

**CRIME-RELATED SECONDARY EFFECTS OF
SEXUALLY-ORIENTED BUSINESSES**

**REPORT TO THE JACKSON COUNTY LEGISLATURE
JACKSON COUNTY, MISSOURI**

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May 9, 2008

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INTRODUCTION

Expressive activities that occur inside sexually-oriented businesses (SOBs), such as X-rated bookstores, video arcades, peep-shows, or erotic dance clubs, have broad First Amendment protection. Nevertheless, governments are allowed to regulate the time, manner, and place of expressive activities so long as the regulations are motivated by and aimed at ameliorating the potential secondary effects of SOBs. Governments typically attempt to regulate SOBs through zoning or planning codes, business licensing codes, and where applicable, through alcoholic beverage control codes. Regardless of the mechanism, of course, regulations must be aimed narrowly at the secondary effects of the businesses. Regulation ordinarily begins with legislative fact-finding. This report is part of the fact-finding process.

I am a Professor at the University of California, Irvine with appointments in the Departments of Criminology, Environmental Health Science, and Planning. My *curriculum vitae* is attached to this report. My degrees include a B.S. from the University of Wisconsin and an M.A. and Ph.D. from Northwestern University. I have taught graduate courses in statistics and criminology at the University of California, Irvine; the University of Minnesota; the University of Michigan; the University of New Mexico; Arizona State University; the State University of New York, Albany; and the University of Illinois, Chicago. I have supervised more than two-dozen doctoral students in statistics and/or criminology at these universities. My students hold appointments at major research universities in the U.S. and U.K.

My training and experience qualify me as an expert in criminology and statistics. I joined the American Society for Criminology and the American Statistical Association in 1977 and am currently a member of both scholarly societies. My scholarly contributions in these fields have been recognized by awards from Federal and state government agencies and scholarly societies. As an expert in these fields, I have served on Federal and state government task forces and panels and have served on the editorial boards of national peer-reviewed journals. I am the author or co-author of five books more than 70 articles in these fields.

Throughout my career, I have applied my expertise in statistics and criminology to the problem of measuring site-specific public safety hazards, especially the hazards associated with sexually-oriented businesses (SOBs). These hazards are also called “ambient crime risks” or “crime-related secondary effects.” I have advised local, county, and state governments on these problems for nearly 30 years. Based on my background and research, I have three opinions that are relevant to Jackson County:

Opinion 1: The criminological theory of ambient crime risk, known as the “routine activity theory of hotspots,” predicts that SOBs as a class will have large, significant crime-related secondary effects. The effect is the product of three factors. (1) SOBs draw patrons from wide catchment areas. (2) Because they are disproportionately male, open to vice overtures, reluctant to report victimizations to the police, *etc.*, SOB patrons are “soft” targets. (3) The high density of “soft” targets at the site attracts predatory criminals, including vice purveyors who dabble in crime and criminals who pose as vice purveyors in order to lure or lull

potential victims.

Opinion 2: In the last thirty years, empirical studies employing a wide range of quasi-experimental designs have found that SOBs have large, significant crime-related secondary effects. Since these studies are quasi-experiments, each can be criticized on narrow methodological grounds. Since no single methodological critique applies to all (or even most) of these studies, however, the consensus finding of the literature is scientifically robust.

Opinion 3: Given that strong criminological theory predicts the effect, and given that the prediction is corroborated consistently by the empirical literature, it is a *scientific fact* that SOBs pose ambient crime risks.

This report will expand on and explain these opinions. **Section 1** introduces the criminological theory of secondary effects. The secondary effects “debate” often misses this important point: Criminological theory *predicts* that SOBs will generate ambient public safety hazard. The same theory informs the regulation of SOBs, explaining how effective mitigation strategies can be incorporated into codes.

After developing the theoretical foundation, **Section 2** reviews the early that constitute the voluminous “secondary effects literature” that, following the *Renton* standard, governments have relied upon.¹ *Without exception*, the early studies corroborated theoretical expectations in that all found that SOBs posed large, significant ambient public safety hazards.

In the last decade, the validity of the consensus finding of the early literature has come under attack from experts retained by SOBs. To be fair, the early studies were conducted without modern computers and related resources. Although these studies could have been “done better,” the validity of the consensus finding has survived the critics’ attacks. Nevertheless, in the last decade, the secondary effects literature has grown more voluminous.

The more recent literature, reviewed in **Sections 3-5**, reinforces the consensus finding of the earlier studies. Reflecting an emerging theme, many of the more recent studies focus on SOB subclasses, including adult cabarets (**Section 3**), video arcades (**Section 4**), and “off-site” adult bookstores. As criminological theory predicts, all three SOB subclasses have large, significant secondary effects.

Secondary effects studies sponsored by the SOB industry invariably contradict the consensus finding that SOBs pose large, significant public safety hazards. In many instances, the “null findings” reported by these studies rest on bizarre interpretations of numerical results. In other instances, the reported “null findings” are an artifact of design – *i.e.*, the methods used to

¹ *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986).

conduct the study. It should be no surprise that a study's results can be influenced (or biased) by the study's design. Methodological rules have evolved to guard against design abuses. Two of the most important methodological rules are discussed in **Section 6**.

The first methodological rule concerns ambient crime risk measures. For purposes of a secondary effects study, criminologists prefer to measure ambient crime risk with crime incident reports, such as the Uniform Crime Reports collected by local police agencies. Experts retained by the SOB industry prefer 911 calls. The rationale for this preference, put simply, is that 911 calls generate a bias in favor a "null finding." If these biases are corrected, the null finding is rejected.

The second methodological rule concerns the criteria under which a "null finding" can be interpreted to mean that SOBs have no secondary effects. To illustrate, suppose that I search for my car keys but cannot find them. Although it is possible that I could not find them because they do not exist, it is also possible that I did not look hard enough. An analogous dilemma arises in secondary effects research when no secondary effect is found. Although it is possible that none exists, it is also possible that the search for secondary effects was too superficial.

A "quick and dirty" study is the easiest way *not* to find a secondary effect. The potential for abuse is addressed by the methodological convention of "statistical power." Put simply, any researcher who fails to find a secondary effect must demonstrate that the search was sufficiently powerful. Otherwise, the unsuccessful search is *inconclusive*.² Many of the studies sponsored by the SOB industry use inherently weak designs to produce "null findings." When widely accepted methodological conventions are applied to these findings, of course, they are *inconclusive*.

² The Latin aphorism "*Negativa non probanda*," attributed to Isaac Newton, is translated roughly as "Finding nothing proves nothing."

1. THE CRIMINOLOGICAL THEORY OF SECONDARY EFFECTS

It is a *scientific fact* that SOBs, as a class, pose large, statistically significant ambient public safety hazards. The public safety hazard is realized not only in terms of “victimless” crimes (prostitution, drugs, *etc.*) but, also, in terms of the “serious” crimes (assault, robbery, *etc.*) and “opportunistic” crimes (vandalism, trespass *etc.*) that are associated with vice.

Table 1 - Secondary Effect Studies Relied on by Legislatures

Los Angeles, CA	1977	Times Square, NY	1994
Whittier, CA	1978	Newport News, VA	1996
St. Paul, MN	1978	Dallas, TX	1997
Phoenix, AZ	1979	San Diego, CA	2002
Minneapolis, MN	1980	Greensboro, NC	2003
Indianapolis, IN	1984	Centralia, WA	2003
Austin, TX	1986	Daytona Beach, FL	2004
Garden Grove, CA	1991	Montrose, IL	2005
Manhattan, NY	1994	Sioux City, IA	2006

I call the SOB-crime relationship a “*scientific fact*” because, first, it is predicted by a strong scientific theory; and second, because the theoretical prediction has been corroborated empirically. On the second point, Table 1 lists eighteen empirical studies whose findings corroborate the claim that SOBs pose large, significant ambient public safety hazards. The remarkable range of time-frames, locations, and circumstances represented by these studies suggests that the consensus finding is general and robust.

1.1 THE ROUTINE ACTIVITY THEORY OF “HOTSPOTS”

The consensus finding of this literature becomes *scientific fact* when it is interpreted in the context of a scientific theory. In this instance, the SOB-crime relationship is predicted by the central “organizing theory” of modern scientific criminology. The so-called routine activity theory³ answers the what-when-where questions of victimization risk. As applied to “hotspots of predatory crime,” such as SOB sites, the theory holds that ambient crime risk, generally defined as the number of crimes within 500-1000 feet of a site, with the product of four risk factors. This

³ This theory is due to Cohen and Felson (1979; Felson and Cohen, 1980; Felson, 1998). The routine activity theory is one of the most validated theories in modern social science. In 2005 alone, according to the *Social Science Citation Index*, the 1979 Cohen-Felson article was cited 621 times. The “hotspot” application of the theory is due to Sherman, Gartin, and Buerger (1989) and to Brantingham and Brantingham (1981; 1993).

can be written as:

$$\textit{Ambient Crime Risk} = \frac{\textit{N of Targets} \times \textit{Average Value}}{\textit{Police Presence}} \times \textit{Offenders}$$

An increase (or decrease) in the number of targets at the site or in their average value yields an increase (or decrease) in ambient crime risk. An increase (or decrease) in police presence, on the other hand, yields a decrease (or increase) in ambient crime risk.

1.1.1 TARGETS

SOB sites are crime hotspots because they attract potential victims, or targets, from wide catchment areas. SOB sites are no different in that respect than tourist attractions (Dimanche and Lepetic, 1999; Danner, 2003) and sporting events (Corcoran, Wilson and Ware, 2003; Westcott, 2006). Compared to the targets found at these better known hotspots, however, the targets found at SOBs are exceptionally attractive to offenders. This reflects the presumed characteristics of SOB patrons. The patrons do not ordinarily live in the neighborhood but travel long distances to the site.⁴ They are disproportionately male, open to vice overtures, and carry cash. Most important of all, when victimized, they are reluctant to involve the police. From the offender's perspective, they are "perfect" victims.

1.1.2 OFFENDERS

The crime-vice connection has been a popular plot device for at least 250 years. John Gay's *Beggar's Opera* (1728), for example, describes the relationship between MacHeath, a predatory criminal, and the vice ring composed of Peachum, Lucy, and Jenny. This popular view is reinforced by the empirical literature on criminal lifestyles and thought processes. The earliest and best-known study (Shaw, 1930; Snodgrass, 1982) describes the life of "Stanley," a delinquent who lives with a prostitute and preys on her clients.

This routine activity theory of hotspots assumes a pool of rational offenders who move freely from site to site, choosing to work the most attractive site available. These offenders lack legitimate means of livelihood and devote substantial time to illegitimate activities; they are "professional thieves" by Sutherland's (1937) definition. Otherwise, they are a heterogeneous

⁴ In 1990, as part of an investigation, Garden Grove police officers ran registration checks on motor vehicles parked at SOBs. Virtually all of the vehicles were registered to addresses outside Garden Grove. The 1986 Austin, TX study arrived at the same finding. More recently, the Effingham County Sheriff's Department ran registration checks on motor vehicles parked at an SOB in the Village of Montrose. Except for employees' vehicles, all were from outside the county.

group. Some are vice purveyors who dabble in crime. Others are predatory criminals who promise vice to lure and lull their victims. Despite their heterogeneity, the offenders share a rational decision-making calculus that draws them to adult business sites.

1.1.3 TARGET VALUE

Criminological thinking has changed little in the 75 years since Shaw's (1930) *Jack-Roller*. To document the rational choices of predatory criminals, Wright and Decker (1997) interviewed 86 active armed robbers. Asked to describe a perfect victim, all mentioned victims involved in vice, either as sellers or buyers. Three of the armed robbers worked as prostitutes:

From their perspective, the ideal robbery target was a married man in search of an illicit sexual adventure; he would be disinclined to make a police report for fear of exposing his own deviance (p. 69).

The rational calculus described by these prostitute-robbers echoes the descriptions of other predators (see Bennett and Wright, 1984; Feeney, 1986; Fleisher, 1995; Katz, 1988, 1991; Shover, 1996).

1.1.4 POLICE PRESENCE

Controlling for the quantity and value of the targets at a site, rational offenders choose sites with the lowest level of visible police presence. In strictly physical terms, increasing (or decreasing) the number of police physically on or near a site reduces (or increases) ambient risk. However, police presence can also be virtual through remote camera surveillance and similar processes.

Whether physical or virtual, the *effectiveness* of police presence can be affected – for better or worse – by broadly defined environmental factors. For example, due to the reduced effectiveness of conventional patrolling after dark, crime risk rises at night, peaking around the time that taverns close. Darkness has a lesser effect on other policing strategies, which raises the general principle of *optimizing* the effectiveness of police presence. One theoretical reason why SOB subclasses might have qualitatively different ambient risks is that they have different optimal policing strategies.

1.2 WHAT DOES CRIMINOLOGICAL THEORY SAY ABOUT SUBCLASSES?

In lawsuits, SOB plaintiffs have argued that their narrowly-defined SOB subclass is exempt from criminological theory. But in fact, the relevant criminological theory applies to all subclasses. To the extent that two SOB subclasses draw similar patrons from similarly wide catchment areas, theory predicts similar ambient crime risks. Put simply, similar causes (the presence of many high-value targets and low levels of police presence) have similar effects (*i.e.*, high ambient crime risk). This theoretical expectation is consistent with the data. Although the

applies identically to all SOB subclasses, however, at the same time, it allows for qualitative differences among the subclasses.

In some instances, subclass-specific risks arise because the defining property of the subclass implies (or creates) idiosyncratic opportunities (or risks) for particular types of crime. Compared to the complementary subclass, for example, SOBs that serve alcohol present idiosyncratic opportunities for non-instrumental crimes, especially simple assault, disorderly conduct, *etc.* SOBs that provide on-premise entertainment present idiosyncratic opportunities for vice crime, customer-employee assault, *etc.* Criminologists call this etiological crime category “opportunistic.” There are many obvious examples and SOB regulations often treat subclasses differently because their ambient opportunity structures are different.

Qualitative differences also arise when the defining property of the subclass compromises the effectiveness of common policing strategies. Policing SOBs that offer on-site entertainment (adult cabarets, peep shows, *etc.*) may require that police officers inspect the interior premises, for example. Because this places officers at risk of injury, policing on-site SOBs requires specially trained and equipped officers, prior intelligence, specialized backup manpower, and other resources. Because potential offenders can wait inside the premises without arousing suspicion, moreover, routine drive-by patrols to “show the flag” are less effective.

The optimal policing strategies for two subclasses are sometimes incompatible or even mutually exclusive. To illustrate, an optimal policing strategy for SOBs that do not offer on-site entertainment, such as adult video and book stores, often involves neighborhood patrols by uniformed officers in marked cars. Visibility is a key element of this strategy. For peep shows and adult cabarets, on the other hand, the optimal policing strategy often involves boots-on-the-ground deployments of plainclothes officers and unmarked cars. Invisibility is a key element of this strategy. Obviously, neighborhood patrols by plainclothes officers driving unmarked cars would defeat a major purpose of drive-by patrols; likewise, sending uniformed officers into an adult cabaret would be an inefficient method of control and might pose a physical danger to the officers, patrons, and employees. As a general rule, distinct SOB subclasses may require distinct policing strategies to mitigate ambient crime risks.

To some extent, differences among the optimal policing strategies for SOB subclasses amount to differences in cost. In many (but certainly not all) instances, the least expensive policing strategy involves drive-by patrols by uniformed officers in marked cars. Beyond the deterrent value of visible drive-by patrols, patrol officers can keep watch for known offenders and suspicious activity. When potential problems are spotted, the patrol officers can forward the information to a specialized unit or, if necessary, handle it on the spot, requesting backup

resources only as needed.⁵ It is important to realize, nevertheless, that the implementation of a policing strategy is determined in large part by local exigencies.

1.3 THE THEORETICAL ROLE OF ALCOHOL

Proximity to alcohol is a key component of the criminological theory of secondary effects. Alcohol aggravates an SOB's already-high ambient crime risk by lowering the inhibitions and clouding the judgments of the SOB's patrons. In effect, alcohol makes the soft targets found at the SOB site considerably softer. The available data corroborate this theoretical expectation in all respects. Predatory criminals prefer inebriated victims,⁶ *e.g.*, and SOBs that serve alcohol or that are located near liquor-serving businesses pose accordingly larger and qualitatively different ambient public safety hazards.⁷ Governments rely on this consistent finding of crime-related secondary effect studies as a rationale for limiting nudity in liquor-serving businesses.

1.4 THE CRIMINOLOGICAL THEORY OF MITIGATION STRATEGIES

The routine activity theory points to strategies for mitigating the crime-related secondary effects of SOBs. In principle, the effects of a mitigation strategy can be *direct* or *indirect*. *Direct* effects are typically realized through *direct* manipulation of the risk factors to reduce ambient risk. *Indirect* effects are realized by making the risk factors more efficient. In practice, of course, some of the strategies are expensive or otherwise impractical. I begin with one of the most expensive, least practical mitigation strategies.

1.4.1 INCREASING THE LEVEL OF POLICE PRESENCE

The simplest, surest way to mitigate ambient crime risk is to assign more police to SOB neighborhoods. Although the relationship between police presence and ambient crime risk is

⁵ See, *e.g.*, National Research Council. *Fairness and Effectiveness in Policing: The Evidence*. National Academies Press, 2004.

⁶ See, *e.g.*, Wright and Decker (1997, p. 87): “[E]ach of (the armed robbers) expressed a preference for intoxicated victims, who were viewed as good targets because they were in no condition to fight back.” (p. 70); “Several [armed robbers] said that they usually chose victims who appeared to be intoxicated because, as one put it, ‘Drunks never know what hit them.’”

⁷ A 1991 study of Garden Grove, California by McCleary and Meeker found a large, significant increase on ambient crime risk when an alcohol-serving establishment opened within 500 feet (*ca.* one city block) of an SOB. Secondary effect studies in Greensboro (2003) and Daytona Beach (2004) found that alcohol-serving SOBs had larger secondary effects than retail alcohol outlets. These studies are reviewed in Section 2.

complicated and complex, criminologists generally accept the aphorism: “more police, less crime.”⁸ Unfortunately, this simplest, surest mitigation strategy is expensive and impractical. From the government’s perspective, increasing the number of police patrols in a neighborhood is prohibitively expensive. From the perspective of the SOB and its patrons, police presence can be highly intrusive, bordering on “harassment.”

In principle, fixed levels of police presence can be made more effective by fine-tuning *status quo* policing strategies. Police patrols can be made more visible, *e.g.*, by using uniformed officers in marked vehicles instead of plain-clothes officers in unmarked vehicles. Most police departments have already optimized their strategies, however. Police effectiveness can also be enhanced by incorporating rational enforcement policies into SOB codes. Several examples are described in subsequent sections.

1.4.2 DISTANCING SOB SITES FROM SENSITIVE USES

Reducing the density of targets in an SOB neighborhood is a more economical, practical mitigation strategy. As a rule, the most problematic secondary effects are associated with dense concentrations of SOBs (*e.g.*, Boston’s “combat zone” model). Accordingly, many governments require minimum distances between SOB sites (*e.g.*, the Detroit model). In addition to reducing per-site target density, thereby reducing aggregate risk, this model minimizes many obstacles to routine policing.

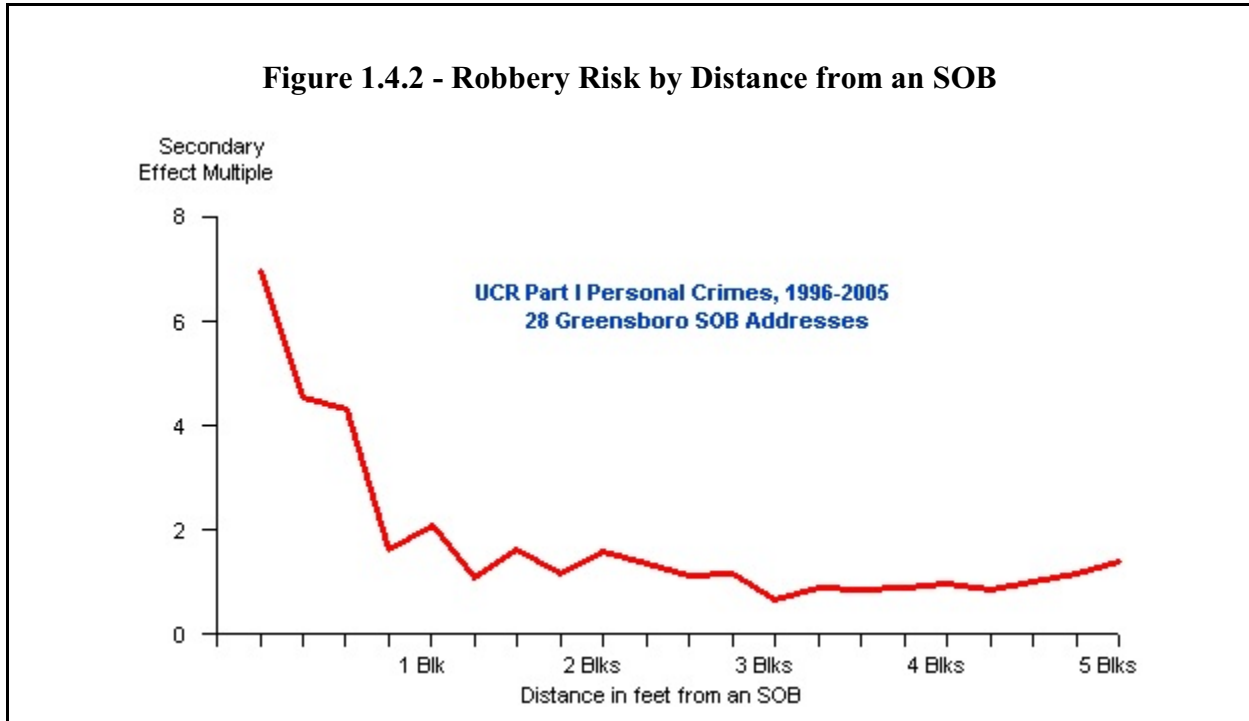
Figure 1.4.2 demonstrates the rationale for a related mitigation strategy.⁹ The vertical axis of this “risk-distance function” is calibrated in units of Part I personal crime (homicide, aggravated assault, robbery, and rape) risk, relative to the neighborhood risk, for 28 Greensboro SOBs for 1996-2005. The horizontal axis is calibrated in distance from an SOB. The unit of distance is a city block which, in the Greensboro neighborhoods from which these data are taken, is approximately 400 feet.

Suppose that a person exits a building five city blocks (*i.e.*, 2,000 feet) from an SOB. As this person walks toward the SOB, his or her victimization risk rises. For the first few blocks, the risk increments are modest; thereafter, the risk increments grow large. At two blocks from the SOB, the person’s risk is double what it was at start of the five-block walk. At one-half

⁸ See, *e.g.*, S.D. Levitt. Using electoral cycles in police hiring to estimate the effect of police on crime. *American Economic Review*, 1997, 87:270-290. “Increases in police are shown to substantially reduce violent crime but have a smaller impact on property crime. The null hypothesis that the marginal social benefit of reduced crime equals the costs of hiring additional police cannot be rejected.” (p. 270). Some “victimless” vice crimes are an exception to the rule, of course.

⁹ Risk-distance functions are revisited in Sections 3-4 below.

block. the risk is six times higher. If the person walks away from the SOB site, his or her victimization risk falls until, at a distance of three blocks from the site, the risk decrements are imperceptible.



Governments can take advantage of the risk-distance relationship plotted in Figure 1.4.2 by setting minimum distances between SOBs and other sensitive land uses. SOB patrons have no choice but to “run the gauntlet.” The victims of some ambient crime incidents are not SOB patrons, however, but rather, are neighborhood residents and by-passers. By setting minimum distances between SOBs and the land uses frequented by these people, the government mitigates the SOB’s ambient crime risk secondary effect.¹⁰

1.4.3 LIMITING THE HOURS OF OPERATION

Another economical and practical strategy for mitigating the ambient crime risk of SOBs is to limit the hours of operation. Criminological theory reduces to the aphorism, “more targets,

¹⁰ I am often asked to specify a distance sufficient to fully mitigate an SOB’s ambient crime risk. The correct answer to this question – “As far as possible” – is not helpful. Although the risk-distance function plotted in Figure 1.4.2 seems to answer this question, remember that it is the *average* of 28 SOB sites. By definition, some sites are “better,” some “worse.” Planners must assume a worst case scenario but, then, must balance this assumption with practical (and legal) considerations.

more crime.” And in the overnight hours when businesses close and people go home, the crime rate drops. While the crime *rate* drops, however, the *per-target* risk rises. When a business stays open around-the-clock, its victimization risk rises steadily after sundown, peaking in the early morning. Darkness softens a target, increasing its appeal to predatory criminals.

Several mechanisms operate here but the most salient is that routine policing is more difficult and less effective in darkness. When bars and taverns close, police resources are stretched thinner yet, making soft targets even softer. Governments typically mitigate this risk by closing high-risk public places (playgrounds, beaches, parks, *etc.*) from dawn to dusk; by imposing curfews on high-risk persons (teen-agers, parolees, *etc.*); and by limiting the operation of high-risk businesses (bars, SOBs, *etc.*) during times of acute risk. Not surprisingly, this theoretical prediction is confirmed by the empirical evidence.

1.4.4 “HARDENING” SOB SITES¹¹

In principle, ordinances can mitigate ambient crime risk requiring SOBs to “harden” their properties. Mandating outdoor lighting, parking lot surveillance cameras, and anti-“cruising” structures illustrate strategies for hardening the site’s exterior. This list of exterior hardening options is short, unfortunately; and although the effectiveness of exterior hardening strategies depends to some extent on local circumstances and conditions, there is little evidence that any of the typical options can mitigate ambient crime risk.

Regulating the interior configurations of SOBs, in contrast, has a stronger rationale in criminological theory. Interior hardening strategies are often less costly moreover, more practical, and in theory, more effective. Three widely used strategies illustrate the general principle:

- Ordinances that eliminate interior blind spots
- Ordinances that prohibit closed viewing booths
- Ordinances that restrict entertainers to raised stage areas

Each of these strategies reduces the risk of on-premise victimization of patrons and employees.¹² In some respects, the risk reduction mechanism is obvious. Removing blind spots and opening up closed booths obviously reduces the opportunity for lewd behavior, *e.g.* Though less obvious, to the extent that patron-on-patron, patron-on-employee, and employee-on-patron confrontations are precipitated by lewd behavior, these strategies also reduce the risk of assault.

¹¹ The classic statement on “hardening” is Oscar Newman’s *Defensible Space: Crime Prevention Through Urban Design*. (New York: MacMillan, 1973).

¹² The strategies also facilitate routine enforcement while minimizing the risk of injury to police officers. Those topics will be discussed separately in the next section.

The risk of patron-on-patron, patron-on-employee, and employee-on-patron crime is most acute inside SOBs that feature live entertainment; and of course, alcohol aggravates the risk. The risk can be mitigated by separating patrons and entertainers. Ideally, separation is achieved by mandated structures, such as raised stages. By creating a tangible “wall” between employees and patrons, raised stages reduce unintentional (or intentional) “touching,” thereby reducing the risk of patron-on-employee and employee-on-patron crime.

1.4.5 POLICE OFFICER SAFETY

While assaults on police officers are rare, they are among the most serious crimes that occur inside SOBs. In theory, moreover, they are preventable. The risk of assault begins when officers enter the SOB and continues until they leave. Mitigation strategies aim at minimizing the number of times officers must enter SOBs and, having entered, the amount of time they must spend inside. Strategies that focus on the latter factor are more practical.

Police officers enter SOBs either in response to a reported crime incident or to inspect the premises as part of routine enforcement. By reducing the risk of the on-premise crime incidents, the interior target-hardening strategies described in the preceding section reduce the number of times that officers must enter SOBs to respond to reported incidents. Otherwise, there are few options for reducing the number of times that officers must enter SOBs. Notwithstanding the risk to officers, routine inspection can be an effective mitigation strategy. By focusing attention on SOB sites, routine inspection reduces ambient risk through a complex set of pathways referred to, collectively, as “broken windows.”¹³

Regardless of how officers come to be inside an SOB, any strategy that minimizes the amount of time spent inside reduces the risk of injury. Ordinances aimed at improving interior visibility illustrate these strategies. In many instances, officers can accomplish their purpose with a quick visual inspection. If the interior of the SOB is well lit and obstacle-free, the inspection can be completed by one officer in a minute or two. If the interior is dark and/or labyrinthian, the same inspection may require two (or more) officers for a longer period of time.

In SOBs that feature live entertainment, a raised stage reduces the risk of injury to police officers through the same mechanism. If an ordinance mandates, say, a six-foot distance between patrons and entertainers, absent a raised stage, enforcing (and/or detecting willful violations of) the ordinance may require that several plainclothes officers spend an hour or more inside. With a raised stage, on the other hand, a comparable level enforcement and detection of violations can

¹³The best known statement of this effect is “Broken windows: The police and neighborhood safety.” by J.Q. Wilson and G.L. Kelling, *Atlantic Monthly*, 1982, 249:29-38. Wilson and Kelling argue persuasively that police visibility in a neighborhood can have a greater impact on victimization risk than police activities that target crime *per se*. Modern police methods are based on this theory.

be accomplished with shorter, more superficial inspections. Raised stages also facilitate self-enforcement. Ensuring that patrons and entertainers comply with a distance rule, absent a raised stage, demands constant attention and keen judgement by the SOB. A raised stage facilitates self-enforcement by the SOB, thereby reducing the risk of patron-patron and employee-patron confrontations.

1.4.6 TAILORING REGULATIONS TO FIT LOCAL NEEDS

The ideal SOB ordinance marries low compliance costs for the SOB to low enforcement costs for the government. To some extent, compliance and enforcement costs depend on local circumstances and conditions and these often dictate differences in codes and/or enforcement strategies. A code or strategy that is optimal for one set of circumstances may be less than optimal for another. If a local variation is aimed at rationalizing regulation and optimizing mitigation, it should be encouraged.

By definition, local conditions are too numerous to list. Nevertheless, the principle is straightforward. Legislatures adapt and modify codes to take advantage of local idiosyncracies. In most instances, modifications are designed to facilitate compliance and minimize enforcement costs. Toward that end, legislatures often consult local enforcement officers and, to the extent possible and appropriate, incorporate the views of experts into the regulations.

1.5 CONCLUDING REMARKS: CRIMINOLOGICAL THEORY

The legal debate over crime-related secondary effects ignores the crucial role of criminological theory. *Without exception*, criminological theory predicts that SOBs will generate ambient public safety hazards. Plaintiffs' witnesses produce study after study to show that SOBs have *no* crime-related secondary effects or, sometimes, that SOBs have salutary public safety impacts on their neighborhoods. I will discuss the details of these studies at a later point. For present purposes, the criminological theory that I have described is internally consistent and compelling – it makes sense in other words. As it turns out, the theory also agrees with the data.

2 EARLY EMPIRICAL STUDIES CORROBORATE THE THEORY

Scientific theory leads us to *expect* secondary effects in SOB neighborhoods and, in fact, *that is exactly what we find*. Table 1 lists eighteen studies conducted over a 30-year period in rural, urban, and suburban settings; the studies span all regions of the U.S. and every conceivable SOB subclass. Despite this diversity, these eighteen studies have one thing in common. Each reports what I call the “consensus finding” of the literature: a substantively large, statistically significant crime-related secondary effect. Given the theoretical prediction, this consensus finding is a scientific fact.

The eighteen studies listed in Table 1 are also *methodologically* diverse. Some of the studies use a before/after difference to estimate a secondary effect. Others use SOB-control differences for that purpose.¹⁴ Some of these SOB-control studies select control zones by “matching.” Others use statistical models (regression, *e.g.*) to adjust irrelevant differences between the SOB and control zones. Methodological attacks on the literature typically focus on idiosyncratic design features of each study. Despite their methodological idiosyncracies, the studies all report remarkably similar findings. *This consensus renders any methodological challenge implausible.*

Ideally, one could read each of the eighteen studies listed in Table 1 and draw inferences from their similarities and differences. Given the broad consensus finding, however, there is little to learn from the minor details of specific studies. My review will focus on SOB subclasses and, to a lesser extent, on methodological idiosyncracies. I will return to the methodological issues in subsequent sections.

2.1 SOB-CONTROL CONTRASTS: PHOENIX, 1979

In many respects, true experiments are the strongest designs.¹⁵ But since true experiments are not possible, crime-related secondary effect studies rely on *quasi-experimental designs*. Except for random assignment, quasi-experimental and true experimental designs use similar structures to control threats to validity. The strongest quasi-experimental design compares

¹⁴ My authority on quasi-experimental design is *Experimental and Quasi-Experimental Designs for Research* by D.T. Campbell and J.C. Stanley (Rand-McNally, 1966). Campbell and Stanley call before/after designs “pretest-posttest” designs; they call SOB-control designs “static group comparison” designs. In general, before/after comparisons are prone to fewer threats to internal validity and, hence, are “stronger” than SOB-control designs.

¹⁵ An experimental design controls common threats to validity by random assignment. To estimate the crime-related secondary effects of SOBs experimentally, *e.g.*, we would compile a list of the business sites in a jurisdiction and open SOBs in a random sample of sites. Random assignment (and hence, experimenting) is not possible, of course.

ambient crime risk at a site before and after the opening of an SOB. Before-after contrasts are not always possible, unfortunately.

A somewhat weaker quasi-experimental design compares ambient crime risk at an SOB site to ambient crime risk at a control site. Though weaker in principle, SOB-control contrasts are often more practical. The validity of an SOB-control contrast is a function of similarity of the SOB and control sites. Barring out-and-out dishonesty, the differences will be small and roughly random, thereby favoring neither side.

In 1979, the City of Phoenix conducted a study of crime-related secondary effects. Although the actual work was conducted by City employees, Arizona State University faculty served as advisors and consultants. I was a Professor of Criminal Justice at Arizona State University at that time and met on a weekly basis with the City employees who conducted this research.

To estimate the crime-related secondary effects of SOBs, the researchers compared crime rates in areas with SOBs to crime rates in “matched” control zones (*i.e.*, similar areas that had no SOBs). The comparisons are summarized in my Table 2.1. The property and personal crime rates reported in Table 2.1 were estimated from Uniform Crime Report (UCR) data. The percentages reported in the right-hand column (in red) are the secondary effect estimates derived from the crime rates. Compared to crime rates in the control zones, the UCR property crime rate was 39.8 percent higher; the UCR personal crime rate was 13.7 percent higher; and the UCR sex crime rate was 480.2 percent higher in the adult business areas. By any reasonable standard, these are *large, significant* crime-related secondary effects.

Table 2.1 - Secondary Effects in Phoenix, AZ

	<i>SOB Areas</i>	<i>Control Areas</i>	<i>Secondary Effect</i>
<i>Property Crime Rate</i>	122.86	87.90	139.8 %
<i>Personal Crime Rate</i>	5.81	5.11	113.7 %
<i>Sexual Crime Rate</i>	9.40	1.62	580.2 %

Source: ADULT BUSINESS STUDY, City of Phoenix Planning Department, May 25, 1979; Table V

In the 30 years following this study, legislatures around the U.S. have accepted and relied upon its findings. Witnesses retained by SOBs and SOB plaintiffs, on the other hand, have argued that the 1979 Phoenix study is “fatally flawed” and that its findings are wholly

implausible. This position is wrong, in my opinion. Although the design of this study leaves much to be desired – especially by today’s standards – many of the study’s methodological shortcomings minimize the size of the effect. A stronger design would have produced a larger effect estimate.

2.2 BEFORE-AFTER CONTRASTS: GARDEN GROVE, 1991

Prior to 1990, virtually all crime-related secondary effect studies compared crime rates in police districts with SOBs to crime rates in districts without SOBs.¹⁶ By contemporary standards, the design of these studies was weak. Existing police districts comprised areas of several square miles, *e.g.*, and sometimes had several SOBs. Researchers handled these problems as best they could by matching and, rarely, by statistical adjustment. The wide use of weak “static group comparison” designs was dictated by economics, of course. Prior to 1990, relatively few police departments had sophisticated management information systems.

Citing these methodological flaws, witnesses hired by the SOB industry characterized these studies as exemplars of “shoddy research” whose findings are not to be trusted. Ironically, the methodological flaws in these early studies favor a *null* finding.¹⁷ Stronger designs would most likely have yielded larger, more significant effect estimates. Ignoring this point, the “static group comparison” design assumes that SOB and control neighborhoods are equivalent on relevant crime risk factors. If this assumption is unwarranted, observed secondary effects cannot be attributed to the SOBs. The surest, simplest way to control this threat to validity is to use a before-after design.

In the early 1990s, James W. Meeker and I conducted a secondary effect study in Garden Grove, CA that is considered to be the most scientifically rigorous, valid study of crime-related secondary effects in the literature.¹⁸ The design of our 1991 Garden Grove study differed from what had been done previously in many respects. We had location-coded crime incidents, *e.g.*, so we could estimate crime rates within 500 feet of an SOB; we had ten years of crime data, so we could use relatively stronger before/after contrasts; and we had several nearly ideal control businesses for our contrasts.

¹⁶ Studies in Los Angeles (1977), Amarillo (1977), Whittier (1978), St. Paul (1978), Phoenix (1979), Indianapolis (1984), and Austin (1986) used this design.

¹⁷ “Null finding” means “finding that SOBs have no secondary effects.”

¹⁸ *Final Report to the City of Garden Grove: The Relationship between Crime and Adult Business Operations on Garden Grove Boulevard*. October 23, 1991. Richard McCleary, Ph.D. and James W. Meeker, J.D., Ph.D.

Observing ambient crime before and after an SOB opened in a neighborhood, Meeker and I found that crime risk rose whenever an SOB *opened* its doors for business; when an SOB *closed* its doors, crime risk fell. The validity of a before/after design requires that other plausible explanations for the rise and fall of crime be ruled out. The change may be a coincidence, *e.g.*; perhaps crime rose or fell throughout the city. To control these common “threats to internal validity,” Meeker and I replicated each before/after analysis for other SOBs in Garden Grove. We reasoned that, if a rise or fall in ambient crime were a coincidence, we would observe the effect at other Garden Grove SOBs. If we did not observe the same effect at these control sites, on the other hand, the effect could be attributed confidently to the newly opened SOB.

Secondary effects for three business openings are reported in Table 2.2. When a new SOB opened, total “serious” crimes in a 500-foot radius around the site rose, on average, 67 percent. To control for the confounding effects of city-wide crime trends, changes in police activity, and other common threats to internal validity, these before-after differences were compared to the analogous differences for the addresses of existing SOBs. Total “serious” crimes in a 500-foot radius around these “control” sites rose, on average, only six percent. The secondary effect observed when new SOBs open is, thus, substantively large and statistically significant.

	<i>Test Sites</i>			<i>Control Sites</i>		
	<i>Before</i>	<i>After</i>		<i>Before</i>	<i>After</i>	
March, 1982	71	106	1.49	76	78	1.03
March, 1986	31	68	2.19	80	92	1.15
August, 1988	32	50	1.56	41	40	0.98
Total	134	224	1.67	197	210	1.06

Source: *Final Report to the City of Garden Grove*, pp. 26-28

Social scientists (and their government clients) learned two things from the 1991 Garden Grove study. First and foremost, when relatively stronger before-after quasi-experimental designs are possible, the same ambient public safety hazards are found. The Garden Grove findings corroborate the findings in the Los Angeles (1977), Phoenix (1979), Indianapolis (1984) studies. Second, however, and more important, the 1991 Garden Grove study taught us how expensive a crime-related secondary effect study can be. I will have more to say about this shortly.

2.3 WHAT WE LEARNED FROM THE EARLY STUDIES

By contemporary standards, the early secondary effects studies – say, those conducted prior to 1995 – are relatively unsophisticated. The early studies compared ambient crime risk in existing police precincts, *e.g.*, rather than in the smaller impact areas suggested by criminological theory. The use of weak quasi-experimental designs in these early studies was dictated by fiscal reality.¹⁹ Yet despite their design weaknesses, these studies generated a consistent picture that came into sharper focus as stronger, more sophisticated studies added to the consensus finding; *i.e.*, as a business class, SOBs have large, statistically significant crime-related secondary effects.

The relatively weak designs used in the early literature open the door to charges, by SOB plaintiffs, that the strong consensus finding of the literature is an artifact; had the studies used stronger designs, according to the plaintiffs, all would have arrived at the opposite conclusion.²⁰ But in fact, the very consistency of the early literature rules out an artifactual explanation. First, virtually all design weaknesses bias the study in favor of the *null* finding. Second, more recent studies that use stronger, more sophisticated designs yield the same finding as the weaker, less sophisticated early studies.

¹⁹ In our 1991 Garden Grove study, Jim Meeker and I spent more than \$100,000 (adjusted for inflation) for a stronger, more sophisticated quasi-experimental design. The study's cost was a minor scandal.

²⁰ The best-known statement of this view is “Government regulation of ‘adult’ businesses through zoning and anti-nudity ordinances: de-bunking the legal myth of negative secondary effects.” (B. Paul, D. Linz, and B.J. Shafer. *Communication Law and Policy*, 2001, 6:355-391).

3 RECENT EMPIRICAL STUDIES: ADULT CABARETS

Adult cabarets are the oldest and, in some respects, the most interesting SOB subclass. In principle, furthermore, estimating the secondary effect of an adult cabaret is straightforward. If we agree that live nude entertainment is the essential difference between adult cabarets and other businesses that sell alcohol by the drink (or “taverns” as I will call them), the secondary effect can be estimated by comparing the ambient crime rates for adult cabarets and taverns. Although the differences between adult cabarets and taverns are often more complicated than this simplest, straightforward design admits, several studies have used taverns as controls for adult cabarets. *All find that adult cabarets have higher ambient crime rates than taverns.*

3.1 GREENSBORO, 2003

In 2003, Dr. Daniel Linz conducted a crime-related secondary effect study in Greensboro, NC.²¹ Analyzing police calls-for-service (CFSs) Dr. Linz concluded 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 (*sic*) 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 ... (T)here 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.²²

Due to the technical nature of Dr. Linz’ statistical analyses, the City of Greensboro retained me to “translate” Dr. Linz’ numerical results into plain words.²³

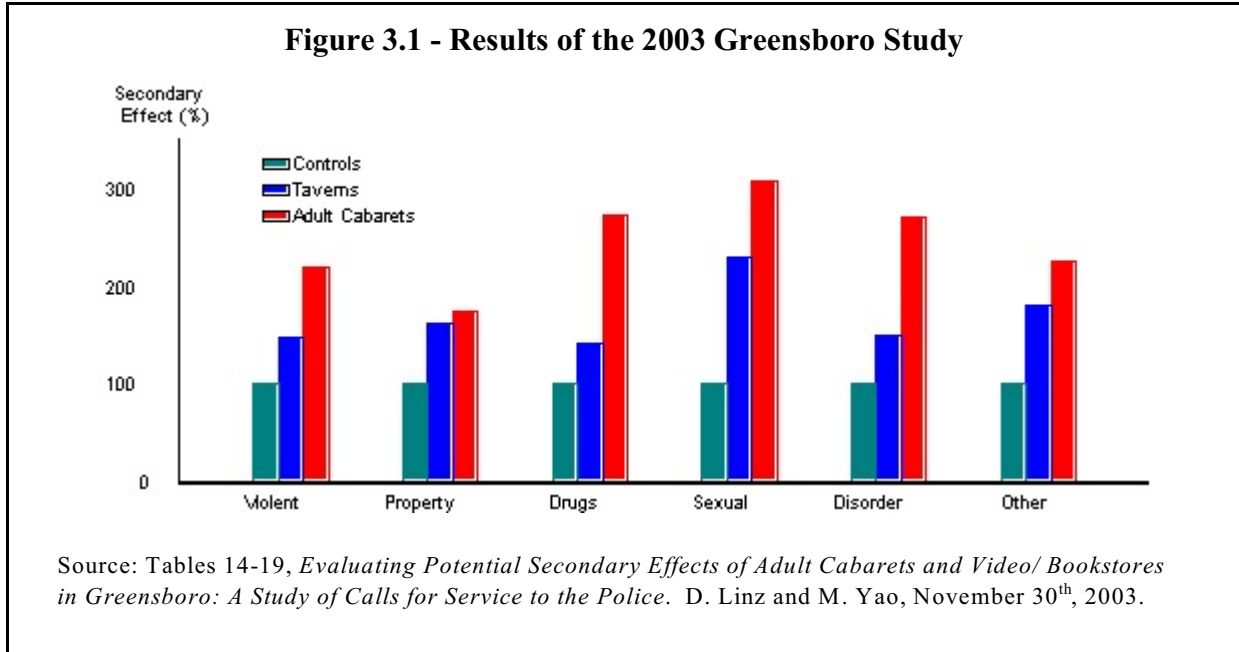
Dr. Linz’ report was a difficult read, even for statisticians. The numbers on which his conclusion was based were scattered across 18 pages of computer output in an appendix. Few report readers consult appendices under any circumstances. But in this instance, a critical

²¹ *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. A Professor of Communication at the University of California, Santa Barbara, Dr. Linz is a prolific witness for SOB plaintiffs, often in collaboration with Dr. Fisher.

²² P. 3 (counting the title sheet as p. 1) of the Linz-Yao Greensboro *Study*.

²³ R. McCleary. *A Methodical Critique of the Linz-Yao Report: Report to the Greensboro City Attorney*. December 15, 2003.

reading of the report’s appendices required technical skills (that most of the report’s readers lack) and great tolerance for numerical detail. When the actual numbers were finally examined, it became clear that Dr. Linz had overstated the basis of his strongly-worded conclusion. Put simply, Dr. Linz’ numbers contradicted his words.



The results of Dr. Linz’ analyses are plotted in Figure 3.1. The green bars report the ambient crime levels²⁴ for Greensboro’s “control” neighborhoods that have no taverns and no SOBs. The blue and red bars report the ambient crime levels for neighborhoods with taverns and neighborhoods with adult cabarets, respectively. To facilitate interpretation, I have fixed the ambient crime levels in control neighborhoods at 100 percent; the ambient effects in tavern neighborhoods (blue bars) and adult cabaret neighborhoods (red bars) are easily interpreted, thus, as multiples of the control neighborhood effects (green bars).

Since the social, demographic, and economic variables that are presumed to “cause” crime vary across neighborhoods, unadjusted crime levels may be deceiving. To control for these confounding effects, Dr. Linz adjusted his raw numbers with a statistical model whose technical details will not be discussed here. As the adjusted effects plotted in Figure 3.1 show, Dr. Linz found that ambient crime in tavern neighborhoods (blue bars) range from 148 percent (violent crimes) to 229 percent (sexual crimes) of the ambient crime in control neighborhoods. Since tavern neighborhoods are the criminological “gold standard” of ambient crime, that result

²⁴ I use the term crime “levels” because, strictly speaking, crime “rates” are difficult to tease out of police CFSs. I will return to this issue later.

was expected.²⁵ What Dr. Linz did not expect, however, was that adult cabaret neighborhoods (red bars) would have more crime than the tavern neighborhoods (blue bars).

Crime-related secondary effects in Greensboro's adult cabaret neighborhoods ranged from 175 percent (for property crime) to 307 percent (for sexual crime) of the ambient crime levels in control neighborhoods. These effect estimates are large in every sense and, of course, they are not surprising. To me, the only surprise was that the estimates in Figure 3.1 were reported in a study commissioned by a consortium of SOB plaintiffs.

3.2 DAYTONA BEACH, 2004

In 2004, Dr. Linz collaborated with Dr. Randy D. Fisher on a Daytona Beach secondary effect study.²⁶ With minor exceptions, the design of the Daytona Beach study was identical to the Greensboro design.²⁷ Analyzing CFSs once again, Drs. Linz and Fisher concluded that adult cabarets, had no significant crime-related secondary effects:

We are able to account for crime events in Daytona Beach with a moderately high level of accuracy using variables found by other researchers to be related to crime...The social disorganization variables and especially the presence of an (*sic*) alcohol beverage retail sale establishments in the blocks (that did not feature adult entertainment) accounts largely for this explanatory power. The presence of an adult cabaret in the census block explained only to (*sic*) a trivial amount of variability in crime incidents when these other variables were considered ... From these analyses we are able to reliably conclude that once we control for variables

²⁵ Most of the research on the relationship between taverns and ambient crime risk is due to my colleague of 30 years, Dennis W. ("Denn") Roncek. See D.W. Roncek and M.A. Pravatiner. Additional evidence that taverns enhance nearby crime. *Social Science Research*, 1989, 73:185-188.

²⁶ *Evaluating Potential Secondary Effects of Adult Cabarets in Daytona Beach, Florida: A Study of Calls for Service to the Police in Reference to Ordinance 02-496* by Daniel Linz, Ph.D., Randy D. Fisher, Ph.D. and Mike Yao, April 7th, 2004. Dr. Fisher is an associate Professor of Psychology at the University of Central Florida. He is also a prolific witness for SOB plaintiffs.

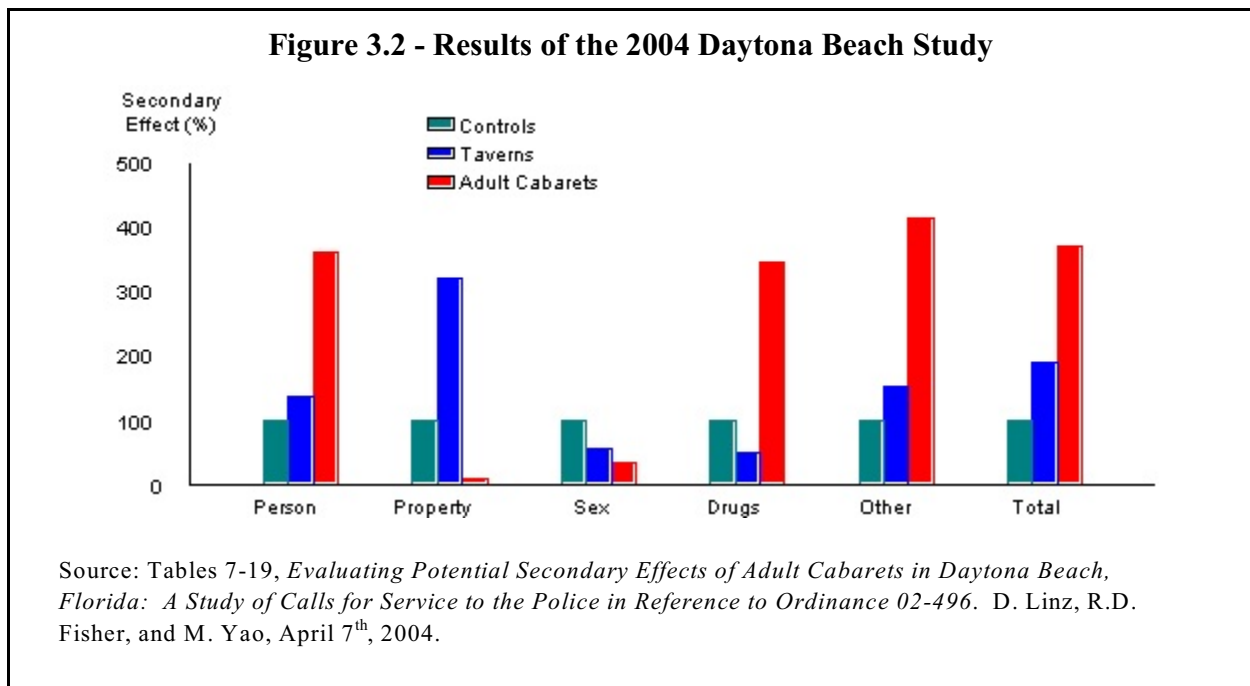
²⁷ Since the Daytona Beach SOBs were adult cabarets, Linz, Fisher, and Yao excluded bookstores and video arcades from the study. Instead of defining "neighborhoods" as Census Block Groups, in Daytona Beach, Linz, Fisher, and Yao used Census Tracts. The Greensboro and Daytona Beach designs are otherwise identical.

known to be related to crime there is not a meaningful relationship between the presence of an adult cabaret in the neighborhood and crime events.²⁸

This conclusion is worded more cautiously than the conclusion in Greensboro. Indeed, the authors go so far in the Daytona Beach report as to admit that, as in Greensboro, the Daytona Beach results amount to statistically significant crime-related secondary effects:

There are analyses reported below where there are small but statistically significant relationships due to the exceptionally large N (sample size) employed in the analyses (at times over 1,100 census blocks)...[But] we favor “strength” over a technical “significance.”²⁹

This is a highly technical statistical issue, of course. In my opinion, Drs. Linz and Fisher misunderstand the assumptions of their model as well as the statistical problem of an “exceptionally large N” that, in their opinion, obviates the statistical model. Put simply, they are incorrect.



Notwithstanding the large *statistical* size of their effect estimates, the effect estimates reported by Drs. Linz and Fisher in Daytona Beach are *substantively* large. Figure 3.2 plots the

²⁸ P. 36 (counting the title sheet as p. 1) of the Linz-Fisher-Yao Daytona Beach study.

²⁹ P. 23 (counting the title sheet as p. 1) of the Linz-Fisher-Yao Daytona Beach study.

results of the Daytona Beach analyses using the same conventions used in Figure 3.1 (for Greensboro). The ambient crime levels in control neighborhoods (green) are fixed at 100 percent again so that the levels in tavern neighborhoods (blue) and adult cabaret neighborhoods (red) can be interpreted as multiples of the controls. With two exceptions, adult cabaret neighborhoods have higher ambient crime levels than tavern neighborhoods. Given the well-known relationship between taverns and ambient crime, the Daytona Beach analyses corroborate the consensus finding of the literature. Like the broader SOB class, adult cabarets, pose large, statistically significant ambient public safety hazards.

Figure 3.2 speaks for itself. Tavern neighborhoods (blue) have 90 percent more total crime than control neighborhoods (green). Adult cabaret neighborhoods (red) have 270 percent more total crime than control neighborhoods (green). In substantive terms then, taverns have *large* secondary effects and adult cabarets have even *larger* secondary effects. The fact that these effect estimates are also *statistically* large adds little to our understanding of Figure 3.2.

The estimates *are* statistically large, of course – *i.e.*, statistically *significant* – and that poses a dilemma for Drs. Linz and Fisher. If the estimates were statistically small, Drs. Linz and Fisher could argue that they were due to chance (regardless of their substantive size). Denied this solution to the dilemma, Drs. Linz and Fisher argue that statistical significance is an artifact of an “exceptionally large N.” This is a specious argument, however, on two grounds. First, samples of 1,100 are not large enough to obviate the statistical model used by Drs. Linz and Fisher. But second, if samples of 1,100 *were* large enough to obviate the statistical model, as claimed, *all* of effect estimates would be statistically significant. In fact, of the 84 parameter estimates reported by Drs. Linz and Fisher, 42 are statistically significant and 42 are not. I will return to this issue in Section 3.4 below.

3.3 PALM BEACH COUNTY, 2004

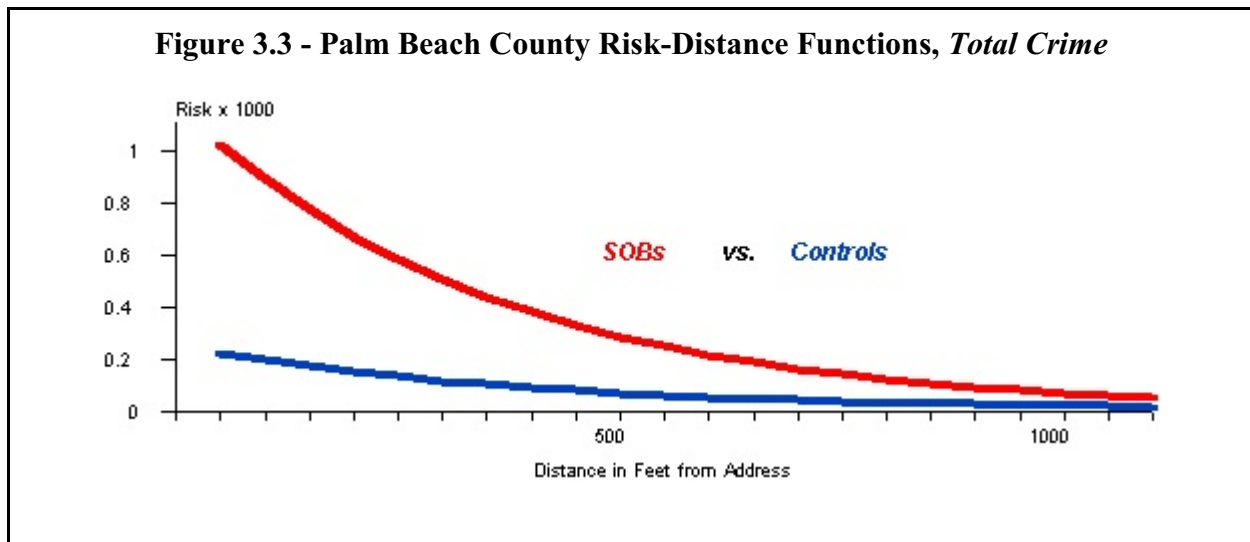
Comparing 911 calls to the addresses of nine adult and seven non-adult cabarets in Palm Beach County, FL, Dr. Terry A. Danner found that the adult cabaret addresses had fewer crime-related 911 calls (2.5 per month *vs.* 2.9 for SOB addresses) but more order-related 911 calls (3.1 per month *vs.* 2.0 for SOB addresses). Based on these comparisons, Dr. Danner concluded that the contrast “does not provide compelling evidence that the addition of various levels of nude dancing to the ‘nightclub type environment’ produces a pattern of crime and public disorder that appears to be uniquely attributable to the adult cabaret category of business.”³⁰

³⁰ P. 8, *The Crime-related Secondary Effects of Adult Cabarets in Palm Beach County* by Terry A. Danner, Ph.D. Report submitted in *Palm Beach County v. Casablanca East*, CA-02-03813 AF, Circuit Court, 15th Judicial Circuit, Palm Beach County, 2005. A professor of criminal justice at St. Leo’s University, Dr. Danner is a prolific expert for the SOB industry.

Dr. Danner’s idea of comparing adult and non-adult cabarets makes good sense. The legal difference between adult and non-adult cabarets is, after all, the quantity and/or quality of clothing worn by employees. Changing the quantity and/or quality of clothing changes the non-adult cabaret into an adult cabaret and *vice versa*. It follows from this argument that ambient crime rate differences between adult and non-adult cabarets must be due to nudity.

Aside from the idea of comparing adult and non-adult cabarets, however, Dr. Danner’s study is problematic in two respects. First, Dr. Danner uses 911 calls to measure ambient crime risk. Although 911 calls are *correlated* with ambient crime risk, however, the correlation is weak at best. Second, Dr. Danner considers only the subset of 911 calls to the immediate addresses of the adult and non-adult cabarets. Calls to *nearby* addresses are excluded. If ambient crime risk “seeps out” across the adult cabaret neighborhood, of course, as the theory predicts, excluding these calls biases the secondary effect estimate in an unknown way.

Irvine colleagues Valerie Jenness, James W. Meeker, and I were retained by Palm Beach County to evaluate and, if necessary, replicate Dr. Danner’s study. Given the problematic use of address-specific 911 calls, we questioned Dr. Danner’s conclusion.³¹ Our replication used the same adult and non-adult cabaret sites. Instead of using 911 calls, however, we used crime incident reports; and instead of restricting the analyses to the specific addresses, we included all crime incidents that occurred within 1,100 feet of the adult and non-adult cabarets.



The results of our replication are plotted in Figure 3.3. In terms of total crime, SOBs (in red, nine adult cabarets) and controls (in blue, seven non-adult cabarets) are both risky places.

³¹ *Crime-Related Secondary Effects of Sexually-Oriented Businesses: Report to the County Attorney, Palm Beach County, Florida.* Valerie Jenness, Ph.D., Richard McCleary, Ph.D., and James W. Meeker, J.D., Ph.D. August 15, 2007.

Moving toward an “average” site, whether SOB or control, victimization risk rises. Moving away, risk diminishes. With that said, compared to control sites, SOB sites are much riskier on average. How much riskier? At 500 feet, approximately one long city block, ambient risk at the SOB is four times greater. At 1,000 feet, the risk is substantially lower for all sites. But even at that distance, SOB sites are 3.5 times riskier than control sites.

Although risk-distance plots have been widely used to document the ambient crime risks at “nuisance” sites, including SOBs,³² most of uses have foregone statistical significance tests of the plots. Given the quantity and quality of data that were available in Palm Beach County, we were able calculate confidence intervals for the risk-distance functions plotted in Figure 3.3. At the conventional 95 percent confidence level, both the SOB (red) and control (blue) functions are statistically significant as is their difference. Rejecting both null hypotheses then, the functions plotted in Figure 3.3 have the obvious interpretation.

Some readers may question the use of *total* crime. Why not some subcategory of crimes? Total crime is the convention in secondary effects studies – all of the studies referenced in Table 1 use total crime – and the convention rests on theoretical and practical grounds. As a practical matter, breaking total crime down into subcategories is expensive. As a theoretical matter, SOBs are expected to generate “victimless” vice crimes (prostitution, drugs, *etc.*), predatory crimes (robbery, assault, *etc.*) that are associated with vice, and opportunistic crimes (vandalism, theft, *etc.*) associated with the influx of strangers to the SOB neighborhood. In short, *total* crime.

Nevertheless, to investigate the statistical robustness of our findings, Jenness, Meeker, and I replicated the risk-distance analyses for property crime (burglary, theft, vandalism, *etc.*), personal crime (robbery, assault, *etc.*), and the residual category of all other crime (including most notably, vice crimes). This is not the only possible taxonomy, of course; but it is a reasonable taxonomy and one that is easily understood. The risk-distance functions for these three complementary crime categories lead to the same interpretation and conclusion.

3.4 CONCLUDING REMARKS ON ADULT CABARETS

The three studies of adult cabarets reviewed here illustrate a range of designs. Two use 911 calls, one uses crime incident reports. Two compare SOB and control neighborhoods, one compares adult and non-adult cabarets. Yet all three studies support the conclusion that adult cabarets have large, statistically significant secondary effects.

Nevertheless, there is a remarkable difference in how the studies interpret their findings. Whereas the Greensboro and Daytona Beach studies find large, statistically significant secondary

³² See, *e.g.*, *An Analysis of the Relationship between Adult Entertainment Establishments, Crime, and Housing Values*. M. McPherson and G. Silloway. Minnesota Crime Prevention Center, Inc. October, 1980.

effects, the authors give their findings the opposite interpretation. The secondary effect study summarized in Figure 3.2 was commissioned by the plaintiffs in *Daytona Grand v. City of Daytona Beach*.³³ Drs. Fisher and Linz used a two-prong argument to challenge the City's secondary effects evidence. First, the studies relied on by the City were methodologically flawed. Second, local data showed that neighborhoods with adult businesses had the same number of 911 calls as other neighborhoods. To refute these arguments, the City cross-examined the experts. The trial court was unimpressed, however, and struck down those parts of Daytona Beach ordinance that regulated nudity.

The trial court's decision in *Daytona Grand* provoked a mild panic among Florida governments. Two years later, however, the U.S. Eleventh Circuit reversed the trial court.³⁴ The Eleventh Circuit decision reaffirmed the *Renton* standard in the most crucial respect: If the government's interpretation of its secondary effects evidence is "reasonable," there is no need to show that its interpretation is the *only* reasonable interpretation. The fact that plaintiffs can draw alternative conclusions from the evidence does not bar the government from "reaching other reasonable and different conclusions."

The Eleventh Circuit addressed three other relevant issues. First, the panel explicitly rejected the methodological arguments of Paul, Linz and Shafer.³⁵ Second, the panel rejected the use of 911 calls to demonstrate the absence (but *not* the presence) of a secondary effect. Third, the panel noted, as I have, that several of the secondary effect estimates reported by Drs. Linz and Fisher were statistically significant.

The experts are no doubt correct that factors other than the presence of adult theaters affect crime rates in Daytona Beach: crime is plainly caused by many factors. But that does little to undermine the City's conclusion that adult theaters *also* affect crime rates, especially when the experts' own analysis shows a statistically significant correlation between adult theaters and increased crime in half of the areas in the study.³⁶

This observation by the Eleventh Circuit panel is consistent with Figure 3.2 above.

³³ *Daytona Grand Inc. v. City of Daytona Beach, Florida* 410 F. Supp. 2d 1173 (2006).

³⁴ *Daytona Grand, Inc. v. City of Daytona Beach, Florida* No. 06-12022 (11th Cir. 2007)

³⁵ Paul, Linz, and Shafer (Government regulation of adult businesses through zoning and anti-nudity ordinances: Debunking the legal myth of negative secondary effects. *Communication Law and Policy*, 2001, 6:355-391) argue that the government's secondary effects evidence must satisfy *Daubert* admissibility criteria.

³⁶ *Id.*, at 47-48

4. THE “COMMERCIALLY NATURAL IF NOT UNIVERSAL” SOB

In the past, one of the most common SOB business models combined the sale of adult DVDs (or tapes) with coin-operated booths where the DVDs could be viewed. In principle, the viewing booths allowed customers to sample DVDs to inform their purchasing decisions. This SOB subclass was so common twenty years ago that Justice Souter called it the “commercially natural, if not universal” model.³⁷ Although the subclass continues to flourish, competition from other SOB business models appears to have made inroads. Because private (and semi-private) viewing booths create opportunities for sexual contact, this SOB subclass poses special problems for routine policing.

4.1 CENTRALIA, 2003

Centralia, Washington is a small city (ca. 14,000 population) on Interstate 5 between Olympia and Portland. In December, 2003, an adult bookstore opened in a building that had been a residential dwelling. In addition to selling videos for off-premise viewing, the SOB had coin-operated viewing booths. Shortly after opening its doors for business, the City moved to enforce zoning ordinances prohibiting SOBs in residential neighborhoods. When the SOB filed a lawsuit,³⁸ the City defended itself with the crime incident statistics summarized in Table 4.1.

	Before	After	Change	Odds Ratio
SOB Area	9	17	1.889	—
All Other Centralia	3358	3358	0.966	1.956
Control Areas	23	19	0.826	2.058

Source: Richard McCleary, *Crime Risk in the Vicinity of a Sexually Oriented Business: Final Report to the City Attorney’s Office*. February 28th, 2004.

In the impact area, defined by a 250-foot radius around the SOB site, serious crime rose by nearly 90 percent after the SOB opening. In the rest of Centralia, during the same period, serious crime dropped by nearly four percent. The statistical significance of these before-after contrasts can be tested by comparing the value of the odds ratio reported in Table 4.1 to its standard error. By chance alone, odds ratios larger than this one occur less than eight times in

³⁷ City of Los Angeles v. Alameda Books, Inc, 535 U.S. 425 (2002) at 465.

³⁸ *Washington Retailtainment, Inc. et al. v. City of Centralia, Washington*. U.S. District Court for the Western District of Washington at Tacoma, Case No. C03-5137FDB

one thousand trials or samples.

Although it is highly unlikely that the effect reported in Table 4.1 is due to chance, it is always possible that the observed effect is due to some uncontrolled threat to internal validity. If that were the case, we would expect crime to rise when any other type of business, say, for example, a bread store, moves into a vacant residential structure. In fact, three businesses *did* open in Centralia during this time frame. But as reported in Table 4.1, ambient crime in a 250-foot radius around the sites dropped when these non-SOBs opened.

4.2 LOS ANGELES, 2008

In 1977, the City of Los Angeles conducted a comprehensive secondary effects study³⁹ that found, among other things, an association between ambient crime and SOB concentrations. Based on this finding, Los Angeles required a minimum distance between SOB sites. When SOB sites began to evade the minimum distance rule by merging, the City amended its ordinance to require minimum distances between distinct *activities*. The amendment forced “commercially natural if not universal” SOB sites to segregate DVD sales from viewing booths.

In 1995, two affected SOB sites challenged the amended ordinance. Because the 1977 study did not address the secondary effects of combining multiple activities under one roof, it was argued, Los Angeles had no evidence that multiple-activity businesses generated secondary effects. The trial court agreed and the Ninth Circuit Court affirmed. The U.S. Supreme Court reversed, reaffirming *Renton* and allowing that a government could infer, from the findings of the 1977 study, that concentrations of distinct *activities* – in particular, DVD sales and viewing booths on the same site – generated secondary effects. In a complicated split decision, the Court remanded the case for trial.

In 2006, the City of Los Angeles retained me to examine the secondary effects rationale for the amended ordinance. Would dividing a multiple-activity SOB into single-activity SOB sites, as required by the amended ordinance, yield a reduction in ambient crime risk? Ideally, this question could be addressed by finding a member of the “commercially natural if not universal” SOB subclass that had been divided into discrete units that sold DVDs (but had no booths) and that operated coin-operated viewing booths (but did not sell DVDs). If the amended ordinance had a legitimate rationale, one would expect the ambient risk for the multiple-activity SOB to be greater than the sum of the risks for its constituent single-activity SOB sites.

