguments for restricting such a business must be based on other considerations.

Our analyses focus only on comparisons between counties. There are several reasons for this selection. First, there are only 20 MSAs in Florida, and a statistical analysis based on so small a sample would lack the statistical power necessary to adequately test for the hypothesized relationships. Cities on the other hand are numerous, but their populations are often so small that their crime rates can fluctuate dramatically from one year to the next. County crime rates tend to be much more stable. Second, counties are more socially and demographically meaningful geographical areas than either MSAs or cities. Divisions between cities can often create a contrast between two contiguous areas that are identical in virtually all ways, save for their arbitrary boundaries. Cities can also be so small that the characteristics of one city can have a powerful effect on adjoining, or even nearby cities. On the other hand, MSAs can be so large that they arbitrarily combine counties that are quite different from each other. Finally, if there is any validity to the concept of "adverse secondary effects," such effects would seem to emanate at least moderate distances from adult businesses. These effects could extend beyond the boundaries of a small city, or even a large one if the business is near its border. On the other hand, they would be unlikely to extend across the counties of a large, multi-county MSA.

Crime Rates

The focus of this analysis is on rates of crime in the 67 counties of Florida. All of these data were downloaded from the Florida Department of Law Enforcement (FDLE) website (www.fdle.state.fl.fsac) for the period from 1998 to 2002. Our analysis focuses on three types of crimes: UCR property crimes (burglary, theft, auto theft and arson), UCR violent crimes (murder, assault, and robbery), and forcible rape. Rape is typically included as one of the UCR violent crimes. However, rates of rape were of interest by themselves, so they were analyzed as a separate category. All crime rates were computed as annual rates per 100K people in the population. Examination of these rates reveals that they are quite consistent from one year to the next. Consequently the average rate for each

county for the period 1998-2002 was computed for use in subsequent analyses. This time span was used because it centered on the year 2000 for which U. S. Census data is readily available.

Control Variables

A considerable amount of previous research has established that several characteristics of geographical areas, such as states, MSAs, and counties are associated with their rates of crime. These can be seen as falling into one of three theoretical domains.

“Urbanness.” The first theoretical domain contains measures of the degree of urbanness or population density of the area. It is obvious that areas with more persons will have higher absolute numbers of crimes. But, it is also true that the rate of crime is typically higher in areas that have higher populations. For example, Baron and Straus (1989) found that rates of rape were higher in states where a higher percentage of the population resided in MSAs. Kposawa, Breault, and Harrison (1995) found that “urbanness” and population density were related to rates of both property crimes and violent crimes. We computed population densities (persons per square mile) from Census Bureau data.

Demographic characteristics of population. A second set of variables related to crime are those that describe demographic characteristics of the population. These include the relative youthfulness of the population, its ethnic composition, and the income distribution. The highest rate of rape perpetration is found among males aged 15-24, and the highest rate of rape victimization is found among females aged 15-24. Consequently, the higher the percentage of persons in the population of an area who are in this age range, the greater the rate of rape is likely to be (Baron and Strauss, 1987 & 1989; Gentry, 1991). Young persons are also more likely to commit other forms of violent crime and property crimes (Cohen and Land, 1987, Cohen, Felson and Land, 1980). To assess the youthfulness of county populations, we computed the percentage of persons between the age of 15 and 24 for each county from data from the 2000 Census.

In absolute numbers, most crimes are committed by people of European origin. Still, African-Americans commit a higher number of rapes and other violent crimes than would be expected based on

their proportion of the population (Amir, 1971; Katz and Mazur, 1979). Other researchers found the percentage of the population that is African-American to be associated with rates of both violent crimes and property crimes (Kposawa, Breault, and Harrison, 1995; Patterson, 1991). Kposawa, Breault, and Harrison (1995) also found that the percentage of persons identifying themselves as Hispanic was related to rates of property crime. To capture the level of ethnic diversity of counties, we used Census data to compute the percentage of the total population who were non-white (either African-American or Hispanic).

Many researchers have noted a link between poverty and crime (Allen, 1996; Blau and Golden, 1986). Some researchers have found that communities with high proportions of both poor and affluent citizens are especially likely to have high rates of property crimes (Kposawa, Breault, and Harrison, 1995) and rape (Baron and Straus, 1989). Thus, any attempt to explain variations in levels of crime rates across geographical areas should take into account some measure of income variance. We constructed an index of income inequality from Census data giving percentages of the population over the age of 15 who fell above or below the poverty line. Specifically, we computed the product of the percentage of these persons whose annual incomes were .74 or below the poverty line and those whose incomes were 2.0 the poverty line or above. Thus our measure of income inequality reflects the variability in incomes, with counties that have the highest proportions of both poor and affluent persons scoring highest.

Social disorganization variables. A third set of variables that is related to crime are those that describe the degree of social disorganization of the area. A higher proportion of separated or divorced persons indicates a greater degree of social disorganization, and this is typically associated with a breakdown in conformity to social norms, including the tendency to abide by law. Further, separated and divorced women may be especially vulnerable to sexual assault and other crimes against persons. Separated and divorced men may also be more likely to be perpetrators of crimes, including rape. Finally, the adolescent offspring living in single parent (female headed) households may be less closely

supervised. This variable has been found to be associated with both violent and property crimes by Kposawa, Breault, and Harrison (1995) at the county level. Rice and Smith (2002) also found that single parent households were related to auto thefts at the "face block" level, especially when a hotel or motel was near. Thus, a thorough attempt to account for variations in crime rates should also take measures of social disorganization into account. To partially assess levels of social disorganization we computed two variables from Census data. The first was simply the percentage of persons over the age of 15 who were separated or divorced. The second was the percentage of households headed by females.

Numbers of nonsexual adult businesses. We included in our analyses measures of several types of businesses that cater mostly or exclusively to adults, but do not provide any form of sexual entertainment. On the one hand, these measures are included to serve simply as control variables. As with the social disorganization and demographic variables, they may account for much of the variance in crime rates. In addition, these businesses are similar in nature to the many of nude or semi-nude businesses, and provide useful comparisons to these businesses. If it is true, as the doctrine of adverse secondary effects holds, that businesses that offer sexual entertainment have adverse effects over and above those associated with any large and successful business, then we should observe stronger associations between measures of sexually oriented businesses and crime rates than we observe between measures of nonsexual adult businesses and crime rates.

Bars and taverns are especially appropriate controls for many nude businesses. In some cases the sole difference between an alcohol only bar and a "topless" bar, or nude cabaret that offers alcohol for consumption on the premises, is the presence of sexual entertainment in one but not the other. Several studies have found that bars and taverns tend to be associated with elevated rates of crimes. For example, Sherman, Gartin and Buerger (1989) found that both bars and convenience stores were disproportionately likely to be locations from which calls for police service were made. Roncek and Maier (1991) also reported that crime rates were higher on blocks that contained bars or taverns. We attempted to apply this logic at the level of counties. We obtained the numbers of drinking

15-189

establishments for Florida counties from the survey of County Business Patterns performed each year by the Census Bureau for inclusion in the analysis.

Nicholls (1976) argues that tourists are more likely to commit crimes because they have less investment in the community and/or view themselves as on a "vacation" from norms that usually govern their behavior. In addition, tourists may be more vulnerable for a variety of reasons. Visitors may be unaware of dangerous areas or practices that locals routinely avoid. Hotel or motel rooms may be less secure than the homes that visitors left behind. If the tourists drove their vehicles, the vehicles are likely to be more vulnerable to auto thefts or burglaries than they would have been in the visitor's garages at home as shown by Rice and Smith (2002). They examined the likelihood of auto thefts in nearly eight thousand "face blocks" in a medium sized southeastern city, and found that the presence of hotels and motels was by far the best predictor of the number of auto thefts. The second best predictor of auto thefts in their study was the combination of the presence of a hotel or motel and a high number of single parent households.

A large number of non-residents visiting a community may contribute to heightened crime rates in a more basic way. The FBI calculates crime rates per 100K population by dividing the number of known crimes by the stable population of the community, as indicated by Census Bureau. If a sizable number of persons, whether tourists or business travelers, are found in a geographical area on a given day, these persons may contribute to the number of crimes in the area either as victims or perpetrators. However, their numbers are not included in the population used to compute crime rates. Thus, even if these non-residents are no more likely than permanent residents to be either victims or perpetrators, they can increase the reported "crime rate." Finally, if tourists are more likely to be victims or perpetrators, then their impact on the crime rate is even greater.

There is no readily available indicator of this level of increase in the aggregate number of persons in a community on an average day. One indirect measure of this impact is the number of businesses that provide accommodations for these visitors, such as hotels and motels. It may be

reasonable to assume that those communities that have higher numbers of hotels and motels are those that have higher numbers of visitors, and that the number of visitors these communities have is roughly proportional to the number of hotels and motels. We obtained the numbers of hotels and motels for Florida counties from the survey of County Business Patterns performed each year by the Census Bureau.

Several researchers (Beale & Goldman, 1975; Fujii & Mak, 1980; Miller & Schwartz, 1998, Ochrym, 1990; and Wilson, 2001) have examined the impact of gambling establishments, both traditional casinos and riverboat gambling establishments, on crime. While the results of their studies are somewhat inconsistent, almost all have detected evidence that the presence of gambling establishments increases one or more types of crime. Thus, it is reasonable to anticipate that the number of gambling establishments in each county is likely to be related to rates of crimes in that county. The numbers of gambling establishments for each county were also derived from the survey of County Business Patterns performed annually by the Census Bureau.

Results

Numbers of adult businesses per county

Table 1 displays the counts of nude and semi-nude businesses of various types by county. Table 1 shows only those counties that have at least one adult business; counties not found in the table had no adult businesses with physical locations listed in any of our sources. While we are aware of at least some adult businesses that have physical locations that are not listed here, it is reasonable to believe that Table 1 captures the vast majority of such businesses found in the state of Florida. Certainly the relative differences between counties in number and type of adult businesses are reflected accurately in the table.

Examination of Table 1 reveals that 401 adult businesses were listed by at least one of the various sources consulted. Nude dance clubs (33.7% of the total) are the most common form, followed by topless dance clubs (26.2%), and lingerie modeling salons (20.7%). It is also clear that nude and semi-nude businesses are not randomly distributed across counties. Rather, the highest numbers are

clearly found in the more populous counties. For example, of all such businesses, 90 (22.4%) are in Hillsborough County, 54 (13.5%) are in Dade County, 40 (10.0%) are in Pinellas County, and 36 (9.0%) are in Broward County. Thus these four counties contain over half of these businesses, while the 42 counties not listed in Table 1 have no such businesses. Clearly, Florida counties vary considerably in the number of nude and semi-nude businesses they contain. The total number of nude and semi-nude businesses in each county was selected as the clearest indicator of these businesses. This measure was converted to a rate similar to the UCR crime rates by dividing the number of nude and semi-nude businesses by the population of the county and multiplying by 100,000. This variable was used in all subsequent analyses. Rates of nonsexual adult businesses, such as drinking establishments, were also computed in the same way.

Rates of property crime 1998-2002. Rates of property crimes per 100K people in the population averaged across this five-year period show considerable variability, ranging from a low of 119.17 to a high of 7198.87. The mean for this distribution is 3574.78, with a standard deviation of 1505.50. Rates of property crime showed great stability across the five years, $\alpha = .977$.

Rates of violent crime (other than rape) 1998-2002. Rates of violent crimes per 100K population averaged across this five year period also show considerable variability across counties, ranging from a low of 106.94 to a high of 1265.18. The mean for this distribution is 627.94, with a standard deviation of 251.30. Rates of violent crime also showed great stability, $\alpha = .954$

Rates of rape 1998-2002. Rates of rape per 100K population averaged across this five year period ranged from a low of 9.30 to a high of 135.35. The mean for this distribution is 73.94, with a standard deviation of 26.57. Rates of rape also showed considerable stability, $\alpha = .847$.

Data cleaning

Prior to any statistical analysis, descriptive statistics for all predictor variables were examined to determine whether these variables met the assumptions underlying multiple regression analysis. These descriptive statistics are shown in Table 2. Many of the variables showed high levels of skew, kurtosis,

or both. Following the advice of Tabachnick and Fidell (2000), variables with that strongly deviated from normality were subjected to log (10) transformations, while variables with less severe deviations were transformed by computing the square root of the raw scores. These transformed scores were then used in all subsequent analyses.

Zero order correlations among the predictor variables

Table 3 shows the zero order correlations between the predictor variables used in the initial regression analyses. Quite notable are the very high, positive correlations between the three variables that assess types of nonsexual, adult businesses and between these variables and population. Clearly, more populous counties are those that also have more hotels and motels, drinking establishments, gambling establishments and businesses offering nude and semi-nude entertainment. The high correlations raised the likelihood that the results of the planned regression analyses could be affected by multicollinearity. Given the very high correlations between the three measures of nonsexual businesses (hotels and motels, drinking establishments, and gambling establishments), it was reasoned that it would be impossible to distinguish between these variables in a multivariate analysis in which more than one of them was included, so the decision was made to perform the initial analyses using only one of these variables (drinking establishments per 100K population). Secondary analyses were planned in which this variable would be deleted and one of the other two measures of rate of nonsexual adult businesses used in its place. In other words, 3 regression analyses would be performed and only one measure of nonsexual adult businesses would be entered into each equation.

Zero order correlations between the predictor variables and crime rates

Table 4 shows the zero order correlations between the crime outcome variables and the predictor variables. The rates of nonsexual adult businesses per 100K population are significantly correlated with both rates of violent and property crimes but not with rates of rape. Rates of nude and semi-nude businesses per 100K are not significantly related to rates of any type of crime.

The purpose of the regression analyses that follow was two fold. The first purpose was to determine whether numbers of nude and semi-nude businesses per 100K contributed to the prediction of rates of crime after variance accounted for by the remaining variables was taken into account. The second was to compare the amounts of unique variance accounted for in prediction of crime by numbers of nude and seminude businesses per 100K and with that accounted for by numbers of nonsexual adult businesses per 100K.

Regression analyses with UCR property crime rates as the dependent variable

Rates of property crimes were used as the outcome variable in a standard regression analysis with the following variables entered in a single step: county population density, the % of the population nonWhite, the % of the population between the ages of 15 and 24, the % of the population separated or divorced, the % of households headed by females, income inequality, the number of drinking establishments per 100K population, and the number of nude and semi-nude businesses per 100K population. The results of this analysis are shown in Table 5. The model including these eight predictor variables is clearly significant, $R = .756$, $F(8, 58) = 20.606$, $p < .001$, and accounts for 64.3% of the variance in UCR property crime rates. Three variables make a unique, significant contribution to prediction of rates of property crimes: population density ($sr = .214$), income inequality ($sr = .214$), number of drinking establishments per 100K ($sr = .194$). The number of nude and semi-nude businesses per 100K does not make a significant contribution to prediction of UCR property crimes when the other variables are taken into account, ($sr = -.095$).

Two similar analyses were performed. In the first, number of hotels and motels per 100K was substituted for number of drinking establishments per 100K, and in the second number of gambling establishments per 100K was used as the variable representing nonsexual adult businesses. As expected, given the high correlations between the three measures of nonsexual adult businesses, both analyses yielded quite similar results. The unique contributions of hotels and motels per 100K ($sr = .331$), and gambling establishments per 100K ($sr = .331$), were significant, while the contributions of the remaining

variables were similar to the initial analysis. All three measures of nonsexual adult businesses thus have a similar ability to account for rates of property crime.

Regression Analyses With UCR Violent Crimes as Dependent Variable

Rates of UCR violent crimes were also used as the outcome variable in a standard regression analysis similar to that described above. The same eight predictor variables were entered in a single step. The results of this analysis are shown in Table 6. The model including these variables is significant, $R = .713$, $F(8, 58) = 7.500$, $p < .001$, and accounts for 50.8% of the variance in UCR violent crime rates. Only population density ($sr = .212$), % of female headed households ($sr = .192$), and income inequality make significant, unique contributions to prediction of rates of violent crimes. Neither the number of drinking establishments per 100K ($sr = .082$), nor the number of nude and semi-nude businesses per 100K ($sr = -.014$) makes a significant contribution to prediction of UCR violent crimes when the other variables are taken into account.

Once again, two similar analyses were performed. In the first, number of hotels and motels per 100K was substituted for number of drinking establishments per 100K, and in the second number of gambling establishments per 100K was used as was the variable representing nonsexual adult businesses. The unique contributions of hotels and motels per 100K ($sr = .135$) and gambling establishments per 100K ($sr = .125$) were both non-significant. The contributions of the remaining variables were similar to the initial analysis.

Regression Analyses With UCR Rape Rates as Dependent Variable

UCR rates of rape also were submitted to a regression analysis identical to those described above. Table 7 shows that the model predicted 34.3% of the variance in rates of rape, $F(8, 58) = 3.780$, $p < .001$. Three variables make unique, significant contributions to prediction of rates of rape: % of the population nonWhite ($sr = -.223$), number of drinking establishments per 100K ($sr = .216$), and the number of nude and semi-nude businesses per 100K ($sr = -.260$).

Once again, secondary analyses substituting number of hotels and motels per 100K or number of gambling establishments per 100K for number of drinking establishments per 100K were performed. In the first analysis, neither the contribution of hotels and motels per 100K ($sr = .145$) nor that of numbers of nude and semi-nude businesses per 100K ($sr = -.212$) reached the conventional level of statistical significance ($p < .05$), though their magnitudes were similar to those of the initial analysis. In the second, both gambling establishments per 100K ($sr = .229$) and numbers of nude and semi-nude businesses per 100K ($sr = -.250$) made significant, unique contributions to prediction of rates of rape. Percentage of the population that is nonwhite made a significant, unique contribution in both analyses.

Discussion

The Supreme Court of the United States has considered the constitutionality of anti-nudity legislation passed by municipalities or states that have relied on the negative secondary effects doctrine as justification. One negative secondary effect often cited is an increase in crime. The present study examined the empirical support for this assumption at the level of counties in the state of Florida. We examined the relationship between crime rates and the prevalence of nude or semi-nude businesses with other variables known to be related to crime controlled. Three kinds of crime were examined: UCR property crimes, UCR violent crimes, and rape. A single measure of the rate of nude and semi-nude businesses per 100K people in the population was computed. Four demographic variables (population density, percentage of the population non-white, percentage 15-24, and income inequality) previously shown to be related to crime were used as control variables. Similarly, two social disorganization variables (percentage of female headed households and percentage of the population separated or divorced) were also entered as control variable. Measures of the numbers of nonsexual adult businesses (hotels and motels, drinking establishments, and gambling establishments) were also computed as rates per 100K population. Due to their high correlations with each other, these variables were entered in separate regression equations. These variables were entered into a series of regression analyses to

determine whether the measure of nude or semi-nude businesses showed significant relationships with rates of crime after the other variables were controlled.

These results provide no support for the prediction from social learning theory that rates of rape would be positively associated with the prevalence of businesses offering nude or semi-nude entertainment. On the contrary, when all variables were entered in the equation, the relationships between nude and semi-nude businesses and rates of all three crimes were negative. *In the case of rape, this negative relationship was statistically significant when rates of drinking establishments and gambling establishments were entered*, and approached significance when rates of hotels and motels were entered. On the other hand, rates of drinking establishments and gambling establishments both showed significant relationships with rates of rape when other variables were taken into account.

Predictions derived from McCleary's (2004) version of routine activities theory applied to erotic businesses did not fare well either. The relationships between rates of nude and semi-nude businesses were negative and non-significant when other predictor variables were taken into account. Further, rates of nonsexual adult businesses showed substantial positive associations with rates of both property crimes and rape when other variables were taken into account. McCleary's (2004) speculations about the quality and quantity of the patron's of adult businesses making them especially likely to be targets of predatory criminals are not supported by these data.

Predictions derived from work within the mainstream of routine activities theory was reasonably well supported. As predicted by this view, rates of both violent crime and rape were positively associated with the prevalence of nonsexual adult businesses, such as drinking establishments, hotels and motels, and gambling establishments. Our results also revealed negative associations between crime rates and the prevalence of nude and semi-nude businesses when other variables were controlled. A similar pattern of results was obtained for violent crimes other than rape, but the semi-partial correlations for these variables did not reach conventional significance.

Cohen and Felson (1979) hypothesized crime clustering required motivated offenders, suitable targets, and the *absence of capable guardians against a violation*. Emphasis on the capable guardians portion of routine activities theory suggests that adult cabarets may not be sites where motivated offenders prey on victims. Why do we not find empirical evidence of the social disorganization/crime opportunity spillover of these adult establishments? While many interpretations of the different patterns of associations with crime rates shown by nude and semi-nude clubs and nonsexual adult businesses are possible, we suggest that the role of capable guardians is likely to be important.

The adult nightclub business in the late-1990s in many respects may be quite unlike that of the 1960s and 1970s when these establishments were relatively new forums of entertainment in American society. Adult nightclubs have been subjected to over two decades of municipal zoning restrictions across the country, and they usually must comply with many other regulations as well. The establishments themselves have evolved more closely into legitimate businesses establishments with management attention to profitability and continuity of existence. To meet these objectives, it is essential that the management and/or owners of the clubs provide their customers with some assurance of safety. Accordingly, adult nightclubs, including those in Florida often appear to have better lighting in their parking lots and better security surveillance than is standard for non-nightclub business establishments. These may be factors producing fewer crime opportunities and lower numbers of reported crime incidents in the surrounding areas of the clubs.

Architectural features of businesses may also play a role. Carter, Carter, and Dannenburg (2003) advocate an approach they call Crime Prevention Through Environmental Design. This approach emphasizes changes in properties that make the activities of persons more visible from the street and reinforce distinctions between public and private places. Carter et al noted a decrease in prostitution following the institution of their program while crime in the remainder of Sarasota, Florida remained unchanged or increased.

Support for the secondary effects doctrine

15-198

Our results are not consistent with the doctrine of adverse secondary effects. The prevalence of nonsexual adult businesses is more powerfully associated with rates of crime than the prevalence of nude and semi-nude businesses. Empirical findings that fully support the secondary effects notion should have shown not only that businesses offering nude entertainment are associated with crime, but also that they are associated with levels of crime over and above those associated with nonsexual businesses. The results of the present study show the opposite pattern: the prevalence of nonsexual adult businesses is more powerfully associated with rates of crime than the prevalence of nude and semi-nude businesses.

However, some caveats should be made regarding these results as applied to the debate about the secondary effects of adult businesses. We were able to identify 401 adult businesses in the state of Florida. While this is substantial, it is clear that the actual number is even greater. We did not include in our listing businesses for which we could identify no physical location. This eliminates many out-call modeling and massage businesses. Indeed, we observed many massage businesses that advertise only a phone number, though their ads suggest they have a physical location, e.g., by listing a general area, such as "Disney vicinity." It is also undoubtedly the case that some businesses with actual physical locations were not found, because they advertise in ways not captured in our search. We also did not include adult bookstores, though some may feature live performances, at least occasionally. Certainly, there are many adult businesses in the state of Florida that provide nude or semi-nude female performers for (mostly) male patrons. Our listing of 401 should be considered the lower limit on their number.

An additional concern that one might have about this data set is that the number of counties examined limits the likelihood of detecting adverse effects because it places a limit on the degree of statistical power that can be obtained. Several analytic decisions were based on a concern with statistical power. This concern is why the number of predictor variables was limited and crime rates were observed over a five-year period. However, the pattern of these results argues against this criticism. We did find statistically significant associations between both property crime and rape and the prevalence of

nonsexual adult businesses. Thus our data apparently provide sufficient power to detect these robust associations. Further, these data have sufficient statistical power to reveal that relationships between crime rates and rates of nonsexual adult businesses are significantly more positive than the relationships between crime rates and rates of nude or semi-nude businesses.

A related concern is the possibility that adverse effects such as crime emanate only a short distance from nude businesses, and that they are thus not detectable when a much larger unit of analysis, such as whole counties, is examined. This view suggests that these adverse effects can be detected only with designs that examine crime activity within a small radius, such as 1,000 feet, from the business. Such a position might have some merit, but it assumes that any adverse effects such businesses have on crime are weak and local. Still, one might argue that even weak and local effects, if accumulated over 90 or so businesses, such as in Hillsborough County, ought to have a detectable effect at the county level. If these effects cannot be detected at the level of analysis at which policy decisions are being made, that is, cities or counties, then it is difficult in our view to argue that the possibility of such effects should affect policy decisions made at that level. This is especially true when powerful "effects" of nonsexual businesses on crime are suggested by the robust associations between their prevalence and crime rates.

One final concern can be raised about the generalizability of these results. We found no evidence of a positive association between rates of crime and the prevalence of nude and semi-nude businesses. However, one can express some doubt about whether the patterns observed here will be found in other regions of the country. Tourism is a very important part of the Florida economy, and Florida arguably has a greater population of tourists as well as higher densities of hotels and motels than most other states. It is possible that the associations observed here are affected in part by the relatively high numbers of nonsexual adult businesses in Florida as compared to other states.

A comprehensive examination of the validity of the concept of adverse secondary effects on crime rates should employ a variety of methods. Different measures of crime (calls for service and UCR rates), analytic strategies (multivariate and quasi-experimental), and units of analysis (from counties to

census tracts and “face blocks”) should be used. However, until studies using valid sources of data and appropriate methods provide credible evidence that businesses offering sexual entertainment contribute to increased crime in the areas that surround them, the doctrine of adverse secondary effects must be regarded as unsupported in the published scientific literature.

15-201

Table 1.

Types of businesses featuring nude or semi-nude live performances by female performers by county.

County	Type							Total
	Bikini	Lingerie	Massage	Nude	Pasties	Swing	Topless	
Alachua	0	0	0	2	0	0	0	2
Bay	0	0	0	0	1	0	6	7
Bradenton	0	1	0	0	0	0	0	1
Brevard	0	0	0	1	0	0	8	9
Broward	0	3	0	16	1	6	10	36
Charlotte	1	0	0	1	0	0	0	2
Collier	0	0	0	0	0	1	0	1
Dade	0	2	1	43	0	2	6	54
Duval	21	0	0	3	0	0	3	27
Escambia	0	0	0	1	0	0	8	9
Hillsborough	3	43	8	24	0	2	10	90
Lee	1	0	0	0	0	1	5	7
Manatee	0	11	0	0	0	0	2	13
Marion	0	0	0	0	1	1	0	2
Monroe	0	0	0	5	0	1	2	8
Okaloosa	0	0	0	1	0	0	4	5
Orange	4	0	3	5	2	0	10	24
Palm Beach	0	1	2	15	0	0	4	22
Pasco	1	2	0	2	0	0	5	10
Pinellas	5	13	0	10	1	0	11	40
Sarasota	0	7	0	1	0	0	2	10
Seminole	0	0	1	1	1	0	4	7
St. Johns	1	0	0	0	0	0	0	1
St. Lucie	1	0	0	2	0	0	1	4
Volusia	1	0	0	2	2	1	4	10
Total	39	83	15	135	9	15	105	401

Legend: Bikini=dance club with women in bikinis, Lingerie=lingerie modeling salon, Massage=message salon, Nude=dance club with nude dancers, Pasties=dance club with dancers wearing pasties, Swing=swingers club, Topless=dance club with topless dancers

Note: Forty-two counties not shown above had no nude or semi-nude businesses listed in any of our sources.

Table 2.

Descriptive statistics for predictor variables.

Predictor variables	Mean	Std. Deviation	Skewness	Kurtosis	transformation
County population density	288.73	491.23	4.036	21.142	logarithm
% Non-white	.198	.102	1.410	3.173	square root
% aged 15-24	6.27	1.70	1.741	5.698	logarithm
% Separated or divorced	9.45	1.746	2.595	11.492	logarithm
% households headed by females	11.41	2.855	1.086	2.318	square root
Income inequality	.062	.015	.736	.255	--
Nude or Semi-Nude businesses per 100K	1.051	2.007	2.695	8.443	logarithm
Drinking establishments per 100K	29.993	41.397	2.682	7.688	logarithm
Hotels and motels per 100K	49.291	75.479	2.632	7.215	logarithm
Gambling establishments Per 100K	58.067	85.661	2.665	7.369	logarithm

Table 3.

Zero order correlations between predictor variables.

Variables	Var.1	Var.2	Var.3	Var.4	Var.5	Var.6	Var.7	Var.8	Var.9	Var.10
1. Population density (log10)	--	-.130	.203	-.070	-.115	-.400*	.152	.788*	.748*	.843*
2. % nonwhite (square root)		--	.571*	-.083	.807*	.717*	.218	-.091	-.061	-.166
3. % aged 15-24 (log10)			--	-.117	.621*	.654*	.067	-.130	-.091	-.233
4. % Separated or Divorced (log10)				--	.131	-.121	.370*	.182	.168	.065
5. % households headed by females (square root)					--	.589	.251*	-.101	-.029	-.212
6. Income inequality						--	.117	-.270*	-.234	-.390*
7. Nude & semi-nude businesses per 100K (log10)							--	.412*	.473*	.334*
8. Number of drinking establishments per 100K (log10)								--	.889*	.929*
9. Number of hotels and motels per 100K (log10)									--	.915*
10. Number of gambling establishments per 100K (log10)										--

* $p < .05$

15-204

Table 4.

Zero order correlations between predictor variables and crime rates.