Unfortunately, there were no ideal “natural experiments” of this sort to be found in Los Angeles. Alternatively, using the same logical argument, one could compare the ambient crime

³⁹ Los Angeles Dept of City Planning, *Study of the Effects of the Concentration of Adult Entertainments in the City of Los Angeles* (City Plan Case No. 26475, City Council File No. 74-4521-S.3, June 1977) as cited in *Alameda Books* at 429.

risks for multiple-activity SOBs – which I will call “bookstore-arcades” – to the ambient risks for single-activity “bookstores” and “arcades.” Since there were no *pure* arcades⁴⁰ in Los Angeles, however, only part of this alternative design could be implemented. Though less than the ideal – which is almost always true – the partial design tells us much about the phenomenon.

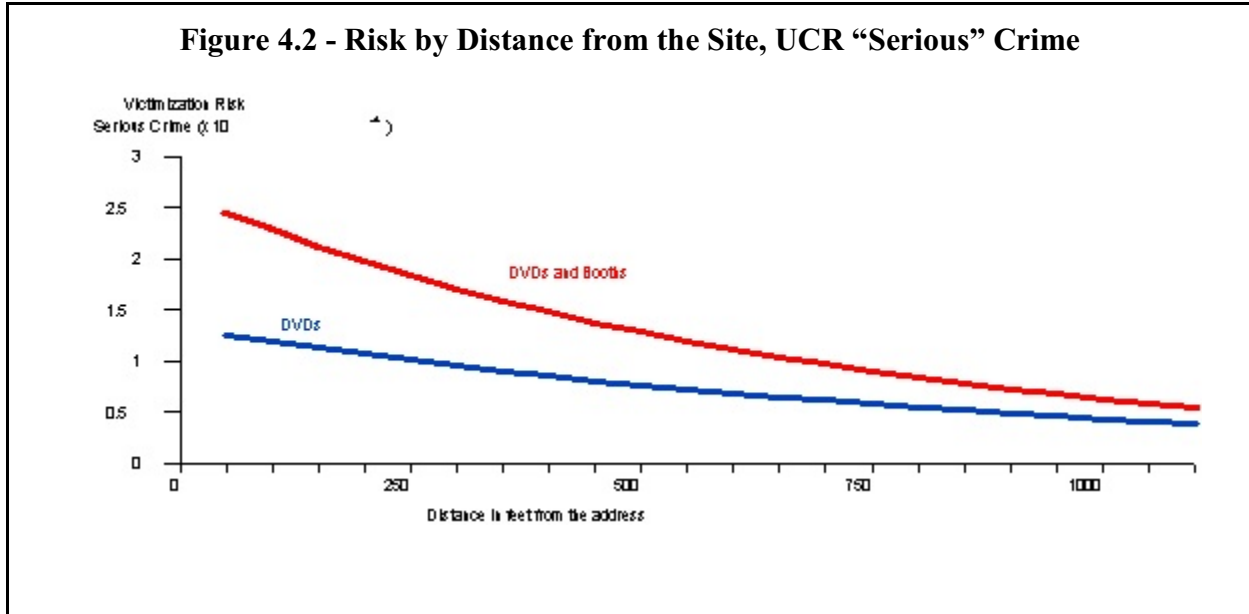


Figure 4.2 plots the risk-distance functions for twelve bookstore-arcades (in red) and seven bookstores (in blue). The vertical axis is calibrated in annual UCR Part I (“serious”) crime incidents (homicide, aggravated assault, robbery, rape, burglary, theft, auto theft, and arson) per square mile. The horizontal axis is calibrated in distance from the site. As Figure 4.2 shows, both SOB subclasses are risky places. Since both risk-distance functions are statistically significant at the conventional 95 percent confidence level, both SOB subclasses have secondary effects. Compared to bookstores, however, bookstore-arcades are riskier at all distances and the difference between the two functions is significant.

4.3 CONCLUDING REMARKS

Some subclass specific risks arise because the defining characteristic of a subclass or creates idiosyncratic opportunities for particular types of crime. Other subclass-specific risks arise when the defining characteristic of the subclass compromises the effectiveness of common policing strategies. The relatively higher ambient risks of bookstore-arcades accrues from both sources. Nevertheless, the failure of economical policing strategies is the greater problem. The optimal policing strategy for SOBs with viewing booths requires that police inspect the interior,

⁴⁰ SOB arcades that sell *no* adult merchandise whatsoever are rare. But there are many that derive very little revenue from the same of adult merchandise.

placing officers at risk of injury. Accordingly, policing this subclass requires specially training and equipment, prior intelligence, backup manpower, and other resources.

Absent viewing booths, the optimal policing strategy rests heavily on routine drive-by patrols. Since the ambient risk function for this subclass can cover a several- block area (see Figure 4.2), drive-by patrols are an efficient way to provide a visible police presence to the neighborhood. Visibility is *per se* a deterrent. Routine patrols can keep watch for known offenders and suspicious activity. When problems are spotted, the routine patrol can forward the information to a specialized unit or, if necessary, handle it on the spot, requesting backup resources only as needed. Needless to say, neighborhood patrols by plainclothes officers in unmarked cars would be inefficient. Whereas visibility is central to policing SOB bookstores, the presence of viewing booths requires invisible (plainclothes) police presence inside the SOB. The optimal policing strategies the two subclasses are incompatible.

5. “OFF-SITE” SOBs

Suppose that distinct SOB subclasses has a unique “average” secondary effects. This implies that one of the subclasses would have the lowest effect. The effect might be so minimal as to fall below the Constitutional threshold where a government could regulate that subclass. Or if the effect fell just above the threshold, the configuration and operation of the subclass might be “tweaked” to force the effect below the threshold.

What might this “bullet-proof” SOB subclass look like? Common sense suggests that it would be a store that sells adult merchandise for *off-site* use. Customers drive to the store; park; go in; make a purchase; come out; and drive away. Except for the merchandise purchased, the SOB’s routine activity is indistinguishable from the activities of convenience stores, dry cleaners, and libraries. Common sense argues then, that the secondary effects of off-site SOBs are likely to be no larger than the effects of convenience stores, dry cleaners, and libraries.

Off-site SOBs – book and DVD stores – have made this common sense argument and some courts have found it persuasive. In *Encore Videos, Inc. v. City of San Antonio*,⁴¹ an ordinance classified off-site book and DVD stores as SOBs if their inventories included 20 percent adult material. When the ordinance was challenged, the Fifth Circuit found that San Antonio had relied on studies that not addressed the (presumably) unique effects of off-site SOBs. In the Court’s view, moreover, the City’s rationale for ignoring the differences between on-site and off-site businesses was weak.

Off-site businesses differ from on-site ones, because it is only reasonable to assume that the former are less likely to create harmful secondary effects because of the fact that consumers of pornography are not as likely to linger in the area and engage in public alcohol consumption and other undesirable activities.⁴²

Other factors influenced the decision, of course, and a more recent Fifth Circuit decision clarifies *Encore Videos* in the most crucial respect.

Nevertheless, based on common sense, the Court’s theoretical rational is appealing. It ignores theoretically relevant characteristics of off-site SOBs, however. To the extent that off-site SOBs attract similar “soft-target” patrons, the routine activity theory of hotspots outlined in Section 1 above predicts that the subclass will have similar secondary effects. The findings of two recent secondary effects studies corroborates the theory.

⁴¹ 330 F.3d 288 (5th Cir. 2003), *cert. denied*, 540 U.S. 982 (2003), and opinion clarified, 352 F.3d 938 (5th Cir. 2003).

⁴² *Id.* at 294-5

5.1 SIOUX CITY, 2006⁴³

Adult businesses are nothing new to Sioux City, Iowa. Two adult businesses had operated without incident in the city's older downtown area for decades. Although both businesses sold sexually explicit DVDs for off-site use, most of their revenue came from coin-operated viewing booths. Nevertheless, strictly speaking, both belonged to the adult business model that Justice Souter characterized as the "commercially natural, if not universal" model. In terms of "look and feel," the two businesses were indistinguishable from adult businesses in larger cities.

In March, 2004, a third SOB opened in Sioux City. Unlike the two existing SOBs, *Dr. John's* had no viewing booths. It was located in a newer area of the city and lacked the garish appearance associated with adult businesses generally and, in particular, with Sioux City's two existing SOBs. During subsequent litigation, the trial judge commented on this fact:

[T]he first impression of the store is a far cry from the first image that most people would likely have of an "adult book store" or "sex shop." There is nothing seedy about the neighborhood, store building, or store front. In fact, from a quick drive-by, one would likely assume that the business was a rather upscale retail store for women's clothing and accessories. There are no "adult" signs or banners proclaiming "peep shows," "live entertainment booths," "XXX movies," "live models," "adult massage," or any of the other tasteless come-ons all too familiar from adult entertainment stores that exist in virtually every American city of any size and which one may find scattered along interstates and highways even in rural America.⁴⁴

The trial judge's drive-by impression may overstate the point. Few passers-by would mistake *Dr. John's* for anything other than what it was.

Regardless of its look and feel *Dr. John's* was located in a prohibited zone. When Sioux City attempted to enforce its zoning code, *Dr. John's* sued, arguing that off-site adult businesses lacked the typical crime-related secondary effects associated with adult businesses. To counter this argument, Sioux City produced police reports of incidents occurring within 500 feet of *Dr.*

⁴³ This case study is based on a paper written by Alan C. Weinstein and me: "Do 'off-site' adult businesses have secondary effects? Legal doctrine, social theory, and empirical evidence." The paper was presented in Atlanta at the November, 14th, 2007 meeting of the American Society for Criminology.

⁴⁴ *Doctor John's, Inc. v. City of Sioux City, IA.*, 389 F.Supp.2d 1096, 1103 (N.D. Iowa 2005), quoting from court's ruling on plaintiff's motion for preliminary injunction.

John's during the four years between January 1st, 2002 and December 31st, 2005. For purposes of quasi-experimental control, reports of incidents occurring within 500 feet of a nearby motel were also retrieved.

To control plausible threats to internal and statistical conclusion validity, the City collected analogous police incident reports for an adjacent control area, a 500 circle centered on a non-SOB. Because the two circles are tangent to each other and face the same thoroughfare, they have similar traffic flows. And because they have similar mixes of businesses and similar incident rates, their underlying ambient crime risks are similar. Because the underlying risk factors are identical in the two circles, any effect found in one of the circles should be found in the other as well. But that was not the case.

	<i>Before</i>		<i>After</i>		<i>After/Before</i>	<i>Ratio</i>
	<i>N</i>	<i>Rate</i>	<i>N</i>	<i>Rate</i>		
Total Incidents						
Dr. John's	17	7.8	41	22.4	2.86	
Control	44	20.3	46	25.1	1.24	2.31
	<i>Before</i>		<i>After</i>		<i>After/Before</i>	<i>Ratio</i>
	<i>N</i>	<i>Rate</i>	<i>N</i>	<i>Rate</i>		
"Victimless" Excluded						
Dr. John's	12	5.5	31	16.9	3.08	
Control	26	12.0	32	17.5	1.46	2.11

The first rows of Table 5.1 breaks down total incidents for the 793 days before and 668 days after the SOB opened. In the *Dr. John's* circle, the annual crime rate rose from 7.8 to 22.4 incidents per year, an increase of approximately 190 percent. Crime in the control circle rose as well but the increase was more modest. The rise from 20.3 to 25.1 incidents per year amounts to a 25 percent increase. Based on a crude comparison of these rates, *Dr. John's* appears to pose an ambient victimization risk.

To test whether the effect might be a chance fluctuation, we take advantage of the fact that crime incidents in the two circles are not different than Poisson (Haight, 1967: 94-95). Under a Poisson hypothesis, the after/before odds for the *Dr. John's* and control circles, reported in Table 2, are distributed as unit-mean log-Normal variables. The ratio of the two odds, also distributed as unit-mean log-Normal, the a maximum-likelihood estimate of the secondary effect. In this instance,

$$\text{Odds Ratio} = 2.31$$

implies that, compared to the control circle, ambient crime rose by 131 percent after *Dr. John's* opened for business. Because an effect estimate of this magnitude or larger occur by chance with probability smaller than 0.01, the null hypothesis is rejected.

The second set of rows in Table 5.1 reports the analogous breakdown with “victimless” crime incidents excluded. If the opening of *Dr. John's* lead to heightened police surveillance, it is possible that the before-after effect is a simple “instrumentation” artifact. Indeed, in a critique of the 1977 Los Angeles secondary effects study relied upon in *Alameda Books*, Paul, Linz and Shafer cite this possibility:

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.⁴⁵

Whereas this explanation might be plausible for prostitution, drugs, and other “victimless” vice crimes, however, it is implausible for homicide, robbery, and the other “street” crimes reported in the 1977 Los Angeles study. On the contrary, heightened police surveillance will reduce the risk of these crimes. So if the *instrumentation* hypothesis is plausible, the secondary effect should vanish when “victimless” crimes are excluded. As reported in Table 5.1, excluding “victimless” crimes from the estimate leads to the same conclusion.

5.2 MONTROSE, 2003⁴⁶

The relevance a the government’s secondary effects evidence can be challenged through either of two arguments. The first is predicated on the fact that the evidence has ignored some *relevant* difference among distinct SOB subclasses. Challenges by off-site SOBs illustrate this argument. The second is predicated on the fact that the evidence has ignored some idiosyncratic (but nevertheless *relevant*) local condition. In 2004, an SOB in rural Kansas used criminological theory to argue that the sparsely-populated rural environment precluded the possibility of secondary effects. And since the local government had not studied this issue prior to enactment, the ordinance should be struck down.

⁴⁵ P. 379, “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.

⁴⁶ This case study is based on “Rural hotspots: the case of adult businesses.” *Criminal Justice Policy Review*, 2008, 19:1-11.

Rejecting this argument, the trial court granted the defendant's summary judgment motion. On appeal, however, in *Abilene Retail*,⁴⁷ the Tenth Circuit agreed with the plaintiff's interpretation of criminological theory:

All of the studies relied upon by the Board examine the secondary effects of sexually oriented businesses located in urban environments; none examine businesses situated in an entirely rural area. To hold that legislators may reasonably rely on those studies to regulate a single adult bookstore, located on a highway pullout far from any business or residential area within the County would be to abdicate out "independent judgment" entirely. Such a holding would require complete deference to a local government's reliance on prepackaged secondary effects studies from other jurisdictions to regulate any single sexually oriented business of any type, located in any setting.⁴⁸

Because the SOB was located in an isolated rural area, and because the County had no evidence to suggest that rural SOBs would have secondary effects, the Tenth Circuit reversed the summary judgment and remanded the case for trial.

Ignoring the question of *relevance*, the argument's predicate is correct. Because most criminological research is conducted in urban areas, criminological theories do not *necessarily* generalize to rural areas. In fact, it is entirely possible that some obscure criminological theory might not generalize to rural areas and populations. But the relevant routine activity theory of hotspots, outlined in Section 1 above, generalizes to any accessible area, urban, suburban, or rural. This is corroborated by a recent case study. When an SOB opens on an interstate highway off-ramp in a sparsely populated rural community, ambient crime risk rises precipitously, turning the community into a rural "hotspot of predatory crime."

An unincorporated village of 250 residents, Montrose, Illinois is located on I-70 midway between St. Louis and Indianapolis. I-70 separates Montrose's residential dwellings from its businesses: a convenience store-gas station, a motel, and for a short period, a tavern. Other than gas and lodging, cross-country travelers had no reason to exit I-70 at Montrose prior to February, 2003. In that month, the *Lion's Den* opened on a service road within 750 feet of the I-70 off-ramp. A large, elevated sign let I-70 travelers know that x-rated videos, books, and novelties could be purchased "24/7." The store was successful by all accounts.

The residents of Montrose did not welcome the new business. Unlike the village's other businesses, the *Lion's Den* was located on the residential side of I-70. Complaining that the store

⁴⁷ *Abilene Retail #30, Inc. v. Board of Commissions of Dickinson County, Kansas*, 492 F.3d 1164, 1175 (10th Cir. 2007)

⁴⁸ *Id.* at 1175.

disrupted their idyllic life-style, villagers picketed the site on several occasions. Traffic was a chronic complaint. The narrow gravel access road connecting the site to I-70 could not support the weight of big-rig trucks; it soon fell into disrepair. The *Lion's Den* offered to build a new, larger access road from I-70 to its site. But fearing an even larger volume of traffic, the villagers declined the offer.

Like all Illinois villages, Montrose had no SOB ordinances. The *Lion's Den* was located within 1,000 feet of a public park, however, in violation of an Illinois statute. When the State moved to enforce its statute, the *Lion's Den* sued, arguing that "off-site" SOBs could not generate the public safety hazards associated with adult cabarets, video arcades and other on-site SOBs. The trial in *State v. The Lion's Den et al.* lasted four days. The court upheld the statute and, in July, 2005, the Montrose *Lion's Den* closed its doors.

	<i>Open</i>		<i>Closed</i>		<i>Log Effect</i>	λ	<i>t</i>
<i>Property Crimes</i>	23	9.54	15	7.20			
<i>Personal Crimes</i>	3	1.24	5	2.40	Constant	-3.267	-17.60
<i>All Other Crimes</i>	28	11.61	9	4.32	Open	0.475	2.06
<i>Total Crimes</i>	54	22.39	29	13.92		$e^{0.475} \approx 1.61$	

At the trial, the State presented evidence of the *Lion's Den's* adverse impact on the surrounding area: sexually explicit litter and decreased use of the nearby park. Neither party presented local crime data, however. Table 5.2 reports data bearing on this issue. During the 1,642-day period beginning January 1, 2002, the Effingham County Sheriff's Office recorded 83 crime incidents in the Village. The most common incidents involved the theft or destruction of property. Incidents of disorder and indecency, traffic-related incidents, and alcohol-drug offenses were nearly as common. But incidents involving danger or harm to persons (robbery, assault, etc.) were rare.

The columns labeled "Open" and "Closed" in Table 5.2 break the incidents down into an 881-day segment in which the *Lion's Den* was open and a 761-day segment in which it was closed. Crime rates are 22.39 and 13.92 total incidents per year for the "Open" and "Closed" segments. From these raw rates, it appears that crime risk in Montrose rose when the *Lion's Den* opened and fell when the *Lion's Den* closed. The magnitude of the effect is proportional to the exponentiated effect estimate reported in Table 5.2 ($e^{0.475} = 1.61$). The crime rate in Montrose was 61 percent higher while the *Lion's Den* was open.

Could the effect be due to chance? That is unlikely. The effect estimate reported in

Table 5.2 is statistically significant at the conventional 95 percent confidence level. Could the effect be due a coincidental increase in the frequency of patrols the Effingham County Sheriff? That too is unlikely. Whereas heightened surveillance can exaggerate “victimless” crime rates, heightened surveillance would not *not* produce higher rates of serious crime and, while the *Lion’s Den* was open, crime in the Village grew more “serious,” including two armed robberies, one committed by a gang of four men wearing ski masks and armed with shotguns. Both armed robberies were committed at site of the *Lion’s Den*, moreover, and were the only robberies recorded in the Village’s modern history.

The timing of the crime incidents reinforces this point. While the *Lion’s Den* was closed, Montrose’s modal crime incidents were “drive-off” thefts from the Village’s gasoline station and vandalism at the Village’s motel. Most of these incidents occurred in daylight and required no immediate response from the Sheriff’s Office; and because the businesses were separated from residences by I-70, the modal incidents attracted little attention. While the *Lion’s Den* was open, on the other hand, a majority of incidents occurred at night and demanded immediate response; as more incidents began to occur on the residential side of I-70, crime became more noticeable to Village residents.

5.3 CONCLUDING REMARKS

Criminological theory is clear on the threshold question of whether off-site SOBs are exempt. They are not. As it turns out, moreover, the Fifth Circuit had not intended its *Encore Videos* decision to be interpreted as a comment on applicability of criminological theory. Four years later, the Fifth Circuit upheld a Kennedale, Texas ordinance aimed at off-site SOBs.⁴⁹ Unlike the San Antonio ordinance under challenge in *Encore Videos*, the Kennedale ordinance relied on studies of off-site SOBs. The Court took the opportunity, furthermore, to clarify the short note in *Encore Videos* that had been misinterpreted as questioning the applicability of criminological theory.

On March 1st, 2007, exactly one week after the Fifth Circuit’s *H and A Land Corp.* decision, a man parked his car in a dark lot near an off-site SOB in Kennedale, Texas. Returning to his car, the man was confronted by a robber and shot.⁵⁰ Though seriously injured, he survived. Governments would not want to rely on anecdotal evidence alone. Nevertheless, anecdotes of

⁴⁹ *H and A Land Corp. v. City of Kennedale, TX.*, 480 F.3d 336 No. 05-11474 (5th Cir. Feb. 22nd, 2007).

⁵⁰ Bourgeois, P. “Man shot outside video store in Kennedale.” *Fort Worth Star-Telegram*, March 1st, 2007.

this sort constitute legitimate secondary effects evidence.⁵¹ In addition to its corroborative value, this particular anecdote has some legal relevance because the off-site SOB was a plaintiff in *H and A Land Corp.*

The Tenth Circuit may not have found the Montrose results relevant to *Abeline Retail*. Every case study is unique in some respect, after all; and although the U.S. Census Bureau considers both Effingham County, Illinois and Dickinson County, Kansas to be “rural,” the Tenth Circuit may have focused on idiosyncratic, legally relevant factors. Nevertheless, the case study results demonstrate that, whether urban, suburban, or rural, hotspots are hotspots. Whether the area is urban, suburban, or rural, SOBs attract patrons from wide catchment areas. Because these patrons are disproportionately male, open to vice overtures, and reluctant to report victimizations, their presence attracts offenders, generating ambient victimization risk – a hotspot of predatory crime. This theoretical mechanism operates identically in rural, suburban, and urban areas but, because rural areas ordinarily have lower levels of visible police presence, rural hotspots may be riskier than their suburban and urban counterparts.

Solving the problem by allocating more police to rural areas is politically unfeasible. Governments allocate public safety resources across regions on utilitarian grounds. Per capita allocations have the greatest impact on per capita crime rates. This poses an obstacle to rural problem-oriented policing (Weisheit, Falcone, and Wells, 1999), of course, but it is a rational policy for a government.⁵² Because the targets attracted to the rural hotspot live outside the jurisdiction, and because victimizations are under-reported, ignoring the hotspot is a more realistic strategy.

The future is unclear. The relocation of adult businesses to rural areas parallels the post-war “flight” of inner-cities families. From the perspective of adult business proprietors, the urban environment has become hostile. Zoning codes force adult businesses into “ghettos” where their operations are strictly regulated and where competition with other adult businesses is fierce. Rural areas have few regulations, on the other hand, and little competition; access to interstate highway traffic is a bonus. As urban environments become more hostile, more adult businesses will relocate to rural areas, forcing state and county governments into policy decisions.

⁵¹ See, e.g., *World Wide Video of Washington, Inc. v. City of Spokane*, 368 F.3d 1186, 1195-96 (9th Cir. 2004) (“Anecdotal evidence and reported experience can be as telling as statistical data and can serve as a legitimate basis for finding negative secondary effects ...”).

⁵² For a review of the problems involved in rural policing, see *Community policing in a rural setting*. (by Q. Thurman and E.G. McGarrell; Anderson Publishing, 1997) or *Crime and policing in rural and small-town America* (by R.A. Weisheit, D.N. Falcone, and L.E. Wells; Waveland Press, 1999).

6. METHODOLOGICAL RULES

In the last five years, legislatures and courts have been bombarded with expert opinions from both sides. Plaintiffs' experts argue that *every* government-sponsored secondary effect study is "fatally flawed" while *every* study conducted by a plaintiffs' expert is "methodologically rigorous." Plaintiffs' experts are incorrect, of course, but ignoring this point for the present, the clash of experts raises this question: *How can two sets of experts look at the same data and arrive at different conclusions?* The short answer to this question is that the experts recognize and obey different methodological rules.

A more complete answer requires a discussion of the rules. Like all rules, the rules of statistical inference are unambiguous and binding. Although investigators on both sides of a debate are bound by the same set of rules, the rules can have slightly different interpretations. If investigators frame the research question differently then, or if they make different assumptions, or if they use different statistical models, even following the same rules, they can arrive at different findings. With that point in mind, if an investigator *wanted* to produce a null finding,⁵³ that goal could be achieved by using the weakest possible quasi-experimental design.

6.1 WEAK MEASURES OF AMBIENT CRIME RISK⁵⁴

The most salient difference between government-sponsored secondary effects studies, such as those listed in Table 1, and the industry-sponsored studies that began to appear after the *Alameda Books* decision, is way that *ambient crime risk* is measured. Whereas government-sponsored studies use crime incident reports (*e.g.*, Uniform Crime Reports or UCRs), for the most part, industry-sponsored studies use 911 calls-for-service (CFSs).

Although UCRs and CFSs are roughly comparable under some (but *not* all) conditions, in statistical terms, UCRs are always the "better" measure of ambient crime risk. To explain this important point, define the *crime risk measure* (CFSs or UCRs, *e.g.*) as the sum of *crime risk* and *noise*:

$$CRIME\ RISK\ MEASURE = CRIME\ RISK + NOISE$$

Defined this way, the *signal-to-noise* ratio as the ratio of *crime risk* to the *crime risk measure*⁵⁵

⁵³ Again, "null finding" means "finding that SOBs have no secondary effects."

⁵⁴ This section and the next are based on R. McCleary and J.W. Meeker, "Do peep shows "cause" crime?" *Journal of Sex Research*, 2006, 43:194-196.

⁵⁵ The terms in the numerator and denominator of this expression are population variances. Although I call this expression the "signal-to-noise ratio," it is the *squared* correlation

$$SIGNAL-TO-NOISE = \frac{CRIME RISK}{CRIME RISK MEASURE} = \frac{CRIME RISK}{CRIME RISK + NOISE}$$

The higher the signal-to-noise ratio, the “better” the measure. Relative to CFSs, UCRs are a “better” measure of crime risk because they have a higher signal-to-noise ratio.

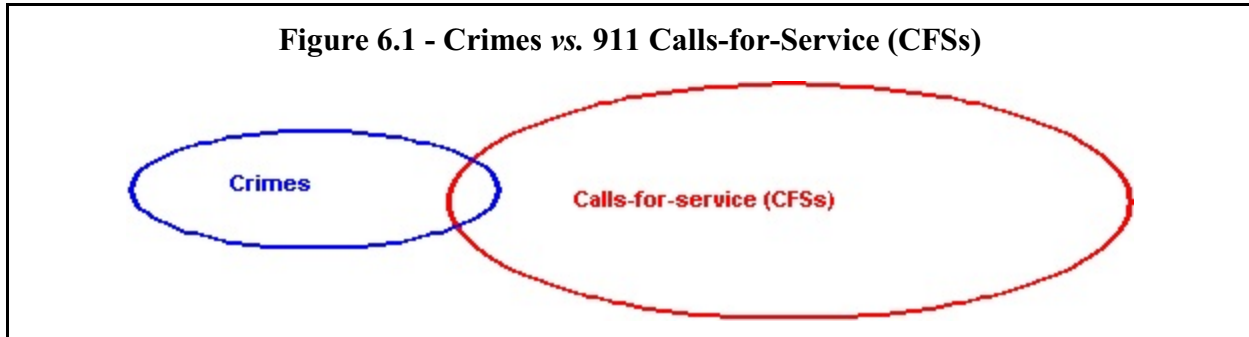


Figure 6.1 depicts the statistical relationship between CFSs and crime risk. In any jurisdiction, CFSs outnumber crimes by a large factor. The relative areas accorded to CFSs (in red) and crimes (in blue) depicts this aspect of the relationship. The signal-to-noise ratio is proportional to the overlapping area. The larger the overlapping area, relative to the total area, the higher the signal-to-noise ratio. In this case, the signal-to-noise ratio is relatively small.

The non-overlapping areas in Figure 6.1 fall into two categories. The first category consists of CFSs that have nothing to do with crime. Examples include duplicated or unfounded CFSs; CFSs that have no apparent basis; and CFSs that are precipitated by false alarms. The second category consists of crimes that circumvent the 911 system and, thus, leave no CFS records. Examples include crimes that the police discover through routine or proactive patrolling and crimes that the police discover through specialized unit activity, especially “victimless” vice crimes, particularly drugs and prostitution.⁵⁶

(or R²) for crime risk and its measure. See McCleary, R. and J.W. Meeker. Do peep shows “cause” crime? *Journal of Sex Research*, 2006, 43:194-196.

⁵⁶ In the *Annex Books v. City of Indianapolis* decision, e.g., “Specifically, the data revealed that the police made forty one (41) arrests at Annex Books for public masturbation between December 5, 2001 and November 5, 2002. Def.'s Br. at 24. In the before/after crime analysis Dr. Linz conducted, we note that he collected police call data for 2001 and 2003, but not for 2002. We need not delve into the intricacies of Dr. Linz's analysis in order to conclude, as we do, that the City has rebutted Plaintiffs' evidence to the contrary on adverse secondary effects. We find the data regarding the number and type of actual arrests at Annex Books for the year period compelling.” (333 F. Supp. 2d 773; 2004 U.S. Dist. LEXIS 17341)

CFSs in the first category tend to *overstate* the crime rate; CFSs in the second category tend to *understate* the crime rate. In addition to errors that *over-* and *under-*state the crime rate, CFSs have errors that limit their use for finer inferences about *where* and *when* crimes occur.

Address-specific (“hotspot”) analyses assume that the address recorded on a CFS is the address where the precipitating crime occurred. The address on a CFS instructs responding patrol units where they go to “see the man,” however, and this is often not the address of the precipitating incident. If X calls 911 to report a disturbance at Y’s house, *e.g.*, the responding patrol unit will be asked to “see the man” at X’s address. Although the disturbance occurred at Y’s address them, X’s address will be recorded on the CFS record.⁵⁷

Time-specific analyses of CFSs are limited by analogous errors. The time recorded on a CFS is not necessarily the time of the crime incident. For property crimes such as burglary and theft, victims call 911 when the crime is discovered. This may be hours (or even days) after the fact. Given these errors, CFSs allow for relatively crude, approximate inferences about the times and places of crimes.

Table 6.1a - San Diego CFSs by Final Disposition			
88,215	CFSs were cleared by report	14.6 %	
31,035	CFSs were cleared by arrest	5.1 %	(19.7 %)
71,686	CFSs were cancelled or duplicated	11.8 %	
32,757	CFSs were unfounded	5.4 %	
332,014	CFSs were disposed of without report	54.8 %	
52,196	CFSs had other or unknown disposition	8.3 %	(80.3%)
Table 6.1b - San Diego Burglary CFSs by Initial and Final Disposition			
Total CFSs		607,903	100.0 %
	CFSs initially classified as burglaries	147,127	24.2 %
	Burglary CFSs initiated by an alarm	110,111	18.1 %
	False alarms	109,135	18.1 %
	CFSs initiated by actual burglaries	37,992	25.8 %
Source: <i>A Methodical Critique of the Linz-Paul Report: Report to the San Diego City Attorney’s Office.</i> R. McCleary and J.W. Meeker, March 12, 2003.			

Tables 6.1a-b illustrate the magnitude of the “noise” component in CFSs. In a 2002 San

⁵⁷ To obscure a business’ public safety hazard, the proprietor can ask 911 to send a patrol unit to “5th and Main” instead of to “521 East Main.”

Diego secondary effects study, Drs. Daniel Linz and Bryant Paul analyzed 607,903 CFSs. As reported in Table 6.1a, fewer than 20 percent of these CFSs began with a crime; more than 80 percent were cancelled, duplicated, unfounded, disposed of without report,⁵⁸ or had some other non-crime disposition. This 80:20 ratio of CFSs-to-crimes is typical of the overstatement found in many large cities.

Table 6.1b illustrates another aspect of the problem. Nearly 25 percent of the CFSs analyzed by Drs. Linz and Paul were initially classified as burglaries. Of these, 74.8 percent were initiated by burglar alarms, 99.1 percent of which turned out to be false; only 25.8 percent of burglary CFSs were actual burglaries. CFSs initiated by auto and robbery alarms aggravate the problem that seen for burglaries. Considering “serious” crimes, like burglary, auto theft, and robbery, in most large cities, CFSs overstate the crime rate by a substantial factor.

In light of these well known properties of CFSs, one might wonder why any researcher might prefer to use CFSs to measure of crime risk. One answer – and there are several – is that the relatively low signal-to-noise ratio of CFSs biases statistical tests in favor of a null finding. I will explain this rather technical point after a short historical digression.

6.1.1 HISTORICAL NOTE ON THE USE OF CFSs

Until recently, virtually all secondary effect studies used UCR-based measures of ambient crime risk. The millennial year, 2001, marked an historical turning point. Four years earlier, in 1997, the Fulton County, GA Police Department issued a “quick and dirty” report that compared CFSs at the addresses of adult cabarets and taverns.⁵⁹ The design of the report reflects the obvious common sense notion that, other things equal, an adult cabaret is a tavern that offers nude or semi-nude entertainment; clothe the entertainers and the adult cabaret becomes a tavern. It follows from this common sense argument that any difference in CFSs is the secondary effect of nudity.

The results of the comparison surprised the Fulton County Commission. Over a 29-month period, more CFSs were logged to tavern addresses. At a minimum, this implied that adult cabarets posed no ambient public safety hazards; and this in turn implied that Fulton County had no legitimate secondary effects rationale for regulating adult cabarets. And that,

⁵⁸ CFSs end without a report when the responding patrol unit finds no complainant, informant, victim, or evidence of a crime. Most of the CFSs disposed of as “other/unknown” do not require responses; “all units” CFSs, *e.g.*, describe suspects or vehicles. Strictly speaking, Drs. Linz and Paul should have analyzed only those CFSs that ended in an arrest or report.

⁵⁹ *Study of Calls-for-Service to Adult Entertainment Establishments which Serve Alcoholic Beverages*. June 13th, 1997, Capt. Ron Fuller and Lt. Sue Miller.

more or less, is how the U.S. Eleventh Circuit Court interpreted the data.⁶⁰

Following the 2001 decision in *Flanigan's Enterprises*, CFSs became the preferred crime risk measure for experts retained by the SOB industry. Whereas government-sponsored studies continue to use UCR-based measures, after 2001, most SOB industry-sponsored studies use CFS-based measures of ambient crime risk. The 2002 San Diego study, to be reviewed below, and the 2003 Greensboro and 2004 Daytona Beach studies, reviewed in Section 3 above, illustrate the trend. All used CFSs; all purported to find no secondary effects.

In our critique of the 2002 San Diego study by Drs. Daniel Linz and Bryant Paul, Jim Meeker and I pointed out the problems inherent to CFSs generally and their use in secondary effects studies particularly. Drs. Linz and Paul countered by arguing, first, that there is a debate among criminologists about the statistical properties of CFSs; and second, that CFSs are widely used in government-sponsored secondary effects studies. Both arguments are incorrect.

On the first point, shortly after the advent of computerized 911 systems, criminologists experimented with CFSs, sometimes even using them as surrogate measures of crime risk. The results of this experiment led to a consensus view that CFSs are not the *best* – or even a *good* – measure of ambient crime risk. Few criminologists study CFSs for any reason; but no criminologists study CFSs to learn about ambient crime risk. The published literature review summarized in Table 6.1.1 supports both of these opinions. During a recent five-year period, four general criminology journals published 705 items. Most of the items were either non-empirical (essays, reviews, *etc.*) or else, analyzed phenomena other than crime (police behavior, sentencing decisions, *etc.*). Of the 254 articles that analyzed a crime statistic, 134 (52.8 percent) analyzed UCRs; 119 (46.8 percent) analyzed victim or offender surveys. Only five items (1.9 percent) analyzed CFSs.⁶¹ Of these five, *only one used CFSs as a crime risk measure.*

⁶⁰ *Flanigan's Enterprises, Inc. v. Fulton County*, 242 F.3d 976 (11th Cir. 2001)

⁶¹ Table 6.1.1 was compiled from the independent judgements of eight students. Inter-rater reliability among the eight was nearly .95. Because some of the 254 articles analyzed multiple statistics, the rows may sum to more than 100 percent.

Table 6.1.1 Crime Statistics in Criminological Journals, 2000-2004

	Total Items	Crime Stats	UCRs	Survey	CFSs
<i>Criminology</i>	193	52	37	16	0
<i>Justice Quarterly</i>	152	48	23	23	2
<i>J of Quantitative Criminology</i>	95	47	30	17	0
<i>J of Criminal Justice</i>	265	107	44	63	3
	(705)	(254)	(134)	(119)	(5)

On the second point, other than the 1997 Fulton County study, analyses of CFSs are rarer than hen’s teeth in government-sponsored studies. Finally, however, recent case law supports the views of criminologists and governments. At least four U.S. Circuits have rejected attempts by SOB plaintiffs to use 911 calls to cast direct doubt on an ordinance.⁶² In short, analyses of CFSs these data are not sufficient to meet the standards required under *Alameda Books* to cast doubt on the secondary effects evidence relied on by the government to support an ordinance.

6.1.2 ANECDOTAL EVIDENCE OF BIAS IN CFSs

All large police agencies record 911 calls for planning and budgeting purposes.⁶³ In a pinch, 911 databases can generate “quick and dirty” snapshots of crime problems. In the long run, however, police agencies use crime incident reports to measure crime risk. Criminologists have the same views. Nevertheless, 911 calls-for-service seem to be the preferred secondary effect measure for SOB plaintiffs.

One reason why SOB plaintiffs might prefer 911 calls is that, because relatively few “victimless” crimes (drugs, prostitution, *etc.*) come in through 911 channels, 911 calls understate the incidence of these crimes by a large factor. Another reason is that 911 calls can be used to mask an address-specific public safety hazard. This last problem merits special comment. If a

⁶² In *Daytona Grand* (at 44-46), the Eleventh Circuit outlined the limitations of 911 calls and in footnote 33, noted that three other Circuits had rejected attempts by plaintiffs to use 911 calls to cast direct doubt on an ordinance: *Gammoh v. City of La Habra*, 395 F.3d 1114, 1126-27 (9th Cir. 2005), *G.M. Enter., Inc.*, 350 F.3d 631, 639 (7th Cir. 2003), and *SOB, Inc.*, 317 F.3d 856, 863 & n.2 (8th Cir. 2003).

⁶³ These legitimate uses of 911 calls are discussed in most undergraduate policing texts. See, e.g., Roberg, R.R., J. Crank and J. Kuykendall, *Police and Society*. Wadsworth, 1999.

business is familiar with the coding conventions, 911 records can be manipulated to make the business look more or less in need of police service. To build a case for more police service, the proprietor can complain to the police about problems that might otherwise be handled informally. Or alternatively, to mask a public safety hazard, the proprietor can handle problems informally, thereby creating fewer 911 records and making the business seem safer than it actually is.

Manipulations of this sort are legal, strictly speaking. At the extreme, manipulating the 911 record-keeping system crosses the line. In a recent Manatee County case, for example, an SOB bribed at least two deputies to illegally circumvent and/or to falsify 911 records.

Another Manatee deputy, Daniel E. Martin, 35, told sheriff's investigators that one of the Cleopatra's door girls had his cell phone and would call him personally to quell customer disturbances ... Former Manatee deputy Joshua R. Fleischer, 25, who resigned this month, told a detective that whenever he was dispatched to Cleopatra's for a disturbance he listed the address as the "3900" block of U.S. 41 – deliberately misidentifying the actual address in the 3800 block. Fleischer, according to the detective, did not want his reports associated with the club.⁶⁴

The investigation into this scandal has spread to surrounding counties. The relevant point, for our purposes, is that business proprietors who are familiar the geo-coding conventions can (and in Manatee County, at least, *do*) attempt to manipulate the system.

6.2 SUBSTANTIVE VS. STATISTICAL SIZE

A relatively low signal-to-noise ratio does not disqualify CFSs as a measure of ambient crime risk. On the contrary, ignoring their inherent biases, CFSs could provide a crude measure of ambient crime risk. When CFS-based risk measures are used to test statistical hypotheses, however, their relatively low signal-to-noise ratio biases the test in favor of a null finding. In effect, the low signal-to-noise ratio of CFSs makes *substantively* large secondary effects look *statistically* small.

The distinction between the *substantive* and *statistical* size of a secondary effect requires an explanation. In their 2002 San Diego secondary effects study, Drs. Linz and Paul found that SOB areas had 15.7 percent more CFSs than control areas. Most San Diegans would consider a 15.7 percent difference in CFSs to be *substantively* large. The budgetary implications of a 15.7 percent difference in CFSs boggle the mind. Nevertheless, according to Drs. Linz and Paul, the difference is *statistically* small and, hence, should be ignored. In fact, Drs. Linz and Paul are wrong. The *substantively* large secondary effect is also *statistically* large. After a short digression, I will review the 2002 San Diego study.

⁶⁴ *StripClub News*, September 22nd, 2006, "Investigation tied to strip club leads to resignations and charges."

Figure 6.2.1 - Jury Trials and Hypothesis Tests

		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

6.2.1 STATISTICAL HYPOTHESIS TESTING

Figure 6.2.1 summarizes the principles of statistical hypothesis testing by analogy to a jury trial. Suppose that an SOB stands accused of posing an ambient crime risk. After hearing the evidence, the jury can convict, acquit, or hang. If the jury convicts, there is a small (but non-zero) probability that the jury convicted an innocent SOB; *i.e.*, a false-positive (or “Type I” or “ α -type”) error. If the jury acquits, on the other hand, there is a small (but non-zero) probability that the jury acquitted a guilty SOB; *i.e.*, a false negative (or “Type II” or “ β -type”) error. Finally, if the jury hangs, there was no decision and, hence, no possibility of error.

In real-world courtrooms, the probabilities of false-positive and false-negative verdicts is unknown. Courts enforce strict procedural rules to minimize these probabilities but we can only guess at their values. In statistical hypothesis testing, on the other hand, the values are set by rigid conventions, to five percent for false-positives and twenty percent for false negatives.⁶⁵ Adopting these same values, to convict, the jury must be 95 percent *certain* of the SOB’s guilt.

⁶⁵ The most comprehensive authority on this issue is Chapter 22 of *The Advanced Theory of Statistics, Vol. 2, 4th Ed.* by M. Kendall and A. Stuart (Charles Griffin, 1979). This authority requires a strong background in mathematics, however. 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). Both Cohen (pp. 3-4) and Lipsey (pp. 38-40) set the conventional false-positive and false-negative rates at $\alpha=.05$ and $\beta=.2$, respectively. These rates can be set lower, of course. The convention also sets the ratio of false-positives to false-negatives at 4:1, implying that false-positives are “four times worse than” false-negatives. The 4:1 convention 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). It reflects a view that science should be conservative. In this instance, for example, the 4:1 convention works in favor of the SOB. When actual decision error costs are known, the actual ratio is used.

To acquit, the jury must be 80 percent *certain* of the SOB's innocence. To ground the 95 and 80 percent certainty levels, we could try each case in front of a large number of independent juries. To convict, 95 percent of the juries would have to return the same guilty verdict; in the case of an acquittal, 80 percent would return the same not guilty verdict.

Correct decisions are painted blue in Figure 6.2.1. Five percent of all convictions are false-positives and 20 percent of all acquittals are false-negatives. Incorrect decisions are painted red in Figure 6.2.1. When the levels of certainty are too low to support conviction *or* acquittal, of course, the jury hangs. Non-decisions, painted yellow in Figure 6.2.1, depend on factors such as the strength of evidence, credibility of witnesses, and so forth. So as not waste a jury's time, the prosecutor doesn't bring obviously weak cases to trial. Likewise, faced with strong evidence of guilt, the defense counsel seeks a plea bargain in order to avoid trial.

The analogy to statistical hypothesis testing is nearly perfect. The researcher considers two complementary hypotheses. The SOB either has secondary effects; or alternatively, the SOB does not have secondary effects. Based on the magnitude of the expected and estimated effects, the researcher then accepts one of the two hypotheses.

- If the false-positive rate for the estimated is smaller than five percent, the hypothetical secondary effect is accepted with 95 percent *confidence*. The SOB has a large, significant secondary effect.

If the false-positive rate is larger than five percent, researcher does not automatically accept the alternative hypothesis but, rather, conducts a second test.

- If the false-negative rate for the expected effect is smaller than twenty percent, the alternative hypothesis is accepted with 80 percent *power*. The SOB does not have a secondary effect.

But lacking *both* 95 percent confidence *and* 80 percent power, neither hypothesis is accepted; *the results are inconclusive*. Since inconclusive results invariably arise from weak research designs, and since the relative strength of a design is known *a priori*, inconclusive results should be rare. But in fact, many of the secondary effects studies sponsored by SOB plaintiffs have inconclusive results. An example illustrate the plaintiffs' rationale.

6.2.2 SAN DIEGO PEEP SHOWS

Analyzing San Diego CFSs, Drs. Daniel Linz and Bryant Paul found no statistically significant difference between SOB and control areas.⁶⁶ When Jim Meeker and I re-analyzed the

⁶⁶ *A Secondary Effects Study Relating to Hours of Operation of Peep Show Establishments in San Diego, California*. September 1, 2002. Daniel Linz and Bryant Paul. Submitted in

data,⁶⁷ we discovered that the SOB areas *actually* had 15.7 percent more CFSs than the control areas. In the view of police, legislatures, and citizens, a 15.7 percent difference in any crime-related statistic is *substantively* large. In *statistical* terms, however, the effect was not so large. Drs. Linz and Paul used the *statistically* small size of the effect to argue that the “real” secondary effect was zero:

... statistically nonsignificant result and must be interpreted, as meaning that there is no significant difference between these two averages – an indication that the level of criminal activity for [peep-show areas] is equal to the level of criminal activity for [control areas].⁶⁸

The substantively large 15.7 percent increase is not “real,” in other words. If the effect estimate is not *statistically* significant, then it does not exist.

A mundane analogy reveals the fallacy in this argument. If I cannot find my car keys, I might conclude that my car keys do not exist. But although this may be true, it may also be true (and certainly more likely) that I did not look hard enough for my car keys or that I looked in the wrong place.⁶⁹ By analogy again, if a “quick and dirty” secondary effect study fails to find a statistically significant effect, one might want to conclude that no effect exists. Although this may be true, it may also be true that the study was “too quick” or “too dirty.”

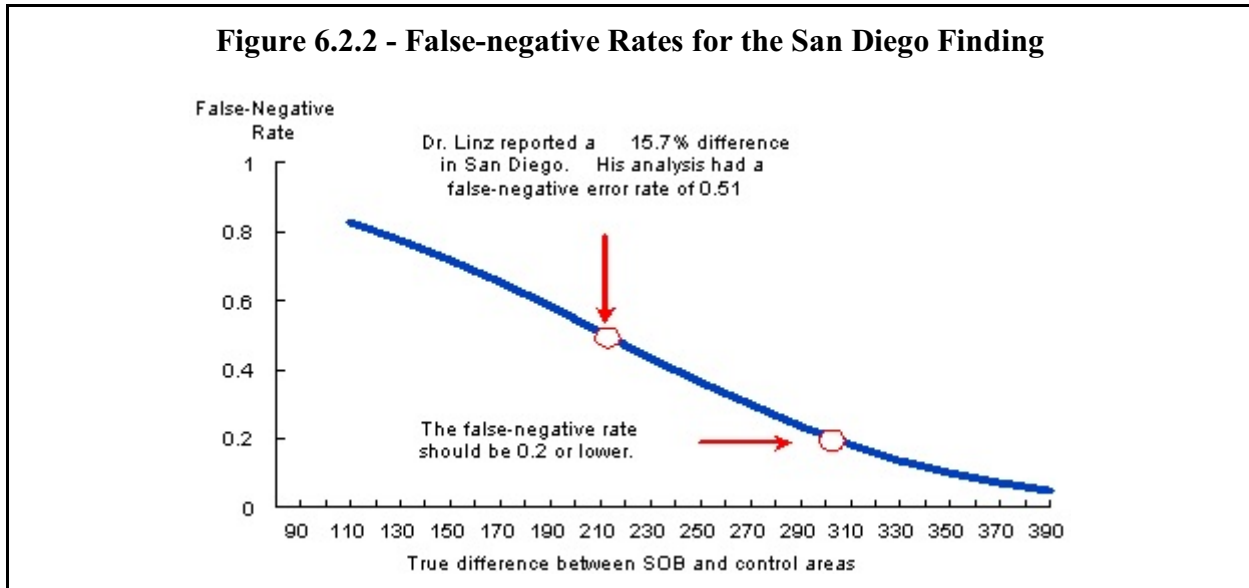
As it turns out, Drs. Linz and Paul did not “look hard enough” for a secondary effect in San Diego *and*, worse, looked “in the wrong place.” The false-negative error rates plotted in Figure 6.2.2 were calculated by Jim Meeker and me from statistics reported by Drs. Linz and Paul. As shown, the reported 15.7 percent secondary effect estimate has a false-negative rate of .508. What this means, simply, is that the reported null finding is more likely (51 percent) to be *incorrect* than it is to be *correct* (49 percent).

Mercury Books v. City of San Diego. U.S. District Court, Southern District of California (00-CV2461).

⁶⁷ R. McCleary and J.W. Meeker, *A Methodical Critique of the Linz-Paul Report: A Report to the San Diego City Attorney’s Office*. March 12, 2003.

⁶⁸ p.15, *A Secondary Effects Study Relating to Hours of Operation of Peep Show Establishments in San Diego, California*. September 1, 2002. Daniel Linz and Bryant Paul.

⁶⁹ Newton made this point with his aphorism “*Negativa non Probanda*.” “Finding nothing proves nothing.”



Whereas Drs. Linz and Paul interpret their null finding as evidence that San Diego SOBs do *not* have secondary effects, in fact, their results are inconclusive. The secondary effect would have to exceed 22.7 percent (304.5 CFSs) before the effect could be detected with 80 percent power. Although many elements of the design contribute to its inherent weakness, the use of CFSs is a major culprit. Jim Meeker and I have demonstrated that, correcting for low signal-to-noise ratio of the San Diego CFSs, the *substantively* significant secondary effect estimate is *statistically* significant as well.⁷⁰

6.3 CONCLUDING REMARKS

The mathematics of statistical hypothesis testing is so demanding that few social scientists understand the concepts or their importance to research.⁷¹ The conventional 80 percent power level was proposed and adopted in the 1920s when statistical hypothesis testing was in its infancy. The convention has survived for eighty years because it serves two useful, crucial functions.

- Anyone with a modest background in research methods can design a study in a way that favors – or even guarantees – a null finding. The convention minimizes abuses by malicious investigators.

⁷⁰ The correction is reported in R. McCleary and J.W. Meeker, “Do peep shows ‘cause’ crime?” *Journal of Sex Research*, 2006, 43:194-196.

⁷¹ E.g., “I attributed this disregard of power to the inaccessibility of a meager and mathematically difficult literature...” (p. 155, “A power primer.” J. Cohen, *Psychological Bulletin*, 1992, 112:155-159).

- Haphazardly designed “quick and dirty” studies favor the null finding. The convention minimizes the impact of spurious findings generated by naive (but benign) investigators.

Lay audiences, who must rely on common sense, cannot always distinguish between weak and strong designs or between benign and malicious investigators. Scientific conventions guard against both abuses. In this particular instance, the 80 percent power convention allows the lay audience to trust the validity of a null finding.

Recognizing the conventions, crime-related secondary effect studies can be assigned to one of three categories: studies that report secondary effects with 95 percent *confidence*; studies that report null findings with 80 percent *power*; and studies that are *inconclusive*. All of the studies listed in Table 1 above either report large, significant secondary effects or else are *inconclusive*. No studies report null findings with the conventional 80 percent power. This reinforces a statement that I made in the introduction to this report: It is a *scientific fact* that SOBs pose large, significant ambient crime risks.

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1989.

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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 (Environmental Health Sciences and Policy; Criminology, Law and Society; Planning and Policy), 1988-Present.

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 of Criminology
American Statistical Association
Justice Research and Statistics Association

EDITORIAL BOARDS

Behavioral Assessment: Associate Editor, 1980-1984
Criminology and Public Policy, Senior Editor, 2006-7
Evaluation Studies Review Annual: Associate Editor, 1986
J. of Criminal Law and Criminology: Consulting Editor, 1982-Present
J. of 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, 1997-2003
Board of Directors, Orange County Youth and Family Services, 1995-2002
Technical Advisory Board (HealthLink), Robert Wood Johnson Foundation
Executive Committee, UCI Mental Retardation Research Center, 1995-2000
Executive Committee, UC Institute for Brain Aging and Dementia, 1995-2003
Faculty Chair, UC Irvine School of Social Ecology, 2002, 2003
Member, UC Irvine Institutional Review Board "C," 2003-present
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FUNDED RESEARCH

Grant #P30-95-S7 from the National Institute of Childhood Health and Development to the University of California Regents: "MRRC Biostatistics Core," \$580,000 (PI).

Grant #AGA24806 from the American Gaming Association to the University of California Regents: "Suicide in Casino Gaming Areas," \$35,000 (PI).

Contract #C91-37 from the City of Garden Grove to the Principal Investigator, "Public safety hazards associated with adult entertainment businesses," \$35,000 (PI).

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Grant #JS2-47 from the U.S. Bureau of Justice Statistics to the University of New Mexico: "The New Mexico Criminal Justice Statistical Analysis Center," \$50,000 (Co-PI).

Contract #14-12-001-30300 from the U.S. Department of the Interior to Human Relations Area File, Yale University: "Alaskan OCS Social Indicators System," \$1,200,000 (Co-PI).

Contract #SOJ-85019 from the Alaska Department of Corrections to the Justice Center, University of Alaska, Anchorage: "A forecast of prison population through the year 2000," \$15,000 (Co-PI).

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).

Contract #AG-82-1 from the Arizona Auditor General to the Principal Investigator: "An evaluation of Arizona's vehicle emissions inspection program," \$17,000 (PI).

Grant #CF-80-08-0070(a) from the Arizona JPA to the Center of Criminal Justice, Arizona State University: "Technical assistance project in evaluation research," \$40,000 (Co-PI).

Contract #22820 from the City of Phoenix to the co-principals: "Telephone survey of citizen attitudes toward team policing," \$10,000 (Co-PI).

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

Contract #UIACC3-47-32-25-3-51 from the Illinois Department of Corrections to the Center for Criminal Justice, University of Illinois, Chicago: "Re-evaluation of UDIS," \$8,000 (PI).

Grant #77-NI-99-0073 from the National Institute of Law Enforcement and Criminal Justice to the Center for Research in Criminal Justice, University of Illinois, Chicago: "Measurement of recidivism," \$225,000 (Co-PI).

Report and
Analysis

**SURVEY OF APPRAISERS
FORT WORTH & DALLAS
EFFECTS OF LAND USES ON
SURROUNDING PROPERTY VALUES**

Submitted to

CITY OF FORT WORTH, TEXAS

Submitted by

duncan | associates

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September 2004

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Introduction

CONSULTANT TEAM

The City of Fort Worth retained Duncan Associates, in association with Cooper Consulting Company, Inc., to undertake a study of certain effects of sexually oriented businesses. Specifically, a survey of Fort Worth and Dallas appraisers was undertaken to determine the potential impacts sexually oriented uses, as well as other land use types, may have on residential and businesses property values. Project manager for the study is Eric Damian Kelly, Ph.D., FAICP, vice-president with Duncan Associates. Teamed with Eric, is Connie B. Cooper, FAICP, co-author, with Kelly, of the American Planning Association's Planning Advisory Service Report *Everything You Always Wanted to Know About Regulating Sex Businesses*. We were assisted in the survey design and the analysis of results by David C. Keuhl, Ph.D., an Assistant Professor of Urban Planning at Ball State University. The work was performed under the supervision of the Office of the City Attorney, providing background for the City Council in its consideration of amendments to the zoning regulations for sexually oriented businesses.



REGULATING SEXUALLY ORIENTED BUSINESSES

Regulation of sexually oriented businesses has become one of the more challenging tasks facing communities today. Regulations must balance legitimate community concerns about the businesses with the First Amendment rights of the business owners and customers.

Courts increasingly demand that local governments base their zoning regulations of sexually oriented businesses on documented land-use effects of those businesses. Recent court decisions indicate that a local government representing a jurisdiction of significant size is in a better position legally if it conducts its own study of those impacts, rather than relying on published studies or studies conducted in other communities.

Most regulations of sexually oriented businesses are directed at nude or topless bars, XXX video stores and other establishments devoted almost entirely to sexually oriented activities. However, many well-regarded merchants include in their stock a measurable proportion of arguably sexually oriented material; such businesses include the video rental stores with "adults only" backrooms, news dealers with isolated racks of adult magazines and a variety of specialty stores that may include certain sexually oriented items.



Although those who take the most negative view of sexually oriented activities and materials would lump all such businesses together, this creates an impossible situation, legally and politically. First, any broad limitation on any business with any "sexually oriented" materials or activities would ultimately apply to every bookstore, every movie rental store, every news dealer and, arguably, a variety of other merchants, such as Victoria's Secret, which trades on the fringes of this market in some of the nation's most upscale malls. Although those who would like to see such materials and activities eliminated completely from a community, the fact remains that there are technically x-rated scenes in major works of literature, brief nudity and sexual activity in Academy award-winning motion pictures.

Regulation of sex businesses is one of the most litigated areas of land-use law today. Communities that have tried to bar most or all sex businesses have generally lost court challenges to their regulatory schemes. In that context, a community must make reasonable provision for the existence of some sexually oriented businesses; on the other hand, it is also clear that a community need not necessarily allow every such establishment to offer the full range of sexually oriented products or activities that its proprietors might like to offer. Courts have also recognized that a sexually oriented business (such as a book store) is different from other businesses offering similar products that are not sexually oriented. Detroit can adopt and implement different zoning regulations for such businesses, provided that the effect is not a complete ban on all such businesses.

Regulations that attempt to censor specific messages or that otherwise target the message itself are subject to "strict scrutiny" in the courts, a standard which places a heavy burden on a government to show a "compelling state interest" that justifies the regulations. See, for example, *Boos v. Barry*, 85 U.S. 312, 108 S. Ct. 1157, 99 L. Ed. 2d 333 (1988). But where the regulations are aimed at the secondary effects of sexually oriented businesses, they will be treated as "content neutral" and subject only to "intermediate scrutiny," a far less burdensome standard for local governments to meet. See *City of Los Angeles v. Alameda Books, Inc.*, 152 L. Ed. 2d 670, 122 S. Ct. 1728 (U.S. 2002).

In response to concerns of residents about the secondary effects of certain sexually oriented businesses, particularly in parts of the community where there were multiple such businesses, the City of Fort Worth began to consider amendments to its zoning regulations affecting sexually oriented businesses and sought our advice on the extent of those secondary effects. The focus of this study has been on the secondary effects of those businesses on property values.

SCOPE AND DESIGN OF STUDY

This study consisted of a survey of MAI and SRA real estate appraisers in Fort Worth and Dallas. There have been earlier surveys of real estate appraisers and professionals regarding this subject, including those incorporated in studies for Indianapolis, Indiana, Austin, Texas, Garden Grove, California, and Rochester, New York.¹

The most commonly cited secondary effects of sexually oriented businesses on communities relate to incidence of crime and effects on surrounding property values. The incidence of crime was well documented in the Garden Grove study,² a study that would be difficult and expensive to replicate. Efforts to model the effects of particular uses on property values have proven to be very difficult to carry out effectively. The typical method, followed in sections of both the Indianapolis and Austin reports, is to compare trends in property values in an area with a sexually oriented business to trends in property values over the same period of time in a similar area without a sexually oriented business. There are multiple levels of comparison in such a study. One major challenge is trying to find "similar" areas. There will always be differences other than the sexually oriented business, and, without a large enough sample size that allows testing for other variables, it is difficult to determine how those other variables may be increasing or offsetting the apparent secondary effects of sexually oriented businesses. One area may have a park, while the other does not. One may have three small religious institutions while another has only two such institutions, but one of them turns out to be very large, with activities several days a week. The area with the sexually oriented business may also have a

pawn shop or a salvage yard or another use that may also have a negative effect on property values.

Even if researchers are able to identify truly comparable areas for the study, there is a further problem in tracking trends in property values. A study may use values assessed for tax purposes, a methodology that is itself fraught with problems and that often includes a number of factors other than market value. Tracking the values of properties that actually sell may make sense, but there is no guarantee that similar properties will sell in the two similar areas over any reasonable study period. The sale of one deteriorated home in one area or of a couple of upscale homes in another can distort study results. Understanding those problems is not particularly difficult. Solving them in the context of a specific study in a specific community is very difficult indeed.

Given the above, we believe that the opinions of appraisers provide an excellent and reliable measure of the effects of any kind of use or activity on property values. First, certified appraisers are experts in their fields, people who follow professional standards in making judgments about property values. Second, appraisers familiar with a local market look at the values of many properties every year and thus have a substantial data set not only in their files but also in their heads. Third, and perhaps most important, the opinions of appraisers are essentially self-fulfilling prophecies. The vast majority of real estate transactions that take place in this country involve mortgage loans. The amount available for a mortgage loan on a particular property depends on the value of the property, as determined by an appraiser. The mortgage value of a property is typically closely correlated with the market value of the property, because few buyers are willing to pay more for a property than mortgage lenders believe that it is worth. Thus, to take an overly simple example, if most appraisers in a community believe that pink and green houses are worth, in general, 10 percent less than similar houses painted beige, the practical effect of that opinion will be to reduce the market value of pink and green houses.

We elected to survey only appraisers who have met the professional standards of the Appraisal Institute³ as Members (holding the MAI designation) or as Senior Residential Appraisers (SRA designation). The Institute is considered by many to be the leading organization setting the standards for appraisers in the United States.

Previous surveys of appraisers have been criticized because the purpose of the survey was made obvious, either in a cover letter or in the narrow focus of the instrument itself. We thus designed a survey that asked the opinions of the appraisers about both positive and negative effects of a variety of land uses on surrounding properties – uses including religious institutions, parks, libraries and shopping centers, as well as uses often carrying a negative connotation, such as sexually oriented businesses, pawn shops and homeless shelters.

We mailed the surveys to all appraisers meeting the above qualifications. We used follow-up letters and e-mails to ask survey recipients to respond. A discussion of the response rates follows at the end of this report.

In our report below, we include summaries of responses to the questions in which we were most interested. The survey instrument and responses to all questions are included at the end of the report. Although we have grouped sexually oriented businesses together in reporting the responses, the survey instrument mixed various land uses in the questions.

Findings

Question 3: How would the listed land uses located within 500 feet of a Single-Family Home likely affect the home's appraised value?

Land Uses	Affect on Single Family Home's Appraised Value (%)			
	Decrease	No impact	Increase	No Opinion
Adult Arcade/Peep Booths	97.5	0.0	0.0	2.5
Adult Novelty/Media Store (Retail only)	97.5	0.0	0.0	2.5
Gentleman's Club/Cabaret	95.0	2.5	0.0	2.5
Homeless Shelter	95.0	2.5	0.0	2.5
Bar/Lounge	87.5	7.5	0.0	5.0
Pawn Shop	87.5	10.0	0.0	2.5
Convenience Store (beer/wine license)	80.0	12.5	2.5	5.0
Gas Station	60.0	32.5	2.5	5.0
Office Building	52.5	40.0	0.0	7.5
Grocery Store	47.5	25.0	25.0	2.5
Fire station	27.5	50.0	20.0	2.5
Bookstore	23.1	59.0	15.4	2.6
Religious Institution	15.4	61.5	17.9	5.1
Public Library	15.0	45.0	32.5	7.5
Neighborhood Park	5.0	15.0	77.5	2.5

Appraisers were nearly unanimous in responding that adult-oriented businesses of any kind (arcades, stores, or cabarets) would decrease single-family home property values. Other uses deemed similarly detrimental to property values included homeless shelters, bars, and pawnshops. Interestingly, a convenience store with a beer and wine license was viewed as decreasing values by 60% of the respondents.

Question 4: If you selected “Decrease Value” or “Increase Value” for any of the land uses in Question 3, at what distance would the land use likely have **No Impact** on the appraised value of the **Single-Family Home**?

Land Uses	Distance Before There Is No Impact on Single Family Home's Appraised Value (%)						Average Feet
	Over 500 ft.	Over 1000 ft.	Over 1500 ft.	Over 2000 ft.	Over 2500 ft.	Over 3000 ft.	
Homeless Shelter	0.0	0.0	5.7	5.7	2.9	85.7	2800
Adult Arcade/Peep Booths	0.0	0.0	5.7	5.7	5.7	82.9	2800
Gentleman's Club/Cabaret	0.0	2.8	8.3	2.8	2.8	83.3	2700
Adult Novelty/Media Store (Retail only)	0.0	2.7	2.7	5.4	10.8	78.4	2700
Pawn Shop	0.0	3.0	9.1	15.2	9.1	63.6	2600
Bar/Lounge	0.0	9.1	12.1	9.1	12.1	57.6	2400
Gas Station	3.4	6.9	13.8	13.8	17.2	44.8	2300
Convenience Store (beer/wine license)	3.2	12.9	25.8	0.0	16.1	41.9	2100
Office Building	3.6	7.1	21.4	21.4	14.3	32.1	2100
Fire station	5.6	11.1	22.2	11.1	11.1	38.9	2100
Public Library	13.0	4.3	21.7	4.3	26.1	30.4	2000
Grocery Store	7.4	11.1	25.9	18.5	3.7	33.3	2000
Neighborhood Park	12.9	16.1	19.4	25.8	0.0	25.8	1800
Bookstore	11.8	17.6	23.5	17.6	5.9	23.5	1700
Religious Institution	13.3	20.0	26.7	13.3	6.7	20.0	1700

More than 78% of the appraisers judged the negative influence of adult-oriented businesses on property values to extend beyond 3000 feet (or approximately 6 blocks). While a few suggested the influence was not felt quite so far, even the lowest estimates put the distance at 1000 feet. The average distance was between 2700 and 2800 feet. Other than sexually oriented uses, only homeless shelters were considered to influence property values that far away. Pawnshops, bars, and gas stations were next (2600 to 2400 feet).

Question 5: How would the listed land uses located within 500 feet of a Community Shopping Center likely affect the community shopping center's appraised value?

Land Use	Affect on Community Shopping Center's Appraised Value (%)			
	Decrease	No impact	Increase	No Opinion
Adult Arcade/Peep Booths	92.3	2.6	2.6	2.6
Gentleman's Club/Cabaret	89.7	2.6	5.1	2.6
Adult Novelty/Media Store (Retail only)	82.1	12.8	0.0	5.1
Homeless Shelter	82.1	12.8	2.6	2.6
Pawn Shop	53.8	35.9	5.1	5.1
Bar/Lounge	35.9	46.2	12.8	5.1
Convenience Store (beer/wine license)	7.7	59.0	25.6	7.7
Grocery Store	7.7	53.8	35.9	2.6
Bookstore	2.7	62.2	32.4	2.7
Fire station	2.6	76.3	18.4	2.6
Neighborhood Park	2.6	82.1	10.3	5.1
Religious Institution	2.6	82.1	10.3	5.1
Office Building	2.6	64.1	30.8	2.6
Gas Station	2.6	64.1	30.8	2.6
Public Library	0.0	89.7	7.7	2.6

The appraisers considered the property values of community shopping centers to be equally detrimentally affected by the proximity of adult-oriented businesses. More than 82% considered adult-oriented uses to decrease commercial property values. The only use considered to be comparable in its decreasing of property values was homeless shelters. Pawnshops and bars were next but only 54% and 36%, respectively, of the appraisers thought they would decrease property values.

Question 6: If you selected "Increase Value" or "Decrease Value" for any of the land uses in Question 5, at what distance would the land use likely have **No Impact** on the appraised value of the **Community Shopping Center**?

Land Uses	Distance Before There Is No Impact on Community Shopping Center's Appraised Value (%)						
	Over 500 ft.	Over 1000 ft.	Over 1500 ft.	Over 2000 ft.	Over 2500 ft.	Over 3000 ft.	Average Feet
Homeless Shelter	0.0	3.6	10.7	17.9	3.6	64.3	2500
Adult Novelty/Media Store (Retail only)	0.0	14.3	10.7	10.7	3.6	60.7	2400
Adult Arcade/Peep Booths	2.9	8.8	11.8	11.8	5.9	58.8	2400
Gentleman's Club/Cabaret	0.0	14.7	14.7	5.9	5.9	58.8	2300
Pawn Shop	9.5	9.5	19.0	4.8	14.3	42.9	2100
Bar/Lounge	5.0	10.0	35.0	20.0	0.0	30.0	1900
Grocery Store	23.8	4.8	28.6	14.3	4.8	23.8	1700
Office Building	11.1	11.1	33.3	22.2	0.0	22.2	1700
Fire station	18.2	9.1	27.3	18.2	0.0	27.3	1700
Gas Station	31.3	6.3	25.0	0.0	0.0	37.5	1700
Bookstore	17.6	17.6	29.4	5.9	5.9	23.5	1600
Religious Institution	18.2	27.3	27.3	9.1	0.0	18.2	1500
Convenience Store (beer/wine license)	25.0	18.8	31.3	6.3	0.0	18.8	1400
Public Library	20.0	30.0	30.0	10.0	0.0	10.0	1300
Neighborhood Park	22.2	44.4	22.2	0.0	0.0	11.1	1200

Approximately 60% of the appraisers felt adult-oriented businesses have an impact on the value of shopping centers' values beyond 3000 feet. As compared to single-family homes, the distance at which appraised values would no longer be affected by an adult use was somewhat less. Respondents felt that it took from 2300 to 2400 feet before an adult use had no impact on the appraised value of a shopping center. Only homeless shelters were suggested to have a further reach (2500 feet). Again, pawnshops and bars were next with an influence on property values 2100 and 1900 feet, respectively.

Question 7: Is there a greater negative impact on property values if there is a **concentration of land uses that have a negative impact** on appraised values?

Does a Concentration of Negative Uses Create a Greater Impact?					
Yes	82.9%	No	9.8%	No opinion	7.3%

The vast majority of appraisers agreed that a concentration or cluster of detrimental uses had a greater negative impact on property values than isolated uses.

Question 8: If you answered "YES" to Question 7, which of the following **factors are important in determining whether there is a "concentration" of uses with a possible negative impact?**

Factors Determining a Concentration	
Number of uses within a specified area?	3 + (uses)
Distance between uses measured in feet?	430 feet (average)
At what separation distance would the impact of the concentration cease to be a consideration?	3,340 feet (average)

A concentration of three or more negative uses was considered by most appraisers to be the level at which the impact is greater. The grouping was considered to occur if uses were within approximately 400 feet of each other. Respondents felt concentration ceased to have an impact at an average distance of 3,340 feet (as compared to approximately 2300 to 2800 feet for single uses listed earlier.)

Question 9: General comments on other issues related to Question 8.

- Survey did not consider condition or level of public use for several items.
- Variable that affects survey is the price range of house and size of community. In Dallas, \$300,000+ houses like to be secluded. In small towns people are happy to have a choice in uses, have growth and acceptance of it.
- Concentration depends on size of the defined area.
- Grouping of uses may be beneficial such as West End, Deep Ellum, or Sundance Square; however, DFW does not group their sexually oriented businesses into a single "red-light" district so it is difficult to measure. Although all of the clubs near Buchman Lake had a negative effect on the area; so it may be un-wise to cluster such uses near a residential area.
- Adult sexually oriented businesses need to be concentrated and located low-end industrial areas, otherwise they will gradually drive down the population and desirability of the area.
- Shopping centers benefit from defined agglomerations of retail if they have high architectural and signage standards; residential amenities within walking distance (5 - 6 blocks) are positive.

- Uses such as pawnshops, peep booths, etc, obviously effect single-family value. It is an open question as to effect on commercial properties; but as always, the developer must exhibit some common sense as to locations, area, etc., in both residential and commercial.
- The adverse land uses should be located outside the defined neighborhood in order for an adverse use to have little or no impact.
- Certain uses tend to increase crime rates and probably push values downward.
- Concentrating SOBs in industrial areas is reasonable as I support the business owners' rights to do business. Homeless shelters strike me as a big problem due to the number of panhandlers, bums, psychotics, etc. that leave the shelter each day. These need to be close to police stations and city services.
- It depends – Type of uses. Type of high-rise. Type of low rise. Ugly stuff in air. Blah Blah Blah.
- It depends on various factors primary are owner's expectations for the environment they are purchasing close to their house. Urban area negative use not a factor; suburban - everything can be an issue. Could get more usefulness by designing a questionnaire from an appraiser's perspective. I really think you can't understand factors without a socio-economic context.
- All of the above factors are relevant in that the noise level and traffic need to be minimal, although services need to be still relatively close by.
- Obviously some uses detract from value but number of uses is subjective.
- Marketing time (for property) would need to be extended.
- There would be other factors to be considered such as a major street or intersection as a screening characteristic, a larger building that blocks, a green belt or distances between uses, etc.
- Typically, no single adverse use causes a negative impact but a negative impact use causes other negative impact uses to move into certain areas and the combination of all negative uses creates negative property values.
- Single-family uses should be "family" oriented - not pornographic oriented. Lower demand would result in lower prices. Community shopping tends to be "A, B, or C" tenants etc. Generally pawnshops and adult entertainment are the lower rents, thus in lower value areas.
- SOBs generally have a negative affect on single family uses; lesser impact on retail.

Question 10: Do you believe that your personal, moral, or ethical beliefs about certain land uses have affected your responses to any of the questions in this survey?

Do Personal Beliefs Affect Response?	
Yes	19.5%
No	80.5%

Slightly less than 20% of appraisers felt that the answers they gave to the previous questions might be influenced by their "personal, moral, or ethical beliefs." The most commonly mentioned uses where this occurred were in the case of adult-oriented businesses. This means the findings may be slightly skewed negatively towards adult-oriented businesses.

Analysis of Response Rate

We mailed 186 surveys to appraisers holding the SRA or MAI designation in the cities of Fort Worth and Dallas. After follow-ups by mail and e-mail, we received 41 completed forms. Another 34 persons responded by indicating that they did not wish to complete the survey. Conservatively, that gave us a response rate of 22 percent, which is a margin of error of 13.7 percent. In some surveys – such as those of voters for President of the United States, where margins are typically narrow – that margin of error would substantially impair if not eliminate any validity of the survey.

In this case, however, the major findings were supported by 82 to 97 percent of the respondents. Even if the entire margin of error were applied negatively and the resulting responses were thus directly reduced (which is a worst-case example of possible error, not a statistically valid technique), the results would drop to 68 to 83 percent of the respective respondents, still a very strong and firm finding on all of the issues on which we have reported.

An argument can certainly be made that the response rate was greater than that in a typical survey in which a response rate of 22 percent is reported; in such a survey, typically only 22 percent of the people respond in any way. In this case, 40 percent actually responded in some way, although 18 percent were simply responding to say that they did not wish to participate.

It is also useful to compare the response rate in this study to response rates in other surveys of appraisers. A search of the literature on appraiser's response rates to surveys revealed a range as follows:

Author	Year	Response Rate
Chan ⁴	2000	21.0%
Clauretje, Bible, et al. ⁵	1989	23.9%
Diskin, Lahev, et al. ⁶	1988	30.0%
Dotterweich and Myers ⁷	1995	41.5%
Fisher, Lentz, et al. ⁸	1993	33.0%
Kinnard and Worzala ⁹	1999	43.0%
Lahey, Ott, et al. ¹⁰	1993	40.4%
Smolen and Hambleton ¹¹	1997	36.5%
Waller ¹²	2000	50.0%
Wolverton and Epley ¹³	2000	25.7%
Wolverton and Gallimore ¹⁴	1999	31.7%
Wolverton and Gallimore ¹⁵	1999a	31.8%

Although at the low end of response rates among surveys of appraisers on a variety of subjects, the results in this survey were of the same order of magnitude. Further, most of the other

surveys asked appraisers questions about their profession or practices, not hypothetical questions about property values. As experts and consultants, we certainly understand the reluctance of experts to respond to hypothetical questions in their area of expertise for a non-client, without compensation and with no firm understanding of how the material will be used. When all of those factors are considered, we believe that the response rate is understandable. Further, as noted above, the findings are so clear that the relatively high margin of error resulting from the lower response rate has no effect on the substantive findings of the study.

Summary

- ❑ Appraisers were nearly unanimous in responding that adult-oriented businesses of any kind (stores, arcades, or cabarets) would decrease single-family home property values. Other uses deemed similarly detrimental to property values included homeless shelters, bars, and pawnshops.
- ❑ More than 70% of the appraisers judged the influence of adult-oriented businesses on property values to extend beyond 3000 feet (or approximately 6 blocks). While a few suggested the influence was not felt quite so far, even the lowest estimates put the distance at 1000 feet. The average distance was between 2700 and 2800 feet. Only homeless shelters were considered to influence property values that far away. Pawnshops, bars, and gas stations were next (2300 to 2500 feet).
- ❑ The appraisers considered the property values of community shopping centers to be equally detrimentally affected by the proximity of adult-oriented businesses. More than 75% considered adult uses to decrease commercial property values. The only use considered to be comparable in its decreasing of property values was homeless shelters. Pawnshops and bars were next in their impact on lowering appraised values for community shopping centers but to a much lower degree (53% and 32%, respectively).
- ❑ Approximately 50% of the appraisers felt adult-oriented businesses impact shopping centers' appraised values beyond 3000 feet. As compared to single-family homes, the distance at which appraised values would no longer be affected by an adult use was somewhat less. Respondents felt that it took from 2200 to 2300 feet before an adult use had no impact on the appraised value of a shopping center. Only homeless shelters were suggested to have a further reach (2400 feet). Again, pawnshops and bars were next in their influence on property values within 2000 and 1900 feet, respectively.
- ❑ The vast majority of appraisers agreed that a concentration or cluster of detrimental uses had a greater negative impact than isolated uses.
- ❑ Three negative uses grouped together was considered by most appraisers to be the level at which the impact was greater. The grouping was considered to occur if uses were within approximately 1000 feet of each other. They felt the concentration ceased to have an impact at an average distance of 3800 feet (as compared to approximately 2300 to 2800 feet single uses).
- ❑ Slightly more than 20% of appraisers felt that the answers to the survey questions might be influenced by their "personal, moral, or ethical beliefs." This means the findings may be slightly skewed negatively towards adult-oriented businesses.

Survey Instrument

duncan | associates

c/o ION DESIGN GROUP
2800 NORTH HENDERSON AVENUE,
SUITE 100
DALLAS, TX 75206
PH: 214-228-0211 FAX: 214-370-3083

August 15, 2004

Dear MAI and SRA Designated Appraisers,

We are writing to request your assistance. Duncan Associates is conducting a **survey on whether property values are affected by certain types of nearby land uses**. We are sending this **10-question survey** to MAI and SRA designated appraisers in Dallas and Fort Worth to gain additional insight into better ways to regulate land uses and protect neighborhood amenities.

Please be assured that your response to this survey in no way implies that you are undertaking an appraisal of a property. It is simply to ascertain your views on the potential impact on property values created by certain types of land uses. **Your responses are completely confidential**. We use a mailing code to follow up on surveys that have not been returned. This is on the envelope and is discarded upon tabulation of the returned survey.

Enclosed with the survey is a stamped, self-addressed return envelope. Please use it to return the survey. We ask that you return the survey by **Monday, August 30**. If you would like to receive a copy of the tabulated survey results, please provide your name and address in the informational block found at the end of the survey.

We thank you in advance for your participation. If you have any questions, comments, or concerns please contact me at the number above or my associate, Connie B. Cooper, FAICP, via phone at 214-228-0211, or via e-mail at ccconniecooper@cs.com.

Sincerely,

Eric Damian Kelly, FAICP

SURVEY OF MAI AND SRA DESIGNATED APPRAISERS

DEADLINE: MONDAY, AUGUST 30, 2004

Purpose of the Survey: This survey asks Dallas and Fort Worth MAI and SRA designated appraisers your views of the impact certain land uses have on the appraised value of single-family homes and commercial businesses. Again, your response to this survey in no way implies that you are undertaking an appraisal of a property. It is simply to ascertain your views on the potential impact on property values created by the presence of certain types of land uses. We recognize that it may be difficult to respond to the questions related to specific distances; your best effort is appreciated. Thank You!

1. Rate the following amenities as to their potential influence on a **Single-Family Home's** appraised value. (circle response)

Amenities	1 = No Influence 5 = Very Positive Influence					No Opinion
	1	2	3	4	5	
Low Traffic Volumes	1	2	3	4	5	N/O
Tree-Lined Street	1	2	3	4	5	N/O
Nearby Elementary School	1	2	3	4	5	N/O
Close to Local Shopping	1	2	3	4	5	N/O
Sidewalks	1	2	3	4	5	N/O
Near Neighborhood Park	1	2	3	4	5	N/O
Underground Power Lines	1	2	3	4	5	N/O
Street Lights	1	2	3	4	5	N/O
On-street Parking	1	2	3	4	5	N/O
Curb and Gutter	1	2	3	4	5	N/O

2. Rate the following amenities as to their potential influence on a **Community Shopping Center's** appraised value. (circle response)

Amenities	1 = No Influence 5 = Very Positive Influence					No Opinion
	1	2	3	4	5	
Low Traffic Volumes	1	2	3	4	5	N/O
Tree-Lined Street	1	2	3	4	5	N/O
Nearby Elementary School	1	2	3	4	5	N/O
Close to Local Shopping	1	2	3	4	5	N/O
Sidewalks	1	2	3	4	5	N/O
Near Neighborhood Park	1	2	3	4	5	N/O
Underground Power Lines	1	2	3	4	5	N/O
Street Lights	1	2	3	4	5	N/O
On-street Parking	1	2	3	4	5	N/O
Curb and Gutter	1	2	3	4	5	N/O

3. How would the listed land uses located within **500 feet** of a **Single-Family Home** likely affect the home's appraised value? (Check only ONE box for each land use)

Land Use	Impact on Single-Family Home's appraised value due to the listed land uses located within 500 feet			
	Decrease Value	No Impact	Increase Value	No Opinion
Neighborhood Park				
Religious Institution				
Convenience Store (beer/wine license)				
Public Library				
Bar/Lounge				
Gentleman's Club/Cabaret				
Grocery Store				
Bookstore				
Adult Novelty/Media Store (Retail only)				
Office Building				
Homeless Shelter				
Fire station				
Pawn Shop				
Adult Arcade/Peep Booths				
Gas Station				

4. If you selected "**Decrease Value**" or "**Increase Value**" for any of the land uses in Question 3, at what distance would the land use likely have **NO IMPACT** on the appraised value of the **Single-Family Home**? (Check only ONE box for each land use).

Land Use	Distance at which land use would have NO IMPACT on Single-Family Home's appraised value					
	Over 500 ft.	Over 1000 ft.	Over 1500 ft.	Over 2000 ft.	Over 2500 ft.	Over 3000 ft.
Neighborhood Park						
Religious Institution						
Convenience Store (beer/wine license)						
Public Library						
Bar/Lounge						
Gentleman's Club/Cabaret						
Grocery Store						
Bookstore						
Adult Novelty/Media Store (Retail only)						
Office Building						
Homeless Shelter						
Fire station						
Pawn Shop						
Adult Arcade/Peep Booths						
Gas Station						

5. How would the listed land uses located within **500 feet** of a **Community Shopping Center** likely affect the community shopping center's appraised value? (Check only ONE box for each land use)

Land Use	Impact on Community Shopping Center's appraised value due to the listed land uses located within 500 feet			
	Decrease Value	No Impact	Increase Value	No Opinion
Neighborhood Park				
Religious Institution				
Convenience Store (beer/wine license)				
Public Library				
Bar/Lounge				
Gentleman's Club/Cabaret				
Grocery Store				
Bookstore				
Adult Novelty/Media Store (Retail only)				
Office Building				
Homeless Shelter				
Fire station				
Pawn Shop				
Adult Arcade/Peep Booths				
Gas Station				

6. If you selected "**Increase Value**" or "**Decrease Value**" for any of the land uses in Question 5, at what distance would the land use likely have **NO IMPACT** on the appraised value of the **Community Shopping Center**? (Check only ONE box for each land use).

Land Use	Distance at which land use would have NO IMPACT on Community Shopping Center's appraised value					
	Over 500 ft.	Over 1000 ft.	Over 1500 ft.	Over 2000 ft.	Over 2500 ft.	Over 3000 ft.
Neighborhood Park						
Religious Institution						
Convenience Store (beer/wine license)						
Public Library						
Bar/Lounge						
Gentleman's Club/Cabaret						
Grocery Store						
Bookstore						
Adult Novelty/Media Store (Retail only)						
Office Building						
Homeless Shelter						
Fire station						
Pawn Shop						
Adult Arcade/Peep Booths						
Gas Station						

7. Is there a greater negative impact on property values if there is a concentration of land uses that have a negative impact on appraised values?

Yes: ____ No: ____ No Opinion: ____

Note: If you answered "No" or "No Opinion" skip to Question #9

8. If you answered "YES" to Question 7, which of the following factors are important in determining whether there is a "concentration" of uses with a possible negative impact?

Factors Determining a Concentration	✓	How Much or How Many?
Number of uses within a specified area?		
Distance between uses measured in feet?		
Distance between uses measured in driving time?		
At what separation distance, minutes or feet (indicate) would the impact of the concentration cease to be a consideration?		
No Opinion		

9. Provide any other comments regarding the potential impact the surveyed land uses might have on the appraised value of a single-family home or community shopping center.

10. Some of the types of land uses listed in this survey elicit strong responses from some persons, both positively and negatively. Although we believe that professionals are less likely than others to respond to these questions from emotional or moral positions, previous surveys of this type have sometimes been criticized because they did not include a question about the extent to which ethical, religious or other personal beliefs might have affected responses. In that context, we would appreciate your response to this final, two-part question.

	YES	NO
Do you believe that your personal, moral or ethical beliefs about certain land uses have affected your responses to any of the questions in this survey?		
If yes, which types of land uses?		

Please provide your name and mailing address if you would like a copy of the survey results:

Thank You for taking the time out of your business day to respond to our questionnaire. Again, if you have any questions or wish to provide comments, please include them with your questionnaire or give us a call / email at the numbers listed on the cover letter.

Eric Damian Kelly, FAICP

Connie B. Cooper, FAICP

¹ Austin, Texas: "Report on Adult Oriented Businesses in Austin," prepared by Office of Land Development Services, May 19, 1986.

Garden Grove, California: "Final Report to the City of Garden Grove: the Relationship between Crime and Adult Business Operations on Garden Grove Boulevard," Richard W. McCleary, Ph.D., James W. Meeker, J.D., Ph.D., October 23, 1991.

Indianapolis: "Adult Entertainment Businesses in Indianapolis, An Analysis," 1984.

Rochester, New York: "Survey of Appraisers in Monroe County, New York," Summer 2000, results published in Kelly and Cooper, *Everything You Always Wanted to Know about Regulating Sex Businesses*, Planning Advisory Service Report No. 495-96. Chicago: American Planning Association, 2000; pages 51-57.

² McCleary and Meeker, op. cit.

³ <http://www.appraisalinstitute.org>

⁴ Chan, N. (2000). "How Australian appraisers assess contaminated land." *The Appraisal Journal* 68(4): 432-439.

⁵ Claurette, T. M., D. S. Bible, et al. (1989). "Appraisal Regulation And Certification: Appraisers' Views." *The Appraisal Journal* 57(3): 317-326.

⁶ Diskin, B. A., V. M. Lahey, et al. (1988). "Appraisers' Utilization Of Computer Technology." *The Appraisal Journal* 56(2): 179-189.

⁷ Dotterweich, D. and G. Myers (1995). "Appraiser Attitudes toward Industry Changes." *The Appraisal Journal* 63(3): 291-297.

⁸ Fisher, J. D., G. H. Lentz, et al. (1993). "Effects of Asbestos on Commercial Real Estate: A Survey of MAI Appraisers." *The Appraisal Journal* 61(4): 587-599.

⁹ Kinnard, W. N. and E. M. Worzala (1999). "How North American Appraisers Value Contaminated Property and Associated Stigma." *The Appraisal Journal* 67(3): 269-279.

¹⁰ Lahey, K. E., D. M. Ott, et al. (1993). "Survey of the effects of state certification on appraisers." *The Appraisal Journal* 61(3): 405-413.

¹¹ Smolen, G. E. and D. C. Hambleton (1997). "Is the Real Estate Appraiser's Role Too Much To Expect?" *The Appraisal Journal* 65(1): 9-17.

¹² Waller, B. D. (2000). "A Survey of the Technology Astuteness of the Appraisal Industry." *The Appraisal Journal* 68(4): 469-473.

¹³ Wolverton, M. L. and D. Epley (2000). "National Survey of Residential Appraisers Shows SRAs Have More Earning Power." *The Appraisal Journal* 68(4): 395-405.

¹⁴ Wolverton, M. L. and P. Gallimore (1999). "Client feedback and the role of the appraiser." *The Journal of Real Estate Research* 18(3): 415-431.

¹⁵ Wolverton, M. L. and P. Gallimore (1999). "A cross-cultural comparison of the appraisal profession." *The Appraisal Journal* 67(1): 47-56.

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

RELIABLE CONSULTANTS, INC.,	§	
et al.	§	
	§	
Plaintiffs,	§	
	§	
vs.	§	CIVIL ACTION NO. 4:05-CV-166-A
	§	
CITY OF KENNEDALE, TEXAS	§	
	§	
Defendant.	§	

REPORT TO THE CITY ATTORNEY ON CRIME-RELATED SECONDARY EFFECTS

I am a Professor at the University of California, Irvine with appointments in the Departments of Environmental Health Science, Criminology, and Planning. My training and experience qualify me as an expert in the areas of criminology and statistics. Throughout my career, I have applied these areas of expertise to the problem of measuring site-specific public safety hazards, especially the public safety hazards associated with sexually-oriented businesses (SOBs). These are also called “crime-related secondary effects.”

The City Attorney of Kennedale, TX has retained me to express an opinion on the four central questions in this case:

Question 1: *Do SOBs pose significant ambient public safety hazards?*

Question 2: *How valid is the empirical evidence that SOBs pose significant public safety hazards?*

Question 3: *Do SOBs that provide material for off-premise-only use pose smaller ambient public safety hazards than other SOBs?*

Question 4: *Can the ambient public safety hazard associated with SOBs be mitigated by “hours-of-operation” regulations?*

To form an opinion on these questions, I reviewed materials submitted in this case; relevant empirical studies of crime-related secondary effects; and relevant authorities on statistics and criminology cited in this Report. I also analyzed two relevant datasets. Based on my review of materials, studies, and authorities, and on my analyses of relevant data, at a trial in this case, I would express the following opinions.

Opinion 1: *As a class, SOBs pose significant ambient public safety hazards. These hazards involve not only “victimless” crimes (prostitution, e.g.) but, also, the “serious” crimes (robbery, e.g.) and “opportunistic” crimes (vandalism, e.g.) associated with vice.*

Opinion 2: *The criminogenic nature of SOBs is a scientific fact. This opinion is based on two considerations. First, strong, empirically validated criminological theory predicts that crime victimization risks will be higher around SOB sites as a consequence of the normal commercial activities at the site. Second, this theoretically expected secondary effect has been observed in a diverse range of locations, circumstances, and times. Although the magnitude and nature of the observed crime-related secondary effect varies from case to case, every adequately designed study has observed and reported a large, significant effect.*

Opinion 3: *To the extent that on-premise and off-premise-only SOBs draw similar patrons from similarly wide catchment areas, criminological theory predicts similar ambient crime risks. This theoretical expectation is supported by the data.*

Opinion 4: *The ambient public safety hazard (or crime victimization risk) can be mitigated by regulation, including hours-of-operation regulations.*

The Plaintiff's expert, Mr. R. Bruce McLaughlin, has expressed two contradictory opinions.¹

Mr McLaughlin believes that:

- (1) The consistent finding that SOBs pose public safety hazards is a methodological artifact of the quasi-experimental designs used in secondary effect studies.
- (2) But even if SOBs do have crime-related secondary effects, no research has shown that the subclass of SOBs that offer materials exclusively for off-premise use have the same effect.

Theory and fact contradict Mr. McLaughlin's opinions. My explication of the errors in Mr. McLaughlin's opinions must begin with the criminological theory of secondary effects. No opinion can be "scientific" without a strong theoretical foundation. After outlining the theory of secondary effects, I will present the empirical evidence bearing on both issues raised by Mr. McLaughlin.

1. THE CRIMINOLOGICAL THEORY OF SECONDARY EFFECTS.

Crime-related secondary effects studies consistently find that SOBs generate significant ambient public safety hazards. The cumulative finding of this literature is more convincing because it is predicted by a strong, empirically-validated criminological theory. Modern criminological theory holds that the victimization risk at a site is determined by three factors:

- (1) The number of potential victims (or targets) at the site
- (2) The "hardness" of the site's targets; and

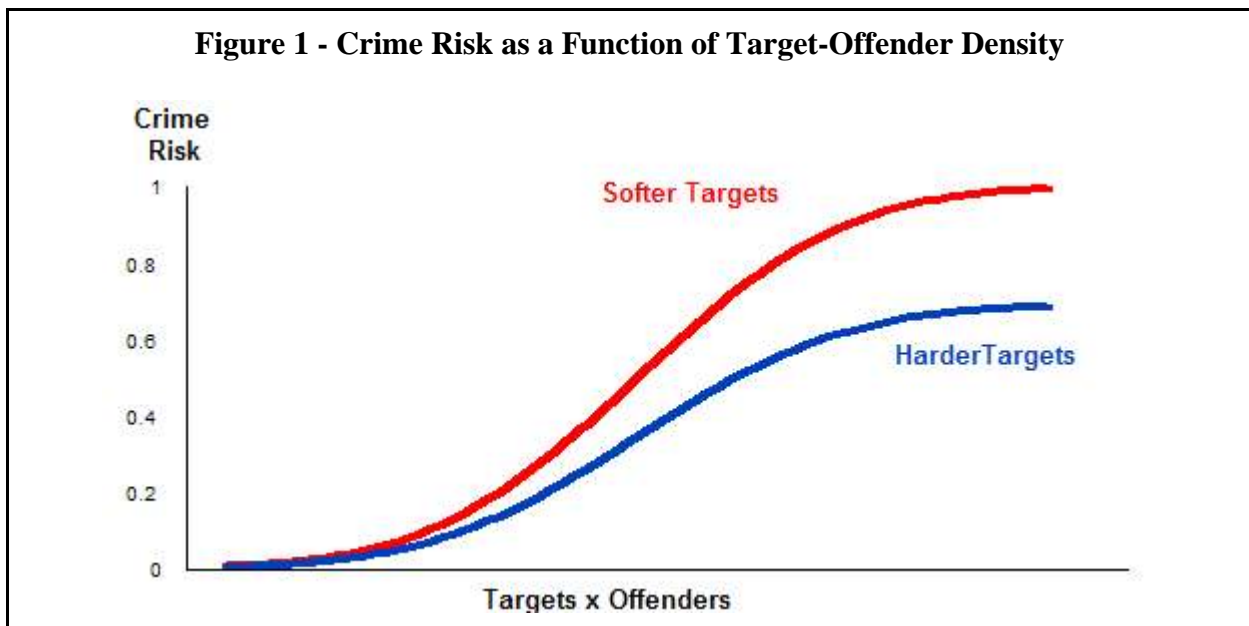
¹Expert Report of R. Bruce McLaughlin, May 7th, 2005.

(3) The number of potential offenders at the site.²

Ignoring one mathematical technicality, this three-factor theory can be written formally as

$$\text{CRIME RISK} = \frac{\text{TARGETS} \times \text{OFFENDERS}}{\text{HARDNESS}}$$

As depicted in Figure 1, crime risk rises as the number of targets and/or offenders at the site increases. The rate of increase in risk is proportional to the relative hardness of targets. Before applying this theory to SOBs, I will comment separately on each of the three factors.



1.1 VICTIMS OR TARGETS.

The risk phenomenon is driven by the victim or target factor. Put simply, sites with more targets will have more crimes. SOBs draw relatively large numbers of potential victims to a common site from a wide catchment area. The density of potential victims attracts predatory

²The source of this so-called "Routine Activities Theory" is L.E. Cohen and M. Felson "Social change and crime rate trends: A routine activity approach." *American Sociological Review*, 1979, 44:588-608. See also, M. Felson's *Crime and Everyday Life, Second Edition* (Thousand Oaks, CA: Pine Forge Press, 1998).

criminals to the site. Business practices designed to attract more patrons to the site (sales, advertising, *etc.*) aggravate the risk. To the extent that many types of businesses try to attract more patrons, this factor is not exclusive to SOBs. Patrons attracted to SOBs have characteristics (*i.e.*, the desire for anonymity) that make them attractive targets, however.

1.2 TARGET HARDNESS

Several qualities make SOB patrons soft targets for predatory criminals. Many travel long distances to the site, for instance, and are often strangers or outsiders to the area.³ To avoid stigmatization, some patrons use aliases and pay in cash; SOB patrons are disproportionately male and, presumably, are receptive to vice overtures; and worse, when victimized, SOB patrons tend not to complain to or seek assistance from the police.

Physical properties of the site may aggravate the risk. If the SOB site was not designed with public safety in mind, it may have structural features – alleyways, adjacent buildings, fences, *etc.* – that hide or obscure actors and activities. These structures, which constitute one important class of site-specific risk factors, aggravate ambient risk through either of two mechanisms.

- (1) If the structural feature obscures criminal activity, it makes the site more attractive to predatory criminals. As more potential criminals are drawn to the site, the site's victimization risk rises.
- (2) If the structural feature makes routine police patrolling more difficult, the

³In 1990, as part of an investigation, Garden Grove police officers ran registration checks on motor vehicles parked at SOBs. Virtually all of the vehicles were registered to addresses outside Garden Grove. The 1986 Austin, TX study arrived at the same finding. More recently, the Effingham County Sheriff's Department ran registration checks on motor vehicles parked at an SOB in the Village of Montrose. Except for employees' vehicles, all were from outside the county.

effectiveness of police crime reduction procedures diminishes.

Recognizing the role of structural features in the phenomenon, municipal zoning regulations often address features (security lighting, removing visual obstructions, *etc.*) that facilitate police patrolling and related crime reduction procedures.

Finally, of course, proximity to alcohol makes soft targets softer. Proximity to alcohol aggravates the ambient crime phenomenon through two mechanisms.

(1) Proximity to a bar or tavern makes a SOB site more attractive relative to competing sites; opening a tavern near a SOB site will increase the site's target density.

(2) To the extent that alcohol lowers personal inhibitions and clouds judgment, proximity to a tavern will make SOB patrons more vulnerable to predatory criminals.

Recognizing the link between crime risk and alcohol, municipal regulations often set minimum distances between between high crime risk sites like SOBs and businesses with alcohol licenses.

1.3 EXPECTED CRIMES AND CRIMINALS

Criminological theory predicts that the public safety hazard posed by SOBs will be realized in three broad categories of crime:

(1) Predatory crimes, like robbery and assault, are perpetrated in the victims' presence and, for that reason, each is potentially fatal.

(2) "Victimless" crimes, including drugs, lewd behavior, and prostitution, are perpetrated with the victims' active participation. Aside from the fact that these crimes are illegal *per se*, victimless crimes are often linked to predatory crimes through the perpetrator. This link can be a rationale for police vice control activities.

(3) Crimes of opportunity, including some acts of vandalism, thefts, and burglaries, are perpetrated outside the victims' presence, often by predatory criminals drawn to

the site by opportunities for other crimes.

The predators who are attracted to SOB sites by the high density of soft targets can be thought of as “professional” criminals. Most lack legitimate means of livelihood and devote substantial time to illegitimate activities. With few exceptions, predators and victims are not acquainted and this has theoretical implications for the types of crimes expected.

1.4 REGULATORY MITIGATION

The three-factor criminological theory suggests that the ambient crime risk associated with an SOB can be mitigated by regulation. The mitigation effect operates through at least three distinct mechanisms.

(1) Moving targets away from risk. Temporal and spatial distributions of crime follow simple mathematical laws.⁴ When crime is generated at a fixed site, the density of crimes around the site diminishes exponentially with distance. Risk can be reduced then by creating distance between SOB sites and sensitive uses (residences, *etc.*). Zoning codes are an example of this mechanism as are codes that regulate hours-of-operation.

(2) Target hardening. Since risk is inversely proportional to the hardness of targets, risk can be reduced by hardening soft targets. Target-hardening strategies range from devices designed to increase security around the target (lighting, dead-bolt locks,

⁴ French mathematician S.D. Poisson (1781-1840) invented the probability function that bears his name to describe the distribution of crime across Paris neighborhoods. See F. Haight, *Handbook of the Poisson Distribution* (John Wiley and Sons, New York 1967) for the history and technical details. Briefly, a Poisson distribution has two parameters, λ and p . For a fixed period of time in a fixed place, the individual’s risk of 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 .

etc.) to proactive guardianship (uniformed guards, police patrols, *etc.*). Reducing the density of offenders (by controlling site access, *e.g.*) or targets (by dispersing the targets across sites, *e.g.*) can also reduce ambient risk in principle. But as a practical matter, crime reduction programs operate primarily through target-hardening.⁵ Alcoholic beverage control codes are an example of this mechanism.

- (3) “Broken Windows” enforcement. Focusing police resources and attention on an SOB site has the effect of reducing risk through a complex set of pathways.⁶ Codes that regulate the internal environment of SOBs (lighting, *e.g.*) are an example of this mechanism. Inspections and routine visible police presence in a neighborhood have the effect of reducing victimization risk.

Effective regulations vary across jurisdictions, of course, but to the extent that idiosyncratic regulations are designed to facilitate enforcement, to maximize police officer safety, or to otherwise harden a target, they are expected to amplify the regulations’ impact on ambient crime. In that sense, these idiosyncracies represent sound public policy.

1.5 *Non-SOBs*

Criminological theory predicts that *non-SOBs*, like gas stations, convenience markets, and bread stores, will have trivially small crime-related secondary effects. This is because *non-SOBs* do *not* draw large numbers of soft-target patrons from wide catchment areas; patrons

⁵The classic statement on target-hardening is Oscar Newman’s *Defensible Space: Crime Prevention Through Urban Design*. (New York: MacMillan, 1973).

⁶The best known statement of this effect is “Broken windows: The police and neighborhood safety.” by J.Q. Wilson and G.L. Kelling, *Atlantic Monthly*, 1982, 249:29-38. Wilson and Kelling argue persuasively that police visibility in a neighborhood has a greater impact on crime and victimization risk than police activities that target crime. Modern police methods are based on this theory.

drawn to the sites of *non*-SOBs spend only minutes on-site, are not disproportionately male, and are not obviously receptive to vice overtures. When victimized, non-SOB patrons are not obviously reluctant to involve the police. In short, non-SOB patrons lack the characteristics that make SOB patrons soft targets. Due to the relatively low density of soft targets in areas around *non*-SOBs, rational predatory criminals are *not* attracted to gas stations, convenience markets, or bread stores.

1.6 ON-PREMISE VS. OFF-PREMISE SOBs

In this and other cases, experts have argued that the criminological theory of secondary effects does not apply to SOBs that rent or sell products for off-premise-only use. This argument is incorrect. In fact, the same theoretical mechanism that generates a public safety hazard in and around an on-premise SOB, operates as well for off-premise SOBs. If the two SOB subclasses draw similar patrons from similarly wide catchment areas, criminological theory predicts similar ambient crime risks. In short, similar causes (*i.e.*, high “soft” target density) have similar effects (*i.e.*, ambient crime risk). This applies to all dichotomous SOB subclasses, of course, not just the on-premise *vs.* off-premise subclasses.

Table 1.6 - Cash Transactions at Dreamer’s, January 26th-February 28th, 2005					
	Transactions		Total Sales	Median Sale	Maximum Sale
Cash	2425	84.1%	\$42,711.73	\$12.99	\$222.93
Credit Card	384	13.3%	\$10,164.93	\$17.32	\$340.88
Other Method	76	2.6%	\$1,573.67	\$8.66	\$238.15

Table 1.6 reveals one theoretically important aspect of the phenomenon relating to this

case.⁷ From January 26th, 2005 through February 28th, 2005, the overwhelming majority of transactions during the overnight shift at the Kennedale SOB known as “Dreamer’s” were made with cash. Patrons of on-premise and off-premise SOBs have that in common: They carry cash. Combined with their common implicit interests, this makes patrons of both SOB subclasses soft targets for predatory criminals. Because both on-premise and off-premise-only SOBs attract soft target patrons from wide catchment areas then, both pose public safety hazards. I will present data below that confirm this theoretical expectation.

1.7 CRIME RISK IN THE OVERNIGHT SHIFT

Criminological theory holds that the frequency of crime at any time is proportional to target density (“more targets, more crime”). Accordingly, one would expect the frequency of Part I UCR (“serious”) crimes to drop in the overnight hours when businesses close and people go home to sleep. This theoretical expectation is supported by the empirical evidence; in any urban area, proportionately fewer “serious” crimes are reported between midnight and eight A.M. But while the gross frequency of crime drops in the overnight period, the per-target risk rises significantly. When a business remains open around-the-clock, its crime victimization risk rises steadily after sundown, peaking in the early morning hours.

Criminological theory explains this phenomenon too. Darkness softens targets, making them more appealing to predatory criminals. Several mechanisms are at work here but the most salient is that routine patrol functions become more difficult in the dark; indeed, policing of any sort becomes less effective when the sun goes down. When bars and taverns close, police resources are stretched thinner, making soft targets softer.

⁷These data come from a file named “FTW 12am to 8am report.xls” that was submitted by the Plaintiffs in this case.

Methods of mitigating this risk include closing high-risk public areas (playgrounds, parks, *etc.*) from dawn to dusk; imposing curfews on high-risk persons (teen-agers, *e.g.*); and limiting the operation of high-risk businesses (bars, SOBs, *etc.*) during times of acute risk. Hours-of-operation regulations are an issue in this case and criminological theory predicts that these regulations will effectively mitigate the ambient crime risk associated with SOBs. As I will now demonstrate, the empirical evidence confirms this theoretical expectation.

2. EMPIRICAL EVIDENCE

Crime-related secondary effect studies began to appear in the mid-1970s. The literature accumulated for the next thirty years until, at present, there are at least three-dozen studies. The Plaintiffs' expert, Mr. McLaughlin, has expressed the opinion that:

Even if there is evidence that sexually oriented adult uses, as a class, cause unique adverse secondary effects, there is no such evidence whatsoever with respect to take-home only adult uses.⁸

Mr. McLaughlin bases this opinion on the fact that the City's legislative record included no studies that reported explicit effect estimates for off-premise-only SOBs. Although Mr. McLaughlin's point appears to be correct, it is scientifically *irrelevant*.

It would be impossible to explicitly test a null hypothesis for every dichotomous SOB subclass (nude *vs.* semi-nude, closed *vs.* open booths, *etc.*). Indeed, if this were the standard, no legislature would *ever* be able regulate *any* SOB. Nor could any scientific law ever be judged true or even likely. Science uses theory to circumvent this obstacle.⁹ In this instance, the mere existence of an SOB subclass cannot trigger the demand for an empirical test. Unless theory

⁸Expert Report of R. Bruce McLaughlin, May 7th, 2005. Page 14, lines 17-19.

⁹ Philosophers of science call this the "Induction Problem" See, *e.g.*, p. 34 of Karl R. Popper's *The Logic of Scientific Discovery* (Routledge, 1959).

points directly to the variable that defines the subclass (*i.e.*, on-premise *vs.* off-premise-only), we must assume that the defined subclass has the same properties of all SOB's.

Fortunately, for this particular SOB subclass, there is an empirical confirmation of the theoretical expectation. As predicted by criminological theory, off-premise-only SOB's have the same crime-related secondary effect as their on-premise cousins.

2.1 MONTROSE, IL

The Village of Montrose is on I-70 in Effingham County, Illinois. In February, 2003, an off-premise-only SOB opened within a few hundred feet of the Montrose off-ramp. The SOB's sign is visible from I-70 and attracts cross-country truckers. Because the narrow gravel access road connecting the SOB to the I-70 off-ramp cannot support the weight of big rigs, the road is in constant disrepair. The SOB's proximity to a cemetery was another source of friction. In 2004, the State moved to enforce a statute mandating separation between SOB's and cemeteries. Apparently, the SOB had been unaware of the statute when it chose the Montrose site.

	<i>24 Hours</i>			<i>8 AM to Midnight</i>		
	<i>Before</i>	<i>After</i>		<i>Before</i>	<i>After</i>	
“Serious” Crime	6.29	10.07	1.60	5.39	6.89	1.28
Other Crime	17.02	19.61	1.15	12.59	15.37	1.22
Total Crime	23.37	29.68	1.27	17.98	22.26	1.24

Table 2.1 reports annual crime rates for Montrose before and after the SOB opens. In terms of total crime, the secondary effect is modest, though significant. In terms of “serious” crimes, on the other hand – including assault, robbery, burglary, and theft – the secondary effect,

amounting to a 60 percent increase, is quite large.

Two qualitative changes revealed by the before-after contrast are more important than the straightforward rise in crime victimization risk. First, following the SOB's opening, crimes reported in Montrose were more likely to involve force and/or weapons. In the decade prior to the SOB's opening, for instance, not one armed robbery had been reported in Montrose. After the opening, two armed robberies were reported in Montrose, including one committed by a gang of four men wearing ski masks and armed with shotguns.

The second qualitative change in Montrose concerns crimes reported in the overnight period. The right-hand columns in Table 2.1 report annual crime rates for the period between eight AM and Midnight. The secondary effect for all three crime categories is approximately 25 percent. If there is any surprise in these statistics, it is that the large, significant rise in "serious" crime is less dramatic during the daytime shift. *In Montrose, closing SOBs between midnight and 8 A.M. would have had an important and substantial mitigation effect.*

2.2 PHOENIX, AZ

The quasi-experimental design used in Montrose benefitted from two fortuitous accidents. First, the village occupies a small geographical area, approximately four blocks. Second, before-after data were available. This is not always the case. In 1979, the City of Phoenix, AZ conducted a study of crime-related secondary effects. Although the actual work was conducted by City employees, Arizona State University faculty served as advisors and consultants. I was a Professor of Criminal Justice at Arizona State University at that time and met regularly with the City employees who conducted this research.

To estimate the crime-related secondary effects of adult businesses, the researchers compared crime rates in areas with adult businesses to crime rates in "matched" control areas

(i.e., areas that were similar but that had no adult businesses). The comparisons are summarized in Table 2.2. The property and personal crime rates reported in Table 2.2 were estimated from Uniform Crime Report (UCR) data. The percentages reported in the right-hand column, in red, are the secondary effect estimates derived from the crime rates. Compared to crime rates in the control areas, the UCR property crime rate was 39.8 percent higher; the UCR personal crime rate was 13.7 percent higher; and the UCR sex crime rate was 480.2 percent higher in the adult business areas. By any reasonable standard, these are *large, significant* secondary effects.

	<i>Adult Business Areas</i>	<i>Control Areas</i>	<i>Secondary Effect</i>
<i>Property Crime Rate</i>	122.86	87.90	139.8 %
<i>Personal Crime Rate</i>	5.81	5.11	113.7 %
<i>Sexual Crime Rate</i>	9.40	1.62	580.2 %

Source: ADULT BUSINESS STUDY, City of Phoenix Planning Department, May 25, 1979; Table V

The quasi-experimental design of the Phoenix study is not as strong as the design used in Montrose. More than anything else, this reflects the scarcity of computing resources in 1979. A weak quasi-experimental design is just as likely to favor one side of the debate as the other, however, and fact that this study found a large, significant secondary effect cannot be argued away on methodological grounds. Finally, although the study did not report unique effects for SOB subclasses, we can assume that a range of subclasses were included in the study.

2.3 GARDEN GROVE, CA

The salient weakness in the Phoenix study is that its “static group comparison” design¹⁰ assumes that the test and control neighborhoods are equivalent on relevant crime risk factors. If this assumption is unwarranted, observed secondary effects cannot be attributed to the SOBs. The surest, simplest way to control this threat to validity is to use a before-after design.

In the early 1990s, James W. Meeker and I were able to use a before-after design to study the secondary effects of SOBs in Garden Grove, CA.¹¹ Observing ambient crime before and after an SOB opened in a neighborhood, Meeker and I found that ambient crime rose whenever an SOB opened its doors. Validity requires that other plausible explanations for the before-after difference be ruled out, of course. Perhaps the difference is a coincidence, for example; or perhaps crime rose throughout the city, not just in the neighborhood where the SOB opened.

To control these common “threats to internal validity,” Meeker and I replicated the analyses for all other SOBs in Garden Grove. If a before-after rise in ambient crime were due to some unrelated factor, the effect would also be observed at other SOBs in Garden Grove. If the same effect were not observed at these control sites, on the other hand, the rise in ambient crime could be attributed confidently to the newly opened business.

Secondary effects for three business openings are reported in Table 2.3a. When a new SOB opened, total “serious” crimes in a 500-foot radius around the site rose, on average, 67

¹⁰ The most widely-cited authority on quasi-experimental designs is D.T. Campbell and J.C. Stanley, *Experimental and Quasi-experimental Designs for Research*. Rand-McNally, 1966. Campbell and Stanley call the design used in Phoenix a “static group comparison” design.

¹¹ *Final Report to the City of Garden Grove: The Relationship between Crime and Adult Business Operations on Garden Grove Boulevard*. October 23, 1991. Richard McCleary, Ph.D. and James W. Meeker, J.D., Ph.D.

percent. To control for the confounding effects of city-wide crime trends, changes in police activity, and other common threats to internal validity, these before/after differences were compared to the analogous differences for the addresses of existing SOBs. Total “serious” crimes in a 500-foot radius around these “control” sites rose, on average, only 6 percent. The secondary effect observed when new SOBs open is, thus, substantively large and statistically significant.

**Table 2.3a - Secondary Effects in Garden Grove, CA: Business Openings
Total “Serious” Crime, One Year Before/After**

	<i>Test Sites</i>			<i>Control Sites</i>		
	<i>Before</i>	<i>After</i>		<i>Before</i>	<i>After</i>	
March, 1982	71	106	1.49	76	78	1.03
March, 1986	31	68	2.19	80	92	1.15
August, 1988	32	50	1.56	41	40	0.98
Total	134	224	1.67	197	210	1.06

Source: *Final Report to the City of Garden Grove*, pp. 26-28

**Table 2.3b - Secondary Effects in Garden Grove, CA: Alcohol License
Total “Serious” Crime, One Year Before/After**

	<i>Test Sites</i>			<i>Control Sites</i>		
	<i>Before</i>	<i>After</i>		<i>Before</i>	<i>After</i>	
Violent Crimes	1	10	10.0	1	2	2.00
Property Crimes	38	48	1.26	16	21	1.31

Source: *Final Report to the City of Garden Grove*, pp. 26-28

In addition to the findings about SOBs, the Garden Grove study produced a collateral finding of some importance. When a tavern opened less than 500 feet from a SOB, violent crime

in the vicinity of the SOB rose significantly. While violent crime in the vicinity of a “control” also rose, the effect was substantially smaller. Before-after differences in property crime around the test and control sites were not significantly different. The crime-related secondary effect of SOBs is aggravated by proximity to a liquor license then but the effect is limited to serious violent crime. Like the major finding in Garden Grove, this collateral finding is predicted by empirically-validated criminological theory.

Although Meeker and I did not report subclass-specific effects, the Garden Grove study included both on-premise and off-premise-only SOBs. One of the effects reported in Table 2.3a was an off-premise-only SOB. Despite this diversity, the three effects are all within sampling error of the common mean – no difference between the subclasses, in other words.

2.4 GREENSBORO, NC

In a Greensboro, NC secondary effect study sponsored by SOB plaintiffs, Dr. Daniel Linz used a relatively weak “static group comparison design,” similar to the one used in the 1979 Phoenix study.¹² Dr. Linz found no secondary effect:

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 ... (T)here 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.¹³

¹² *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.

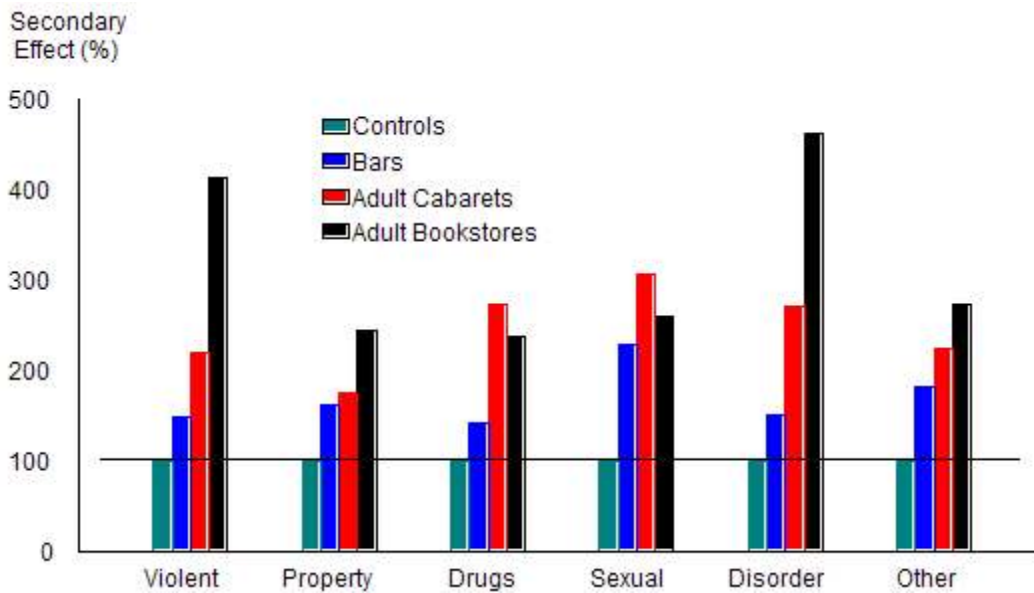
¹³ p. 3 (counting the title sheet as p. 1) of the Linz-Yao Greensboro *Study*.

Due to the technical nature of the statistical analyses, the City of Greensboro retained me to “translate” Dr. Linz’ numerical results into plain words.¹⁴ Even for a statistician, Dr. Linz’ report was a difficult read. The numerical results supporting his conclusion were scattered over 18 pages of computer output in an appendix. When the actual numbers are examined, it was clear that Dr. Linz had overstated the basis of his strongly-worded conclusion. Put simply, Dr. Linz’ numbers contradicted his words.

The results of Dr. Linz’ analyses are plotted in Figure 2.4. Linz analyzed six types of police data (relating to violent crimes, property crimes, drug crimes, sexual crimes, disorder crimes, and all other crimes). Controlling the effects of demographic and economic variables presumed to cause crime, Dr. Linz estimated crime risks four model neighborhood types. To facilitate interpretation, the green bars in Figure 2.4, representing control neighborhoods, are fixed at 100 percent. Dr. Linz found that neighborhoods with taverns, represented as blue bars in Figure 2.4, had more crime than the controls. That result was expected. What Dr. Linz did not expect, was that neighborhoods with adult cabarets would have more crime than neighborhoods with taverns; and that neighborhoods with adult bookstores would have more crime than any other type of neighborhood.

¹⁴ R. McCleary. *A Methodical Critique of the Linz-Yao Report: Report to the Greensboro City Attorney*. December 15, 2003.

Figure 2.4 - Results of Dr. Linz' Greensboro Study



Source: Tables 14-19, *Evaluating Potential Secondary Effects of Adult Cabarets and Video/ Bookstores in Greensboro: A Study of Calls for Service to the Police*. Daniel Linz and Mike Yao, November 30th, 2003.

In 2003, I visited all of the licensed adult bookstores in Greensboro. None of the adult bookstores had on-premise viewing booths. All of the bookstores were off-premise-only SOB's and, yet, as reported in Figure 2.4, all had large, significant secondary effects.

2.5 SUMMARY OF THE EMPIRICAL EVIDENCE

The secondary effects studies reviewed in this Report here are typical in that each finds a substantively large, statistically significant crime-related secondary effects. The studies also typify the range of methodological rigor found in secondary effects studies. Other commonly cited government-sponsored studies which report large, significant crime-related secondary effects include Los Angeles CA (1977), Whittier, CA (1978), Minneapolis, MN (1980), Indianapolis, IN (1984), Austin, TX (1986), Seattle, WA (1989), Times Square, NY (1994), and Newport News, VA (1996). Individually, each of these studies might be faulted on narrow

methodological grounds; that is the nature of non-experimental research. Since no single methodological critique applies to all of the studies, however, taken together, the literature supports the strong inference that SOBs pose serious ambient public safety hazards.

3. STATISTICAL POWER

Secondary effect studies conducted or sponsored SOB plaintiffs began to appear in 2001. Unlike the government-sponsored research studies that had been conducted in the preceding 25 years, these studies were conducted specifically for use in legal proceedings. The most prolific author of industry-sponsored studies is Dr. Daniel Linz.¹⁵ Without exception, Dr. Linz finds that SOBs pose no *statistically* significant ambient crime risks. Although Dr. Linz' null findings appear to contradict the consensus finding of government-sponsored studies, in fact, they are entirely consistent with the consensus view.

3.1 SAN DIEGO, CA

Analyzing police calls-for-service in San Diego neighborhoods, Dr. Linz found that there were no statistically significant differences between peep-show and control neighborhoods.¹⁶ Professor James W. Meeker and I were retained by the City of San Diego to re-analyze Dr. Linz' data.¹⁷ We discovered that an important point had been omitted. Linz found that peep-show neighborhoods had 15.7 percent more calls-for-service than control neighborhoods. Although a

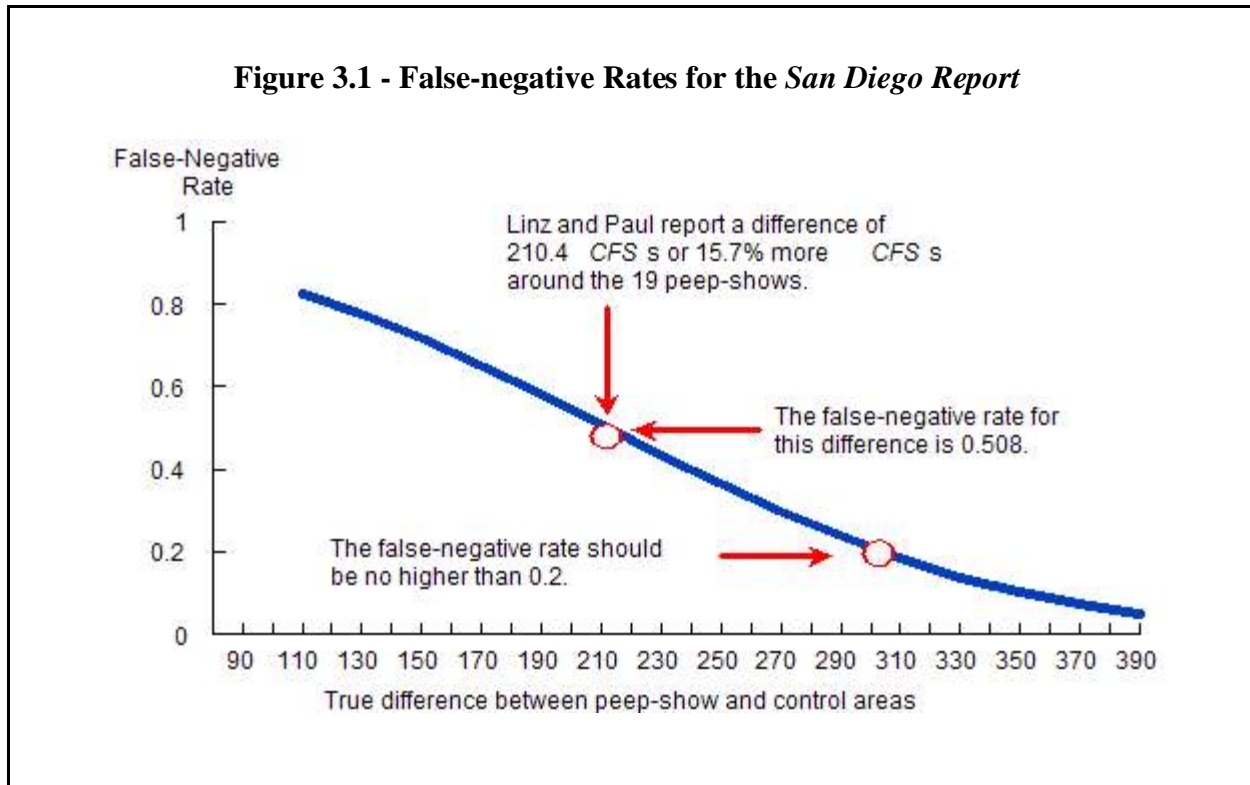
¹⁵ Dr. Linz is a Professor of Communication, University of California, Santa Barbara.

¹⁶ *A Secondary Effects Study Relating to Hours of Operation of Peep Show Establishments in San Diego, California*. September 1, 2002. Daniel Linz and Bryant Paul. Submitted in *Mercury Books v. City of San Diego*. U.S. District Court, Southern District of California (00-CV2461).

¹⁷ R. McCleary and J.W. Meeker, *A Methodical Critique of the Linz-Paul Report: A Report to the San Diego City Attorney's Office*. March 12, 2003.

15.7 percent increase in crime is large by *any* standard, Linz argued that because the effect was *statistically insignificant*, the “real” secondary effect was zero:

... statistically nonsignificant result and must be interpreted, as meaning that there is no significant difference between these two averages – an indication that the level of criminal activity for [peep-show areas] is equal to the level of criminal activity for [control areas].¹⁸



This is a fallacy. Although not finding a significant effect *might* imply that no secondary effect exists, it might also imply that the search for an effect was weak or defective.¹⁹ Under the circumstances, Dr. Linz should have asked why he was unable to find an effect that, by any reasonable criteria, was quite large. Although Dr. Linz did not ask this question, his report

¹⁸p.15, *A Secondary Effects Study Relating to Hours of Operation of Peep Show Establishments in San Diego, California*. September 1, 2002. Daniel Linz and Bryant Paul.

¹⁹Not finding something *cannot* prove that the thing does not exist. Newton made this point with his aphorism “*Negativa non Probanda.*” “Finding nothing proves nothing.”

included enough statistical detail to permit us to calculate probabilities. Figure 3.1 reports a probability function calculated by Meeker and me from data in Dr. Linz' San Diego report. As shown, the 15.7 percent secondary effect estimate found by Dr. Linz has a false-negative probability of .508. What this means, simply, is that Dr. Linz' null finding is more likely (51 percent) to be *incorrect* than it is to be correct (49 percent).

3.2 THE THEORY OF STATISTICAL POWER

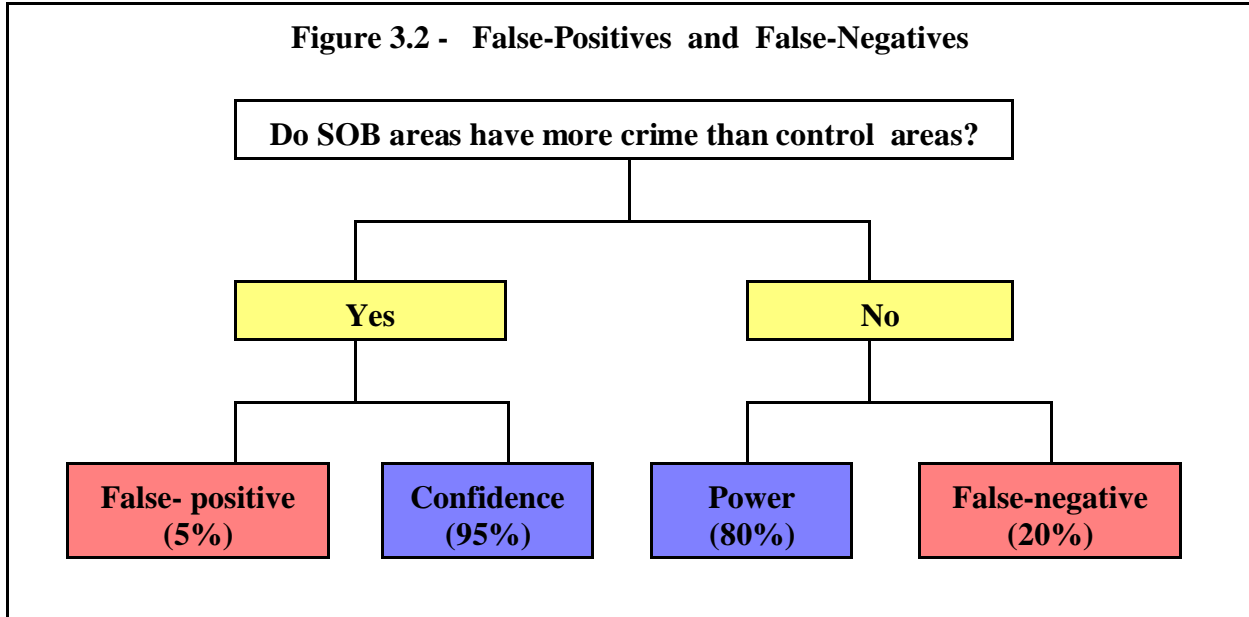
Although Dr. Linz characterized the results of his San Diego analyses as a *null finding* – proof that San Diego peep-shows have no secondary effects – strictly speaking, his results were *inconclusive*. Ignoring the possibility of salutary secondary effects, the findings of any study must be *adverse, inconclusive, or null*. The criteria for deciding among these three are so widely accepted in the scientific community that no research is accepted as *scientific* unless it adheres to the conventions of statistical “confidence” and “power.”²⁰

The idea behind the confidence and power criteria is that any statistical hypothesis test can be wrong. Recognizing this point, scientists who conduct hypothesis tests calculate two error rates. The “false-positive” error rate comes into play when an adverse effect finding emerges from the research; the “false-negative” error rate comes into play when the research produces a null finding. Figure 3.2 illustrates the relationship between the two complementary error rates.²¹

²⁰ Since general acceptance in the scientific community is one of four criteria noted in *Daubert v Merrell Dow Pharmaceuticals* 509 US 579 (1993), this might also affect admissibility in U.S. District Court trials.

²¹ In statistical hypothesis testing, a false positive is called a “Type I” or “alpha-type” error. A false negative is called a “Type II” or “beta-type” error. The terms “false positive” and “false negative,” which come from the field of public health screening, are widely used in popular discourse. I use the terms “false positive” and “false negative” for descriptive

Figure 3.2 - False-Positives and False-Negatives



The research question “Do SOB areas have more crime than control areas?” has two possible answers, “Yes” or “No.” Since data vary from sample to sample, any study can arrive at an incorrect answer. Incorrect “Yes” answers are false-positives. Incorrect “No” answers are false-negatives. Conventional false-positive and false-negative rates are 5 and 20 percent.²²

Complements of the false-positive and false-negative rates, “confidence” and “power,” are 95

simplicity.

²² The most comprehensive authority on this issue is Chapter 22 of *The Advanced Theory of Statistics, Vol. 2, 4th Ed.* by M. Kendall and A. Stuart (Charles Griffin, 1979). This authority requires a strong background in mathematics, however. 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). Both Cohen (pp. 3-4) and Lipsey (pp. 38-40) set the conventional false-positive and false-negative rates at .05 and .2, respectively. These rates can be set lower, of course. The convention also sets the ratio of false-positives to false-negatives at 4:1, implying that false-positives are “four times worse than” false-negatives. The 4:1 convention 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). It reflects a view that science should be conservative. In this instance, for example, the 4:1 convention works in favor of the SOBs. When actual decision error costs are known, the actual ratio is used.

and 80 percent respectively. These conventional levels imply that “Yes” decisions are correct 95 percent of the time, “No” decisions are correct 80 percent of the time respectively.

Returning now to Table 3.2, *adverse effect* findings are required to have 95 percent confidence (*i.e.*, false positive rates less than 5 percent). The Montrose, Phoenix, Garden Grove, and Greensboro studies discussed in this Report, as well as the majority of government-sponsored studies, satisfy this criterion. Lacking 95 percent confidence, one can conclude that the finding is a *null effect* if – and only if – the finding has 80 percent power (*i.e.*, false negative rates less than 20 percent). Findings that have neither 95 percent confidence nor 80 percent power are *inconclusive* and must be done over. The San Diego study reviewed here, as well as several other studies commissioned by SOB plaintiffs, fall into this category.

The issue of low statistical power, depicted in Figure 3.1 for the San Diego study, has become one of the most serious methodological issues in the secondary effects literature. The “dirty little secret” of social science research is that anyone with a modest research background can design a study so weak as to guarantee statistically insignificant results.

4.0 CONCLUSION

I conclude by reiterating four opinions. (1) *SOBs pose large, significant ambient public safety hazards*; (2) *the link between SOBs and crime is a scientific fact*; (3) *on-premise and off-premise-only SOBs have identical crime-related secondary effects*; and (4) *the ambient public safety hazards associated with SOBs can be mitigated by regulation*. Mr. McLaughlin’s contrary opinions are contradicted by theory and fact.

Taken outside the context of this Report, my opinion (2) may sound like an arrogant exaggeration. It is not. “Scientific fact” means that the SOB-crime link is expected from and/or predicted by the central theory of criminology; *and* that the theoretical link has been tested and

confirmed in a diverse range of times, places, circumstances, and situations. Theoretical prediction or expectation is the *primes inter pares* component of a scientific fact. In this instance, it would be impractical (perhaps impossible) to test each and every minor SOB subclass, circumstance, or situation. Since the criminological theory of secondary effects *has* been tested and confirmed many times, however, mindless replication is as unnecessary as it is wasteful.

Absent strong theoretical grounds for expecting a different effect, the laws of inductive logic require that we assume identical effects. With no empirical evidence then, we are allowed to *assume* (within probability limits) that on-premise and off-premise-only SOBs have identical secondary effects. When empirical evidence finally becomes available – Montrose – it confirms the strong theoretical expectation. Confirmation is not surprising.

Mr. McLaughlin’s Expert Report alludes to methodological “flaws” in the empirical literature that could account for the consistent adverse secondary effect finding. All quasi-experiments have methodological deficiencies, of course; otherwise, they would not be quasi-experiments.²³ But in reality, methodological flaws of the sort alluded to by Mr. McLaughlin cut both ways, generating a literature with ambiguous effects. Instead, we see a literature with a set of unambiguous effects.

It is difficult to give full weight to Mr. McLaughlin’s opinions on scientific method.

A final point concerns the few studies that purport to find *null* effects (*i.e.*, no significant crime-related secondary effects). Since the magnitude of any crime-related secondary effect varies stochastically, failing to find effects in a few instances can never imply a universal

²³They would be experiments – which would require that SOBs be randomly assigned to sites around the city. All secondary effect studies are quasi-experimental.

disconfirmation of the criminological theory of secondary effects.²⁴ Due to “background noise” alone, we expect a few null effects.

If the level of “background noise” is large relative to the secondary effect, however, the effect is obscured. Unfortunately, “background noise” is a design property – the weaker the design, the greater the likelihood that a secondary effect will be lost in “background noise” (no matter how large it might be). “Shoddy” research favors a null finding for that reason – favors SOBs and plaintiffs, in other words.

Scientific method corrects this bias by setting a minimum false-negative error rate. By convention, when a potential null finding arises, the researcher must demonstrate the false-negative error rate associated with the finding is smaller than 20 percent. If the false-negative error rate is 20 percent or larger, by convention, the putative null finding is judged *inconclusive*. When this convention of scientific method is observed, there are no reported null findings in the secondary effects literature.

²⁴By analogy, finding a heavy smoker who dies free of cancer at 99 does not disconfirm the theoretical link between smoking and cancer. The theory specifies a stochastic distribution of latency times, so we expect to observe “censored” cases.

**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.

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

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.

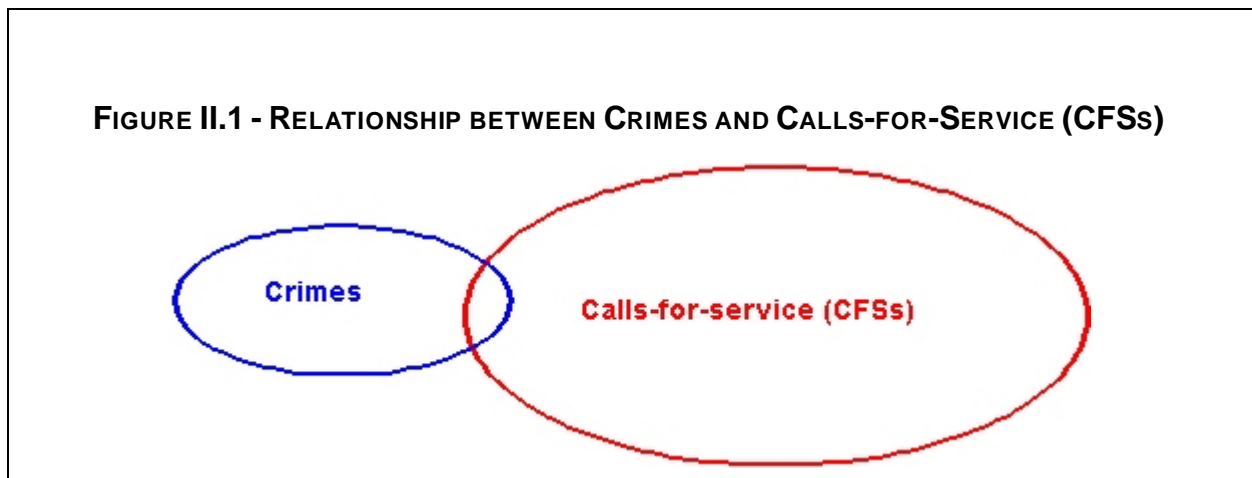
¹⁵ For definitions, see H.M. Blalock’s *Measurement and Conceptualization in the Social Sciences* (Sage, 1982). See also *Quasi-Experimentation: Design and Analysis Issues for Field Settings* by T.D. Cook and D.T. Campbell (Houghton-Mifflin, 1979).