Predictor variables	Type of crime rate ^a		
	UCR property	UCR violent	Rape
Population density	.607*	.413*	.162
% Nonwhite	.203	.426*	.101
% aged 15-24	.129	.272*	.337*
% separated or divorced	-.134	-.097	.129
% of households headed by females	.160	.437*	.256*
Income inequality	.128	.304*	.200
Number of nude or semi-nude businesses per 100K	.171	.218	-.108
Number of Drinking Establishments per 100K	.586**	.369*	.229
Number of Hotels and Motels per 100K	.669*	.417*	.218
Number of Gambling Establishments per 100K	.640*	.349*	.183

^a All crime rates are expressed as numbers of crimes per 100K population.* $p < .05$, two tailed.

15-205

Table 5.

Hierarchical regression analysis with rate of property crimes 1998-2002 as the outcome variable

Predictor Variables	<i>B</i>	<i>SE B</i>	β	<i>p</i>	<i>sr</i>
Population density	1135.07	455.71	.442	.016	.214
% Non-white	606.51	2489.50	.044	.808	.021
% population 15-24	-611.87	1796.23	-.044	.735	-.029
% separated or divorced	-2058.59	2343.66	-.096	.383	-.075
% of female headed households	958.85	2584.23	.066	.712	.032
Income inequality	37293.64	14973.30	.381	.016	.214
Nude or semi-nude Businesses per 100K	-356.16	331.66	-.129	.275	-.095
Drinking Estab.s per 100K	1381.38	611.44	.424	.028	.194

$R^2 = .643, F(8,58) = 13.079, p < .001.$

Table 6.

Regression analysis with rate of violent crimes (other than rape) 1998-2002 as the outcome variable.

Predictor Variables	<i>B</i>	<i>SE B</i>	β	<i>p</i>	<i>sr</i>
Population density	177.82	78.17	.438	.027	.212
% Non-white	-91.40	427.04	-.042	.831	-.020
% population 15-24	-208.72	308.12	-.094	.501	-.063
% separated or divorced	-383.70	402.02	-.113	.344	-.089
% of female headed households	911.98	442.98	.397	.044	.192
Income inequality	5778.75	2568.46	.373	.028	.210
Nude or semi-nude Businesses per 100K	-8.31	56.89	-.019	.884	-.014
Drinking Estab.s per 100K	91.98	104.89	.179	.384	.082

$R^2 = .506, F(8,58) = 7.419, p < .001.$

15-207

Table 7.

Regression analysis with rate of rape 1998-2002 as the outcome variable.

Predictor Variables	<i>B</i>	<i>SE B</i>	β	<i>p</i>	<i>sr</i>
Population density	1.041	9.962	.023	.917	.011
% Non-white	-113.96	54.42	-.468	.041	-.223
% population 15-24	59.35	39.27	.241	.136	.161
% separated or divorced	55.92	51.23	.148	.280	.116
% of female headed households	104.20	56.45	.407	.070	.196
Income inequality	578.16	327.23	.335	.083	.188
Nude or semi-nude Businesses per 100K	-17.23	7.25	-.355	.018	-.260
Drinking Estab.s per 100K	27.14	13.37	.473	.047	.216

 $R^2 = .343, F(8,58) = 3.780, p < .001.$

15-208

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Running Head: Testing Supreme Court Assumptions

Testing Supreme Court Assumptions in *California v. la Rue*: Is There Justification for Prohibiting Sexually Explicit Messages in Establishments that Sell Liquor?

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By

Daniel Linz, Ph.D.
Professor of Law and Society, and Communication
University of California at Santa Barbara
Department of Communication
Santa Barbara, CA 93106
Linz@comm.ucsb.edu

Mike Yao
Ph.D. Candidate
University of California at Santa Barbara
Department of Communication
Santa Barbara, CA 93106

and

Sahara Byrne
University of California at Santa Barbara
Department of Communication
Santa Barbara, CA 93106

Abstract

The United States Supreme Court has upheld the idea that a state may prohibit the communication of sexually explicit messages and adult entertainment in establishments licensed to sell liquor (*California v. La Rue*, 409 U.S. 109 (1972)). State liquor control boards across the country rely on this decision in order to regulate alcohol serving businesses that feature adult entertainment. These boards have accepted the untested premise that combining liquor service with adult entertainment leads to greater adverse secondary effects than merely serving liquor alone. In order to test the assumption a study of prostitution, sexual assault and other sexual offenses in Toledo, Dayton, Columbus and Cleveland Ohio was undertaken utilizing crime event data provided by the police. The results revealed that adult businesses were not the primary source of sex crime events. Often these businesses showed zero crime events. Instead, alcohol serving, non-adult establishments are a significant source of such events. The consistency of the results of the present study with past research and the implications of this study and past research for assumptions made about state regulations of sex related communication are discussed.

Testing Supreme Court Assumptions in *California v. la Rue*: Is There Justification for Prohibiting Sexually Explicit Messages in Establishments that Sell Liquor?

**SUPREME COURT DECISION MAKING
AND NEGATIVE SECONDARY EFFECTS OF ADULT BUSINESSES**

Since 1976, the United States Supreme Court has decided a series of cases focusing on whether the Free Speech clause of the First Amendment allows cities and states to enact legislation controlling the location of "sexually oriented" businesses (See e.g., *Young v. American Mini Theatres, Inc.*, 427 U.S. 50 (1976); *City of Renton v Playtime Theatres Inc.*, 475 U.S. 41 (1986). "Zoning" regulations, laws or ordinances that prevent a sex-related business from operating within certain defined areas and/or within a certain number of feet of so-called "sensitive" locations (e.g., residential neighborhoods, schools, houses of worship and/or other "adult establishments") have been predicated on the notion that municipalities have a substantial interest in combating so-called "negative secondary effects" on the neighborhoods surrounding exotic dance businesses. These secondary effects are generally said to include alleged increases in crime, decreases in property values, and other indicators of neighborhood deterioration in the area surrounding the adult establishment.

The rationale for the secondary effects doctrine was most completely laid out in *Renton v. Playtime Theatres, Inc.*, in 1986. In *Renton*, the Supreme Court considered the validity of a Renton municipal ordinance that prohibited any "X-rated" theater from locating within 1,000 feet of any residential zone, family dwelling, church, park or school. The Court stated that the ordinance would be upheld so long as the city of Renton showed that its ordinance was designed to serve a substantial government interest such as a reducing crime rates or maintaining property values.

Social Disorganization Theory and Crime

Structural characteristics of a community or neighborhood often influence crime. Social Disorganization theory was established by Shaw and McKay (1942) and has been used by criminologists to understand the causes of crime rates across urban neighborhoods. Social disorganization theory specifies that economically impoverished local communities characterized by residential instability and made-up of ethnically diverse citizens are more likely to lack social organization when compared to more affluent, homogenous neighborhoods with stable populations (Shaw & McKay, 1942).

Contemporary research has mounted considerable evidence in support of Social Disorganization theory. Scholars have reformulated and refined Shaw and McKay's (1942) classic model (Bursik, 1988; Kornhauser, 1978; Sampson & Groves, 1989; Sampson et al., 1997; Sampson & Raudenbush, 1999; Osgood & Chambers, 2000), and have applied the principles of social disorganization to explain the link between local institutions (e.g., bars) and crime (Peterson, Krivo, & Harris, 2000; Alaniz, Cartmill, & Parker, 1998). For example, Sampson and Groves (1989) reported that family disruption (measured as divorced families), low socio-economic status, residential stability, and heterogeneity accounted for much of the effect on rates of burglary. In addition, recent studies show that burglary is influenced by other community characteristics, such as single parent households (Smith & Jarjoura, 1989; Rountree et al., 1994; Lynch & Cantor, 1992).

Alcohol Outlet Businesses and Crime

Local institutions and businesses are also associated with crime is based on the principles of social disorganization (Byrne & Sampson, 1986, p. 5). Peterson et al. (2000, p. 33; see also Nielsen & Martinez, 2003) argue that socially disorganized communities are less likely to attract

and sustain conventional institutions such as banks, libraries, and recreational centers that help control crime; whereas, businesses such as bars are likely to be more prevalent in disorganized neighborhoods that undermine crime control efforts (see also, Covington, 1999; Zahn, 1998). The alcohol outlet-crime connection is also consistent with Bursik and Grasmick's (1993) assertion that neighborhood life is influenced by external parochial forces, such as social networks among residents who may share weak local institutions (e.g., bars). It is among these weak institutions, operating within the broader urban context, that induce crime. The presence of bars have been characterized as an indirect indicator of social disorganization (Petersen et al., 2000, p. 35) and more recently conceptualized as crime "generators" (Quimet, 2000, p. 41). Watts and Rabow (1983) found a higher concentration of alcohol outlets in 213 socially disorganized California cities. The combination of weak institutions and social disorganization attributes are likely to foster crime (Wilson, 1987; Sullivan, 1993; Short, 1997; Parker & Rubhum, 1995; Scribner, MacKinnon, & Dwyer, 1995).

Several studies have focused on the number of bars (i.e., weak institutions) in local areas as a major source of crime. Some studies have posited a stronger effect for bars on crime, compared to other social disorganization predictors (Roncek & Bell, 1981; Roncek & Maier, 1991). These studies have used a variety of different census units of analysis (e.g., tracts, block groups, and blocks) that vary by geographic size. For example, studies indicate a positive correlation between blocks occupied with a higher number of bars and higher rates of crime (Roncek & Bell, 1981; Roncek & Maier, 1991; Roncek & Pravatiner, 1989; Zahn, 1998; Quimet, 2000). Nielsen and Martinez (2003) reported that alcohol establishments (operationalized as total outlet rate) had a significant effect on non-lethal violence at the census tract level. Quimet (2000) also found that the number of bars predicted offender rates at the census tract. However,

using 1990 census, crime, and alcohol outlet data at the block group level, Alaniz et al. (1998) examined the connection between immigrants and violence across three California communities. The authors reported that violence was a function of alcohol availability and family breakdown (i.e., percent divorced) at the block group level.

Overall, researchers have marshaled impressive evidence indicating that alcohol outlets influence crimes of rape, assault, homicide, robberies, auto-theft, public intoxication, and drunk driving (Scribner et al., 1995; Sherman, Gartin, & Buerger, 1989; Roncek & Maier, 1991; Watts & Rabow, 1983; Nielsen & Martinez, 2003). Some studies also report that alcohol availability has such a profound effect on crime, namely homicide, that it intensifies the effect of poverty (Parker, 1995, 1993; Parker & Rebhum, 1995).

Combining Alcohol Service and Adult Entertainment

The Supreme Court has maintained that States may regulate sexually explicit messages and adult entertainment in liquor serving establishments. This opinion, articulated in *California v. la Rue*, 409 U.S. 109 (1972) involved the California Department of Alcoholic Beverage Control which had issued regulations prohibiting explicitly sexual live entertainment and films in bars and other establishments licensed to dispense liquor by the drink. A three-judge District Court held the regulations invalid under the First and Fourteenth Amendments, concluding that under standards laid down by this Court some of the proscribed entertainment could not be classified as obscene or lacking a communicative element. Among the regulations at issue were those prohibiting the performance of simulated sexual intercourse, actual or simulated "touching, caressing or fondling of the breast" or "the actual or simulated displaying of the public hair, anus, vulva or genitals." (*California v. la Rue*, 409 U.S. at 112). The Supreme Court held that in the context, not of censoring dramatic performances in a theater, but of licensing bars and

nightclubs to sell liquor by the drink, the States have broad latitude under the Twenty-first Amendment to control the manner and circumstances under which liquor may be dispensed, and here the conclusion that sale of liquor by the drink and lewd or naked entertainment should not take place simultaneously in licensed establishments was not irrational nor was the prophylactic solution unreasonable.

Although *44 Liquormart, Inc. v. Rhode Island*, 517 U.S. 484 (1996), disavowed *La Rue's* "reasoning insofar as it relied on the Twenty-first amendment, "the Supreme Court stressed in that case that *LaRue's* holding remained intact. See *44 Liquormart*, 517 U.S. at 516.

The doctrine established in *LaRue* that states may legally regulate sex related communication in alcohol serving establishments has been relied upon by liquor control boards across the country to justify regulation of adult entertainment in alcohol serving businesses. These boards have often accepted the untested premise that combining liquor service with adult entertainment leads to greater adverse secondary effects than merely serving liquor alone. The rationale relied upon by the Liquor Control Commission of the State of Ohio is exactly this premise. At a public hearing involving the Proposed Rule No. 4301:1 -1- 52 (a measure to limit the display of simulated sex acts in liquor serving establishments throughout Ohio) on September 11, 2003 the testimony of Mr. Bruce Taylor prosecutor for the U.S. Department of Justice was presented. Mr. Taylor opined:

"There have been studies that were done in cities across the country for the past 30-some years, most of which have involved adult bookstores, but other kinds of sexually-oriented businesses like strip joints and adult theatres and porno book stores that sell sexually-oriented materials or permit sexually-oriented entertainment like strip acts, like nude dancing." (pg. 15).

"So this idea that the harmful secondary effects that have existed and have been noticed by reports or by studies around the country

is something that is (sic) sort of become a body of common knowledge." (pg 17-18)

"But the studies...did conclude that the harmful secondary effects are, if anything worse when you combine -- you have some when you have just the nudity and sex shows and stripping. But, there are more effects and more greater degree of intensity (sic) and harm on the community and on the people in it when you mix the alcohol and the sex with alcohol and the nudity." (pg. 66)

THE PRESENT STUDY: FOUR OHIO CITIES

The purpose of the present study is to conduct an empirical study to determine if a relationship exists between adult businesses that serve alcohol and harm done to the community in terms of sex crimes in four Ohio cities--Toledo, Dayton, Columbus and Cleveland. The following question is asked: Once variables known to be related to crime events suggested by Social Disorganization theory have been statistically controlled, does the presence of adult entertainment in an alcohol serving establishment increase sex related crimes above and beyond those crimes at alcohol serving establishments that do not present such entertainment?

Overview of Methods

The methodological approach taken here involves three procedures. First, the Computer Aided Dispatch or NIBRS data involving sex crimes in the cities of Toledo, Dayton, Columbus and Cleveland Ohio are obtained and aggregated within census block groups defined by the 2000 United States Census Bureau. Second, we measured the presence or absence of community features derived from Social Disorganization theory, including the presence of alcohol serving non-adult businesses that may be related to criminal activity. Third, these two sources of information are combined for analyses.

Block Group Level U.S. Census Demographic Information

The 2000 United States Census measures general demographic characteristics of each block group. These variables include, among others, measures of population, sex and age, race, relationships in household, household type measured at the block level. Using a Geographic Information System (GIS) program, Maptitude 4.5, we were able to link demographic characteristics of each census block group as measured by the 2000 United States Census to their geographical locations. The crime incident data were then plotted in the same map according to police records. Finally, a data file was constructed which included the demographic and crime incident frequencies for each block group.

Analyses Overview

Our analysis strategy entails first entering these census variables into a statistical analysis to control for the effects of these characteristics on crime incidents. After we control for demographic features, we then examine the relative contribution of the presence of an alcohol selling establishment in the neighborhood. Finally, after we have controlled for this variable, we then examine the impact of having an adult cabaret in the block group area on crime incidents. These analyses are undertaken on a city-by-city basis.

Criterion Variables

The analysis reported below was designed to answer the question: Once we have controlled for characteristics of the immediate "neighborhood" (census block group) known to be related to crime and community disorder, including alcohol serving establishments, what is the effect of the presence of an adult cabaret in a census block group on crime events? This comprehensive form of analysis is necessary to insure that once other sources of variability in

crime incidents, known from past research, are statistically controlled the effect of the adult business as a source of crime and disorder in the area may manifest itself.

As we noted in the introduction several variables investigated by others have been found to be important as predictors of crime activity. These include measures of population density, racial composition, and neighborhood characteristics. These social variables have been examined on the basis of the theory that a local area's population age structure (especially the presence of young adults), and its race/ethnic composition can affect both the size of the pool of motivated crime offenders and the presence of suitable targets for predatory crimes. Variables that have been investigated and have been found to be most important as predictors of crime activity include measures of racial composition (number of African Americans and racial heterogeneity), family structure (as measured by number of single-parent households, female headed households), economic composition (as measured family income), and the presence of motivated offenders, primarily males between the ages of 18 and 25 and socioeconomic status as measured by level of education (see, e.g., Miethe & Meier, 1994).¹

In addition, it is necessary to control for neighborhood business and housing characteristics that may contribute to social disorganization such as the presence of vacant houses and lots and rental housing units and measures of neighborhood integration such as number of owner occupied housing units. Specific land uses are not only important in themselves but they also operate in interaction with variables that are indicative of social disorganization. The presence of alcohol serving establishments or bars identifies areas that might be particularly attractive for potential offenders (Roncek and Maier, 1991; Sherman et al., 1989; Stark, 1987).

¹ Menthe, T. D., & Meier, R. F. (1994). Crime and Its Social Context: Toward an Integrated Theory of Offenders, Victims, and Situations. Albany, NY: State University of New York Press.

The list of population, general demographic characteristics, social disorganization variables and alcohol serving private club establishments measured at the census block group level included in the analyses appears immediately below.

Variable Group 1
POPULATION
AREA

Variable Group 2
MEDIAN_AGE OF POPULATION
NUMBER OF NONWHITES
FEMALE HEAD OF HOUSEHOLD, NO HUSBAND
MARRIED HOUSEHOLD FAMILIES
MEDIAN AGE

Variable Group 3
HOUSEHOLD MEDIAN INCOME
OWNER OCCUPIED HOUSING UNIT VALUE-MEDIAN
FAMILIES BELOW POVERTY LEVEL
ADULTS (25+) WITH LESS THAN 9TH GRADE EDUCATION
PERCENT OF ADULTS (25+) WITH BACHELOR'S DEGREE OR HIGHER

Variable Group 4
HOUSE HOLD UNITS VACANT
OCCUPIED HOUSEHOLDS-OWNER OCCUPIED

Variable Group 5
NUMBER OF ALCOHOL SERVING PRIVATE CLUBS

Variable Group 6
PRESENCE OF ADULT CABARETS

Once the demographic and social disorganization variables are statistically controlled, the effect of the variables measuring the presence or absence of adult cabarets (variable group 6) in the block group is examined.

The Toledo Study

Method

Locating the Adult Cabarets and Alcohol Serving Establishments

A comprehensive list of adult cabaret businesses was obtained for the City of Toledo. Three alcohol serving adult cabarets establishments were identified and examined in the present study. We also obtained a comprehensive list of private club alcohol serving licensees in Toledo who were issued licenses to sell alcoholic beverages by the Ohio Department of Commerce, Division of Liquor Control. The addresses of these businesses were located within the census block groups by using the GIS mapping program.

Measuring Crime and Disorder Incidents

For the analyses below we rely on crime incident report data collected by the City of Toledo Police Department Computer Automated Dispatch (CAD). This included records of dispatches or calls for service (CFS) that were either police-initiated or calls from the public from January 1, 1998 to December 31, 2002--five years. Each record contained the date, time, location, and the disposition of the call. In this study we employ only the calls for service for which a report or arrest is made. During the period between January, 1998 and December, 31, 2002, the Toledo Police Department had dispatch records for 1074 incidents of sexual assault and rape, 248 prostitution incidents, and 377 obscene activities. The sex crime breakdown by type in Toledo is displayed immediate below.

Locating the Crime Incident Calls for Service by Address

The crime incident data were then plotted by address in Toledo using Maptitude 4.5. Initially, an attempt was made to plot all calls based upon the street name and address using the "very strict" location criterion option (i.e., only those addresses for which an exact street name and

number match to those stored in Mapitude are plotted). This resulted in the plotting of roughly 90% of all calls for service. We then use the “normal” criterion to locate the rest of incidents by allowing for some misspelling of street names by the police. This procedure allowed the GIS program to plot an additional 8% of calls for services. The remaining 2% of the calls were not plotted.

Results

A series of hierarchical ordinary least squares (OLS) regression were conducted. The population, demographic and social disorganization variables were entered into the regression equation in the first four blocks. The alcohol serving private club predictor variable (adult business cabarets that were private clubs were eliminated from this stage) was then entered into the model. This was followed by a block measuring the presence or absence of adult cabarets. A summary of results of the hierarchical regression analyses for sexual assault and rape, prostitution, and obscene activity calls for service events in Toledo are displayed in Table 1.

Sexual Assault and Rape

In Toledo, the hierarchical regression model explained 54-percent of the variability in sexual assault and rape incidents across census block groups ($R^2 = .54$). The first variable cluster measuring population and geographic area accounted for 5-percent of the variability. The addition of the demographic variables set added another 39-percent to the explanatory power of the model. The addition of the next block of variables contributed 5-percentage points to the model's explanatory power. The block measuring the housing variables was statistically significant and explained an additional 4-percent of variability. The addition of the single variable measuring alcohol-serving establishments added approximately 2-percent to the model's

predictive power. Finally, the variable measuring the presence of an adult cabaret added no statistically significant predictive power to the model.

Prostitution

As can be seen from Table 1, the hierarchical regression analyses for prostitution calls for service events in Toledo accounted for 30-percent of the variability in these crime incidents across census block groups. The first variable cluster measuring population and geographic area was not a significant contributor to predicting prostitution incidents in Toledo. In the second step, the addition of the demographic variables set added a statistically significant 15-percent explanatory power to the overall model. The addition of the next block of variables significantly contributed 9-percentage points to the model's total explanatory power. The block measuring the housing variables was statistically significant and contributed an additional 4-percent to the model. The addition of the single variable measuring alcohol-serving establishments added approximately 3-percent to the model's predictive power. Finally, the variable measuring the presence of an adult cabaret added no statistically significant predictive power to the model.

Obscene activities

The hierarchical regression analyses for public obscene events in Toledo explained 33-percent of the variability in these crime incidents across census block groups. The first variable cluster measuring population and geographic area is significant contributor accounting for almost 5-percent of the total variability in the model. In the second step, the addition of the demographic variables set added a statistically significant almost 13-percent explanatory power to the overall model. The addition of the next block of variables significantly contributed about 4.5-percentage points to the model's total explanatory power. The block measuring the housing variables was statistically significant and contributed an additional 7-percent to the model. The

addition of the single variable measuring alcohol-serving establishments added approximately 3-percent to the model's predictive power. The variable measuring the presence of an adult cabaret added was significant and added around 1.3-percentage point to the explanatory power of the model. Overall the result of this regression analysis suggests that although the presence of an adult cabaret may be a statistically significant factor, social economic status, demographics, and the presence of non-adult alcohol serving private clubs are far better predictors of where these obscene activities occur in Toledo.

Comparison of alcohol serving and cabarets in terms of sex crimes

Although our regression analyses revealed that the presence of non-adult alcohol serving establishments is a far better predictor of sex related crime incidents than the presence of adult cabarets in Toledo, one may still argue that sex crimes may occur on the premises of these cabarets more frequently than non-adult alcohol serving businesses. In other words adult cabarets may not be located in areas where sex crimes frequently occur, but these cabarets themselves may be the "hotspots" of such crimes incidents as compared to a non-adult alcohol serving club. To test this possibility, we compared the number of sex crime related police dispatches to non-adult alcohol serving establishments and adult cabarets in Toledo. The result of this analysis suggests 13 non-adult alcohol serving businesses in Toledo reported at least one sex-related incident in the period of 5 years. In contrast, zero sex-related crime incidents were reported at the three adult cabarets in Toledo, OH.

The Columbus Study

Method

A comprehensive list of adult cabaret businesses was obtained from the City of Columbus, OH. 15 alcohol serving adult cabarets establishments were identified and included in

the present study. We also obtained a comprehensive list of private club alcohol serving licenses in Columbus who were issued licenses to sell alcoholic beverages by the Ohio Department of Commerce, Division of Liquor Control. These business addresses were located within each of census block groups using a Maptitude 4.5.

Measuring Crime and Disorder Incidents

For the analyses below we relied on crime incident report data collected by the City of Columbus Police Department Computer Automated Dispatch (CAD). This included records of dispatches or calls for service that were either police-initiated or calls from the public in a period of five years from January 1, 1998 to December 31, 2002. Each record contained the date, time, and location of the call and the disposition of the call. In this study we employ only the calls for service for which a report or arrest is made. Due to the nature of radio codes used by Columbus Police Department, further categorization of sex offenses is impossible. A general sex offenses category was used to indicate all sex crimes in progress and sex crime reports. A total of 3580 sex offense incidents were included in the police calls for service data during the five year period.

Locating the Crime Incident Calls for Service by Address

The crime incident data were plotted by address in Columbus using Maptitude 4.5. Initially, an attempt was made to plot all calls based upon the street name and address using the "very strict" location criterion option. This resulted in the plotting of roughly 92% of all calls for service. Next, we used the "normal" criterion that allows for some misspelling of street names by the police the remaining addresses to plot an additional 7% of total calls for service. The remaining 1% of the calls was not plotted.

Results

Using the same groups of variables described in the Toledo analysis above, a hierarchical multiple regression analysis was conducted to predict sex offense incidents in Columbus, OH. The population, demographic and social disorganization variables were entered into the regression equation in the first four blocks. The alcohol serving private club predictor variable (adult business cabarets that were private clubs were eliminated from this stage) was then entered into the equation. This was followed by a variable measuring the presence or absence of adult cabarets.

The result of this hierarchical regression analysis is displayed in Table 2. The table displays the variables that were entered at each of the six different stages and how much variance in sex assaults and rape events across the census block groups in Columbus is accounted for at each stage. As can be seen from the table, the overall regression model successfully accounted for 40-percent of the variability in sex offense incidents across census block groups.

The first variable cluster measuring population and geographic area accounted for 1.5-percent of the variability. The addition of the demographic variables set added another 28-percent to the explanatory power of the model. The next block of variables measuring social economic status and education contributed a statistically-significant six-percentage points to the model's explanatory power. The block measuring the housing variables, although was statistically significant, only contributed an additional two-percent to the model. The addition of the single variable measuring alcohol-serving establishments added approximately three percentage points to the model's predictive power.

Finally, the variable measuring the presence of an adult cabaret added no statistically significant predictive power to the model. In fact, reveals a *negative* beta coefficient for the variable measuring the presence of adult cabarets in the last step of the regression model.

Comparison of alcohol serving and cabarets in terms of sex crimes

To test this possibility that sex offenses may have higher occurrences at the adult cabarets than at the non-adult alcohol serving private clubs despite of the fact that they are not located in areas where such incidents frequently occur, we conducted a analysis comparing the number of sex offense police dispatches to non-adult alcohol serving establishments and adult cabarets in Columbus. This analysis revealed that the 22 non-adult private clubs were associated with a total of 30 sex offenses in five years of available data. However, there were only 2 sex incidents during the same five-year period at the 15 alcohol-serving adult cabarets.

The Dayton Study

Method

Locating the Adult Cabarets and Alcohol Serving Establishments

A comprehensive list of adult cabarets, adult video/bookstores and other adult businesses was obtained from the City of Dayton, OH. The 5 alcohol-serving adult cabarets establishments were examined in the Dayton study. A comprehensive list of private clubs in Dayton with alcohol serving licenses issued by the Ohio Department of Commerce, Division of Liquor Control was also obtained. These business addresses were located and plotted within the census block groups.

Measuring Crime and Disorder Incidents

In the Dayton study, we relied on crime data reported by the Dayton Police Department to the National Incident Based Reporting System (NIBRS) in a four-year period of time from

1/1/1999 to 12/31/2002. Being a part of the widely used Uniform Crime Reporting (UCR) program, NIBRS is an incident-based reporting system for crimes known to the police. For each crime incident coming to the attention of law enforcement, a variety of data are collected about the incident. These data include the nature and types of specific offenses in the incident, characteristics of the victim(s) and offender(s), types and value of property stolen and recovered, and characteristics of persons arrested in connection with a crime incident.

Unlike CAD, which is a comprehensive index of both police activity and crime activity, NIBRS provides a large amount of information only about crime activities. The information is also organized in complex ways, reflecting the many different aspects of a crime incident. Based on the codebook provided by the National Archive of Criminal Justice Data, three categories of sex crimes were devised in this study: 1) Forcible Rape, which included Forcible Rape, Forcible Sodomy, Sexual Assault with an Object, and forcible fondling. 2) Prostitution, and 3) Other Sex Crimes, which included Obscenity, Statutory Rape, Incest, and Peeping Tom. During the four years for which we had data, there were 940 forcible rape incidents, 1970 prostitution incidents, and 111 other sex crimes.

Locating the Crime Incident Calls for Service by Address

The crime incident data were plotted by address in Dayton, OH, using Mapitude GIS software. Because each crime incident included the NIBRS data was recorded with high levels of precision, we were able to plot all 100% of crime incidents using the “very strict” mapping criterion.

Results

Using the same groups of geographical, demographic, and social economic variables used in the Toledo and Columbus analyses above, a series of hierarchical multiple regression analyses

were conducted to predict sex crimes in Dayton, OH (see Table 3). The population, demographic and social disorganization variables were entered into the regression equation in the first four blocks. The alcohol serving private club predictor variable (adult business cabarets that were private clubs were eliminated from this stage) was then entered into the equation. This was followed by a variable measuring the presence or absence of adult cabarets.

Predicting forcible rape crime incidents

The result of this hierarchical regression analysis successfully accounted for 50-percent of the variability in forcible rape crime incidents across census block groups. The first variable cluster measuring population and geographic area accounted for 4-percent of the variability. The addition of the demographic variables set added another 27-percent to the explanatory power of the model. The next block of variables measuring social economic status and education accounted for 14-percent of the total variability in rape crime. The block measuring the housing variables, although was statistically significant, only contributed an additional 4-percent to the model. The addition of the variable measuring alcohol-serving establishments added approximately 3.5-percent to the model's predictive power. Finally, the variable measuring the presence of an adult cabaret added no statistically significant predictive power to the model.