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

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

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

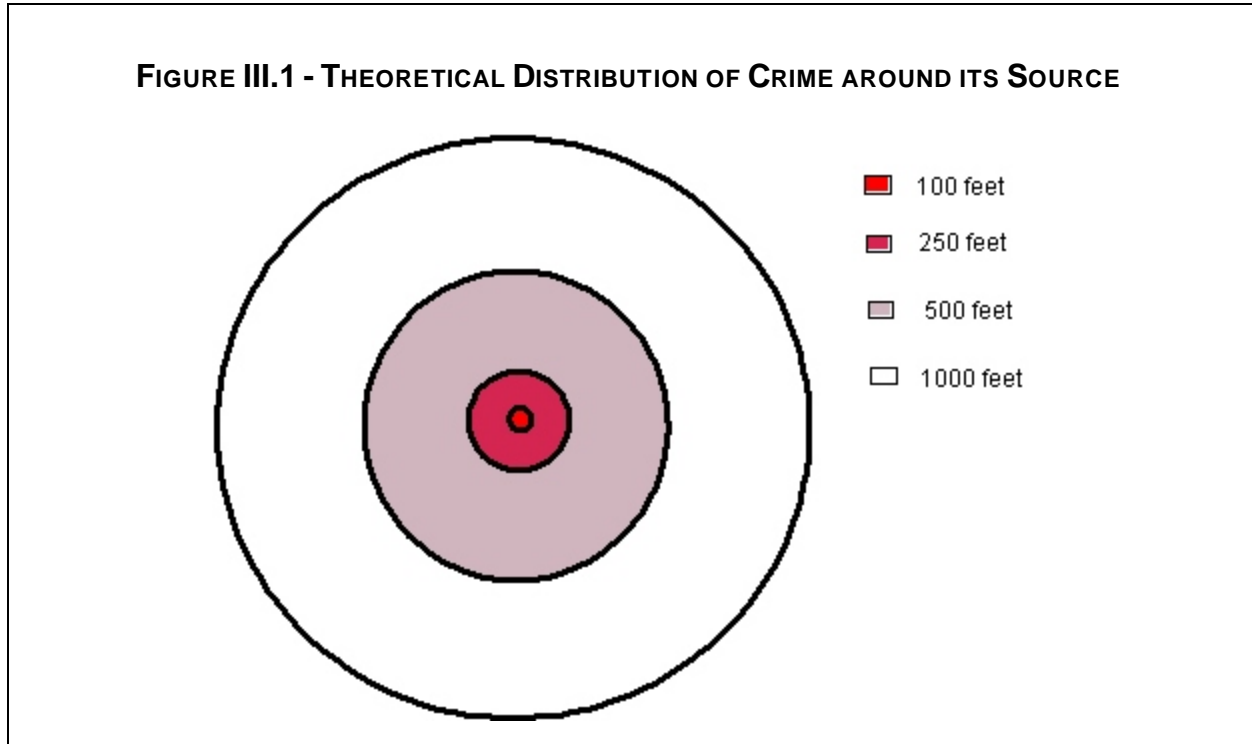
$$\text{Secondary Effect} = \text{Crime}_{\text{Impact, After}} - \text{Crime}_{\text{Impact, Before}}$$

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

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.

TABLE III.1 - GREENSBORO CENSUS BLOCKS					
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.

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.

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	<i>CFs</i>	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.”

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.

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.

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

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.

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 CFSs 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.

- ◆ 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.*

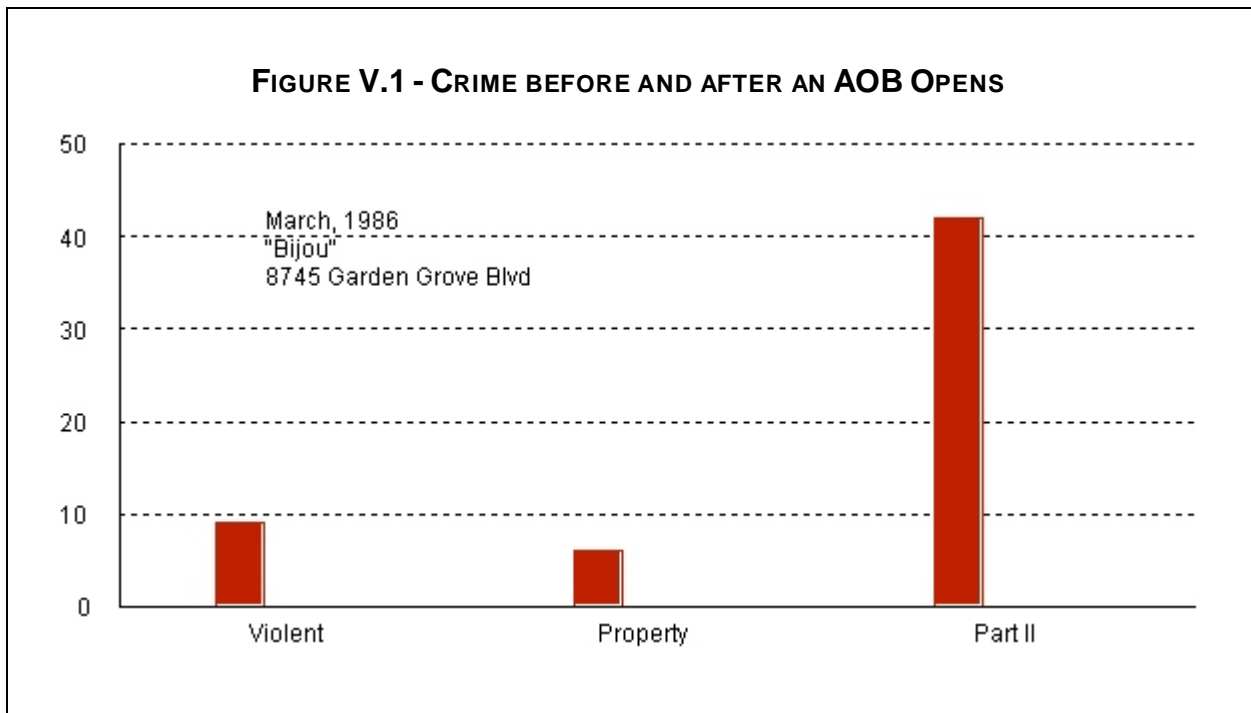
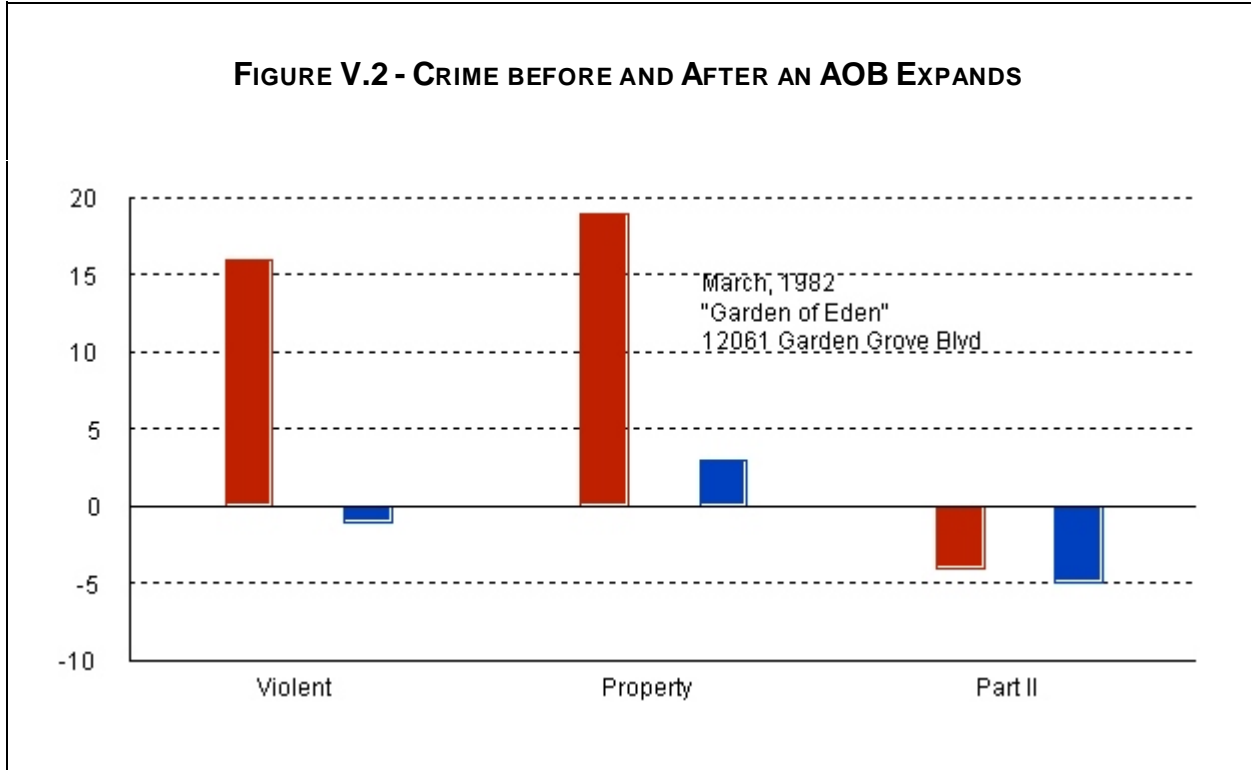


FIGURE V.2 reports result for the expansion of an existing AOB. In March, 1982, an existing AOB tripled its size by acquiring adjacent store fronts. Compared to the year before expansion, Part I UCRs rose sharply in the impact area but not in the control area. Part II UCRs declined in both areas. This 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

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.

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 of 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 to 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

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

	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

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

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

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

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

AS OF APRIL 1997

Prepared for:

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THE MALIN GROUP
Real Estate Programmers
Litigation Support Services
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April 29, 1997

Ms. Sangeeta Kuruppillai
Assistant City Attorney
CITY OF DALLAS
Office of the City Attorney
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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 conclusion.

CONCLUSIONS

Sexually oriented businesses, specifically those that offer or advertise live entertainment and operate as 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, 1984 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.

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There are two primary ways in which SOBs 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. SOBs "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."¹ 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 SOBs 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 SOBs keep late hours which can also become a nuisance to nearby residents.

We studied police calls for service emanating from 10 different SOBs over a four-year period from 1993 through 1996 and found that SOBs were a major source of such calls. The seven SOBs 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 included rape, prostitution/commercial vice and other sex offenses, was 396 in the area along West Northwest Highway which includes the seven SOBs. This compares to 77 and 133 sex crime arrests respectively in two similar areas along Northwest Highway, the second of which contained two SOBs spaced more than a ½ mile from the other. From this evidence, it appears that there are increased sex crime arrests and disturbances requiring police presence around SOBs and significantly more crime when there is a concentration of SOBs 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 SOBs in Dallas.

¹*Adult Entertainment Study*, Department of City Planning, City of New York, 1994, p. 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 difference 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-oriented shopping areas and view the appearance of one or more of these uses as a deterioration in the quality of urban life."³

²IBID. p. vii

³IBID. p. viii

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In Dallas, we interviewed a number of real estate brokers active in an area punctuated by SOB's who reported that SOBs "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 SOBs 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 SOBs. 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 SOBs in one neighborhood can have a major impact on the neighborhood by contributing to crime, driving away family-oriented businesses

⁴IBID. p. viii

⁵IBID. p. viii

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 ideas 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 Appraiser, Page 3.

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

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 half 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 auto part 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 area 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.

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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:

DALLAS, 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 four sales along the same

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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 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 adults 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 A 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 months period through March 1997 while Control Area East and West had 133 and 77 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.

Location	# of Sex Crime Arrest 1/93 - 3/97
Study Area	396
Control Area East	133
Control Area West	77

These results cannot be solely attributed to the SOBs 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 SOBs 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 SOBs in the three areas (See Exhibit B). A review of these calls from the four year period 1993 through 1996 shows a repetitive series of complaints coming from these SOBs 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 benefited from the presence of the SOBs. The SOBs were largely responsible for the Study Area's negative perception by the public and many people interviewed believe that the SOBs 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 SOBs. The two SOBs reported 275 calls for Police during the last four years. The Control Area with the two SOBs also had significantly more sex crime arrests than the Control Area with no SOBs.

We found that properties in Dallas are negatively impacted by the presence of SOBs. This is more evidence when the 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 graphically suggestive signage. Little investment

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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.

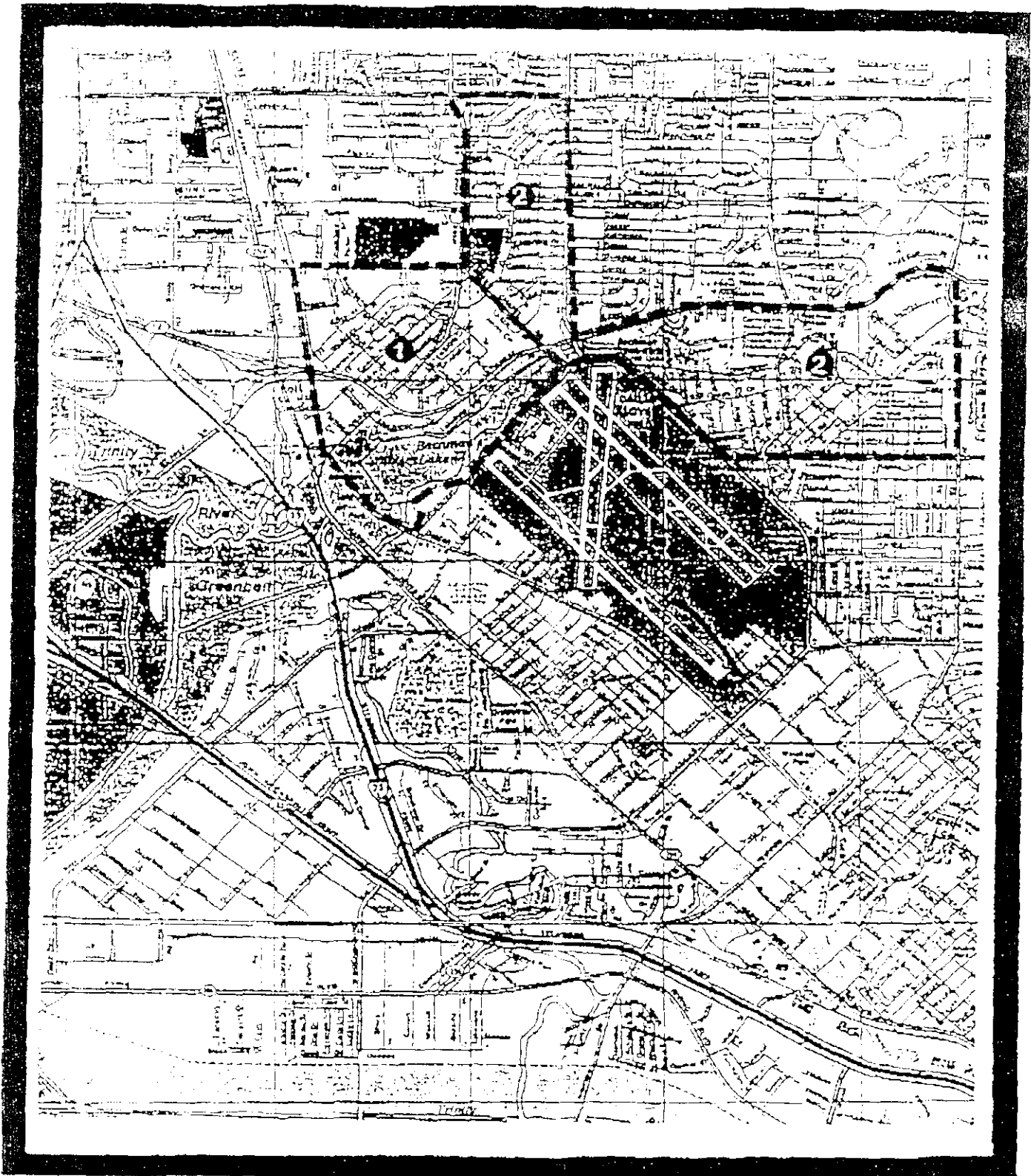
Our findings here in Dallas are reinforced by the numerous studies done in other localities, all showing higher crime in areas where SOBs are concentrated (especially sex crimes). The general negative feelings towards these areas and avoidance of the area by those who live in the surrounding community, 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

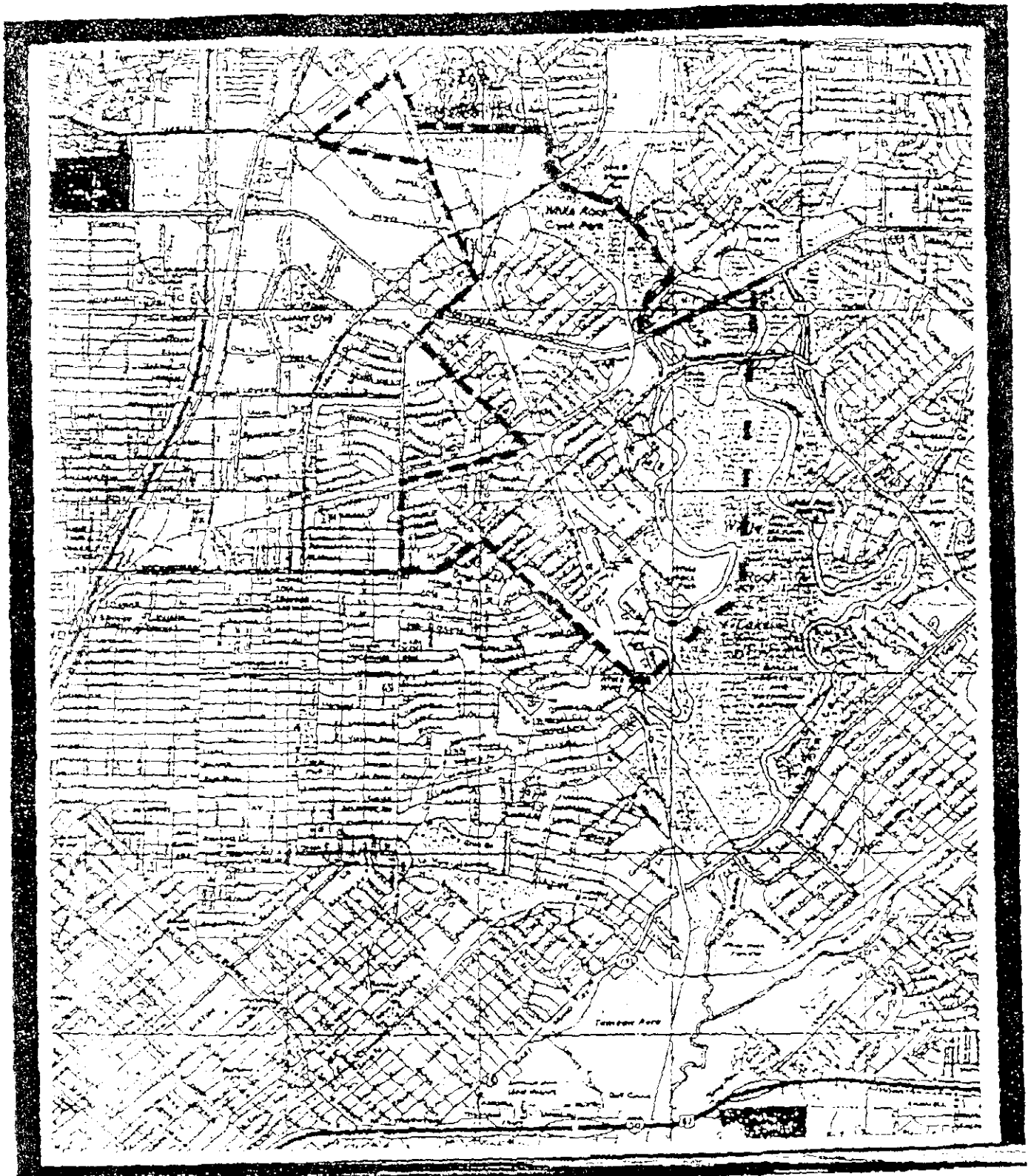
Peter Malin, MAI
Managing Director

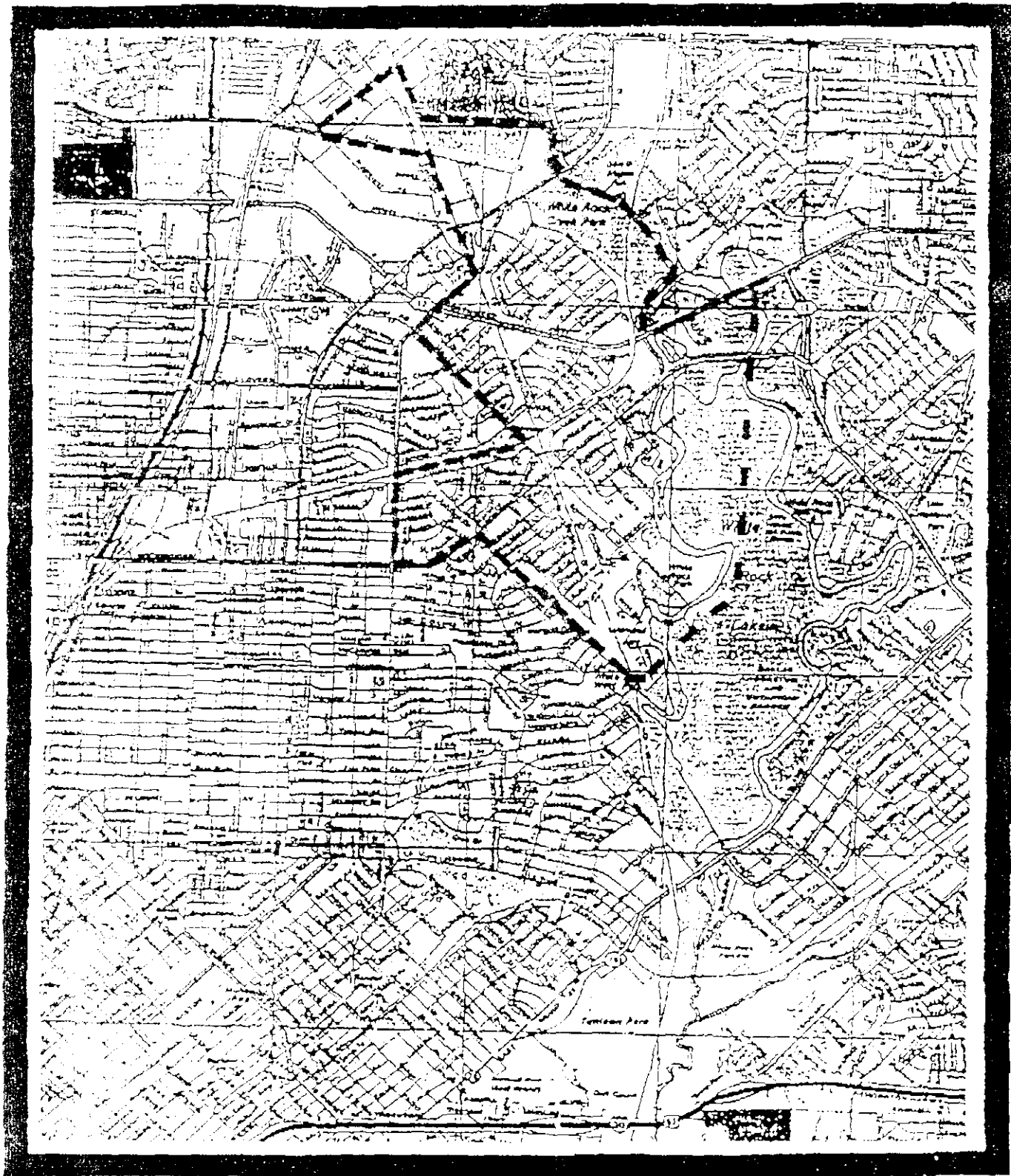
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The Malin Group

1. Study Area 2. Control Area- West





The Mallin Group
Control Area - East



The Malin Group

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

EXHIBITS

EXHIBIT A

Comparison of Sex-Related Arrests for 60 months ending 03/01/97		
Study Area	No. of Sex Crimes ¹	No. of SOBs ²
Police Beat 536	149	7 ³
Police Beat 537	41	0
Police beat 538	206	0 ⁴
Total	396 Sex Crimes	7 SOBs
Control Area – West	No. of Sex Crimes	No. of SOBs
Police Beat 546	17	0
Police Beat 552	60	0
Total	77 Sex Crimes	0 SOBs
Control Area – East	No. of Sex Crimes	No. of SOBs
Police Beat 215	23	1
Police Beat 244	52	1
Police Beat 241	58	1
Total	133 Sex Crimes	3
		SOBs

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 SOBs as defined in the proposed amendment to Chapter 41A dated 03/10/97.

³ This is a concentration of SOBs along several blocks of West Northwest Highway.

⁴ These beats are immediately adjacent to the seven SOBs in Beat 536.

Source: Dallas Police Department

EXHIBIT B
(Page 1 of 2)

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	16	13	87	22
Crystal Pistol 3211 W. Northwest Hwy, Dallas, Texas 75220	18	14	11	4	47	12
Baby Dolls Topless Saloon/Déjà vu 3039 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	109	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 SOBs					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 SOBs.					275	35

EXHIBIT B
(Page 2 of 2)

SUMMARY OF POLICE CALLS FOR SERVICE 01/93 thru 12/96						
Names/Addresses	1993	1994	1995	1996	Total	Avg. Per Year
Million Dollar Saloon 6826 Greenville Avenue, Dallas, Texas 75231	37	15	11	19	82	21

EXHIBIT C

SOBs in the Study and Control Areas By Type of License

Study Area	
Chez 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	

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 on 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 Federation Internationale de Geometric 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 . . . 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.

GDD final

HOUSTON CITY COUNCIL

**SEXUALLY ORIENTED BUSINESS
ORDINANCE REVISION COMMITTEE
LEGISLATIVE REPORT**

COMMITTEE MEMBERS:

**Jew Don Boney, Jr.
Helen Huey
John Castillo
Ray Driscoll
Joe Roach
Judson Robinson, Jr.
Gracie Guzman Saenz
Orlando Sanchez**

January 7, 1997

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INTRODUCTION

This report has been prepared by the Sexually Oriented Business Revision Committee for the purpose of summarizing the Committee's work in drafting a proposed amendment to Articles 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 SOBa. 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 track. 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 disrobe 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 SOB's, regulated and licensed, unlicensed and illegal
- c. licensing of employees
- d. visibility issues
- e. revision of land policies
- f. balance SOB's 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. Devianney, 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. SOB's 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 SOB's 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 SOB's, either by posting a large sign on the property or individual mail outs. In addition, they urged that billboard advertising be illegal.

The second public hearing occurred on July 29, 1996. Attorneys representing the SOB industry requested that a hearing panel be developed to deal with permitting issues. In addition, the panel should consist of non-law enforcement individuals, and contain several different hearing officers.

Testimony indicated that although many SOBs follow the rules, most industry representatives are not against stronger regulations in regards to licensing the entertainers. Often the dancers are transient. The establishment of a license issued through HPD would create a data base of information.

Furthermore, a great deal of discussion was given to a "no touch" policy. Owners and dancers alike stated that touching was part of the entertainment. 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

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. Benners*, 485 S.W.2d 773 (Tex. 1972).

"Grandfathering" essentially contemplates the indefinite continuance of non-conforming businesses or land uses following the passage of zoning or similar land use ordinances, notwithstanding that such businesses or uses clearly violate the provisions of the ordinance. The effect of "grandfathering" is to continue such non-conforming uses indefinitely, although new land uses may be subject to the newly enacted restrictions. A number of authorities hold that established non-conforming uses that are grandfathered must be allowed to continue the use, notwithstanding transfer or change in ownership. See, Section 25-183.50, McQuillin, Municipal Corporations. These authorities hold that only if a non-conforming use is abandoned altogether can the zoning or other ordinances be enforced against the particular property or business use. *Id.* While these authorities may not necessarily preclude termination of non-conforming rights upon transfer of ownership under Texas law, it is altogether possible that non-conforming sexually oriented businesses could find ways to structure sale of assets or ownership interests in such a manner as to perpetuate the entity "owning" the sexually oriented business to avoid termination of non-conforming rights. In any event, most non-conforming sexually oriented businesses would likely enjoy the opportunity for a very long continuation in business under any "grandfathering" scheme.

In contrast, amortization has been determined by the prevailing majority of courts in this country to be a reasonable means of accommodating the need to protect the public from

adverse land uses, while at the same time giving consideration to the rights of business owners to recoup business investments, prior to feeling the effects of a restrictive ordinance. The problem with "grandfathering" is that it perpetuates non-conforming uses for an indefinite period, thus preventing the effective exercise of the City's police powers to protect its residents. As noted by the Supreme Court of Texas, "There are strong policy arguments and a demonstrable public need for the fair and reasonable termination of non-conforming property uses which most often do not disappear but tend to thrive in monopolistic positions in the 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

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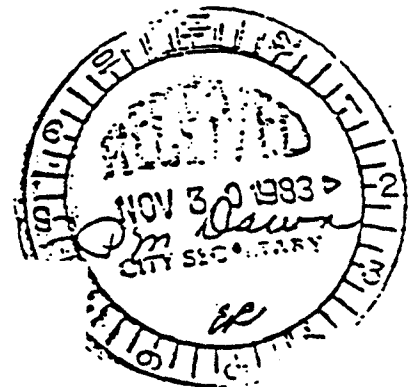
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HOUSTON CITY COUNCIL

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



11-11-83

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 the 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. Gorczynski, 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 oriente

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?

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

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

version of an ordinance was moved from January 25 to July 10 (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, 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" (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

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

continue to exist and that he was resigned to that fact, also 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,

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.

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 seem 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:

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

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 this

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.

Equal Protection. The Court in Universal Amusement also 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,

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

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.

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 effects 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

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

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 businesses. 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

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

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.

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

expert testimony offered -- and hence created the 750 foot rule 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.

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

the test would not place an undue or unfair burden on the 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.

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.)

In the end, the Committee devised ordinance provisions -- 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 record 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 that 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.

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

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

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

appearance of all such businesses. (With respect to businesses selling alcohol, only signage and not exterior appearance is 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

is virtually identical to the procedure set out in Article 11, 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 preserving 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

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

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

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

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.

**ADULT CABARETS
FACTUAL RECORD**

ADULT CABARETS

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2. Eve's Tease and the Body Shop, License Appeal Board Hearing, Direct Examination of Phoenix Police Department Detective William Mellinger, April 24, 1997, Vol. I, pp. 87 - 97.
3. Eve's Tease and the Body Shop, License Appeal Board Hearing, Direct Examination of Phoenix Police Department Detective Donald Casey, April 24, 1997, Vol. I, pp. 110 - 117.
4. Eve's Tease and the Body Shop, License Appeal Board Hearing, Direct and Cross Examination of Jessica Alcantar, April 24, 1997, Vol. I, pp. 125 - 147.
5. Eve's Tease and the Body Shop, License Appeal Board Hearing, Direct, Cross, Redirect, and Recross Examination of Tasha Kennison, April 24, 1997, Vol. I, pp. 147 - 162.
6. Eve's Tease and the Body Shop, License Appeal Board Hearing, Excerpt from the Cross-Examination Testimony of Gregory A. Welling, April 24, 1997, Vol. I, p. 185.
7. Eve's Tease and the Body Shop, License Appeal Board Hearing, Redirect Examination Testimony of Detectives Kulesa, Mellinger, and Casey, April 24, 1997, Vol. II, pp. 224 - 296.
8. City of Phoenix Police Department Report No. 51014042, dated June 19, 1995, *Johnny O's Show Club*.
9. City of Phoenix Police Department Report No. 51071068, dated June 28, 1995, *Donna Kay*.
10. City of Phoenix Police Department Report No. 60695163, dated April 29, 1996, *Johnny O's Show Club* and *The Blue Moon*.

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I N D E X

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 Redirect Examination by Mr. Hays on page 77
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WITNESS: William Mellinger
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WITNESS: Jessica Alcantar (phonetic)
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WITNESS: Tasha Kennison (phonetic)
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Exhibits 1 and 2 were marked on page 4

Exhibits 3, 4, 5 and 6 were marked on page 124

Exhibit 7 was marked on page 178

1 LICENSE APPEAL BOARD HEARING, VOLUME I,
2 commencing at 6:55 p.m., on April 24, 1997, 200 West Washington,
3 Phoenix, Arizona 85003, before Sandy Marruffo, a Notary Public
4 in and for the County of Maricopa, State of Arizona.

5

6

A P P E A R A N C E S

7

8

FOR THE CITY OF PHOENIX

Office of the City Attorney
9 200 West Washington Street
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BY: Mr. James H. Hays

11

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BOARD MEMBERS

19

Larry Snow
Boyd Heckel
20 Dempster Jackson
Jason Morris

21

22

ALSO PRESENT

23

Ida Alonge, Business License Services Clerk
Lorraine Hunt, Business License Services Clerk

24

25

1 You also have, pursuant to Chapter 19, Article 2 I believe, the
2 ability to reduce the revocation to suspensions of not more than
3 60 days. And my remarks in the earlier case on that would apply
4 here. So those are your options.

5 I have a fair bit of evidence to go through. I'd like
6 you to indulge me as I do it. And when I'm done, I would like
7 the same opportunity, obviously, to summarize my remarks. And
8 I'll apologize in advance for what I think will be the length of
9 these cases. Hopefully it will be expedited somewhat by
10 combining the two and I'll do the best I can to move it a long.

11 MR. SNOW: We are here for the duration.

12 Gentlemen, the Appellants may have an opportunity to
13 make their opening remarks.

14 MR. DICAVALCANTE: Mr. Chair, I am not going to make
15 an opening statement. In lieu thereof I will just request that
16 you all read the cover to the memorandum I submitted.

17 MR. SNOW: Okay. Then the time now is for the City to
18 begin presenting their case.

19 MR. HAYS: Thank you, Mr. Chair.

20 City's first witness is a police detective,
21 Detective Kulesa. I'll ask him to identify himself for the
22 record.

23 DIRECT EXAMINATION

24 BY MR. HAYS:

25 Q. Detective, state your full name for the record.

1 A. My name is Thomas Robert Kulesa, last name is
2 K-U-L-E-S-A.

3 BY MR. HAYS:

4 Q. And how are you employed?

5 A. I'm a Detective with the City of Phoenix Police
6 Department.

7 Q. And are you in the Vice enforcement division?

8 A. Yes, sir, I am.

9 Q. How long have you been employed there?

10 A. I've been in the Vice enforcement unit currently
11 for approximately six months, but in, like, 1986, 1987 I served
12 in the Vice unit for approximately a year and a half.

13 Q. All right. Are you acquainted with two businesses
14 known as Eve's Tease and The Body Shop?

15 A. Yes, sir, I am.

16 Q. And are you acquainted with the address for those
17 two?

18 A. Yes. Eve's Tease is located at 3737 West Indian
19 School in Phoenix, Arizona. The Body Shop is located at 3790
20 West Grand Avenue in Phoenix, Arizona.

21 Q. And would you explain to the Board, please, what
22 your role was in connection with those investigations?

23 A. I, along with other members of my Vice enforcement
24 unit, the India 51 squad, which is the day shift squad, we
25 conducted a lengthy undercover investigation at both The Body

1 Shop and Eve's Tease locations.

2 Q. All right. And do you have the dates that those
3 investigations were performed? I'm talking now about work done
4 at the business, as opposed to in your office or something like
5 that.

6 A. The dates of the undercover portion of the
7 investigation were approximately September 16th of 1996 until
8 approximately November 30 of 1996.

9 Q. And that's for both businesses; is that right?

10 A. Yes, sir, they were simultaneous investigations.

11 Q. All right. I need the specific dates that you
12 were at both businesses. And, if you need to refer to your
13 report for that, go ahead. Tell us which dates you were at
14 which businesses in the undercover capacity.

15 A. On September 16th, 1996, I went to the location of
16 The Body Shop on Grand Avenue along with Detectives Bill White,
17 Bill Mellinger, Don Casey, and Greg Mesa.

18 On September 23rd, 1996, two other detectives of my
19 squad, Terry Sherrard and Zeke Columber, went to The Body Shop
20 location.

21 On November 26 Detective Don Casey and I went to The
22 Body Shop location.

23 On October 1st Detective Casey and I again went to The
24 Body Shop location.

25 On October 7th Detective Mellinger and I went to The

1 Body Shop location.

2 October 14th Detective Mellinger and I went to The Body
3 Shop location.

4 October 28th Detective Mellinger and I went to The Body
5 Shop location.

6 November 4th Detective Casey and I went to The Body Shop
7 location.

8 November 5th Detective Mellinger, Detective Casey, and I
9 went to The Body Shop location.

10 November 6 Detective -- on November 6th
11 Detective Mellinger and I went to the Eve's Tease location.

12 Q. All right. Did that complete The Body Shop
13 visits?

14 A. No. There was two other times at The Body Shop.

15 November 18th Detective Mellinger, Detective Casey, and
16 I went to The Body Shop location.

17 November 30th Sergeant Shamley, Detective Mellinger, and
18 I went to The Body Shop location.

19 As far as the Eve's Tease location, October 16th
20 Detective Mellinger, Detective Casey, and I went to the Eve's
21 Tease location.

22 October 28th Detective Mellinger and I went to the Eve's
23 Tease location.

24 And November 6th Detective Mellinger and I went to the
25 Eve's Tease location.

1 Q. Let's start with Eve's Tease, okay? And we'll
2 talk about that business first in some detail and then we'll
3 move to The Body Shop; is that okay?

4 A. Yes, sir.

5 Q. Describe for the Board how Eve's Tease appears,
6 the exterior of the building, the parking lot, for someone at
7 the door, that sort of thing. Describe for them the exterior
8 appearance of this business.

9 A. The business is located at 3737 West Indian School
10 Road. It's located on the south side of Indian School Road.
11 And the parking lot for the business is directly off of Indian
12 School Road, which is -- the parking lot is located on the north
13 side of the building. The building is approximately, in my
14 guesstimate, a hundred feet by maybe fifty or so, and that's an
15 approximation. The front door to the business is also located
16 on the north side of the business.

17 On our occasions that we went there, if you go to the
18 front door of the business during the daytime hours, we did not
19 encounter any type of doorman or anything like that. If you go
20 to the business during the nighttime hours, there is, from our
21 experiences, usually a doorman seated at the front door.

22 Upon entering the business you are in, like, the little
23 foyer area and directly off to your left are the bathrooms.
24 Directly straight ahead is a small bar-type set up. It is set
25 up like a bar but there's no alcohol served there. Off to the

1 left of the bar, which would be to the east, there is a small
2 little dance area set up with a few tables and chairs and that
3 is referred to in our experience as the topless section.
4 Directly to the east of there, a little bit more, is a small
5 little shower and it's set up just like a shower would be inside
6 your home. It's -- it looks like a fiberglass-type set up.
7 I've never been close to it to see if it's actually fiberglass,
8 but that's what it looks like.

9 Now, again, standing in the foyer area, if you look off
10 to your right, which would be to the west, there is a large
11 table setting, numerous tables and chairs which is where the
12 patrons of the business would sit.

13 Directly west of there, located against the west wall of
14 that room is a peninsula-type stage. The stage is
15 approximately, oh, about fifteen feet by approximately twenty
16 feet or so, and again that's an approximation. The stage is
17 approximately 30 inches, something like that, above the floor
18 level. There's seats positioned directly at the stage around
19 the peninsula-type stage for patrons to sit. There is no
20 railing at the stage enabling the girls or dancers to dance
21 directly up to the customers.

22 In our experiences at the business, directly west of
23 that stage is another small room. There is a curtain separating
24 that room from the main patron area. And on that at the time we
25 were there, there was a sign which basically said something to

1 the effect of "No admittance."

2 Now, in our experiences at that room, that room was used
3 as a private, totally nude dance area. When you enter that
4 room, the room is a long narrow room which has a -- it's -- the
5 narrow section goes from the north to the south. The room is
6 approximately eight feet wide and approximately twenty or so
7 feet long. Along the east side of this room, as you're walking
8 down the narrow section, if you were walking in a southerly
9 direction, is just a pathway which is approximately a third of
10 the room.

11 Off to the right side of the room the room is divided
12 into four cubicles approximately six foot by six foot in size.
13 Each one of these cubicles appeared somewhat identical on the
14 inside, and what that entailed was each separate cubicle which
15 was separated from each other by a wall, but there was no wall
16 leading into the small pathway. There is a stage which is
17 approximately two feet or so off the ground and the stage is
18 approximately four foot by four foot in size. Directly next to
19 the stage, which would be about a foot away from it, is a table
20 and chair for the patrons to sit.

21 Again, each room is basically identical. And also
22 located in this room which would be along that long pathway on
23 the east side, at the time that we were there, each separate
24 cubicle had a video-type camera pointed down at the stage area
25 which enabled the management or employees, whoever was at the

1 bar area when you first came in, to be able to view on small
2 monitors what was occurring on the stages in those small
3 cubicles.

4 Q. Can you give the Board some idea of the interior
5 dimensions of this business excluding the rooms behind the
6 curtain?

7 A. When you walk into the foyer area -- And again I
8 apologize if I'm wrong, they are approximations through my
9 visual observations. When you walk into the foyer area, it's
10 approximately ten by ten foot or so. The main patron area,
11 which would be off to the right, off to the west, is
12 approximately twenty feet in width, which would be north to
13 south, and in length approximately forty feet, something like
14 that. The bar area, again, if you're standing in the foyer, the
15 bar area is approximately ten foot by ten foot. The section off
16 to the right, which was referred to us as the topless dance
17 area, approximately maybe fifteen feet by twenty-five feet.

18 Q. Now, of the times you entered this business which
19 you related earlier, you entered in an undercover capacity; is
20 that right?

21 A. Yes, sir.

22 Q. And to your knowledge did anyone at the business
23 ever become aware of the fact that you were, in fact, a Phoenix
24 Police Detective?

25 A. Not to my knowledge, no, sir.

1 Q. Would you describe for the Board, please, the
2 nature of the entertainment? Without getting into specifics,
3 give the Board the nature of the entertainment. For example,
4 I'd like you to talk about the performers, their number, how
5 many there are, where they perform, that sort of thing.

6 A. As far as Eve's Tease is concerned, we were there
7 on I believe three occasions. And during those three occasions,
8 we were there during mostly afternoon-type hours, early
9 afternoon. And on one occasion we stayed until the early
10 evening hours. During that time, in the earlier afternoon hours
11 we observed approximately four, maybe five dancers. As the
12 nighttime hours, the evening hours, rolled around on occasion
13 that we were there during the evening, there were approximately
14 six dancers.

15 When you go into the main patron area, the dancers that
16 you observe are basically clad in costume-type outfits, some in
17 bathing suit-type outfits, some in undergarment-type outfits,
18 some in lingerie-type outfits. They all vary.

19 When the dancers are up on the stage, through our
20 observations at the time we were there, these dancers performed
21 either two or three dances. The first dance being clad in
22 whatever costume that they were out in the patron area with, the
23 second dance, what the dancer would do is take her top off and
24 do the second dance topless, the third dance, since this is a
25 totally nude establishment, the dancer would strip completely

1 nude and do the third dance nude.

2 As far as the two semi-private areas, as far as the
3 topless section, a dancer in there would give you a dance
4 topless. And the totally nude section, which would be the room
5 off to the west, would be a totally nude dance.

6 Q. Do you happen to know what the hours of operation
7 were for Eve's Tease?

8 A. I believe they were approximately -- approximately
9 11 o'clock in the morning till approximately 3:00 a.m.,
10 something like that. I don't know if I'm exact in those hours,
11 but they were approximately somewhere around there.

12 Q. Was it your understanding that this business was
13 open to the general public?

14 A. Yes, sir.

15 Q. Were there any signs posted in connection with
16 either what would be offered inside the business or what would
17 be permitted of performers or customers that you noticed?

18 A. There is a sign outside. I can't recall. It's
19 something to the effect of that it's a nude establishment, but I
20 cannot recall exactly what it said.

21 Q. Okay. The occasions you were in the business, can
22 you give the Board the range of patrons that were in there,
23 their number?

24 A. We were in there, again, on approximately three
25 occasions and during that time, during the afternoon hours it

1 ranged as far as we were the only patrons in there for an hour
2 or so at a time. And I think the most we saw in there,
3 excluding the two or three detectives that were in there, were
4 approximately ten patrons and that was towards the evening
5 hours. It appeared to us that towards the evening hours more
6 and more -- towards the end of the workday and the early evening
7 more and more patrons would come in.

8 Q. How many non-dancers would be working there? Do
9 you have a range on that?

10 A. From our experiences, there appeared to be either
11 two or three non-dancers and that would include the waitress who
12 was -- through the times that we were there, we never observed
13 dancing, the male stationed at the door as a doorman-type
14 person, and also the management which was usually behind the bar
15 area.

16 Q. Would you describe for the Board, please, the
17 interaction that you had generally with the performers?

18 A. We, through our experiences and -- we -- The
19 dancers would constantly intermingle both with us and with other
20 patrons that we observed. When the dancers are not dancing on
21 the stage, they are constantly going around sitting with the
22 different patrons talking to the patrons for a while, asking the
23 patrons if they would like to purchase additional private,
24 semi-private dances.

25 In addition to that, the waitress that we encountered on

1 our times there would also, in addition to serving us our drinks
2 which were nonalcoholic because they cannot serve alcohol at
3 this establishment, this waitress would also come around talking
4 with us, talking with the other patrons asking the patrons if
5 they wished to purchase dances. To our experiences all the
6 off-stage dances, which would be the totally nude or topless,
7 were arranged through the waitress.

8 Q. Let's talk about payment. Did it cost something
9 to get into the business?

10 A. Yes. On the occasions that we were there, we,
11 along with additional patrons that we observed, had to pay a
12 cover charge which is an entrance fee of \$5 to gain entrance
13 into the business.

14 Q. Was there a minimum number of drinks you had to
15 buy?

16 A. Yes. We were advised on occasion that we went
17 there that you had to purchase a minimum of one drink which was
18 \$3.

19 Q. Did it cost anything to watch the dancers dance on
20 the main stage?

21 A. There was no required payment for the dancers on
22 the main stage. It is customary to tip these dancers, but it
23 was not required.

24 Q. What about the performances in the topless
25 section, how much did those cost?

1 A. We were -- We were advised through our experiences
2 as far as the prices for the topless dances and the prices for
3 the totally nude dances were identical during the time that we
4 were there. And the prices for these would be a 15-minute
5 dance, however many songs that would include, for a price of
6 \$35. A half-hour dance would cost \$50, and a one-hour dance
7 would cost \$100.

8 Q. What about tipping? Was that customary, expected?
9 What was the nature of the tipping as you understand it?.

10 A. There is no required tip to be paid to the dancers
11 here, but through our experiences, past experience as well as
12 our experiences in this establishment here, it is customary to
13 give the dancer some type of tip. And that is -- The amount is
14 usually left up to the patron or the patron and dancer
15 negotiating.

16 Q. Describe the lighting in this business for the
17 Board, please.

18 A. The lighting is somewhat dimmer than your outside
19 daylight so it takes a few -- maybe a minute or so to adjust to
20 the change when you come in from the bright sunlight. But the
21 lighting in there is very adequate to clearly see what is going
22 on in the business, maybe a little bit, you know, dimmer than
23 what we have here. But as far as the different areas, if you
24 were seated to the back of the patron area, it's a little bit
25 dimmer than if you were seated up by the stage. The stage area

1 in this establishment is very well lit. There are lights
2 directly at the stage which would enable anyone in the
3 establishment to clearly view what is going on in the stage
4 without any difficulty.

5 Q. Is there music playing?

6 A. Yes, sir, there is. The music in this business
7 was through a jukebox which was located next to the stage.

8 A. Do they ever have a band in there?

9 A. We never observed a band in there. I don't know
10 if they do or not, but we never observed one.

11 Q. Do they have any television monitors there?

12 A. At the time that we were in there, they had the
13 monitors which were located behind the bar, but those monitors
14 were specifically for viewing the activity in the totally nude
15 room. Other than those, I did not observe any other television
16 monitors.

17 Q. Was there at least one live performer -- By "live
18 performer" I mean an actual performing human being as opposed to
19 someone on television. Was there at least one live performer on
20 each of the occasions in which you visited the business who was
21 performing while exposing her genitals, anus, and naked breasts?

22 A. Yes, sir. On each occasion there was at least one
23 and on each occasion that we were there, a minimum of three.

24 Q. Was there at least one live performer on each of
25 the occasions in which you visited the business who was

1 performing masturbation either actual or simulated?

2 A. Yes, sir, there was.

3 Q. Was there at least one live performer on each of
4 the occasions in which you visited the premises who was fondling
5 or otherwise erotically touching either of her genitals, pubic
6 region, buttocks, anus, or breasts?

7 A. Yes, sir, there was.

8 Q. Are you acquainted with the City's sexually
9 oriented business ordinance?

10 A. Yes, sir.

11 Q. Are you acquainted with the ordinance's definition
12 of adult cabaret?

13 A. Yes, sir.

14 Q. Did you form a conclusion at any point during your
15 investigation as to whether or not this business qualified as an
16 adult cabaret under the ordinance?

17 A. Yes, sir. My conclusion was that this
18 establishment through our observations did fit the definition of
19 an adult cabaret.

20 Q. Did you check with City Licensing to see if, in
21 fact, the business had an SOB license?

22 A. Yes, sir, we did.

23 Q. What did you learn?

24 A. On October 21st I believe it was --

25 Q. Of '96?

1 A. Of 1996 Detective Casey and I did go to the City
2 Licensing for the City of Phoenix and we did find that this
3 establishment did, in fact, have a sexually oriented business
4 license with the licensees listed as Gregory Welling and
5 Anita Welling.

6 Q. Are you acquainted with the City's notice of
7 intent to revoke license for this business?

8 A. Yes, sir.

9 Q. Okay. What I'm going to ask you to do is to go
10 through this with me and for those incidents listed of which you
11 have personal knowledge, ask you to describe for the Board what
12 you saw. Okay? Before I do that, why don't I offer these for
13 just this business at the moment, the notice of intent to revoke
14 license.

15 Does the licensee have a problem?

16 MR. DICAVALCANTE: No objection.

17 MR. HAYS: Beg your pardon?

18 MR. DICAVALCANTE: No objection.

19 BY MR. HAYS:

20 Q. Detective, let's start at the first violation
21 which is a patron -- the allegation now is that a patron touched
22 the breast, buttocks, or genitals of an employee, section
23 10-148(A)(2) -- I'm sorry. No. In this case, I beg your
24 pardon. "Patron placed money on the person or in or on the
25 costume of an employee;" that's 10-148(A)(3).

1 Now, did you, yourself observe any violations of that
2 section?

3 A. Yes, sir, I did.

4 Q. Okay. Would you identify them, if you would,
5 please, on the notice and describe them for the Board?

6 A. They are listed under "a patron placed money on
7 the person or in or on the costume of an employee." As far as
8 sub-section A, on October 16th, 1996, I was in the establishment
9 with Detective Mellinger and Detective Casey. At that time I
10 observed Detective Mellinger approach the stage during the time
11 that a dancer who was later identified as Sheri Katrina Allison
12 was dancing on the stage. Detective Mellinger was then allowed
13 by Miss Allison to place a dollar bill in a garter belt that she
14 was wearing while she danced on the stage, the dollar bill being
15 a tip.

16 On October 16th, 1996, during the same time period, I
17 observed a dancer who was later identified as
18 Karen Rachel Parker to be dancing on the stage, at which time I
19 approached the stage. She was in a totally nude state and I
20 gave her a one dollar tip, and during this time Miss Parker took
21 both hands, placed them on the outside of her breasts and walked
22 towards me and squeezed her breasts together to take the dollar
23 bill from my hand.

24 On October 28th, 1996, Detective Mellinger and I were in
25 Eve's Tease at which time I observed a dancer later identified

1 as Celeste Ruth Sheret take a dollar bill as a tip by placing
2 her hands on the outside of her naked breasts as she was dancing
3 on the main stage to remove the dollar bill from the patron's
4 hand.

5 On October 28th, 1996, I identified a dancer later
6 identified as Patricia May Holmes to be dancing in a totally
7 nude state on the main stage, at which time I observed her take
8 a dollar bill tip by placing her hands on the outside of her
9 naked breasts and squeezing her breasts together to remove the
10 tip from the patron's hand.

11 On November 6th, 1996, I observed a dancer dancing
12 totally nude on the main stage. This dancer was later
13 identified as Kelley Ann Hocking. I observed Miss Hocking take
14 a dollar bill from my hand by placing her hands on the outside
15 of her naked breasts and removing the bill from my hand by
16 squeezing her breasts together.

17 On November 6th, 1996, I observed a dancer to be dancing
18 on the main stage. The dancer at this time is only known to us
19 with a stage name of Sexy. I observed this dancer remove a
20 dollar bill from my hand by placing her hands on the outside of
21 her breasts and squeezing her breasts together to remove the
22 dollar bill.

23 On November 6th, 1996, I observed a dancer later
24 identified as Ronda Widdison to be dancing on the main stage, at
25 which time I observed her to remove a dollar bill from a

1 patron's hand by placing her hands on the outside of her naked
2 breasts and squeezing her breasts together to remove the bill.

3 November 6th, 1996, a dancer only known to us at this
4 time with a stage name of Summer, dancing totally nude on the
5 main stage, removed a dollar bill from a patron's hand by taking
6 her hands, placing them on the outside of her naked breasts,
7 squeezing her breasts together to remove the bill.

8 November 6th, 1996, a dancer only known to us with a
9 stage name of Sandy, dancing totally nude on the main stage,
10 removed a dollar bill from a patron's hand by taking her hands,
11 placing them on the outside of her naked breasts and squeezing
12 her breasts together to remove the bill.

13 On some of these occasions, the patrons that I observed
14 to be paying the dollar tips were some of the other detectives I
15 was with myself and some of them were other patrons in the
16 establishment.

17 Q. You'll note on the last four listed here that it's
18 alleged that more than one patron placed the dollar bill between
19 the naked breasts of the dancer.

20 Would it be your testimony that the activity listed here
21 occurred on more than one occasion on these dates?

22 A. Yes, sir, on those last four the date would all be
23 on November 6, 1996.

24 Q. All right. Let's move on to the next violation.
25 This one is that, "The licensee manager or an employee has

1 knowingly allowed prostitution on the premises or that a
2 licensee manager or an employee has knowingly allowed any act of
3 sexual intercourse, oral sexual contact, or sexual contact,
4 including masturbation, to occur in or on the licensed
5 premises."

6 Keeping those two sections in mind, can you identify for
7 the Board any violations of those sections of your own personal
8 knowledge giving the dates of the violation, please?

9 A. Yes, sir. On October 16th, 1996, I observed a
10 dancer later identified as Kelley Ann Hocking to be dancing
11 totally nude -- nude on the main stage. During this dance, on
12 numerous occasions during the song I observed Miss Hocking to
13 take her hand, place the tips of her first two fingers on her
14 vaginal area actually coming into contact with her vagina and
15 for a few seconds on each occasion Miss Hocking would actually
16 rub her vaginal area with her hand during the dance.

17 On October 16th, 1996, I did receive a private dance as
18 it's called which would be in a totally nude area from a dancer
19 who was later identified as Kelley Ann hawking. For this dance
20 I paid a \$35 fee which would be a 15-minute dance. In addition
21 to this \$35 fee, after the dance was performed I gave Miss
22 Hocking a \$20 tip which was negotiated between Miss Hocking and
23 myself. Prior to the dance I asked Miss Hocking if during the
24 dance she would be masturbating herself and she replied that she
25 would if that's what I wanted for my dance money.

1 During the dance, which was a 15-minute dance,
2 Miss Hocking and I went into the totally nude section, at which
3 time Miss Hocking went up onto one of the small stages which is
4 located in one of the cubicles. I sat in the chair next to the
5 stage. During that 15-minute dance Miss Hocking made numerous
6 and various positions on the stage. During this time, almost
7 the entire time, Miss Hocking was masturbating herself. While
8 masturbating herself, Miss Hocking -- and I apologize for the
9 language, Miss Hocking asked me, quote, You want to see me come,
10 don't you?" And after the dance, after I gave Miss Hocking a
11 \$20 tip, Miss Hocking took the hand -- without my knowledge,
12 took the hand that she had masturbated herself and touched me on
13 my hand and advised me that I could smell that later.

14 During this dance also, the person who was at the bar,
15 which during our observations -- he was later identified as
16 Timothy Wheeler. During this time, during our observations of
17 Timothy Wheeler, he appeared to us through everything he was
18 doing, to be the on-duty manager at that time. The actions he
19 was doing was he was instructing -- he would greet the customers
20 at the door, advise them of the cover charge, advise them of the
21 drink minimum. He would also advise the waitress when to go up
22 to each customer to refill drinks, ask them for dances. He was
23 advising some of the dancers to go up on the stage at various
24 times.

25 During the time that Miss Hocking was giving me my dance

1 in the totally nude section, Detective Casey did observe this
2 Timothy Wheeler to be behind the bar area watching the monitor
3 which was in a cubicle which showed what the actions in the
4 cubicle that I was in with Miss Hocking.

5 Detective Casey also observed the waitress at the time,
6 who was later identified as Marjorie Wiley, to also be behind
7 the bar area watching the monitor which was displaying the
8 activities in the cubicle that I was in with Miss Hocking. At
9 the end of the dance Miss Wiley came into the small area and as
10 she approached Miss Hocking was unaware that she was approaching
11 and did observe -- obviously observe Miss Hocking masturbating
12 herself in front of me.

13 Moving to the next --

14 Q. Let me stop you there for a second. You made a
15 reference to a slang term. You indicated that the dancer asked
16 you if, in fact, you didn't want to watch her come.

17 What did you understand that to mean at that time?

18 A. She asked me, she goes, quote, You want to see me
19 come, don't you?" "Come" is a common street slang referring to
20 reaching an orgasm.

21 Q. Okay. Go ahead. Thank you.

22 A. On October 16th, 1996, another incident occurred
23 where Detective Mellinger did receive a dance from a dancer
24 identified as Sheri Katrina Allison. Detective Mellinger will
25 have to testify as to what occurred as it occurred in a totally

1 nude area.

2 October 16th, 1996, Detective Casey received a topless
3 dance from a dancer later identified as Karen Rachel Parker.
4 Detective Casey will testify as to what occurred during that
5 time period.

6 On October 28th, 1996, a dancer later identified as
7 Kelley Ann Hocking, I observed her to be dancing on the main
8 stage of the business. Miss Hocking, again while dancing in a
9 totally nude state, did again take her hands and on numerous
10 occasions during the dance did take her first two fingers, touch
11 her vaginal area and for a few seconds on each occasion did rub
12 her vaginal area. Again, during this time period
13 Timothy Wheeler appeared to be the on duty manager through his
14 actions and Marjorie Wiley was the waitress. And they were
15 observed to be standing by the bar area observing what was
16 happening on the stage. They took no actions to stop what was
17 happening.

18 On October 28th, 1996, I received a totally nude dance
19 from a female dancer who was later identified as
20 Patricia May Holmes. During this time I paid -- or just prior
21 to the dance I paid a \$40 fee for the dance. It was negotiated
22 between Marjorie Wiley who was the waitress and myself that I
23 would get a 15-minute dance. Well, I had \$40. She advised she
24 didn't have change, so she made the decision to go ahead and
25 give me a twenty minute dance for \$40. Miss Holmes and myself

1 then went to the totally nude section and prior to the dance, I
2 asked Miss Holmes if she would, quote, play with yourself,"
3 which is common street slang referring to masturbating for the
4 dance. Her reply was, "Of course."

5 Miss Holmes and I then went into the totally nude
6 section which again still had the monitors and video cameras set
7 up. And during the 20-minute dance Miss Holmes did for
8 approximately ten minutes of the dance -- she laid a blanket out
9 on the stage and I sat in the chair right next to the stage and
10 approximately ten minutes of the dance she laid on the blanket
11 and masturbated herself. During the other ten minutes what I
12 would do is engage her in conversation because I observed that
13 each time I engaged her in conversation she would stop
14 masturbating. The reason I did that was I did not want to have
15 her lay there and masturbate herself for 20 minutes.

16 Q. How was she situated during the ten minutes you
17 claim she was masturbating?

18 A. I was seated in a chair directly next to the stage
19 which was approximately a foot or so away. She was laying with
20 her head away from me laying on her back and her legs towards me
21 exposing her whole vaginal area to me. Her legs were spread and
22 I was approximately a couple feet away from her vaginal area, a
23 little bit higher because I was seated and she was laying on the
24 stage.

25 Q. And would it be your testimony that the lighting

1 was adequate there for you to have a clear view of exactly what
2 she was doing?

3 A. Yes, the lighting was very adequate for me to
4 observe what she was doing. In addition, on this time I did pay
5 Miss Holmes an extra \$20 as a tip which was negotiated between
6 the two of us.

7 On October 28th, 1996, Detective Mellinger did receive a
8 totally nude dance from a dancer who was later identified as
9 Celeste Ruth Sheret, and Detective Mellinger will have to
10 testify as to what occurred during that time.

11 November 6th, 1996, a dancer later identified as
12 Kelley Ann Hocking, I observed her to be dancing on the main
13 stage, during this time again in a totally nude state,
14 Miss Hocking, on numerous occasions --

15 MS. ALONGE: Stop please.

16 (Ms. Alonge changed tapes.)

17 MS. ALONGE: Okay.

18 THE WITNESS: As far as the November 6th issue with
19 Kelley Ann Hocking dancing total nude on the main stage, on
20 numerous occasions I again observed Miss Hocking to go take her
21 first two fingers of her hand and touch them to her vagina for a
22 few seconds each time masturbating.

23 On November 6th, 1996, I observed a dancer only known to
24 us at this time with a stage name of Sexy to be dancing totally
25 nude on the main stage. During this time the dancer, Sexy, did

1 on numerous occasions place her hand on her vagina and for a few
2 seconds each time masturbate her vagina.

3 November 6th, 1996, a dancer only known to us at this
4 time with a stage name of Summer dancing totally nude on the
5 main stage did on numerous occasions take her hand, place it on
6 her naked vagina and for a few seconds each time masturbate her
7 vagina.

8 November 6th, 1996, a dancer who is only known to us at
9 this time with a stage name of Sandy, while dancing in a totally
10 nude state on the main stage did take her hand, place it under
11 her breast, tilt her head forward, push her breast up to her
12 mouth area and did during the dance lick the nipple of her
13 breast.

14 On the November 6th occurrences, we did observe
15 Mr. Gregory Allen Welling who is seated at the table next to me
16 at the center with a whitish, yellow shirt to be present at the
17 business. Mr. Welling was acting in a managerial-type position.
18 Mr. Welling was directing the dancers as to what to do.
19 Mr. Welling was directing the waitress as to what to do. We did
20 observe that these occurrences on the main stage were obviously
21 in the view of Mr. Welling. We observed Mr. Welling to be
22 looking at the main stage as the dancers danced.

23 Q. On that last point, see if you can be a little
24 more specific in two areas. One, you indicated that Mr. Welling
25 was acting in a managerial-type capacity by directing dancers

1 and waitresses.

2 What would he have been directing them to do?

3 A. We observed Mr. Welling -- I observed Mr. Welling
4 to advise the waitress to go around and ask some of the patrons
5 if they needed to have more drinks, if they desired to have some
6 dances. I also observed Mr. Welling -- it appeared to us that
7 they -- the business was set up to where the dancers would have
8 to go up on stage in somewhat of an order. Well, when the
9 dancer that was up next on the stage was giving either a topless
10 -- or at that time a topless dance, she would not be able to go
11 up on the main stage. I observed Mr. Welling on one occasion to
12 advise a different dancer to go up on the stage during that time
13 period.

14 Q. Now, you indicated that he was in a position to
15 observe the dancers on the main stage; is that right?

16 A. Yes, sir.

17 Q. And you indicated earlier that the women would
18 typically perform three song sets; is that correct?

19 A. Either two or three songs. It varied.

20 Q. And did the final song of the set result in the
21 woman performing totally nude?

22 A. Yes, sir.

23 Q. And was it at that time that you observed the
24 women engaging in acts of masturbation?

25 A. Yes, sir.

1 Q. And is it your testimony that Mr. Welling was
2 present during those occasions when the woman was performing the
3 final song of her set and masturbating?

4 A. During the time period that we observed these
5 actions -- that I observed these actions along with the other
6 detectives, I did observe Mr. Welling to be at various locations
7 in the bar and, again, I call it a bar, it's not a bar as we
8 know it in the business. And for the most part he was located
9 either behind or at the bar setup area. Mr. Welling was
10 approximately 20 to 30 feet, maybe, away from the main stage.

11 The main stage was very well lit and I have been at that
12 location as well as locations behind, you know, further away
13 from where Mr. Welling was and from those locations you have a
14 clear view of what's occurring on that main stage. It is well
15 lit from where you're standing. I did observe Mr. Welling
16 during those occasions to be looking at the bar, not
17 continuously --

18 Q. I'm sorry. You said the bar?

19 A. Not continuously, but on occasion to be looking at
20 the stage while the dancers were performing these acts.

21 Q. Which acts?

22 A. The masturbation acts.

23 Q. On those occasions when you believe Mr. Welling
24 was observing these acts of masturbation, did you ever note an
25 attempt of any sort on the part of the dancer to hide the act of

1 masturbation from Mr. Welling?

2 A. No, sir. No. Not during that time, no, I did
3 not.

4 MR. HAYS: Okay. That's all I have of this witness on
5 Eve's Tease.

6 Did you want to ask any questions now?

7 MR. DICAVALCANTE: Yes, sure.

8 CROSS-EXAMINATION

9 BY MR. DICAVALCANTE:

10 Q. How long have you been a police officer?

11 A. This coming July will be 18 years.

12 Q. How long have you been in Vice?

13 A. For this portion of my term in Vice I've been
14 approximately six months or so, and the mid-eighties,
15 '86, '87, I worked in Vice for approximately a year and a half.
16 All total I've been working in an undercover capacity for
17 approximately 13 years.

18 Q. Did you receive any special training to work in
19 Vice?

20 A. I received on-the-job training from more
21 experienced Vice officers.

22 Q. What kind of training -- Give us examples of what
23 kind of things they would want you to learn on the job.

24 A. Basically they advise you to read through the
25 laws, read what's required in the laws. I was schooled by more

1 kind of an incident you did not seek to write up this club for
2 any kind of misbehavior?

3 A. I wrote a police report but it was not turned in
4 yet.

5 MR. DICAVALCANTE: Nothing further.

6 MS. ALONGE: Can I make a short announcement? I'm
7 sorry. The fire alarms are having a problem so, if they go off,
8 it isn't a fire.

9 MR. HAYS: Great. Thank you.

10 DIRECT EXAMINATION

11 BY MR. HAYS:

12 Q. Officer, will you state your full name for the
13 record, please?

14 A. William Mellinger, M-E-L-L-I-N-G-E-R.

15 Q. Shall I refer to you as officer now?

16 A. Officer is fine.

17 Q. Officer, I presume at some point you were employed
18 in the Vice enforcement unit of the Phoenix Police Department;
19 is that right?

20 A. Yes, I was.

21 Q. Over what period of time were you employed with
22 that unit?

23 A. From -- Well it was three years and I left to go
24 back to patrol on February -- I think it was 21st.

25 Q. Of '97?

1 A. Yes.

2 Q. And you were a part of the investigation being
3 done at Eve's Tease and The Body Shop; is that right?

4 A. That's correct.

5 Q. And do you recall on which dates you were in Eve's
6 Tease in an undercover capacity?

7 A. Referring to my report or supplement.

8 Q. You prepared a written report in connection with
9 this investigation?

10 A. Yes, I did.

11 Q. When was that report prepared?

12 A. It started on October 16th and went on to about
13 November, through November.

14 Q. What I'm asking you is at what point do you
15 actually write in your report? Is it after you leave the
16 establishment? At what point do you actually take the --

17 A. Depending on what time we went in. If it was late
18 in the day, our shift usually ended at 4 o'clock, then we would
19 make notes at a nearby location on a steno pad and the next day
20 we type it in on our computer.

21 Q. All right. And that was your practice during this
22 investigation; is that right?

23 A. Yes, it was.

24 Q. Let's go back to the original question. On what
25 dates were you in Eve's Tease in an undercover capacity?

1 A. October 16th.

2 Q. 1996?

3 A. '96.

4 Q. Okay.

5 A. October 28th, '96. November 6, '96.

6 Q. Were you in there about November 28th?

7 A. October 28th.

8 Q. Not November 28th?

9 A. I don't think so.

10 Q. Have you seen a copy of the notice or notice of
11 intent to revoke the license for Eve's Tease?

12 A. Oh, wait. Back up. I was in there on October
13 28th.

14 Q. October or November?

15 A. October 28th.

16 Q. I think you indicated that before.

17 Are you acquainted with what I think we marked as
18 Exhibit 1, notice of intent to revoke?

19 A. Yes.

20 Q. Referring to page five, item 2C, there's an
21 incident recorded there for October 16th of 1996. Take a minute
22 to look at that and tell me if you recall that incident as you
23 sit here today.

24 A. Yes, I do.

25 Q. Tell the Board what happened, please, what you

1 observed at that time.

2 A. I went in with Detective Kulesa in an undercover
3 capacity and as he described, we sat in the establishment,
4 watched some of the dancers. We were approached by a couple of
5 the dancers and one of them approached me. She had a strong
6 Australian, New Zealand accent and she went by the name of Pearl
7 which was her stage name. She was identified later as
8 Sheri Allison. She asked if I wanted a private show. I was
9 also solicited by Angela who was the waitress for a private
10 show. It was \$35 and I paid the \$35 to Angela.

11 She told me that -- I asked her if there would be any
12 contact in the back and she said no because there were cameras
13 in the back so the manager can watch the girls and the patrons
14 from the bar, that way the girls wouldn't get hurt. I paid
15 Angela the \$35, went back to the area that Detective Kulesa
16 described behind the stage. We were in, I believe it was the
17 second cubicle as you go in the back room.

18 Pearl asked me what I was into and I told her just
19 watching. And she asked me what I wanted to watch. I says,
20 well, I asked her if she would masturbate herself and she said,
21 "Sure. How far do you want me to go?" I says, "All the way."
22 Pearl said, "I can go all the way," but what I would give her as
23 a tip would depend on how far she would go. I asked her how
24 much she wanted and she told me that it was up to me. I asked
25 her if \$20 would be fine, if \$20 was okay and she said that

1 would be fine.

2 Q. What did she do?

3 A. At that time she removed her clothes, she sat on
4 the stage, it's about five by five, about 18 inches high. She
5 sat on the stage in front of me and leaned back, so now she's
6 laying on her back and she had her legs up kind of like -- kind
7 of like -- Well, with her feet flat on the ground, her knees
8 were up. She was approximately two feet, maybe a foot and a
9 half, two feet from me from where her knees were. At that time
10 she leaned her head back, she closed her eyes and she began to
11 masturbate herself by rubbing her vagina. This went on for --
12 it was probably ten, 15 minutes.

13 While she was doing that, I got an opportunity to look
14 around. I saw that there was a camera up to my left, there was
15 another camera up in front of another cubicle. I couldn't see
16 to the fourth cubicle. And the cubicle behind me I was unable
17 to look around the wall, so I really couldn't get a good
18 description of it.

19 She continued on. After about probably ten, 12 minutes,
20 Angela, the waitress, came in. I saw the curtains open up
21 because it got brighter in the back room. I looked up. As she
22 walked by she looked down at Pearl laying on the stage and
23 continued walking past to talk to Detective Kulesa and I think
24 it was Hocking, her name is Sierra, her stage name.

25 While Angela was talking to Detective Kulesa, Pearl sat

1 up and she said that she didn't know that Angela was back there.
2 I said -- I asked her if she was going to get into any trouble.
3 She said, "No, Angela's cool with it. She don't care." She
4 said, "That's the best I've ever felt." I gave her a \$25 bill
5 -- or gave her \$25. And after she got dressed we walked back
6 out into the patron area, the bar.

7 Q. \$25, was that a tip you had agreed to in advance
8 or was that something you offered gratuitously after she was
9 done?

10 A. That was what we agreed to in advance. She said
11 what she did depended on what I gave her as a tip. And as I
12 testified earlier, I said -- I told her that I'd give her \$20 --
13 or \$25 and she said that would be fine.

14 Q. You said Angela observed this; is that right?

15 A. Angela -- I don't. I would have to look at
16 Detective Kulesa's report for her real name. I think it's
17 Wiley, Miss Wiley.

18 Q. Do you wear glasses?

19 A. No.

20 Q. Was the light adequate at that time for you to
21 observe her actions?

22 A. Yes, it was.

23 Q. All right. Let's go to October 28th, 1996.
24 You're in the totally nude performance area.

25 Do you recall an incident with a woman whose real name

1 is Celeste Ruth Sheret?

2 A. Yes.

3 Q. Could you describe for the Board what happened at
4 that time?

5 A. Basically the same scenario. From the beginning
6 we sat and watched a few of the dancers on stage. We were
7 approached by several of the dancers. One of the dancers that I
8 was approached by went by the stage name Audae. Her name was
9 Celeste Sheret. At the same time Angela came over and asked if
10 I wanted a private dance. I paid Angela \$35 for the private
11 show in the area behind the stage. I got up, we walked back
12 there and Audae told me, "Like Angela said, the better the tip,
13 the better the show."

14 I asked her how much she wanted for a tip and she
15 replied, "More than a dollar," she said, or else she would be
16 offended. And I told her I would give her \$20 and asked if that
17 was okay and she nodded her head in an affirmative manner.

18 She took her clothes off. She was wearing a short
19 dress, kind of a blue nylon, silky-type dress. She took it off
20 and she did the same thing. She sat on the stage and leaned
21 back. I asked her if she would masturbate herself for the \$20
22 and she said, "I can't do that because they watch us on cameras,
23 but watch." At that time she turned over, she was on her knees
24 and her elbows facing away from me and at that time she
25 masturbated herself by rubbing her vagina. The position that

1 she was in made it difficult for the camera to see it because
2 she was sitting in front of me here and the camera was up here
3 and her arm was underneath her with her hand coming up between
4 her legs, so it was difficult. Had anybody been watching the
5 monitors, I'm sure they probably wouldn't have been able to see
6 her hand.

7 Q. All right. Let's go to November 6th, 1996.

8 On that date did you know a man by the name of
9 Gregory Allen Welling?

10 A. No.

11 Q. Do you know who Gregory Allen Welling is today?

12 A. Yes, I do.

13 Q. Is he in the room today?

14 A. Yes, the gentleman sitting with the goatee beard
15 and the white shirt.

16 Q. On November 6, 1996, do you recall seeing that
17 same gentleman at the business?

18 A. On the last day, yes, the last day that I was in
19 there, yes.

20 Q. Which was what date?

21 A. November 6.

22 Q. All right. And can you explain to the Board what
23 you observed Mr. Welling to be doing, where he was in relation
24 to the business, what he was doing?

25 A. On that date, that was the day that he took our \$5

1 cover charge.

2 Q. At the door?

3 A. Yes.

4 Q. Did he remain at the door?

5 A. No. He was behind the bar most of the time.

6 Q. What was he doing behind the bar? Serving drinks?

7 A. Pouring drinks probably. It was hard to tell.

8 Q. Do you recall, as you sit here today, whether or
9 not Mr. Welling was in a position, while he was behind the bar,
10 to observe the main stage?

11 A. Oh, yeah, there was a clear view.

12 Q. And during that time were there women dancing on
13 the main stage?

14 A. Yes.

15 Q. And would it be your testimony that the women --
16 You were present for the testimony of Detective Kulesa; is that
17 right?

18 A. Yes, I was.

19 Q. Did he accurately describe the manner in which the
20 women go through their two or three song set?

21 A. Yes.

22 Q. And those sets were occurring while Mr. Welling
23 was behind the bar; is that correct?

24 A. That's correct.

25 Q. One last thing do you recall observing any signage

1 that may have been on the outside of the business or the outside
2 of the front door of the business?

3 A. No.

4 As far as the SOB ordinance?

5 Q. Do you recall any signage at all on the outside of
6 the business?

7 A. No. I recall posters. I recall a sign that had
8 the dancers' names written on it as you come in the door.

9 Q. Once you're inside the business?

10 A. Once you're inside the business.

11 Q. Do you recall any signage inside the business that
12 may have had rules or something along those lines?

13 A. No. My attention wasn't brought to it.

14 Q. Was it part of your investigation to determine
15 whether or not there were signs which may contain rules posted
16 for patrons to observe either outside the business or as they
17 enter?

18 A. It's in the code that there should be a sign
19 posted. I didn't observe one. Quite honestly, I wasn't even
20 looking for one.

21 When Detective Kulesa and I went in there, we went in
22 the establishment as looking as regular customers as though we'd
23 been in there a lot, we knew what we were doing. It would kind
24 of hink somebody up if we stood around and read pictures or
25 letters or documents on the wall. Most patrons don't do that

1 when they go into establishments like this, so we didn't do
2 that.

3 MR. HAYS: Okay. That's all I have. Thank you.

4 MR. DICAVALCANTE: I'll be a lot more brief here.

5 CROSS-EXAMINATION

6 BY MR. DICAVALCANTE:

7 Q. You're now back in uniform; is there a reason for
8 that, that you asked for reassignment to uniform?

9 A. Mo money.

10 Q. Mo money?

11 A. Mo money.

12 Q. You left Vice and went back to uniform at your
13 request?

14 A. Yes, I did.

15 Q. The two incidents that you've talked about where
16 you used a word, "hidden" and another one, "can't do that." The
17 first one was "hidden" where you were having some exchange with
18 some girl and she was indicating to you that we're going to need
19 to go hide someplace where the management can't see what we're
20 doing. Do you recall that portion of your testimony?

21 A. We're going to have to go hide somewhere?

22 Q. No. The word was, "hidden." I wish I'd written
23 it down verbatim. But was there an interaction with one of
24 these dancers or entertainers where they said to you: We're
25 going need to get out of the view of management?

1 Okay.

2 MR. HAYS: That reconcile it?

3 MR. DICAVALCANTE: Yes.

4 MR. HAYS: Okay. Thank you, Officer.

5 Okay. Detective Casey. Quick half hour.

6 DIRECT EXAMINATION

7 BY MR. HAYS:

8 Q. You're still a detective; is that right

9 A. Yes.

10 Q. You're not a plain clothes officer or something.

11 Okay. State your full name for the record.

12 A. Donald Casey. The last name is spelled C-A-S-E-Y.

13 Q. And how are you employed?

14 A. As a Phoenix police detective.

15 Q. And, Detective, how long have you been -- you're
16 in the Vice enforcement unit; is that right?

17 A. Yes.

18 Q. And how long have you been in that unit?

19 A. A little over three years.

20 Q. How long have you been in the employment of the
21 Phoenix Police Department?

22 A. Just over 13 years.

23 Q. And you're acquainted with the investigation of
24 Eve's Tease; is that right?

25 A. Yes.

1 Q. And you participated in that?

2 A. Yes, I did.

3 Q. On how many occasions did you visit the business?

4 A. On one occasion.

5 Q. What was the date?

6 A. October 16th of '96.

7 Q. And as you sit here today, do you have a
8 recollection of that visit?

9 A. Yes.

10 Q. And have you ever seen the City's notice of intent
11 to revoke the license of Eve's Tease?

12 A. Yes, I have.

13 Q. On page five at number 2B there's an incident
14 reference on October 16th of '96, the date you were there, with
15 a woman by the name of Kelley Ann Hocking.

16 Do you know Kelley Ann Hocking by her real name or some
17 other name?

18 A. She was one of the dancers that had contact with
19 either Detective Kulesa or Detective Mellinger.

20 Q. Okay. Do you recall that contact?

21 A. They had a private room dance from her.

22 Q. Fair enough. Do you know a woman by the name of
23 Marjorie Wiley?

24 A. Yes.

25 Q. And do you recall if Marjorie Wiley was present at

1 the business when this private dance you just referred to was
2 occurring?

3 A. She was at the business and apparently working in
4 the capacity of a waitress.

5 Q. As a waitress? Okay. Was she one of the people
6 that would act as an agent, as Counsel determined, collecting
7 money for private dances?

8 A. Yes.

9 Q. And do you recall if she observed this private
10 dance that you just referenced?

11 A. No, I don't.

12 MS. ALONGE: Stop, please.

13 MR. HAYS: Hold on a second.

14 (Ms. Alonge changed tapes.)

15 MS. ALONGE: Okay.

16 BY MR. HAYS:

17 Q. Do you know a Timothy Wheeler?

18 A. Yes.

19 Q. How do you know him?

20 A. He was acting as bartender and appeared to be
21 managing or running the Eve's Tease on October 16th.

22 Q. What was he doing that made you conclude that he
23 may have been running or managing the business on that date?

24 A. He was giving some directions to the dancers. I
25 noticed him pointing to patrons as if sending Marjorie Wiley

1 over to check on their drinks. He also collected the entrance
2 fee from me when I entered Eve's Tease.

3 Q. What sort of directions was he giving the dancers?

4 A. Telling a dancer to go up on the stage.

5 Q. Did you ever observe a situation where
6 Timothy Wheeler was in a position to observe an act of
7 masturbation being performed by a dancer or one of the
8 performers there?

9 A. Yes.

10 Q. How did that occur?

11 A. I was in the topless private dance area and I was
12 seated facing the -- what would be the south side of the
13 business or the bar area and I could see a group of TV monitors.
14 And on those monitors it looked to be a slightly overhead,
15 downward view of four small rooms. I knew at the time that
16 Detectives Kulesa and Mellinger had obtained private dances in
17 the totally nude area. I could -- On the monitors I could see
18 from where I was, which was a distance away, I could see that
19 two of the rooms were occupied by two people. I couldn't make
20 out who the people were. I saw Mr. Wheeler watching the
21 monitors. At one point he called Marjorie Wiley over, pointed
22 to the monitors and I recall them laughing. And they continued
23 to watch the monitors for maybe two, maybe three more minutes.

24 Q. And these are monitors of which rooms again?

25 A. I couldn't tell what rooms they were monitoring,

1 but they appeared to be four small rooms.

2 Q. That were on the monitor?

3 A. That were shown on the monitor.

4 Q. You actually viewed the monitor yourself?

5 A. Yes.

6 Q. And you viewed it at about the time they were
7 observing the monitor?

8 A. Yes.

9 Q. Wheeler and Wiley?

10 A. Yes. I was looking at the screen at the same time
11 they were.

12 Q. And did they take any action in connection with
13 what they were seeing apart from laughing about it or whatever
14 you indicated?

15 A. Well, as I said, Mr. Wheeler was looking at the
16 monitors. He motioned or called Miss Wiley over and pointed up
17 at the screen. I couldn't tell specifically what he was
18 pointing at or which room. I recall them laughing and then they
19 stood there and watched the monitors for two or three more
20 minutes.

21 Q. Could you see what was going on in the rooms by
22 virtue of watching the monitor yourself?

23 A. From where I was, I could see that there were two
24 people in each of the two rooms, but I couldn't tell what was
25 going on.

1 Q. You couldn't tell specifically what these people
2 were doing in these rooms at this time?

3 A. That's correct.

4 Q. Is there any other instance you can think of where
5 Timothy Wheeler may have observed an act of masturbation being
6 performed by one of the employees or independent contractors,
7 someone working for the business?

8 A. No.

9 Q. Do you know someone by the name of
10 Carol Rachel Parker?

11 A. I believe it's Karen Parker.

12 Q. I'm sorry. Karen Parker.

13 A. Yes.

14 Q. Was she present at the business on October 16th,
15 1996?

16 A. Yes, she was.

17 Q. Did you observe her engaged in what the code
18 refers to as an act of sexual contact in the business?

19 A. Yes.

20 Q. And could you describe for the Board what you saw
21 her doing?

22 A. I paid for and obtained a private, topless dance
23 from Karen Parker who was using the stage name of Sapphire. I
24 obtained that through Marjorie Wiley. I paid \$35 for 15 minutes
25 or approximately three songs.

1 Q. Was that the standard price?

2 A. Yes.

3 Q. Go ahead.

4 A. Miss Parker took me to the east end of the bar,
5 which is the private area for the topless dances, and while
6 there, she removed her bra top and began dancing in front of me.

7 During the dance I was seated with my hands on my
8 thighs. She would dance between my legs. During part of the
9 dance she bent down and rubbed her bare breasts and nipples
10 across my hands and she would also rub them in my clothed
11 genital area.

12 Q. Where were your hands at this time?

13 A. My hands were palm down on my thighs.

14 Q. Okay. And when she's rubbing her breasts against
15 your hands, she rubbing them against the back of your hands; is
16 that correct?

17 A. Yes.

18 Q. Did you do anything in response to that?

19 A. I would try to move back in the seat and break the
20 contact with her.

21 Q. You heard the testimony earlier about signage at
22 the business. I'll ask you the same question.

23 Do you recall any signs outside of the business on the
24 door or adjoining the wall?

25 A. Just the business sign itself, Eve's Tease.

1 Q. Do you recall any signs in the interior, in the
2 foyer of the business?

3 A. No.

4 Q. Did anyone at anytime ever tell you that you were
5 violating a club rule or regulation of any sort by your conduct?

6 A. No.

7 Q. Did you ever ask a question of someone that
8 requested a service that they refused to provide?

9 A. I'm sorry. Could you repeat that?

10 Q. Yeah. Did you ever ask anyone working for the
11 business a question which was asking them to provide a service
12 which they refused to provide?

13 A. During the private dance, I asked Karen Parker for
14 a \$20 tip if she would masturbate me. She never answered
15 directly, she laughed.

16 Q. But she clearly didn't agree to do it?

17 A. No, she did not.

18 MR. HAYS: All right. That's all I have.

19 CROSS-EXAMINATION

20 BY MR. DICAVALCANTE:

21 Q. I'm curious about your moving back when a girl's
22 nipples touched the back of your hands.

23 Are you telling this Board that you went into this place
24 as a John Doe off the street into a nude bar and you engaged one
25 of these people to interact with you and when they began

1 MR. DICAVALCANTE: Mr. Chair, as we were talking about
2 before we took the short break, we have now marked this document
3 that is marked by the court reporter as Exhibit No. 3, Eve's
4 Tease and we would ask that this document in toto be submitted
5 for the record. It contains four or five pages of what I would
6 characterize as background information and then mostly argument
7 and then some attachments that are a certified copy of the code
8 and some Arizona case law and a finding in federal court here
9 with regard to a section of this ordinance which, we allege,
10 goes to the overall unconstitutionality of the ordinance.
11 With that in mind, we would ask that this be accepted as part of
12 the record.

13 MR. SNOW: Okay. Just to reiterate once again,
14 Mr. Hays, is there any objection to this being entered from the
15 City?

16 MR. HAYS: No. Without agreeing to anything in it, I
17 have no objection to it being entered.

18 MR. SNOW: And the Board has no objection.

19 MR. DICAVALCANTE: Mr. Chair, for the Appellant's
20 first witness we'll call Jessica Alcantar.

21 DIRECT EXAMINATION

22 BY MR. DICAVALCANTE:

23 Q. Ma'am, would you state your name for the record?

24 A. Jessica Alcantar.

25 Q. I want you to keep your voice up so the court

1 reporter over there can hear you and everybody else can hear
2 you.

3 Miss Alcantar, how are you presently employed?

4 A. I'm now working at Eve's Tease.

5 Q. What does your employment over there consist of?
6 What do you do there?

7 A. I dance.

8 Q. Are you a nude dancer?

9 A. Yes, I am.

10 Q. And how long have you been so employed?

11 A. For a year, maybe a little over.

12 Q. Have you worked at a place called The Body Shop?

13 A. Yes, I have.

14 Q. So you've worked at both Eve's Tease and The Body
15 Shop that are the subject of this hearing; is that correct?

16 A. Yes, I have.

17 Q. Can you give us some idea of how often you work
18 there?

19 A. I work there at least five to six days a week.

20 Q. Do you work the day or the evening shift?

21 A. Evening.

22 Q. And in terms of shift work, is this something
23 that's two hours, five hours, six hours? How long is a shift?

24 A. Eight hours.

25 Q. And you've been doing this for a year?

1 A. A year.

2 Q. Would it be your testimony -- And you understand
3 you're under oath?

4 A. Yes.

5 Q. Would it be your testimony that you are familiar
6 with the procedures and policies as far as management goes with
7 regard to conduct of employees at Eve's Tease and The Body Shop?

8 A. Yes.

9 Q. And that would be for this preceding year that
10 you've worked; is that correct?

11 A. Yes.

12 Q. So that we have some time line, do you know when
13 you began working at either place?

14 A. March of '96.

15 Q. At which place?

16 A. Eve's.

17 Q. And for The Body Shop when was your first
18 employment there?

19 A. We fluctuate. If they need girls at The Body
20 Shop, they take a couple from Eve's and send them over there.

21 Q. Okay. When you first went to work there, did you
22 have occasion to speak with somebody to ask if you could have
23 employment there?

24 A. Yes.

25 Q. Who would that be?

1 A. Tim.

2 Q. Does Tim have a last name?

3 A. Yeah.

4 Q. You don't know his last name?

5 A. No.

6 Q. Is this Wheeler?

7 A. Yes.

8 Q. What capacity did you understand he occupied at
9 either Eve's or the Body Shop?

10 A. He's the manager.

11 Q. And explain to us what the interaction was.
12 Did you say, I want a job or something like that?

13 A. I walked in and I told him that I needed an
14 application for a job. He gave me the application, I filled it
15 out, he gave me a tour, he showed me sheets of paper that were
16 hung on the wall that told me the rules that I had to abide by
17 and I received my job.

18 Q. Can you tell the Board, if you recall, what some
19 of the rules were that were explained to you when you began to
20 work at either place?

21 A. Yes. I had to take the tips a certain way. I
22 couldn't let any of the men touch me in certain places. I
23 wasn't allowed to have sex with men inside or outside the club.
24 Drugs are not permitted on the premises. Alcohol is not
25 permitted on the premises.

1 Q. Did it have to be explained to you that you were
2 prohibited from doing things like masturbating yourself for
3 customers?

4 A. I was told that you weren't allowed to touch your
5 genital areas, you weren't allowed to open your lips, anything
6 like that.

7 Q. Open your labia?

8 A. Yes.

9 Q. I know that this testimony is graphic, but I
10 think that everybody understands.

11 Did you ever, during the year that you were employed
12 there, did you ever have a customer come to you, ask you for
13 what had been told to you to be prohibited activity?

14 A. Yes, many times.

15 Q. What did you do when those things happened?

16 A. Told them no, we're not allowed to.

17 Q. Would you do anything further?

18 A. The first time if they ask, I tell them no. If
19 they continue asking, I tell the management. It becomes a
20 bother, so they kick them out.

21 Q. Can you testify that you have ever personally been
22 involved in an incident at Eve's Tease or The Body Shop where
23 you told management that a customer was misbehaving and that
24 customer was ejected from the premises?

25 A. Yes.

1 Q. How often did that happen?

2 A. To me?

3 Q. Yes, just to you.

4 A. It's only happened three times at the very most.

5 Q. Do you have personal knowledge of when that has
6 happened involving other dancers?

7 A. It happens to all of us. It's an everyday thing.

8 Q. It's an everyday thing. What's an everyday thing?

9 A. Being confronted, asked to do things.

10 Q. And do you know personally of management ever
11 terminating a dancer for misbehavior?

12 A. Yes.

13 Q. Do you have names of people that have been
14 terminated and the reasons why?

15 A. Yes.

16 Q. Can you tell us those?

17 A. Pearl was terminated for doing what we call dirty
18 dances. Destiny, Strawberry, Special, Cory, Deserai. That's
19 all I can remember right now.

20 Q. Do you know Greg Welling?

21 A. Yes.

22 Q. How do you know him?

23 A. He's the owner of the club I work at.

24 Q. Are you talking about Eve's Tease?

25 A. Yes.

1 Q. Have you ever had any discussion with Greg with
2 regard to rules, regulations, conduct, policies?

3 A. When I have questions, I ask him. If I see girls
4 doing certain things, I question him, "Are we allowed to do
5 that?"

6 Q. What advice does he give you?

7 A. If we're not allowed to do it, he says, no, and he
8 says something to the girl.

9 Q. Is it your opinion that -- or your personal
10 experience that Greg Welling follows all of the rules that you
11 have told the Board were told to you by Tim Wheeler when you
12 first came to work?

13 A. Yes.

14 Q. Do you know Anita Welling?

15 A. Yes.

16 Q. How do you know Anita Welling?

17 A. She's the owner also of Eve's.

18 Q. Would all of the questions that I've asked you
19 with regard to Greg's adherence to the rules, telling you what
20 the rules were, whatever, equally apply to your answers about
21 Anita Welling?

22 A. Yes.

23 MR. DICAVALCANTE: I have nothing further.

24 Stay there.

25 WITNESS: Okay.

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CROSS-EXAMINATION

BY MR. HAYS:

Q. Jessica, you said you started working for Eve's Tease about a year ago; is that right?

A. A year, maybe a little over.

MR. DICAVALCANTE: Speak up.

BY MR. HAYS:

Q. Which shift did you start working when you first started working at Eve's Tease?

A. Evening.

Q. Over what hours is the evening shift?

A. 7:00 at night until 3:00 in the morning.

Q. And did that continue up until the present or did you change the hours of your shift?

A. No, I still work evenings.

Q. How many women work there during the evening shift at Eve's Tease?

A. It varies.

Q. What's the range?

A. We can have from five to 15.

Q. See if you can recall the operation of the business prior to November of last year, can you do that in your mind?

A. Uh-huh. Yes.

Q. Do you ever recall seeing a woman dance totally

1 nude on the main stage during that period of time?

2 A. Yes.

3 Q. And do you ever recall seeing a woman, while her
4 breasts were exposed, no clothing on her torso, accept a tip, a
5 dollar bill tip, from a patron using her breasts?

6 A. Yes, I've seen it happen.

7 Q. Okay. Is that an unusual occurrence there or
8 would that be a typical way of accepting a tip?

9 A. When I first started, we were told that we
10 couldn't do it. And then a couple of months into me working I
11 guess the ordinance wasn't passed or something so I was told
12 that they weren't sure if we could do it anymore but some girls
13 started doing it. And as soon as the ordinance went back in, we
14 were reprimanded and said that you can't do that.

15 Q. When did you understand the ordinance to have gone
16 back in?

17 A. I don't remember exactly because I don't take tips
18 with my breasts.

19 Q. Well, focusing then on the women who did or do, do
20 you recall when it was during that period up till November of
21 '96 when they stopped accepting tips with their breasts?

22 A. No.

23 Q. Are you sure that this incident you're referring
24 to when the ordinance goes back into effect, in fact, took place
25 before November of 1996?

1 A. No.

2 Q. So it could have occurred afterwards?

3 A. Yes.

4 Q. During this period between the time you begin

5 working in November of 1996, do you ever recall seeing a woman

6 place her hand or her fingers on her genitals while performing

7 totally nude on the main stage?

8 A. I've seen it.

9 Q. It has occurred?

10 A. Yes.

11 Q. Of the 15 women that you say might be working as a

12 maximum on any particular evening, what number of them would

13 engage in that type of activity?

14 A. I can't say what numbers. If I see it happening,

15 then I say something to management cause personally I think that

16 if I'm not allowed to do it, then neither is anybody else.

17 Q. It would be your view then that being able to

18 perform that sort of activity while on the main stage would be

19 an advantage to a performer there financially?

20 A. Yes, it probably would.

21 Q. In other words, you would gather more tips if you

22 could engage in that type of activity?

23 A. Yes, you probably would. I can't say. I've

24 never --

25 Q. The patrons that go into your business there are

1 (a) excited by this activity (b) repulsed by it or (c) neutral?

2 What would your answer be?

3 A. I've never seen anybody not want to see anything.

4 Q. So your understanding is that men go into this
5 business with the hope at least that they would be able to watch
6 a woman get totally naked; is that right?

7 A. Yes.

8 Q. And perhaps masturbate herself?

9 A. No, I've never -- I mean --

10 Q. I'm asking you to speak of the patrons that go
11 into the business. You've spoken with some of these patrons, I
12 presume. You've been there a year; is that right?

13 A. Yes.

14 Q. So you've had a chance to communicate with the
15 patrons that go into the business?

16 A. Yeah.

17 Q. Is it your understanding, based upon your
18 experience with them, that they go into the business with the
19 hope that they will see a woman get totally naked on the main
20 stage and place her hands in her genital area?

21 A. No, from my understanding they go in to see naked
22 women.

23 Q. And that's it?

24 A. Dance, yes.

25 Q. Have you ever witnessed or been aware of an

1 occurrence where a man paid a woman to perform an act of
2 masturbation in one of the private rooms?

3 A. No.

4 Q. No personal knowledge of that happening?

5 A. No. I wouldn't -- It wouldn't happen in front of
6 me because management would know.

7 Q. Why is that? What is the connection? You would
8 tell them?

9 A. Yes.

10 Q. Were you ever acting in any sort of managerial
11 capacity there at the business?

12 A. No, I've always been a dancer.

13 Q. Just a regular dancer?

14 A. Yes.

15 Q. Are the other dancers aware of the fact that if
16 they engage in that type of activity that you would tell
17 management?

18 A. Yes.

19 Q. Would that create an incentive then on the part of
20 these other dancers to hide that type of activity from you?

21 Let me ask the question differently.

22 Is it common knowledge amongst the other dancers that
23 you will report acts of masturbation by dancers which patrons
24 are paying for?

25 A. Yes. I'm not the only one who reports it.

1 Q. Have you had occasion to report it?

2 A. Yes. In my opinion it's not fair to have my
3 customers seeing another girl do something that they are not
4 supposed to be doing. That's taking away from my money, my
5 kids. So you're not going to sit across from me and do
6 something that you're not supposed to be doing.

7 Q. Do you know Kelley Ann Hocking?

8 A. Do you have her stage name?

9 Q. I'm sure I do.

10 Do you know a woman by the name of Sierra?

11 A. Yes, I do.

12 Q. But you don't know her real name?

13 A. No, I haven't come into contact with her very
14 much. I just recognize the name from switching shifts.

15 Q. All right. You've never been on duty at the same
16 time as Sierra?

17 A. No.

18 Q. How about Sheri Katrina Allison, do you know that
19 person?

20 A. Do you have her stage name?

21 Q. Pearl. Do you know Pearl?

22 A. Yes.

23 Q. Have you ever been working at the business at the
24 same time as Pearl?

25 A. Yes.

1 Q. And is Pearl one of those individuals that you
2 observed, whether you reported it or not, performing an act of
3 masturbation at the business?

4 A. Yes.

5 Q. She has?

6 A. Yes.

7 Q. And after witnessing that act, did you report it
8 to management?

9 A. Yes, I did.

10 Q. Was she aware of the fact that you reported that
11 to management?

12 A. Yes, she was.

13 Q. And what happened as a result?

14 A. She got in trouble.

15 Q. What sort of trouble?

16 A. She was pulled off the show that she was doing,
17 she was taken and reprimanded.

18 Q. What do you mean by "pulled off the show she was
19 doing"? What show was she doing?

20 A. She was doing a table dance in the back.

21 Q. Oh, you observed her performing this act of
22 masturbation --

23 A. No, she wasn't masturbating.

24 Q. She wasn't masturbating.

25 What was she doing?

1 A. What we call it is dirty dancing. From what I
2 remember, she kissed a customer.

3 Q. Where did she kiss him?

4 A. On the lips.

5 Q. That was the extent of it?

6 A. That's as far as I let it go.

7 Q. How was she clothed at that time?

8 A. Topless.

9 Q. Just topless?

10 A. Yes.

11 Q. Were you making it a point to observe this
12 performance? In other words, were you actually directing your
13 attention specifically to what she was doing or did you happen
14 to observe this just as an incidental manner?

15 A. I was doing a table dance across from the area
16 that she was doing it and I witnessed it and got up and went
17 over and told management.

18 Q. Simply because she was kissing a patron on the
19 lips?

20 A. Yes. That's not allowed. If my customer sees
21 that, then he's going to wonder why I'm not kissing him.

22 Q. And the dance that you were doing at this time was
23 in what, the private dance area; is that right?

24 A. Topless.

25 Q. Just the topless?

1 A. Yes.

2 Q. So you kept something on the bottom?

3 A. Yes.

4 Q. And your breasts were totally exposed; is that
5 right?

6 A. Yes.

7 Q. You didn't have pasties on or anything like that?

8 A. No.

9 Q. In the year you've been performing there, have
10 your breasts ever come in contact with a patron?

11 A. Accidentally a couple of times I probably brushed
12 them against them.

13 Q. And has a patron ever placed his hands on your
14 breasts?

15 A. Yes.

16 Q. And what do you do at that point?

17 A. Move his hands.

18 Q. Is it your understanding that that is the reaction
19 that all of the women have while giving private dances at the
20 business?

21 A. To move the hands?

22 Q. Right.

23 A. Yes.

24 Q. So you're not at a competitive disadvantage if
25 everybody is moving the patrons' hands?

1 A. Exactly.

2 Q. That's why you insure that everyone lives up to
3 the same rule you have?

4 A. I think that morally I couldn't let a guy touch my
5 breasts whether it was the law or wasn't.

6 Q. Why is that?

7 A. Because I'm not there to let him touch my boobs.
8 I'm not there to let him do anything else but see me dance.

9 Q. So are the rules you're following your own
10 personal morality or something else?

11 A. No, it's the rules of my morality and the rules of
12 the club.

13 Q. And what are specifically the rules of the club?

14 A. You are --

15 Q. These are the rules given to you when you're
16 hired?

17 A. Yes, they are posted on the wall and you're taken
18 over and they show them to you.

19 Q. Is this in a place where the patrons can see it?

20 A. Three places where the patrons can see them.

21 Q. And did the rules provide that the patron may not
22 touch the dancer in any way?

23 A. Yes.

24 Q. Did they provide that the patron may not come in
25 contact with the dancer in any way?

1 A. In any sexual way, yes.

2 Q. It's worded "in any sexual way"?

3 A. Yes.

4 Q. What do you understand that to mean?

5 A. That they are not allowed to touch us.

6 Q. When the woman is giving one of these dances in
7 the private topless dance area, isn't there contact between a
8 woman and a man?

9 A. On their arms and legs.

10 Q. How close are you when you're performing one of
11 these dances?

12 A. I can sit on them.

13 Q. Sitting on his lap?

14 A. Yes.

15 Q. Facing him?

16 A. Or backwards.

17 Q. Backwards? And when you're sitting on his lap
18 facing him, where do you put your arms?

19 A. Sitting on his lap facing him?

20 Q. Right.

21 A. Usually around his neck.

22 Q. At that point doesn't that put your breasts quite
23 close to the man's body?

24 A. Close, not real close.

25 Q. How far are your breasts from the man's body?

1 A. Probably a foot, half a foot.

2 Q. And it's your testimony that personally you do not
3 intentionally rub your breasts against any part of a patron?

4 A. No, I do not.

5 Q. What sort of tips do you get after one of these
6 private dances?

7 A. Depends. They give you --

8 Q. What's the range?

9 A. From nothing to a hundred.

10 Q. A hundred dollars?

11 A. Yes.

12 Q. Can you tell us to a certainty or to the best you
13 can if you reached that level that you received a tip of a
14 hundred dollars from a patron you know not to be an undercover
15 police officer?

16 A. Yes.

17 Q. Would a \$20 tip be unusual to receive after one of
18 those dances?

19 A. No.

20 Q. This is a dance now where your breasts have not
21 come into direct contact with a patron in any way?

22 A. Yes.

23 Q. How long would one of these private dances last in
24 which you received a \$20 tip?

25 A. Usually half an hour.

1 Q. How much does that cost?

2 A. \$50.

3 Q. And in that case a \$20 tip would not be
4 unreasonable?

5 A. Yes.

6 Q. How about the \$35, how long does that last?

7 A. Three songs, about 15 minutes.

8 Q. Would a \$20 tip under those circumstances be
9 unusual? Would that be a generous tip?

10 A. Generous.

11 Q. What would you normally expect to get from one of
12 your performances after three songs by way of a tip?

13 A. \$10.

14 Q. \$10 would be customary?

15 A. Yes.

16 Q. Are you aware of any instances where women
17 performing the same type of dances intentionally rub their
18 breasts against either the man's chest, hands, or face?

19 A. No.

20 Q. Never seen that happen?

21 A. No, I don't --

22 Q. Don't recall that happening?

23 A. No, not like -- I mean, if it was out of the
24 normal, I would have recalled it, but not like in a sexual way
25 or anything like that.

1 Q. What do you mean "in a sexual way"? The woman is
2 working, isn't she?

3 A. Yeah, but she's not putting her breasts in his
4 hands or she's not --

5 Q. None of this is sexual for the woman; isn't that
6 right?

7 A. Not for me.

8 Q. For any of the women is this sexual in some way
9 for them?

10 A. I can't speak for all of them.

11 Q. Are you aware of any performers there that do this
12 because they enjoy it sexually?

13 A. No.

14 Q. So they are there performing for a man; is that
15 right?

16 A. Yes.

17 Q. And you would agree with me that men go there with
18 the expectation that the woman will provide him with as much
19 contact between a patron and the dancer as possible?

20 A. On a topless dance?

21 Q. In a topless dance.

22 A. Yes, I'm sure that's what they want.

23 Q. And it must be a constant struggle, then, to keep
24 the man's hands or face off your breasts under those
25 circumstances; is that correct?

1 A. Yes.

2 Q. Does that get frustrating after a while or how do
3 you deal with it?

4 A. It gets frustrating.

5 Q. This is an every-night occasion?

6 A. Yes.

7 Q. How do you deal with this?

8 A. How do I deal with it?

9 Q. Yeah, how do you deal with it?

10 A. I don't like men.

11 Q. I mean -- I guess that's one way of dealing with
12 it when you get home.

13 But how do you deal with it right there when the man has
14 got you on his lap, your arms around his neck, you're half
15 naked?

16 A. If he's trying to touch my breasts and I don't
17 like it, I can ask him no and if he doesn't listen, I can take
18 his hands down.

19 Q. And what sort of tip do you get in an instance
20 where you've actually had to restrain a man's hands?

21 A. Not very much.

22 Q. That's okay?

23 A. Yeah.

24 Q. Do you have a family to support; is that right?

25 A. Yes, I do.

1 Q. Are you married?

2 A. I'm in the process of a divorce.

3 Q. And you have how many children?

4 A. Two.

5 Q. And you're supporting them by yourself?

6 A. Yeah, I am.

7 MR. HAYS: Okay. That's all I had. Thanks very much.
8 I appreciate it.

9 MR. DICAVALCANTE: I don't have any questions. But
10 I'm wondering, Mr. Hays, if I could get you to stipulate to a
11 couple of things that you posited to this witness.

12 Can we stipulate that none of what the dancers do at
13 these places is sexual?

14 MR. HAYS: No. That was a question.

15 MR. DICAVALCANTE: Can we stipulate that it's a
16 constant struggle to keep the men off them?

17 MR. HAYS: No. Those were questions.

18 MR. DICAVALCANTE: I have nothing.

19 My next witness is Tasha Kennison.

20 DIRECT EXAMINATION

21 BY MR. DICAVALCANTE:

22 Q. Would you state your name for the record?

23 A. Tasha Kennison.

24 Q. Miss Kennison, are you employed now?

25 A. Yes.

1 Q. How are you employed?

2 A. I'm a dancer at Eve's Tease.

3 Q. How long have you been a dancer?

4 A. A little over a year.

5 Q. When did you begin your employment?

6 A. February of '96.

7 Q. Will you tell us what your shifts were, how often
8 you worked, how frequently you worked?

9 A. Usually four or five nights a week from 7:00 to
10 3:00.

11 Q. Has there been any interruption since February of
12 1996 since that happened?

13 A. (The witness gave a nonverbal response.)

14 Q. You have to actually respond in order for the
15 court reporter to get it.

16 A. No.

17 Q. Do you recall the date that you would have gone
18 over to Eve's Tease to seek employment?

19 A. Yeah.

20 Q. And do you recall who it was that you would have
21 met over there to talk to about employment?

22 A. Anita Welling.

23 Q. And were you hired?

24 A. Yeah.

25 Q. And what was -- what were you hired to do?

1 A. Dancer.

2 Q. A nude dancer?

3 A. Yeah.

4 Q. Did Miss Welling or anyone else in authority or
5 management there at Eve's Tease, as the previous witness has
6 explained, did anybody show you around or tell you the rules or
7 anything like that?

8 A. The next night when I started, they did.

9 Q. Who is they?

10 A. Robert.

11 Q. Robert is someone who is here tonight who is a
12 manager?

13 A. Yes.

14 Q. Will you tell us what you were told in terms of
15 what the rules structures were at Eve's Tease for a nude dancer?

16 A. We're not allowed to let the guys touch any of our
17 private parts, you're not allowed to leave the place with them
18 or have any contact with them. There's no drugs or alcohol on
19 the premises. And we're only allowed to take tips with our
20 hands or from the stage.

21 Q. While you've been an employee, have you been the
22 object of an infraction of any of those rules?

23 A. No.

24 Q. Have any men ever attempted to touch you in
25 private areas?

1 A. Yeah.

2 Q. And what do you do on those occasions?

3 A. I push their hands away.

4 Q. Do you ever have occasion to alert management to
5 that kind of situation?

6 A. Yeah.

7 Q. And have there been any instances where action was
8 taken on the part of management in relation to the customer
9 where you reported some bad conduct?

10 A. Yes.

11 Q. What's happened?

12 A. They got kicked out.

13 Q. How many times has that happened to you
14 personally?

15 A. Like five or six times.

16 Q. Are you personally aware if that has ever happened
17 involving another dancer and another patron?

18 A. Yeah.

19 Q. And is this a matter that occurs with some
20 frequency or rarely?

21 A. It happens a lot.

22 Q. And do you know Greg Welling?

23 A. Yes.

24 Q. Do you know Anita Welling?

25 A. Yes.

1 Q. And is it your testimony that Anita Welling and
2 Greg Welling and any of the managers that you have worked for
3 adhere to the rule structure that you testified you were told by
4 Robert the manager when you began employment?

5 A. Yes.

6 Q. They adhere to those rules?

7 A. Yes.

8 Q. Can you cite for the Board any specific instances
9 of where you recall either Anita, Greg Welling, or a manager
10 adhering to one of these rules that you've talked about?

11 A. If they see the girl doing something wrong, they
12 will tell them not to do it anymore and, if they still do it,
13 then they get fired.

14 Q. Are you personally aware of any girls who have
15 been terminated for misbehavior of any of these rules that
16 you're talking about?

17 A. Yes.

18 Q. Do you have names of those people?

19 A. Vanity, Special, Strawberry, Destiny, Deserai.
20 Those are all I can think of right now.

21 Q. Mr. Hays, I thought, made an actual statement. He
22 calls it a question. But what he had asked the previous witness
23 was: Was it a constant struggle to keep the men off of you
24 while you're working?

25 A. Sometimes.

1 Q. Is -- Would it be your testimony also that at
2 least as far as you go, that what is occurring in terms of the
3 interaction between yourself and the male customer is not
4 sexual?

5 A. No, it's not.

6 Q. It's work?

7 A. Yeah.

8 Q. The previous witness testified that she was aware
9 of signage posted in Eve's Tease in three different places
10 alerting customers and employees to the rules there at Eve's
11 Tease; would you agree with that?

12 A. Yes.

13 Q. Can you tell the Board what you recollect those
14 rules were?

15 A. It tells the customers how they can tip us, they
16 can't have sexual contact with us, they can't touch us, just
17 basic rules.

18 MR. DICAVALCANTE: Nothing further.

19 CROSS-EXAMINATION

20 BY MR. HAYS:

21 Q. Tasha; is that right?

22 A. Tasha.

23 Q. Tasha. Sorry. I'll try and remember that.

24 Tasha, you've been working at Eve's Tease for the last
25 year; is that right?

1 A. Yeah.

2 Q. The evening shift?

3 A. Yes.

4 Q. But you've been working at The Body Shop as well?

5 A. Every now and then, it just depends, not that
6 often.

7 Q. Okay. Now, in your one-year experience at Eve's
8 Tease, have you ever seen a dancer accept a tip from the main
9 stage, a dollar bill tip, from a patron using her breast?

10 A. Yes.

11 Q. You have seen that?

12 A. Yes.

13 Q. Over the last year does that happen on isolated
14 occasions or is it a regular occurrence? How would you describe
15 the frequency?

16 A. It happened for a little while then they enforced
17 the rules and we had to stop doing it.

18 Q. You heard the officers testify earlier; is that
19 right?

20 A. Yes.

21 Q. And the relevant time period there was September,
22 October, November of 1996.

23 Was that the time period at which women were customarily
24 accepting dollar bill tips with their breasts?

25 A. I don't remember.

1 Q. But you can't tell us that that was not the time
2 period when women were accepting dollar bill tips with their
3 breasts?

4 A. No, I can't tell you that.

5 Q. And over the period of time when they were doing
6 that, were they doing it by taking their hands and placing their
7 hands on the side of their breasts, squeezing their breasts
8 together to remove the dollar bill tip from the patron's hand?

9 A. Yes.

10 Q. Had you personally yourself ever done that at any
11 point at all last year?

12 A. Yeah, I've done it.

13 Q. And have you ever seen, over the last year, a
14 woman while totally naked on the main stage place any part of
15 her hand on her genitals?

16 A. Yes.

17 Q. And on those occasions when it did happen, do you
18 know if a manager was aware of the act?

19 A. If he sees it, he says something, but, if he
20 doesn't see it, he can't say anything.

21 Q. Let's see if we can focus on the time period where
22 the women were accepting dollar bill tips with their breasts.

23 Do you recall if there were any occasions where a woman
24 was totally naked on the main stage during this time period and
25 placing her hands on her genitals while management observed and

1 said nothing?

2 A. I don't recall.

3 Q. Don't recall if those circumstances ever existed?

4 A. I've never seen it happen. I've never seen
5 managers watch that and not say anything.

6 Q. What would they say?

7 A. They would tell them not to do it anymore and if
8 they kept doing it then they would be terminated.

9 Q. Why would a woman do something like that if she
10 knew she was going to be terminated?

11 A. I don't know. I can't speak for other women. I
12 don't know. More money maybe.

13 Q. I know you can't, but you work in this type of
14 business, you do exactly what they do. So, if you can shed some
15 light on it, I'd like you to do that.

16 A. Maybe for more money. I don't know.

17 Q. Would a woman earn more tips if she were to do
18 that sort of thing on the main stage?

19 A. I'm sure she would, yeah.

20 Q. Have you seen a woman earn more tips doing that?

21 A. Yeah.

22 Q. Have you ever observed a woman while performing in
23 the private topless dance area intentionally place her breasts
24 in contact with a patron?

25 A. No.

1 Q. Never seen that happen?

2 A. No.

3 Q. So you've never been required to report something
4 like that to management?

5 A. If I see a customer touching a girl's breast, I'll
6 tell them or, if she's letting him, I will. But I've never seen
7 a girl purposely put his hands there or anything.

8 Q. All right. But you have seen a situation where
9 the man placed his hands on the woman's breasts and she would
10 not immediately remove his hands?

11 A. Yes.

12 Q. That has occurred?

13 A. Yes.

14 Q. And when it does occur, you report it to
15 management?

16 A. Yes.

17 Q. And when you say you report it to management, who
18 qualifies as management?

19 A. Robert.

20 Q. Robert. What's Robert's last name?

21 A. I don't know his last name.

22 Q. Is that his real name as far as you know?

23 A. Yeah.

24 Q. You're sure that's his real name?

25 A. Yeah.

1 Q. Okay. And who else?

2 A. Greg.

3 Q. That's Greg who?

4 A. Welling.

5 Q. The owner?

6 A. Yeah.

7 Q. Anybody else?

8 A. And Tim.

9 Q. Tim Wheeler?

10 A. Yeah.

11 Q. Anybody else?

12 A. No.

13 Q. Are you acquainted with the system where a private

14 dance is paid for by paying the money to a waitress?

15 A. Yes.

16 Q. Who then arranges for the dance to be performed by

17 a dancer?

18 A. Yes.

19 Q. Do any of the women who accept the money for those

20 dances qualify in your mind as management?

21 A. Could you repeat the question?

22 Q. The women that accept the money for the private

23 dances, are they managers?

24 A. No.

25 Q. Do they have a title in the business?

1 A. Waitresses.

2 Q. Waitress. They are not floor managers?

3 A. No.

4 Q. Is it your understanding that a private dancer
5 cannot accept money herself for that private dance?

6 A. She can accept -- Not the money for the show. She
7 can accept tips, but not the show.

8 Q. Okay. The show money has to be accepted by
9 somebody else?

10 A. Yes.

11 Q. She can accept the tip?

12 A. Yes.

13 Q. What's the range of tips you've received at Eve's
14 Tease while performing in the private dance area?

15 A. It just depends on how long the show is.

16 Q. Okay. What's the range of shows? Do you have a
17 three song \$35 show?

18 A. Yes.

19 Q. What do you normally receive in the way of tips
20 there?

21 A. Between ten and \$15.

22 Q. And how about -- Is it a half-hour show for \$50?

23 A. Uh-huh.

24 Q. What's the typical range of tips there?

25 A. 20 to \$25.

1 Q. Is there a longer show than that?

2 A. An hour.

3 Q. An hour show?

4 A. Uh-huh.

5 Q. How much does that cost?

6 A. A hundred dollars.

7 Q. What kind of tips do you get there?

8 A. Forty or fifty.

9 Q. Dollars as a tip?

10 A. Yeah.

11 Q. And have you ever performed an hour show?

12 A. Yeah.

13 Q. What are you doing for an entire hour for this
14 hundred dollars?

15 A. Sometimes you just sit there and talk to the guy.
16 I mean you don't sit there and dance for the whole time. You
17 sit and you talk and you dance.

18 Q. Do you sit in his lap?

19 A. I sit in a chair and talk to him, I don't sit on
20 his lap when we're talking.

21 Q. Do you ever sit on a man's lap?

22 A. Yes.

23 Q. One last thing that just occurred to me. You've
24 got a situation where you can earn forty or \$50 as a tip for an
25 hour's work, do you do anything to help encourage a patron to

1 purchase one of these private dances?

2 A. No. I just ask him if he wants a table dance. If
3 he says no then I just go to the next guy.

4 Q. Until you eventually find one, somebody that says
5 yes?

6 A. Yes.

7 Q. You don't sit and talk to the man for a while?

8 A. No.

9 Q. You don't try and get to know him?

10 A. No.

11 Q. You don't touch him in any way?

12 A. No. I shake his hand when I introduce myself.

13 Q. Do you have pretty good success with that system
14 in getting men to hire you to do these private dances?

15 A. Yes.

16 Q. Is that sort of conduct typical in the business?

17 A. No.

18 Q. Are some women more aggressive than others?

19 A. Most of the girls they sit and talk to the guys

20 but I don't like to, so I just ask them if they want a table

21 dance. If they don't, then I just move on.

22 MR. HAYS: That's all I had.

23 REDIRECT EXAMINATION

24 BY MR. DICAVALCANTE:

25 Q. I had just a couple things and I'm glad you

1 brought it up, that many instances of where someone is buying a
2 half hour of your time or whatever, there's a good portion of
3 that time that is taken up from just sitting there and talking
4 to them, correct?

5 A. Yes.

6 Q. And that is typical in the business; is that
7 correct?

8 A. Yes.

9 Q. Conversation occupies a significant period of the
10 time that they buy?

11 A. Yes.

12 Q. Did you say that you had or had not also worked at
13 The Body Shop?

14 A. I have.

15 Q. And would it be your testimony that the rules
16 structure and the conveyance to you of what the rules were at
17 The Body Shop would be the same testimony you gave with regard
18 to Eve's Tease?

19 A. Yes.

20 Q. I think that Mr. Hays asked you this question, but
21 let me -- This is my last question.

22 Have you -- When you witnessed misbehavior on the part
23 of the girls breaching rules or whatever, have you reported that
24 to management?

25 A. Yes.

1 Q. And what -- In each instance that you can
2 remember, can you summarize for the Board what management's
3 reaction has been to your telling about these things happening?

4 A. They go and they tell the girl when she's done
5 with her show that she can't do that and what she did wrong and
6 if she does it again she'll be fired.

7 MR. DICAVALCANTE: Thank you very much.

8 Mr. Hays?

9 RE CROSS-EXAMINATION

10 BY MR. HAYS:

11 Q. I have one last question, Tasha.
12 Are you being paid anything for being here today?

13 A. No.

14 MR. HAYS: Okay. Thank you.

15 MR. SNOW: Okay.

16 MR. DICAVALCANTE: I have two more witnesses.

17 MR. SNOW: That's fine.

18 MR. DICAVALCANTE: Is that okay? Does anybody want to
19 take a break?

20 MR. SNOW: No.

21 MR. DICAVALCANTE: Mr. Matthews?

22 DIRECT EXAMINATION

23 BY MR. DICAVALCANTE:

24 Q. Would you state your name, sir?

25 A. Robert Matthews.

1 Is it possible that a woman could masturbate herself in
2 one of the private rooms for ten minutes without your knowledge?

3 A. Yes.

4 Q. Is it possible, based upon everything you
5 described yourself as doing behind the bar, that a woman could
6 masturbate herself on the main stage without your knowing it?

7 A. I suppose, yes.

8 Q. Is it possible that a woman could accept a dollar
9 tip between her breasts using her hands in the outside of her
10 breasts to remove the dollar bill without your knowing it?

11 A. That's right.

12 Q. In fact, are you aware of any of those incidents
13 occurring which you were not aware of at the time they occurred,
14 but later became aware of?

15 A. Yes.

16 Q. How were those incidents brought to your
17 attention?

18 A. People that were managing stated that the girls
19 weren't accepting tips like every other club in town and I said,
20 "How is that?"

21 And they said, "Between the breasts." So basically
22 that's what they told me.

23 Q. You understand that your business competes with
24 similar-type businesses in the City of Phoenix; is that right?

25 A. I suppose, yes.

BEFORE THE LICENSE APPEAL BOARD.

CITY ATTORNEY'S OFFICE

In re: The License Revocation)
)
 Proceedings of Eve's Tease and)
)
 The Body Shop,)
)
)
 Licensees/Respondents.)
)

LICENSE APPEAL BOARD HEARING

RE: EVE'S TEASE AND THE BODY SHOP

VOLUME II

Phoenix, Arizona
 May 29, 1997
 5:47 p.m.

PREPARED FOR:
 JAMES H. HAYS

(ORIGINAL)

PREPARED BY:
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I N D E X

WITNESS: Thomas Robert Kulesa

Further Redirect Examination by Mr. Hays on page 224, 293

WITNESS: William Mellinger

Further Redirect Examination by Mr. Hays on page 261, 295

WITNESS: Donald Casey

Further Redirect Examination by Mr. Hays on page 277, 295

E X H I B I T S

- Exhibits 8 was marked on page 200
- Exhibits 9 and 10 were marked on page 206
- Exhibits 11 and 12 were marked on page 230
- Exhibits 12b and 13 were marked on page 260
- Exhibit 14 was marked on page 274
- Exhibit 15 was marked on page 296
- Exhibit 16 was marked on page 315

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LICENSE APPEAL BOARD HEARING, VOLUME II,

commencing at 5:47 p.m., on May 29, 1997, 200 West Washington,
Phoenix, Arizona 85003, before Sandy Marruffo, a Notary Public
in and for the County of Maricopa, State of Arizona.

A P P E A R A N C E S

FOR THE CITY OF PHOENIX

Office of the City Attorney
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Phoenix, Arizona 85003-1411
(602) 262-6761
BY: Mr. James H. Hays

BOARD MEMBERS

Larry Snow
Boyd Heckel
Dempster Jackson
Jason Morris

ALSO PRESENT

Ida Alonge, Business License Services Clerk
Lorraine Hunt, Business License Services Clerk

1 MR. HAYS: If I might, Mr. Chair, we've already agreed
2 to hear them together, so I believe it would be entirely
3 appropriate, should you have a question on Eve's Tease later, to
4 go ahead and ask it.

5 MR. SNOW: Noted. But my intent actually was just to
6 be sure that any question that had been waiting was being given
7 a chance to be answered now.

8 Okay. There are none. Please continue.

9 FURTHER REDIRECT EXAMINATION

10 BY MR. HAYS:

11 Q. Detective, would you state your full name for us
12 please?

13 A. Thomas Robert Kulesa. Last name is K-U-L-E-S-A.

14 Q. And are you still employed with the Phoenix Police
15 Department as a detective in the Vice enforcement unit?

16 A. Yes, sir.

17 Q. And you participated in an investigation of The
18 Body Shop Cabaret last year; is that right?

19 A. Yes, sir.

20 Q. And why don't you tell us where The Body Shop
21 Cabaret is.

22 A. It's located at 3790 Northwest Grand Avenue,
23 Phoenix, Arizona, Maricopa County.

24 Q. And you've been inside that business, haven't you?

25 A. Yes, sir.

INCALL ESCORT BUREAUS/NUDE MODELING STUDIOS

(PRIVATE ROOM NUDE DANCING)

FACTUAL RECORD

INCALL ESCORT BUREAUS/NUDE MODELING STUDIOS

(PRIVATE ROOM NUDE DANCING)

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15. Playtime Magazine, August, 1998, Advertisement for *French Fantasies*, 3826 E. Illini, Phoenix, Arizona.
16. City of Phoenix Police Department Report No. 80991354, dated June 13, 1998, *Secret Seductions*, Phoenix, Arizona.

::JHH/jhh/FAPP-21285-1

BEFORE THE LICENSE APPEAL BOARD
OF THE CITY OF PHOENIX

In the Matter of:)
)
THE LICENSE APPEAL BOARD)
MEETING)
_____)

Phoenix, Arizona
November 29, 1995
5:30 p.m.

REPORTED BY: KARMAN COBB

(COPY)
PREPARED FOR:

MR. JAMES HAYS
Assistant City Attorney

BRUSH & TERRELL
Court Reporters
3031 W. Northern, Suite 281
Phoenix, Arizona 85051
995-0950

1 were in the business at that time.

2 Q And similarly, you did not interview any
3 of the male customers to see if one dancer gave a better
4 show than any other?

5 A No, I did not. I was the only person
6 there.

7 MR. YEE: Thank you. No other questions.

8 MR. HAYS: That's all I have for this
9 witness.

10 MR. YEE: Thank you.

11 MR. HAYS: I'd like to call Katheryn Freitas.

12

13 K A T H E R Y N F R E I T A S,
14 called as a witness herein, having been previously duly
15 sworn, was examined and testified as follows:

16

17 E X A M I N A T I O N

18

19 BY MR. HAYS:

20 Q Katheryn, would you state your full name
21 for the record, please.

22 A Katheryn Ann Clark Freitas.

23 Q And your last name, F-r-e-i-t-a-s?

24 A That is correct.

25 Q Katheryn, do you live in the City of

1 Phoenix?

2 A Yes, I do.

3 Q And are you working now in the City of
4 Phoenix?

5 A Yes, I do. I work at the Sunset Strip.

6 Q What's the highest level of education
7 that you obtained?

8 A I have my Bachelor's of Business Degree
9 in accounting from the University of Hawaii graduating
10 and majoring in accounting.

11 MR. YEE: Mr. Chairman, I realize this is a
12 new form of meeting, but if the City is posing specific
13 questions or answers for the witness which deals with
14 the other sex acts at Temptations, at this point in
15 time, I'm going to make an objection for the record, and
16 this goes along with what I said earlier. I have not
17 been given notice of this, and I'm not prepared at all
18 to address any of the issues or any statements of this
19 witness might make in that regard. I've had no
20 opportunity to rebuttal witnesses or any opportunity to
21 even hear the testimony or much less know what was going
22 to be presented to prepare a defense to what's being
23 stated or what will be stated.

24 MR. KLAHR: Do you want to respond to that?

25 MR. HAYS: This testimony is going to go

1 exclusively, explicitly to what was noticed in the
2 Notice of Revocation, that this business was being
3 operated as a sexually-oriented escort bureau.

4 I outlined the activity in the notice
5 she's going to testify specifically along those lines.

6 MR. KLAHR: All right. I will overrule the
7 objection and allow it into testimony at this time.

8 MR. HAYS: Thank you.

9 BY MR. HAYS:

10 Q Katheryn, what type of business is the
11 Sunset Strip where you're working now?

12 A It's a gentleman's club. It's an
13 in-call, licensed escort bureau.

14 Q And they have a license with the City of
15 Phoenix?

16 A Yes, they do.

17 Q That's an escort bureau license?

18 A That's right.

19 MR. KLAHR: When you say, in-call, that means
20 the men come there, they don't go out on dates with a
21 woman?

22 THE WITNESS: No, they don't. It's all
23 monitored so that illegal activities cannot be
24 performed.

25 MR. KLAHR: So it's not really a dating escort

1 bureau in the normal sense when you think of escort at
2 all because you don't provide escorts to the community.

3 A Right. But we do all have to have an
4 escort license, and we are classified as escorts.

5 Q Actually, Katheryn, what you have is an
6 escort identification card; is that right?

7 A Right.

8 Q That's what you meant by a license?

9 A That's right.

10 Q When did you start working there?

11 A The beginning of June of '95.

12 Q And who hired you?

13 A Holly Wild, the owner.

14 Q How long have you worked in the escort
15 bureau business?

16 A A little less than a year. I started at
17 Temptations the beginning of December of '94.

18 Q And which location is that? Do you
19 recall?

20 A 3912 East Miami Avenue.

21 Q And when did you leave Temptations?

22 A I left as soon as I started Sunset
23 Strip, the beginning of June of '95.

24 Q And what position were you hired to fill
25 at this Temptations location?

1 A Escort dancer.

2 Q And who hired you? Do you remember?

3 A Steve Budge, the owner.

4 Q Were you hired as an employee or
5 independent contractor?

6 A Independent contractor.

7 Q Let's talk about your training for a
8 minute.

9 Did you receive any training or
10 instruction of the operation of the business?

11 A Yes. Steve Budge owned the business.
12 His wife Malissa Budge, who is now his ex-wife, they
13 both trained me. I had a big -- I got a manual, which
14 was like a plexiglass. It stated all the different type
15 of shows. It ranged from 15 minutes all the way to an
16 hour. The prices started from \$40 to \$200.

17 And Steve Budge explicitly told me
18 there's -- and excuse my language, but he said, "There's
19 no sucking or fucking, but if you're going to do hand,"
20 and he says, "and you're going get caught, I don't want
21 to know about it. I'm not going know about it."

22 And then I asked him, "What do you mean
23 by that?" He said, "A release," and I said, "What do
24 you mean by a release," because I didn't know, and he
25 said that was a hand job.

1 Q When he told me that a release was a
2 hand job, did you understand at that point what he had
3 meant by a release?

4 A Yes, I did.

5 Q Let's talk about your conversation for a
6 minute.

7 You indicated that the show fee ranged
8 between \$40 to \$200. Was there also a fee that
9 automatically went to the house, a room fee?

10 A Yeah, a room fee. And that's typical of
11 all businesses when you are dancing. They usually have
12 a room fee, flat, that we don't receive anything.

13 And when I got hired there, he had
14 indicated that it was a great business, that I could
15 earn as much as \$1,000, but primarily it would be on
16 tips, not on the show price.

17 He said you could earn a lot on tips,
18 but the compensation from the show price was between 60
19 to 33 percent.

20 Q So the \$20 room fee goes 100 percent to
21 the house. The show fee which ranges between \$40 to
22 \$200, depending on how much time the customer spends
23 with the escort, is the split with 16 to 33 percent
24 going to the escort and the balance going to the
25 business?

1 A That's right.

2 Q So the greater share goes to the
3 business?

4 A Yes.

5 Q And if the customer should offer the
6 escort a tip over and above the show fee, to whom is
7 that to go?

8 A The tip was to go to the model.

9 Q 100 percent?

10 A 100 percent. And he indicated these
11 tips primarily came from releases and that, typically,
12 the customer -- the typical fee was \$100 per release.
13 There were exceptions.

14 He had some regular clientele that he
15 indicated some of these people could pay a little less,
16 because he would tell the ladies that they were
17 long-time customers so he only pays \$60 to \$80.

18 Q Now, it was your understanding that no
19 releases could be given for less than \$100 without the
20 explicit authorization of the manager; is that right?

21 A That's correct.

22 Q And did that include just Mr. Budge and
23 Malissa or could that be another manager?

24 A No. Any manager that was working there,
25 you had to make sure who the customer was, and it was

1 monitored, the lobby, that the clients came in. You
2 could see the customer. And then when you would come
3 in, they would first pay the room fee.

4 Steve had a very good memory of who the
5 clients were, and he would say, "This is John," or
6 whatever. A lot of them paid on credit card, and so
7 he'd say this customer -- he was very familiar with the
8 clientele.

9 Q Are you aware of an occasion where an
10 escort ever refused to do a release?

11 A Yes, I am.

12 Q And what would happen in that case?

13 A A lot. A lot of ladies would refuse to
14 do that. The policy was, you would just tell that
15 person, "I don't do that," and at that point, another
16 lady would come in that was willing to do that, and the
17 customer could either say no or yes, but they usually
18 they said yes.

19 Steve had a very good memory of who was a
20 client and he would say, "Oh, this is Star," or
21 whatever. A lot of them would pay with a credit card.
22 He was very familiar with the clientele.

23 Q Let's talk about the regular customers
24 for a minute.

25 Was this a mechanism by which the

1 typical customer would be offered the standard release
2 fee of \$100?

3 A Yes. Steve mentioned that most of the
4 customers already knew about this; that they would
5 typically put the money down on the table or either hand
6 it to the model so the model wouldn't even have to ask
7 for it. So he pretty much knew how it worked.

8 Q Now, did Steve give you any training on
9 the law as part of your structure?

10 A He was very -- yes. He was very -- when
11 I first started there, he gave me photocopies of the
12 State Law, the City Law, what was allowed, and, you
13 know.

14 He told us when we were doing the shows,
15 don't touch breasts, crotch, or the buttocks area. You
16 do not touch the customer's genitalia. And of course,
17 no oral sex, no sexual intercourse.

18 He knew what was legal, and he knew that
19 the hand releases were illegal, but like as I stated
20 before, he said if anyone ever got caught, he would deny
21 knowing. He would deny by pretty much turning the
22 other -- you know, turning the --

23 Q The other way?

24 A Yeah. Turning the other way, yeah. He
25 just would say he didn't know about it, even though he

1 monitored the room.

2 Q Do you recall an incident in which the
3 Phoenix Police Department attempted to shut down this
4 particular business while you were working there?

5 A Yes. And I believe it was in March. I
6 got a phone call from his ex-wife Malissa Budge saying
7 all the private clubs have been shut down and call us
8 before you come in, but as of now, the business has been
9 closed.

10 Q And did they call you shortly after that
11 to indicate the business was now operational again?

12 A Yeah. Within three days or so, they
13 said business is back, so just come on in, you know.

14 Q All right. After that -- what I would
15 imagine would be a very shocking event, were there any
16 changes that were implemented at the business?

17 A Oh, yes. Steve was very paranoid. I
18 recall him mentioning that this -- there was a girl
19 doing a release in the other room just a couple -- and
20 she had just finished before the police busted in. He
21 was very paranoid.

22 He said that no releases were to be done
23 by any of the ladies, of the girls, unless they were
24 regular clientele that he knew, because, I guess -- I'm
25 just speculating, but I guess he figured that, you know,

1 the people who had been coming in for a long time were
2 neither police officers or police informants, so he said
3 that it was okay to do that. It was regular customers.

4 Q What was the effect on the business with
5 the changes as a result of the police officer?

6 A Well --

7 MR. YEE: I object; irrelevant, speculation.

8 MR. KLAHR: Overruled.

9 BY MR. HAYS:

10 Q Go ahead, Katheryn.

11 A I was going to say, instead of seeing
12 girls with seven \$100 bills, they were all complaining
13 that they didn't make as much money as they did before.
14 So the income fell drastically. I saw girls that made
15 \$1,000 a shift just from tips. And they were all
16 complaining that they can't approach the gentlemen
17 anymore or not -- anyway, they can't approach people
18 anymore. They had to rely on the old clients, and they
19 were pretty upset about it.

20 And then, at this time, there were a lot
21 of, you know -- it's not just gossip, I mean, it's not
22 gossip. When Mr. Yee was saying that, you know, this
23 gossip about dancers, it's not gossip. We all know each
24 other. We all talk to each other.

25 There were several girls who had come

1 from the Sunset Strip. I knew a lot of them. They had
2 all said the Sunset Strip is totally legal. It's a
3 60/40; 60 to the model, 40 to the house. They said it
4 was very strict, very legal, and you have to work very
5 hard. You have to do a lot of shows, totally legal
6 shows, but you will make money, but you will have to
7 work a lot harder.

8 Holly Wild was known for if you came in
9 late, you would get fined. She ran her business like a
10 real business, I mean, like a -- whereas, at
11 Temptations, for example, some girls wouldn't show up
12 for work. Everyday, somebody would not show up for
13 work, and it was the same with Steve.

14 MR. YEE: Mr. Chairman, aren't we getting a
15 little off base?

16 MR. KLAHR: Yeah. We've got to cut this down,
17 because I'm not sure of the time limit. Some of the
18 members say they have to leave at 8:00, and I can't stay
19 all night, either. We really need to speed this up.