Similar to the Columbus results, the hierarchical regression analysis for forcible rape revealed a *negative* but non-significant beta coefficient for the variable measuring the presence of adult cabarets in the last step of the regression model.

Predicting prostitution incidents

The overall regression model successfully accounted for 33-percent of the variability in prostitution incidents crimes across census block groups. The first variable cluster measuring population and geographic area accounted for 3-percent of the variability. The addition of the

demographic variables set added another 5-percent to the explanatory power of the model. The next block of variables measuring social economic status and education accounted for 9-percent of the total variability in rape crime. The block measuring the housing variables, although was statistically significant, only contributed an additional 7.6-percent to the model. The addition of the variable measuring alcohol-serving establishments added approximately 7.8-percent to the model's predictive power. Finally, the variable measuring the presence of an adult cabaret added no statistically significant predictive power to the model.

In addition, we again found a *negative* beta coefficient for the variable measuring the presence of adult cabarets in the last step of the regression model.

Predicting other sex crimes

The result of a third hierarchical regression analysis suggests that the overall model successfully accounts for almost 30-percent of the variability in rape crimes across census block groups. The first variable cluster measuring population and geographic area was not statistically significant. The addition of the demographic variables set added a significant 14-percent to the explanatory power of the model. The next block of variables measuring social economic status and education accounted for 6-percent of the total variability in rape crime. The block measuring the housing variables, although was statistically significant, only contributed close to 3-percent to the model. The addition of the variable measuring alcohol-serving establishments added approximately 5.5-percent to the model's predictive power. Finally, the variable measuring the presence of an adult cabaret added no statistically significant predictive power to the model.

Once again, we found a *negative* beta coefficient for the variable measuring the presence of adult cabarets in the last step of the regression model.

Comparison of alcohol serving and cabarets in terms of sex crimes

To test the possibility that sex crimes may occur more frequently at the adult cabarets than at the non-adult alcohol serving private clubs despite of the fact that they are not located in areas where sex crimes frequently occur, we conducted a analysis comparing the number of different types of sex crimes at non-adult alcohol serving establishments and adult cabarets in Dayton. We found that 14 non-adult alcohol-serving private clubs reported a total of 41 sex offenses during 1/1/1999 and 12/31/2002. However, there is not a single sex crime at the five adult cabarets during the same four-year period. It is clear that adult cabarets in Dayton, OH, do not have a higher sex crime rate than non-adult alcohol serving private clubs.

The Cleveland Study

Method

Locating the Adult Cabarets and Alcohol Serving Establishments

The Cleveland analysis examined 12 alcohol-serving adult establishments. We obtained a comprehensive list of private club alcohol serving licensees in Cleveland who were issued licenses to sell alcoholic beverages by the Ohio Department of Commerce, Division of Liquor Control. These business addresses were located and mapped within the census block groups by using Maptitude 4.5.

Measuring Crime and Disorder Incidents

The City of Cleveland Police Department's CAD records from December 31, 1997 to February 28, 2003 were examined in this study. Each record contained the date, time, type, and location of the call. Due to limitations of the dataset provided by the Cleveland Police Department, we were not able to select only those calls for service for which a report or arrest is

made. For the 5-years available CAD data, there were 953 rape incidents, 1205 prostitution incidents, and 1803 public indecency incidents.

Locating the Crime Incident Calls for Service by Address

The sex crime incident data were plotted by address using Maptitude 4.5. The initially attempt plot all calls based upon the street name and address using the “very strict” location criterion option resulted in the plotting of roughly 86% of all incidents. Next, we used the “normal” criterion to allow for an additional 8% plotting rate. The remaining 6% of the calls were not plotted.

Results

A series of hierarchical multiple regression analyses were conducted to predict three types of sex crimes in Cleveland, OH (see Table 4). The population, demographic and social disorganization variables were entered into the regression equation in the first four blocks. The alcohol serving private club predictor variable (adult business cabarets that were private clubs were eliminated from this stage) was then entered into the equation.

Predicting rape incidents

The overall regression model successfully accounted for 44-percent of the variability in rape crimes across census block groups. The first variable cluster measuring population and geographic area accounted for almost 3-percent of the variability. The addition of the demographic variables set added another 30-percent to the explanatory power of the model. The next block of variables measuring social economic status and education accounted for 7.5-percent of the total variability in rape crime. The block measuring the housing variables, although was statistically significant, only contributed an additional 1.3-percent to the model. The addition of the variable measuring alcohol-serving establishments added approximately 2-

percent to the model's predictive power. Finally, the variable measuring the presence of an adult cabaret added no statistically significant predictive power to the model.

Predicting Prostitution Incidents

The overall regression model successfully accounts for 23-percent of the variability in prostitution incidents across census block groups. The first variable cluster measuring population and geographic area accounted for one-percent of the variability. The addition of the demographic variables set added another 14 percent to the explanatory power of the model. The next block of variables measuring social economic status and education accounted for five-percent of the total variability in rape crime. The block measuring the housing variables, although was statistically significant, only contributed an additional three-percent to the model. The addition of the variable measuring alcohol-serving establishments added approximately seven tenth of a percent to the model's predictive power. Finally, the variable measuring the presence of an adult cabaret added no statistically significant predictive power to the model.

Predicting Public Indecency and Indecent Exposure

The overall regression model successfully accounts for almost 45 percent of the variability in public indecency incidents across census block groups. The first variable cluster measuring population and geographic area was statistically significant and contributed close to three percent of the total variability in indecent exposure and public indecency calls for service. The addition of the demographic variables set added a significant 28 percent to the explanatory power of the model. The next block of variables measuring social economic status and education accounted for 9-percent of the total variability in rape crime. The block measuring the housing variables, although was statistically significant, only contributed close to two percent to the model. The addition of the variable measuring alcohol-serving establishments added

approximately three percent to the model's predictive power. Finally, the variable measuring the presence of an adult cabaret added no statistically significant predictive power to the model.

Comparison of alcohol serving and cabarets in terms of sex crimes

To test this possibility that sex crimes may occur more frequently at the adult cabarets than at the non-adult alcohol serving private clubs despite of the fact that they are not located in areas where sex crimes frequently occur, we conducted a analysis comparing the number of different types of sex crimes at non-adult alcohol serving establishments and adult cabarets in Cleveland. The result of this analysis suggests that 28 non-adult alcohol-serving private clubs reported a total of 36 sex related calls for service during 12/31/1997 and 2/28/2003, while there were only 2 sex related calls for service from the 12 adult cabarets during the same five-year period. It is clear that adult cabarets in Cleveland, OH, do not have a higher sex crime rate than non-adult alcohol serving private clubs.

Discussion

In order to test the assumption that adult cabarets that serve alcohol are associated with negative secondary effects, an empirical study of prostitution, sexual assault and other sexual offenses in Toledo, Dayton, Columbus and Cleveland Ohio was undertaken utilizing crime event data provided by the police (computer aided dispatch and NIBRS data). The following research question was posed: Once variables known to be related to crime events suggested by Social Disorganization and Routine Activities theories have been statistically controlled, does the presence of adult entertainment in an alcohol serving establishment increase sex related crimes above and beyond those crimes at alcohol serving establishments that do not present such entertainment? The results revealed that the adult businesses were not the primary source of sex

crime events. Often these businesses actually showed zero sex crime events. Instead, alcohol serving, non-adult establishments are often a significant source of such events.

Consistency with Previous Research

Few studies have been undertaken to test the assumption made by state liquor control boards that there are more effects and the effects are of a greater degree of intensity and harm in communities with business establishments that serve alcohol and feature exotic dancing and nudity. The research that has been undertaken in other states is consistent with the results obtained in the present study of Ohio cities. Linz, Fisher, and Yao (2004) estimated the effects of social disorganization variables, alcohol sites, and adult cabarets on police calls for service at the census block level in Daytona Beach Florida. The authors also matched (based on census socioeconomic and demographic characteristics) 1000-foot perimeter control-sites, with those of the adult cabaret perimeters to help isolate the sources of crime. The regression analysis showed no association between adult cabarets serving alcohol and crime at the census block level. Rather, the results indicated that social disorganization and alcohol establishments that did not feature sexually explicit communication or entertainment were better predictors of crime. Similarly, Linz, Land, Williams, Ezell, & Paul (2004) found that adult businesses that served alcohol were not associated with crime in Charlotte, North Carolina.

Fisher, Linz, & Paul (2004) examined the link between sexual entertainment, sexual aggression and the presence of adult businesses and the prediction of rape rates in Florida. This study examined whether rates of crime are associated with the rates of adult businesses in the 67 counties of Florida once other variables related to crime are controlled. Rates per 100K people in the population were computed for the numbers of nonsexual adult businesses: drinking establishments, gambling establishments, and hotels and motels in each county. These measures,

along with measures of social disorganization and demographic variables, were examined for their relative ability to predict UCR. The model estimated in this research explained 34.3% of the variance in rates of rape with three variables make unique, significant contributions to prediction of rates of rape: percentage of the population that is classified as nonWhite, the number of drinking establishments per 100K population and the number of nude and semi-nude businesses per 100K population. However, the correlation for the presence of adult businesses as was the case in the analyses for two of the Ohio cities examined above was negative.

Implications for Assumptions Underlying *California v. la Rue*

The United States Supreme Court has ruled that a state may prohibit “the actual or simulated touching, caressing, or fondling of the breast, buttocks, anus or genitals” in establishments licensed to sell liquor (*California v. la Rue*, 409 U.S. 109 (1972)). State liquor control boards across the country and specifically, in Ohio have accepted the premise that combining liquor service with adult entertainment leads to greater adverse secondary effects than merely serving liquor alone. This premise is not supported by either the current research or past studies.

What does the lack of empirical evidence of a relationship between sexually oriented businesses in the community and secondary crime effects mean, regarding the Ohio liquor control board’s underlying rationale for regulating sex oriented businesses despite a lack of empirical evidence of adverse secondary effects? It may be an incidence of what Justice Souter in the *City of Los Angeles v. Alameda Books, Inc.* (2002) has referred to as a weak demonstration of facts indicating viewpoint discrimination.

In *Alameda* Justice Souter has said that sound empirical investigations of presumed adverse secondary effects are helpful in guarding against unconstitutional restrictions of freedom

of sexual speech. Lacking empirical proof of its own the state of Ohio may be engaging in disapproval of adult speech rather than attempting to regulate sex communication out of concern for adverse secondary effects.

Explaining the Lack of Crime

Results from previous studies and the results from the present study suggest either no relationship or even a negative relationship between the presence of alcohol serving adult entertainment establishments and adverse secondary effects in the form of sex related crime activity. These findings may not be surprising given developments in the adult nightclub business over the last decade. First, the adult nightclub business in the late-1990s in many respects may be quite unlike that of the 1960s and 1970s when these establishments were relatively new forums of entertainment in American society. Adult nightclubs have been subjected to over two decades of municipal zoning restrictions across the country, and they usually must comply with many other regulations as well. These clubs do not appear to be locations where potential offenders gather to prey on desirable targets in the absence of crime suppressors, such as employees whose role is to ensure the safety of customers and the maintenance of order within the clubs.

The establishments themselves have evolved more closely into legitimate businesses establishments with management attention to profitability and continuity of existence. To meet these objectives, it is essential that the management and/or owners of the clubs provide their customers with some assurance of safety. Accordingly, adult nightclubs, including those in the Ohio cities under investigation often appear to have better lighting in their parking lots and better security surveillance than is standard for non-nightclub business establishments. These may be factors producing fewer crime opportunities and lower numbers of reported crime incidents in

the surrounding areas of the clubs. The extensive management of the parking lots adjoining the exotic dance nightclubs, in many cases including guards in the parking lots, valet parking, and other control mechanisms, may be especially effective in reducing the possibility of violent disputes in the surrounding area. In addition, unlike other liquor-serving establishments (bars and taverns that do not offer adult entertainment) that may be present in the control areas, violent disputes in the areas surrounding exotic dance clubs between men over unwanted attention by other males to dates or partners are minimal due to the fact that the majority of patrons attend the clubs without female partners. Thus, the possibility of sexual aggression may be greatly reduced in the vicinity of adult dance clubs, compared to most other locations where adults congregate, such as bars or taverns that do not feature adult entertainment.

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15-246

Tables

Table 1

Summary of hierarchical regression analyses for natural-logged sex crime calls for service incidents in Toledo, OH. (N = 340).

	Sexual Assault & Rape		Prostitution		Obscene	
	R ² Change	F Change	R ² Change	F Change	R ² Change	F Change
Step 1	0.052	9.27***	0.008	1.33	0.046	8.08***
Step 2	0.387	57.55***	0.146	14.44***	0.126	12.75***
Step 3	0.048	6.15***	0.086	7.4***	0.044	3.74**
Step 4	0.035	11.87***	0.041	9.33***	0.071	16.22***
Step 5	0.018	12.57***	0.027	12.66***	0.032	15.511***
Step 6	0.002	1.67	0.004	1.72	0.013	6.36*

Note. The total R² for the regression model predicting sexual assault and rape is .54; the total R² for the regression model predicting prostitution is .31; the total R² for the regression model predicting obscene activities is .33.

* p < .05, ** p < .01 *** p < .001

15-247

Table 2

Summary of hierarchical regression analyses for natural-logged sex crime calls for service incidents in Columbus, OH. ($N = 737$).

	Sex Crimes	
	R2 Change	F Change
Step 1	0.015	5.67**
Step 2	0.280	72.57***
Step 3	0.058	13.04***
Step 4	0.019	10.82***
Step 5	0.033	40.49***
Step 6	0.000 [†]	0.07

Note. The total R^2 for the regression model predicting sex crimes is .41.

[†] The Beta coefficient for Step 6, a single variable for the presence and absence of adult cabarets in a census block is -.008, $p = .792$.

** $p < .01$, *** $p < .001$

15-248

Table 3

Summary of hierarchical regression analyses for natural-logged sex crime calls for service incidents in Dayton, OH. (N = 405).

	Forcible Rape		Prostitution		Other Sex Crimes	
	R ² Change	F Change	R ² Change	F Change	R ² Change	F Change
Step 1	0.042	8.80 ^{***}	0.030	6.31 ^{**}	0.013	2.58
Step 2	0.266	38.13 ^{***}	0.052	5.68 ^{***}	0.139	16.39 ^{***}
Step 3	0.135	19.13 ^{***}	0.090	8.58 ^{***}	0.061	6.07 ^{***}
Step 4	0.040	14.97 ^{***}	0.076	19.96 ^{***}	0.028	7.25 ^{***}
Step 5	0.035	28.34 ^{***}	0.078	45.14 ^{***}	0.053	29.31 ^{***}
Step 6	0.003 [†]	2.66	0.003 ^{††}	1.52	0.001 ^{†††}	0.54

Note. The total R² for the regression model predicting forcible rape is .52; the total R² for the regression model predicting prostitution is .33; the total R² for the regression model predicting other sex crimes is .30.

[†] The Beta coefficient for Step 6, a single variable for the presence and absence of adult cabarets in a census block is -.06, $p = .10$.

^{††} The Beta coefficient for Step 6, a single variable for the presence and absence of adult cabarets in a census block is -.053, $p = .22$.

^{†††} The Beta coefficient for Step 6, a single variable for the presence and absence of adult cabarets in a census block is -.033, $p = .46$.

** $p < .01$, *** $p < .001$

15-249

Table 4

Summary of hierarchical regression analyses for natural-logged sex crime calls for service incidents in Cleveland, OH. (N = 1029).

	Rape		Prostitution		Indecency	
	R ² Change	F Change	R ² Change	F Change	R ² Change	F Change
Step 1	0.027	14.28***	0.012	5.99***	0.029	15.34***
Step 2	0.300	113.90***	0.138	41.40***	0.279	103.07***
Step 3	0.075	25.64***	0.050	12.69***	0.092	31.28***
Step 4	0.013	10.93***	0.034	22.62***	0.021	18.77***
Step 5	0.020	35.52***	0.007	9.76**	0.031	57.69***
Step 6	0.001	1.01	0	0.001	0	0.003

Note. The total R² for the regression model predicting rape is .44; the total R² for the regression model predicting prostitution is .24; the total R² for the regression model predicting public indecency is .45.

** $p < .01$, *** $p < .001$

15-250

THE ECONOMIC IMPACT OF THREE ADULT-ORIENTED
CLUBS IN RANCHO CORDOVA

Phillip H. Allman, Ph.D.
Allman & Petersen Economics, LLC
230 California Street, Suite 602
San Francisco, CA 94111
www.allmaneconomics.com

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15-251

TABLE OF CONTENTS

<u>Section</u>	<u>Page</u>
Purpose of Study	2
Results in Brief	2
Background	3
The Clubs Have No Statistically Significant Effect on Property Values	5
The Clubs Have a Positive Effect on the Local Economy	12
Conclusion	16
Technical Appendix	17

15-252

PURPOSE OF STUDY

The purpose of this study is to examine the economic impact of three adult-oriented businesses – Gold Club Centerfolds, Pure Gold, and Risky Business (the “Clubs”) -- in Rancho Cordova, California. To assess the economic impact of these clubs, we addressed the following research questions: (1) what effect do these Clubs have on surrounding property values? and (2) what effect do the Clubs have on the local economy?

RESULTS IN BRIEF

The existence of the Clubs has no statistically significant effect on property values in the surrounding areas. Data was collected on all sales of residential properties within a two-mile radius of each club. Additionally, data was collected on all sales of commercial and industrial properties within a one-mile radius of each club. This data contains detailed characteristics of each property such as proximity to each club, square footage, age of structure, and the type of property. The data was utilized in a multi-variable statistical test to determine if proximity to the club had any effect on property values. The results indicate that there is no statistically significant relationship between the values of residential, commercial, or industrial property near the Clubs compared to properties that are located further away after accounting for differences in property characteristics and market conditions.

The Clubs have a substantial positive effect on the local economy. The current combined annual revenue of the Clubs is approximately \$15 million. Approximately 97 percent of the Clubs’ patrons are from outside of Rancho Cordova. These patrons not only spend dollars at the Clubs, they also spend dollars at local businesses. The results of our study on expenditures inside and outside the Clubs show that the Clubs generate approximately \$30.5 million of income within Rancho Cordova.

BACKGROUND

Adult-oriented businesses have been criticized as having a negative impact on property values. This criticism stems from a belief that the nature of activities taking place in an adult-oriented business spill over into the local community and stigmatize the area. The stigma associated with property in close proximity to adult-oriented businesses is that the patrons of these establishments will increase crime and conduct other damaging behavior to the surrounding area. These claims have yet to be established in a scientific manner. The critics of adult-oriented businesses tend to rely on anecdotal information and ad hoc reasoning to establish their claims.

The owners of adult-oriented businesses have tended to defend their businesses by invoking their freedom of expression rights under the First Amendment. This protects expression that some people may find objectionable. For example, Supreme Court Justice Anthony Kennedy wrote in *U.S. v. Playboy Entertainment Group* that the “history of the law of free expression is one of vindication in cases involving speech that many citizens may find shabby, offensive, or even ugly.”¹

This report relies neither on anecdotal or legal claims. It is a scientific investigation into the economic impact of an adult-oriented business utilizing relevant data and examining the data using generally accepted statistical methods. Detailed data on property values based upon characteristics of the property is available. Scientific statistical methods that differentiate between the effects of different variables on property values are available. The effect of proximity to an adult-oriented business on property values can be tested by placing a variable in a statistical equation that accounts for the proximity of property to an adult-oriented business.

¹ Source: Hudson, David L. “Nude Dancing,” www.firstamendmentcenter.org.

Utilizing these data and statistical techniques, one can project the effects of adult-oriented businesses on property values.

Economic science is also available to project the effect of the proximity of an adult-oriented business on revenues for local businesses. Businesses can be divided into two categories – base and non-base. Base businesses bring in dollars from outside the local community. An adult-oriented business can be considered a base business if the majority of its revenue comes from patrons outside the local area. Non-base businesses serve the local community by providing goods and services within the local community. Dollars from non-base businesses tend to flow circularly within the community. The dollars that are attracted by base industries enter this circular flow and then multiply. Economists have developed methods to measure the extent of this multiplier effect.

**THE CLUBS HAVE NO STATISTICALLY SIGNIFICANT EFFECT ON PROPERTY
VALUES**

The existence of the Clubs has no statistically significant effect on property values in the surrounding areas. Data was collected from a leading real estate software tool called RealQuest. The data contains information on all sales of residential, commercial, and industrial properties within a two-mile radius of each club for a five-year period. This data was utilized in multi-variable statistical tests to determine if proximity to a club had any effect on property values. The results indicate that after accounting for property characteristics and market conditions, no statistically significant outcome indicates a linear relationship between the values of properties near the Clubs compared to the values of properties that are located further away.

Data & Methods

Data was collected from RealQuest on all sales of residential properties within a two-mile radius of each club from January 1, 2000 to February 28, 2005. RealQuest collects and maintains a comprehensive real estate data information base. This data was separated into two groups: (1) residential property, and (2) commercial and industrial property. For residential properties the data was separated into two categories within both groups: (1) property within one mile of a club and (2) property that is one mile to two miles from a club. The Clubs are in close proximity to each other and some properties could fit both criteria. The properties that fit both criteria were assigned to category one. Thus, category two is a unique group of properties that are only one mile to two miles away from any of the Clubs. For commercial and industrial properties, the categories were: (1) properties within a half a mile from a club, and (2) properties that are a half mile to one mile from a club.

The data from RealQuest were utilized in the statistical models. The variables extracted from the residential property data set are (1) the sale price, (2) age of the structure, (3) square feet of the structure, (4) square feet of the lot, and (5) type of property (single family, duplex, or condominium). The same variables were extracted from the commercial and industrial data set except the type of dwelling was defined as commercial or industrial. A variable in the residential property data set was constructed to account for the general increase in the value of property over time: the median value of home prices for the month of sale.² In the commercial and industrial property data set a similar variable was created. A variable to account for proximity to the Clubs was created in both data sets. This variable takes the form of a “dummy” variable in the residential property model meaning it takes on the value of one if it is within one mile of a club and zero if it is within one to two miles of a club. The variable specifying type of property was also constructed as a dummy variable. In the residential data set it took the value of one if it was a condominium and zero if it was a single family home or duplex. In the commercial and industrial data set it took the value of one if the property was industrial and zero if it was commercial.

The statistical model for analyzing the data is multivariate regression. This type of statistical model projects the value of a dependent variable – in this case the sale price of a property – on several independent variables. In other words, the model explains the “dependence” of the dependent variable on several variables. It quantifies the effect of each independent variable on the dependent variable by assigning a numerical coefficient to the variable. The statistical method utilized within the multivariate regression is ordinary least squares (OLS). This method projects the effect of each of the variables on the dependent variable by getting the best “fit” for the model. A measure of the fit of the model is the R^2

² Source: California Association of Realtors.

coefficient. A high R^2 signifies that the variation in the dependent variable is explained by the independent variables (the highest possible R^2 is 1). In an OLS model, each variable will have a projected coefficient that describes the effect of the variable on the dependent variable. The model will also generate a projected statistical significance known as a t-value. It is a commonly held projection among statisticians that a coefficient with an absolute t-value of 1.96 or greater is a statistically significant variable.³ If a variable is statistically significant, the projected value of its effect on the dependent variable is the value of the coefficient generated by the model. If a variable is not statistically significant, its effect on the dependent variable has not been established. Thus, that variable can be eliminated from the equation as its explanatory value is in question.

The theoretical basis for the specification of the models is derived from microeconomic price theory. This theory examines the price of a commodity (such as a home price) to be dependent on the utility (enjoyment or satisfaction) that the commodity provides to the consumer. The utility derived from the consumption of the commodity can be dependent upon the attributes of the commodity.⁴ Examples of attributes, or characteristics associated with houses, are living area, lot size, and age of the property. By incorporating these characteristics in a model to determine an expected home price, the analyst can then distinguish the composition of a home's characteristics from general property appreciation.⁵ Economic research has also shown that there is a relationship between home prices and the location of the home.⁶

³ An absolute t-value is a positive value greater than 1.96 or a negative value less than -1.96.

⁴ Lancaster, K.J., 1996. A New Approach to Consumer Theory. *Journal of Political Economy*, 74: 132-157.

⁵ Calhoun, C.A., 2001. Property Valuation Methods and Data in the United States. *Housing Finance International*, 16: 12-23.

⁶ Frew, J. and B. Wilson, 2000. Estimating the Connection Between Location and Property Value, Essay in Honor of James A. Graaskamp, Boston, MA: Kluwer Academic Publishers.

Effect of Proximity to a Club on the Value of Residential Property

Two statistical models were specified according to the theory delineated above to test for the effect of proximity to one of the Clubs on residential property prices. Both models relied on the following equation:

$$Y = \alpha + X_1\beta_1 + X_2\beta_2 + X_3\beta_3 + X_4\beta_4 + X_5\beta_5 + X_6\beta_6 + \varepsilon$$

Variable X_1 is the month of purchase in model number 1 and the value of the median home price in model number 2. Variables X_2 to X_6 are the same in both models. The variables are defined as:

Y = sales price (dependent variable)

α = intercept

X_1 = month of sale (model #1) or median home price for the month of the sale (model #2)

X_2 = square feet of the structure

X_3 = age of the structure

X_4 = proximity to one of the Clubs

X_5 = square feet of the lot

X_6 = type of property (condo or single family home)

ε = error term

Table 1 summarizes the results of the first model and table 2 summarizes the results of the second model.

Table 1: The effect of proximity to one of the Clubs on residential property values (Model #1).

Variable	Effect of Variable on Property Values based on Statistical Significance	T-statistic of the Variable (absolute value)
Intercept	Negative	12.20
month of sale (X_1)	Positive	60.89
square feet (X_2)	Positive	37.83
age of the structure (X_3)	Negative	11.95
proximity to one of the Clubs (X_4)	No Significance	1.41
square feet of the lot (X_5)	Positive	36.93
type of property (X_6)	Negative	5.43
$R^2 = .83$		

Table 2: The effect of proximity to one of the Clubs on residential property values (Model #2).

Variable	Effect of Variable on Property Values based on Statistical Significance	T-statistic of the Variable (absolute value)
Intercept	Negative	29.18
median home price (X_1)	Positive	64.08
square feet (X_2)	Positive	38.86
age of the structure (X_3)	Negative	13.95
proximity to one of the Clubs (X_4)	No Significance	1.74
square feet of the lot (X_5)	Positive	38.35
type of property (X_6)	Negative	5.48
$R^2 = .84$		

In each table, the column labeled "T-statistic" indicates the estimated strength of the variables in the model. To evaluate the strength of the regression model, it is necessary to test the hypothesis that the coefficients are equal to zero which would indicate that they have no

15-260

effect on property values. In other words, a statistical test must be run on the regression results to project whether the results have significance.⁷ The following hypotheses were tested:

- null hypothesis: coefficient = 0 (there is no linear relationship)
- alternative hypothesis: coefficient not equal to 0 (there is a linear relationship)

The t-test is utilized to test the alternative hypothesis. The critical value for the t-test is 1.96. If the t-value is greater than 1.96 then the null hypothesis is rejected at a confidence level of 95 percent.

The results of both models show t-statistics with absolute values that are far greater than 1.96 for variables X_1 , X_2 , X_3 , X_5 , and X_6 . Thus, the null hypothesis is rejected for each of these variables. The linear relationship demonstrated for each of these coefficients is statistically significant. The median home price in the area, the month of the purchase, the square footage of property, and the square footage of the lot were positively correlated with property values. The age of the structure and the type of property as a condominium were negatively correlated with the property value.

The results of both models show a t-statistic with an absolute value that is less than 1.96 for variable X_4 . Thus, we fail to reject the null hypothesis. There is no statistically significant linear relationship identified between proximity to one of the clubs and property values and this variable should be discarded from the model.

The overall results of the model are robust. The R^2 statistic shows that greater than 83 percent of the variation in property values is explained by the model. The combination of a high R^2 and the t-tests lead to the following overall conclusion from the models: after accounting for differences in property characteristics and property appreciation, there is no significant

⁷ Gaynor, P.E. and R. Kirkpatrick. 1994, *Time Series Modeling and Forecasting in Business and Economics*, New York: McGraw-Hill, Inc. Pindyck, R.S. and D.L. Rubinfeld. 1991, *Econometric Models & Economic Forecasts*, New York: McGraw-Hill Inc.

difference in the value of residential property near the Clubs compared to property that is located further away.

Effect of Proximity to a Club on the Value of Commercial and Industrial Property

The effect of proximity to a Club on the value of commercial and industrial property was projected using the following equation:

$$Y = \alpha + X_1\beta_1 + X_2\beta_2 + X_3\beta_3 + X_4\beta_4 + X_5\beta_5 + \varepsilon$$

where,

- Y = sales price (dependent variable)
- α = intercept
- X_1 = gross area of the property
- X_2 = sale date
- X_3 = age of the structure
- X_4 = proximity to one of the Clubs
- X_5 = type of property (industrial or commercial)
- ε = error term

Table 3 summarizes the results of the model.

Table 3: The effect of proximity to one of the Clubs on commercial and industrial property values.

Variable	Effect of Variable on Property Values based on Statistical Significance	T-statistic of the Variable (absolute value)
Intercept	Negative	2.82
gross area of the property (X_1)	Positive	3.98
sale date (X_2)	Positive	2.85
age of the structure (X_3)	No Significance	0.25
proximity to one of the Clubs (X_4)	No Significance	1.04
type of property (X_5)	No Significance	1.38
$R^2 = .48$		

The same hypothesis testing that was applied to the residential property results was applied to the commercial and industrial property results. The t-statistic on the variable that projects the effect of proximity to one of the Clubs on the value of commercial and industrial property is 1.04. Thus, we fail to reject the null hypothesis -- there is no linear relationship between proximity to one of the Clubs and the value of commercial or industrial property.

THE CLUBS HAVE A POSITIVE EFFECT ON THE LOCAL ECONOMY

Economic science can project how the presence of an adult-oriented business can affect the revenues of other local businesses. Businesses can be divided into two categories – base and non-base. Base businesses bring in dollars from outside the local economy. An adult-oriented business can be considered a base business if the majority of its revenue comes from patrons outside the local area. Non-base businesses serve the local community by providing goods and services that are staples of the local economy. Dollars from non-base businesses tend to flow circularly within the community. The dollars that are attracted by base industries enter this circular flow and then multiply. Economists have developed methods to measure the extent of this multiplier effect.

Data & Methods

Base businesses bring in dollars from outside the local communities. An example of a pure base business is tourism. Tourists bring dollars from outside a local community and spend them at businesses within the community. These dollars not only raise the revenue of the businesses directly serving the tourists, but the dollars also flow to businesses outside the tourism industry – the non-base businesses.

Non-base industries are often referred to as the service or domestic sector. These industries serve local markets and are a staple of the local economy. Examples of non-base industries include retail stores, hair salons, grocery stores, medical services, local government and local financial institutions. Non-base industries rise and fall with the increase or decrease of base industries, as non-base industries simply circulate dollars within the local economy. Therefore, it follows that the local economy is directly tied to the region's production of base goods and services. If the local economy has strong base industries, then extra dollars are generated to purchase imported goods and services. Conversely, if a local economy's base industries are weak, then the local economy will have a difficult time importing the goods and services required to create a strong economic region.

The Clubs generate services that are almost a pure base business. Approximately, 97 percent of patrons of the Clubs are from outside of Rancho Cordova.⁸ Thus, the Clubs bring dollars to the local communities that then flow within the local businesses. The amount of income that is generated by these dollars can be approximated by projecting the amount of non-basic employment that is created by base employment. In other words, base employment has a multiplying effect – it brings in dollars from outside the local community and then these dollars transfer into non-basic employment.

The base employment of Rancho Cordova was established using the minimum requirements methodology.⁹ Employment data was collected from the Labor Market Information Division ("LMID") of the California Employment Development Department ("EDD"). The LMID provides employment totals for specific industries within all California

⁸ This was established from data gathered at the Clubs on the zip codes of the patrons.

⁹ Ullman, E. 1960, *The Minimum Requirements Technique Approach to Urban Economic Base*, Papers: Regional Science Association. Ullman, E. 1968, *Minimum Requirements after a Decade: A Critique and an Appraisal*, *Economic Geography*, 44. Ullman, E., M. Dacey, and H. Brodsky. 1969, *The Economic Base of American Cities*, Seattle: University of Washington Press.

counties on an annual basis. The data was utilized to calculate the percentage of employment in the different industries within each county. Data was compiled on employment in California counties using LMID's 2002 *County Snapshots* reports. The fraction of employment for each industry within that county was then compared to all other counties. This determined the lowest fraction of employment within California for each particular industry. These fractions provide an estimate of the minimum percentage of total employment that would allow any region to be self-reliant in that particular industry. Counties were then identified that most closely resembled Rancho Cordova for each industry in order to establish the minimum fractions necessary for self sufficiency. The amount that an employment fraction exceeds the self-sufficiency fraction is the projection of excess employment in that industry. The excess employment is defined as the estimate of employment in export production. Counties were then identified that most closely resembled Rancho Cordova for each industry in order to establish the minimum fractions necessary for self sufficiency. The final step was to calculate, within each industry, the difference between the percentage employment in Rancho Cordova and the county with the minimum requirements divided by the percentage employment in Rancho Cordova. The resulting quotient provides an estimate of base employment in each industry.

Results

Table 3 summarizes the calculations of the regional economy multiplier. This multiplier projects the effects of base dollars coming into the local economy.

Table 3: The Regional Economy Multiplier for Rancho Cordova.

RANCHO CORDOVA ECONOMIC BASE (2003)						
<u>Employment by Industry</u>	<u>Industry Employment¹</u>	<u>% of Total</u>	<u>Minimum Requirement²</u>	<u>% of Industry in Base Activity³</u>	<u>% of Industry Workforce in Base Activity⁴</u>	<u>Base Employment⁵</u>
Agriculture	621	1.85%	0.34%	1.51%	81.58%	507
Natural Resources	37	0.11%	0.08%	0.03%	27.24%	10
Construction	3,013	8.95%	3.53%	5.42%	60.57%	1,825
Manufacturing	6,071	18.04%	5.46%	12.58%	69.73%	4,234
Trade, Transportation and Utilities	7,312	21.73%	16.13%	5.60%	25.76%	1,884
Information	-	0.00%	0.00%	0.00%	0.00%	-
Financial Activities	3,982	11.83%	3.29%	8.54%	72.20%	2,875
Professional and Business Services	4,947	14.70%	3.93%	10.77%	73.27%	3,624
Educational and Health Services	3,730	11.08%	8.99%	2.09%	18.89%	705
Leisure and Hospitality	2,194	6.52%	6.52%	0.00%	0.00%	-
Other Services	976	2.90%	1.44%	1.46%	50.35%	491
Government	769	2.29%	2.29%	0.00%	0.00%	-
Total	33,652	100.00%	51.99%	48.01%		16,155
Regional Economy Multiplier ⁶						2.1

1. Source: California Employment Development Department.
2. Projected from counties that are comparable to Rancho Cordova.
3. % of Total – Minimum Requirement.
4. % of Industry Workforce in Base Activity.
5. % of Total x % of Industry Workforce in Base Activity.
6. Total Industry Employment / Total Base Employment.

The annual revenue of the Clubs was projected by the average number of dancer shifts per month per club, the average dollars earned by each dancer per shift, and the average video sales per month from each club. Based upon these estimates, the Clubs' projected revenue ranged from \$15 million to \$18 million for the most recent twelve months. Taking the low end

of the range and multiplying it by the percent of the patrons at the clubs from outside the area (97 percent), projects the base dollars generated from the Clubs at approximately \$14.5 million. The base dollars multiplied by the regional county multiplier of 2.1 projects the total revenue for Rancho Cordova generated by the Clubs at \$30.5 million annually.

CONCLUSION

The results of the statistical analysis show that the existence of Gold Club Centerfolds, Pure Gold, and Risky Business does not have a significant effect on residential, commercial, or industrial property values in the surrounding areas. Moreover, these clubs have a positive impact on the economy of Rancho Cordova. These clubs generate approximately \$30.5 million dollars of income. Less than half of these dollars are spent directly in the clubs. Thus, the economic benefit from the existence of these clubs does not solely flow to the employees and owners of the clubs. Local business profits and local employment are increased by the existence of these clubs.

TECHNICAL APPENDIX: THEORY OF THE ECONOMIC BASE OF A COMMUNITY

The nature of a local economy has steadily evolved over time. Centuries ago, when travel, communication, and trade were primitive, a local community had to satisfy its material needs exclusively out of its own local resources. As technology has improved, trade has allowed local economies to increase their standard of living. Through trade, localities have become able to gain access to resources outside their borders. In the modern world, a region does not have the resources on its own to acquire the mass of goods of services it has grown to expect and require. Trade is needed to satisfy its full requirements. A local economy with little to trade lacks the means to develop a strong economy with a high standard of living.

For a modern community to sustain a high standard of living, it must continue to produce goods which can be exported to other regions. The value of a community's exportable goods is called its *economic base*.

Base industries are generally in activities such as manufacturing, fishing, logging, agriculture, private colleges, state or federal government activities, and financial services headquarters. Other examples are hotels and restaurants catering to non-residents, wholesalers supplying out of region customers, financial institutions lending to national markets, residents drawing income from outside the region, and consultants or individuals providing services to clients outside the community. The dollars that come in from the outside through the export of base goods and services provide the dollars to purchase items which are not produced from within.

Non-basic industries, often referred to as the service or domestic sector, are made up of businesses which serve local markets, such as retail stores, medical services, legal services, hair salons, grocery stores, local finance institutions, and local government. The size of the domestic

sector depends on the level of base industry. Shopping centers, housing, and real estate agents are created in response to increase in base industry—i.e. the creation of dollars flowing into the community. Domestic industries simply circulate dollars within the community. For a community to buy products and services produced outside of its boundaries, base production is necessary to generate the inflow of dollars to make these purchases. The long-term rise and fall of regional income and welfare shifts with a region's production of base goods and services.

When economists decide to measure the structure of a regional economy, several estimating techniques are available. Three common techniques are the economic base model, the input-output model, and the econometric model. The technique chosen depends on the objective of the study, the data that is available, and the time and/or money available to gather the data.

The technique chosen in this analysis is the economic base model. It provides a technique to measure the current economic structure of the area. A perfect base study requires extensive surveys, but the data presently available generates base estimates which provide meaningful insight into a local area's economy.

The graph shown here (Figure 1, next page) illustrates the essential structure of a regional economy using the base model. The horizontal axis, denoted Y , shows the value of net regional income. Since regional income is generated by payments to resources used in the production process, Y is equivalently equal to the value of production. Hence, Y is also represented on the vertical axis as local production. Note that the line Y goes through the origin and has a slope of one, which indicates the value of local income equals the value of local production.

The other variable shown on the vertical axis is denoted D , the demand for local goods. Mathematically, $D = x + sY$. x is the demand for local goods by entities outside the region—i.e.

export demand. The sale of x provides the initial dollars for local entities to spend on imported goods or their own domestic goods.

The second component of D , which is sY , sets the relationship between the demand for local goods and local income. As local income rises, there is a concomitant increase in the demand for local goods. This is reflected in the movement along d . As Y increases, D rises. For each \$1 increase in Y , D will increase by s , where s is the fraction of a dollar increase in income spent on local goods (Note : $(1 - s)$ is the fraction of a dollar's increase in income which flows out of the region to purchase imported goods.) The objective of a base study is to measure s – i.e. (non-basic spending) / (non-basic spending + basic spending).

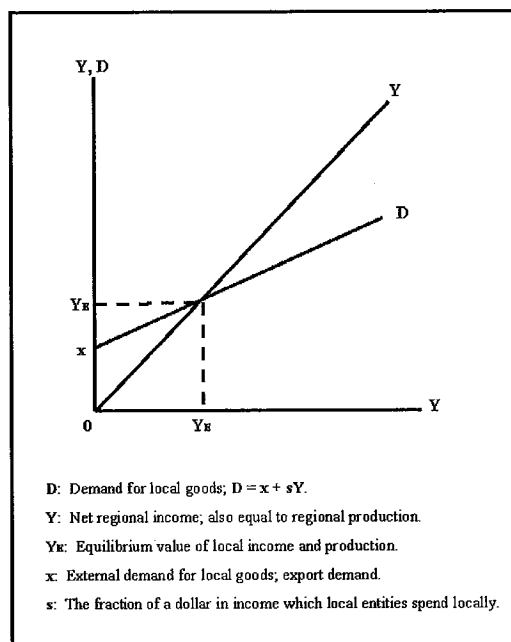


Figure 1

Returning to the graph in Figure 1, note that when local production is less than the level at Y_E , D (Demand) is greater than Y (supply). Local producers will respond by raising production.

Conversely, at those levels of production greater than Y_E , D (demand for local goods) is less than Y (the supply of local good production). Producers will then experience surplus inventories and respond by cutting back on production.

Only at production level Y_E , will supply and demand converge and reach an equilibrium level of income. Note that export demand (x) determines the position of D , and hence, the equilibrium level of production and income for the region.

Mathematically, Y_E can be determined as shown below:

$$Y = D$$

$$Y = x + sY$$

$$Y(1 - s) = x$$

$$Y_E = x / (1 - s), \text{ the equilibrium condition.}$$

The equilibrium condition implies that changes in export demand (x) will set off changes in local income (Y_E). Interestingly, the change in local income will be some multiple of the change in export demand. This multiple is commonly called the *local spending multiplier* and is equal to : $1 / (1 - s)$.

Recall s is equal to (non-basic spending) / (non-basic spending + basic spending). It can be shown algebraically that the *multiplier*, $1 / (1 - s)$, is equal to (non-basic spending + basic spending) / (basic spending). Stated mathematically, $1 / (1 - s) = Y_E / x$.

The *multiplier* can then be used in forecasting the impact on local income resulting from a change in export (base) demand. The relationship between a region's economic base and the value of regional production and income is quantified by the *multiplier*. For example, if the base production in a community (x) is \$1,000 and the total production (Y_E) is \$2,500, then the *multiplier* is $2,500 / 1,000 = 2.5$. This means that an increase in the base production of \$100 will generate a total increase in community income and production of $\$100 \times 2.5 = \250 .

In summary, the economic base ultimately determines the total production and income of a region. A county is not self-sufficient and must import many of its goods and services. The ability to import products is dependent upon the amount which it exports. The value of imports can not exceed the value of exports for an extended period.

The domestic sector provides the support and services to workers in base industries and to themselves. The relationship between the value of a county's economic base and the base plus the domestic sector is quantified by a number which is defined as the local *multiplier*. The larger the base of exported goods produced in a community, the greater will be the long-term economic wealth and stability of the community. The ability of a community to consistently create income depends on how well it can sustain or enhance its base.

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ARTICLES

THE JURISPRUDENCE OF PRECISION: CONTRAST SPACE AND NARROW
TAILORING IN FIRST AMENDMENT DOCTRINE

Matthew D. Bunker and Emily Erickson

RESPONSES TO INTERNET HATE SITES: IS SPEECH TOO FREE
IN CYBERSPACE?

Laura Leets

PLEADING THE FIFTH: MEDIA ECONOMICS, FREE AIR TIME
AND THE FIFTH AMENDMENT

Glenda C. Williams

GOVERNMENT REGULATION OF "ADULT" BUSINESSES THROUGH ZONING
AND ANTI-NUDITY ORDINANCES: DEBUNKING THE LEGAL MYTH
OF NEGATIVE SECONDARY EFFECTS

Bryant Paul, Daniel Linz, and Bradley J. Shafer



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15-273

GOVERNMENT REGULATION OF "ADULT" BUSINESSES THROUGH ZONING AND ANTI-NUDITY ORDINANCES: DEBUNKING THE LEGAL MYTH OF NEGATIVE SECONDARY EFFECTS

BRYANT PAUL*

DANIEL LINZ**

BRADLEY J. SHAFER***

Municipalities that prohibit "adult" businesses from operating in certain areas have justified these "zoning" regulations by advancing the idea that the presence of the business will have so-called "adverse, or negative secondary effects" on the surrounding community. Most recently, a plurality of the United States Supreme Court has upheld the extension of this doctrine beyond the zoning of adult businesses to the symbolic behavior within them in the form of ordinances banning nudity. This article abstracts and analyzes the methods and major empirical findings of studies conducted by United States municipalities, purporting to detect adverse secondary effects of adult businesses. With few exceptions the methods used in the most frequently cited studies are seriously and often fatally flawed. These studies, relied on by other communities throughout the country, do not adhere to professional standards of scientific inquiry and nearly all fail to meet the basic assumptions necessary to calculate an error rate—a test of the reliability of findings in science. Those studies that are scientifically credible demonstrate either no

*Ph.D. candidate, Department of Communication, University of California, Santa Barbara.

**Professor, Department of Communication and Law and Society Program, University of California, Santa Barbara.

***Attorney, Shafer and Associates, P.C., Lansing, Michigan.

negative secondary effects associated with adult businesses or a reversal of the presumed negative effect. The implications of the lack of evidence of adverse secondary effects for the regulation of performances within adult businesses are discussed.

Since 1976, the United States Supreme Court has decided a series of cases focusing on whether the free speech clause of the First Amendment allows cities and states to enact legislation controlling the location of "adult" businesses.¹ These "zoning" regulations, which may prevent a sex-related business from operating, for example, within a certain number of feet from residences, schools and houses of worship or a given distance from one-another, have been predicated on the notion that cities and other municipalities have a substantial interest in combating so-called "negative secondary effects" on the neighborhoods surrounding adult businesses. These secondary effects have most often included alleged increases in crime, decreases in property values, and other indicators of neighborhood deterioration in the area surrounding the adult business. Typically, communities have either conducted their own investigations of potential secondary effects or have relied on studies conducted by other cities or localities.

In more recent years, the Court has considered the constitutionality of anti-nudity legislation passed by municipalities or states that have relied on the negative secondary effects doctrine as justification.² The Court in *Barnes v. Glen Theatre, Inc.* held that the State of Indiana could regulate nudity; with a plurality of the Court concluding that the government could undertake such regulation to protect the public order and morality.³ In a concurring opinion, however, Justice Souter argued that the State had justified the ban on the basis of the *presumed* negative secondary effects on the surrounding community.⁴

Most recently, in *City of Erie v. Pap's A.M.*, the Court again held that municipalities have the right under appropriate circumstances to pass anti-nudity ordinances.⁵ Again, however, the Court was fractured. Three justices agreed with Justice O'Connor's opinion that

¹See, e.g., *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986); *Young v. Am. Mini Theatres, Inc.*, 427 U.S. 50 (1976).

²See, e.g., *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560 (1991); *City of Erie v. Pap's A.M.*, 120 S. Ct. 1382 (2000).

³501 U.S. at 567-68.

⁴*Id.* at 582-84 (Souter, J., concurring).

⁵120 S. Ct. 1382.

combating negative secondary effects supposedly associated with adult businesses was a legitimate basis for the imposition of an anti-nudity regulation.⁶ Most notable for the purposes of this article was, however, Justice Souter's partial concurrence and partial dissent, in which he significantly revised the position he took regarding secondary effects in *Barnes*. In *Pap's*, Justice Souter admitted that the evidence of a relationship between adult businesses and negative secondary effects is at best inconclusive.⁷ He called into question the reliability of past studies that purported to demonstrate these effects and suggested that municipalities wishing to ban nudity must show evidence of an actual relationship between adult businesses and negative effects.⁸

The recent expansion of the secondary effects "doctrine" to include not only the zoning of adult businesses but now the regulation of the content of expression within these establishments, raises the question: How reliable and valid are the so called "studies" conducted by individual municipalities and shared nationwide with other municipalities attempting to regulate the location of, and most recently, erotic expression within, adult businesses? Examined in this article is the scientific validity of the research considered by municipalities across the country as a justification for the regulation of adult businesses.

THE SUPREME COURT ON OBSCENITY

Early attempts to regulate adult businesses involved enforcement of obscenity laws. The United States Supreme Court rendered its first authoritative decision on obscenity in *Roth v. United States*.⁹ The Court ruled that obscene material was not protected by the First Amendment to the Constitution. It defined obscene materials as those that "appeal to a prurient interest" in sex (defined as a shameful, morbid and unhealthy interest in sex) and are presented in a "patently offensive way."¹⁰

Through the 1960s, the *Roth* test was refined to reflect objections to the suppression of erotica. In *Kingsley International Pictures Corp. v. Regents*, the Court found that a film based on the erotic novel, *Lady Chatterly's Lover*, was not obscene under the *Roth* test.¹¹

⁶*Id.* at 1393 (O'Connor, J., concurring).

⁷*Id.* at 1404-05 (Souter, J., concurring in part and dissenting in part).

⁸*Id.* at 1402-03 n.3.

⁹54 U.S. 476 (1957).

¹⁰*Id.* at 488.

¹¹360 U.S. 684, 689-90 (1959).

The Court greatly expanded the scope of permissible sexual portrayals with its decision in *Memoirs v. Massachusetts*.¹² At issue was the literary work, *Memoirs of a Woman of Pleasure*, commonly known as *Fanny Hill*, by John Cleland. The Court ruled that the prosecution must prove to the jury's satisfaction that the work in question is "utterly without socially redeeming value." In the Court's view the First Amendment protection given to "socially redeeming ideas" was sufficient to override the accompanying portrayals of sexual activity.¹³ Later, the Court further broadened its notion of permissibility by striking down another obscenity conviction in *Stanley v. Georgia*.¹⁴ In this case, the defendant had been found guilty of possessing obscene materials in his home. The Supreme Court ruled that the First Amendment provides protection for the individual's right to receive information and ideas about sex.¹⁵

The body of social science research sponsored by the 1970 Presidential Commission on Obscenity and Pornography in the United States was the first systematic academic foray into the study of exposure to sexually explicit materials.¹⁶ Consistent with the more liberal Supreme Court rulings in the 1960s, the Commission concluded that there were no scientifically demonstrated harmful effects from pornography and recommended legalization of all forms of sexually explicit communication.

A more politically conservative Court ruled, in *Miller v. California*, that "contemporary community standards" must be used to resolve the underlying questions of fact regarding "prurient interest" and "patent offensiveness."¹⁷ By the late 1980s and early 1990s empirical studies estimating community standards for sexually explicit materials suggested that even in politically conservative communities, the majority of citizens actually found such materials non-obscene.¹⁸

¹²383 U.S. 413 (1966).

¹³*Id.* at 418.

¹⁴394 U.S. 557 (1969).

¹⁵*Id.* at 567-68.

¹⁶PRESIDENTIAL COMM'N ON OBSCENITY AND PORNOGRAPHY, TECHNICAL REPORTS OF THE PRESIDENTIAL COMM'N ON OBSCENITY AND PORNOGRAPHY (1970).

¹⁷413 U.S. 15, 24-25 (1973).

¹⁸See Daniel Linz et al., *Estimating Community Tolerance for Obscenity: The Use of Social Science Evidence*, 55 PUB. OPINION Q. 80 (1991); Daniel E. Linz et al., *Measuring Community Standards for Sex and Violence: An Empirical Challenge to Assumptions in Obscenity Law*, 29 L. & SOC'Y REV. 127 (1995). Social science research suggests that communities may tolerate and/or accept for others, sexually explicit material involving consenting adults. However, sexual violence, the use of children in pornography and extreme forms of nonsexual violence are not tolerated. See *id.*

Recently, some feminists have argued that the traditional obscenity perspective, with its emphasis on sexual explicitness and its notion of offensiveness, moral corruption and shame, is misguided.¹⁹ In their view, the regulation of pornography should not be a means for the government to preserve public morals. Instead, regulation should prevent harms to women, including sexual harassment, discrimination and sexual assault.

Efforts to change the legal system to allow women to address pornography's supposed harms were undertaken in the 1980s. The purpose of these laws was to permit women to address the harms claimed to have been done to them by pornography, both as individuals and as a class of persons. In the early 1980's, a model ordinance was introduced in Minneapolis, where it was rejected, and in Indianapolis, where it passed and became law for a time. The ordinance defined pornography as the "graphic sexually explicit subordination of women." Immediately after its passage, the Indianapolis ordinance was challenged. A federal district court declared the Indianapolis ordinance unconstitutional in *American Booksellers Association v Hudnut*, arguing that an ordinance that makes injuries of pornography actionable is unconstitutional under the First Amendment because the law prohibits expression of a point of view.²⁰ Social science research testing feminist socio-legal theory has examined pornography's effect on attitudes that justify violence towards women, undermine viewer sensitivity to female victims of rape and violence and increase discriminatory and sexually explicit behavior.²¹

Most recently, governments have shifted away from obscenity prosecutions and are attempting to regulate live performances in adult nightclubs across the United States. These regulations have often been based on the notion that government is permitted to ban behavior, such as nude dancing, if such laws can be shown to be "content neutral" and directed at curbing the so-called adverse secondary effects allegedly associated with adult businesses.²² Law-

¹⁹See IN HARM'S WAY: THE PORNOGRAPHY CIVIL RIGHTS HEARINGS (Andrea Dworkin & Catherine A. MacKinnon eds., 1988); Catherine MacKinnon, *Not a Moral Issue*, 2 YALE L. & POL'Y REV. 321 (1984).

²⁰*Am. Booksellers Ass'n v Hudnut*, 598 F. Supp 1316, 1320 (S.D. Ind. 1984), *aff'd*, 771 F.2d 323 (7th Cir. 1985), *aff'd*, 475 U.S. 1001 (1986).

²¹See EDWARD DONNERSTEIN ET AL., THE QUESTION OF PORNOGRAPHY (1987).

²²See Daniel Linz et al., *Testing Legal Assumptions Regarding the Effects of Dancer Nudity and Proximity to Patron on Erotic Expression*, 24 L. & HUM. BEHAV. 507 (2000). This social science investigation demonstrated that contrary to the assumption made by Chief Justice Rehnquist in *Barnes*, 501 U.S. 560 (1991), laws that prescribe putting pasties and G-string on exotic dancers are, in fact, not seen as content neutral. Results of a field experiment in which dancer nudity (nude vs. partial

makers across the country have referred to a number of secondary effects studies undertaken by municipalities interested in "zoning" adult businesses as justification for regulating nudity in the business. The scientific validity of this research is the subject of this study.

THE ZONING OF ADULT ENTERTAINMENT BUSINESSES AND THE FIRST AMENDMENT

Beginning with the 1976 case, *Young v. American Mini Theatres, Inc.*,²³ several United States Supreme Court decisions have provided guidance as to what constitutes permissible government regulation of the location of adult entertainment establishments, given the protection provided by the Free Speech Clause of the First Amendment.²⁴ The Court has normally subjected ordinances that restrict the location of adult businesses to an evaluation under the framework for content restrictions on symbolic speech set forth in the four-part test in *United States v. O'Brien*.²⁵

Justice Powell applied the four-part *O'Brien* test in his plurality opinion in *Young*.²⁶ In that case, the Court upheld a Detroit zoning ordinance that regulated the location of adult theaters. The ordinance mandated that adult theaters not locate within 1,000 feet of any two other "regulated uses" or within 500 feet of a residential area. The Detroit ordinance did not attempt to eliminate adult entertainment; rather its aim was to disperse such businesses in an effort to minimize so-called negative secondary effects. In uphold-

clothing) and dancer proximity significantly altered the message of erotic performances. See Linz et al., *supra* note 22.

²³427 U.S. 50 (1976).

²⁴See *id.*; *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986); *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560 (1991); *City of Erie v. Pap's A.M.*, 120 S. Ct. 1382 (2000).

²⁵391 U.S. 367, 376-77 (1968). The landmark decision sets forth a series of criteria courts must consider when determining the constitutionality of government suppression of speech. For a restriction to pass the *O'Brien* test, the courts must consider (1) whether the regulation is within the constitutional power of government, (2) whether it furthers an important or substantial governmental interest, (3) whether that interest is unrelated to suppression of free expression and (4) whether the restriction on First Amendment freedoms is no greater than is essential to the furtherance of that interest. *Id.*

²⁶*Young*, 427 U.S. at 79-82 (Powell, J., concurring). Most important for present purposes, the Court suggested that the Detroit ordinance passed the second prong of the *O'Brien* test because it was aimed at preserving the stability of the city's residential and commercial neighborhoods. *Id.* at 73. The Court noted that a city's interest in protecting the quality of urban life is one that must be accorded high respect. *Id.*

ing this ordinance, the plurality opinion of the Court reaffirmed the doctrine that a government regulation must have a real and substantial deterrent effect on legitimate expression before it will be invalidated.²⁷ The Court said the ordinance was not an invalid prior restraint on protected expression because it had neither the intent nor the effect of suppressing speech but was aimed at controlling the secondary effects caused by adult businesses on surrounding uses.²⁸

In another landmark decision regarding a municipality's attempt to control secondary effects allegedly caused by adult businesses, *City of Renton v. Playtime Theatres, Inc.*, the Court upheld a Renton, Washington, zoning ordinance that, although not banning adult businesses altogether, did prohibit them from locating within 1,000 feet of any residential zone, church, park or school.²⁹ The Court held that the Renton ordinance did not restrict First Amendment rights, as the purposes of the ordinance were unrelated to the suppression of speech and the restrictions were the least intrusive means by which to further the government's interests.³⁰ Part of the precedent set by *Renton* is a three-prong test stipulating that an ordinance must: (1) Be content neutral and aimed only at curbing secondary effects, (2) provide alternate avenues of communication and (3) further a substantial governmental interest.³¹

Further, the Court stated for the first time that a city interested in restricting the operation of adult businesses was not required to show adverse impact from the operation of adult theaters in its own community, if no such experience existed, but could instead rely on the experiences of other cities as a rationale for supporting the passage of an ordinance.³² The court of appeals had found 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

²⁷*Id.* at 60.

²⁸*Id.* at 73 n.34 (plurality opinion). The Court remarked that the city of Detroit had offered evidence that a concentration of "adult" movie theaters causes the area to deteriorate and become a focus of crime. Further, no such relationship was found for theaters showing other types of films. *Id.* This marks the first time the Court explicitly mentions the term "secondary effects." The Court suggests that "[i]t is this secondary effect which these zoning ordinances attempt to avoid, not the dissemination of 'offensive' speech" that allows the Court to find the Detroit ordinances constitutionally sound. *Id.*

²⁹475 U.S. 41 (1986).

³⁰*Id.* at 83.

³¹*Id.*

³²*Id.* at 50-53.