20 BY MR. HAYS:

21 Q Katheryn, did the women try and do
22 anything as a result of this?

23 A Okay, okay. After this, we all said --
24 One girl was going to have a meeting. We were all going
25 to get together and give Steve an ultimatum. Either

1 give us a 60/40 cut, no illegal stuff anymore, just
2 60/40 cut and we'd be happy about it.

3 And the girl was going to set up a
4 meeting. Steve found out about it. He said, "You
5 better cut it out. If you don't," -- and the girl told
6 me that Steve found out about the meeting, and he
7 said -- she told me if anything happens to her, Steve
8 did it. She was very paranoid.

9 MR. KLAHR: This is highly irrelevant. It's
10 way, way off.

11 THE WITNESS: Anyway, he refused to give us a
12 cut. He wanted to continue the hand releases, is
13 basically what happened.

14 BY MR. HAYS:

15 Q All right. Did he come up with a system
16 so that he could make the women happy so they wouldn't
17 have to have meetings and to try to get a split,
18 et cetera, et cetera.

19 A Right. According to him, if you went
20 in -- if the girls went in and asked a client, made them
21 repeat this, "Are you a police officer? Are you
22 affiliated with the police department in any way?" And
23 they repeated this, "No, I'm not a police officer, no,
24 I'm not affiliated with a police department in any way,"
25 then the girls could go ahead and ask for tips, okay?

1 That was the way he did it.

2 MR. YEE: Okay. I'm going to object. I just
3 don't think it's relevant. There's certainly no
4 foundation as to when all this happened.

5 MR. KLAHR: I think we are getting close to
6 that. I really want to finish with her and let him do
7 cross, because I may rule that she will be the main
8 witness, and anyone else will be cumulative, because
9 we've got to give them a chance to put on the testimony.
10 And this is not going to go all night.

11 MR. HAYS: All right. I'll try and finish up
12 quickly.

13 MR. KLAHR: The other thing I'm concerned
14 about is that I'm hearing nothing about Mr. Alguire.
15 I'm hearing about Mr. Budge who we've already ruled
16 isn't here tonight and isn't appealing anything and
17 isn't running the show anymore.

18 MR. HAYS: I understand. My next witness will
19 be shorter.

20 MR. KLAHR: All right. I hope so.

21 MR. HAYS: I'll try to finish up here.

22 BY MR. HAYS:

23 Q Katheryn, why don't you tell the Board
24 who the managers were while you were there?

25 A Well --

1 MR. YEE: Again, is that relevant?

2 MR. KLAHR: Well, then just give the names,
3 you know, as long as it doesn't go into any more detail.

4 MR. HAYS: Mr. Chairman, the code
5 provides --

6 MR. KLAHR: Let's get the managers' names.
7 Then I'll rule.

8 Go ahead, ma'am, answer the question.

9 THE WITNESS: One is sitting right here, Andre
10 Hernandez. (Witness indicating.) He was one of the
11 managers. There's also John Williams, Joe, which I
12 believe are still managers.

13 MR. KLAHR: The same Joe we talked about
14 earlier?

15 THE WITNESS: Yes. There's two. If -- I'd
16 like to say something, Steve was trying to sell his
17 business. There were plenty of buyers who came in. He
18 would let them look underneath, so most of the people
19 who would buy or were looking into a business -- If I
20 would want to buy a business, I would want to look to
21 make sure and see if that was a legal business or not.

22 MR. KLAHR: I understand that you have
23 evidence, but that sounds like oral argument, his
24 closing argument.

25 MR. HAYS: Thank you.

1 BY MR. HAYS:

2 Q Let me ask you one last thing, Katheryn.

3 Do you know who trained the managers at Temptations?

4 A Steve Budge. He did everything.

5 MR. HAYS: Okay. That's all I had. Thank
6 you.

7 Just stay right here.

8 MR. KLAHR: Do you have any cross?

9 MR. YEE: Just a couple on cross.

10

11 C R O S S - E X A M I N A T I O N

12

13 BY MR. YEE:

14 Q During the time that you worked at
15 Temptations, did you do hand releases?

16 MR. HAYS: I object to that question.

17 MR. KLAHR: I think it's a legitimate cross,
18 absolutely. I would overrule the objection.

19 MR. HAYS: All right. Well, this needs to
20 be --

21 MR. KLAHR: No, really. I overrule. I think
22 it's a very legitimate cross.

23 You can go ahead answer it.

24 THE WITNESS: I refuse to answer on the
25 grounds that it may incriminate myself.

1 MR. KLAHR: She can take the Fifth Amendment,
2 I guess, you can take that.

3 BY MR. YEE:

4 Q Did you earn tips when you worked at
5 Temptations?

6 A Did I earn tips at Temptations?

7 Q Yeah. When you worked at Temptations --

8 A I refuse to answer on the grounds that
9 it may incriminate me.

10 Q Did you receive 100 percent of the tips
11 that you earned?

12 A I refuse to answer on the grounds that
13 it may incriminate me.

14 Q If I ask you any more questions about
15 what you did as a person working at Temptations, you
16 would again assert your Fifth Amendment Right because
17 you would incriminate yourself?

18 MR. HAYS: I object to that question. The
19 witness could have no way of knowing --

20 MR. KLAHR: Well, that's correct. But as you
21 know, that type of question, although maybe it is too
22 broad, is the usual question after several refusals
23 happen, like Mark Fuhrman in the O.J. case.

24 So, let me rephrase it.

25 If he asks you any more questions about

1 things that theoretically could be illegal, you will
2 give the same answer; is that correct?

3 THE WITNESS: If it may incriminate myself,
4 yes. Right.

5 MR. KLAHR: Is that sufficient?

6 Any questions from the Board?

7 MR. SNOW: Please.

8

9 E X A M I N A T I O N

10

11 BY MR. SNOW:

12 Q Can you remind me, again, how long you
13 worked at Temptations in particular?

14 A I worked approximately six months.

15 Q And that time frame was what month? Of
16 what month, please?

17 A From December to June.

18 Q Okay. How many hours did you typically
19 work in a week while you were there?

20 A 50 hours.

21 Q 50. So quite a bit actually?

22 A Yes.

23 Q Can you give any kind of estimates of
24 how many customers you personally would see in a given
25 work day?

1 A Steve had me work from 2:00 in the
2 morning till 12:00 noon. We were open Christmas Day --

3 Q And you might see how many customers
4 during that time?

5 A Probably like three.

6 Q And regardless of what your answers
7 would have been -- I'm not interested in pursuing that
8 line of questioning -- But of the average customer who
9 would come in, what percentage of the average customer
10 asked for hand releases?

11 A 80 percent.

12 Q In other words, this is something that
13 most people who come in there are looking to have done?

14 A Yes.

15 MR. SNOW: Okay. Thank you.

16 MR. KLAHR: Let me follow up with this, if I
17 could.

18

19 E X A M I N A T I O N

20

21 BY MR. KLAHR:

22 Q I notice that you are a degreed
23 professional. Is there any particular reason why you
24 decided to work in this particular business rather than
25 in the accounting business?

1 A What does that have to do with this?

2 Q Well, I'm just concerned with, you know,
3 whether the finances are such that even a degreed
4 professional -- that's what I'm getting at -- would be
5 attracted to something like this. That's what I'm
6 getting at. Is it money? Is that what it was?

7 A I don't personally -- Somebody in my
8 family died. I lost all my savings and was not able to
9 resume my control- --

10 MR. HAYS: But you were working as an
11 accountant; is that right?

12 THE WITNESS: Controller and general manager
13 and I just -- somebody had just died.

14 BY MR. KLAHR:

15 Q I understand this was not a second job.
16 This became her job. She gave up the controller thing,
17 and this was her job until June of this year; is that
18 correct?

19 A That's correct.

20 Q And now you are employed back in
21 accounting or --

22 A I do some accounting, but I sustain part
23 of my income as a dancer.

24 Q Oh. So you are still a dancer. In
25 fact, that leads to another question.

1 Did you ever investigate the books or do
2 any accounting or investigate the books of any of these
3 people, whether it be him, referring to Mr. Alguire or
4 Mr. Budge, you never had access to any books, did you?

5 A Not books, but I heard things like --

6 MR. YEE: I'm going to object to speculation
7 testimony.

8 BY MR. KLAHR:

9 Q All right. Now --

10 A From Budge, I heard --

11 Q Hold on. I don't mean to -- I ask the
12 question, and I don't mean to open doors that I
13 shouldn't. I'm just saying, did you see any books of
14 the Budge corporation, the Budge proprietorship?

15 A Not books.

16 MR. KLAHR: Any other questions of the Board?

17 Now, as I say, if you have any other
18 testimony, you can present it with, you know, cameo
19 appearances, who they are, and would your testimony be
20 the same, unless there's something material.

21 Can we do that? Because, again, I don't
22 want to impose on you, but we could be here all night on
23 the same point here.

24 MR. HAYS: Yeah. This will be much briefer.

25

A F F I D A V I T

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.

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?

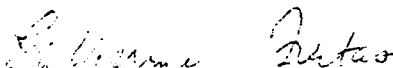
A: Melissa Budge, John Williams, Joe, Brett and Andre.

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

SUBSCRIBED AND SWORN TO before me this 29th day of November,
1995, by Catherine Freitas.



Notary Public

My Commission Expires:

My Commission Expires Dec. 14, 1998

994



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A Message From Lisa
Owner, French Fantasies Men's Club

Hi guys, my name is Lisa, the owner of French Fantasies Men's Club. I would like to introduce you to my club and the selection of beautiful, friendly models available to meet you night and day. What you are about to see will arouse you. French Fantasies is the most inviting, the most wood producing, the most explosive, the most satisfying **ALL NUDE** private room performance club in the USA, and I personally invite you to visit us. All nude shows like you have never seen! Up close and

in your face! So start playing with your HARD drive and prepare for the ride of your life!!!

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3



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Couples are very welcome at French Fantasies. The models all enjoy performing and interacting with couples in complete privacy. The mood is intimate and the interaction between you and your companion is very extensive. Perform for your model if you so desire. Turn the tables a little. We like to play the Voyeur just as much as you do.

After you follow your entertainer to her private room and you have chosen a show from the menu, she will leave you for a few minutes to inform the management as to the time and nature of your show. You should take this opportunity to make yourself very comfortable. We encourage you to get completely nude and relax on the sofa. When your private dancer returns, she will change behind her dressing screen, adjust the music and lighting and then start the timer.

Touching of oneself is perfectly acceptable, completely legal and makes for a very HOT show. There is no direct sexual contact, however even though that is the law and we do not break the law, we push our shows TO THE LIMIT! Touching between yourself and your private dancer is EXTENSIVE and you will want to touch yourself.




French Fantasies deals in creating Fantasies and we are very good at what we do. Before you are able to turn on your body you must first be able to turn on your mind.

Undress, relax and don't be shy about touching yourself. The more uninhibited you are, the more uninhibited your private dancer will be.

[REDACTED]

Our room fee is \$20. That gets you into your entertainer's private room. The minimum show is \$20 and the very Hottest shows begin at \$50. They are available up to an entire hour.

All shows and prices are clearly listed on the menu and your private dancer will be happy to go over that with you and answer any questions you may have.

We accept    and have an ATM Terminal. All are discreetly billed. Only F.F.L. will show on your ticket and your bill. Nothing else.

[REDACTED]

Tipping is not mandatory by any means. Your private dancer is treated very fairly by French Fantasies. However tipping is an integral part of our society. It will enhance just about anything nowadays.

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Above all Attitude, Quality and Class sets our club apart from the competition. You will encounter a completely different attitude at French Fantasies Mens Club. From the time you walk in the frontdoor it will be apparent that your visit is appreciated and everything in our power will be done to assure that you will return to us again.

You will never pay a room fee twice in one day. If you extend the time of your show, see another private dancer for an extended period of time or even leave the premises and return later even on the next shift you will not pay for your room again that day. It's our way of thanking you for your business.

Adjustable lighting to set the mood and insure your ultimate viewing pleasure.

Digital timers insure you receive your show in its entirety. Other clubs use songs, their watch or nothing. They "just know" when your time is up.

Complete privacy during your show.

No hidden cameras.

No games.

No lies.

Any email will be promptly answered, seriously considered and if you wish, held in the strictest of confidence. I run a clean business and stand behind all of my previous statements. So that I may continue to do so, I encourage any feedback desirable or otherwise. It is very

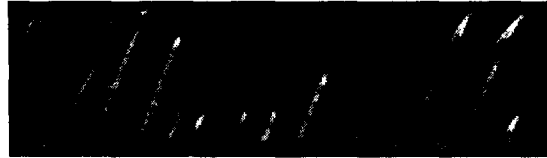
important to me in maintaining the quality of customer service and my relentless pursuit of perfection.

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Hi, I'm Nicole.

Welcome to my French Fantasies web site!!!

I enjoy making you guys hard and would love to perform for you if you were to ever come by French Fantasies here in Phoenix, Arizona!!!

I can fit into just about any role that you would like to see me in and I would just love to make your fantasies cum true!!! Yes, I enjoy watching you touch yourself and EXPLODE with desire!!!

I like to get really close to you, so close that you can feel me breathe. If you cum and visit me for a show I will make you very, very happy and you'll want to keep cumming back for more.

Nicole



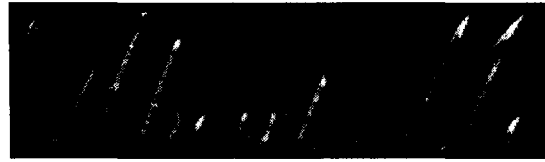
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Hi, I'm Brandy.

Welcome to my French Fantasies web site!!!

I hope that you guys get a chance to visit me for a show at French Fantasies here in Phoenix, Arizona!!!

I know that I can put a VERY big smile on your face because before you leave you will EXPLODE with pleasure!!!

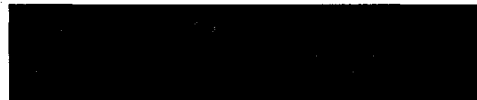
I can make you so happy that you'll want to cum back for more and more!!!

I get very close and I know that you will love the closeness we share!!!

Nothing turns me on more that watching you touch yourself!!!



Brandy



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Hi, I'm Theresa.

I'm here to make your day, your week, your month LOTS BETTER!!! I'm a petite thing and I have a perfect body. I'm an ex-gymnast, very athletic and flexible. There are things I can do that no-one else can do. I want to do them for you.

I'm 5'2" 102# and perfectly proportioned. I have long dark hair and dark eyes. I don't mind telling you I'm in my early 30's.

There are so many ways to make you hard as a rock and I'm here to make you do just that. I love bending, spreading, brushing up against you and resting on your lap. There are lots of positions we could get into in my private room. I would love to get you alone with me...in my room...with my soft rock music...dim lights...all my scented candles and we'll be nude together. I'll caress you all over, and you will do the same to me.



**I can't wait...
See you soon!**

Theresa



Age
30 something

Birthday
[REDACTED]

Occupation
Entertainer at French Fantasies - Phoenix, Arizona.

My favorite type of man
Funny, positive, energetic.

My favorite type of night spot
Rock 'n Roll club with live band music.

My favorite type of music
Classic rock ballads

My favorite type of car
red Mazda Miata convertible

My favorite type of food
Ice cream, chocolate, cruch berries cereal

My favorite type of friend
One that I can trust and confide in.

My favorite type of sexual partner
Has high sex drive, takes his time, knows how to give it to me good.

My favorite type of pre-sexual stimulation
Oral for a good long time.

My favorite sexual scenario
My boyfriend and myself at a resort hotel suite, sitting in a jacuzzi in the bedroom and watching porno.

My favorite sexual fantasy
To be with another woman...just the two of us alone.

Most bizarre sexual experience
On the plane on the way to Japan (and of course on the way back again!)



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Hi, I'm Kayla.

Welcome to my French Fantasies web site!!!

I would just love to perform for you if you were to ever come by French Fantasies here in Phoenix, Arizona!!!

I know that you will love seeing my big tits and my 21-year-old body!!! I enjoy watching you touch yourself and love seeing you EXPLODE with desire!!!

I like to get really close to you and I know that you'll like that!!! If you cum and visit me for a show I will leave you with a very wide smile on your face and totally satisfied!!!

Cum by French Fantasies and see me now!!!

Kayla



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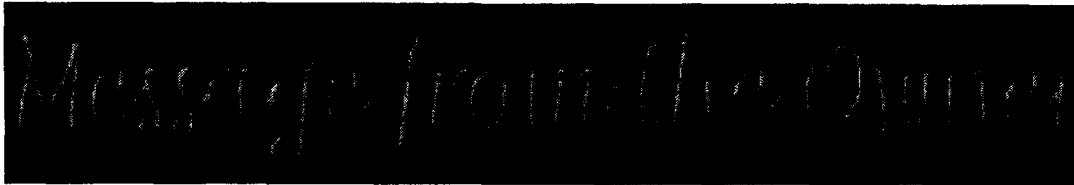
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Our hours are Sun - Thurs 10am - 2am and Fri - Sat 10am - 3am.



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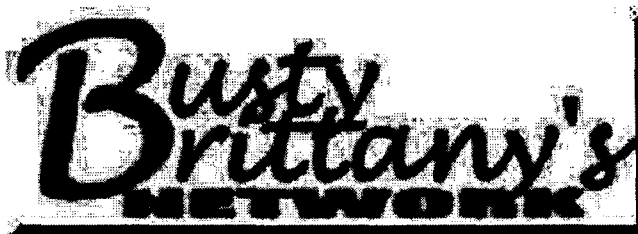
Our goal at Sunset Strip is you, to send you home completely satisfied every time you visit. I am proud to say that after 9 years in business we've never failed to meet our goal - your satisfaction.

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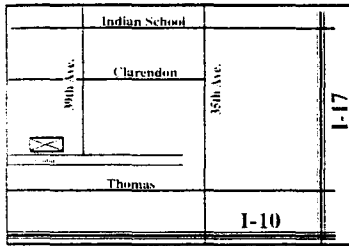
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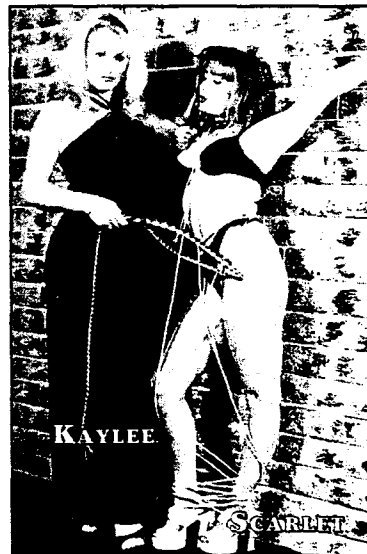
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a little
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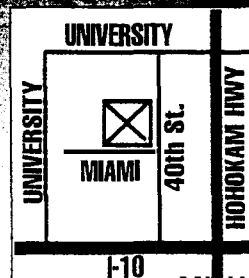
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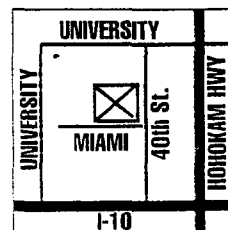
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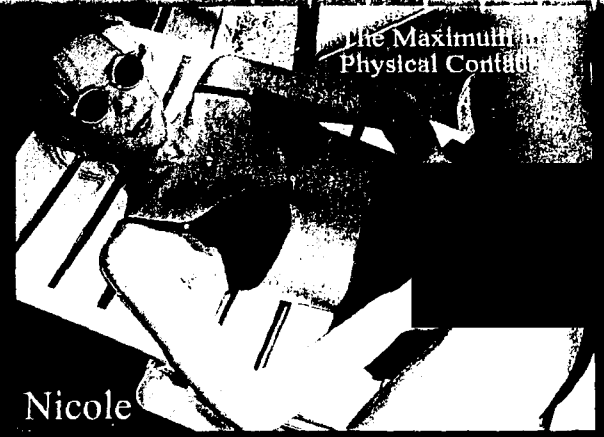
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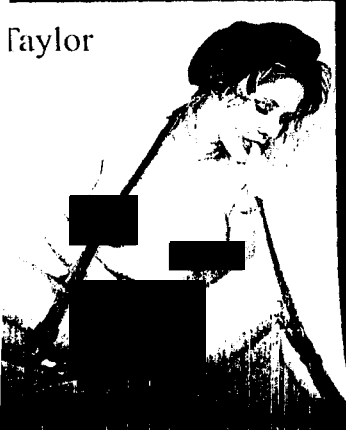
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Take a Walk on the Wild Side
DOMINANCE IS MY SPECIALTY



Taylor



Brandy

LET ME MAKE YOUR DAY

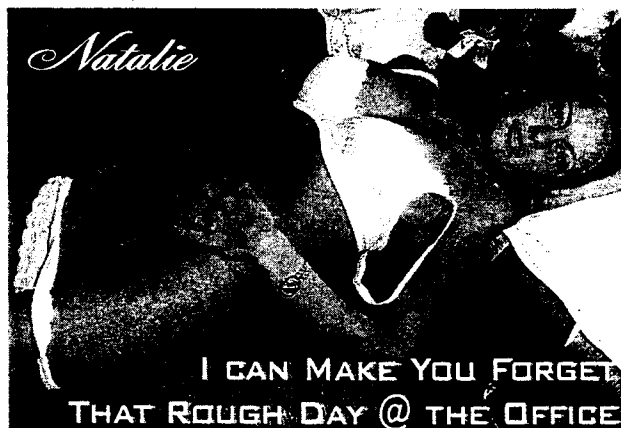
Alexis

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FOR YOU

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Natalie

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Theresa

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GUNS & DOLLS

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World
steps on a
JIMMY

ARIZONA'S
MOST
EROTIC girls
featuring
SUMMER LEIGH
TABATHA



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persons under 18 years of age

WAUKEE, WI AE REGS 001081

FANTASY FOR SALE!

Hi Guys!

I just wanted to drop you a note to say hello, and to let you know that I've been doing a lot of thinking lately about what men really want.

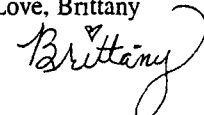
I started out as a dancer, and I decided to open my own business because I thought that I could find a way to please my customers better than anyone else could. Believe me, I have the ability, and the desire. First of all, let me tell you a little about myself. I'm about 5'5", 38DD, very curvaceous, with gorgeous blond hair, sparkling sky-blue eyes, and a terrific smile. I'm tanned, and very, very talented, if you know what I mean! My devoted repeat customers said that my oral abilities were definitely one of my strong points.

So when I started the Sunset Strip, I decided to hire girls like myself: stunning, centerfold-quality party girls that love to bend the rules and get nasty. We finally found a place to fulfill all our delicious fantasies. Now you never know what will happen when you're hanging out at the Strip! In one room, maybe you'll see two of our girls passing the time by exploring every inch of each other's bodies using only their tongues... maybe in a private corner a beautiful girl is releasing her own tension, tiny skirt pushed up around bucking hips, writhing and wet with her big dildo... sometimes we just like to have someone lick whipped cream or honey right off of our sweetest and most delicate folds, flicking our clit just right, making us cum again and again until our juices run down the insides of our succulent thighs.

Well, now you're probably starting to get the idea. All I need now is to hear from you, because we want to fulfill your fantasies too. I need you to tell me what really gets you hot, and what you as a customer would really like to see at The Sunset Strip. Our goal is to personalize your experience by making it exactly what you've always fantasized about. This is my idea: lets get together, just you and me. I'm making myself "available" to my generous customers for a little personal attention from 1:30pm to 4pm every Tuesday and Thursday. Get a private tour, private information, and the inside track on how to get what you really want during our hot, naked, wild and uninhibited private sessions. So call me. Let me know that you're coming, and I'll show you how to really cum! If you want to stay and experience some personalized service from a beautiful model while you're here, I'll give you a very special discount. So call me soon... I can't wait to introduce myself! (Wait 'till you see how!)

437-6969

Love, Brittany



Owner, The Sunset Strip
4025 E. University Drive
Phoenix, AZ 85034

pass the
water,
please...



Watersports is a slang term for the practice of draining the radiator in the presence of another in order to enhance sexual intimacy--in other words, erotic pissing. The medical term for this act is urolagnia or urophilia and it has a long history of acceptance and aversion throughout every culture ever known to man. The obvious questions aside, therefore, we present here a few variations on this most intimate act.

IVING DOCTOR

Simply sit with facing each other with legs apart. When one of you gets the urge, simply pee. The other gets to watch and touch. Pretending to be children again adds a fun twist to this game.

OLDEN SHOWER

This is simply where one person kneels, sit, or lies on the floor and the other pees all over him or her. Again, either way is enjoyable. If you have dominance and submission fantasies, this activity fits into them nicely. It's also a good way to kiss your lover's organ and to see where the cascade of water falls.

MASSAGE

Have your lover straddle your back, with the small of the back. Put a little KY jelly on your hands. Now pee onto your hands and begin rubbing it into your lover's back. Add more KY jelly as needed to keep everything slippery. Work your stream up and down your lover's back, neck, and over your shoulders. Use your lover's hands to massage techniques.

CATARACTS OF THE NILE

The woman lies on her back with legs apart. The man stands or kneels between her thighs. The man pees as hard as he can, directing his stream onto the woman's clitoris. The woman simply enjoys, touching herself if she likes. You will probably want to experiment with standing or kneeling, as different women will have different preferences over how high the stream should come from.

LOG IN THE AMAZON

This time the man lies on his back. The woman squats over his crotch. She may want to stimulate him manually before beginning the main event. When he is wonderfully aroused and erect, she pees hard onto his erection, moving her stream up and down the length of his shaft. The woman should not worry about whether or not she makes him ejaculate this way. Either way, he is certain to enjoy it.

Arizona's ADULT ENTERTAINMENT GUIDE

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club spotlight
GUYS & DOLLS

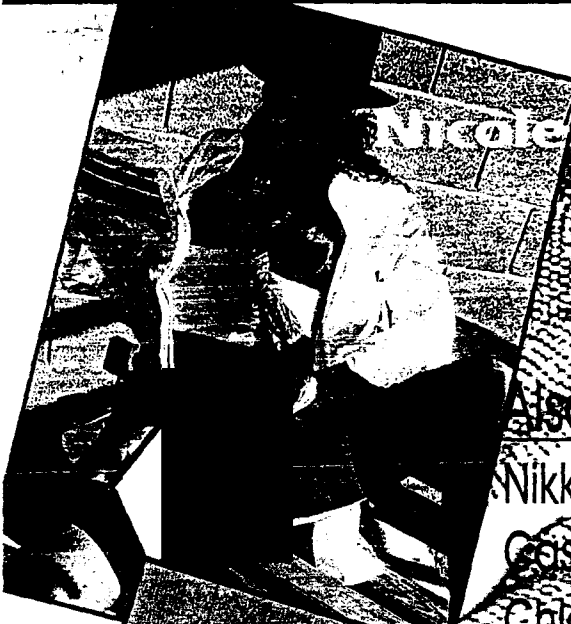
Shane's
WORLD
slaps on a
JIMMY

ARIZONA'S
MOST
EROTIC girls
featuring
SUMMER LEIGH
and
TABATHA



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MILWAUKEE, WI AE REGS 0010831



Nicole



Theresa



Allyssa

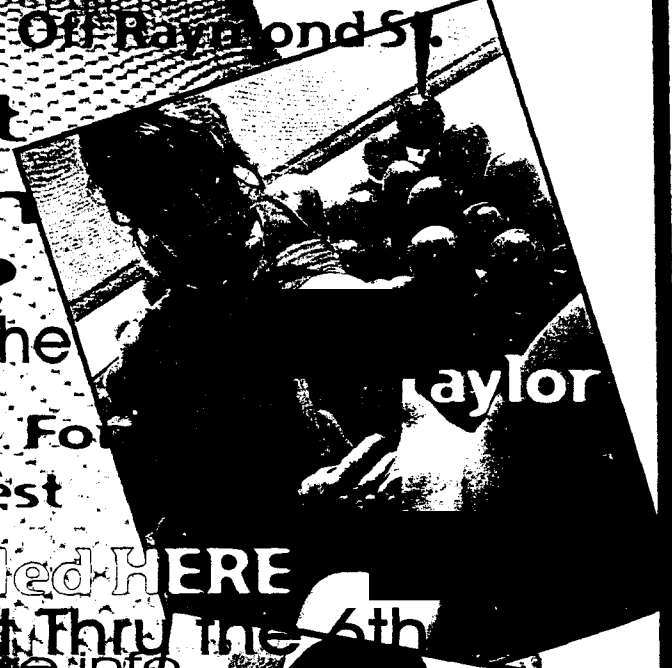
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Nikki
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Off Raymond St.



Taylor



Alexis

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fantasies... ed HERE

... week... Thru the 6th

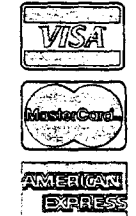
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naked
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 ... playing with our kinky little toys...
 ... whispering in your ear...
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French Fantasies

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Hot NUDE Private Room Shows

Also

Nikki

Casey &

Chloe

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Just West of 40th St.

Off Raymond St.

Theresa

Can't

Touch

That

he has the

Don't see for

Secret best

Taylor

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Digital Timers

London Rubs

Lab Dancing

Dominance

Role Playing

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Alyssa

Alexis

MILWAUKEE

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Arizona's Adult

Entertainment Guide

August 1998

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PussyCats

Interview
**Last Train to
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Johnni Black**

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01091
15

French Fantasies

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Casey & Chloe
3826 E. Illini St
Just N. Off I-90 Just W. Of 40th St.
Off Raymond St.

Can't Touch

Tr

he h... ne
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Taylor

Fantasies... ed HERE

Bikini week Jun... Thru the 6th

Call... e info
Digital Timers

Lotion Rubs
Lap Dancing
Dominance
Role Playing



Allyssa



Alexis

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001092

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: A837

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: [REDACTED] 70 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: Maye 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.

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.

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 MISDEMEANOR, FOR MASTURBATING HERSELF AFTER BEING GIVEN 100.00 DOLLARS.

THE SIXTY DOLLARS AND THE ONE HUNDRED DOLLARS WERE NOT RECOVERED AND NOT IMFOUNDED.

VICTIM RECEIVED RIGHTS INFORMATION: NO

MAIL-IN SUPPLEMENT:

INVOICES:

END OF REPORT

DR NO: 80991354

Tucson

FILED AT MAYOR & COUNCIL
MEETING MAY 21 1990
ITEM # 12
BY: Bill Call

EXHIBIT NO. 1

Police Memorandum dated May 1, 1990



TUCSON

MEMORANDUM

DATE: May 1, 1990

TO: Mr. William Call
City Prosecutor

FROM: Michael J. Leverenz *ml*
Assistant Chief of Police
Investigative Services
Ext. 4480

SUBJECT: ADULT ENTERTAINMENT ORDINANCE

Per your request, the following information describes some of the events and activities that were occurring in adult entertainment bookstores and establishments that clearly demanded the need for a stronger ordinance.

BACKGROUND

In late 1986, the Police Department received numerous complaints of illegal sexual activity and unsanitary conditions occurring in many of the adult entertainment bookstores and establishments. Initial reports indicated that sexual activity was occurring on the premises between customers and prostitutes, customers and the entertainers and between the customers themselves. Through covert investigations it was soon discovered that many of these allegations were in fact true.

Investigating officers found that many of the dancers were prostitutes who were offering private shows where customers could, for a price, observe them performing live sex acts. One of these acts was the "double dong" show. This show consisted of two females using a double headed dildo simultaneously. In a similar act dancers would perform oral sex on each other. Many times the dancers would require customers to expose themselves before they would perform. At several of the businesses, customers were allowed inside the booths with the dancer and were encouraged to undress and masturbate. For a little more money, the dancers would help the customer masturbate. Nearly all of the dancers engaged in sexually explicit conversations with the customers. For the right price customers would be allowed to touch the dancer in every place that bikini panties did not cover and if enough money was paid the customers would be allowed to insert their fingers into the vagina

ADULT ENTERTAINMENT ORDINANCE

Page 2

of the dancer. Undercover officers also learned that customers could hire the dancers to engage in acts of prostitution. Confidential sources indicated that, in some instances, these acts actually occurred on the premises with the knowledge of the management.

Investigating officers also discovered that underage females were being hired to dance nude. The youngest person known to have been working in one of these businesses was a fifteen year old female. The business that she was working at required that she dance several times an hour and perform what are known as spread shows. In these type of shows a female masturbates either manually or with a vibrator in front of a customer. In most cases these minors were in possession of false identification which they were assisted in obtaining by the older dancers and, in one case, allegedly by the business manager.

"Glory holes" were discovered in the walls of adjoining booths in some of the bookstores and adult entertainment establishments. These holes were used by male customers to facilitate sexual acts with the occupant of the neighboring booth. Additionally, certain book stores were found to be frequented by homosexuals and it was not unusual to have men standing around the booth areas attempting to pick each other up. It was also obvious to anyone who went into these businesses that there was a problem with the sanitary conditions. Upon entering the viewing booths, investigators often found puddles of semen on the floors and/or hanging on the walls. If the customer did use a tissue these were also usually found on the floor of the booth and in some cases in the hallways.

In order to verify the accuracy of their observations, investigating officers collected samples on two separate occasions. Between April and August of 1987, investigators collected 26 random samples at eight separate adult entertainment bookstores and establishments. Of these 26 samples the TPD Crime Lab reported that 21 (81%) tested positive for semen. The second collection occurred between October and December of 1988. This time investigators collected 27 random samples at ten separate adult entertainment bookstores and establishments. Of these 27 samples, 26 (96%) tested positive for semen.

At virtually every adult entertainment bookstore and establishment employees were arrested for prostitution or obscene sex shows. At one of these businesses a nationally known porn star was seen on

ADULT ENTERTAINMENT ORDINANCE

Page 3

stage in front of approximately twenty people inserting her tongue and finger into the vagina and anus of another performer. At another business, a dancer was arrested after she performed oral/anal sex on another female. At the end of her show she blew air out of her vagina in order to make noise. As a result of arrangements that were easily made at these businesses, dancers were also arrested for performing sex shows and other acts of prostitution at other locations.

NEED FOR A STRONGER ORDINANCE

During the time that we were conducting these criminal investigations, the Health Department began investigating the sanitary conditions in these businesses. The Health Department recognized, as we did, that many of the activities that were occurring were made possible by the doors on the booths. When it was suggested that their removal would substantially reduce the opportunity for people to have anonymous sex, the Adult Entertainment Industry quickly joined forces with a common goal in mind. That goal was to keep the doors on the booths.

In order to demonstrate that a health ordinance was not needed these businesses began cleaning the booths and, in some instances, the entire premises. Whole businesses suddenly were painted and in some cases remodeled. Signs started being displayed discouraging loitering and asking customers to place their tissues in trash cans. The whole industry began changing due to the fact that they were trying to convince the Health Department and the public that they could police themselves and that the doors did not have to come off. In an attempt to diffuse the cry for the removal of the doors the bottom part of the doors were cut off.

Shortly thereafter, City Ordinance 7299 was enacted which provided for the licensing of employees and established regulations regarding the operation and location of adult entertainment enterprises. On November 1, 1989, Mr. Michael J. Bloom, attorney for several of the enterprises affected by the ordinance, filed a law suit in the United States District Court challenging this ordinance. Since then a series of meetings occurred between Mr. Bloom, the Police Department, and the City Attorney's Office to determine if compromise was possible. As a result, we found that a major issue of contention was whether the doors should come off or be allowed to stay on. During an on-site inspection of these booths with Mr. Bloom, he advised us that his clients position was

ADULT ENTERTAINMENT ORDINANCE

Page 4

that the doors had to stay on. He stated that his clients were very concerned of the possibility of non-paying customers congregating around the booth of a paying customer. Mr. Bloom also indicated that his clients would be agreeable to wording in the ordinance that require the bottom of the doors to be raised to a height that would permit all the interior floor space (of the booth) to be visible from the public hallway. The idea being that this would allow anyone to count the number of feet in the booth thereby insuring that there was only one person in there. Discussions occurred with supervisors and officers of the Police Department's Vice Detail pertaining to the alternatives. After these discussions, and recognizing that although Mr. Bloom's position has some merit, our first recommendation was that the doors be removed from the viewing booths for the following reasons.

1. "Glory Holes" - even if the doors were raised to knee level, they would still provide customers with enough shielding to encourage and permit illegal sex acts to continue.
2. Masturbation - doors encourage and facilitate this act and we do not feel the community believes this should be an acceptable or sanctioned practice in a city licensed business open to the public.
3. Sanitation - as previously stated random inspections of booths by investigators found some rather offensive conditions. Although there has been significant changes in the operation of these businesses, recent spot checks indicates that this problem persists.
4. Booths - the viewing booths can be configured in a manner that will preclude viewing by non-paying customers.
5. Court Decisions - the removal of doors has been upheld by the courts.

Since then several meetings with Mr. Bloom have taken place regarding this issue. On April 30, 1990, the Police Department was advised that Mr. Bloom, in a letter to Mr. William Call, indicated that his clients would agree to raising the bottom of the doors to a height of 30 inches from the floor. Subsequent to this compromise offer, the Police Department agrees to recommend that the doors remain on the booths under the following conditions:

ADULT ENTERTAINMENT ORDINANCE

Page 5

1. The bottom of the door must be a minimum of 30 inches from the floor, so that the occupant of the booth is visible from the waist down when seated.
2. The booth can not be modified nor can a chair be used that will circumvent the intent of condition #1

We feel that this compromise answers the privacy issues raised by Mr. Bloom and his clients, as well as, providing a deterrent effect against the type of behavior that we originally cited for the doors coming off entirely. Additionally, we believe that the proposed ordinance will also benefit the businesses that it regulates because:

1. Employee licensing obligates the Police Department to conduct background investigations on all applicants. This will ultimately result in the selection of better employees.
2. If the denial or revocation of a license is recommended a hearing is required before any action is taken.
3. The presence of partial doors should not reduce business.
4. The presence of partial doors will assist the businesses in maintaining a cleaner environment and meeting the regulation set forth in the ordinance.

It is for these reasons and the belief that the ordinance will not adversely affect these business establishments that the Police Department recommends the ordinance be adopted in its present form.

COPY

Honorable Alan A. McDonald

RECEIVED

JUL 30 2002

OFFICE OF THE CITY ATTORNEY

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON
AT SPOKANE

WORLD WIDE VIDEO OF
WASHINGTON, INC.,

Plaintiff,

v.

CITY OF SPOKANE,

Defendant.

No. CS-02-0074-AAM

DECLARATION OF TIM
SZAMBELAN IN SUPPORT
OF CITY OF SPOKANE'S
MOTION FOR SUMMARY
JUDGMENT

I, TIM SZAMBELAN, hereby declare under penalty of perjury under the laws of the state of Washington that the following is true and correct.

1. I am of legal age, am competent to testify, and I make this declaration on my own personal knowledge.

2. I have been an assistant city attorney for the City of Spokane (the "City") since 1991.

3. I have knowledge of the contents of the Legislative Record from City Ordinances No. 32778 and 33001 (the "Ordinances"). Attached hereto as exhibits are excerpts of the Legislative Record of the Ordinances.

I declare under penalty of perjury under the laws of the State of

DECLARATION OF TIM
SZAMBELAN- 1

K:\24148\00020\TLN\TLN_P20QA

PRESTON GATES & ELLIS LLP
701 FIFTH AVENUE
SUITE 5000

MILWAUKEE, WISCONSIN 53204-7078 001102

TELEPHONE: (206) 623-7580
FACSIMILE: (206) 623-7022

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Washington that the foregoing is true and correct:

EXECUTED this 24th day of July, 2002 at Spokane, Washington.



TIM SZAMBELAN

DECLARATION OF TIM
SZAMBELAN- 2

K:\24148\00020\TLN\TLN_P20QA

PRESTON GATES & ELLIS LLP
701 FIFTH AVENUE

SUITE 5000
MILWAUKEE, WISCONSIN 53101-7078
TELEPHONE: (206) 623-7580
FACSIMILE: (206) 623-7022

001103

CODE ENFORCEMENT COMPLAINT FORM

CODE ENFORCEMENT
MUNICIPAL BUILDING/BOX 165
808 WEST SPOKANE FALLS BLVD
SPOKANE WA 99201-3333
(509) 625-6083

PLEASE COMPLETE ALL APPLICABLE INFORMATION AND RETURN TO THE ABOVE ADDRESS. PROVIDE AS MANY RELEVANT DETAILS AS POSSIBLE INCLUDING SPECIFIC ADDRESSES, LICENSE PLATE NUMBERS, ETC.

YOU MUST SIGN YOUR COMPLAINT BEFORE THE CODE ENFORCEMENT OFFICE CAN INVESTIGATE THE MATTER, UNLESS A LIFE THREATENING ISSUE EXISTS OR IF IT IS OTHERWISE DEEMED APPROPRIATE TO ACT.

ONE PROPERTY PER COMPLAINT FORM, PLEASE.

VIOLATION INFORMATION:

ADDRESS OF PROPERTY BEING COMPLAINED ABOUT: 4801? entered
Spokane Ave 99207

PROPERTY OWNER (IF KNOWN) _____

NAME OF RESIDENT: Hollywood Adult Store PHONE NUMBER: _____

SUMMARY OF COMPLAINT: Store in violation - within radius of
250 ft of Residential area
Graphic material found on our property

(If necessary use back of complaint form.)
HOW LONG HAS VIOLATION EXISTED? 3 or 4 weeks

COMPLAINANT INFORMATION: (REQUIRED)

YOUR NAME: _____

YOUR ADDRESS: _____ Spokane WA _____

SPO 000004

HOME PHONE NUMBER: _____ WORK PHONE NUMBER: _____

CONFIDENTIALITY PREFERENCE - DISCLOSURE OF INFORMATION REVEALING YOUR IDENTITY WILL DEPEND ON APPLICATION OF THE PUBLIC DISCLOSURE LAW, CHAPTER 42.17 RCW, OTHER APPLICABLE STATUTES AND WHETHER THE COMPLAINT IS CRIMINALLY PROSECUTED. WITH THAT UNDERSTANDING, PLEASE PUT YOUR INITIALS IN THE SPACE THAT INDICATES WHETHER OR NOT YOU DESIRE THAT INFORMATION REVEALING YOUR ENTITY BE DISCLOSED. FAILURE TO SELECT DISCLOSURE OR NO DISCLOSURE WILL RESULT IN THAT INFORMATION BEING SUBJECT TO DISCLOSURE.

Ca DO NOT DISCLOSE _____ YOU MAY DISCLOSE

INITIAL

INITIAL

RECEIVED

DEC 01 1998

SIGNATURE: _____ DATE: 11-30-98



CODE ENFORCEMENT COMPLAINT FORM

CODE ENFORCEMENT
MUNICIPAL BUILDING BOX 165
808 WEST SPOKANE FALLS BLVD
SPOKANE WA 99201-3333
(509) 625-6083 FAX 625-6802

PLEASE COMPLETE ALL APPLICABLE INFORMATION AND RETURN TO THE ABOVE ADDRESS. PROVIDE AS MANY RELEVANT DETAILS AS POSSIBLE INCLUDING SPECIFIC ADDRESS, LICENSE PLATE NUMBERS, GARBAGE (HOUSEHOLD, YARD WASTE, WOOD) ETC.

A SIGNED COMPLAINT FORM IS NECESSARY BEFORE THE CODE ENFORCEMENT OFFICE CAN INVESTIGATE, UNLESS A LIFE THREATENING ISSUE EXISTS OR IF IT IS OTHERWISE DEEMED APPROPRIATE TO ACT.

ENFORCEMENT NUMBER

VIOLATION INFORMATION:
ONE ADDRESS PER COMPLAINT FORM:

ADDRESS OF PROPERTY BEING COMPLAINED ABOUT: _____

3813 N Arushin

PROPERTY OWNER (if known): *Mario Barchanti*

NAME OF RESIDENT: _____ PHONE NUMBER: _____

CHARACTER OF COMPLAINT: *Adult Barking*

HOW LONG HAS VIOLATION EXISTED? *Just beginning* (If necessary use the back of complaint form.)

COMPLAINANT INFORMATION: (REQUIRED)

PRINT YOUR NAME: _____

YOUR ADDRESS: _____

Spokane Wa ZIP CODE: _____

HOME PHONE NUMBER: _____ WORK PHONE NUMBER: _____

CONFIDENTIALITY PREFERENCE: DISCLOSURE OF INFORMATION REVEALING YOUR IDENTITY WILL DEPEND ON APPLICATION OF THE PUBLIC DISCLOSURE LAW, CHAPTER 42.17 RCW, OTHER APPLICABLE STATUTES AND WHETHER THE COMPLAINT IS CRIMINALLY PROSECUTED. WITH THAT UNDERSTANDING, PLEASE INITIALS IN THE SPACE THAT INDICATES WHETHER OR NOT YOU DESIRE INFORMATION REVEALING YOUR IDENTITY BE DISCLOSED. FAILURE TO SELECT DISCLOSURE OR NON-DISCLOSURE WILL RESULT IN YOUR INFORMATION BEING SUBJECT TO DISCLOSURE.

A DO NOT DISCLOSE _____ YOU MAY DISCLOSE
INITIAL INITIAL

SIGNATURE: _____ DATE: *7/25/00*

JUL 26 2000

SPO 000093

COMPLAINT FORM 10-991

CODE ENFORCEMENT COMPLAINT FORM

CODE ENFORCEMENT
MUNICIPAL BUILDING BOX 165
808 WEST SPOKANE FALLS BLVD
SPOKANE WA 99201-3333
(509) 625-6083 FAX 625-6802

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ENFORCEMENT NUMBER

VIOLATION INFORMATION:
ONE ADDRESS PER COMPLAINT FORM:

ADDRESS OF PROPERTY BEING COMPLAINED ABOUT: 3813 N. ^{DIVISION} ~~BLVD~~ ST.
SPOKANE, WA.

PROPERTY OWNER (if known): MARCO BARBANTI

NAME OF RESIDENT: _____ PHONE NUMBER: _____

RY OF COMPLAINT: According to information I have the above named person is planning to open an adult bookstore or an entertainment establishment at the above address.

According to zoning code 11.19.143-B2-1 Zone the (over)
HOW LONG HAS VIOLATION EXISTED? _____
(If necessary use the back of complaint form.)

COMPLAINANT INFORMATION: (REQUIRED)

PRINT YOUR NAME: _____

YOUR ADDRESS: _____
SPOKANE, WA. ZIP CODE: _____

HOME PHONE NUMBER: _____ WORK PHONE NUMBER: NONE

CONFIDENTIALITY PREFERENCE: DISCLOSURE OF INFORMATION REVEALING YOUR IDENTITY WILL DEPEND ON APPLICATION OF THE PUBLIC DISCLOSURE LAW, CHAPTER 42.17 RCW, OTHER APPLICABLE STATUTES AND WHETHER THE COMPLAINT IS CRIMINALLY PROSECUTED. WITH THAT UNDERSTANDING, PLEASE INITIALS IN THE SPACE THAT INDICATES WHETHER OR NOT YOU DESIRE INFORMATION REVEALING YOUR IDENTITY BE DISCLOSED. FAILURE TO SELECT DISCLOSURE OR NON-DISCLOSURE WILL RESULT IN THAT INFORMATION BEING SUBJECT TO DISCLOSURE.

DO NOT DISCLOSE YOU MAY DISCLOSE

SIGNATURE: _____ DATE: July 24, 2000

COMPLAIN.SIG(12-10-99)

SPO 000094

MILWAUKEE, WI AE REGS 001107

Pg 2

above named person
is in violation of the code as ~~the~~ is less than
750 feet from a public playground known as "Clark
Park" which is just across Garland Avenue and
this bookstore is only about 20 to 30 feet from
one family residence as I live across the alley
from the proposed site. Also I don't want
that bookstore close to other children that
lives within the 750 foot area.

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A SIGNED COMPLAINT FORM IS NECESSARY BEFORE THE CODE ENFORCEMENT OFFICE CAN INVESTIGATE, UNLESS A LIFE THREATENING ISSUE EXISTS OR IF IT IS OTHERWISE DEEMED APPROPRIATE TO ACT.

ENFORCEMENT NUMBER

VIOLATION INFORMATION:
ONE ADDRESS PER COMPLAINT FORM:

ADDRESS OF PROPERTY BEING COMPLAINED ABOUT: 3813 N. DIVISION
SPOKANE, WA 99205

PROPERTY OWNER (if known): MARCO BARBANTI

NAME OF RESIDENT: _____ PHONE NUMBER: _____

REASON FOR COMPLAINT: PLEASE DO NOT APPROVE BUSINESS OPENING IN ABOVE ADDRESS. IT IS OBVIOUS TO BE IN VIOLATION OF: 11.9.143- B2.1 ZONE I LIVE IN THE SAME-BLOCK SEPERATED BY ALLEY. MY GRANDCHILDREN ARE FREQUENT VISITORS & HAVE MANY CHILDREN ON THIS BLOCK LIVING HERE! PLEASE SAY NO!
(If necessary use the back of complaint form.)

HOW LONG HAS VIOLATION EXISTED? _____

COMPLAINANT INFORMATION: (REQUIRED)

PRINT YOUR NAME: KAREN L. REL

YOUR ADDRESS: _____
SPOKANE, WA ZIP CODE: _____

HOME PHONE NUMBER: _____ WORK PHONE NUMBER: _____

CONFIDENTIALITY PREFERENCE: DISCLOSURE OF INFORMATION REVEALING YOUR IDENTITY WILL DEPEND ON APPLICATION OF THE PUBLIC DISCLOSURE LAW, CHAPTER 42.17 RCW, OTHER APPLICABLE STATUTES AND WHETHER THE COMPLAINT IS CRIMINALLY PROSECUTED. WITH THAT UNDERSTANDING, PLEASE INITIALS IN THE SPACE THAT INDICATES WHETHER OR NOT YOU DESIRE INFORMATION REVEALING YOUR IDENTITY BE DISCLOSED. FAILURE TO SELECT DISCLOSURE OR NON-DISCLOSURE WILL RESULT IN ALL INFORMATION BEING SUBJECT TO DISCLOSURE.

DO NOT DISCLOSE KLR YOU MAY DISCLOSE

SIGNATURE: Karen L. Rel DATE: 7/24/2000

COMPLAIN.SIG(12-10-99)

Attachment "A"

PROPOSED AMENDMENT TO THE
SPOKANE COUNTY ZONING CODE
"Adult Retail Use Establishments"

Added wording is in underlined
Deleted wording is in strike-through.

Amend Chapter 14.300(Definitions) as follows:

~~Adult Bookstore: An establishment having as a substantial or significant portion of its stock in trade, books, magazines and other periodicals which are distinguished or characterized by their emphasis on matters depicting, describing or relating to "specified sexual activities" or "specified anatomical areas" as defined in this section.~~

~~Adult Entertainment Establishment: An establishment defined pursuant to Chapter 7.80 of the Spokane County Code. ~~An enclosed building, or any portion thereof, used for presenting performances, activities, or material or relating to "specified sexual activities" or "specified anatomical areas," as defined in this section, for observation by patrons therein; Provided, however, that a motion picture theater shall be considered an adult entertainment establishment if the preponderance of the films presented is distinguished or characterized by an emphasis on the depicting or the describing of "specified sexual activities" or "specified anatomical areas"; provided further, however, that a hotel or motel shall not be considered an adult entertainment establishment merely because it provides adult closed circuit television programming in its rooms for its registered guests~~~~

Adult Retail Use Establishment:

A retail establishment which, for money or any other form of consideration, devotes a significant or substantial portion of stock in trade, to the sale, exchange, rental, loan, trade, transfer, or viewing of adult oriented merchandise.

"Adult oriented merchandise" means any goods, products, commodities, or other ware, including but not limited to, videos, CD Roms, DVDs, magazines, books, pamphlets, posters, cards, periodicals or non-clothing novelties which depict, describe or simulate specified anatomical area or specified sexual activities.

"Specified anatomical areas" means

- 1) less than completely and opaquely covered human genitals, pubic region, buttock, or female breast below a point immediately above the top of the areola; or
- 2) Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

"Specified Sexual Activities means any of the following:

- 1) Human genitals in a state of sexual stimulation or arousal;
- 2) Acts of human masturbation, sexual intercourse, sodomy, oral copulation, or bestiality; or

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| A | Adult Entertainment Businesses in Indianapolis, 1984 |
| B | A Report on Zoning and Other Methods of Regulating Adult Entertainment in Amarillo (Texas), September 12, 1977 |
| C | Adult Entertainment Study, Department of City Planning, New York City, November 1994 |
| D | Report On the Secondary Effects of the Concentration of Adult Use Establishments in the Times Square Area, April 1994 |
| E | Final Report to the City of Garden Grove: The Relationship Between Crime and Adult Business Operations on Garden Grove Boulevard, October 23, 1991 |
| F | Report of the (Minnesota) Attorney General's Working Group on the Regulation of Sexually Oriented Businesses, June 6, 1989 |
| G | Report on Adult Oriented businesses in Austin (Texas), May 19, 1986 |
| H | Study & Recommendations for Adult Entertainment Businesses in the Town of Islip (NY), September 23, 1980 |
| I | Study of the Effects of the Concentration of Adult Entertainment Establishments in the City of Los Angeles, June 1977 |
| J | Forty Acre Study on Adult Entertainment, St. Paul, Minnesota, 1987 |

M I N U T E S

SPOKANE CITY PLAN COMMISSION
WEDNESDAY, NOVEMBER 29, 2000
CITY COUNCIL CHAMBER
AND
PLANNING DEPARTMENT CONFERENCE ROOM 200-2B
SPOKANE, WASHINGTON

MEMBERS PRESENT: Stanley Stirling, President; Phyllis Meyer, Vice-president; David Bray; Candace Dahlstrom (arrive at 10:00 a.m.); Robert Herold; Ted Horobiowski; William Kelley; Phyllis Meyer; George Nachtsheim (arrive at 1:30 p.m.).

MEMBERS ABSENT: Mike Kennedy; Jim Wilson.

LIAISON PRESENT: Al French, Neighborhood Council Liaison.

LIAISON ABSENT: Rob Higgins, City Council Liaison.

President Stanley Stirling called the meeting to order at 9:45 a.m. with a quorum present.

1. PUBLIC HEARING

- A. A public hearing to consider proposed text amendments to the Spokane Municipal Code Section 11.19. (Zoning Code) with regards to the definitions and regulations for 'Adult Use Establishments.'*

Mr. Stirling called on Patti Connolly Walker, Spokane County Prosecuting Attorney's Office for a report on the above described issue.

Ms. Walker said for the record she is also employed by the City as a City Attorney. Her office is in the county building. She went on to say that being presented is an Adult Retail Use Establishment Ordinance which are historically referred to in the city code as 'adult businesses' or 'adult bookstores'. The reason for the change in wording is that in the last several years the City of Spokane has been working with other cities across the state to develop an ordinance essentially working from a model ordinance so that all the cities and counties across the state that are looking at this issue would be 'on the same page.'

Therefore, they are not different terminology, different definitional sections so that when there are challenges to this type of an ordinance, staff can rely on what other entities have done.

Ms. Connelly said she would like to begin by talking about the type of business. People think that because these businesses sell material that is protected by the first amendment that there can be no regulation or zoning of this type of business and that is an incorrect assumption. They proceed when enacting ordinances of this type with the assumption that the material that is being sold, rented, leased, loaned, out of these businesses is protected by the first amendment. Occasionally it is discovered that these businesses do sell material which is considered obscene so it is not just regular adult pornography but it is pornography that crosses the line of protected material and is unprotected obscenity. The attorney's office begin with the assumption that the material that is sold in these facilities is entitled to first amendment protection. That doesn't mean that the business can't be regulated in any way. These businesses are treated essentially, from the court's perspective the same as an adult entertainment establishment that provides on-site viewing of adult activities like nude dance establishments. The other type of facility in the city and county are referred to as adult arcade establishments. Those are facilities that have peep show booths and also sometimes in the peep show booths not just video viewing but live dancing in the peep show booths. Each of these type of facilities do engage in activities are at the periphery of first amendment protection. With book stores they are a little more clear. They are entitled to full first amendment protection. The Courts have looked at this issue and determined that it is permissible for cities and counties to legislate, regulate, license, these types of facilities because of one main issue. That is that these types of businesses have historically been shown to produce as adverse secondary effects. Those adverse secondary effects are well-documented in the case law. There have been numerous studies over the last 25 years which have well-demonstrated the fact that adult entertainment businesses in general cause neighborhood blight, they cause a down-turn in property values, increase in crime and a whole host of other problems. For this reason the courts have determined that it is permissible to zone, regulate or license a book store, an adult entertainment establishment that is essentially a book store because they have been shown to produce similar adverse secondary effects to other adult entertainment establishments. So that the fact that you have a business that does not have on site viewing of adult entertainment activities, so you go into the retail use establishment or the adult bookstore, you merely purchase, rent, borrow, material. You don't actually watch in a arcade peep show booth or look at nude dancing in the establishment. The mere fact that you can purchase that material and take it away has for a variety of reasons caused the adverse secondary effects that has been previously mentioned. Therefore, the courts have determined that cities and counties do have a substantial governmental interest in curbing the adverse secondary effect of those businesses and one of the ways that a city or county can do that is by zoning these facilities.

Some cities and counties have gone to concentration models where they have essentially set up a 'red light district'. They will require that all of the adult entertainment facilities locate in an industrial, for example. The purpose of that is to remove them from

residential areas. For some cities and counties that works well because they have an area that is separated from the rest of their population. Most cities go with a dispersement model. That is what is being proposed to the Commission. The dispersement model is one that requires the facilities not locate within a certain distance of other businesses or residences that might experience adverse secondary effects if they are located in close proximity to one of the adult retail use establishments. The zoning buffers being recommended are the same recommended when the adult arcade ordinance was enacted. It is believed that the adverse secondary effects are very similar. A lot of the same issues are being dealt with and the distancing requirement of 750', in terms of requiring that these businesses not be within 750' is a reasonable distance given the makeup of Spokane and the issues that the Plan Commission determines in terms of planning and preparing for uses in the future. The goal is to keep the businesses as far away as possible from places where children might congregate, such as schools, churches, day cares, parks, residences but allow them to locate within the City of Spokane but require that they not be located in close proximity or within 750' of other adult entertainment establishment. It has been found that where these facilities are allowed to congregate impact on the neighborhood is increased for example along East Sprague.

Ms. Walker said what cannot be done is zone the places out of business. It is not permissible according to state & US Supreme Court. These businesses do have a first amendment right to sell material and they have a right to do it in most communities. Therefore the ordinance being proposed is 'content neutral'. If the ordinance is designed to curb the 'adverse secondary effects' it is considered content neutral. It does not mean that the city can't target a business that sells first amendment protected material. What content neutral means is that the city is dealing with the business that sells first amendment protected material, adult entertainment merchandise in a way that ensures that a substantial government interest, or compelling governmental interests which is to curb the adverse secondary effects. An ordinance needs to be narrowly tailored to achieve that interest. It is done by insuring that there are reasonable alternative avenues of communication for those businesses. The city insures that there are sufficient sites where they can locate within the city. Currently there are six retail use establishments in the City of Spokane.

Spokane does not, as do some cities, require that each adult entertainment use be a single use only. Some cities and counties have limited the use. Those cities that have done that have a great deal of problems. It is also difficult to establish that having a place that has adult material for sale and nude dancing in the same establishment causes more or worse adverse secondary effects. It is very difficult to separate those out. For that reason, staff is recommending the ordinance before the Commission today. It does not state that one cannot have an adult bookstore in the same facility as a adult nude dance establishment or as an arcade facility. What has been done is to ensure that there is sufficient number of alternative avenues for these places to sell their ware or loan their merchandise or trade it in whatever fashion they choose. The Planning Department has insured that there is a sufficient number of sites to which these businesses (the six businesses currently not conforming with what is proposed today) to relocate to.

With regard to relocation, case law has come down to a case by case basis by making an analysis as to whether or not a city or county has provided alternative avenues of communication if they have provided enough sites. Part of the reason for that is that the courts will look at a Planning Department's purpose or a Planning Commission's purpose when they are developing a growth management act or a overall plan for their city or county. When they do that the courts are required to look at each situation on a case by case basis. Some of the courts have said that is permissible if you have a certain percentage of land available for these businesses to locate or if there are a certain amount of sites or a specific type of site. The bottom line is – is there the same number of sites or more sites available for relocation than the number of businesses currently in operation in the community. Staff believes that the 750' dispersment model is a reasonable one for the Plan Commission to recommend adoption on because there is a reasonable alternative avenue of communication for these businesses.

Further, with regard to the relocation aspect, the City in its retail use ordinance indicated that these businesses that are retail use establishments will be required to relocate if they are not in conformance with the 750' dispersment model within one year of the adoption of the ordinance. That is the amortization provision. The amortization provision allows these businesses one year. The intent is that they should be given a sufficient amount of time to recoup any money that they might have expended at that particular location. What the courts have said is that they have a constitutional right to sell the material, to make it available for viewing but they don't have a constitutional right to make a profit. A city has to permit the businesses to locate someplace and have a viable business. To insure that occurs, an amortization period is provided. The recommended amortization period is one which has been adopted by many other cities and counties across the country. Also, built into the amortization provision a hardship provision where a business can demonstrate that they will incur substantial hardship or the facility is not for use for any other purpose they can ask for an additional amortization period (have the amortization period be extended). Spokane County adopted essentially the same ordinance a year ago, being proposed to the Commission today. The County Planning Commission chose to recommend an amortization period of five years. Ms. Walker said it is her opinion that that is overly generous. It delays the time within which the city or county will be sued because it gives the business plenty opportunity to get into other areas or find sites. She said she is recommending the one year amortization period.

Ms. Walker said one of the issues that comes up with this type of ordinance is the language that chosen in relation to the definitional provision. She read that into the record as follows:

An adult retail use establishment is an enclosed building or any portion thereof which for many or any other form of consideration devotes a significant or substantial portion of stock in trade to the sale, exchange, rental, loan, trade, transfer, or viewing of adult oriented merchandise.

Ms. Walker explained to the Commission that adult oriented merchandise is defined the same way as adult arcade businesses is defined and in the County for nude dance

establishments. The adult oriented merchandise definition essentially says that if there is specified sexual activities for specified sexual material then that falls within the category of adult oriented merchandise. Those definitional provisions have been tried over and over again over the last 25 years and always withstood constitutional challenge.

With regard to the “devotes a significant or substantial stock in trade” provision has also been tried over the last several of years. Not just in this area but also having to do with other provisions have to do with other provisions in the United States code.

She said she is proposing the substantial stock in trade definitional provision because she believes it is defensible, reasonable, it is not difficult for adult retail businesses to determine whether in fact they fall within that criteria or not. This does not apply to the 7-11 that has a couple of adult entertainment videos for sale or rent, it doesn't target the kind of business that might have a little risqué lingerie or anything of that nature. It is intended to encompass only businesses that sell adult entertainment material to individuals who go there for that purpose. The way to demonstrate the way she has done her homework is by presenting a very detailed legislative record. Some cities and counties don't have the experience of having a very good local legislative record.

Ms. Walker said she would give a list of the kind of adverse secondary effects that are expected and are well documented in the legislative record. These pop up repeatedly in court cases. Both the US and the State Supreme Court have discussed at length these kind of businesses and what they do to neighborhoods and communities. The kinds of adverse secondary effects seen locally are an impact on the surrounding neighborhoods, in residential neighborhood traditionally crime rates increased, property values decrease and an increase in transiency. The values of residential and commercial properties tend to be diminished dramatically and the closer the distance to the residence or to the business of the adult entertainment establishment the more dramatic the increase or the decrease in property values. The increase tends to be more dramatic where there is a concentration of businesses. So if there is more than one adult entertainment establishment in close proximity to another adult entertainment, historically there is worse adverse secondary effects in that area.

DAVID BRAY asked for a definition of “viable alternative location”.

Ms. Walker said in the State of Washington is the Renton case, which dealt with the same issue. The bottom line is that you can't provide them an alternative location that is under water. You have to insure that it is in an area where there is a sufficient infrastructure, where roads can lead to these facilities. It can't be a remote or unbuildable location that it is not a reasonable alternative. It is not necessary to say there is a certain number sites and show where they are located. All that is necessary is to say that there are sufficient sites available. The city does not have to find those sites for them.

PUBLIC TESTIMONY:

JOE ASTERINO, [REDACTED] said he is one of four dentists in downtown. The practice has been there since 1947. He said he has been there 35 years through "thick and thin". Bikers, bars, fights, but the detrimental aspect of the book store right next door to them has financially impacted them. His staff has to go out and pick up books, wrappers, every morning. Female employees have been rudely accosted. Three weeks ago they tried to usher some young men off their property that had been around the book store (Hollywood Boutique) and they proceeded to get a rock and throw it through one of his patients windows. (That's on a police report). A pedodontist in his building sees a lot of children. The patients parents of these children are not happy with them. They will go elsewhere. This is a financial impact that they aren't going to stand for. He is in the process of selling his practice, his part of the practice. There is hundreds of thousands of dollars involved in this. They are the largest employer in downtown Hillyard. Three people have looked at his practice and have all commented on the aspect of an adult bookstore next door to them. This bookstore is within 700' of residential and single dwellings. So they are already illegally located. He said he understands that Ms. Walker has said this cannot be defended but he has obtained legal advice as a result of the violent incident and until a few days my attorney has been in the process of looking for someone who will handle this case on a financial aspect. The new patient load in just this year has dropped 18 percent. This is a practice that has been in existence a long time. They are not according legal counsel, the bookstore would be one of the people they would go after, but so would the city for allowing this with the statute on the book. I understand that the period to move is a year. For him that's too short. Three months to a month, six months is too long.

RON HANSEN, N. [REDACTED] owner of Century 21/Advance said he has been at that location 6 ½ - 7 years. He discovered through several of his agents who saw a sign copy deliver a xxx type sign for the building next door to him on Friday, July 21, that this type of business was trying to open in the building next door to him. Obviously he had grave concerns and immediately contacted everybody he could think of at the city, city council people, code enforcement people, building department people, special prosecutors, the police department and initially was told they would not be allowed to open. They were in violation of the current ordinance and I'm going to make a couple of points today and probably the main one that supports what Ms. Walker has done, and he appreciates the research she has done, she's done an excellent job in preparing what she has, and understands what she has done will not help his business at this point because of things like an amortization period. He wants to give the Commission the facts about the adverse secondary effects on his business. As time insured after July 21 it became apparent the city was not going to stop this place from opening and they did. Since that time he invested a sum of money to put high speed internet to all the desks in his office because he was in the process of expanding, recruiting some new agents. He had five commitments from a

couple of other offices, one that was about to close down on N. Division and a couple of other people from various offices and he was going to be full and he was going to be able to pay back the money he had invested to do the remodel. What happened he invested that money and the place next door began to open. He not only didn't get any of those people, and they were very specific on the reason, they didn't come to work for me and apologized to me, they understood my problem but they didn't want to make it their problem and they didn't want to have to bring their clients into a driveway that was shared with a porn shop. Their words. We can call it an adult bookstore but out there in the street people are a little more colloquial. They didn't want to bring their clients into a porn shop drive way and turn left instead of right and come to the Century 21 office. He did loose a couple of agents that had been with me for some time. One worked with him for 24 years, which was tough but business was effected. He had other reasons, doing some other things, but this hurried his decision. He said he thought he was going to get an agent who was going to overlook this, hopefully the week they could shut the place down or he would move, after an interview process and a couple of phone calls he called and said "Ron, looking at the whole picture, talking to my clients, praying over it with my wife, there is no way I can come to work there right now, and I apologize to you because I really wanted to go to work for your company." In total he has had 8-9 agents that he doesn't have working for him specifically because of that bookstore next door. The incidents that are happening around the neighborhood – there are residential homes directly behind his office, directly behind the porn shop, virtually the porn's parking lot goes right up to their fences. There are children in these homes, there are elderly people. One has been there 54 years, one has been 50 years, they are afraid to go in their back yards especially at night. He has had personal incidents where he has had to call 911 because he was personally threatened by a guy who was inebriated, pulling into his parking lot on a Saturday. He was working about 7:00 – 7:30 in the evening. He just asked him – he didn't even pull into a parking spot in my parking lot, he pulled into the middle of the parking lot, stopped and said you don't want me to park it should be posted. Well, he was standing in front of a 4' x 8' sign that said no parking with the towing and all that. He asked him to please move, because he isn't supporting the parking for the bookstore next door. He came at him and he got into his car and called 911 and it turned into an ugly thing. They have had several of their clients turn around and leave because of some shouting matches going on at the back door. They don't go in their front door, they only have a back door entry and they pull up, see that place and they don't want to come there. He has had clients that he's asked to meet him at the office, and they ask if he's the one that's right next to the bright green porn shop and ask to meet him somewhere else. He said he doesn't know how many clients he's lost that haven't turned in. He doesn't know who drove by and didn't turn in. He said he is in a situation where he's been in the real estate business quite a while and there's been ups and downs in the market since 1976. From 1980 to 1990 there was virtually no increase in values in Spokane but the costs kept going up. The sales were tough to get, but he was able to weather that. Then 1990-1993 Spokane was really on fire in real estate and things were going very well and

things were going great. Right after that he moved into his current building and things have been flat since about 1994 in real estate. You can make a living but not really rolling. All of a sudden, he weathered that, three – four months ago one little bright green porn shop opens up next door and his business is in threat of closing at this point. The money that he could have used to make a move has been eaten up with the lack of income because of that thing being there. It is the only reason. It is the sole reason. He said he was in the best position he had been in in six years to have his business move forward until this happened. He worked with the city very closely, the city manager, the mayor, the mayor's office, Ms. Walker's office has been very very sympathetic but it hasn't helped his business. His last statement is that in relation to the amortization period this new ordinance proposed, says proposed "amendment", because they are amending an existing ordinance, there is an ordinance in place, that disallows that book store to be where it is. They're supposed to be 750' from a park, there about 160' lot line to lot line. They're supposed to be 750' from a residential zone, they are back to back, connected. There are some other violations you could probably find in there but on that point alone, his financial loss as hard as it is for him, kind of pales in comparison to the potential lowering of community standards and the danger to the community. There are children there and there are elderly people. He really feels for the doctor who spoke before because they have a very similar experience. Allowing this place to stay open after the City Council would get this with the Commission's approval, get stamped out and in place and then given a year – she understands from Ms. Walker that the owners of these businesses can wait up to 30 days prior to the end of the amortization period and then file for a stay and start the court actions. The city is going to be in court over this. The owners of the book store have said so in interviews to the newspaper and to the TV stations news, that they will take the city to court. Delaying trying to shut them down is not going to eliminate the court suit. It might leave them in place long enough where instead of the abduction of a couple of students that happened recently, we know there is a tie to it, unless we are intentionally naïve we know there is tie to it. What if it's a little girl, or a lady that has lived there for 54 years and she's abducted or raped. The loss of his business or his income will pale in comparison to the liability the city will have. He thinks they need to go ahead and put their foot down, forget the amortization period. He understands the city will be at risk but they'll be in court anyway. He hopes the Commission will consider the evidences, that legal businesses that have never violated an ordinance, existing or new ordinances, are losing their businesses. They want to give somebody that has damaged those businesses another year? To damage more businesses? Or the final strangle hold to put those already damaged out of business? That doesn't seem fair.