Supreme Court maintained that the court of appeals had placed an unnecessary burden of proof on the city, ruling that Renton—which had no adult businesses—could rely primarily on experiences of and studies produced by the nearby city of Seattle as evidence of a relationship between adult uses and negative secondary effects.³⁴ Thus, the Court ruled that the First Amendment does not require a city to conduct new studies or produce new evidence before enacting an ordinance, so long as the evidence relied upon is reasonably believed to be relevant to the problem the city faces.³⁵

Since *Renton*, a number of cities, counties and states have undertaken investigations intended to establish the presence of such secondary effects and their connection to adult facilities. These studies have, in turn, been shared with other municipalities and generally serve as the basis for claims that adult entertainment establishments are causally related to harmful secondary side effects, such as increased crime and decreases in property values. Many local governments across the United States have relied on this body of shared information as evidence of the secondary effects of adult businesses. Further, in most cases, cities and other governmental agencies have used the findings of a core set of studies from other locales as a rationale for instituting regulation of such businesses in their own communities.

Recent Applications of the Secondary Effects Doctrine

In 1991, the U.S. Supreme Court began down the road to expanding the “secondary effects” doctrine as a justification for a total ban on nude dancing. In *Barnes v. Glen Theatre, Inc.*,³⁶ the

³³*City of Renton v. Playtime Theatres, Inc.*, 748 F. 2d 527, 537 (9th Cir. 1984), *rev'd*, 475 U.S. 41 (1986).

³⁴*Id.* at 50–51. See *Northend Cinema, Inc. v. Seattle*, 585 P.2d 1153 (1978). In *Northend*, the Washington State Supreme Court held that the city of Seattle had provided sufficient evidence of a need for a zoning code amendment aimed at preventing the secondary effects on the neighborhoods surrounding adult theaters. This evidence came in the form of “a long period of study and discussion of the problems of adult movie theaters in residential areas of the City.” *Id.* at 1154–55. The city offered the Washington court a report, among other things, analyzing the City’s zoning scheme and describing land uses around existing adult motion picture theaters. In addition, the trial court heard “expert testimony on the adverse effects of adult motion picture theaters on neighborhood children and community improvement projects.” *Id.* at 1156. In *Renton*, the United States Supreme Court found that the city in question was entitled to rely on the evidence summarized in the Washington court’s opinion. 475 U.S. at 50–53.

³⁵*Renton*, 475 U.S. at 51–52

³⁶501 U.S. 560 (1991).

enforcement of Indiana's public indecency law, which prevented totally nude dancing by indirectly requiring a dancer to perform in no less than pasties and a G-string, did not violate the First Amendment's guarantee of freedom of expression.³⁷ Led by Chief Justice Rehnquist, a plurality found the anti-nudity ordinance in question was constitutional because it was aimed at protecting societal order and morality.³⁸ The Court had held in previous cases that such an objective represented a sufficient government interest.³⁹ Couching the decision as simply supporting a constitutionally protected time, place and manner restriction of expression, the plurality argued that the Indiana statute did not proscribe erotic dancing. Instead, the Chief Justice argued, it simply ensured that any such performance would include the wearing of scant clothing.⁴⁰

Justice Souter's concurring opinion gave particular attention to the notion of a state's substantial interest in combating the secondary effects of adult entertainment establishments.⁴¹ Justice Souter stated that the type of entertainment the Indiana statute was aimed at regulating was clearly of the same character as that at issue in a number of past decisions by both the Supreme Court⁴² as well as lower courts.⁴³ He went on to suggest that it was therefore no leap to say that live nude dancing of the sort at issue in *Barnes* was "... likely to produce the same pernicious secondary effects as the adult films displaying 'specified anatomical areas' at issue in *Renton*."⁴⁴ Souter then applied the precedent set forth in *Renton*, stating:

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 Glen Theatre's "bookstore" furthers its interest in preventing prostitution, sexual assault and associated crimes.⁴⁵

³⁷*Id.* at 561.

³⁸*Id.* at 569.

³⁹*See, e.g.*, *Paris Adult Theatre I v. Slaton*, 413 U.S. 49, 61 (1973).

⁴⁰*Barnes*, 501 U.S. at 587.

⁴¹*Id.* at 582 (Souter, J., concurring).

⁴²*See, e.g.*, *California v. LaRue*, 409 U.S. 109, 111 (1972); *Renton v. Playtime Theaters, Inc.*, 475 U.S. 41 (1986); *Young v. Am. Mini Theatres, Inc.*, 501 U.S. 560 (1991).

⁴³*See, e.g.*, *United States v. Marren*, 890 F.2d 924, 926 (7th Cir. 1989) (arguing that prostitution is associated with nude dancing establishments); *United States v. Doerr*, 886 F.2d 944, 949 (7th Cir. 1989) (same).

⁴⁴*Barnes*, 501 U.S. at 584.

⁴⁵*Id.*

Thus, Justice Souter wrote that municipalities could *assume* that negative secondary effects result from nude dancing establishments when justifying regulation of such expression.

The Supreme Court most recently addressed the constitutionality of regulating adult entertainment in *City of Erie v. Pap's A.M.* A fractured majority upheld an Erie, Pennsylvania, ordinance that, like the statute considered in *Barnes*, required a dancer to wear at least pasties and a G-string during a performance.⁴⁶ A majority of five Justices agreed that the case called for the application of the *O'Brien* test. Further, a majority held that the Erie ordinance was aimed at the important government interest of combating the harmful secondary effects associated with nude dancing.⁴⁷ A plurality of four justices—not a majority of the Court—held that Erie had met this burden by relying on the evidentiary foundation⁴⁸ set forth in both *Renton* and *Young*.⁴⁹

⁴⁶120 S. Ct. 1382, 1384 (2000). In *Barnes*, Justice Souter used the secondary effects doctrine as a justification of the anti-nudity ordinance. 501 U.S. at 584 (Souter, J., concurring). In *Pap's*, the city adopted Justice Souter's reasoning and argued that the same devaluation of the surrounding areas attributed to adult businesses can be attributed to establishments featuring live nude entertainment. See 120 S. Ct. at 1394. The city argued that the government's vital interest in protecting and preserving the desirability of residential neighborhoods and business districts is a sufficient justification for the ordinance's incidental encroachment on protected expression. See *id.* at 1394.

⁴⁷*Id.* at 1394. The Court cited the *Renton* precedent allowing municipalities to rely on secondary effects evidence produced by other, similar municipalities to fulfill the evidentiary burden. *Id.* None of the justices in the fractured majority explained, however, how the requirement of wearing pasties and a G-string would in fact reduce prostitution, sexual assaults or other problems associated with places where dancers appear nude.

⁴⁸*Id.* Justice Scalia, joined by Justice Thomas, concurred with the Court's majority opinion, but for different reasons. The justices held that the Erie ordinance prohibits not merely nude dancing but the act of going nude at all—irrespective of whether it is engaged in for expressive purposes. *Id.* at 1398 (Scalia, J., concurring). He found the statute constitutionally permissible because it was a general law regulating conduct and not specifically directed at expression. *Id.* at 1401. As such, the ordinance was not subject to First Amendment scrutiny at all. See *id.* at 1401–02. Justice Scalia suggested that there was no need to consider the presence or absence of “secondary effects” because the government was well within its rights in regulating non-expressive behavior. *Id.* The opinion of Justice Scalia, when combined with that of Justice O'Connor, with whom Chief Justice Rehnquist, Justice Kennedy and Justice Breyer joined, left the Court with a 6–3 majority that the law was constitutional. Yet, there was no controlling opinion. In other words, the Court agreed that Erie can regulate nudity, but could not agree on why.

⁴⁹*Renton*, 475 U.S. at 83; *Young*, 501 U.S. at 564.

Justice Souter's Partial Dissent in Pap's

Only a plurality of justices agreed that the city of Erie had demonstrated *evidence* of a compelling government interest. Justice Souter disagreed.⁵⁰ In *Barnes*, he opined that the government could assume that "pernicious secondary effects" would result from the presence of nude dancing establishments.⁵¹ In *Pap's*, however, Justice Souter demanded that cities such as Erie, interested in regulating nude dancing on the basis of adverse secondary effects, should be required to provide germane evidence of a relationship between nude dancing and these secondary effects.⁵² Ruefully, Justice Souter stated:

Careful readers ... 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*. ... 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." *McGrath v. Kristensen*, 340 U.S. 162, 178 (1950) (concurring opinion). 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 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.⁵³

In his opinion, Justice Souter questions the evidence used by municipalities of a relationship between adult businesses and negative secondary effects, concluding that such a relationship can no longer be presumed from past studies.⁵⁴ In support of his position, Justice Souter cited an amici brief that contained a condensed summary of the critique of existing secondary effects studies reported below.⁵⁵

⁵⁰*Id.* at 1402 (Souter, J., concurring in part and dissenting in part).

⁵¹*Barnes*, 501 U.S. at 584 (Souter, J., concurring).

⁵²120 S. Ct. 1382 at 1403-04 (Souter, J., concurring in part and dissenting in part).

⁵³*Id.* at 1405-06.

⁵⁴*Id.*

⁵⁵Brief for First Amendment Lawyers Association at 16-23, *id.* (No. 98-1161). Justice Souter stated:

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

Evaluating the Validity of Secondary Effects Studies

Since the secondary effects doctrine appears to be expanding, it is imperative that it be based on solid evidence that the operation of an adult entertainment business has a deleterious effect on the surrounding community. Unfortunately, when municipalities have conducted studies in the past, there has not been a set of methodological criteria or minimum standards, to which the cities were required to adhere. Without such standards, cities may be relying on flawed databases. This problem is further compounded when courts allow previous studies, conducted in other cities, to supplant data collected in the city where the ordinance is being proposed. A flawed study replicates errors across localities. It makes little sense to generalize to the experiences of other cities on the basis of what may be an invalid investigation in the first place.

The basic requirements for the acceptance of scientific evidence, such as secondary effects studies, were prescribed by the Supreme Court in the 1993 case of *Daubert v. Merrell Dow Pharmaceuticals, Inc.*⁵⁶ In *Daubert*, the Court held that there are limits on the admissibility of scientific evidence offered by "expert witnesses" in federal courts. The Court noted that scientific knowledge must be grounded in the methods and procedures of science and must be based on more than subjective belief or unsupported speculation.⁵⁷ Offering observations as to how this connection can be made, the Court provided a list of factors that federal judges could consider in ruling on a proffer of expert scientific testimony, including the notion of falsifiability, peer review and publication, error rate and adherence to professional standards in using the technique in question.⁵⁸

Since a core set of studies has been and continues to be relied upon by hundreds of local municipalities as evidence of negative secondary effects, a central concern must be the methodological rigor, and therefore trustworthiness, of these studies. This is particularly true when the Supreme Court requires that a municipality establish that such regulations are necessary to further the governmental interest

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.

Id. (Souter, J., dissenting).

⁵⁶509 U.S. 579 (1993).

⁵⁷*Id.* at 590.

⁵⁸*Id.* at 593-95.

15-285

of ameliorating secondary effects and that such regulations are no broader than is essential to the furtherance of such interest.⁵⁹

To evaluate the validity of the secondary effects studies cited by communities across the country, this article will abstract and analyze the methods and major empirical findings in the relevant research. With few exceptions, the methods most frequently used in these studies are seriously and often fatally flawed. Specifically, these studies do not adhere to professional standards of scientific inquiry and nearly all universally fail to meet the basic assumptions necessary to calculate an error rate—a test of the reliability of findings in science. More importantly, those studies that are scientifically credible demonstrate either no negative secondary effects associated with adult businesses or a reversal of the presumed negative effect.

The Core Set of Frequently Cited Scientific Studies of Secondary Effects

Amassed for this study were a large body of laws enacted for the regulation of adult entertainment businesses and as many as possible of the empirical and non-empirical reports examining potential secondary effects of such businesses produced or purportedly relied upon by municipalities considering the issue. Often, the laws—usually municipal ordinances—contain “preambles” that specifically set forth which of the various “secondary effects studies” the municipality is relying on as justification for enacting the particular regulation. Presumably, these studies are listed in order to comply with the *Renton* requirement that a municipality rely upon evidence “reasonably believed to be relevant to the problem that the city addresses.”⁶⁰

The interest is in examining the methodological legitimacy of every “study” cited by municipalities as containing evidence of the relationship between adult entertainment businesses and negative secondary effects. Several steps were taken to obtain as many such studies as possible. First, several attorneys known for their experience and expertise in the arena of adult business regulation were contacted and asked to provide lists and, when possible, printed copies of studies that they were aware had been cited in municipal and state zoning ordinances. Second, the citations found in each of the obtained studies and zoning ordinances were scanned for additional studies on secondary effects. Finally, several additional individuals

⁵⁹See *Renton v. Playtime Theater, Inc.*, 475 U.S. 41 (1986); *Young v. Am. Mini Theatres, Inc.*, 427 U.S. 50 (1976); *United States v. O'Brien*, 391 U.S. 367 (1968)

⁶⁰*Renton*, 475 U.S. at 51-52 n.26.

that have expert knowledge in the area of adult business regulation were asked to supplement the list of "studies."⁶¹ In all, a total of 107 reports were eventually obtained. To be included in the analysis, each report must have been cited by at least one municipality as evidence of a relationship between adult entertainment businesses and negative secondary effects. Although it is more than likely that not every single "secondary effects study" is included in this review, the extensive literature search nevertheless resulted in a large and, more importantly, a representative number of such reports. This study has located, collected and analyzed the vast majority of "studies" that communities purport to rely upon when enacting regulations of adult businesses.⁶²

First considered in detail are the four most frequently cited (and relied upon) studies of secondary effects: Indianapolis, Indiana (1984),⁶³ Phoenix, Arizona (1979),⁶⁴ Los Angeles, California (1977)⁶⁵ and St. Paul, Minnesota (1978).⁶⁶ As can be seen in Table 1, these studies have been cited as evidence of the relationship between adult entertainment businesses and negative secondary effects by no less than 27 different municipalities. The problems that have been found in these four reports in regard to misunderstandings of their "findings" and methodological failings (discussed in detail below) pertain as well to the next six most frequently relied-upon reports. Discussed next are these six studies, in brief, at the end of the review of the four

⁶¹All of the reports included in the analysis were obtained by contacting the specific communities and municipalities that originally sponsored or produced them.

⁶²It should be noted that although the study began with 107 municipal reports addressing the relationship between adult entertainment businesses and negative secondary effects, and although a large percentage of these claim to report "scientific" evidence of such a relationship, this analysis found only 29 of these studies to contain empirical data. A number of the remaining 78 reports simply contained the minutes of city planning committee meetings during which options for the regulation of adult businesses were discussed. Others simply contained samples of arrest reports from inside adult entertainment businesses. Needless to say, such information did not meet even the most basic criteria for empirical evidence. However, such studies have been used (often consistently) as representing empirical evidence of the relationship between adult entertainment businesses and negative secondary effects.

⁶³CITY OF INDIANAPOLIS, INDIANA, ADULT ENTERTAINMENT BUSINESSES IN INDIANAPOLIS—AN ANALYSIS (1984).

⁶⁴CITY OF PHOENIX, ARIZONA, RELATION OF CRIMINAL ACTIVITY AND ADULT BUSINESSES (1979).

⁶⁵CITY OF LOS ANGELES, CALIFORNIA, STUDY OF THE EFFECTS OF THE CONCENTRATION OF ADULT ENTERTAINMENT ESTABLISHMENTS IN THE CITY OF LOS ANGELES (1977).

⁶⁶CITY OF ST. PAUL, MINNESOTA, NEIGHBORHOOD DETERIORATION AND THE LOCATION OF ADULT ENTERTAINMENT ESTABLISHMENTS IN ST. PAUL (1978).

TABLE 1: TEN MOST FREQUENTLY REFERENCED STUDIES AND MUNICIPALITIES THAT REFERENCED THEM IN DRAFTING LEGISLATION REGULATING ADULT BUSINESSES

1. Indianapolis, Ind. (1984):
Dallas (1986), The Bronx (1995), Ramsey (1990), Manchester, N.H., Brooklyn, Minn. Beaumont (1982), St. Paul, Minn. (1987/1988), Times Square, N.Y. (1993), Newport News, Va. (1996), Kansas City, Mo. (1998), Falcon Heights, Minn. (1994), Fridley, Minn., Brooklyn Park, Minn., Manatee County, Fla., Lynnwood, Wash. (1990), Oklahoma City (1986), New Hanover County (1989), Rochester/Olmsted (1988), Seattle (1989), St. Cloud, Minn. (1982), St. Croix (1993), St. Paul (1994)
2. Phoenix, Ariz. (1979):
Dallas (1986), The Bronx (1995), St. Paul (1994), Ramsey (1990), Manchester, N.H., Brooklyn, Minn., St. Paul, Minn. (1987/1988), Times Square, N.Y. (1993), Newport News, Va. (1996), Minnesota (1989), Kansas City, Mo. (1998), Falcon Heights, Minn. (1994), Fridley, Minn., Brooklyn Park, Minn., Manatee County, Fla., New Hanover County (1989), Rochester/Olmsted (1988), St. Cloud, Minn. (1982)
3. Los Angeles, Cal. (1977):
Dallas (1986), The Bronx (1995), Broward County, Fla., Times Square, N.Y. (1993), Newport News, Va. (1996), Garden Grove (1991), Bellevue, Wash. (1987), Manhattan (1994), Seattle (1989), St. Cloud, Minn. (1982), St. Paul, Minn. (1994), St. Croix (1993), Brooklyn Park, Minn.
4. St. Paul, Minn. (1987):
Dallas (1986), Ramsey (1990), St. Paul, Minn. (1987/1988), Times Square, N.Y. (1993), Minnesota (1989), Bellevue, Wash. (1987), Brooklyn, Minn., Falcon Heights, Minn. (1994), Brooklyn Park, Minn., Manatee County, Fla., Lynnwood, Wash. (1989), Rochester/Olmsted (1988)
5. Austin, Tex. (1986):
Dallas (1986), The Bronx (1995), Manchester, N.H., Broward County, Fla., Kansas City, Mo. (1998), Manatee County, Fla., Manhattan (1994), Seattle (1989), St. Cloud, Minn. (1982), St. Paul, Minn. (1994)
6. St. Paul, Minn. (1987/1988):
Brooklyn, Minn., Times Square, N.Y. (1993), Minnesota (1989), Kansas City, Mo. (1998), Falcon Heights, Minn. (1994), Fridley, Minn., Rochester/Olmsted (1988), St. Cloud, Minn. (1982), St. Paul, Minn. (1994)
7. Amarillo, Tex. (1977):
Dallas (1986), Beaumont (1982), Newport News, Va. (1996), Manatee County, Fla., New Hanover County (1989), St. Croix (1993), St. Paul, Minn. (1994)
8. Detroit, Mich. (1972):
Beaumont (1982), Times Square, N.Y., (1993), Bellevue (1987), New Hanover County (1989), St. Croix (1993)
9. Beaumont, Tex. (1982):
Dallas (1986), Newport News, Va. (1996), Manatee County, Fla., New Hanover County (1989), St. Croix (1993)
10. Kent, Wash. (1982):
Des Moines, Wash., Bellevue, Wash. (1987), Lynnwood, Wash. (1990), Seattle (1989)

most frequently cited studies. Accordingly, the concerns that are outlined below apply to all of the "top ten" relied upon "secondary effects studies." And, virtually all of the reports that have been analyzed have these same failings, often because they themselves relied upon earlier "studies" that contained the same flaws discussed below.

THE BASIC REQUIREMENTS FOR THE ACCEPTANCE OF SCIENTIFIC EVIDENCE

In an attempt to prevent the proliferation in courtrooms of "junk science," the United States Supreme Court in *Daubert* held that there are limits on the admissibility of scientific evidence offered by "expert witnesses" in federal courts.⁶⁷ The Court opined that scientific knowledge must be grounded "in the methods and procedures of science" and must be based on more than "subjective belief or unsupported speculation."⁶⁸ Thus, the Court said, "the requirement that an expert's testimony pertain to 'scientific knowledge' establishes a standard of evidentiary reliability."⁶⁹ In a footnote, the Court observes that "[i]n a case involving scientific evidence, *evidentiary reliability* will be based upon *scientific validity*."⁷⁰ Offering "some general observations" as to how this connection can be made, the Court provided a list of factors that federal judges could consider in ruling on a proffer of expert scientific testimony: (1) The "key question" is whether the theory or technique under scrutiny is testable, borrowing Karl Popper's notion of falsifiability.⁷¹ (2) Although publication was not an absolute essential, the Court noted that peer review and publication increased "the likelihood that substantive flaws in methodology will be detected."⁷² (3) Error rate.⁷³ (4) Adherence to professional standards in using the technique in question.⁷⁴ (5) Finally, though not the sole or even the primary test, general acceptance could "have a bearing on the inquiry."⁷⁵

While it may not be necessary to hold municipalities to each of these considerations when weighing the validity of evidence substan-

⁶⁷*Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579, 590 (1993).

⁶⁸*Id.* at 599.

⁶⁹*Id.* at 590.

⁷⁰*Id.* n.9.

⁷¹*See id.* at 593 (citing KARL POPPER, *CONJECTURES AND REFUTATIONS* 37 (5th ed. 1989)).

⁷²*Id.*

⁷³*See id.* at 594.

⁷⁴*See id.*

⁷⁵*Id.* at 593-94.

tiating the existence of secondary effects research with adult businesses, at least two factors are indispensable. It is at least a testable proposition that secondary effects may result from adult establishments, or else a study would not have been undertaken in the first place. It can be further presumed that a lengthy peer review and publication process may be unlikely due to the sense of urgency when communities tend to address these issues. In addition, the general acceptance requirement is held to have a bearing but is not an absolute consideration. The third and fourth factors, however, the calculation of an error rate and adherence to professional standards in using techniques or procedures, need to be applied to these studies in order to ensure "evidentiary reliability." Without this reliability, there is no basis to determine whether there is a substantial or important governmental interest involved, whether a specific piece of legislation is "necessary" in order to further that interest, or whether it is "reasonable" for a municipality to rely upon such a study as a basis for enacting legislation.⁷⁶

In a scientific study, the error rate refers to the probability of accepting a result as true, when in fact it is false.⁷⁷ The rate is an indication of the reliability of a finding. An error rate is determined by first calculating an estimation of a population characteristic (a statistic) that summarizes the data that have been collected and then asking how likely it is that that statistical value would be obtained by chance alone. The error rate is the degree of chance a scientist will allow. In the social sciences, it is conventional to set the error rate at five percent or less (that is, a researcher will tolerate an error rate of five times out of 100 that the results may be obtained by chance).⁷⁸

Unless certain assumptions are met, statistical tests cannot be applied to the data, and an error rate cannot be calculated. Most impor-

⁷⁶This is perhaps the most important notion underlying this research. Results suggesting no reliable and/or valid evidence of a relationship between negative secondary effects and adult entertainment businesses would mean that the courts would need seriously to reconsider whether municipalities indeed have a substantial interest in regulating such uses. At the very least, it would suggest that most, if not all, municipalities with codified restrictions on adult uses have based their justification of such restrictions (according to the requirements set forth in *Young and Renton*) on inaccurate data.

⁷⁷See JACOB COHEN & PATRICIA COHEN, *APPLIED MULTIPLE REGRESSION/CORRELATION ANALYSIS FOR THE BEHAVIORAL SCIENCES* 166-76 (2d ed. 1983); DAVID C. HOWELL, *STATISTICAL METHODS FOR PSYCHOLOGY* 349-50 (4th ed. 1997); GEOFFREY KEPPEL, *DESIGN AND ANALYSIS: A RESEARCHER'S HANDBOOK* 164-65 (3d ed. 1991); ROBERT R. PAGANO, *UNDERSTANDING STATISTICS IN THE BEHAVIORAL SCIENCES* 215-16, 384 (5th ed. 1998).

⁷⁸See COHEN & COHEN, *supra* note 77, at 21.

tant of these assumptions in regard to, for example, survey research, is that the units of analysis (for example, survey respondents) are randomly selected from the population, or in regard to an experiment, that the units of analysis (for example, subjects) are randomly assigned to experimental and control or comparison groups.⁷⁹ The results of properly conducted experiments and surveys are always couched in terms of an error rate.

In many cases, especially in field research, it is not possible to randomly assign units of analysis to an experimental group and a control group.⁸⁰ This is universally true of "secondary effects" studies.⁸¹ When this is the case, adherence to a set of professional standards that have been devised by scientists in a particular area of inquiry to insure methodological integrity and thus the validity of a study is all the more necessary. These standards vary somewhat depending on the area of inquiry or social science discipline, but they are generally known as professional standards for conducting "quasi-experiments."⁸²

Four Criteria for Insuring a Scientifically Valid Study of Secondary Effects

The majority of the secondary effects studies reviewed in this article generally assume the following form. Researchers assemble crime statistics and calculate average property values and other general measures of neighborhood quality or deterioration (for example, residential turnover rate, local tax revenue, etc.) in the geographical area surrounding adult entertainment businesses. In a few studies these measures are compared to other areas that do not contain adult businesses. Another popular data gathering method is to perform a survey in which residents or business owners are asked for their opinions of the likely impact of adult entertainment businesses on their neighborhoods.

Four criteria are crucial in insuring that a scientifically valid study of secondary effects has been conducted. First, in order to insure accurate and fair comparisons, a control area must be selected that is truly "equivalent" to the area containing the adult entertainment busi-

⁷⁹See EARL BABBIE, *THE PRACTICE OF SOCIAL RESEARCH* 202-10 (8th ed. 1998); ROYCE A. SINGLETON, JR. ET AL., *APPROACHES TO SOCIAL RESEARCH* 136-51 (2d ed. 1993).

⁸⁰See DONALD T. CAMPBELL & JULIAN C. STANLEY, *EXPERIMENTAL AND QUASI-EXPERIMENTAL DESIGNS FOR RESEARCH* 34 (1963).

⁸¹Obviously, it is not possible randomly to assign adult businesses to some neighborhoods and hold other neighborhoods as controls.

⁸²See CAMPBELL & STANLEY, *supra* note 80, at 34-71.

ness.⁸³ Since most studies of secondary effects attempt to uncover increases in crime or neighborhood economic deterioration, professional standards dictate that the control (non-adult) site must be comparable (matched) with the study (adult) site on variables related to crime and deterioration. Of particular importance when studying crime is that the study and control areas are matched for variables such as ethnicity and socioeconomic status of individuals in both areas. Additionally, economic factors, such as median home value and total individuals employed and unemployed, should be comparable in both areas. A concerted effort should also be made to include only comparison areas with similar real estate market characteristics including property values, rental rates and proportion of unused commercial and industrial space in either area. The study and control areas in a crime study should be approximately equal in total population. Finally, because of the effect of businesses that serve alcoholic beverages on increases in crime and neighborhood deterioration, the study and control area should be matched on the presence of alcohol-serving establishments.⁸⁴

Second, a sufficient period of elapsed time, ideally both prior to and following the establishment of an adult entertainment business, is necessary when compiling data in order to ensure that the study is not merely detecting an erratic pattern of social activity. Most methodologically sound, quasi-experimental, time-series analyses rely on at least a one-year period prior to and after the introduction of the event under study to test for significant changes. Generally, the longer the time period before and after the event under consideration, the more stable (and more valid) the estimates of the event's effects tend to be.⁸⁵

Third, the crime rate must be measured according to the same valid source for all areas considered.⁸⁶ Studies on secondary effects typically focus on two general types of crime in relation to adult entertainment businesses. These two types of crime are "general criminal activity" (including, but not limited to, robbery, theft, assault, disorderly conduct and breaking and entering) and "crimes of a sexual nature" (including, but not limited to, rape, prostitution, child molestation and indecent public exposure). It is especially important that the measurement of these crimes is based on the same information source for both sites and throughout the entire study period. For

⁸³See BABBIE, *supra* note 79, at 213-14.

⁸⁴*Sec. e.g., CITY OF ST. PAUL, MINNESOTA, supra* note 66.

⁸⁵See SINGLETON ET AL., *supra* note 79, at 213-41.

⁸⁶See CAMPBELL & STANLEY, *supra* note 80, at 5, 9.

example, if the study area measures crime by the number and type of calls made to the police department, the control area must also rely on such a measure when the two areas are compared.

In addition, the crime information source must be factually valid and reliable, such as a daily log kept by police or a compilation of the number of arrests. Many studies claim to measure area crime by asking survey respondents about their estimates of the likelihood of being a victim of crime. Such data are not preferred because of their subjectivity and as such, cannot be trusted as a valid representation of actual criminal activity in a particular area. Social scientists should hesitate to rely upon such "evidence" to establish a causal link between adult businesses and secondary effects. The *Daubert* standard suggests such information may not have sufficient "trustworthiness" to be admissible in a federal court. However, if such subjective opinion research on crime is to be undertaken, it should conform to the standards for conducting reliable and valid survey research.

Researchers must also acknowledge any change in police surveillance techniques once an adult entertainment business has been established in a particular community. Obviously, increased surveillance of an area simply because an adult business is located there will have an impact on the amount of crime detected by the police. If increased police surveillance and the opening of an adult business in a particular area are confounded in this way, it is impossible to tell whether crime has increased due to the presence of the adult entertainment business or increased surveillance police discovering more crime.

Finally, survey research, if relevant to the question at all, must be properly conducted. Most survey research in this area involves asking real estate professionals, local property owners, law enforcement officers and/or community residents to estimate the effect of the presence of an adult entertainment business on a particular community. Less frequently, surveys of citizens' perception of crime and victimization are also undertaken. While subjective surveys may provide a sense of the general opinion of a particular group regarding the impact of adult entertainment businesses on surrounding neighborhood property values or criminal activity, this kind of survey does not provide sound empirical evidence of any true relationship between these businesses and their actual impacts on the surrounding areas. For instance, while the opinions of real estate professionals are legitimate and important in regard to other matters, they have a particularly strong interest in the issue and as such, may produce biased results.

Survey evidence is not comparable to, nor can it replace, the evidence supplied by objective comparisons of, for example, property

values and/or crime statistics compiled by the police within areas containing adult entertainment businesses, with property values or crime statistics within areas containing no such businesses. Such a comparative analysis is the preferable social scientific means by which to establish a relationship between the presence of adult entertainment businesses and either decreases in property values or increases in crime for the surrounding areas.

Even if some survey research may be relevant to the issue at hand—although we doubt whether it truly is—it must be properly conducted in order for the researcher to calculate an error rate. Professional standards do exist for performing methodologically valid social scientific survey research so that it possesses some degree of reliability and trustworthiness. Adherence to these standards is essential if researchers hope to obtain legitimate unbiased survey results. First, it is important to ensure that a random sample of potential respondents is included in the study.⁸⁷ Second, a sufficient response rate must be reached, and those who do respond must not be a biased sub-portion of the sample.⁸⁸ Finally, there must be a sufficient number of respondents to provide a stable statistical estimate.⁸⁹

THE FOUR MOST FREQUENTLY CITED STUDIES

The four most frequently cited studies and the degree to which they are scientifically valid according to the criteria laid out above are summarized in Table 2. The studies are described below, including their findings and conclusions as well as their methodological strengths and weaknesses, in reverse order of how often they have been cited by municipalities.

*St. Paul, Minnesota (1978)*⁹⁰

This study represents the most methodologically sound of all of the empirical research reviewed. Ironically, the St. Paul study does not claim to have found any support for the existence of a relationship between sexually oriented adult entertainment businesses and negative secondary effects.

The study was methodologically stronger than most others for at least two reasons. First, the researchers examined all 76 census

⁸⁷See BABBIE, *supra* note 79, at 176–82.

⁸⁸See *id.* at 240.

⁸⁹See *id.*

⁹⁰See CITY OF ST. PAUL, *supra* note 66.

TABLE 2. HOW THE FOUR MOST FREQUENTLY REFERENCED STUDIES FULFILL THE CRITERIA NECESSARY FOR VALID RESEARCH CONCERNING SECONDARY EFFECTS

Criteria	Study	Indianapolis, Ind. (1986)	Phoenix, Ariz. (1979)	Los Angeles, Cal. (1977)	St. Paul, Minn. (1978)
Study and Control Areas Properly Matched	Valid Measures of Crime Statistics	Used only a 3-year average for crime rates and property values. No measures taken prior to existence of adult businesses. (-)	No significant time series data considered. No measures taken prior to existence of adult businesses. (-)	Data from over a six year period were considered. During that time a number of businesses both opened and closed. (+)	Data from over a six year period were considered. During that time a number of businesses both opened and closed. (+)
Change in police surveillance	Change in police surveillance	No change in police surveillance mentioned. (+)	No change in police surveillance mentioned. (NA)	Admit to "stepped up" police surveillance. (-)	Did not consider crime as a variable. (NA)
Correct survey methodology	Correct survey methodology	Used random sample of real estate appraisers. Though only asked for reaction to a hypothetical scenario. (-)	No survey data collected. (NA)	Used completely biased, nonrandom sample of local residents and real estate professionals who lived or worked within 500 feet of an adult business. (-)	No survey data collected. (NA)
Evidence of negative secondary effects	Contains evidence both for and against a relationship.	Contains evidence both for and against a relationship.	Contains some equivocal evidence of a relationship.	Contains absolutely no objective evidence of a relationship.	Contains absolutely no evidence of a relationship.

tracts within the St. Paul region. The authors compared all tracts containing adult entertainment establishments with all of those that did not. As such, the study examined the entire geographical "study universe," negating the need for random assignment of control areas or the appropriate matching of selected control areas to the study area. Second, the study, which compared levels of neighborhood deterioration for study and control areas, maintained a substantial time lag between the first measures of deterioration and the second. Deterioration was determined by examining crime counts, housing values and market and legal influences over the study period. Therefore, changes in neighborhood climate between the first and second measures are more likely representative of reliable neighborhood changes rather than erratic fluctuations in social activity.

The most important aspect of this study is that it found absolutely no relationship between sexually oriented businesses and neighborhood deterioration. In fact, the study found that the only factor that was predictive of neighborhood deterioration was whether an alcohol-serving establishment was operating within the area. No relationship was found, however, between neighborhood deterioration and the presence of establishments that both served alcoholic beverages and offered live nude entertainment.

Los Angeles, California (1977)⁹¹

This study is perhaps the most often incorrectly referenced of any empirical research investigating the effects of adult-oriented businesses on surrounding areas. In fact, although it is the third most relied-upon piece of research that was found supposedly establishing the relationship between adult-oriented businesses and negative social repercussions, the researchers actually never claim any significant support for such a connection.

The study report consists of four parts. In the first part of the study, the researchers openly admit that they found no evidence of a relationship between the operation of adult entertainment businesses and potential negative effects. These conclusions were based on the results of a comparison of the average property value changes for five study areas and four control areas. Each of the five study areas was chosen because it contained a known cluster of adult entertainment businesses. The four control areas were chosen because of their proximity and supposed similarity to at least one of the study areas and because they did not have an adult entertainment business

⁹¹See CITY OF LOS ANGELES, *supra* note 65.

operating within their borders. All of the study and control areas were in Hollywood, North Hollywood or Studio City.

The researchers reported that it was difficult to find any consistent increase or decrease in property values associated with adult businesses. Results of the comparisons found that for some study and control area comparisons, there was a far larger decrease in the control (non-adult) area. Such a result is contrary to the assumption underlying the secondary effects doctrine (that adult establishments themselves cause a decrease in property values). Similarly, at least one study (adult) areas increased in value by more than 400% over their comparable control (non-adult) area. Again, this result is directly opposite to what one would expect to see by assuming a connection between adult businesses and secondary effects. Given these objective findings, the researchers stated that there is "... insufficient evidence to support the contention that concentrations of sex oriented businesses have been the primary cause of these patterns of change in assessed valuations between 1970 and 1976."⁹² It seems that those who have incorrectly referenced this study as supporting the relationship between adult entertainment businesses and lower property rates have simply disregarded the preceding statement by the study's authors.

The second part of the Los Angeles study claimed that survey results suggest that public opinion is strongly opposed to the operation of adult businesses. Such a "study" does nothing more than attempt to gauge subjective opinions and does not then serve to answer the more relevant question of whether adult businesses actually cause secondary effects. In addition, even in this subjective endeavor, the researchers failed to adhere to minimum professional standards by failing to conduct the research in accordance with proper survey techniques—most importantly, they failed to obtain a random sample of respondents. Without adherence to the requirement that a random sample of respondents be obtained, the study authors cannot calculate an error rate, and the reliability of the results cannot be determined. Instead, the Los Angeles study authors are left with a non-random survey of the opinions of potentially biased property owners and real estate professionals who each lived and/or worked within 500 feet of an adult entertainment business. Such a "survey" offers no insight as to whether adult establishments engender secondary effects and is not even representative of the broader public opinion on the issue.

⁹²*Id.* at 25.

In the third part of the Los Angeles study, the researchers openly acknowledge that they found no significant differences in crime rates between the census tracts encompassing the areas containing adult entertainment businesses and areas containing no such establishments. This part of the study consisted of an examination of the crime and population statistics for each of the census tracts containing clusters of adult entertainment businesses. Only tracts containing the clusters of adult businesses considered within the study areas for the first part of the study (discussed above) were considered. These data were then compared to those obtained from the census tracts containing each of the comparison control (non-adult) areas used in the first part of the study. Both sets of data were analyzed and compared over time in order to determine any significant differences concerning crime rates. The study authors concluded that in general there were no significant differences in crime rates between the census tracts encompassing the study (adult) and control (non-adult) areas and that no firm conclusions relevant to the study could be developed.

The fourth and final part of the Los Angeles study involved a "special" police study of the areas of Hollywood containing clusters of adult entertainment businesses. However, the researchers failed to adhere to even the most basic and rudimentary professional standards by failing to attempt to make a comparison of crime statistics in these areas with those in comparable control (non-adult) areas. The researchers failed to compare the areas surrounding adult businesses with comparable control (non-adult) areas. In addition, the researchers admitted to a substantial change in police surveillance of the area under study, which renders any results at least suspect and most likely meaningless. Although the findings of this study suggested high levels of criminal activity within these clusters, any implication that this is connected to the presence of adult businesses is invalidated by the fact that the researchers admitted to "stepped up" surveillance within these areas. Put simply, the police most likely found greater amounts of crime in the adult establishment areas because they were trying harder to find it. These failings and problems take this portion of the study outside of the reliability criteria of *Daubert* discussed above.

*Phoenix, Arizona (1979)*⁹³

This report presents the findings of a study performed in Phoenix that attempted to examine the relationship between adult entertain-

⁹³See CITY OF PHOENIX, *supra* note 64.

ment businesses and local crime rates. This study claimed to find higher overall crime rates in study areas containing adult-oriented businesses compared to control areas containing no such businesses. However, the evidence of negative secondary effects was equivocal at best. In addition, the study fails to adhere to professional standards because the control sites are not sufficiently comparable with the study site and there was not a sufficient period of time for the collection of data, both prior to and following the establishment of an adult entertainment business. The time control is necessary to ensure that the study is not merely detecting an erratic pattern of social activity.

The researchers selected three geographically diverse study areas, each comprised of one census tract in which at least one adult entertainment business was in operation. They further selected three control (non-adult) tracts located directly adjacent to the study tract. An attempt was made to match each of the three control areas with the study areas on several dimensions, including the number of buildings built since 1950, the median family income, median population age, percentage of acreage used residentially and percentage of population that was non-white.

It is essential that the selected study and control areas be accurately matched, but the matching of study and control census tracts for this study was unacceptable. The median income for study area 1 was 30% lower than that in the matching control, control area 1 had a substantially greater number of buildings built since 1950 than the corresponding study area, and study areas 2 and 3 each had significantly lower median income levels than did their matching control areas. Since income and crime levels are generally inversely related one might expect to see higher crime rates with lower income irrespective of the presence of adult businesses. These failures to sufficiently match the study and control areas suggest that this study does not adhere to acceptable professional standards for scientific research.

In addition, there was an insufficient period of time, both prior to and following the establishment of an adult entertainment business for reliable measures of crime or economic deterioration to be obtained. The study was limited to crime rates for a one-year period. Because of the extremely short period of time, one cannot be sure that the study was not merely detecting an erratic pattern of social activity.

Finally, although the study findings suggested that overall crime rates were higher in each of the study areas than those for each matching control area, a composite index of "violent crimes," which included murder, robbery, assault and rape, was also constructed.

Each study (adult) area showed a lower rate of violent crime (including rape) than the matched control (non-adult) area. In addition, the rate of child molestation was higher in the control (non-adult) areas than in the matched study (adult) areas. The results of the study offered, at best, equivocal evidence of the relationship between crime rates and the operation of adult entertainment businesses.

Indianapolis, Indiana (1984)⁹⁴

This study appeared to be the report most widely cited and relied upon by municipalities as evidence of negative secondary effects. Regardless of the problems with this report as outlined in this summary, the overall study offered equivocal findings regarding the supposed relationship between adult businesses and negative secondary effects. More importantly, in a sub-area analysis most relevant to the question of the relationship between adult businesses and secondary effects, lower rather than higher crime rates were found in all study (adult business) areas when compared to control (no adult business) areas. In addition, the overall study failed to adhere to rudimentary professional standards of scientific evidence, and an error rate could not be calculated due to a failure to meet basic statistical assumptions.

The methodological problems with this study can be summarized as follows: (1) The control sites were not sufficiently comparable (properly matched) with the study sites. (2) No measurements were taken prior to the establishment of an adult entertainment business to ensure that the study was not merely picking up an already established crime pattern that is independent of the adult businesses in the area. (3) There was a potential confounding effect caused by adult entertainment businesses that supplied both sexually oriented entertainment and alcoholic beverages. (4) The researchers did not adhere to minimum professional standards by failing to conduct a survey study of real estate professionals in accordance with proper survey techniques. Beyond being purely subjective, the most striking limitations of this survey study were that it asked a national sample of real estate appraisers who were not from Indianapolis to consider only a hypothetical scenario concerning adult businesses in an unspecified community. Thus, the survey results are not applicable to the question of whether an adult

⁹⁴See CITY OF INDIANAPOLIS, *supra* note 63.

business would have a negative (even subjective) effect upon property values in the Indianapolis area.

The Indianapolis study contained reports of four separate analyses. Each had significant methodological problems that undercut its reliability.

While the first set of analyses purported to show that higher crime rates were associated with adult entertainment businesses, the researchers failed to adhere to minimum professional standards by not properly matching study and control areas and by not including a sufficient period of time prior to the establishment of an adult entertainment business for collection and analysis of data. In this portion of the report, the researchers compared crime rates for six study areas containing at least one adult entertainment business with crime rates for six control areas containing no adult entertainment businesses. The study authors attempted but failed properly to match control and study areas on a number of criteria, including zoning mix, population size and age of housing stock. Significant differences existed in reference to the zoning mix within the majority of study versus control sites. In addition, the control sites were 37% more heavily populated than the study sites. Since population density and zoning mix are often associated with higher crime rates, any differences found between the study and control areas could very well have been due to these factors rather than the presence of adult businesses.

Another problem with the study was that it did not include a sufficient period of time prior to the establishment of an adult entertainment business for the collection and analysis of data. This lack of a measurement some time before the adult business located in the area made it impossible to determine whether findings of higher or lower crime rates in either area were associated with the operation of adult entertainment businesses or whether the study was simply detecting an already established pattern of criminal activity.

Finally, also problematic was the fact that at least one establishment that served alcoholic beverages was included within each of the study areas, while this was not the case for each of the control areas. As at least one study has found evidence that the presence of alcohol-serving establishments are associated with higher rates of criminal activity,⁹⁵ this must be viewed as a potentially serious flaw (confound) to the study's validity. One would expect to see higher crime rates in areas that contained establishments that served alco-

⁹⁵CITY OF ST. PAUL, *supra* note 66.

holic beverages, regardless of the presence or absence of any sexually oriented businesses.

Particularly interesting was the fact that the Indianapolis report included a sub-area analysis that found lower rather than higher crime rates in all areas where adult businesses were located compared to control (non-adult) areas. This analysis involved a comparison of crime statistics for a smaller sub-area of the larger areas considered in the first analysis described above. The researchers examined crime rates in a 1000-foot radius around the adult businesses in the study areas. They compared these crime rates to those within a 1000-foot radius around a random centroid located within the control areas used in the first analysis. This portion of the study would then appear to be the most relevant of all to the question of whether adult businesses create or cause secondary effects in the areas immediately surrounding them. However, this sub-area analysis found lower crime rates in all study areas compared to control areas.

The Indianapolis report authors also claimed to have found a substantially smaller increase in property values for the study areas than for the control areas. However, the researchers failed to adhere to minimum professional standards by not properly matching study and control areas for this analysis. This portion of the study was therefore unreliable from a scientific standpoint.

The analysis compared the average home mortgage value and average number of homes sold for the control and study areas discussed in the first study, as well as those for the center township area. Since the data came from the same study and control areas discussed in the first analysis, these data are fraught with the same methodological problems associated with that data set (that is, the study and control areas were not properly matched). The average mortgage values in the study areas were initially 49% higher than those in either the control areas or the central township area. As such, the finding that the average mortgage value for the control areas and central township area increased by 77% and 56%, respectively, while the study areas saw only an average increase of 26%, can be explained as the result of what is known as a ceiling effect. The study area values may have initially been far more inflated than the two comparison areas. Thus, it would come as no surprise that the study areas saw a smaller increase in property value than the comparison areas. The vast differences in initial mortgage values associated with the failure to properly match control and study areas rendered the two areas far too dissimilar to consider as suitable comparison groups. Finally, it should also be noted that despite the greater increase in mortgage values for the control and

center township areas in comparison to the study (adult) areas, the study area still maintained a higher average mortgage value when the final measures were taken.

The fourth analysis described in the Indianapolis report included the results of a national survey of members of the American Institute of Real Estate Appraisers. The data collection for this analysis was flawed in three ways. First, survey research on perceived likely deterioration effects is completely subjective and does not answer the question as to whether there are secondary effects associated with adult establishments in terms of actual property values, such as average home prices or other economic indicators. Second, even in this subjective analysis, the researchers failed to adhere to minimum professional standards by failing to conduct the study in accordance with proper survey techniques. Although a random sample of real estate professionals was obtained, the response rate was unacceptably low (only one third of the respondents returned the questionnaire). Further, no error rate was calculated for the percentages reported in the study. Without the calculation of an error rate, the researchers cannot establish a "confidence interval" around the percentages calculated in the study. This is especially troublesome given the fact many of the findings hovered around the 50% mark. Without some indication of the confidence one can place in these estimates, it is unclear if the majority or a minority of respondents projected a negative impact if adult businesses were to locate in a community.

Third, and even more problematic, the sampled appraisers were asked only to consider a brief hypothetical situation concerning a middle class family that lived in an area in which an adult bookstore would soon be opening in a nearby building. The respondents were asked five questions concerning the potential effects on the value of the family's home. A fatal flaw in this study is that it asks a nationally selected group of appraisers—none of whom were from Indianapolis—to consider only a hypothetical scenario. Thus, it has little to say about how an Indianapolis community appraiser might actually view the value of a home in Indianapolis (if such a question was even truly relevant to the secondary effects doctrine).

Summary of the Six Other Most Frequently Referenced Reports

Table 3 provides a brief description of the methodological features of each of the remaining studies in the "top ten," and illustrates the de-

TABLE 3. HOW WELL THE TOP TEN REFERENCED STUDIES MEET THE NECESSARY CRITERIA FOR GOOD SOCIAL SCIENTIFIC RESEARCH

Study	Criteria					
	Matched Control	Valid Measure of Crime Statistics	Sufficient Time Lag	Change in Police Surveillance	Correct Survey Methods	Evidence of Secondary Effects
Indianapolis (1984)	No (-)	Yes (+)	No (-)	No (+)	Yes (+)	Equivocal
Phoenix (1979)	No (-)	Yes (+)	No (-)	No (+)	NA	Equivocal
Los Angeles (1977)	Yes (+)	Yes (+)	Yes (+)	Yes (-)	No (-)	None
St. Paul (1978)	Yes (+)	NA	Yes (+)	NA	NA	None
Austin (1986)	No (-)	Yes (+)	No (-)	No (+)	Yes (+)	Equivocal
St. Paul (1987), (1988)	No (-)	Yes (+)	No (-)	NA	NA	None
Amarillo (1977)	No (-)	Yes (+)	No (-)	No (+)	NA	Yes
Detroit (1972)*	NA	NA	NA	NA	NA	None
Beaumont (1982)*	NA	NA	NA	NA	NA	None
Kent (1982)	NA	NA	NA	NA	No (-)	Equivocal

*Not an empirical study.

15-304

gree to which the studies are scientifically valid. The remaining six most frequently referenced studies in descending order were reports produced by Austin, Texas (1986),⁹⁶ St. Paul, Minnesota (1987, 1988),⁹⁷ Amarillo, Texas (1977),⁹⁸ Detroit, Michigan (1972),⁹⁹ Beaumont, Texas (1982)¹⁰⁰ and Kent, Washington (1982).¹⁰¹ Two of these, the reports by Beaumont and Detroit, are not empirical studies. The Beaumont "study," for example, is merely a report prepared by the planning department of that municipality, suggesting a need for regulation of adult businesses. The remaining four reports did not adhere to minimum professional standards of valid scientific research by failing to meet one or more of the four necessary criteria discussed above.

The studies produced by Austin, St. Paul and Amarillo all failed to compare neighborhood characteristics (crime rates or property values) for areas containing adult entertainment businesses with control areas containing no such businesses. In addition, these three studies failed to include measures of neighborhood characteristics over a sufficient period of time, both prior to and following the establishment of adult entertainment businesses. Further, the Kent study, which contained a report of an attempt to query neighbors of adult business establishments, failed to adhere to even the most minimal professional standards for proper survey research.

CONCLUSIONS

This article has abstracted and analyzed the methodology and major empirical findings of studies purporting to detect secondary effects of adult businesses. It has demonstrated, with few exceptions, that the scientific validity of the most frequently used studies is questionable and the methods are seriously and often fatally flawed. These studies, relied on by communities throughout the country, do not adhere to professional standards of scientific inquiry and nearly all fail to meet the basic assumptions necessary to calculate an error rate. Those studies that are scientifically credible demonstrate either

⁹⁶CITY OF AUSTIN, TEXAS, REPORT ON ADULT ORIENTED BUSINESSES IN AUSTIN (1986).

⁹⁷CITY OF ST. PAUL, MINNESOTA, ADULT ENTERTAINMENT—A 40-ACRE STUDY (1987); CITY OF ST. PAUL, MINNESOTA, ADULT ENTERTAINMENT—SUPPLEMENT TO THE 1987 ZONING STUDY (1988).

⁹⁸CITY OF AMARILLO, TEXAS, REPORT ON ZONING AND OTHER METHODS OF REGULATING ADULT ENTERTAINMENT IN AMARILLO (1977).

⁹⁹CITY OF DETROIT, MICHIGAN, DETROIT'S APPROACH TO REGULATING "ADULT" USES (1972).

¹⁰⁰CITY OF BEAUMONT, TEXAS, REGULATION OF ADULT USES (1982)

¹⁰¹CITY OF KENT, WASHINGTON, CITY OF KENT ADULT USE ZONING STUDY (1982).

no negative secondary effects associated with adult businesses or a reversal of the presumed negative effects.

Specifically, this article applied four criteria for methodological validity and found that the majority of studies failed to meet at least one, and often all, of these criteria. First, a number of studies attempting to compare areas containing adult businesses to areas containing no such businesses failed to include comparison (control) areas that were sufficiently matched regarding important characteristics, such as age of housing stock or racial make-up. This lack of comparability between study and control areas prevents researchers from determining whether neighborhood deterioration is related to the operation of adult businesses in an area or that some other confounding variable is responsible for the outcome. Second, a number of the studies using neighborhood crime measures have collected these statistics improperly. Although many studies gathered legitimate and consistent measures of crime statistics, such as police arrest reports over a sufficient period of time, a number of others used less scientifically acceptable measures, such as cross sectional survey results of residents' opinions of levels of crime. Third, the majority of studies failed to include a sufficient period of elapsed time, both prior to and following the establishment of an adult entertainment business, when measuring the relationship between the presence of adult businesses and a number of negative outcomes, such as higher crime rates and lower property values. Without a sufficient study period, it is difficult to determine whether a relationship exists between adult entertainment businesses and negative secondary effects, or whether the data are simply a reflection of an erratic pattern of local activity. Finally, most of the studies that included survey results utilized non-random and therefore biased samples of residents and/or business owners, rendering them scientifically invalid. Even if methodologically valid, such studies offer only subjective opinions concerning the impact of adult businesses and provide little, if any, evidence of actual negative secondary effects.

The studies reviewed here have been (and continue to be) shared across communities. As such, the methodological flaws found in these studies prevent them from being used to establish a sufficient government interest in the regulation of adult businesses within a particular community. However, these unsound studies have been repeatedly misused as evidence across a large number of other municipalities. For example, the Indianapolis study is cited by no fewer than 22 communities as evidence of a relationship between adult businesses and negative secondary effects. This study contained several substantial methodological flaws and found evidence both sup-

porting as well as rejecting negative secondary effects. Thus, the potential exists that as many as 22 zoning ordinances have been founded on a false premise about the substantial government interest in regulating the location of these businesses.

Although not specifically mandating such, the United States Supreme Court in *Pap's* may be perceived by some municipalities as permitting the extension of use of these flawed studies to the regulation of expressive conduct *within* an adult business as a basis for upholding an ordinance to regulate nudity on the ground that such a restriction would serve to eliminate negative secondary effects of such expression. Such regulation would be based on the same false premise as the zoning regulations addressed in *Young and Renton*—that there is valid evidence of a substantial government interest at stake, and that these types of laws further those interests (if they indeed exist).¹⁰²

¹⁰²In his dissent in *Pap's*, joined by Justice Ginsburg, Justice Stevens argued that no rationale existed for an extension of the secondary effects doctrine as a justification for censoring nude dancing. *City of Erie v. Pap's A.M.*, 120 S. Ct. 1382, 1406 (2000) (Stevens, J., dissenting). This doctrine was originally developed in *O'Brien* and extended to the regulation of adult businesses as a justification for zoning in *Young*. Stevens wrote that, although two fractured majorities of the Supreme Court have found such an application of the secondary effects rationale acceptable, the assumption that these secondary effects studies, even if they were not methodologically flawed, could be applied to justify regulation of forms of expression such as nude dancing may be unfounded. *Id.* at 1408–09. He suggested that the secondary effects doctrine, as it had previously been applied to adult businesses, was tailored towards zoning, that there existed no clear rationale for extending this doctrine as a justification for the regulation of expressive content, and that doing so represented a dangerous extension of censorship. *Id.* Stevens wrote:

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 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* ... with a single coherent rationale is strikingly unsuccessful; it is supported neither by precedent nor by persuasive reasoning.

Id. at 1406. Justice Stevens also stated:

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 ... to attract crime and prostitution, and hence to foster sexually transmitted disease."

Id. at 1409 (citing *id.* at 1402 (Scalia, J., concurring)). Justice Stevens, therefore, viewed Erie's anti-nudity ordinance as an unwarranted and ineffective restriction on expression. Justice Souter noted that there had been an adult business zoning ordinance on the books in Erie for 23 years before the anti-nudity ordinance in question

Even if the studies undertaken to justify zoning were not scientifically flawed, there are a number of other reasons why it may be inappropriate to extend the secondary effects doctrine to the regulation of nudity. First, and perhaps most obvious, there have been no studies that have been specifically designed to measure the impact of nudity per se on adverse secondary effects. Of most use would be studies wherein rates of adverse secondary effects for areas surrounding nude dancing establishments are compared to those surrounding establishments where pasties and a g-string are required. In the absence of such a direct test, it cannot and should not be assumed that the studies reviewed here, even if methodologically sound, would generalize to the regulation of nudity.

In fact, from a social psychological standpoint there are several factors that may prevent the generalization of the evidence collected to justify the application of zoning regulations to the regulation of nude dancing. For example, there may be substantial differences in the characteristics of the patrons who frequented the adult establishments studied to justify zoning compared to those who now visit establishments offering live nude dancing. Further, the earlier secondary effects studies were conducted to address the problem of adult businesses that purveyed explicit depiction of sexual intercourse and other sexual acts, whereas nude dancing does not involve such explicit performances. In addition, live entertainment may produce substantially different effects than filmed or videotaped acts. Finally, the interpersonal element of live nude dance establishments must be considered. Viewing a live dancer and later perhaps interacting with that dancer may produce significantly different outcomes than viewing erotic movies or the other fare usually purveyed in businesses considered in earlier secondary effects studies. Until these questions are addressed through scientifically valid empirical research, the applicability of the secondary effects doctrine to yet another area of speech regulation is highly questionable.¹⁰³

had been used to censor nude dancing. However, the city had not enforced this ordinance. Justice Souter indicated that the anti-nudity ordinance did not represent the least restrictive means for curtailing secondary effects because the city had not enforced its less restrictive zoning ordinance and had instead chosen to apply a total ban on nude dancing. As such, the anti-nudity ordinance failed the fourth prong of the *O'Brien* test. *Id.* at 1405 (Souter, J., dissenting).

¹⁰³See *Alameda Books, Inc. v. Los Angeles*, 222 F.3d 719 (9th Cir. 2000). The Ninth Circuit has addressed the applicability of studies conducted on adverse secondary effects for a particular purpose to another, arguably unrelated concern. *Id.* at 724-28. The appeals court affirmed a lower court's decision to strike down a Los Angeles ordinance prohibiting the operation of adult businesses that both sell adult products and contain facilities for the viewing of adult movies or videos. *Id.* at 728.

*The Application of Social Science Evidence
to the Regulation of Nude Dancing*

Because the anti-nudity ordinance under scrutiny in *Pap's* was so similar to that considered in *Barnes*, it seems likely that with its *Pap's* decision, the Supreme Court had hoped to replace the fractured decision in *Barnes* with a clear majority ruling. Such a ruling may have offered the lower courts, lawmakers, adult business owners and First Amendment scholars a coherent precedent towards which to look when considering the constitutionality of anti-nudity regulations based on the secondary effects rationale. Yet, while the Court's decision in *Pap's* appears to be another fractured decision, there may be more coherence to the ruling than is at first apparent.

Five justices and thus a majority embraced the secondary effects doctrine in *Pap's*. Justice Souter, who dissented in part, not only agreed with the plurality's application of the *O'Brien* test to nude dancing as a form of symbolic speech, but, in theory, he also supported the secondary effects doctrine. Justice Souter merely disavowed his assertion in *Barnes* that secondary effects may be *presumed*. In *Pap's*, he questioned whether such a relationship has been empirically demonstrated in previous studies. It appears that Justice Souter is willing to accept application of the secondary effects doctrine to regulation of nudity in a particular community, if empirical evidence of a relationship between nude dancing and negative secondary effects can be obtained and, since his concurrence is necessary to obtain a majority that the *O'Brien* secondary effects doctrine applies, this opinion may in fact be the Constitutional holding of *Pap's*.