MRS. MEYER asked why the permit went through. It is semantics in terms of the definition of the ..

Mr. Hanson said that is a matter of opinion. Ms Walker has done a lot of work in conjunction with the County over a year ago to put a County ordinance together.

When that was complete, that work in that completed ordinance, which the Commission sees before them was taken to Jim Sloane, City Attorney, and was told they were ready to go and he thought there were greater priorities in place at the time. He went on to say that he was in the Mayor's office about two weeks ago, with the Mayor, the City Manager, the City Attorney, Ms. Walker, Mr. Mercer and a couple of others. In that meeting, he expressed that he had contacted everybody he could think of at the city on July 21, 22nd, 23rd and 24th and that was 3 ½ weeks prior to the opening of the business. At that time, sometime between when he first contacted the city and the opening of the business, Ms. Walker was made aware of the situation. Ms. Walker had gone to Mr. Sloane at that time and said there was two options, they could do an interim ordinance or do a moratorium and after her research decided that the interim ordinance would be much more defensible by the city and stop this place from opening. For some reason Mr. Sloane decided it wasn't a priority at that time also. The business license itself isn't subject, at the time its applied for to review ordinances and that type of thing. It's an administrative type thing. It's up to the code enforcement and the Legal Dept. of the use to use the laws and powers that be at the city, whatever the process is to shut them down. They should have been shut down before they opened. There's no doubt about that. I have talked to attorneys also. He said he has not talked to the people at the city about litigation or trying to recoup losses or damages. The thoughts have been there though. Because he wanted to be an advocate with the city to try get done what needed to be done through the proper channels and work with them to get the place shut down. He didn't want to have to flee from an illegal business (in his opinion) when he's been operating a business for 24 years legally. It doesn't seem right. But with these amortizations periods is apparently what is going to happen because he can't afford to stay there and he can't afford to move. He said he hopes the Commission considers his testimony, he knows there are legal constraints, but it also has to be considered what the right thing to do is. Adverse effects have obviously been established for this type of business or they wouldn't all be here today. There wouldn't be an old ordinance if they hadn't been established. His question from a personal view is there are adverse effects established why is it necessary to allow them anywhere, if it has been shown that it is bad for the public safety. There are cities that don't and have defended themselves successfully. He guesses it is just community standards and in our city we are saying our standards say in the right place they are OK. That is his personal opinion. If there is a preponderance of community desire to be able to have these kind of businesses, they need to be restricted. The public safety needs to be protected. They need to protect the kids behind this place, those elderly people and selfishly his business. He thinks he is entitled to that too.

ROBERT HEROLD said that as he reads it, Mr. Hansen is right, it is changing the definition. It is establishing the amortization and tightening up language here and there. If this is an enforcement question, as it appears that it was, why wasn't it just enforced? How can you have other priorities? He said he was very confused. Mr. Hanson's particular issue appears to be an enforcement issue not a planning

issue and he frankly doesn't understand why the enforcement didn't take place. Maybe that's an inappropriate question for him to ask.

Mr. Hanson said it is probably an appropriate question. He said they are all pretty much aware that the city has gone through some times when they have been defending themselves in lawsuits over bridges and with the Marks family and a few other issues that have cost the city a lot of money. Apparently they are getting some money back on the bridge issue. That's great. But the city was in a very tender time when this all started. They didn't want to go to court over anything. They were concerned about what it might cost the city. That is from city officials at the highest level. The city did try to shut down (and he's not sure of the exact name) the same ownership of the building, Mr. Barbanti, a building across the street from Northtown. The city did attempt to shut that down. There was a hearing examiner review and based on that the city got a little skittish that they could defend themselves on the current ordinance because of the way it was handled, it was found in favor of Mr. Barbanti and World Wide Novelty. The reason, if you read the material from the Hearing Examiner, had nothing to do, or very little to do, with the ordinance but the fact the city brought no evidence. The Hearing Examiner wouldn't find with prejudice as the plaintiff wanted because the city might want to come again or the neighbors might want to come again that are being violated, the ordinance is being violated obviously. They asked for bookkeeping to show how much of certain items were being sold and then at the time of the hearing waived their request. They hadn't even counted the videos, or books, or square footage. They brought no evidence. So the Hearing Examiner couldn't find for the city because there was no evidence. (That is file #92-90-AP). There are some good people working on this and he appreciates the people that have worked hard. The will of the City Council or the will of the enforcement people, how its effected, maybe Mr. Sloane has other things on his mind and this issue isn't at the top of his mind the last few months. There needs to be a point where the city picked its fight. The city is going to get sued if they are not allowed to open, but that is the right fight to pick. Don't let the city and the people be at risk and the businesses at risk because they are acting lawfully. If the city is going to get sued, pick the fight that supports the laws and the support the public good.

DAVID BRAY said he had a question for Ms. Walker. Relative to what Mr. Hanson said. He is curious about Mr. Hansen's and Mr. Herold's concern relative to enforcement and provide some assurances that if this ordinance is passed today the one year amortization period will be enforced, or anything relative to this situation that could give the community some assurances this would pass.

Ms. Walker said Mr. Hansen is correct. The City does currently have a provision that deals with adult bookstores and zones them very similar to what is being proposed today. The definitional section has been changed and added some information that staff thinks is necessary to change the stock and trade issue a little bit. It is not that dissimilar to what is already on the books. She said it is her position that after studying the issue with respect to retail book establishments or

bookstores separate from other adult entertainment establishments that that provision is not enforceable. It is not enforceable because it is not defensible. The city could enforce it, the city would be sued, and the city would lose. That is her position. It has been her provision that the city should repeal that provision or amend it which has been recommended over a year, which they were unable to do for a variety of reasons. It wasn't here decision to make.

Mr. Bray said with the few changes what makes this more defensible than the old one.

Ms. Walker said the reason she doesn't think the old provision is defensible is because there was not a sufficient legislative record to support. In 1985-86 the city first started looking at these issues. That was before she joined the City Attorney's office on the civil side. She went back through all the records when she first started working in this area and reviewed the legislative record that they had in place to support the bookstore part of the zoning provision. Essentially what she did was say book stores, adult arcade facilities, nude dance facilities, all adult entertainment establishments shall be zoned in this way which is essentially be recommended now. What they didn't do when they created the legislative record and through no fault of the staff that did it, they didn't separate out the adverse secondary effects that occur as a result of retail use establishments. The reason they didn't do that is because nobody else was doing. There hadn't been legal challenges. Nobody knew it would be a problem to not separate these kinds of adult entertainment businesses. It wasn't until subsequent to that the challenges started to occur. There was about a 15 year period where there was a lot of active litigation in this area. A lot of it comes specifically out of Washington State. There is a lot of good case law in this state dealing with these issues. When she started to look at the issue, when she was first brought on to look at these issues, the city was being sued over the adult arcade ordinance. Upon review of that ordinance it was her position that it didn't do anything. It was a two liner. All it said was you had to have the booths all lined up in a row, and you have to keep the lighting at a certain level. That didn't meet the needs of the community. The city revamped that ordinance. They wrote a comprehensive 20 page ordinance that dealt with all the problems attendant to that business. At the same time she studied all the issues with respect to all different types of adult entertainment facilities. Looked at all the case law in the area. There is a lot of case law in this area. It's become a very narrow area to practice in but it also there is a lot of information at there to rely upon from other cities and counties law suits. These businesses do not have a problem spending money defending or challenging ordinances of this type to continue to operate. Many cities and counties back down and they don't enforce. The city didn't want to do that in Spokane. What was done with the arcade provisions in 1993 said they would enforce it and wrote a new ordinance, litigated 5-6 years and were successful every step of the way. Litigated in state court, federal court, multiple challenges from multiple businesses in all different levels. Prosecuted facilities for violating the ordinance and were successful all the way along. They have a good track record both in the

city and the county. The problem why they can't enforce this is because there is not a legislative record that supports. Back in the mid-80's they didn't know what they know now. They didn't know they had to say specific things to have it upheld. The kinds of things she has discussed with the Commission today. So when she looks back at it, when they initially looked at enforcing the ordinance it was determined that all the businesses they had at that time were grandfathered in so the enforcement issue in the early '90s was not an issue with respect to all of the existing businesses. When the city enacted the original 750' for all these businesses it, for whatever reason, grandfathered him. Didn't want to deal with the litigation. And part of that was because amortization was a new thing, and they were getting challenged. Now they know they can put in amortization periods, require relocation and can do it as long as there is a good legislative record. With respect to why the Hillyard business and the Division business have not been enforced, which are both owned by Jim Sicilia, an individual out of California, have had many lawsuits with him over the years. He owns World Wide Video which is litigious all over the state. The reason they didn't enforce the two new businesses was because they didn't feel the ordinance was defensible. If they had enforced they likely would have lost. What they opted to do instead was write a new ordinance. Unfortunately, only the County wanted to proceed that new ordinance. Consequently the Hillyard business opened, the city took another look at the issue, updated all the research that she had done in the past, and presented to the County Commissioners and the County Planning Commission what she believes to be a defensible ordinance. In doing that she has worked with other cities and counties to make sure they are all the same page. The Hillyard business and the Division business were not grandfathered in and they weren't existing when the original provision was enacted. Yes, they are technically in violation of the provision for zoning bookstore but in her opinion it is not defensible. The city was actually sued by Mr. Sicilia in 1996 in the County over the County's adult bookstore ordinance at that time. They knew they were going to be addressing this issue and adopting a new ordinance and were able to get them to agree to dismiss their lawsuit. Now there are additional businesses and they are attempting to deal with those.

STANLEY STIRLING asked Ms. Walker if she thought the year amortization is the least length of time she can defend.

Ms. Walker said she has found no support in the case law to indicate they could go with a lesser period. That is not to say that the courts in reviewing the constitutionality of an ordinance would not look at all of the facts including the facts specific to our community. To answer the question as honestly as possible, if they went with the lesser amortization period that she could defend it successfully. The one year is a sure thing. There are a lot of adverse secondary effects in these cases of two businesses in two communities that have been impacted and are requesting a lesser amortization period.

KAREN REL, [REDACTED] said her back fence is next to the alley that goes to the XXX store. She is also a small business out of her home. Her husband and she are the sole proprietors. She deals with the public daily. Mostly on the phone, but they do have drop in customers. She works at night doing her bookkeeping. The office she works in faces her back yard and directly into the arcade's parking area, next to the real estate. Last night between 11:30 p.m. and 1:15 a.m. there were 27 cars that pulled in and left. Some went in, some came out, some went to another car that was parked in this lot that they have gone in. She said she has seen limousines pull up. They have come out of the arcade giving them boxes. She isn't sure of all the terminology. That's not her world. She doesn't understand all of it. Is there an escort service going on in her backyard? These aren't people she wants to invite to her barbeques next summer. At night time there is more activity than there will ever be in the daytime. She said she wasn't not trying to pass a moral judgment on anyone. She said she was scared. She no longer can work in her shop, that their garage was converted into by herself. She has gone out to the shop at 8:30 at night when all the other businesses are closed on Division with the exceptions of the restaurants that have bars. They even have to close at 2:00 a.m. in the morning. But this place can go all night long. And they do. They're slamming, they're screaming at each other. They're urinating out in public. In the afternoon when the kids come home from school there is a group of children that come through the alley and there is a scuba diving place that is directly behind her house, right on Division. Scuba diving, real estate, triple X and the cellular phone place. These kids play in this alley. It's a perfect slope for their skateboards. She is in her shop right next to the alley, she hears the kids talking about going and getting some "porn". They discuss what their opinion of "porn" is. These kids are between 8 and 12. There has been impact on their business. She and her husband have struggled very hard to just support themselves, to not be on the roll of the welfare system. Nobody wanted to hire them so they made their own business. Their customers come and soon as they see the triple x will leave because they have their kids with them. She is not a radical. When she is in her shop doing her work an someone beats on the window with their fist and says "Hey bitch do you want to f--". Do I call 911? When the police get there they are gone. Can she give a description? She can't get out to see a license plate number quickly enough. Chief Bragdon is a customer of theirs and he told her that she had to come to these meetings, she needs to call someone and that's why she came today. She doesn't like the year amortization at all. Something needs to be done now. Why are they open 24 hours a day. They came in the night and painted that ugly chartreuse. Nobody did anything when the signed petitions. Nothing was done.

Ms. Meyer said she mentioned several times the sign in the front. The sign bothers her also. It's a large large sign and in the ordinance the signage is addressed as just a regular business sign and she is wondering – if the sign was regulated more closely would we have as much difficulty? She is not trying to dismiss what is already going on. The sign is obviously very large and very colorful. Its purpose is to bring people in. She is wondering is the sign is

regulated. She is wondering if there special regulations for signs of this nature. Also, is there a sign in the back of the building?

Mrs. Rel said there is a sign over their door. And one in front. It is purple and chartreuse.

Ms. Walker said she doesn't know if they specifically looked at the sign issue. At one point it was addressed, there was an addition to the back of the building at the Division and Garland building, there was some indication they were out of compliance with the other zoning provisions. Her relocation is that she doesn't know if the sign issue was one specifically determined but Dave Nakagawara and his staff looked at those issue and her understanding is that they haven't come up with anything that would be a violation sufficient to require a closing of the business at this time.

Mrs. Meyer asked what about sufficient to just redo the sign. Isn't it in the right-of-way?

Ms. Walker said she doesn't know if it is in violation of their general signage ordinances. What she can tell the Commission is that it be in compliance with the sign ordinances that all city businesses are required to be in compliance with. With respect to signage and adult entertainment is that the state supreme court has spoken to that issue. They have indicated they do not want jurisdictions treating these businesses differently from other businesses. Therefore they will be painted in garish, eye-catching colors in an effort to draw in business and there is no violation to have neon signs in your windows. That also could be considered part of the adverse secondary effects. There are reasons that you don't want these businesses located next to residences.

PENNY LANCASTER, [REDACTED] said on behalf of the citizens she would like to thank Patti Walker for all the work she has done, all the research, to craft such an excellent ordinance. She said she first became concerned about the injustices suffered by businesses and neighbors that were forced to live with adult bookstores in their neighborhoods back in 1992. At that time the city was unwilling to defend their zoning against the retail only outlets but the Hearing Examiner, Greg Smith, made it clear that the concerns of the citizens shouldn't be swept under the rug. He wrote in his decision: "... violations of the ordinance are fundamentally unfair to surrounding property owners and, therefore, if the ordinance is in fact being violated it is much more fair for the property owners to have another opportunity to prove the violation." Well, today testimony from Spokane citizens and other communities has been shared which substantiates the risks that these businesses pose to the public health, safety, morals, and general welfare of the citizens of Spokane. I have interviewed people living near the Erotique Boutique on Wellesley, Garland and Division, and on Market in Hillyard. In every case the comments include complaints about men parking away from the store and walking down the alley to access the store, offensive video

wrappers found in their yards, late night traffic, doors slamming, fear of using their own yards for relaxation or recreation, concern for young people waiting for the bus in front of the bookstore, fear of accessing other businesses nearby at night, and children looking in garbage cans for materials from the store. One resident said, "We are mainly senior citizens. Who'd want to buy our home and move into this area now?"

She continued by saying that at least 10 communities in western Washington are in the process of adopting and enforcing a similar ordinance. They are concerned, as we should be, that these businesses attract prostitution and violence against women.

The economic impact of trying to do legitimate business near one of the bookstores is dramatically illustrated by the problems incurred by Century 21, Dr. Asterino, and retail businesses on Wellesley, next to Erotique Boutique. She suggested the Commission drive down the 4800 block on Market or in the East Central Neighborhood and they will understand what economic divestment means, they will understand what dilapidation and property devaluation means, and why we should prevent an imminent threat of serious environmental degradation. These are serious impacts and the families and businesses should not have to put up with it another day longer. Please do not ask them to wait another year. If the rationale for this ordinance is eliminating the harmful secondary effects of Adult Retail Use Establishments, how can the Commission advocate leaving them in place for another year? The courts have upheld shorter amortization periods. A six month amortization period was upheld in *Hartley v. Colorado Springs, 7250 Corp. v. Bd. Of County Commissioners*, and *Hart Book Stores, Inc. v. Edmisten*. A 90 day waiting period was upheld in *Pennsylvania NW Distributors v. Zoning Hearing Board* and *Northend Cinema, Inc. V. City of Seattle*. The initial investment of these adult retail businesses has no doubt been recovered many times over – especially when you consider the low cost of fluorescent green or pink paint and the generous support of their landlord Marco Barbanti.

The Plan Commission should also recommend a second amendment: restricting their hours of operation to those of most other retail businesses. The security of nearby businesses, patrons, or employees is threatened by the increase in traffic late at night. This ordinance, as you know, is a content-neutral, TIME, place, and manner regulation. Constitutionally, municipalities have the authority to restrict hours of operation for purposes of protecting citizens and property. Please consider amending this ordinance by setting the hours of operations from 10 a.m. to 10:00 p.m.

If Mr. Sicilia, the manager of many of these stores, wants to content that he is not operating an adult bookstore because he sells high heels and lingerie, in addition to hardcore pornographic videos and magazines (according to his interview in the *Spokesman-Review*), then let him take down his triple x neon signs, and shut all

his videos and magazines in a back room with a warning for adults only like they do at Zip Trip convenience stores. Instead, he uses his aesthetically offensive signage to draw in people looking for material that appeals to their prurient interests. His own advertising and any other observer would conclude that his "stock in trade" (we're not talking about stock on the shelf) is substantially adult pornographic material.

She concluded by saying that hopefully, the Commission, the City Council, and the community are all beginning to become aware of the dangerous connection between the materials sold in these stores and the attraction for men who commit sexual crimes against women and children. Because of the recent kidnapping and sexual assault of two Mukogawa students she asked the Commission to recommend that the City Council pass this ordinance after reducing the amortization period to less than six months and restricting their hours of operation from 10:00 a.m. to 10:00 p.m.

Mr. Bray asked Ms. Lancaster regarding the reduced time of amortization, was that also in case of relocation.

Ms. Lancaster, she is not sure. These did not specifically have to do with relocating, rather regulations on the inside of the business and the way the business run. She thinks the main point the courts are looking it do the businesses, have they been compensated for the cost of relocating and does it weigh with the good of the community. She thinks the Commission has evidence before them that these businesses have been in business long enough to recoup any relocation costs and that the good of the community is at stake. Why should the businesses around them and residences have to put up with them one day longer. She thinks six months is too long.

Mr. Bray said the good of the community notwithstanding, he thinks the concern is, if he understood Ms. Walker, was the probable challenges by these businesses to that short of a period. He would add to that the cost to city government and therefore the taxpayers in the long run. This has to be weighed carefully whether this can be done effectively in six months or a year and cost effectively as well.

Ms. Lancaster said she thinks the courts are looking at a balance act. The Commission has plenty of evidence to weigh in favor of the city moving these places and six months is a reasonable time for them to pack up their goods and move, especially when they don't own the property. They're only renting. Its not like there is a major cost that they have to recoup. She said "have courage and do it."

Mr. Stirling advised the audience that there is about ½ hour left and the Commission will not be making a decision today. The citizens will have an opportunity to send in written comments.

GINNY FOSTER, [REDACTED] said she and her husband moved to Spokane four ago by choice. In the process of making a decision they gathered information from the Chamber of Commerce, school districts and realtors. They wanted to know if Spokane would be a good place to bring their family. They spent a full week of wining and dining as guests of their prospective employer and decided to move 2500+ miles away from their nearest relative. Not long after they settled in Spokane they discovered the "dirty little secret." Spokane is a haven for convicted sex offenders and in the four years they have been here the businesses that feed that sickness have continued to invade Spokane virtually unregulated. The Chamber of Commerce, realtors and the Welcome Wagon people neglected to point out the blight this industry has brought on Spokane. Now the nation knows what's been lurking around every corner from U-City to the University campus. It is time to public acknowledge that we are sick and it is up to the elected and appointed officials to begin the remedy of enforcing existing laws and vigorously regulating these industry in accordance with a community standard to be proud of.

KIMBERLY DRAKE, [REDACTED] said she is the Executive Director of Citizens for Community Values, but importantly it is important to understand that she is a victim of pornography. Pornography is not a victimless crime. It is not victimless at all. She said she is the ex-dancer that everybody writes about in the newspaper, that came out of DeJ'Vu three years ago. She said she thinks it is important to understand that not only does pornography have secondary adverse effects but it also affects the behavior of the user. It is like advertising. To deny the impact of what we view and read is to deny the impact of the individuals and companies that are willing to pay \$3 ½ million for a 30 second spot on the Super Bowl this year. Fifty-six companies are willing to do that. Those companies are either stupid, charitable or extremely intelligent and she would submit the latter. If pornography is like advertising, what is pornography selling? Pornography is selling lies about relationships, it tells us that women have value from the neck down. That sex is a spectator sport. The more participants the better. And we know from the Mukagawa incident that it is combining sexual arousal with violence. This is very dangerous. The objectification of women in pornography is the key factor in domestic violence. She said she knows Spokane also has a problem with domestic violence that is astronomical. She submits pornography has a part to play in that. She said she would like to tell the Commission how pornography has effected her life.

"When I was 12 years old a man I was baby-sitting for, he was a single father of two daughters introduced me to pornography and inappropriate touch. At 14 years old she was raped by a boy who was a friend of the family, he was the head life guard at the yacht club where my parents belonged and he was the star basketball player at the high school in our neighborhood. He continued to show pornography after the rape and continued to abuse me for a year until he was killed in a car accident. I began to numb the pain of that and self-medicate through drugs and

alcohol. I got married at 20 and six months into my marriage pornography was introduced by a cable television. My husband, I thought would leave me, if I told him this made me jealous, it hurt and it made me angry. And so, instead of telling him what I really felt, with the fear of abandonment and rejection driving my decision, I chose to participate in the pornography that he was looking at. I suffered from what is called "the centerfold syndrome". I tried to become what it was my husband was looking at in order to be loved, and to be the apple of his eye. I wanted to be his centerfold. I wanted to be the one that he loved more than anything. Isn't that what all wives want? Isn't that what all husbands want from their wives? We want to know that we are important, that we are significant and that we matter. In attempt to become it was that my husband was looking at, I made the decision, although I had a background of business management, sales and marketing, I had my own business for 10 years, I made the incorrect decision to become a stripper at the De J'Vu. In December of 1994 I entered an amateur contest. I was just shy of my 32nd birthday and I won \$50. I felt important. By February of '95 I worked in the industry. Now let me tell you as it relates to the hours of operation which is not included in this ordinance. I also do recommend that the hours of operation be regulated. You have the opportunity, by law, to regulate the time, the place, the manner. The how, the when, and the where. The law gives you that ability to do that. I encourage all of you to do that the full extent of the law. I didn't go into sexually oriented businesses to buy pornography, videos, magazines, sex toys and sometimes lingerie but most of my lingerie, ladies and gentlemen, was bought in Nordstroms and the Bon Marche and my high heels were bought in the shoe stores. I didn't go to the porn shops or the sexually oriented businesses or the adult bookstores or whatever you would like to label them. I didn't go there to buy my clothing however sexy or revealing it was. I went there to buy pornography. And I went there late at night. Although I was a porn addict, the shame that surrounds this addiction and it can be classified in some as an addiction, is huge. So that's why the after hour activity. When I worked for DeJ'Vu all of, or most of the experiences that were harmful in nature, the deviant type activity, the grabbing, the drug abuse, the people that came in to harm happened after the bars closed. There is absolutely no reason why these businesses need to stay open 24 hours a day. You have an opportunity today, ladies and gentlemen of the Commission to make a tremendous difference. You have the privilege to minimize the adviser secondary effects to our community. We, the citizens of Spokane believe that you want the best for us. We believe that you want a partner for the good of the community. We have to ask ourselves what kind of city do we want to live. What kind of a city do we want to hand over to our children? What kind of businesses do we want to invite into our community? What are we planning for in our future? Does pornography do good to our citizens and for our community? Or does it cause harmful effects? Not only to the community but to the

individuals involved. If we don't do something to regulate these sexually oriented businesses today, the porn promoters are going to set the standard for us. And ladies and gentlemen we will not like the outcome, I guarantee it. The public health and safety rests in your hands. Thank you very much."

KAREN DAVIS, [REDACTED] said she came to show her support. She believes the previous speakers have said it all and she hopes the Plan Commission is listening. Ms. Walker has done her homework. Ms. Davis said she wished the ordinance could be stronger. She supports the ordinance and wishes it could be implemented immediately.

MERILEE MOSER, [REDACTED] said she is a concerned citizen who carries very much about the issues being discussed today. She lives really close to where the first Erotique Boutique went in. When these laws first came on 10 years ago, this is before the big internet revolution. That's only happened the last five or six years and she feels the law is obsolete. Many people generate enough business just using the computer and the internet, she feels on that basis they don't have justification to be in the city. She'd like to see lawyers research this and her own feelings is they should address some state legislature to get the law amended. Basically a porn established could be dumped out in a wheat field 90 miles from the city and they could generate as much business. She is not encouraging that but she feels it is an obsolete law and no one is looking at the revolution that has just happening poignantly in even the last three or four years. Mini-malls and strip-malls and a geographic site is almost becoming obsolete. She encourages the Commission to think about that.

BRUCE WAKEMAN, [REDACTED] said he has been carrying around in the last few weeks a sign saying "I worship Christ not filth." He said he is getting great public support. He said bad company does corrupt good morals, and there are standards of right and wrong. God has set those standards. If the community wants to keep unity, morality and going by God's standard and showing we are people that can be trusted with one another, and that we will abide by those things that are good and will help build trust among people. When he was at the place in Hillyard, he saw a young woman waiting after her appointment at the dentist office who was afraid. Children are afraid throughout the city. What is lacking is the legislative record, so today the Commission has a chance to make some legislative record and say they do care and don't be concerned about the cost in law suits.

JOANNE MCCANN, [REDACTED] said she strongly support the amended ordinance however she asked the Commission to consider the six month amortization period.

PAUL UNGER, [REDACTED] said he was appalled at what he has heard regarding the hardships of two decent businessmen in the community. No one has

mentioned the pornography connection in the Yates case. It seems Spokane is becoming the poster child for pornography related crimes. He said he would encourage the City to shorten the amortization period and limit the hours of operation.

MARILYN LAWSON, [REDACTED] asked why the city is trying to zone sexually oriented businesses away from day care, parks, schools and residences. The answer is easy, its children, children, children and families. She said she would give the Commission a picture of the victims. Boys and girls that have lost their innocence by viewing pornography at an early age. Children used for sexual of fathers, stepfathers, and men they trusted; young men exposed to a false image of sexuality; men who can't shop using pornography because they are trapped in a secret life of addiction to pornography; women of men pre-occupied with pornography and the sex industry; women who are being treated with disrespect and sexually abused; young women trapped in an industry that exploits them and uses them as mere sex objects; neighbors that have increased crime and decreased property values because of the proliferation of pornography in their communities; society that has become desensitized to the prurient nature of sexuality; lastly, the very people that own or manage these stores are caught also. These are real people with real faces. The public is unaware that the skyrocketing number of people who are affected in their own neighborhoods by rape, molestation, disrespect is in most part due to the title wave of pornography and sexually oriented businesses in the community. She urged the Commission to adopt the ordinance with an amortization period of no more than six months.

CINDY OMLIN, [REDACTED] Mead, said she took a look at the City Charter to view the Commission's task. According to the Charter the Commission is to support and promote the City's health, convenience, safety, and well-being. She encourages and trusts the Commission to do the right thing. She supports the Commission in helping this be a community that lives with and for one another. She thanked the Commission for their service to the community.

FLOYD CONNOR, [REDACTED] said he is right across the street from the book store. He was unaware the store was being established at that site until he saw an 18-wheeler pulling in the alley one night. Later, he went and checked and they were unloading. Two or three nights after that there was carpenters, plumbers, electrician to do whatever inside. There are only five parking areas in that lot. Recently, he saw a truck and a car parking in the alley next to one of the residence's garage. To access the garage, it is necessary to use the alley. There is a lot of noise. People have used the cell phone parking lot even going so far as to park right at their back door and then walked to the book store.

President Stirling closed public testimony and called for discussion or action from the Commission.

Mr. Bray asked Ms. Walker if the Commission can address the hours of operation.

Ms. Walker said they can. No one else has done it yet. Part of the reason that it wasn't included in the Ordinance is because they are already on the cutting edge. The city has already regulated adult arcade facilities to require that they be closed between the hours of 2:00 a.m. and 10:00 a.m. In the County both the arcades and nude dance establishments have those same hours of operation.

Ms. Herold said the state has regulated bars for years. 7-11 stays open all night. He said he finds it odd that it's easy to regulate taverns and bars but we're worried about these places.

Ms. Walker said when she looks at these issues she sometimes tends to be overzealous. In this case she is going slower. She would be happy to prepare some provisions that deal with regulatory issues such as hours of operation. The reason for not including those, when they initially enacted the county's ordinance a years ago it was anticipated there would be some litigation, some very quick litigation (which actually didn't happen) over on the west side. With respect all of the regulatory provisions, part of the problem the city has had in hitting all of the aspects (internet included) is she is spread quite thin in doing all the work that needs to be done in this area. She said if she had the time she would be before the legislature enacting a "harmful to minors" act to protect the state as a whole. She cautioned the Commission that the more provisions they have the more likelihood that they city would be sued. She doesn't have any case law to fall back on. She believes she has a very good legislative record to prove an hours provision.

Ms. Walker said as a community, this community has taken the forefront on a lot of issues in this area, we were the first to do a comprehensive arcade ordinance that is being followed by many cities and counties, not just across the state but across the country.

Mr. Stirling said for the benefit of staff, he would like signage addressed with regard to the existing signage code, to see that it is cross-referenced.

Ms. Walker said it is.

Mr. Stirling said also look at parking standards.

Ms. Walker said it can be included.

Mr. Horobiowski asked if it would mean that all six businesses would be non-conforming and all six would have to relocate.

Ms. Walker said yes. The amortization provision supersedes or replaces the original grandfathering in provision.

Mr. Horobiowski asked about the mention of an amortization period of 90 days in Seattle.

Ms. Walker said that the courts have reviewed the amortization periods as small as 30 days. Several of the cases Ms. Lancaster mentioned, she doesn't recall, she said they are probably lower court decisions as opposed to appellate court decisions, probably in the federal circuits. She is familiar with all of the cases that deal with retail use establishments. None that she could find dealt with less than a one year amortization period.

Ms. Dahlstrom said she would ask Ms. Walker to provide the Commission a summary about the pros and cons of six months, ninety days or one year, also with the hours of operation recommendation so that when they deliberate they can use that information to pass onto City Council so they don't have to go back on square one.

BILL KELLEY, said ask for clarification. The questions about hours of operation, signage and parking, as a legal strategy would it be better that they not be addressed in the ordinance but rather followed up in other municipal ordinances and this ordinance stay, except for the amortization period, stay as Ms. Walker crafted it.

Ms. Walker said with respect to the parking issue she is leaving that to other individuals. With respect to the sign issue Mike Piccolo has looked at that quite definitively. She has looked at it with respect to adult entertainment businesses and doesn't believe the city is in a sound position from a constitutional standpoint to do something different for these businesses. She said she will meet with Mr. Piccolo to make sure the city is doing everything it can with regard to off-site and on-site signage requirements.

M/S P. Meyer, R. Herold, to hold open written testimony for one week (December 6, 2000) , and set deliberation and decision making for two weeks (December 13, 2000). Carried unanimously.

2. COMMISSION WORKSHOP ON DRAFT COMPREHENSIVE PLAN

A. *Review and consideration of final edits to draft Land Use Policies*

KEN PELTON, City Planner, said he would like to review just a few items from the Land Use Chapter.

3.2

Mr. Pelton directed the Commission's attention to the fifth paragraph under the Discussion section.

DECLARATION OF PATRICIA CONNOLLY WALKER

I am a Special Deputy Prosecuting Attorney for Spokane County and an Assistant City Attorney for the City of Spokane. For the last nine years I have been tasked with handling the adult entertainment issues for the City of Spokane. Since September of 1996 I have also handled the adult entertainment issues for Spokane County. I am over the age of eighteen, am competent to testify, and have personal knowledge of the matters contained herein.

During the last nine years I have been involved in the prosecution of various adult entertainment facilities in the City and County of Spokane. It has come to my attention on numerous occasions that many adult retail use establishments will begin operation as traditional book stores and then add, without proper permitting or licensing, adult arcade booths. In addition, throughout the time that I have handled the adult entertainment issues for the City and County of Spokane the City and County have received numerous citizen complaints regarding the adverse secondary effects of adult retail use establishments in the communities in which they locate. Citizens have related finding discarded sexual paraphernalia around these adult retail use establishments, a high incidence of prostitution around these facilities, finding doors to the facilities open on hot days allowing minors to view the interior of the facility thereby being exposed to adult entertainment material, a decline in property values and difficulty marketing property which is in close proximity to adult retail use facilities, and complaints from business owners, customers and employees about having to park near, pass by or do business with a facility that is located near a retail use establishment.

1. Exhibit A is an explicit copy of a VHS video box that was found by a citizen in their yard behind the Erotique Boutique at 54 E. Wellesley in the City of Spokane on June 6, 1994. The video box was given to then Councilmember Joel Crosby who delivered it to my office.
2. Exhibit B is a copy of an article that appeared in the Spokesman Review Newspaper on January 7, 1999 detailing the opening of an adult retail use in the City of Spokane.
3. Exhibit C is a copy of testimony by Brooke Plastino before the City Council on November 24, 1998 indicating her concerns over the Hollywood Erotic Boutique and Video store at 4811 N. Market.

0778

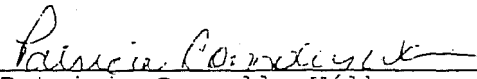
SPO 000980

4. Exhibit D is a compilation of complaints by citizens in the Hillyard are of the City of Spokane regarding their concerns about having an adult retail use establishment locate in their community.

5. Exhibit E is an article which appeared in the Spokesman Review Newspaper on April 29, 1999 regarding the opening of Hollywood Erotic boutique at 9611 E. Sprague in Spokane County.

I DECLARE UNDER THE PENALTY OF PERJURY OF THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

DATED this 21st day of June, 1999 at Spokane, Washington.



Patricia Connolly Walker

0779

SPO 000981

6-6-94

Joel has's this material the neighbors found in their yard behind the Erotic Boutique on E. 54 Wellesley.

I would also like to say how I didn't enjoy the guy that came out of the Erotic Boutique with a pair of glasses that had a penis for to cover his nose and then drives down the road laughing with his girl friend.

These are things that people with any morals at all should not have to put up with

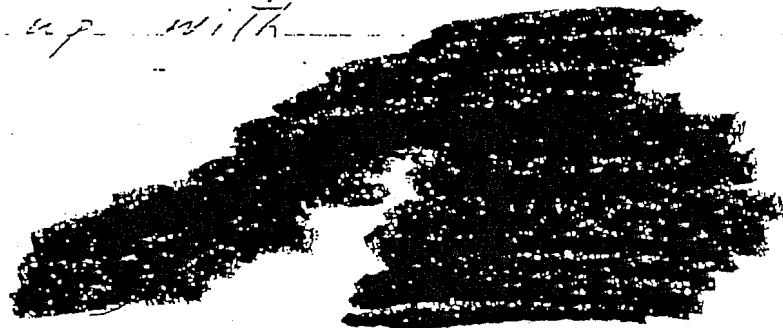


EXHIBIT A

0750

SPO 000982

DEBONAIR PRODUCTIONS
PRESENTS

FROM THE MAKER OF
"THE DIRTY DEBONAIRS"
& "BUS STOP TALKS"

STARRING
ED POWERS • BONITA
MICHELLE ANDERSON
SANDRA • SABRINA

DEEP INSIDE

RATED XXX

Debonair
D
9

*FIRST TIME ON CAMERA

SPO 000985



The following information was obtained from a confidential source who has provided reliable information in the past. The source has provided this information for your information only and should not be disseminated to other personnel. The information is being provided to you for your information only and should not be disseminated to other personnel. The information is being provided to you for your information only and should not be disseminated to other personnel.

SPO 000986

Vendor: FRI 006
21208 WERTHA AVE. 7800 N. WILSON AVE.
CHRISTMASVILLE, OH 43026
91311

Manufacturer:
4 RION VIDEO
CINCINNATI, OH 45202
91506

DEEP INSIDE DIRTY DEB. P
\$49.95
* 6 1 2 0 1 2 4 9 *

INSIDE
eQuintaries
9

SPO 000987

...ing North Spokane County
...h neighborhood news,
...tics and feature stories.

...ursday, January 7, 1999
...e Spokesman-Review

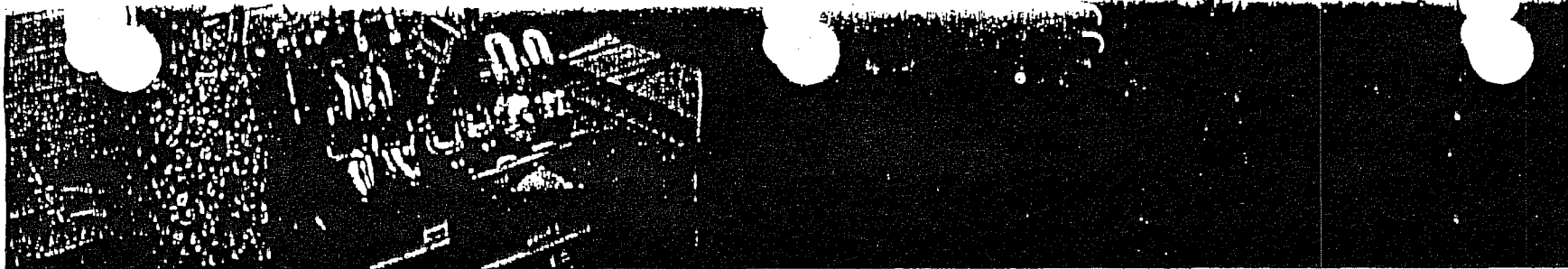
EXHIBIT B

NORTH SIDE VOICE

Land use:
Hearing examiner
denies appeal of
mobile home park
inside



SPO 000988



Joe Brooks is a clerk at Hollywood Erotic Boutique and Video store on north Market in Hillyard. Some nearby merchants have filed concerns and complaints with the city attorney. Kristy MacDonald/The Spokesman-Review

X-rated neighbor

Sex shop in Hillyard changes character of business district

By Kevin Blocker/Staff writer

Lingerie and brassieres hang in the middle of the store.

An assortment of sex toys are peppered throughout.

Pornographic videos and magazines line the walls.

This is Spokane's newest sex shop; the Hollywood Erotic Boutique and Video store at 4811 N. Market in Hillyard.

It's the purple building that sits between the attorney's office and dental clinic. Some folks don't think it belongs there.

"As a Christian, I don't think it's good ethics," said Linda Joy, an employee at the nearby Cinderella Beauty Salon.

The shop opened in mid-November without a lot of fanfare. Things were quiet until recently. Some nearby merchants have been filing their concerns and complaints with the city attorney's office.

Paul Hamilton, chair of the Hillyard Neighborhood Council, said he was enraged when he heard that the shop was opening on north Market.

Continued: **Boutique/Page 2**

Also inside: Chief Garry Park fleet facility update • Pet cemetery's future uncertain

BOOTH #1: Sex shop isn't everyone's idea of good neighbor

Continued from page 1

"We work very hard in Hillyard at protecting our community," Hamilton said. "We do have a tough reputation, but we only have two liquor stores and a dozen antique stores on north Market.

"We refuse to let these people crawl into our neighborhood. We're on them and we're not going to let go," he said.

Ironically, the added attention to the Hollywood Erotic Boutique has generated more business for the store.

"There were business people who were curious, stopped in and talked to us," said Zach Greene, an employee at the store. "A couple of them even made purchases and went on their way."

Some residents and merchants wonder how a shop that sells explicit sex items can be set up so near businesses that attract families and young children.

Assistant city attorney Patti Walker said Spokane's zoning ordinances permit adult sex shops to be located anywhere other businesses are permitted to locate. However, like many cities around the country, Spokane is rethinking those zoning laws.

Last August, a state court ruled that city officials can regulate viewing booths inside adult bookstores and businesses offering nude dancing.

The booths must have adequate lighting inside, the ordinance also says.

The roughly 1,300-square-foot building that houses the Hollywood Boutique, owned by World Wide Video, doesn't have viewing booths but hopes to install them in the near future, Greene said.

Three shops that do have viewing booths — World Wide Video at 1811 E. First; Book City, 2012 E. Sprague; and Spokane Arcade, 1125 W. First —

The city wants to shut down their booths. Book City is challenging the city's ordinance. Officials at those stores refused to comment.

But before the city can shut them down it will have to amend the ordinance in two areas deemed unconstitutional by the Court of Appeals.

The city's ordinance doesn't have a section saying an adult business can continue operating while it challenges the city's refusal of an arcade license, the state court said.

The license denials have inspired a series of federal and state legal disputes dating back six years.

So as the legal hand-wringing continues, the display mannequin at the Hollywood Boutique is draped in lingerie. A black door gives notice that only adults 18 and over are allowed in the store.

Walker said she has met with nearby merchants and is logging their complaints. She said the city is "monitoring" the shop.

While some may find the store offensive or sinister, employees argue that they are doing the community a favor.

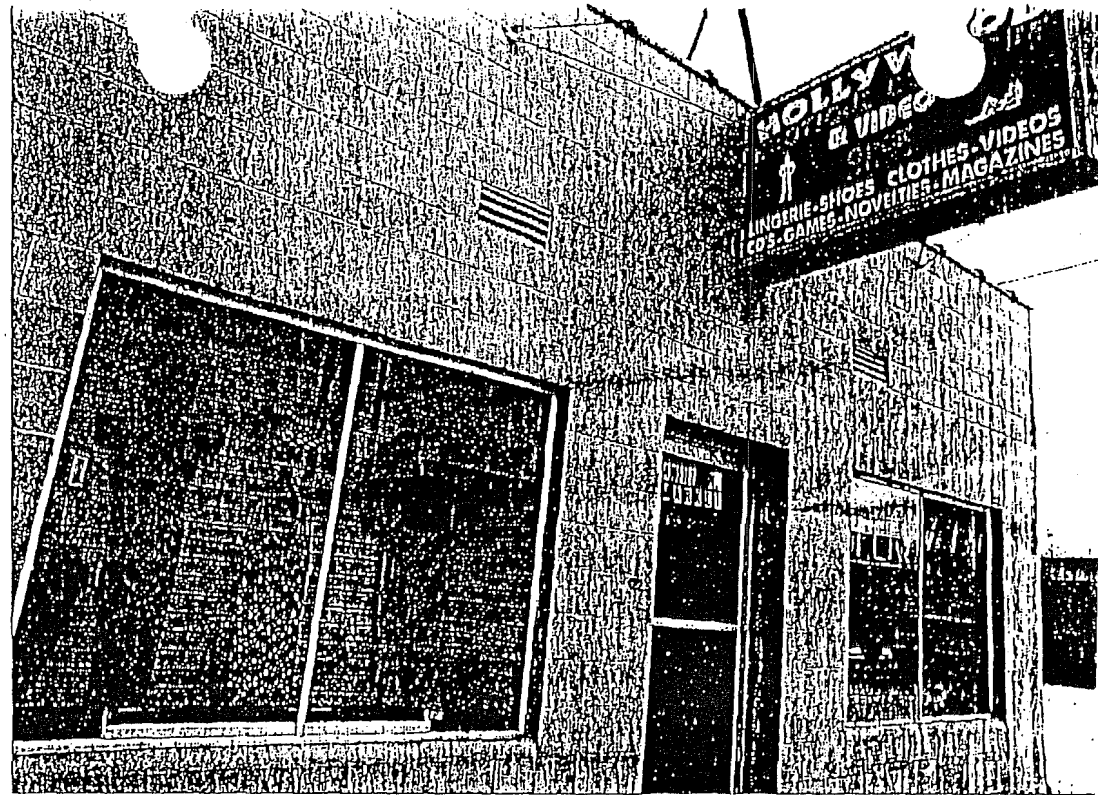
"It's an issue of safety," said Jason Rosslow. "This is a way to keep pedophiles off the streets. If they weren't in here, where would they be?"

But Greene quickly added that he doesn't believe that the majority of the store's clientele are sex offenders or pedophiles.

"There are more shirts and ties; just normal people in here," he said.

Molly, who wouldn't give her last name, sits behind the counter. One of her jobs is to direct patrons, most of whom are men, to items that will help them quench their sexual thirsts. And some of those desires end up being directed at her.

"I've been asked out, offered money, you name it, but for the most part I don't have a whole lot of



Kristy MacDonald/The Spokesman-Tri-Star

Painted purple, the Hollywood Erotic Boutique on market in Hillyard, is hard to miss.

Many women would find such a job degrading, but Molly doesn't feel that way.

"I enjoy working here. To me it's no big deal," she said.

Last week, Marcella Davis waited for her 14-year-old daughter, Carleigh, to have dental work completed at the Hillyard Dental Clinic next door.

Davis said the shop is of no concern to her.

"If it were a drug house I'd say let's make a big deal," Davis said. "But it's not.

"You know, in NorthTown Mall, Victoria's Secret is next to the Disney Store. And in Zip Trip there are adult magazines behind the counter.

Does that mean we stop letting our kids go in there to get candy?

"I think adults need to be a little

Another North Side adult shop has caused a stir as well, prompting a neighboring business to move.

Pleasant Blends, formerly located in the 9300 block of North Division, moved across the street to the 9400 block of the Newport Highway after Love N Stuff opened a year ago.

At Love N Stuff, the store's interior can be seen by passersby through a large window.

"We're a family oriented business," said Dawn Hensley, an employee at Pleasant Blends which sells coffee, tea and a host of other spices.

"Last year, (Love N Stuff) dressed up a full mannequin in a brassiere and G-string and put a whip in its hand. After that we lost a few customers and shortly after that the owners decided to move," Hensley

Love N Stuff patrons masturbating public after leaving the shop

Lorna Bryans, who owns Pleasant Blends with her son Mike, said moving across the street cost between \$5,000 and \$10,000.

"We just had to move," she said. "Besides rent going up, I just didn't want to be next to that."

Despite people's objections, Greene said sex shops don't pose the same threat to the way the Internet does.

"We don't have bestiality or incest in here like you can find on the Internet," he said, though the store sells an inflatable sheep doll.

"People are just too uptight."

MILWAUKEE WISCONSIN AE REGS 001142

Kevin Blawie can be reached at 450

SPC 000990

0756

7/12/96
Mayor Talbott and esteemed Council Members,

My name is Brooke Plastino and I come before you tonight as both a Hillyard business owner and as a concerned and upset citizen and parent. I'm here to speak out against the Hollywood Erotique Boutique which recently moved into our neighborhood at 4811 N. Market.

My wife and I own Accent Frames. We chose to move our business from the Northwest part of town to Hillyard because we didn't wish to continue doing business in an area with an increasing drug and gang problem. Hillyard has become a nationally known and respected antique district and we felt that our custom frame shop and art gallery augmented that image without being competitive to the existing businesses. We felt that our presence in Hillyard augmented that image and perhaps our presence would encourage an arts and cultural component in the neighborhood.

As you know, not too many years ago Hillyard was one of this city's most economically depressed neighborhoods. It's reputation was that of a tough little town predominately filled with taverns and second hand junk shops. Many, including our Mayor, did not feel safe in Hillyard - day or night.

The business community and residents have worked long and hard to reverse that impression and have revitalized both the downtown area and the neighborhood. The junk shops are now antique markets and are known coast to coast for their quality. The bar scene is now down to three taverns and two hard liquor establishments, one of which is the local VFW post. The shopping public has at long last returned and the stigma of Hillyard's previous reputation has, in large part, been replaced. There is a strong movement afoot to have the business district nominated to the National Register of Historic Places. We are trying to turn Hillyard into a respectable, historically significant end destination for Spokane residents, visitors and tourists.

The addition of a porno shop, located prominently between family business, ie. Hillyard's only law offices and the Hillyard Dental Clinic, that sells products with little if any social redeeming value is contra productive to the vision we have formulated for our community. There is no place in that vision for the drugs and prostitution this type of business invariably brings into a neighborhood!

We have a fourteen year old daughter who must spend much of her time in Hillyard because our shops location. I do not want her exposed to the type of individuals who frequent porno shops or those who ply their trade on the surrounding street corners. I do not want any possibility of her being exposed to Spokane's serial killer, who up to now has had no apparent reason to visit Hillyard.

I believe in free enterprise, but all business is not the same! A porn shop located between family patronized businesses is not appropriate! It serves to undermine and devalue the existing businesses. If allowed to remain it sends a message to the public that Hillyard actually is the seamy little den of iniquity it's previous reputation implied, and the respectability of other businesses in the area is just a facade.

We do not want a porn shop in our midst. If allowed to remain you will see the end of Hillyard's renaissance. Hillyard will again decline. Decline into a blight upon Spokane, full of crime, prostitution and drugs. Please don't let that happen.

Thank you

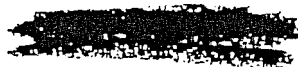


Exhibit C



SPO 000991

07

CODE ENFORCEMENT COMPLAINT FORM

CODE ENFORCEMENT
MUNICIPAL BUILDING/BOX 165
808 WEST SPOKANE FALLS BLVD
SPOKANE WA 99201-3333
(509) 625-6083

PLEASE COMPLETE ALL APPLICABLE INFORMATION AND RETURN TO THE ABOVE ADDRESS.
PROVIDE AS MANY RELEVANT DETAILS AS POSSIBLE INCLUDING SPECIFIC ADDRESSES,
LICENSE PLATE NUMBERS, ETC.

YOU MUST SIGN YOUR COMPLAINT BEFORE THE CODE ENFORCEMENT OFFICE CAN
INVESTIGATE THE MATTER, UNLESS A LIFE THREATENING ISSUE EXISTS OR IF IT IS
OTHERWISE DEEMED APPROPRIATE TO ACT.

ONE PROPERTY PER COMPLAINT FORM, PLEASE.

VIOLATION INFORMATION:

ADDRESS OF PROPERTY BEING COMPLAINED ABOUT: 4801? entire
Spokane Ave 99207

PROPERTY OWNER (IF KNOWN) _____

NAME OF RESIDENT: Hollywood Adult Store PHONE NUMBER: _____

SUMMARY OF COMPLAINT: Store in violation - within radius of
250 ft of residential area
Graphic material found on our property

(If necessary use back of complaint form.)
HOW LONG HAS VIOLATION EXISTED? 3 or 4 weeks


COMPLAINANT INFORMATION: (REQUIRED)

YOUR NAME: 

YOUR ADDRESS:  Spokane WA 

HOME PHONE NUMBER:  WORK PHONE NUMBER: 

CONFIDENTIALITY PREFERENCE - DISCLOSURE OF INFORMATION REVEALING YOUR
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RESULT IN THAT INFORMATION BEING SUBJECT TO DISCLOSURE. **RECEIVED**
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SIGNATURE:  DATE: 11-30-98

COMPLAINANT SIG (10-30-96): Exhibit D **0785**

SPO 000992

December 10, 1998

Patty Walker
[REDACTED]

Spokane, Wa. [REDACTED]

Mrs. Walker:

As to our conversation regarding the Hollywood Adult BookStore at 4811 N. Market, we have the following concerns.

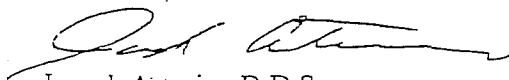
We have been established here since 1954. We have patients from all walks of life, many children, 30 to 40 a day. There has been numerous complaints regarding the bookstore. We feel in the long run this will have a negative financial impact on us.

We have a \$75,000 monthly salary, which I feel is important to this community, drawing people to stores etc. in the area.

Dr. Curalli and myself will be selling our practices in the next year or so. This book store will have a negative impact on something we have built over 40 years.

Aside from the residential areas and the growth of new development on Frances and revitalization of Hillyard, we feel these considerations must be taken into account.

Sincerely,



Joseph Asterino D.D.S

CC: Larry Lanning
Code Enforcement

CODE ENFORCEMENT COMPLAINT FORM

CODE ENFORCEMENT
MUNICIPAL BUILDING/BOX 165
808 WEST SPOKANE FALLS BLVD
SPOKANE WA 99201-3333
(509) 625-6083

CODE ENFORCEMENT

PLEASE COMPLETE ALL APPLICABLE INFORMATION AND RETURN TO THE ABOVE ADDRESS. PROVIDE AS MANY RELEVANT DETAILS AS POSSIBLE INCLUDING SPECIFIC ADDRESSES, LICENSE PLATE NUMBERS, ETC.

YOU MUST SIGN YOUR COMPLAINT BEFORE THE CODE ENFORCEMENT OFFICE CAN INVESTIGATE THE MATTER, UNLESS A LIFE THREATENING ISSUE EXISTS OR IF IT IS OTHERWISE DEEMED APPROPRIATE TO ACT.

ONE PROPERTY PER COMPLAINT FORM, PLEASE.

VIOLATION INFORMATION:

ADDRESS OF PROPERTY BEING COMPLAINED ABOUT: 4811 N Market Hillyard
Too close To Regal grade school + Shaw Middle School

PROPERTY OWNER (IF KNOWN) _____

NAME OF RESIDENT: Hollywood Erotique PHONE NUMBER: 484-1730

TYPE OF COMPLAINT: Boutique

Hillyard does not want this kind of Business on Market, will bring in sex offenders ect (Kids walk al By there to Pool also object ~~to~~ being close To Regal school + Shaw school

(If necessary use back of complaint form.)

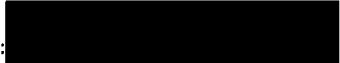
HOW LONG HAS VIOLATION EXISTED? new just opened.

COMPLAINANT INFORMATION: (REQUIRED)

YOUR NAME: 

YOUR ADDRESS: 

HOME PHONE NUMBER: 

WORK PHONE NUMBER: 

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SIGNATURE: 

DATE: 11-20th-98

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OTHERWISE DEEMED APPROPRIATE TO ACT.

ONE PROPERTY PER COMPLAINT FORM, PLEASE.

VIOLATION INFORMATION:

ADDRESS OF PROPERTY BEING COMPLAINED ABOUT: 4811 N Market

PROPERTY OWNER (IF KNOWN)

NAME OF RESIDENT: ~~William Holly Wood~~ ESCORTE POLICE PHONE NUMBER: 484-1730

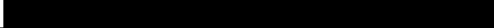
SUMMARY OF COMPLAINT:

We don't need a see sign
in the neighborhood. There is very little
space to walk by every rate to be dirty

(If necessary use back of complaint form.)

HOW LONG HAS VIOLATION EXISTED? month

COMPLAINANT INFORMATION: (REQUIRED)

YOUR NAME: 

YOUR ADDRESS: 

HOME PHONE NUMBER: 

WORK PHONE NUMBER: 

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INITIAL

SIGNATURE: 

DATE: 11-23-98

CODE ENFORCEMENT COMPLAINT FORM

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SPOKANE WA 99201-3333
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ONE PROPERTY PER COMPLAINT FORM, PLEASE.

VIOLATION INFORMATION:

ADDRESS OF PROPERTY BEING COMPLAINED ABOUT: 4811 N. Markete

PROPERTY OWNER (IF KNOWN) _____

NAME OF RESIDENT: Hollywood Erotique PHONE NUMBER: 484-1730


SUMMARY OF COMPLAINT: _____

Don't like the idea of the type of people it will attract to our area. Make potential customers nervous.

(If necessary use back of complaint form.)


HOW LONG HAS VIOLATION EXISTED? 3 wks

COMPLAINANT INFORMATION: (REQUIRED)

YOUR NAME: 

YOUR ADDRESS: 

HOME PHONE NUMBER: 

WORK PHONE NUMBER: 

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SIGNATURE: 

DATE: 11/23/98

COMPLAIN.SIG (10-30-96)

0793

SPO 000997

CODE ENFORCEMENT COMPLAINT FORM

CODE ENFORCEMENT
MUNICIPAL BUILDING/BOX 165
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(509) 625-6083

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ONE PROPERTY PER COMPLAINT FORM, PLEASE.

VIOLATION INFORMATION:

ADDRESS OF PROPERTY BEING COMPLAINED ABOUT: 4811 N Market

PROPERTY OWNER (IF KNOWN) _____

NAME OF RESIDENT: HOLLYWOOD Erotique PHONE NUMBER: 484-1730

TYPE OF COMPLAINT: Boutique

own - the selling of sex + ~~and~~ and general degrading of women with derogatory attempts at restoring Hollywood and own rights.

(If necessary use back of complaint form.)
HOW LONG HAS VIOLATION EXISTED? 3-2 weeks

COMPLAINANT INFORMATION: (REQUIRED)

YOUR NAME: Trey White

YOUR ADDRESS: [REDACTED]

HOME PHONE NUMBER: [REDACTED] WORK PHONE NUMBER: [REDACTED]

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DO NOT DISCLOSE TW YOU MAY DISCLOSE

SIGNATURE: Trey White DATE: 11/23/98

CODE ENFORCEMENT COMPLAINT FORM

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ONE PROPERTY PER COMPLAINT FORM, PLEASE.

VIOLATION INFORMATION:

ADDRESS OF PROPERTY BEING COMPLAINED ABOUT: 4811 N MARKET

PROPERTY OWNER (IF KNOWN) _____

NAME OF RESIDENT: HOLLYWOOD EROTIQUE PHONE NUMBER: 484-1730

SUBJECT MATTER OF COMPLAINT: BOUTIQUE

Myard SPENT YEARS CLEANING UP REPUTATION & WE ARE STILL WORKING TOWARD AN HISTORIC, URBAN BUSINESS/RESIDENTIAL DISTRICT. A 24 HOUR PORN SHOP WOULD SET US BACK YEARS - WE DON'T WANT IT!!

(If necessary use back of complaint form.)
HOW LONG HAS VIOLATION EXISTED? 3 weeks (Nov 1 - To Present)

COMPLAINANT INFORMATION: (REQUIRED)

YOUR NAME: Brooke & Vicki Plastino DBA ACCENT FRAMES

YOUR ADDRESS: [REDACTED]

HOME PHONE NUMBER: [REDACTED] WORK PHONE NUMBER: [REDACTED]

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SIGNATURE: Vicki L. Plastino DATE: 11-23-98

COMPLAINANT SIGNATURE: Brooke S. Plastino

0795
SPO 000999

CODE ENFORCEMENT COMPLAINT FORM

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ONE PROPERTY PER COMPLAINT FORM, PLEASE.

VIOLATION INFORMATION:

ADDRESS OF PROPERTY BEING COMPLAINED ABOUT: 4811 N. Market

PROPERTY OWNER (IF KNOWN) _____

NAME OF RESIDENT: Hollywood Erotique PHONE NUMBER: 484-1730

SUMMARY OF COMPLAINT: Boutique Having a 24-Hour Porn Shop is not the image Hillyard Shopping District needs. All merchants have been working very hard for years to change the image of

HOW LONG HAS VIOLATION EXISTED? 3 weeks (Nov 15th)

COMPLAINANT INFORMATION: (REQUIRED)

YOUR NAME: Collectors Showcase

YOUR ADDRESS: [REDACTED]

HOME PHONE NUMBER: [REDACTED] WORK PHONE NUMBER: [REDACTED]

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____ DO NOT DISCLOSE MD YOU MAY DISCLOSE
INITIAL INITIAL

SIGNATURE: Maudlin Duffen DATE: 11-23-98

COMPLAIN. 513(10-30-96) 7 0796

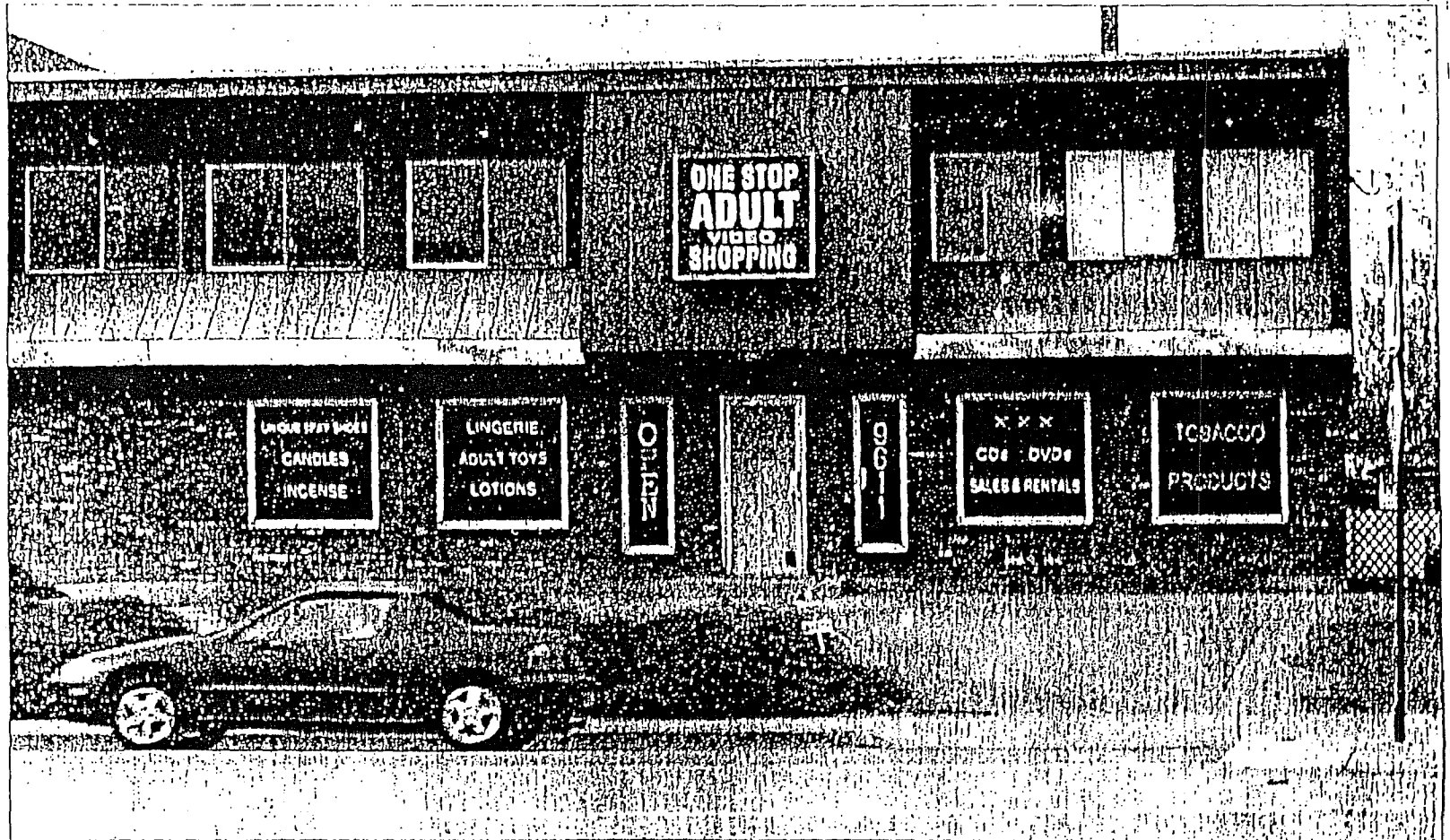
SPO 001000

SUMMARY OF COMPLAINT (CONTINUED)

Hillyard being a place of crime and
taverns. We have come a long way, &
this is something we do not need in
neighborhood.

0797

SPO 001001



Colin Mulvaney/The Spokesman-Review

Hollywood Erotic Boutique on Sprague opened for business Friday. The county contends shop owners didn't get the necessary permits.

Chain opens sex shop in Valley

MILWAUKEE, WI AE REGS 001154

SPO 001002
0734

Hollywood Erotic Boutique on Sprague opened for business Friday. The

contends shop owners didn't get the necessary permits.

Chain opens sex shop in Valley

By Dan Hansen
Staff writer

County says new store didn't have required permits

The owner of three sex shops in Spokane has opened a fourth, despite the county's attempts to regulate such businesses.

Hollywood Erotic Boutique started business Friday at 9611 E. Sprague, across the street from Home Base hardware store.

"It's a real clean store with a nice variety of things," said manager Craig Sicilia. "A lot of games and toys and clothes and shoes," as well as four rooms filled with X-rated videotapes.

Sicilia is the son of Jim Sicilia, the California-based owner of the new store. He owns another Hollywood Erotic Boutique that opened to community protests in Hilliard last year, as well as two World Wide Video stores in Spokane.

Bill Benish, county code enforcement officer, contends the new store didn't have the necessary permits to open, a claim both Sicilias vehemently dispute. Benish has sent them a letter asking that

they come to the courthouse within 10 days to apply for permits.

If Benish is right, the store may not be open long.

On Tuesday, commissioners passed a temporary ordinance regulating stores that specialize in sex products just as they now regulate adult entertainment arcades. They can be no closer than 1,000 feet from residential areas, schools, churches and parks.

County building officials hope commissioners will make the law permanent once they've held public hearings on the matter.

On Tuesday, assistant building Director Mark Holman mistakenly said Hollywood had not yet opened the new shop and would have to comply with the new regulations when it did. Benish said Wednesday he doubts that would be possible at Sicilia's new location. Houses crowd the store and St. John Vianney school is five blocks away.

But existing stores are exempt from the ordinance. So Sicilia won't have to worry about the requirements if the store opened legally before the

ordinance passed.

In a brief telephone interview from California, Jim Sicilia threatened to sue the county if it tries to shut down his store.

He won a similar battle against the city of Tacoma in 1991, when the state Supreme Court ruled that regulating adult bookstores was an infringement on First Amendment rights of free speech. Federal courts since then have ruled that counties can restrict the location of businesses that have contributed to crime in other communities.

Spokane County's interim ordinance states that shops like Hollywood lead to prostitution, drug use and other illegal activities.

Jim Sicilia is angry that commissioners passed the ordinance without public notice, and says he's being treated unfairly.

"We've been (in Spokane) 20 years and we employ a lot of people," he said.

■ Dan Hansen can be reached at (509) 459-3938 or by e-mail at danh@spokesman.com.

0799
SPO 001003

MINUTES

CITY PLAN COMMISSION WEDNESDAY, FEBRUARY 13, 2002 PLANNING DEPARTMENT CONFERENCE ROOM 200-2B CITY HALL – SPOKANE, WASHINGTON

MEMBERS PRESENT: Stanley Stirling, President, Ted Horobiowski, Jeff Bierman, David Bray, Karen Byrd, Charis Keller, William Kelley and Jim Wilson.

MEMBERS ABSENT: Candace Dahlstrom and Julie Dhatt-Honekamp.

LIAISON PRESENT: Al French, Council Member.