Nevertheless, in *Pap's*, the plurality provides room for challenges, based on the collection of empirical evidence, to the assertions made by municipalities regarding a relationship between adverse secondary effects and nude dancing. The plurality noted that the adult business in question in *Pap's* could have challenged the City of Erie's assertion that nudity led to ill effects but that it did not do so. This leaves room for the introduction of secondary effects evidence col-

The court rejected Los Angeles's attempt to use a study conducted in 1977 (reviewed above), which examined the relationship of adverse secondary effects and the concentration of adult businesses as evidence of a compelling government interest to regulate single business with combined uses. The court reasoned that the 1977 study offered no information on the effects of the combination of product-video booth within a single business. *Id.* at 724. "For the purposes of the secondary effects identified in the Los Angeles study, a solitary bookstore/arcade combination is hardly of the 'same character' as a grouping of multiple adult business establishments in a given geographical area." *Id.* at 726 n.7. As such, the court refused to allow a leap in logic similar to that of the plurality in *Pap's*.

lected by adult businesses both in city council hearings and as a basis for court litigation.

It is likely, based on the plurality's decision in *Pap's*, (that is, that the secondary effects doctrine pertains to nudity regulations), coupled with Justice Souter's admonition that secondary effects must be demonstrated convincingly (that is, empirically), that future court rulings concerning the constitutionality of regulations of nudity within adult businesses will continue to involve an application of some form of the *O'Brien* test. In considering the compelling government interest prong of the *O'Brien* test, lower courts intending to remain consistent with the Supreme Court's holding in *Pap's* may be forced to consider the methodological legitimacy of any evidence of a relationship between negative secondary effects and adult businesses collected by municipalities and by business owners who attempt to challenge governmental regulations predicated upon the allegation of such a connection.

In evaluating the admissibility of this evidence, the courts may be best served by turning to standards laid out in *Daubert* for the admissibility of scientific evidence. The application of such standards, bolstered by Justice Souter's opinion in *Pap's*, may force the courts to reject the studies previously relied upon as evidence of negative secondary effects, and require new, more methodologically sound, studies to demonstrate a compelling government interest in regulating nudity.

The courts should be mindful of the criteria designated above for collecting empirical evidence in a methodologically sound manner. Specifically, only evidence obtained using relatively closely matched control and experimental comparison areas should be acceptable. Further, where possible, a time-series analysis should be undertaken. All indicators of neighborhood quality (for example, crime rate and property values) must also be consistently measured across the study conditions. Courts may then accept any evidence (or lack thereof) that met all of the above criteria as definitive. Only such evidence of a relationship between adult entertainment businesses and negative secondary effects should be acceptable, both social scientifically as well as legally.

In this article, it has been demonstrated that there is sufficient room for a serious challenge to the assumption made by communities across the United States that past studies of secondary effects show an empirical relationship between adult businesses and negative effects. Further, there is presently no legitimate basis for extending the secondary effects doctrine to the regulation of expression within adult businesses based on these studies. City councils, municipalities and the courts are best served by the collection of new evidence based on sound scientific standards.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

WET SANDS, INC., et al. *
Plaintiffs *
vs. * CIVIL ACTION NO. MJG-06-2243

PRINCE GEORGE'S COUNTY, MARYLAND*
Defendant *

* * * * *

INTERNATIONAL NITE LIFE *
ENTERPRISES, INC. *
vs. * CIVIL ACTION NO. MJG-06-2581

JACK JOHNSON, et al. *
Defendants *

* * * * *

MEMORANDUM OF DECISION

These cases, consolidated for trial, were tried to the Court without a jury. The Court now issues this Memorandum of Decision as its findings of fact and conclusions of law in compliance with Rule 52(a) of the Federal Rules of Civil Procedure. The facts set forth herein are found based upon the Court's evaluation of the evidence and the reasonable inferences derived therefrom.

I. BACKGROUND

A. Parties

Plaintiffs Wet Sands, Inc. ("Wet Sands"), CD15CL2001, Inc. ("CD"), Nico Enterprises, Inc. ("Nico"), and International Nite Life Enterprises, Inc. ("Nite Life") are Maryland Corporations that, at all times relevant hereto, have provided nude or semi-

15-311

nude dancing in Prince George's County, Maryland.¹ The sole Defendant at trial² was Prince George's County, Maryland (hereinafter "the County").

The adult entertainment provided by Plaintiffs herein includes entertainers³ performing dances on a stage while nude or scantily attired. There is physical contact or proximity between customers and entertainers during the stage dancing if customers approach - or touch - the dancers while giving tips. Plaintiffs also permit customers to have female entertainers perform "lap dances" in which a female entertainer moves on a male customer's lap. Plaintiffs extensively monitor physical contact between patrons and entertainers to prevent overt sexual activity and other intimacies.

Plaintiffs (and others in the same business) typically generate revenue by charging admission,⁴ selling beverages (including alcoholic beverages if licensed to do so), selling of some edibles⁵ and charging fees for lap dances. The entertainers

¹ "John Doe" and "Jane Doe" plaintiffs, identified as representative patrons of the corporate Plaintiffs' establishments by Wet Sands, CD and Nico, have not participated actively in the proceeding and are assumed to lack standing herein.

² Nite Life sued Defendant Jack Johnson, but stipulated to the dismissal of all claims against him. [Paper 19]

³ Most of the businesses provide female dancers; Wet Sands provides male, not female, dancers.

⁴ The admission charge is sometimes euphemistically expressed as a membership fee or the like.

⁵ Typically, chips, pretzels and the equivalent.

are typically not paid by the business. Indeed, the entertainers normally pay the business a fee for the privilege of entertaining and earning tips that, it appears, can amount to considerable sums in the course of an evening.

B. The Legislation

On July 18, 2006, the County Council of Prince George's County ("the Council") enacted CB-31-2006 ("CB-31"), a zoning regulation that granted the Prince George's County Police and Fire Chiefs the power to require operators to cease and desist the operation of activities that are dangerous to the public health or safety, or being conducted without a premises license.

On the same date, the Council enacted CB-61-2006 ("CB-61"), an ordinance that established conduct restrictions and licensing requirements for "adult entertainment" businesses.

As discussed more fully herein, CB-61 places certain conduct restrictions on adult entertainment premises, providing, inter alia, that any nude dancer must perform on a stage raised at least eighteen inches off of the ground six feet away from all patrons. Contact between certain specified anatomical areas of performers and patrons is prohibited, as is providing a gratuity while performances are ongoing. CB-61 also requires an adult entertainment business to obtain a license and meet specified safety standards. The ordinance further requires the licensing of managers and entertainers working in the business.

C. Procedural Background

Wet Sands, CD, and Nico filed suit against the County on August 29, 2006. They contend that CB-31 and CB-61 violate the United States Constitution's First Amendment, the Takings and Due Process Clauses of the Fifth Amendment, and the Equal Protection Clause of the Fourteenth Amendment as well as the Maryland Declaration of Rights. They further claim that the aforesaid provisions are unconstitutionally vague and overbroad. They requested a declaratory judgment, as well as preliminary and permanent injunctive relief against the enforcement of CB-31 and CB-61. On September 15, 2006, Judge Chasanow,⁶ deferred ruling on a request for a broad restraint against the legislation, but preliminarily enjoined enforcement of the provision in CB-61 requiring the public posting of licenses required thereunder. Hr'g. Tr.⁷ 102, 104-05.

Nite Life filed suit on October 5, 2006 presenting essentially the same contentions with regard to CB-61.⁸

On October 5, 2006, these cases were transferred to the undersigned Judge. On October 18, 2006, this Court issued a Preliminary Injunction providing that, by agreement of the parties, Prince George's County would not take action to enforce CB-61 until the conclusion of the trial.

⁶ To whom the case was then assigned.

⁷ References to "Hr'g Tr." are to the transcript of the September 15, 2006 hearing before Judge Chasanow.

⁸ Nite Life does not present any claim with regard to CB-31.

The cases were tried in a consolidated proceeding on November 20 and 21, 2006. Thereafter, a hearing was held and counsel presented post-trial arguments.

II. DISCUSSION

A. CB-31 (Zoning)

Wet Sands, CD, and Nico present an "as-applied facial challenge" to CB-31, contending that, although CB-31 is a generally applicable health and safety law that is neutral on its face, it is unconstitutional "as applied to First Amendment forms of businesses." Pl.'s Pretrial Mem. [Paper 30] at 8. The essence of the argument is that CB-31 affords Prince George's County officials "unbridled discretion" that they could use unconstitutionally to censor speech (including expressive conduct) of which they disapprove.

On its face, CB-31 does not differentiate between adult entertainment establishments and other businesses. The law allows the Chiefs of the Police and Fire Departments to force the closure of any type of business or activity if a use and occupancy permit is lacking, or if the activity presents an immediate danger to public health or safety. CB-31, §§ 27-260, 27-264.01. Should a business be closed by virtue of this authority, a Zoning Hearing Examiner must hold a hearing within four days on the validity of the closing, and must render a decision two days after the hearing. Id. §§ 27-264.01 (d), (g).

Decisions of the Zoning Hearing Examiner may be appealed to the Circuit Court for Prince George's County. Id. § 27-264.01(i).

Wet Sands, CD, and Nico rely primarily on Lady J Lingerie v. City of Jacksonville, 176 F.3d 1358 (11th Cir. 1999), wherein the city of Jacksonville enacted zoning laws that allowed adult entertainment establishments to operate as of right in just one area of the city. Id. at 1361. Moreover, the legislation further required that an adult entertainment establishment be located a specified distance from other such businesses. As a practical matter, only two limited areas remained available for adult entertainment businesses within the permissible zone. Id. Adult entertainment businesses could apply for a zoning exception that would permit them to operate in a second zone of the city. Id. However, the approval of applications for this exception was subject to the discretion of the zoning board, guided only by nebulous standards such as "compatibility" or "environmental considerations." Id. at 1362.

The Eleventh Circuit held that this "unbridled discretion" did not pass constitutional muster because the zoning board's decision was not subject to "precise and objective" criteria. Id. Due to the danger that this broad discretion could be use to stifle certain forms of expression, the court held that the subjective zoning exception criteria could not be used with regard to applicants whose businesses are entitled to First Amendment protection. Id.

The decision in Lady J Lingerie concerned legislation that, unlike CB-31, subjected adult entertainment businesses to standards different from those applicable to other businesses. These businesses were relegated to accepting a location in a part of a small zone in Jacksonville or being subject to the vagaries of a zoning board exception application process. In sharp contrast, CB-31 makes no distinction between types of businesses. It does not disadvantage businesses - such as Plaintiffs' - that would be subject to First Amendment Protection.

Furthermore, CB-31 allows closure of any business only if that business has violated certain county safety codes or failed to obtain a use and occupancy permit. The closure can then be appealed to the Zoning Hearing Examiner and heard within four days; a decision must follow two days later. A dissatisfied party may appeal the decision of the Zoning Hearing Examiner to the Circuit Court for Prince George's County. Thus, there is rapid administrative review and prompt access to the courts for any business closed pursuant to CB-31.

Of course, as Judge Chasanow noted in her ruling in regard to preliminary relief, should CB-31 be implemented in a manner that discriminates against adult entertainment establishments, Plaintiffs (or any other affected person) may present an "as-applied" challenge to CB-31. Hr'g. Tr. 104. However, the instant case does not present any such challenge.

In sum, CB-31 does not distinguish between types of businesses, provides for prompt administrative and judicial

review of any closure and, therefore, is not unconstitutional on its face as violative of Plaintiffs' First Amendment freedoms.

B. CB-61 (Conduct Restrictions and Licensing)

CB-61 includes conduct restrictions and a licensing scheme.

1. The Conduct Restrictions

a. The Restrictions at Issue

CB-61 includes provisions prohibiting minors' access to the premises (§ 2613), preventing entertainers from being visible from any public place while employed on the premises (§ 2609(a)(8)), prohibiting operation of the adult entertainment business from 1 a.m. to 10 a.m. (§ 2612), and imposing certain restrictions on the conduct of the business (§ 2609(a)(1)-(7), (9)-(11)).

Plaintiffs do not raise any objection to the prohibitions relating to access to minors or public visibility of entertainers. Nor do they raise any objection to several safety provisions in CB-61.⁹ Moreover, Plaintiffs concede that some restriction on the hours of operation would be acceptable, but argue that the hours restrictions on their clients must be reasonable.

Accordingly, the term "conduct restrictions" is utilized herein to refer to CB-61-2006 §§ 5-2609(a)(1)-(7) and (a)(9)-(11), but not §§ 5-2609(a)(8), 5-2609(b), 5-2612 and 5-2613.

⁹ See § 5-2609(b).

The conduct restrictions require that employees who are nude, semi-nude, or simulating any state of nudity be separated from the patrons. To accomplish this result, the legislation provides:

(1) No employee or entertainer shall be unclothed, clothed in less than opaque attire, or shall move or remove such attire, or allow such attire to be moved or removed so as to expose to view any portion of the breast below the top of the areola or any portion of the pubic region, anus, buttocks, vulva or genitals, except upon a stage at least eighteen inches (18") above the immediate floor level and removed at least six feet (6') from the nearest patron.

* * *

(3) No employee or entertainer mingling with the patrons shall be unclothed or clothed in less than opaque and complete attire, costume or clothing as described in Section [5-2609] (a) of this Section.

* * *

(6) No employee or entertainer shall wear or use any device or covering exposed view which simulates the breast below the top of the areola, vulva or genitals, anus, buttocks, or any portion of the pubic region.

CB-61, §§ 5-2609(a)(1), (a)(3), (a)(6). Accordingly, nudity¹⁰ is not banned in adult entertainment establishments, so long as each nude entertainer is on a stage eighteen inches higher than the patron floor level and no patron is within six feet of a nude entertainer.

CB-61 provides further that:

¹⁰ The terms "nude," "nudity," etc. are used herein to refer to the state of "nudity" defined in CB-61.

(2) No employee or entertainer shall perform acts of or acts which simulate:

(A) Sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation, or any sexual acts which are prohibited by law;

(B) The touching caressing or fondling of the breasts, buttocks or genitals; or

(C) The displaying of the pubic region, anus, vulva or genitals; except as provided for in Subsection (a) of this Section.

* * *

(4) No employee or entertainer shall knowingly:

(A) Touch, caress or fondle the breast, buttocks, anus, genitals or pubic region of another person; or

(B) Permit the touching, caressing or fondling of his or her own breasts, buttocks, anus genitals or pubic region by another person; or

(C) Permit any person upon the premises to touch, caress, or fondle the breasts, buttocks, anus, genitals or pubic region of another person.

(5) No manager shall knowingly permit any person upon the premises to touch, caress, or fondle the breasts, buttocks, anus, genitals or pubic region of another person.

* * *

(7) No employee or entertainer shall use artificial devices or inanimate objects to depict any of the prohibited activities described in this section.

* * *

(9) No entertainer shall solicit, demand or receive any payment or gratuity from any patron for any act prohibited by this chapter.

(10) No entertainer shall demand or collect any payment or gratuity from any patron for entertainment before its completion.

15-321

Id. §§ 5-2609(a)(4)-(5), (a)(7), (a)(9)-(11).

These provisions prohibit entertainers from touching themselves or others in certain parts of the body, from performing sexual acts and from engaging in, or simulating, sexual conduct. Moreover, patrons are prohibited from tipping the entertainers during a performance. Furthermore, the establishment must conspicuously display a sign stating the existence of certain of the conduct restrictions.

However, CB-61 contains a critical provision (the "Savings Clause") that limits the applicability of the foregoing conduct restrictions to obscene behavior.

b. The Savings Clause

The Savings Clause of CB-61 provides:

(c) This Division shall not be construed to prohibit protected expression, such as:

(1) Plays, operas, musicals, or other dramatic works that are not obscene;

(2) Classes, seminars and lectures held for serious scientific or educational purposes that are not obscene; or

(3) Exhibitions, performances, expressions or dances that are not obscene.

(d) For purposes of this Division, an activity is "obscene" if:

(1) Taken as a whole by an average person applying contemporary community standards the activity appeals to a prurient interest in sex;

(2) The activity depicts patently offensive representations, as measured against the community standards, of:

(A) Ultimate sexual acts, normal or perverted, actual or simulated; or

(B) Masturbation, fellatio, cunnilingus, bestiality, excretory function, or lewd exhibition of the genital areas; or violent or destructive sexual acts, including but not limited to human or animal mutilation, dismemberment, rape or torture; and

(3) The activity taken as a whole lacks serious literary, artistic, political, or scientific value.

Id. § 5-2609 (emphasis added).

In view of the Savings Clause, the only restriction upon the expressive conduct aspect of Plaintiffs' business imposed by CB-61 is a prohibition against performances that are "obscene." The Savings Clause defines "obscene" in accordance with the Supreme Court's definition in Miller v. California, 413 U.S. 15, 24 (1973). Accordingly, except to the extent that such action may be found to constitute "obscenity" under Constitutionally acceptable standards, CB-61 does not restrict "nude" dancing or lap dancing, regardless of stage height, patron proximity or physical contact.

Of course, any conduct that constitutes "obscenity" under the Miller test can properly be prohibited under the legislation because there is no First Amendment protection for such conduct.

In sum, the Savings Clause performs its stated function; it saves the conduct restrictions of CB-61 from constitutional challenge.

c. Equal Protection

Nite Life¹¹ contends that CB-61 denies it the equal protection of the law because it distinguishes between "for-profit" and "non-profit" businesses on its face. Specifically, Nite Life points to the Public Indecency provision of CB-61 that prohibits persons from engaging in sexual intercourse or appearing in a state of nudity "in a public place or in a place open to the public." CB-61, § 14-139.02. CB-61 defines "place open to the public" as "any privately-owned place of business operated for a profit to which the public is invited." § 1-102(25.1) (emphasis added). Nite Life argues that CB-61 thus allows sexual intercourse or nudity in a place that is open to the public but not operated for a profit, creating an unconstitutional distinction between the two. However, § 14-139.02 prohibits nudity and sexual intercourse not only in any "place open to the public," but also in any "public place." The term "public place" is defined by CB-61 as including "any . . . place [whether or not operated for a profit] commonly open to the public." § 1-102(25.1). Therefore, the nudity prohibition in CB-61 does not distinguish between for-profit and non-profit operations; there is no Equal Protection clause violation.¹²

d. Vagueness

¹¹ The other Plaintiffs do not present this contention.

¹² It may be true that a for-profit business is subject to the ban under two separate provisions while a not for profit operation is subject to the ban by only one. However, since both types of operations are subject to the very same treatment, there is no equal protection violation.

Statutory language is void for vagueness if it "fails to provide people of ordinary intelligence a reasonable opportunity to understand what conduct" the statute prohibits, or if "it authorizes or even encourages arbitrary and discriminatory enforcement." Hill v. Colorado, 530 U.S. 703, 732 (2000).

Plaintiffs argue that CB-61 is void because it is unconstitutionally vague. Plaintiffs do not specify what parts of the ordinance they contend are impermissibly vague, but generally refer to the Middle District of North Carolina's holding in Giovani Carandola, Ltd. v. Fox that the terms "fondle" and "simulate" (both used in CB-61) were unconstitutionally vague. 396 F. Supp. 2d 630, 660 (M.D.N.C. 2005) (hereinafter "Carandola I"), rev'd in part, Carandola v. Fox, No. 05-2308, slip. op. (4th Cir. December 15, 2006) (hereinafter "Carandola II").

Like the North Carolina statute at issue in Carandola I, CB-61 prohibits an entertainer in an adult entertainment establishment from performing, inter alia, "acts which simulate" sexual intercourse, masturbation, and sodomy. CB-61, § 5-2609(a)(2). Additionally, entertainers cannot perform or simulate the "touching, caressing or fondling of the breasts, buttocks or genitals." Id.; see id. §§ 5-2609(a)(4), (a)(5).

In Carandola II, the Fourth Circuit held that the verb "'simulate' is sufficiently precise to notify persons of ordinary intelligence of the conduct prohibited by the statute and to prevent the risk of arbitrary or discriminatory enforcement."

Carandola II, No. 05-2308, slip. op. at 8. "An act only constitutes simulated sexual intercourse or simulated masturbation if it creates the realistic impression of an actual act." Id. at 9 (emphasis in original). Moreover, the verb "fondle" is "sufficiently clear to put persons of ordinary intelligence on notice as to what conduct the statute prohibits and to prevent the risk of arbitrary enforcement." Id. at 9-10. The Fourth Circuit noted that the term "fondling" occurred only in conjunction with a "specified erogenous zone, indicating that it aims to prevent overt sexual conduct." Id. at 9.

In light of Carandola II, the Court must hold that CB-61 is not void for vagueness.

e. Overbreadth

Plaintiffs claim that CB-61 is unconstitutionally overbroad because it "reaches a substantial number of impermissible applications." New York v. Ferber, 458 U.S. 747, 771 (1982). However, when legislation limits conduct and not just speech, "the overbreadth of a statute must not only be real, but substantial as well, judged in relation to the statute's plainly legitimate sweep." Broadrick v. Oklahoma, 413 U.S. 601, 615 (1973). Should a statute suffer the overbreadth infirmity, any enforcement is totally forbidden. Id. at 613. Therefore, the Supreme Court has warned that the overbreadth doctrine is "strong medicine" that should be used "sparingly and only as a last resort." Id.

Plaintiffs challenge the prohibition in CB-61 against the simulation of certain sexual acts. CB-61, § 5-260(a). However, in Carandola II the court held that essentially identical language was not overbroad because the prohibition on simulated sexual acts did not apply "when the performances that are presented are expressing matters of serious literary, artistic, scientific, or political value." Carandola II, No. 05-2308, slip. op. at 6. The Savings Clause in CB-61 has the same effect as the exception in the Carandola II legislation and saves CB-61 from being unconstitutionally vague.

f. Hours of Operation

Plaintiffs do not challenge the existence of a restriction on hours of operation in CB-61. They contend, however, that any restriction on the hours of operation of their businesses must be reasonable and that it is fundamentally unfair to impose upon their providing of adult entertainment more stringent hours of operation than those imposed on businesses selling alcoholic beverages with (or without) other types of entertainment.

The ordinance requires that adult entertainment businesses operate only between the hours of 10:00 a.m. and 1:00 a.m. CB-61, § 2612. However, businesses that serve alcohol in Prince George's County may operate, with limited exceptions, between 6:00 a.m. and 2:00 a.m. Thus, an adult entertainment business with a liquor license may continue to serve alcohol until 2 a.m. but at 1 a.m. must cease its adult entertainment.

The County has presented nothing whatsoever to support a conclusion that any secondary effects of adult entertainment - as distinct from other types of entertainment - require or even warrant an earlier closing time than business that provide alcoholic beverages. On the other hand, the Court finds - as Plaintiffs conceded - that it is appropriate to impose reasonable restrictions on their hours of operation. The Court finds that, on the record in the instant cases, the County's adoption of an hours of operation restriction on all places that serve alcohol without regard to the content or absence of entertainment provides an adequate basis for the adoption of the same restrictions on adult entertainment businesses.

Accordingly, the hours of operation restrictions in CB-61 are facially valid and enforceable, but only to the extent of the generally applicable restrictions imposed on businesses that are licensed to sell alcoholic beverages.

g. Sign Posting

The sign posting provision of CB-61 shall be treated consistently with the decision regarding the substance of the items required to be stated thereon. Accordingly, § 5-2609(a)(11) is held facially valid and enforceable only with regard to the requirement that there be a sign stating that the premises are licensed and that entertainers are not permitted to engage in any type of sexual conduct.

2. The Licensing Scheme¹³

CB-61 provides that an individual who desires to operate or work in an "adult entertainment premises" as a manager or entertainer must obtain a license before doing so. CB-61, §§ 5-2602 - 5-2603.

"Adult entertainment" is defined as:

any exhibition, performance or dance of any type conducted in a premises where such exhibition, performance or dance involves a person who:

(1) is unclothed or such attire, costume or clothing as to expose to view any portion of the breast below the top of the areola or any portion of the pubic region, anus, buttocks, vulva or genitals; or

(2) touches, caresses or fondles the breasts, buttocks, anus, genitals or pubic region of another person, or permits the touching, caressing or fondling of his/her own breasts, buttocks, anus, genitals or pubic region by another person, with the intent to sexually arouse or excite another person.

Id. § 5-2601(a).

"Adult entertainment premises" are "any premises to which the public, patrons or members are invited or admitted and wherein an entertainer provides adult entertainment to a member of the public, a patron, or a member." Id. § 5-2601(b). To obtain an "adult entertainment premises license," an applicant must submit personal biographical data, the names and biographical data of all business partners and corporate officers and directors, a description of the adult entertainment business

¹³ The licensing scheme is contained in CB-61 §§ 5-2602 - 5-2608, 5-2610 - 5-2611, 5-2614 - 5-2616.

history of the applicant, and a description of the employment of the applicant for the three previous years.¹⁴ Id. § 5-2605(a). Applicants for a premises license must also submit with their application proposed plans for security, traffic management and parking, a parking lot lighting plan, and a proposed life safety evaluation of the space in which the performance will be held, if the occupancy exceeds 250 persons. Id. § 5-2606.

Managers and entertainers applying for a license must provide biographical information, as well as the name of any business where the applicant intends to work and proof that the applicant is at least eighteen years old. Id. § 5-2605(b).

Within five days of receipt of a completed application, the Chief of Police "shall issue the applicable license," so long as the building in which the entertainment will occur has all required licenses, the applicants and all agents or employees have made no false statements, and all parties involved are at least eighteen years of age. Id. § 5-2608. Should the Chief deny an application, the aggrieved party may appeal the adverse decision to the Prince George's County Board of Administrative Appeals, and then to the Circuit Court for Prince George's County, should the first appeal not succeed. Id. §§ 5-2608, 5-2615 - 5-2616.

¹⁴ Biographical data includes an applicant's address, telephone number, and date and place of birth. CB-61, § 5-2605(a)(1). The applicant must also give addresses for the previous five years. Id. § 5-2605(a)(4). With regard to business history, the applicant must report the suspension or revocation of any other business licenses in the past. Id. § 5-2605(a)(5).

Once a club is fully licensed and operational, the licenses of the owner, managers and entertainers must be posted in a place that is readily available for inspection. Id. § 5-2610. Additionally, the manager is required to maintain a log of all entertainers and managers working at the club each day. Id. A licensed manager must be present at all times the club is in operation. Id. § 5-2611.

The Chief of Police may close the club if there are violations of any part of CB-61. The Police Chief's closure decision may be appealed in the same manner as a denial of a license. Id. §§ 5-2614 - 5-2616.

a. First Amendment Protection of Sexually Oriented Businesses

The First Amendment provides that Congress "shall make no law . . . abridging the freedom of speech." U.S. Const., Amend. I. The Free Speech Clause of the First Amendment applies to the states through the Due Process Clause of the Fourteenth Amendment. Gitlow v. New York, 268 U.S. 652, 666 (1925). The First Amendment "bars the government from dictating what we see or read or speak or hear." Ashcroft v. Free Speech Coalition, 535 U.S. 234, 245 (2002). Expressive conduct is protected by the First Amendment, but it enjoys less protection than does pure speech and restrictions on its exercise are more likely to be constitutionally permissible. See e.g., United States v. O'Brien, 391 U.S. 367, 376 (1968). Restrictions on expressive conduct are typically aimed at suppressing the secondary effects of the non-

expressive aspect of the conduct instead of the expression itself. Steakhouse, Inc. v. City of Raleigh, 166 F.3d 634 (4th Cir. 1999).

Sexual expression which is "indecent but not obscene is protected by the First Amendment." Reno v. ACLU, 521 U.S. 844, 874 (1997). Nude dancing such as the type at issue here can be protected expressive conduct, but the Supreme Court has stated that "customary 'barroom' type of nude dancing may involve only the barest minimum of protected expression." Barnes v. Glen Theatre, Inc., 501 U.S. 560, 564 (1991). As stated by Justice Stevens in Young v. American Mini Theaters, the First Amendment will not allow the total suppression of erotic expression, but "society's interest in protecting this type of expression is of a wholly different, and lesser, magnitude than the interest in untrammelled political debate." 427 U.S. 50, 70 (1976).

Regulations enacted for the purpose of restraining speech due to the content of that speech presumptively violate the First Amendment. Carey v. Brown, 447 U.S. 455, 462-63, 463 n.7 (1980); Police Dept. of Chicago v. Mosley, 408 U.S. 92, 95 (1972). If Prince George's County's purpose in enacting the statutes in question is "related to the content of the expression," then it must be justified under the "more demanding" strict scrutiny, which few statutes survive. City of Erie v. Pap's A.M., 529 U.S. 277, 289 (2000), Texas v. Johnson, 491 U.S. 397, 403 (1989). However, "if the governmental purpose in exacting the regulation is unrelated to the suppression of expression, then the

regulation need only satisfy the 'less stringent' intermediate scrutiny. Pap's A.M., 529 U.S. at 289, Johnson, 491 U.S. at 403.

It is well established that a government may place restrictions on erotic expression if its goal is to prevent the deleterious secondary effects of the adult entertainment establishments, not suppress the erotic message. City of Los Angeles v. Alameda Books, Inc., 535 U.S. 425, 438 (2002) (stating that it is a "settled position" that municipalities must be able to address the secondary effects of protected speech); Boos v. Barry, 485 U.S. 312, 320 (1988) (citing City of Renton v. Playtime Theatres, Inc., 475 U.S. 41, 48 (1986)); Giovani Carandola, Ltd. v. Bason, 303 F.3d 507, 513 (4th Cir. 2002) (hereinafter cited as "Bason"); Carandola II, No. 05-2308, slip. op. at 11. The Fourth Circuit stated in Bason:

The Supreme Court has instructed that measures to regulate sexually explicit entertainment outside the home receive intermediate scrutiny if they are not premised on a desire to suppress the content of such entertainment, but rather to address the harmful secondary effects of such entertainment: higher crime rates and lower property values, and unwanted interactions between patrons and entertainers, such as public sexual conduct, sexual assault, and prostitution.

Bason, 303 F.3d at 513.

b. Prior Restraint

A law "subjecting the exercise of First Amendment freedoms to the prior restraint of a license, without narrow, objective, and definite standards to guide the licensing authority, is unconstitutional." Shuttlesworth v. City of Birmingham, 394 U.S.

147, 150-51 (1969). "[O]therwise valid content-neutral time, place, and manner restrictions that require governmental permission prior to engaging in protected speech must be analyzed as prior restraints and are unconstitutional if they do not limit the discretion of the decision maker and provide for the proper procedural safeguards." 11126 Balt. Blvd., Inc. v. Prince George's County, 59 F.3d 988, 995 (4th Cir. 1995).

Before CB-61 is analyzed under the O'Brien content-neutral framework, the licensing scheme must be examined as a prior restraint. Id.; see id. at 997 (noting that the desire of Prince George's County in enacting the licensing ordinance was to "ameliorate the adverse secondary effects of adult bookstores" but still employing the prior restraint analysis of Freedman v. Maryland, 380 U.S. 51, 58-60 (1965). If the licensing scheme meets the Freedman requirements, it is not an unconstitutional prior restraint.

Licensing restrictions on adult businesses will be upheld so long as "(1) any restraint prior to judicial review can be imposed only for a 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." FW/PBS, Inc. v. Dallas, 493 U.S. 215, 227 (1990) (O'Connor, J.) (citing Freedman, 380 U.S. 58-60); Encore Videos, Inc. v. City of San Antonio, 330 F.3d 288, 296-97 (5th Cir. 2003). The review procedure prior to issuance of the

license and judicial review of a denial must "cabin the decision-maker's discretion" so as to prevent the censorship of disfavored speech. Steakhouse, 166 F.3d at 638. Once the administrative review is completed, the second prong of Freedman requires an aggrieved applicant to have access to a prompt judicial determination of the merits of the claim. City of Littleton v. Z.J. Gifts D-4, L.L.C., 541 U.S. 774, 781 (2004); 11126 Balt. Blvd., 59 F.3d at 999-1000. However, the need for prompt judicial determination may be provided by an appeal of the adverse decision to the state's court system through the usual procedures. Z.J. Gifts, 541 U.S. at 781-82. Applying these standards, it is evident that the CB-61 licensing scheme is not an unconstitutional prior restraint.

The determination of the decision-maker¹⁵ is sufficiently limited so as to cause no concern that the ordinance may give rise to arbitrary enforcement or censorship. An application for an adult entertainment premises license requires only that the applicant provide biographical information and past business information germane to the present issuance of a license to do business. CB-61, § 5-2605. The requirement that an applicant submit parking and security plans and a life safety evaluation is not so nebulous as to render the discretion of the Chief of Police unlimited. Furthermore, so long as the application is complete, the applicant will have a decision within five days. Id. § 5-2608.

¹⁵ Here, the Chief of Police.

Applicants for a manger's or entertainer's license need only submit proof of age, biographical data, and the list of locations at which the applicant intends to work. Within five days of such an application, the applicant will have a decision. While there always exists the possibility that some decision-maker might render arbitrary rulings based on whim and personal proclivities, the ordinance does not grant that power. In order to stave off abuses, Prince George's County has provided an additional level of administrative review.

Should an application be denied or a license revoked, the adverse action must first be appealed to the Prince George's County Board of Administrative Appeals within ten days. On November 1, 2006, just a few weeks after CB-61 was to take effect, the Board of Appeals adopted a rule requiring the Board to hear any appeals from license denials under CB-61 within twenty days of receipt of appeal. After the argument is heard, the Board must, by its own rules, render a decision on manager or entertainer licenses within five days and on adult entertainment premises licenses within ten days.

Assuming an aggrieved applicant appeals as soon as possible, the administrative review will be completed thirty to thirty-five days after the initial application. This review period is not so long as to render the licensing scheme unconstitutional. Viewed in light of the Fourth Circuit's affirmation of the propriety of a ninety-day administrative review period in Steakhouse, the present review period certainly satisfies Freedman's first prong.

Addressing Freedman's second prong, the judicial review period in CB-61 is directly analogous to that in Z.J. Gifts. 541 U.S. at 777. There, the Colorado town of Littleton passed an ordinance requiring that adult bookstores and adult video stores apply for a license before doing business. Id. A denial of a license could be appealed to the Colorado state courts pursuant to the state rules of civil procedure. Id. Though the ordinance did not provide an accelerated briefing schedule or a time by which the decision had to be rendered, the Supreme Court held that the state's "ordinary judicial review procedures suffice as long as the courts remain sensitive to the need to prevent First Amendment harms and administer those procedures accordingly." Id. at 781-82.

CB-61 allows an appeal of the denial of a license to the Circuit Court for Prince George's County. The appeal is governed by the state rules of procedure. Just as in Z.J. Gifts, "ordinary court procedures [provide] judicial tools sufficient to avoid delay-related First Amendment harm." Id. at 781. Additionally, this Court has every confidence that the Prince George's County Circuit Court judges will "execute [their] powers wisely so as to avoid" such serious threats of harm. Id. In the highly unlikely case that the Circuit Court does not administer its procedures in a constitutional manner, Plaintiffs or other injured parties can mount a case-specific challenge. Id. at 782.

3. Applying the O'Brien Test

Plaintiffs allege that CB-61 is unconstitutional on its face because it includes conduct restrictions and a licensing scheme that blocks the free expression of their erotic dancing. Ordinances that "regulate sexually explicit entertainment outside the home receive intermediate scrutiny if they are not premised on a desire to suppress the content of such entertainment, but rather to address the harmful secondary effects of such entertainment: higher crime rates and lower property values." Bason, 303 F.3d at 513; see also Alameda, 535 U.S. at 434.

So long as it is conceivable that a jurisdiction sought to alleviate secondary effects of sexually oriented conduct, the Court will assume¹⁶ that "one purpose of [the regulation] is to address the secondary effects that follow from lewd conduct on licensed premises, and that hostility to erotic expression, if a purpose of the restrictions at all, does not constitute the predominant purpose." Id. at 515 (emphasis added).

Supreme Court jurisprudence regarding the regulation of adult businesses based on their secondary effects has primarily focused on two types of regulations: public nudity ordinances and zoning ordinances. Carandola I, 396 F. Supp. 2d at 636.

¹⁶ In Bason, North Carolina provided "no record evidence," "submitted no direct evidence of legislative motive," and did not "proffer a single study of secondary effects relied upon by the legislature or the Commission" to support their claim that they enacted the regulations to address secondary effects, "protect 'public decency' and to prevent 'disorderly conduct' and 'blatant bacchanalian revelries.'" 303 F.3d at 514.

Currently, the Renton test is used to examine zoning ordinances¹⁷ that affect sexually explicit businesses, and the O'Brien test is employed to analyze public nudity statutes.¹⁸ Renton, 475 U.S. at 46-50; Alameda, 535 U.S. at 433-34. The Renton test asks:

- 1) if the law is a time, place and manner regulation, or a total ban,
- 2) if a time, place and manner regulation, what is the appropriate level of scrutiny, and
- 3) if intermediate scrutiny is appropriate, whether the law serves a substantial government interest and allows for reasonable channels of communication.

Renton, 475 U.S. at 46-50; Carandola I, 396 F. Supp. 2d at 636-

37. The four-part O'Brien test examines whether:

- 1) the government has the constitutional power to enact the statute,
- 2) the statute furthers an important or substantial government interest,
- 3) the governmental interest is unrelated to suppressing free expression, and
- 4) the statute restricts First Amendment freedoms no greater than necessary to further the government's interest.

Barnes, 501 U.S. at 567 (citing O'Brien, 391 U.S. at 376-77);

Carandola I, 396 F. Supp. 2d at 637.

¹⁷It should be noted that Renton is used to analyze zoning ordinances that target adult businesses, not generally applicable zoning ordinances, such as CB-31. Renton, 475 U.S. at 46.

¹⁸As well as many other types of laws that affect speech. See, e.g., O'Brien, 391 U.S. at 369; Turner Broad. Sys., Inc. v. FCC, 520 U.S. 180, 185 (1997).

Though stated somewhat differently, the two tests are, in practical effect, nearly identical. See Barnes, 501 U.S. at 566 (stating that the Renton inquiry embodies the same standards as O'Brien); Ward v. Rock Against Racism, 491 U.S. 781, 798 (1989) (stating there is little, if any, difference between the two tests); Ben's Bar, Inc. v. Vill. of Somerset, 316 F.3d 702, 714 (7th Cir. 2003) (noting that the Supreme Court's most recent cases 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"); but see Peek-A-Boo Lounge of Bradenton v. Manatee County, 337 F.3d 1251, 1264 (11th Cir. 2003) (concluding that despite the similarities in O'Brien and Renton, zoning and public nudity ordinances "must be distinguished and evaluated separately").

CB-61 is neither a zoning nor a pure public nudity ordinance, but the O'Brien test is used to analyze restrictions on exotic dancing such as those at issue here. See Fantasy Ranch, Inc. v. City of Arlington, 459 F.3d 546, 558 (5th Cir. 2006), Carandola I, 396 F. Supp. 2d at 637.

Though CB-61 has escaped strict scrutiny, the intermediate scrutiny of O'Brien is meaningful, and the County bears the burden of persuasion. Bason, 303 F.3d at 515. Prince George's County must produce evidence that the conduct restrictions and licensing provisions of CB-61 "materially advance an important or substantial interest by redressing past harms or preventing

future ones." Satellite Broad. & Commc'ns Ass'n v. FCC, 275 F.3d 337, 356 (4th Cir. 2001). These harms "must be 'real, not merely conjectural,' and the regulation must 'alleviate these harms in a direct and material way.'" Id. (quoting Turner Broad. Sys., Inc., 512 U.S. at 664).

To survive intermediate scrutiny, CB-61 must further the County's substantial interest in regulating the secondary effects associated with the adult entertainment that occur at the adult entertainment clubs. O'Brien, 391 U.S. at 376-77; Barnes, 501 U.S. at 567; Renton, 475 U.S. at 47. Precisely how the County must demonstrate this substantial interest and the amount of evidence upon which the County may and must rely is articulated in the burden-shifting framework of Alameda Books, Inc. v. City of Los Angeles, 535 U.S. 425 (2002).

In Alameda, the City of Los Angeles enacted an ordinance that prohibited adult businesses from being located within 1,000 feet of each other or within 50 feet of a religious institution, school, or public park. Id. at 430. Writing for the plurality, Justice O'Connor stated that the City of Los Angeles did not have to "prove its theory about a concentration of adult operations attracting crowds of customers." Id. at 437. The plurality reiterated the holding in Renton that "a municipality may rely on any evidence that is 'reasonably believed to be relevant' for demonstrating a connection between speech and a substantial, independent government interest." Id. at 438; Renton, 475 U.S. at 51-52. However, this low bar does not grant the municipality

carte blanche to rely on "shoddy data or reasoning." Alameda, 535 U.S. at 438. The evidence relied upon by the municipality "must fairly support [the] rationale for the ordinance." Id.

Once the municipality has produced such evidence, plaintiffs may then attempt to "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. at 438-39 (emphasis added). Put another way, plaintiffs can cast doubt on the municipality's evidence either intrinsically - by undermining the logical connection between the evidence and the ordinance - or extrinsically - by presenting additional evidence that calls validity of the municipality's evidence into question.

If the plaintiffs are unsuccessful in casting doubt on the government's evidence of secondary effects, then the municipality has carried its burden under Renton and Alameda, and the inquiry is over. Id. at 439. However, if plaintiffs "succeed 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."¹⁹ Id.

¹⁹ The plurality in Alameda held that the plaintiffs had not cast doubt on the city's evidence, and thus the city carried its burden. Id. However, it is important to note that the Alameda reached the Supreme Court on appeal from the grant of summary judgment, and the plaintiffs' only evidence consisted of counsel's arguments that the city's main study failed to prove that the city's justification was necessarily correct. Id.

Although there is no majority opinion in Alameda, Justice Kennedy's concurrence is the narrowest opinion and thus has been recognized as controlling. See Peek-A-Boo Lounge, 337 F.3d at 1264; Ben's Bar, Inc., 316 F.3d at 722; SOB, Inc. v. County of Benton, 371 F.3d 856, 862 n.1 (8th Cir. 2003); Carandola I, 396 F. Supp. 2d at 638. Justice Kennedy wrote separately to state that in addition to asking how much evidence is required to support the government's position, the proper inquiry asks "what proposition does a city need to advance in order to sustain a secondary-effects ordinance?" Alameda, 535 U.S. at 449 (Kennedy, J., concurring in judgment). In Justice Kennedy's view, whatever proposition the city advances must have "the purpose and effect of suppressing secondary effects, while leaving the quantity and accessibility of speech substantially intact." Id.

The Court must therefore inquire "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." Ben's Bar, Inc. 316 F.3d at 724. A municipality, then, may not justify the suppression of speech based on the bald assertion that the intent is to regulate secondary effects. A connection must be made between the "negative effects and the regulated speech" through the evidence produced by the municipality and must survive the burden-shifting framework. R.V.S., L.L.C. v. City of Rockford, 361 F.3d 402, 408 (7th Cir. 2004). As noted by Justice Kennedy, "the necessary rationale for applying intermediate scrutiny is the promise that

zoning ordinances . . . may reduce costs of secondary effects without substantially reducing speech." Alameda, 535 U.S. at 450.

In specific reference to CB-61, the County must produce evidence that the conduct restrictions and licensing scheme will reduce the secondary effects it identifies, and must do so with evidence that it "reasonably believed to be relevant" and which "fairly supports" its rationale. Id. at 438; see id. at 449. The rationale supported must be that limiting expression will have the "purpose and effect" of reducing the secondary effects identified by the County.

a. First Prong - Constitutional Power

The first prong of the O'Brien test requires that it be within the constitutional power of the Government entity to enact the regulation in question. Barnes, 501 U.S. at 567. It is undoubtedly within the power of the government to prevent public indecency and regulate, within constitutional limits, sexually oriented entertainment. Id. Moreover, Plaintiffs have not suggested that CB-61 fails in this respect.

b. Second Prong - Secondary Effects

1. County Evidence Relied Upon

The "Declaration of Findings and Public Policy" that begins CB-61 states that the ordinance is intended to "mitigate the secondary effects of adult-oriented businesses." CB-61, § 5-

2600(1). Among those secondary effects, the ordinance notes, are "(a) prostitution and other sex related offenses (b) drug use and dealing and (c) health risks through the spread of AIDS and other sexually transmitted diseases." Id. § 5-2600(3).

At trial, Prince George's County introduced the evidence that had been relied upon by the County Council. This evidence was of the type that Alameda and its progeny have recognized and may validly be relied upon by municipalities. See SOB, Inc., 317 F.3d at 862-63; Fantasy Ranch, 459 F.3d at 559.

The Council had before it copies of statutes regulating adult entertainment businesses from other jurisdictions, as well as anecdotal evidence of the deleterious effects of sexually oriented businesses. Def.'s Ex. 3. The Council also had before it various updates on legal precedent dealing with the regulation of sexually oriented businesses, and summaries of crime impact studies by municipal and state governments on the harmful secondary effects of sexually oriented businesses. The Council also had evidence specific to the County, including a list of calls for service and numbers of crimes at specific adult entertainment clubs, as well as statements from Colonel Jeffrey Cox of the County Police Department as to the problems that the County faces in dealing with adult entertainment businesses.

The County introduced at trial thirty-three "studies" from other jurisdictions on the effects of various types of sexually

oriented businesses.²⁰ Def.'s Ex. 4. Many of these "foreign jurisdiction" studies have been relied upon by other jurisdictions in prior cases. See Carandola I, 396 F. Supp. 2d at 643-45 (listing some of the studies relied upon by North Carolina that were also relied upon by Prince George's County).

The evidence relied on by the County is typical of the evidentiary support relied upon by other state and municipal governments in enacting legislation similar to CB-61. Gammoh v. City of La Habra, 395 F.3d 1114, 1126 (9th Cir. 2005) (upholding the reliance by a city on evidence very similar to that relied upon by Prince George's County); see also G. M. Enterprises, Inc. v. Town of St. Joseph, 350 F.3d 631, 633-34 (7th Cir. 2003); Fantasy Ranch, 459 F.3d at 559; Andy's Restaurant & Lounge, Inc. v. City of Gary, 466, F.3d 550, 555 (7th Cir. 2006); N.W. Enterprises, Inc. v. Houston, 352 F.3d 162, 175-75 (5th Cir. 2003); Encore Videos, 330 F.3d at 294-96; SOB, Inc., 317 F.3d at 862-63; but see R.V.S., L.L.C., 361 F.3d at 411-12 (finding a city's limited proffer of evidence insufficient to carry its initial burden under Alameda).

The evidence introduced by the County was sufficient to carry the initial burden under Alameda and Renton. The burden then shifted to Plaintiffs to offer evidence that rebuts the

²⁰ Though termed "studies," Plaintiffs established that the different materials cited as "studies" by Defendants varied greatly in method and statistical significance. The Court finds the semantic question of what is a "study" to be insignificant and thus will simply refer to anything termed as a "study" as such.

Defendants' evidence either by demonstrating "that the municipality's evidence does not support its rationale" or by "disput[ing] the municipality's factual findings." Alameda, 535 U.S. at 438-39.

2. Plaintiffs' Evidence

Plaintiffs' primary witness was Randy D. Fisher, Ph.D., a member of the faculty of the Psychology Department of the University of Central Florida. He holds a Ph.D. in psychology from Vanderbilt University and was Director of the Survey Research Laboratory from 1998 until 2003. He has authored over 500 peer-reviewed articles and has performed fifteen to twenty reviews of the evidence put forth by municipalities for restrictions on adult businesses.

Dr. Fisher prepared a report entitled "An Analysis of the Predicate for CB-61-2006" critiquing the studies and evidence relied upon by Prince George's County. In performing his review of CB-61, Dr. Fisher reviewed the evidence supplied by the Plaintiffs to the County as well as the evidence submitted by Defendants as the County's trial record.

It is sufficient for purposes of the instant discussion to state that the Court finds that Dr. Fisher effectively demonstrated that the "evidence" relied upon by the County was manifestly inadequate to validate its secondary effects conclusion with regard to the conduct restrictions. Indeed, the County appears to have gone out of its way to avoid obtaining

readily available information that could have been significant in reaching a secondary effects conclusion with regard to conduct restrictions. For example, Wet Sands provides an all-male revue in which nude dancers perform a few nights a week, but also operates without adult entertainment on other nights, and even allows a church to use the premises for services on certain days. There is no doubt that anyone purporting to have a genuine interest in secondary effects of adult entertainment should at least compare the difference between "secondary effects" evidence at this location on adult entertainment nights and the times when there is other entertainment and/or church services.

3. County's Trial Evidence

The County presented the testimony of Lewis Gentile ("Gentile"), author of the study of the effects of adult businesses in Prince George's County on which the County relied when enacting CB-61. Gentile has had a long career in state and federal law enforcement, holds a bachelor's degree in criminology, a master's degree in public administration, and has nearly completed his Ph.D. in sociology. He is currently the president of Gentile, Meinert and Associates, a consulting firm.

The Gentile study was seriously flawed and was inadequate to support the County's secondary effects conclusion with regard to the conduct restrictions in CB-61. For example, Gentile acknowledged that "[y]ou can't categorize what I've done as

meeting a statistics methodology, rigorous scientific requirements. You would categorize it as a survey that has gone through a process." Trial Tr. 10-11 (Dec. 20, 2006). Moreover, Gentile conceded that some of the businesses in his study do not even provide adult entertainment. Gentile also stated that he had no empirical evidence to support the claim that there was a secondary effect of an increase in crime. His conclusion was supported "exclusively" by previous studies done by others, remote in place and time from the County of today.

Gentile testified that his conclusion that adult businesses cause a decrease in property values was based on "interviews with [some people] within relative close proximity"²¹ and the "whole reasonableness of the issue." Trial Tr. 11-12. In sum, as Gentile himself testified, Dr. Fisher's critique of Gentile's report was "a fine piece of academic work." Trial Tr. 23.

Of course, the County "need not conduct local studies or produce evidence independent of that already demonstrated by other municipalities to demonstrate the efficacy of its chosen remedy, 'so long as whatever evidence [the County] relies upon is reasonably believed to be relevant to the problem it addresses.'" Peek-A-Boo Lounge, 337 F.3d at 1265 (emphasis added). However,

²¹ Gentile did not identify, and presumably did not know, where the interviewees lived or what connection, if any, they had to the vicinity of the business in question. It appears that all that was known was that they happened to be in the vicinity when interviewed. Moreover, some of the businesses that Gentile studied were not even adult entertainment businesses. The interview "evidence" is, accordingly, essentially without probative value.

deference to the County must be balanced with the Court's "obligation to exercise independent judgment when First Amendment rights are implicated." Alameda, 535 U.S. at 440 (citing Turner Broad. Sys., Inc., 512 U.S. at 666). In accordance with that balance, this Court must require the County's actions to be narrowly tailored, such that the ordinance "be drawn to affect only that category of business shown to produce the unwanted secondary effects." Peek-A-Boo, 337 F.3d at 1272 (citing Renton, 475 U.S. at 52) (emphasis added).

4. The Conduct Restrictions

The County has not produced any credible evidence that the conduct restrictions it seeks to impose on adult entertainment businesses such as Plaintiffs' would reduce the alleged secondary effects it sought to alleviate, such as drug dealing, the spread of STDs, and an "atmosphere of deviance." See Trial Tr. 14. Indeed, there is nothing of any substance to support a conclusion that the secondary effects alleged by the County (such as rape, robbery, assault, theft from automobiles, etc.) would be reduced at all by requiring dancers to perform on an elevated stage, keeping patrons six feet away from performers, prohibiting tips during performances, banning any physical contact between patrons and entertainers, etc.

Accordingly, absent the Savings Clause, the conduct restrictions in CB-61 would not pass constitutional muster. As discussed above, however, the Savings Clause restricts the

applicability of the conduct restrictions to obscene conduct. Such conduct is not afforded First Amendment protection. Accordingly, by virtue of the Savings Clause, the conduct restrictions in CB-61 are valid and enforceable, but, of course, only with regard to conduct that is obscene under the Miller standards.

5. The Licensing Scheme

Plaintiffs were not successful in rebutting the evidence of secondary effects supporting a licensing scheme. The County considered evidence establishing that, absent licensing, it is not feasible to know of all adult entertainment clubs and impossible to know the identities of operators, employees and entertainers. Many of the problems rendering Gentile's study inadequate to support the County's conclusion regarding conduct restrictions could be overcome if he (and the County) were able to know which businesses provided adult entertainment.

The County has adequately demonstrated the secondary effects caused by an absence of a licensing scheme. These include the County's inability to identify the pertinent businesses and people, the need to ensure adequate security for patrons and neighborhoods in view of the number of persons attending these clubs at late hours, and the need to ensure that persons convicted of certain offenses are not engaged in the business. Additionally, it is apparent that imposing a licensing scheme enabling the identification of entertainers and others who

generate substantial cash income is likely to have a positive effect upon the enforcement of the income tax laws. Most importantly, Plaintiffs' demonstration of many of the defects in the County's evidence plainly indicates that a licensing scheme would substantially assist the County in an effort to obtain reasonably reliable evidence of the presence or absence of asserted secondary effects.

Thus, the Court concludes that the licensing scheme addresses a substantial interest in avoiding the reasonably perceived secondary effects stemming from the absence of a licensing scheme.

3. Third Prong - Content Neutral

Under the third prong of the O'Brien, test, the ordinance must be "justified without reference to the content of the regulated expression." Barnes, 501 U.S. at 567. As discussed above, the County's stated purpose in enacting CB-61 was to combat secondary effects of adult entertainment. In view of that stated purpose, combined with the Fourth Circuit's assumption of that intent by the North Carolina legislature in Bason, the licensing scheme in CB-61 can be justified by the County's intent to regulate harmful secondary effects. See Bason, 303 F.3d at 515 (presuming, though no evidence was offered on the point, that the North Carolina legislature intended to address the secondary effects of nude dancing).

d. Fourth Prong - Unrelated to Suppression

Once a substantial interest is found that is unrelated to the suppression of free speech, O'Brien requires that "any incidental restriction on alleged First Amendment freedoms be no greater than is essential to further the government's interest." O'Brien, 391 U.S. at 376. The County is not required to choose the "least restrictive means" of serving the substantial interest, but it may not "burden substantially more speech than is necessary to further the government's legitimate interests." Id. The County may not "regulate expression in such a manner that a substantial portion of the burden on speech does not serve to advance its goals." Id.

The Court concludes that the existence of a licensing scheme in CB-61 is justified by the County's interest in preventing the above-described secondary effects resulting from totally unlicensed adult entertainment businesses of the type operated by Plaintiffs. The Court finds that except with regard to public posting of licenses identifying licensed individuals, the licensing scheme is no greater than is essential to justify the County's legitimate governmental interest.

The ordinance provides that entertainers' licenses shall be posted so as to be readily available for inspection by County authorities (§ 5-2610) and managers' licenses "in a conspicuous place and manner." Id. at § 5-2610(b). The ordinance is ambiguous as to whether there must be a posting of licenses in a manner that discloses the name and address of individual

licensees to members of the public. The Court finds no justification for the posting of licenses in a manner to make public the names and/or addresses of individual licensees.

Thus, consistent with Judge Chasanow's preliminary injunction, the Court will enjoin enforcement of a requirement requiring the posting of licenses in a manner that would make the names and addresses of licensed individuals visible to members of the public. On the other hand, the County might be able to adopt a public posting requirement that preserved the privacy of the names and addressees of individual licensees;²² the posting provision could thus be adequately tailored to be valid and enforceable. Or, there presumably could be a requirement that licenses need not be posted but had to be readily accessible for inspection by authorized governmental personnel.

III. CONCLUSION

For the foregoing reasons, the Court decides that:

1. Prince George's County Ordinance CB-31-2006 is facially valid and enforceable.
2. The provisions of Prince George's County Ordinance CB-61-2006, §§ 5-2609(a)(8), 5-2609(b)-(d) and 5-2613 are facially valid and enforceable.
3. The hours of operation provision in § 5-2612 is facially valid and enforceable to the extent that it imposes on adult entertainment businesses the

²² For example, it may be feasible to provide that there be public posting of licenses identifying individual licensees by an assigned number, with management required to have available for inspection by appropriate government personnel the identity and address of each such licensee.

same restrictions as applicable to businesses that are licensed to serve alcoholic beverages.

4. The sign posting provisions of Prince George's County Ordinance CB-61-2006, § 5-2609(a)(11) are facially valid and enforceable but only with regard to the display of a sign stating that the premises are licensed and that entertainers are not permitted to engage in any type of sexual conduct.
5. The provisions of Prince George's County Ordinance CB-61-2006, §§ 5-2609(a)(1)-(7), and (a)(9)-(10) are facially valid and enforceable with respect to conduct that is "obscene" but not as to conduct that is not "obscene."
6. The provisions of Prince George's County Ordinance CB-61-2006, §§ 5-2602 - 5-2608, 5-2611 and 5-2614 - 5-2616 are facially valid and enforceable.
7. The provisions of Prince George's County Ordinance CB-61-2006, § 5-2610 are facially valid and enforceable except as to the requirement for any public display of licenses disclosing the names and/or addresses of individual licensees.
8. By separate Orders the Court shall issue Permanent Injunctions and Judgments consistent herewith.

SO DECIDED, on Thursday, April 12, 2007.

/ s /
Marvin J. Garbis
United States District Judge

Work Phone 785.528.4163, work fax 785.528.4795

JOHN SAMPLES

Experience: 2006-Present Kan Build, Inc. Osage City, KS
CEO, Chairman of the Board

2003-2006
Owner Farming General Muscle Car Milanos, CMI TRC VIP Inc

2001-2003 All American Homes of KS, LLC Osage City, KS
General Manager All American Homes of CO, LLC Milliken, CO

1989-2001 Kan Build, Inc. Osage City, KS
President/ CEO

- Founded Corporation
- Lead L.B.O.
- Loveland, CO plant opened 2/94
- Walsenburg, CO plant opened 2/96
- 1997 \$37M in sales

1984-1989 Marley Continental Homes Osage City, KS
General Manager

1981-1984 Modular Technology, Inc. Waco, TX
Plant/ Field Manager

1974-1981 Fleetwood Enterprises Emporia, KS
Salesman to Production Mgr. to Special Projects

Education: Butler County Community College El Dorado, KS

Positions/Memberships:

- Turnaround Entrepreneur of the Year Missouri and Kansas 1994
- Regional VP Kansas Chamber of Commerce 1997
- VP Kansas Homebuilders 1996-997
- President Elect Kansas Homebuilders 1997-1998
- Member U.S. Chamber of Commerce
- National Small Business Board 1995-2001

Interests: Muscle Cars and other business interests

House Fed & State Affairs

Date: 3-18-2010

Attachment 16

John W. Samples
Outline of Testimony Opposing HB2633

- I. Negative Economic Effects
 - a. Loss of Jobs
 - b. Loss of tax revenue

- II. Much Ado About Nothing
 - a. Lower Complaints
 - b. Helping Law Enforcement
 - i. Safe Environment
 - ii. No ABC Violations
 - c. Lost Opportunities
 - d. A further load on State Budget
 - e. No negative societal consequences

- III. Make up of Customers