STAFF PRESENT: John Mercer, Planning Director and Secretary to the Plan Commission; Louis Meuler, City Planner; Dick Raymond, Principal Engineer; Jim MacInnis, Principal Engineer; Lars Hendron, Principal Engineer; and Tim Szambelan, Assistant City Attorney. Ken Pelton, City Planner present at the afternoon workshop.

PUBLIC HEARING

President STAN STIRLING called the meeting to order at 1:14 p.m. This is a public hearing by the City Plan Commission and the proposed amendments to the text of the Spokane Municipal Code regarding Adult Retail Establishments and Adult Entertainment Establishments. The second hearing will be on the Six Year Water and Sewer Capital Improvement Program 2002-2007.

A. *Proposed Amendments to the text of the Spokane Municipal Code with regards to Adult Retail Establishments and Adult Entertainment Establishments.*

LOUIS MEULER advised that this was the second hearing related to the same topic area with copies of the proposal and a map available for review. The main change is in the zoning code relating to how Adult Retail and Entertainment Establishments can locate within the City of Spokane. The location requirements in the main proposal, B2-1 zone, to change from the nearest building to the nearest building to property line to property line and must distant themselves 750 feet from public

library, park, schools, daycare, church and from another adult retail use establishment. Another change would apply these same standards that to uses and zones both within the City of Spokane and outside the City of Spokane. Item 3 clarifies the County zones that would be buffered. The major amendment would include a new zoning category for these uses to relocate; the M1 zone (light industrial zone). The M1-1 zone was removed from the proposal since the hearing in December. Item 3 would continue to exclude the uses from the M2 and the M3 zones. Item 4 regarding the CBD 5 zone downtown, updates the code with the current definitions of adult use entertainments, and makes this zone subject to the special provisions of SMC 11.19.143. Item 5 clarifies Title 10, which controls the hours of operation (could not operate during the hours of 2:00 a.m. and 10:00 a.m.).

Mr. Meuler then pointed out on a map where the adult uses could relocate presently verses the proposed changes.

Mr. Meuler responded to Mr. Horobiowski's inquiry as to the reason the M1-1 zone was removed. It was removed because there are still many non-conforming residential uses within this light industrial zone.

Mr. Meuler responded to Mr. Horobiowski's inquiry; the reason for the amendment is to allow for more property to be available for this type of use. Mr. Meuler confirmed that the approximate number of parcels available under the proposed amendment and including the 750-foot separation is 29 potential simultaneous sites and 610 parcels and 360 acres within parcels. This is compared to 7 simultaneous sites from the initial ordinance adoption not including the CBD zone, which is not yet calculated. Today there are 7 uses today in the City of Spokane that are non-conforming and have 1 year from March 9, 2001 to relocate. All 7 of them have requested extensions for the termination dates to allow them time to find an appropriate place to relocate to.

Mr. Stirling opened the floor up for public testimony.

Public Testimony by:

1. Richard Mertens

Tim Szambelan explained that if an adult entertainment establishment legally establishes in a location and if a church locates within 750 feet, that adult use would have non-conforming use rights.

Mr. Meuler explained why the adult uses are mainly located in the northeastern area and the history of the city's zoning geography.

2. Penny Lancaster

Verbatim

3. Karen Roberts

Hello. I'm Karen Roberts. I live at [REDACTED] I'm the southwest corner of [REDACTED] just a mere few feet from my shop and my backyard is, and I will refer to it as my Triple X Boutique. I have always loved my neighborhood. Uh, I am non-judgmental of people's ways of life. We've always had a time of helpfulness to each other when we need it. We have a lot of elderly people in our community and our neighborhood as well. And I'm the night owl. I watch all of the businesses at night for our block watch. And I have learned a new language. I have learned a new way of life that is totally foreign to me.

I'm hear to tell you the impact that the Triple X Boutique has had on me personally, and my small business at my home and what I've observed since the Triple X opened for business. It came in, in the night. I got up the next morning and saw this vivid store painted. It is right next door to a real estate. They have only two parking spots at the Triple X but they use the realtor's parking area all the time.

I work late in my home office at night, from my workshop behind my house, which is my two care garage. I make beds. Um, I use my computer. I face the alley and their lights come right into my office all night long when I'm out there working. I've observed and seen many things that have upset me and my security and well-being and peace of mind. I want to share with you what I consider an unbiased but honest observations and personal experiences I've seen and had. I'm rarely away from my property so I observe a lot. I don't stress observing a lot, it comes to me, I don't need to look for it. My workshop is separate from the house and it's next to the alley so I'm in two areas both facing the alley and back entrance.

Shortly after the Triple X Boutique was open for business, I was working at night, it was around eleven, in my shop alone as my husband was in the hospital. I heard a man yelling at me. I jumped, I turned, obviously I could see what he was doing. He was masturbating and asking me if I would f-- him and other vulgarities. I beat feet for the house. I called 911 and of course he was gone as quickly as I left too.

I am still affected by that. I don't work at night any longer. A neighbor who used to live three houses north of me in the same block had young children that played in this alley that separates us from the Triple X. Nice

little rolling hills and stuff for their skateboards. I got them to watch for traffic. One little boy who had to have been only, maybe 4 says, "What's pornaphy?" to his brother. His brother says, "Oh, dirty pee pee." Why should they have to have this kind of influence? It is affecting them.

At various times around the clock, and I do mean 24 hours a day, I've heard and seen cars and groups meeting in the parking lot, obviously partying. They are all leaving together after they go into the Triple X and get whatever it is that they get. One night a taxi pulled up. Now you have to realize this has been going on since they opened. This isn't just me sitting out there waiting for something to happen. One night a taxi pulled up in the parking lot of the real estate office, he got out, leaned against the door of his car, and a young girl came between the two buildings of the Triple X and the real estate office, and she ... they exchanged something, I'm assuming it was money, and she performed oral sex. She left, he got in the taxi and left. These are all things that are happening outside of the business establishment. Believe me, none of this was going on before this business moved in.

We used to have an all night doughnut shop on the corner of Garland and Division. Many of us night owls couldn't sleep ... we'd meet up there and have coffee and doughnuts. And I love my maple bars. When I die I know that I'm going to maple bar heaven. But, now we don't see anybody walking at night in our neighborhood. We see a lot of traffic and I do mean a lot of traffic.

When they come in the day time, they park in front of our house on Atlantic, walk around through the alley nonchalantly, go into the back entrance, come back out carrying a Nordstrom's or a Bon Marche sack with whatever it is that they just bought.

Now my customers come to my shop and it's a garage. I've had occasions of their children picking up video covers from these videos that they get there. Mothers saying, "Ah, yuck! Get it out. Get in the car, we're leaving." There went my possible sale. This is my business, this is how I live. My husband and I work very hard because we didn't fit the molds, we couldn't get jobs. My husband is disabled with no pancreas, by the way 3 in the state that's living without one. I'm so hurt and so angry because we're not being protected by letting that business come in there in the first place. We're talking less than 50 feet, less than 130 feet from the park. Why? Why? I'm not going to cry today, I promised myself that. Now, besides having to pick up pornography covers, pick up pregnancy tests, fast food wrappers, beer bottles, wine bottles, these are not there before, this is all started since this business opened up. I wear rubber gloves, go out every morning, and pick up condoms, etc.

Now some customers, on a lighter note, you know with the Bon Marche thing, they're daytime people, they're total different group, they're non-evasive, they don't bother. The amount of traffic is heavier on the weekends late at night, and I do mean all night long. Groups meet there. Taxi cab drivers meet groups there. They all leave together once they have one person go in ... come out with a box of stuff. They have a lot of young girls come that come in there with truck drivers in their tractor trailer rigs, without the trailers, that are ... I've learned from my husband that they're probably prostitutes. Um, they're pretty scantily clad and this is in this winter. Am I the neighborhood pinched nose, spinster, busy body? No, I am not. Ever since the incident of this man outside my shop window, I've been on guard. It may seem to some folks that I'm overreacting. I can assure you before this ever happened my neighborhood never had these occasions.

I miss the people walking in the alley hand in hand, walking their dogs. One old man that faithfully walked his dog every night at 9:15. Why 9:15 I don't know but his says, "I'm on time," as he'd go by. He's no longer doing this.

It's open 24/7 guys and it's never caused us any problems before that. My husband and I used to enjoy walking up the alley late at night too. And I've had occasions of customers coming to my house for gas ... they're locked out of their car. I've tried to help them. These are customers of the Triple X Boutique. Several, and I have to say about 3 or 4 times now, after I couldn't help them, I went back to my house cause its gettin dark. They come back 2 hours later and bang on my back door and say, "Hey lady have you got a coat hanger maybe?" Yes I should help my fellow man but guys, come on, I think this is asking a lot. I don't go out at night, even in my back yard. My neighbors don't venture out much at all.

I pray I won't be a target for any of the Triple X followers for giving this testimony today cause I'm really scared for being here today. My husband and my castle is no longer protected by our moat the alley. To me it's full of alligators out to get me. I pray you've all listened to my story and you take it to heart.

Thank you.

Stan Stirling: Any questions?

Karen Roberts: I'm going to hold up what I get in my yard. (Mrs. Roberts holds up a cover to a video)

4. **Anne Mertens**
5. **Paul Hamilton**

Mr. Stirling closed public testimony.

Mr. Bray explained to the public that the Commission has an obligation to be fair and meet the needs of the community but they cannot regulate someone out of business. The Commission also needs legislative record to support a decision; increasing the buffer zone to 1000 feet runs the risk of not being supported legally.

Commission members clarified to the public that though 29 sites are zoned as available, it does not make 29 sites readily available for the uses to relocate.

DAVID BRAY made the motion to accept these amendments to the ordinance as written as a recommendation to the City Council.

M/S by CHARIS KELLER.

Ted Horobiowski asked Mr. Meuler to explain the 750 feet verses the County's 1000 feet buffer. Mr. Meuler explained the spatial relationship; the geography within the City is roughly 58 square miles compared to the entire County, which is over 1850 square miles and the zoning configuration leaves limited buffering possibilities for the City.

Mr. Mercer confirmed the motion with Mr. Bray.

The motion passed unanimously.

10 minute break

John Mercer, Secretary

In re: World Wide Video v. City of Spokane

CITY COUNCIL MEETING 1-29-01
ORDINANCES C32778 & 32781

City Clerk: S-1 relating to adult entertainment facilities, amending SMC 11.17.426, adding to SMC Chapter 10.08, a new article and a new section and adding to SMC 11.19, a new section, first reading held January 8, 2001, city priority—growth management.

Would you like me to go ahead and read S-2 as well?

Rob Higgins: Why don't we take them one at a time because we have people that want to speak to these items. So, the clerk has read special consideration, S-1. I am now going to ask for those who have signed up to please come up and speak to this issue.

Unknown: But, if they want, can they speak to both issues?

City Clerk: I think we should read both issues.

Rob Higgins: Go ahead and read them both. Let's do it this way since we got it started.

City Clerk: S-2, regulating live adult entertainment establishments providing for the licensing, inspection, regulation and standards of conduct for adult entertainment establishments providing for other matters relating thereto and repealing SMC 10.08.070 through 180. First reading on 1/22/2001 City priority: Public safety.

Higgins: Okay, so we have two items before us, but we are conducting one hearing on them under special considerations both S-1 and S-2...

Greene: Excuse me...

Higgins: Excuse me, Ms. Greene?

Greene: Is it possible that we could have, um, Attorney Patty Connelly Walker come forward and brief us, and the audience also, on the two items involved...

Connelly Walker: Sure. What I anticipated this evening was to present both, what I call the Adult use Retail ordinance and the city's nude dance ordinance at the same time. I will mention, though, as I am going through the issues that I think are pertinent to the council's review tonight, issues that pertain specifically to one business or the other. We have had those discussions in the past in terms of looking at them as two separate issues—two separate ordinances, but I think the council is mindful that many of the adverse secondary effects that I would mention would apply to both types of businesses. So I think it would be expedient and appropriate to hear both issues at the same time because there is a lot of cross over in the testimony. And what I had anticipated was

presenting some of the general issues to the council, and I know there are a number of citizens that would like to speak to the issues tonight as well.

Higgins: Why don't you go ahead and give us some background on the ...

Connelly Walker: I will. Thank you. I'll start first with the city's nude dance ordinance because we haven't had a lot of public discussion about this recently. Last summer I went before the public safety committee and then later before the council in a meeting, in here, on this issue to give the council an overview of what we would be looking at and to bringing before you. But its been quite some time since we have done that. So, I will give you a little bit of history again on this issue. In 1997, the City of Bellevue enacted a nude dance ordinance that ours is patterned after. They were subsequently challenged over the Constitutionality of that in a case of *Ino Ino v. City of Bellevue*. Its kind of a landmark case in this area and many other cities and counties have followed suit in enacting ordinances that are very closely tailored to Bellevue's ordinance and we are one of those. In fact, what I did when I prepared for this county, the nude dance ordinance a couple of years ago, I included the legislative record from Bellevue, Federal Way, Renton and little bits and pieces from other cities and counties over on the west side because they had already done a lot of the work engaged in a lot of studies, and put together a very good legislative record. So, what we did, we gathered up that information, studied it and then added to it with our own local legislative record. Some of the cases we have looked at are *Deja' vu v. Everett*, *Deja' vu v. Federal Way*, *Deja' vu v. Bellevue* and then in the county we enacted our nude dance ordinance in 1997, we were challenged in federal district court and we prevailed at summary judgment over the constitutionality of that ordinance. Essentially, the court said that *Deja' vu* litigated, re-litigated, re-litigated and re-litigated this issue and found there is nothing more to look at in terms of the issues that they raise. So, we are very good solid legal ground with this nude dance ordinance. It has been tried in the State of Washington and it has been upheld repeatedly. In fact, Spokane County's case was a published case, so we've got very direct authority and ability to review and utilize those decisions, should the City of Spokane be challenged. It should be noted that Spokane at this time does not have any nude dance facilities. That does not mean the city can't legislate in this area. Courts have permitted that it's prudent and a lot of times if you legislate, then you won't have those businesses bring with them the adverse secondary effects, knowing they have to comply with certain regulatory and licensing provisions and you don't see those same kinds of adverse secondary effects. So, when we were developing this ordinance, we relied a lot on what I've done for the county and what other cities and counties have done so we weren't reinventing the wheel—tired to narrowly tailor it so that we could rely very directly on the holdings that we already had. When I say that we also studied our own local issues, over the last three years, I have had the benefit of working with *Deja' vu* after the enactment of the ordinance and also before the enactment of the ordinance and have prosecuted them on a number of occasions for violating that ordinance—both the managers and the dancers of those facilities. In fact, we currently have, I believe its cases with six *Deja' vu* dancers pending and two managers, they are criminal misdemeanors and they are being prosecuted for violating the four foot rule that got a lot of attention. That is typically what we see in terms of challenges with this type of an ordinance—is a challenge to the

four foot rule that says dancers have to stay four feet back from their customers when they are giving them a lap dance or a couch dance. There can no longer be a lap dance. They have to be four feet away from the patron they are doing the dance for and the managers are responsible for insuring that that provision is complied with. So when the managers fail to do that and the dancers engage in the activity, then we charge both of them. So, we have as part of our legislative record, and I should indicate that the clerk has that legislative record, much of which you have seen before, it includes I believe its 7 binders of studies and cases, that have developed over the years as well as police reports from a number of different jurisdictions including our own. There are also a number of videos. These videos are of violations in a number of cities over on the west side that we have gathered at the Deja' vu here locally, as well as a copy of the testimony that was before the county commissioners when they enacted their ordinance. I would like to incorporate by reference that entire legislative record but I thought it would be helpful to specifically the testimony that the county commissioners heard. It was, as you will hear tonight, very indicative of what our local issues are and I think helpful in terms of having an understanding as to why and how these adverse secondary effects occur when you have this kind of facility in your community. The issues typically associated from a legal standpoint with the nude dance ordinance are violation of regulatory provisions or standards of conduct. That is typically what we are sued over and that would be the four foot rule that I referred to earlier. We have had 10 foot rules upheld in this state, since that time. So there is really very little room to litigate in this area any more because we have a number of published opinions and in this state and in our federal circuit out of our Washington cities. So there isn't as much issue anymore with respect to the nude dance ordinances. The adverse secondary effects that I referred to that we typically see out of these facilities, really to a large extent, mirror those that we talk about with regards to the adult retail book stores. They are somewhat aggravated because the onsite activity of dancing tends to encourage or promote additional secondary effects within the business that you might not see in an adult bookstore. We see criminal activity such as prostitution or sexual acts on the premise itself as a result of operating the business, so that is a secondary effect that is not always seen with respect to adult bookstores. Sometimes, adult book stores will be set up in such a way that you will have criminal activity on the premises but the adverse secondary effects that tend to be common in both nude dance establishments and adult retail use facilities are more typically the economic downturn issues such as property values decreasing when a business of this sort locates next to residences or other retail uses. There is the blight on the surrounding community in terms of things we have discussed before, paraphernalia being left in the area, sexual acts in the parking lots, disturbances in the neighborhood, sometimes due to the hours of operation, the sexual material being displayed in the window of the facility, doors being left open, general behavior by the patrons once they left the facilities—that type of an urban blight situation tends to occur. We also have a heightened criminal activity in the area often times, although, its not as typically occurring within the facility as much as outside the facility. So, we have a number of adverse secondary effects when adult use retail businesses come into a city, we often see prostitutes patronizing in the area. I have used the phrase before, "if you build it, they will come." We saw that with the county's retail use ordinance and the studies that we did in the county regarding the adverse secondary effects specifically associated with

those types of businesses. We also with respect to the retail use ordinance, as you will recall dealt with zoning adult bookstores, 750 feet-- it's a disbursement model which disburses them 750 feet from other adult entertainment facilities, schools, churches, parks, residences, that type of thing. The adult retail ordinance is different from the nude dance ordinance because the nude dance ordinance that we are dealing with here tonight is not a zoning ordinance. We already have a zoning ordinance with respect to adult dance facilities that was enacted in 1986. The nude dance ordinance is a regulatory and licensing ordinance. The retail use ordinance is strictly a zoning ordinance with one provision that speaks to a regulatory issue which is the hours of operation provision. So we have those issues which are somewhat separate, but as you see, they are quite a bit of overlap as well. We have talked a lot at previous meetings about the adverse secondary effects, I just went basically or very generally over. In addition to the legislative record that the plan committee reviewed, the retail use ordinance, I have added an update essentially, contains photographs of the facilities that we have in the city, also some additional materials that I received from the city of Federal Way and the city of Blaine and their efforts in this area. There was some original legislative history pertaining to those facilities and this is essentially an update of that. I also offer for the council's review some additional citizen's complaints. In addition, there is also a video that came out of the county's efforts in this area to assist in the incorporation of that record as well. I would like to incorporate by reference, the county's efforts in the adult use retail enactment. I think all of the issues that they faced are pertinent to the issues that this council will be examining to determine if it wishes to proceed. As we have discussed before with respect to adult use facilities, is the issue of whether to go with the six months or one year amortization provision. So do these places need to close and move within six months or a year in they are out of compliance with the zoning issue. I also want to speak very briefly to that issue. I know Mr. Eugster in the past has had some concerns with the argument that there is a property taking by enacting this type of ordinance and I did want to indicate to the council that in this area, and I have mentioned this before, but I want to be a little more specific about it, the courts have not looked at this type of ordinance as a property taking. Um, in the same way that they might with other ordinances. That is for two reasons. Under the federal law, there is no physical invasion of property here and the regulation doesn't deny all economic benefits of that property. There is still a productive use for that land. So under the federal analysis, and this council could be sued in federal district court or in state court over these issues (both Constitutions apply and there are a number of options that can occur in that regard.) Under federal law, the analysis is that there is no taking from a property standpoint. Under Washington law, a taking only occurs if the regulation destroys or derogates any fundamental attribute of property ownership. We don't have any of those circumstances with this particular ordinance. This ordinance simply requires these facilities to locate in a place that is 750 ft. from the named uses. It doesn't say you can no longer use that property. It doesn't say that you are zoned completely out of the City of Spokane. These businesses are afforded alternative avenues of communication. We've shown there is a substantial governmental interest and that the ordinance is narrowly tailored to accomplishing that important governmental interest. There are really only two adult zoning cases that have dealt with this issue. They dealt with very similar zoning provisions in an adult entertainment context. One of them is out of New York, it's a

1999 case. *801 Conklin Street v. Babalon*, the other one is a 1988 5th circuit case, *FDA Inc. v. Houston*. In both of those cases the courts found that there was no property taking and in fact the individuals had not clearly articulated a property taking, but they looked at the issue because they think that is where they were going. When I represented the City of Spokane, _____ v. City of Spokane in 1996, that was when the published decision came out. The court found that there is no Constitutional right to make a profit in this area and that was the 9th Circuit Court of Appeals. We have a long history of cases that have built up to that decision and now we have some cases that deal with the taking of property issue in this very narrow area of adult entertainment zoning. So, its our position that we are on very good solid ground with both of these ordinances. That we have, on the nude dance ordinance cases that have been tried in Washington, many of them with business owners that we will be seeing this evening, if we are challenged and then also on the adult retail entertainment side, we have some cases that have upheld the one year amortization provision and have spoken to the issues generally, and then of course the property takings argument that seem to be of concern to the council in the past, are also addressed in this area. So, it is our position, on a local legislative record, even if you don't look at what has happened across the nation, and the council is certainly entitled to consider all adverse secondary effects, the efforts of other cities and counties across the nation, even if you limited your analysis to what we have here locally, because unfortunately, we do have a very plentiful record of secondary adverse effects both on the nude dances establishments and for the adult retail use establishments, its my position that this council would be on very solid ground enacting both of those ordinances. Coupled with that you have a very plentiful national record in this area, some twenty years of decisions in this area and studies by many jurisdictions on many different issues and then a legal response to that, It is also our position that you also have no insurmountable hurdles on the adult retail use end of this ordinance. I will indicate though that we have discussed the fact that this council will likely face a lawsuit as a result certainly of the retail use ordinance so I certainly did want to indicate that there is a great likelihood that that will happen.

Higgins: I have a question. Will you be around to help us on that.

Connelly-Walker: Unfortunately, I will be around to witness for the City or the County on those issues and that is not uncommon where cities and counties will farm out the defense of these suits to private firms or have somebody else handle the case and then bring in the attorney that did the background work, even though I have had the luxury of enacting the ordinances or working on an enactment of them and them trying them as well which is nice from a control stand point for an attorney, I certainly will be available to assist.

Higgins: Congratulations by the way.

Connelly-Walker: Thank you.

Higgins: Mr. Eugster?

Eugster: I have several questions. Are you familiar with a case out of Boise that was decided last week regarding nude dancing?

Connelly-Walker: "Uh, what was the name of the case?"

Eugster: I don't have the case, I saw it in Lawyer's Weekly last week. I can't get to the... it was just a trial court decision so its not a reported decision, but in that case, apparently they held that Boise's nude dance ordinance was unconstitutional and Boise is incurring exposure of substantial attorney's fees because I think the case has been brought as a 1983 case.

Connelly Walker: I will say that because of the length of time that I have been doing these cases for ten years, I have a lot of really good sources and I will typically see arguments on cases that are not even yet before the trial court and certainly not before the appellate court, so that is why I ask for the case, because I will receive on a weekly basis emails from all over the country on cases that are pending...

Eugster: Well we certainly understand that you are the local expert in this area.

Connelly Walker: And I guess.

Eugster: I appreciate that you may well be, however, I see a headline in the Boise Idaho Statesmen that says, Ban on Public Nudity Violates First Amendment. I read the story and it caused me to be somewhat concerned. So you are not familiar with the case?

Connelly-Walker: I am not, but I will say this. A couple of things come to mind as you are raising that as potential issues, banning public nudity is not what we have done with our ordinance, so I don't know if the caption appropriately reflects what occurred in that case, but assuming it did, that is not a concern for this council because we are not banning public nudity. People are still entitled to provide entertainment in the nude in a controlled facility.

Eugster: Let me ask you this. What is your role here? Are you and advisor to this council or are you and advocate for this legislation?

Connelly-Walker: I am an attorney for the City Attorney's Office whose been asked to prepare and present this material and that is what I am doing.

Eugster: All right. Now the second question I have, In your Adult Entertainment Facilities Ordinance, apparently you have drafted, you say that an adult retail establishment is an enclosed building, blah blah blah, in which any portion thereof for money or for any other form of consideration devotes a significant or substantial portion of stock in trade to the sale, exchange, rental, loan, transfer or viewing of adult oriented merchandise. What is the meaning of significant or substantial>

Connelly-Walker: We have had a number of courts who have looked at that language in other jurisdictions, and, uh there was three that have specifically dealt with that language. I would submit, and we have had...

Eugster: I don't care what the courts have said, what is the meaning of it? I mean you are asking us to adopt legislation, so tell us what is the meaning of significant or substantial?

Connelly-Walker: It means that when you have a facility whose predominant or primary purpose is to sell adult oriented merchandise to patrons then...

Eugster: All right, let me stop you right there.

Connelly-Walker: If I could finish, then that is one of the factors that the Court will look at in determining whether the city in slotting a facility as an adult retail use ordinance made an appropriate decision.

Eugster: All right. That doesn't seem to comport with the statement, "devotes a significant or substantial portion of stock and trade." Your definition certainly did not fit the definition of significant or substantial. You have far gone beyond that.

Connelly-Walker: Yes and that is one of the interpretations that the courts have made. To answer your question, a lot of people say, well why don't you put a percentage in there, wouldn't that be a lot easier, say 50% of your merchandise is adult entertainment merchandise and therefore you are an adult use retail establishment. The reason we haven't done that is because of the way the courts have looked at these issues. Number one, you don't have to do that and they have suggested why it may not be prudent to do that. The first reason being that if you pick a number and you draw a line in the sand, say 50%, then its very easy for an adult entertainment facility that really as its purpose for being caters to people who want to buy adult entertainment merchandise, they will just have 49%. They will have a ton of lingerie that will kick them out of that category. So, what we know...

Eugster: Can I stop you right there?

Connelly-Walker: If I could just finish, because I don't want you to have one piece of the puzzle, I want you to get the whole picture, what we do know is that in the State of Washington, 10% is too low given a certain set of criteria given the legislative record. So one of the things that I wanted to point out, the courts are going to look at what you the council have done from a wholistic perspective. The aren't going to require that you give them a number of set items...

Eugster: Counsel, counsel, I am not asking you what the courts are going to do, I am asking you what I would be adopting were I to adopt this legislation. Are you talking 10%, 20%, 50%, 60%--what are you talking about?

Connelly Walker: A substantial portion.

Eugster: Okay, let me ask you this then. There are, let's see, I know that there are various video stores that we all shop at that have rooms specially designated for adult videos. Is that an adult use retail establishment?

Connelly-Walker: No, because it isn't a substantial portion of their stock and trade.

Eugster: But it says significant or substantial. Obviously if they rent adult videos, that is a significant portion of their stock and trade.

Connelly-Walker: That is not how the courts have interpreted it.

Eugster: Well, how are we interpreting it? Are we interpreting it how the courts are interpreting it and if that's the case did you give us the opinion so we know..

Connelly-Walker: As you will recall, if I could just respond to this, I did over a month ago leave you a voice mail inviting you to meet with me and to go through the decisions with me. The decisions are all in the legislative record. They are all in the record that was provided to the City Plan Commission which this council has had for a number of weeks. So I would invite you to review those because what I am proposing to you here today is an ordinance that I believe comports with those decisions and the only interpretation...

Eugster: But counsel, you are not telling us what we are enacting.

Connelly-Walker: I just told you. I would be happy to go into greater detail.

Eugster: Let me. Let me go on to the next question. Let me go on to the next question. Um, in 11.19.143, you have a provision that says they will not be located or maintained within 750 feet, and measured from the nearest property line, of an agricultural zone?

Connelly-Walker: What we have done is adopted, uh, we have tried to be very consistent with our approach on this issue. And, we use the same provisions that were in effect in other places.

Eugster: But, in order, let me, I understand what you are trying to do here, but what is an agricultural zone? What is a country residential zone? What is a residential suburban zone. I am not aware that we have a country residential zone or a residential suburban zone in the city land use code.

Connelly-Walker: The residences, which of course is a concern to,

Eugster: Why don't you say, R-1, R-2, R-3, R-4 zone?

Connelly-Walker: I suppose we could redraft it.

Eugster: I think you have to. I think you have to, because you don't have a country residential zone. I know that you are going to other legislation, but we have to draft legislation that works for the City of Spokane.

Connelly-Walker: Right and we did that and this went the Plan Commission and they reviewed it and they made changes as they felt necessary.

Eugster: We all make mistakes and this is not well drafted. Let me ask you, what is the purpose, what is the legislative purpose for locating or not locating lets say, one of these establishments within 750 feet of an agricultural zone?

Connelly-Walker: Well, I suspect that if an individual had an agricultural residence then they would feel the same way if they were within 750 feet for one of these facilities as somebody that lived in the city would, so there is no distinction from my standpoint. A residence is a residence no matter what zone its located in.

Eugster: Now, another question that I have, you mentioned, that apparently, your understanding of the legislative history on something like this is that we can consider the impact that this use may have on the value of adjoining properties, is that correct?

Connelly-Walker: Yes.

Eugster: Do you think that is ever an appropriate consideration in a land use decisions?

Connelly-Walker: I think its appropriate consideration..

Eugster: In this case?

Connelly-Walker: In these types of cases. The courts have reviewed those issues very specifically.....

Eugster: I understand that you've got all the Court's in the world behind you. I am just asking for an explanation.

Connelly-Walker: Yes, I do, to answer your question.

Eugster: That you understand you think that you have all the courts in the world behind you. Ahhh, now, you went into a long discussion about their not being a taking of property under this statute. Now, I can understand that there might not be a taking with regard to how the legislation might apply to land which is not currently being used as an adult establishment, but, if you have property that is now being used as an adult use establishment, what you have is a vested use. You have a vested property right. Are you aware of all the cases in Washington that refer to vested property rights?

Connelly-Walker: I don't understand your hypothetical.

Eugster: Norco Construction Company and others?

Connelly Walker: Um, you are asking me about non-adult entertainment property or probably its use and non adult entertainment uses?

Eugster: No. Maybe I miss used..

Connelly-Walker: Because this doesn't apply to them.

Eugster: No. I can understand that with respect with property that is currently not being used as a retail adult establishment, you can enact a zoning code that might limit those establishments from other establishments in other areas. But, you said that is not a taking, and I agree with you, but if you have a vested use. If you have somebody that is already using their property appropriately under the land use code and you now say that that use is a non-conforming use, you have engaged in a taking of that use of that property right.

Connelly-Walker: Are you talking about an adult use entertainment facility?

Eugster: Yes.

Connelly-Walker: Then, no. Under the case law that deals very specifically with this type of ordinance, there is not taking.

Eugster: So, you...

Connelly-Walker: So, regular land use law does not apply.

Eugster: Please let me finish.

Connelly-Walker: Sure.

Eugster: So, you can, what you're are saying is that the City can say that a use in six months will no longer be a permitted use and that does not consist of a taking?

Connelly-Walker: If its an adult entertainment use, no.

Eugster: What's the difference between that and an office building?

Connelly-Walker: Because the Courts have looked at these issues over the last twenty years and determined that there is such a significant compelling governmental interest that its permissible for cities and counties to legislate this way. We have a narrow set of circumstances and the law applied in a very narrow way. So its different from an office building because your average office building doesn't have these kinds of adverse secondary effects. It would be more similar to a bar which historically we know we will

have secondary adverse effects so there are certain liquor laws and rules that apply to them.

Eugster: So you are saying that because this falls into a category of supposedly a nuisance, you can bring the use to a halt.

Connelly-Walker: It doesn't have to rise the level of a nuisance before you can legislate like this.

Eugster: Now, how many judicial decisions have held up a six months amortization time period that you have encountered in your experience?

Connelly-Walker: With respect to adult retail use establishments, there are none that I am aware of.

Eugster: How many courts have dealt with a one year amortization period?

Connelly-Walker: Three have very directly addressed the one year period, others have had one year amortization provisions, but have not spoken to it in their decisions. You know, sometimes cities and counties enact things and the proponent of the suit will choose to fight on you know, A and B which might leave C which might be the amortization alone so we have that kind of situation as well

Eugster: Let me, one final question and then I'll be finished. I see no legislative history set forth in the preamble of this ordinance.

Connelly-Walker: What ordinance?

Eugster: The ordinance that you are proposing regarding adult entertainment facilities.

Connelly-Walker: The retail use or the nude dance?

Eugster: The Adult Entertainment Facilities Ordinance. The nude dance ordinance you have a bunch of whereases, none of which we have read, I am sure. But be that as it may, in the adult entertainment facility you have no whereas—none of the legislative.

Connelly-Walker: This body has before it the plan commission's recommendation that came with a number of findings that would encompass the preamble, the whereases...

Eugster: But wouldn't you, in order to protect, wouldn't you suggest to this body in order to protect itself and the citizens from lawsuits that we adopt at least the Plan Committees legislative findings on this?

Connelly Walker: Well, it would be my recommendation.

Eugster: But you don't have that here.

Connelly-Walker: The Plan Commission made that recommendation.

Eugster: But the Plan Commission is a separate entity.

Connelly-Walker: My recommendation of course is that this council adopt their recommendations and their findings which would be the purpose for them to go through that procedure before you and I would be asking to incorporate their record as a whole record of the county planning commission and the county commissioner by reference. Much of that has already been included in this legislative record.

Eugster: You recommend that, but its not there, so shouldn't we defer this until its there?

Connelly-Walker: No. Because I don't have to bring in, I already brought in a banker's box full of materials. Its not required that this body see every little word that every other body has considered before it makes that determination. The Courts have determined that its perfectly appropriate for staff to study the issues, to summarize and to provide a digest version for this body because there is no way that each of you could consider all of the detail that the staff that you charge with developing the record would know. Its not expedient. Its not required and so I think I have provided more of a legislative record than you will see in most of your ordinances without bringing every record that I considered without every study that I have considered. I have bookcases full of material that I considered in preparing this.

Eugster: It is not an issue of you.

Connelly-Walker: No.

Eugster: Its an issue of the legislative history of this council and the protection of the citizens of this city from lawsuits that it might lose.

Connelly-Walker: Right. And it is an issue of me because you are entitled to rely on what staff has done in bringing this before you without specifically and individually considering every study, dotting every I and crossing every T.

Higgins: Mr. Eugster, can I.

Eugster: You overstate the point. All I am trying to suggest to you is that before you have us adopt the ordinance, it would seem appropriate that this body have some findings as to why its adopting the ordinance. It has nothing to do with you. It has everything to do with the legislative history you are suggesting...

Connelly-Walker: I would suggest that you have those findings, Mr. Eugster.

Higgins: Any questions from council members?

Eugster: I would like to ask Mr. Piccolo what his thought is concerning the failure to place legislative findings in the preamble to this ordinance.

Piccolo: At this point, I would certainly have to defer to Ms. Walker's expertise in this area. But any assistance she may need in finalizing this ordinance, we could provide.

Eugster: Well, my problem with Mr. Walker is she is obviously an advocate for this legislation and you are our counsel. I am concerned that we are walking down a real slippery slope here. I would like to defer this. I think that this is wrong. But, I think that if the council is going to protect its citizens, that it ought to have a whole series of whereases here so that we can at least, when we go to the court, say that we did understand, that we had a legislative record, we did approve the actions of the plan committee.

Higgins: We have had a couple of briefings by the

Eugster: Well, Rob, its not a matter of having briefings, it's a matter of making a record.

Higgins: Make your motion. There are a lot of people here that wish to speak. You would like to make a motion to defer?

Eugster: Well, I think we continue the hearing tonight, but I think that we need to defer the final adoption of this until we can explore the need to have legislative findings. I appreciate Ms. Walker's zeal here, but quite frankly I am not enacting what courts are doing, I am enacting what I think I am doing—not what some Judge that's getting paid a \$125,000 is telling me I am doing. So,

Higgins: Any other council members with questions?

Eugster: I move that we defer the final adoption of this until after we've heard from Mr. Piccolo on whether I am right or wrong on the whereas.

Rodgers: I will second that for the sake of discussion.

Higgins: There is a motion to defer this item. A number of people have shown up to speak to this item. Even if we vote to defer on those grounds, we will continue with the hearing. Mr. Corker.

Corker: I have one concern about the six months and a year.

Greene: But that is something we can...

Higgins: Excuse me, we have a Motion on the table to defer. Are you speaking to that Motion?

Corker: I guess I am speaking in support of it because I have some questions that I need to have answered, so I guess so.

Higgins: Is there anybody in the audience that wishes to speak to the council on the Motion to defer legislative action on this item to no specific date but until, as I understand it, some legislative findings can be...

Eugster: To determine if we have findings, I think we should. We clearly have them in the other one and I think this is the critical one.

Higgins: Is there anyone that wishes to speak to the deferral? You may speak to that Motion to defer.

Wakeman: I am Bruce Wakeman, [REDACTED] Spokane. I think that this matter of the questions of the findings is a matter of turnover that we have on the council. Mr. Eugster missed a few of the council meetings during the time that the findings were coming in and being recorded. As a citizens whose been to the meetings that pertain to this issue, I have heard and I've heard submitted to this council many findings.

Higgins: So you are speaking against the Motion? I take it from your comments?

Wakeman: I think we should not defer the action.

Higgins: Thank you. Anyone else wish to speak , just to the deferral issue. It would be nice to move on with this, just so we can discuss the issue with some substance.

Jester: I am Dan Jester. I am a voter in Spokane. I uh, urge you to defer this. I was going to speak to the other forum after this and my last sentence in my presentation is that I also ask you to delay this decision until you have the time to read these statements for your consideration. I will read that again when I have the chance.

Higgins. Thank you sir. Please state your name and address for the record.

Talbott: My name is Glenn Talbott. I live on [REDACTED]. And I would like to see this pursued and not deferred for the reason it's a typical maneuvering of those that want these kinds of establishments to grow to keep deferring as we have seen in about the last, what 15 years, to get the doors off of the booth. I mean that did not happen over night and it happened with a lot of legality. I hope you guys that we elected to stand for this community have the gumption to carry this through and not just put it on hold because that is the biggest tactic of those purveyors of this kind of activities.

Higgins: Thank you sir. That's gals and guys. We like council members, okay. Would you like to speak to this?

Drake: My name is Kimberly Drake and its [REDACTED] and I live in Spokane County and I will speak more directly to this issue, but I also believe that this definitely needs to be pursued this evening. There are businesses who are already feeling the effects because of this kind of Motion to Defer. Please don't do that. You must make some sort of a decision here this evening.

Higgins: Thank you.

My name is Ron Belile (phonetic). I live at [REDACTED] I work for Mukagowa and I strongly urge you to stop this kind of adult entertainment and not defer it anymore. We just had two students who were brutally hurt by people who were incited by this kind of behavior. Please do not defer this action anymore. Thank you very much.

Hansen: Hi. I am Ron Hansen. I have a business at 3809 N. Division. One selfish reason I would like it not deferred tonight, I left two little girls out in Colbert on Daddy-Daughter date night—uh, they are up there waiting for their date which is me and I like to see some resolution. I appreciate Mr. Eugster's questions and I believe they were asked with sincerity trying to get an amendment to the ordinance that can be defended properly. But in my business, we have been seeing an accelerated problem—an aggressive behavior of the people that are going into the business next door to my office and I had to do a police report this weekend on some thefts, My own kids that I actually pay to clean my office, I can't let them do it because they are having to do with an increased amount of used condoms in my parking lot and I am in a situation where time is of the essence for my own business survival. So I just want you to know that I know we gotta follow proper legal steps to try to avoid litigation or be able to defend litigation the best we can. But we know we are going to face litigation and we are not trying to boot somebody out on a new ordinance that is taking their property. We are trying to reinforce an ordinance that has been in place since 1988.

Higgins: Stick to the deferral.

Hansen: So, I am going back to the deferrals because 1988 is a long time to defer enforcement. We have deferred enforcement on the business next to me on an ordinance that already exists. So, I would appreciate it guys, I understand you are trying to be careful and do the right job, but I believe that Patty has done a really good job in preparing the amendment to this ordinance and between the Plan Commission and the City Council has provided the information needed and so I hope you will agree to continue tonight.

Connelly Walker : If I may offer a solution to the council. I have just reworked the Plan Commission's findings with essentially what I would bring back to you if the council directed me to prepare a preamble, or findings or whereases and they can come in any form. My understanding that there is no magic wording to this. So what I have done referred to this as Attachment A to the ordinance that is before the council. I have entitled it Preamble/Findings and it consists of nine different provisions that refer to what the Plan Commission looked at. I crossed out conclusion and Phyllis Meyer's signature

line and I would ask that council to adopt these preamble findings as part of the legislative record and as part of this ordinance.

Higgins: And in fact, that was part of our packet that you provided.

Connelly -Walker: It was?

Eugster: I so move. That might correct the problem here. I will withdraw my Motion if, I will withdraw my Motion for the time being and then I move that we add the reference in the ordinance to the findings of the plan commission.

Second.

Higgins: We remove the deferral ordinance and replacing that with this amendment to include it as part of our ordinance. And there has been a second to that. I am going to call for the question, all those in favor. All say ay. Let the record show it passed unanimously. Mr. Corker?

Corker: Again, I am still concerned about the six months and one year. This is going to be a long legal battle. With the history of the one year supporting us, I am afraid that 6 months would seriously jeopardize our effectiveness.

Cherie Rodgers: I have some of the same concerns and I assumed that after we heard some testimony we probably going to hear from folks that object to the six months and we still have the right to amend that if we want to after the testimony.

Higgins: Ms. Walker, can you, that was an issue of concern to me as well. Do you feel confident that the six months is something that we could pass and you could defend and you could be successful?

Connelly Walker: Yes. The council is aware that I will be leaving my position, so I won't be defending it and you may find that other council may not feel as strong about the defensibly so that is certainly an issue the council could consider when deciding who will be doing this work. So...

Higgins: Okay, thank you. We are going to give the public another opportunity to speak regarding the ordinance that is before us. First, we are speaking on the final reading of Ordinance C32778. Mr. Ron Hansen?

Hansen: My name is Ron Hansen. My home address is [REDACTED] and I have a business on 3809 N. Division and I will be brief. The, my biggest concern is I believe that there is a fairly good consensus about wanting to have an ordinance to address these issues and I think that some of the disagreements come around because of the amortization period, and the issue of 6 months or a year. I would like to reiterate what I have said about, we are not coming in trying to take somebody's livelihood in a situation where they moved into a business zone that supported the type of business that

they wanted to operate and we have come back after they have invested money and come to them and said, no, you are outta here. This amendment to an ordinance from 1988 which was a fairly clearly worded ordinance where the perimeter for the distance of the use is the exact same as it the new ordinance, but we do have an amortization period inserted and some changes in the wording to make it more defensible. The hardship that has been placed on the citizens, whether they are businessmen like myself and I have talked to a number of them during the last 7 or 8 months or on the neighbors who own residential homes directly behind my office has been significant. The owners of the business next to me went into that building knowing full well that they were in violation of the existing ordinance and I believe they are hoping the city will not find the will to be able to enforce any ordinance. They have already started their intent to litigate and that will happen regardless of whether that is a six month or one year amortization. I appreciate Patty standing strong, through the first time she came here and through the Plan Commission and again tonight for her affirmation that a six months amortization is defensible. I know that there is some concern that she won't be here, I found that out just a moment ago I guess listening to her testimony. But I believe that the fairness issue in these particular situations in our city are just going to show that our city is trying to restructure and existing ordinance so that we made it better, more defensible so that we are not trying to make somebody lose a livelihood here. My personal feelings about this type of operation have really changed, before I was all for them and now I am totally against them. I didn't think they were a good thing to have around, especially around me but now that I see the people that are going to these places, I feel for them. I really do. This is, you talk about an addiction to this pornography. I have seen some people that look like a grandpa that you respect or that you would go to for advice or the young couple you think had all the promise in the world and I have seen everything in between go into the facility next door to me and continually come back and I really believe that it's a public duty that you have as a city council to bring about the will that brought about the first ordinance. Obviously, there was a public will to regulate these types of businesses. I think to be overly concerned about their compensation because their investments that they have in these properties is to ignore the damage that has already been done and is heaping more damage upon the business people and the residents in that community and to ignore the losses both emotionally and financially that they have incurred. I hope that you would take that into consideration because there is nothing on the table here tonight being considered on how we are going to remunerate the businesses or the residences for the losses they have incurred. I hope you will take that into consideration when you are thinking about extending the amortization period because I think that its something that has been left out of the conversation a little bit. Anyway, that's all I have. If there is no questions, I want to get to two little girls.

Higgins: Thank you very much. Get to the two little girls. Uh, Dan Jester.

Jester: Good evening, council president, council members. My name is Dan Jester, [REDACTED] East Spokane. I would like to read you a statement from Judy Carren the Executive Director of Sexual Freedom in Washington, D.C.

This was faxed to me today. The National Coalition for Sexual Freedom opposes the opposed retail use establishment reordinance and asks the City Council to vote against it. NCSF is concerned that the proposed ordinance will have a chilling effect on the sale, rental and/or lending educational materials and other sexually explicit but Constitutionally protected goods. The vague definitions of SMC regarding the "economical areas" has specified sexual activities. They do not provide a clear definition on what constitutes adult use materials. For example, a city official or public citizen with homophobic views could use the ordinance to demand the removal of establishments who sell books or magazines with homosexual themes despite the City's ordinance against discrimination and on the basis of sexual orientation. Educational materials designed to teach safe, sane, and consensual forms of alternative sexual expression are sometimes confused with violence and sexual abuse and could thus be targeted as pornography and their distribution subject to the proposed. Perhaps more chilling, the ordinance would intrude on the privacy of married heterosexual couples who simply seek to purchase marital aids sold by local citizens in legitimate local retail establishments. Finally, since the City of Spokane does not distinguish what it deems obscene and other constitutionally protected adult entertainment, the NCSF holds that the adult retail use establishment threatens personal sexual privacy and restricts freedom of choice by permitting the City of Spokane to decide what is best for all adults. As Supreme Court Justice Thurgood Marshall wrote, "if the First Amendment means anything, it means that a state has no business telling a man, sitting alone in his own home, what books he may read and what films he may watch. The NCSF also questions the conclusion of the evidence of the adverse secondary effects of adult use retail establishments. The claim that local public safety is imperiled by the mere existence of such stores is seriously undermined by crime statistics of the FBI and the Washington Assoc. of Sheriffs and Police Chiefs. Reports of Rape and Aggravated Assault in Spokane County in 1999 were significantly less. Almost half than the predicted mean for similarly sized metropolitan areas. There is some foot notes to that. In addition, the SPD reports that these crimes continue to decline significantly down to 62 reported rapes in the year 2000 and that is documented. Further, NSFS examined several adult oriented businesses in Spokane and found that there current locations allow that their patronage and close observation by average citizens who are likely to zealously look after their neighborhood interest. Enactment of the ordinance would force adult establishments to move to isolated locations that would hinder surveillance by law enforcement officers. More conclusive, drawing on the SPD own crime statistics and mapping data, there is no evidence to support that Spokane Plan Commission findings that adult oriented retail establishments are responsible for higher crime rates in their vicinity. In December, 2000, all incident reports within the three block area surrounding these stores did not exceed the median range—there is more documentation. For these reasons, NCSF, urges the city council to reject the proposed ordinance. Um, I am asking that a copy of this be included in the record. I am asking, Dan Jester, that you vote against the adult use establishment ordinance. The reason I am asking, is because I feel this is a backdoor way of closing these businesses and in doing so an erosion of my First Amendment Rights of Free Speech. This ordinance is an incremental way of denying my rights as written in our Constitution. Our new president just took an oath of office and he said, "to preserve and protect the Constitution of the United States and as elected officials, I would expect

nothing less of you. And once again, I would urge you to delay this decision until you have the chance to read all of these documents for your consideration. Thank you.,

Higgins: Thank you Mr. Jester. Rev. Don Anderson?

Anderson: I am Rev. Don Anderson I am the Pastor of the _____ Church of God which is a Jewish congregation here in Spokane. I am also the founder of the Coalition of Parents which is one of largest civil rights protecting, suing welfare depts.. for the taking of kids unconstitutionally and disrupting file. I am also the found of Legal Eagle Investigation which investigates the corruption within City, County, State and Federal governments. I am also a member of the ACLU, but the difference is that I am 100% against adult entertainment on the grounds, first of all the nation was founded, it was founded as a Christian nation and not a Humanist Nation as Human Rights Commission seems to be a liberal and a humanist organization. It was also found on the First Amendment. The First Amendment does not protect, if the founding fathers were here today, they probably would run for fear of being put behind bars for standing against such indecent exposure. Such things as pornography, adult entertainment and I also believe that they would not say to you today not that the First Amendment protects such things. As Herbert W. Armstrong and I am a great follower of the late Herbert W. Armstrong who was an ambassador for the World Wide Church of God , he said, "with every cause there is an effect." Think about that tonight as you go to sleep and I pray that you won't sleep tonight if you do pass this ordinance tonight. As Jeremiah and Isaiah would say today, and Hezekiah would say because God has made me a messenger to this nation and to this council. This is the message that God has me give you tonight. Pass it. And as God destroyed Sodom and Gomorrah, your day of judgment is coming on God's time clock. You are supposed to protect the morals of these people. You are supposed to be a Christian that mentions Jesus in your prayers not trying to delete these away from prayer. How dare a person would say he is a Christian and won't use the name of Jesus. I am proud of being a Jewish Christian. I am proud of the Messiah Jesus because he is my Messiah and I don't think a person can be a Christian unless he includes Jesus in his prayer.

Higgins: Sir. Speak to the ordinance.

Anderson: Okay. This is what I am boiling down to. Pass it and you will stand in judgment before God Almighty and the _____. If you don't pass it, God will continue to bless you according to Deuteronomy 28 and Leviticus 26.

Higgins: Victoria Allen? After Victoria Allen, Kimberly Drake so you can be ready to come up.

Allen: My name is Victoria Allen, [REDACTED] Spokane. I grew up in Spokane and I want my children to grow up in a community where this type of business is not around their neighborhoods, their parks, their churches. It concerns me that children are exposed to sexual paraphernalia from patrons of these retailers. And that neighborhoods and businesses next to these stores are in danger, especially at night because of the kind of

criminal activity that is prone to take place. These stores stay open later than the businesses around them so there is normally activity at these places. Thank you for considering this ordinance and I would ask that you enforce it as expediently as possible. It concerns me that we haven't done it more expediently and for the sake of our children's future, I ask that you would consider this ordinance and pass it quickly. Thank you.

Higgins: Thank you. Kimberly Drake? And after Ms. Drake, Glenn Talbott.

Drake My name is Kimberly Drake and my address is [REDACTED] Spokane. First I want to just say as a citizen that there is utmost confidence from the citizenry in Patty's expertise and knowledge in putting this thing together. She is being sought by national organization for her advice and her extensive research in this area and so we believe she knows what she is doing. I am going to state for the legislative record, my experiences, many of which you have heard before. I can speak to the statistics, but I don't think that is what you need to hear here today. First, I am going to speak to the adult entertainment ordinance and I want to talk to you about the harms from my experience. I would urge you to review the County video tape that has been submitted by Patty. There has been extensive testimony that I gave in November, 1997, just six months after I came out of the industry. As you know, I am former stripper from the Deja' vu and although I have a background in business management and sales and marketing, I made that choice because my husband was addicted to pornography and I wanted to be the centerfold of his life. I thought that this job would be glamorous and that it would fulfill my husband's needs and mine to need know that I mattered and that I was truly significant. I thought that if I could become what it was that he was looking at, that he would no longer purchase the pornography. After about 90 days of being in the industry, I discovered that it was not as glamorous as the porn industry made it out to be. It was dark and it was dirty. It was a place of shame and humiliation. I was loved for my body parts and not my character. It was a place of prostitution and drug addiction. And let me tell you that when those lap dances took place in the Deja' vu prior to the ordinance that is now in place, there was penetration happening on those couches in front of the managers, in front of the patrons on the floor. The girls got very good at it because they got paid well for it. I purchased drugs, sold drugs and participated in drug activity, with not only with the girls and patrons, and also with the managers. And then the managers stood before the County Commissioners and said that they never allowed that when in fact they sold drugs to me and bought drugs from me. There was also direct harm to the girls. I was bit, pinched, hit, grabbed. The public health and safety to these girls is very very important. This is a public health and safety issue. We can stand here and talk about morality but I don't think that is what we are talking about here today. We are talking about the safety and health of our citizenry. These establishments are green houses for STD's. And I traveled around the country and this didn't just happen in the Deja' vu. This happened in many places that I worked all across the country. I am now involved in helping women out of the industry and I get calls from gals all over the place all over the U.S. This doesn't happen just in Spokane, but I can tell you that it does happen in Spokane. Now, I want to talk to the zoning ordinance for the retail establishments. When I was using pornography and my husband and I would use pornography, we went into these establishment very very late in the evening. We left our children, home alone.

Pornography—there is a story of a couple who put a sock in their baby's mouth because the baby was crying—the baby suffocated and died. They wanted to view their pornography that was more important to them than their own child. This is stress management. Pornography is or can be an addiction for some people. It can escalate into very dangerous choices. When we went in the late hours, I am speaking specifically to the decision that you close these businesses and regulate the hours of operation. I don't know what's in the ordinance, but definitely, very very important that you close these stores. That they shouldn't be open 24 hours a day. There were individuals who I knew who were in criminal activity that would go into these establishments very late at night. One of the statistics is that if there are bars next to these establishments, within 500 feet of these establishments, the rape rate increase by 50%. I think its absolutely incumbent that you protect the citizenry. This is taking anybody's choice away. They will still have the opportunity to go into these book stores. They just have to manage their time a little better and go in during the times these businesses are open. And they will have to travel away from schools and churches and parks and residential areas. They will just have to go a little out of their way and I don't really think that that is a big issue. This is not infringing on anybody freedom of choice, not for the sexually oriented bookstores and not the adult entertainment establishments. You have a very unique opportunity as elected officials here tonight by choosing the how, when and where, which is what the law allows you to do, to make a difference to raise community standards and to protect the children and families in our community. If you do not set strict standards today, I guarantee you that the porn industry will set the standards for you and you will not like the outcome much. Thank you very much.

Higgins: Thank you Ms. Drake. Mr. Talbott? Followed by Penny Lancaster

Talbott: My name is Glenn Talbott, as previously said, Can I have your indulgence to give about half a minute to 45 seconds to speak to one previous issue? Thank you. Concerning the issue of beginning your session with prayer, I would like to say that if that is wrong, then the President who started and ended his inaugural with prayer. He was very wrong.

Higgins: Okay, that is enough. You got your point across.

Talbott: Okay, back to the ordinance. Concerning the issue, I think its very important and I support Patty Walker. I am sorry to see her going. It's a sad day for our city. I wish you would reconsider. I support her motion entirely. If 30% of the definition of obscenity is community standard, we need to set our community standard high for our children and that is what we are all concerned about as much as anything. As well as the adults as well as the fact that the more we allow these businesses to promote these wears, the more likely we are to have the secondary effects. The two lovely ladies that were sexually mutilated and abused and it was all for pornography. I think that anything we can do to regulate it, slow it down, stop it, is in the best interest of our children. Because pornography is like a little puppy dog. You let him. You think he is cute and then he grows into a monster like Damer—like we know who not only mutilated young boys, but he also cut them up and ate them. And I think they were made that way and

what we are trying to regulate is what started them on the pathway. Anything we can do to raise our community standard is a value to the City of Spokane and maybe we can stop this stuff like what happened at the college with the Japanese ladies. I guess that's it.

Higgins: Very good. Thank you. Penny Lancaster followed by Kathy Nester.

Lancaster: Penny Lancaster, [REDACTED] Spokane. Today's testimony and the testimony before the Plan Commission on 11-29 clearly substantiates the risk that these businesses pose to public health, safety, morals, general welfare of the citizens of Spokane. I have interviewed people who have been living near these bookstores. In every case, the comments include complaints of men parking away from the stores and walking down the alley to access the business. Offensive video wrappers found in their yards, late night traffic, doors slamming, fear of using their own yards for relaxation, concern for young people waiting for the bus in front of the bookstore, fear of accessing other businesses near by at night and children looking in garbage cans for materials from the stores. These are serious impacts and families and businesses should not have to put up with it another day longer. However, the proposed ordinance is not scheduled to take effect for six more months. It is true that the courts have required municipalities to give businesses time to recoup the costs in establishing their businesses in their present location. If the amount of traffic is any indication of income, the Erotic Boutique on Garland, the most recent establishment, has surely recovered its expenses it this past year. In defense of the proposed ordinance, lets take a look at a Washington State Case, *North End Cinema v. Seattle*. Where a 90 day amortization period was upheld. The Washington Supreme Court made these three points:

1. Each case must be determined on its own merits. I submit to you that you have ample evidence that the nonconforming bookstores have caused enough harm in their present location and pose a substantial threat to the community if they remain located close to parks and churches, etc.

2. The economic hardship of the business must outweigh the benefit to the public to be gained from termination of the use if the business is allowed to remain. It has been shown that the Spokane businesses have not invested a great deal of money into their property. That they have recovered their expenses, through profit or depreciation and that they don't own these property. Further it was pointed out that the property could easily be converted to another business—even a non adult retail bookstore. Remember, even our ordinance has a provision for an extension for extreme economic hardship.

3. The court said that they were mindful that the North End Cinema knew that the zoning ordinance was pending. And for the last 8 years our 6 adult use establishments have been operating the 1989 ordinance that was not enforced by the city. And they also knew that the county had passed an updated ordinance zoning 1000 feet. On behalf of the public welfare the court found that "protecting neighborhood children from increased safety hazards and offensive and dehumanizing influences created by adult use establishments in residential areas were an important part of the city's long range land use planning effort. This certainly has to be true for Spokane.

I want to thank you for your consideration and hopefully you will pass the ordinance as it was written with a six months amortization period today.

Higgins: Thank you. I just want to ask Ms. Walker if you can comment on that 90 days?

Lancaster: I have additional information and court cases in this handout.

Higgins: Thank you very much.

Connelly Walker: Ms. Lancaster addresses a case that does not deal with adult use retail establishments. We do have a number of opinions out of this state as well as across the nation with amortization periods as low as 30 days for regulatory and licensing provisions of the type we are dealing with tonight in terms of the nude dance establishments. We do not have case law that deals with retail use establishments that's less than one year.

Lancaster: The similarity is that they are sexually oriented businesses.

Higgins: We understand that. Mr. Corker?

Corker: She made a comment that the ordinance wouldn't take effect for six months. My understanding is that it would take effect when passed.

Connelly-Walker: It would but the amortization provision would not require relocation for existing businesses. I thought I would mention the gentleman who spoke in opposition to this ordinance raised the issue of obscenity. I did want, we have talked in the past as this ordinance, both of these ordinances being content neutral and proceeding with the assumption that all of these materials in these establishments are protected by the First Amendment and is non-obscene material and obscenity is not protecting the State of Washington and there is a separate legal definition for that. So, I did want to bring to the Council's attention that these ordinances are both considered to be content neutral ordinances.

Higgins: Mr. Piccolo, I just would ask your comment on this ordinance should it pass, takes effect 30 days from passage?

Piccolo: Correct, if its not an emergency ordinance it takes effect in 30 days and then the six months would start from that point.

Higgins: Okay. Next up is Kathy Nester. Marilyn Lawson and then Paul Unger.

Lawson: My name is Marilyn Lawson and I reside at [REDACTED] Spokane. I want to publicly thank Patty Walker for the work that she has done for our community in the area of pornography. Why are we trying to zone sexually oriented businesses away from

day care and residences? The answer, is children, children, and yes, families. Let me give you a picture of the victims. Boys and girls who have lost their innocence by viewing pornography at an early age. Children used for the sexual satisfaction of fathers, step fathers and men they trusted. Young men exposed to a false image of sexuality. Men who cannot stop using pornography because they are trapped in a secret life of addiction to pornography. Women and men preoccupied with pornography and the sex industry. Women who are being treated with disrespect and sexually abused. Young women trapped in an industry that traps them and uses them as mere sex objects. Neighbors that have increased crime and decreased property values because of the proliferation of pornography in their communities. Society that has become desensitized to the pure nature of sexuality. These are real people with real faces. The general public is unaware of the sky rocketing numbers of people in their own neighborhoods that are affected by rape, molestation, disrespect is in most part due to the tidal wave of porn and sexually oriented business in the community. I urge you to adopt these ordinances. Our families can use all the protection they can get sooner the better.

Rob Higgins: Mr. Paul Unger:

Paul Unger: Paul Unger, [REDACTED] I hope the council has a biased and perhaps zeal for protecting neighborhoods and decent businesses like Mr. Hansen's realty business and the dentist who testified before the Plan Commission and that you will adopt this ordinance including the six month moving period. It seems more than fair. Thank you.

Higgins: Bruce Wakeman, [REDACTED] I also ask that both ordinances be adopted pertaining to the live adult entertainment and it being under growth management, I think its conducive to growth management that people will want to come to Spokane if they know that there are protections in place against having to live in the midst of so many corruptions. There is so many posturing about who is the underdog and who is the dominant or the minor culture. I think that those that are Godly and moral are having more and more challenges that we have to contend with that we didn't have to in the past.. Therefore, we have to proceed very quickly and adopt these ordinances.

Higgins: Thank you. Kathleen Gray? Kathleen you are the last to speak so then the council will take action afterward.

Gray: My name is Kathleen Gray and I live at [REDACTED] and when I signed in, I thought I was just signing in, I didn't know I was signing in to talk, but I do have a thought. I live close to three of these shops and its just gives me an awful feeling each time I drive by them. I wish they weren't here and in my perfect world they wouldn't be and I just wish we could get rid of them. Thank you.

Higgins: That concludes public testimony unless there is anyone else. There is more. Please come forward and state your name and address for the record.

Anderson: Thank you for the opportunity to address the council. My name is John Anderson. I live at [REDACTED] I have just moved here from New York City and I work at the Heart Institute. I feel very privileged to have moved here, although I love New York City. As a Nebraska born New York, I guess I just wanted to state that I have been a witness for ten years to the tremendous economic benefits from the New York City leaders saying no. And as someone once told me, you are not able to be a leader unless you are able sometimes to say no. So, I just urge you to listen to your conscious and certainly a lot of the problems that are being discussed before you, you are not able to reverse them and certainly restricting the shops is not necessarily going to solve all the problems and dilemmas that exist her as well as in large city, but it will go along way to showing very dynamic leadership and it will take a stand and it doesn't impinge on the diversity that I think you do want to show respect for as well.

Higgins: Thank you sir. Please come forward and state your name and address for the record.

Barret: My name is Pam Plese Barret. I own the property directly north of the property that you are speaking of now. We will lose the value substantially on that piece of property and I urge you to please pass this ordinance. Also, as a citizen of Spokane city, I live at [REDACTED] so I also live within 12 blocks of this questionable property, so it's a concern to me as far as the neighborhood is concerned. As far as the property is concerned, and I know as a mother, who raised children, as you drive them back and forth through the city, the notice things. They see these signs and they question it. I don't think it's a wholesome environment for our children—especially close to a park on a major arterial that all children travel with their families. Thank you.

Higgins: Thank you Ms. Barret. Next.

Rasmussen: My name is Michelle Rasmussen. I live at [REDACTED] in Spokane. If I heard correctly, Mr. Eugster, you said something about attending a meeting tomorrow night regarding the use of county funds and I thought I heard you say something about that they hadn't been used in such places as women's shelters. I think sometimes we are looking at some things backwards and maybe sometimes we are too busy putting fires out and perhaps we should look at things as preventing the fires and I think that is what this ordinance is all about—preventing it so we don't have to spend those funds on women's shelters. Thank you.

Higgins: Thank you.

Parker: My name is Holly Parker. I live at [REDACTED] I am the head manager of the Spokane Deja' vu. I have worked there four years now and I understand the council's concerns and I even understand the community's concerns about secondary effects that occur but in the four years I have been working in that club, doing everything from waitressing, to bar tending, to dancing, to now being a manager, I have never seen prostitution in that building. I have never seen prostitution on the street outside that building. I have heard a lot today of people blaming child molestation, rape, sexual

abuse, demeaning women on industries like this and I am not even going to say that they don't play a factor because I am sure they probably do. But you cannot blame the whole problem—people that are going to molest children and rape women are mentally ill people. Maybe the pornography may contribute to their actually acting out on that, I don't know because I am not a psychiatrist but I think its wrong for the city council to blame one particular business for the actions of sick people. Its not our fault people are going out and doing these things and in the four years the only time the police have ever been called was when there is someone and they are drunk because some bar let them drive drunk and come to our business and we wouldn't let them in and they try to cause a problem.. In the four years I have been there. That's a long time to be there with that few a problems. So, that's all I have to say. Thank you.

Higgins: Anyone else? We have one more person and they we will have council's thoughts.

Olsen: My name is Theresa Olson and I live at [REDACTED] I have two children and I am concerned that if you keep the adult book stores and the different things around that it could effect them like many people have spoke have the different effects on them and I just hope you guys will consider it and stop it. That's all.

Higgins: Thank you. Thank you very much. Mr. Eugster you have your button pushed first.

Rodgers: Mine has been on for a long time.

Eugster: Go ahead then. That's all right. I have motions.

Rodgers: I just have some clarifying questions I need to ask Patty. On the non-conforming use section, which includes the recommend six month period that the Planning recommended, but it talks about the Planning Director being able to extend that time, but I don't see what the extension could be granted for.

Connelly-Walker: It would be at the discretion of the Planning Director and dependent on the circumstances presented. So we would envision individuals coming forward indicating that the provision being forced against them that they would suffer extreme economic hardship. The Planning Director would then make a determination as to what length of time in terms of an extension would be appropriate.

Rodgers: Was there any, I guess, well there is two questions, I will ask them both at the same time. The first question is, if we saw fit to change that six months to say, one year, then we would still include that discretion on the part of the Plan Director and was there any discussion about if there is any extension granted, in any way capping that so there is a way of capping so that there was an absolute...

Connelly-Walker: That is certainly an option for the council to consider. I will indicate that initially when we were looking at a one year amortization provision rather than

having a requirement that the individual come before the Planning Director, one month or 30 days prior to the six months running. When we were looking at one year, we had envisioned a 90 day period, so requiring individuals who were going to seek an economic hardship extension to do that 90 days before the one year period as opposed to the 30 days that we submitted in the six month scenario. That's to give the Plan Director additional time to consider the issue prior to the one year period and because we have a longer period, its our position that its reasonable to require an application earlier. We had not looked at the option of putting a cap on any extension provision, but the council after hearing the testimony and examining the legislative record can certainly make that kind of guidance or restriction for that Planning Director.

Rodger: Okay I have one more question, Well, I guess I have two questions, Because I would like some feedback. No, I don't think its necessary, I was going to say feedback in terms of the cap and what that might mean in terms of litigation. But we have already dealt the litigation with the whole issue anyway so it's a minor piece. But then if I can go to the next section, its unclear to me who might appeal. Because it talks about, precluding reasonable alternative uses of subject property and what I am envisioning what if the person who is actually in business is a tenant in a property and not the owner of the property and he is unable to claim economic hardship when its really not his problem whether or not that building could be rerented in a timely way. See what I am getting at? There is kind of a disconnect there.

Connelly-Walker: Yes, there is an argument that can be made by tenants and we often see this kind of scenario. Um, where a tenant will make the argument, "well I entered into a 25 year lease with this building and I am only in the second year, so I don't know if I can get out of my lease so that puts me in a precarious position. The Courts have looked disfavor ably upon those kinds of leases for this type of argument for the obvious reason that otherwise every adult entertainment facility would do that—lock themselves into a 50 year lease so they could make that argument. The courts will look to the bottom line which is that facility viable for any other use. So you are going to have a very narrow circumstance where the individual paid so much in improvements that they can't recoup their losses in a reasonable amount of time or they can't then have someone else come in and rent that facility for any other use. The typical scenario is that the business is so tailored in the way that it is set up that no other business could come in and use that particular facility. I haven't seen any cases that were successful with that type of an argument. The courts have looked at those kinds of arguments and said, no, if its available for any other use than we aren't going to find that its not economically feasible so therefore its not a property taking. So we are getting back to that taking argument.

Rodgers: Okay, so basically we have before us the six months with the 30 day request. You discussed the one year with the 90 day advance request for extension. We also have the possibility of putting that cap on the extension.

Connelly-Walker: I would indicate for the council that if you chose a cap, you may want to consider the kinds of scenarios that we just discussed in terms of what kinds of individuals would come before you and what types of economic hardships they might

argue. Certainly, we wouldn't want to be in a position to defend an arbitrary number, that was you know, picked out of the air. I think so long as the council has considered those issues and are mindful of the facts that might be presented to the planning director that it could come up with a cap. My assumption is, in considering a cap, that without a cap it could be an indefinite extension and certainly the council is also able to provide some guidance within that provision that extensions shall not be indefinite but for a fixed time period.

Rodgers: But I think that what I am hearing you saying is that the ordinance is somewhat more defensible without a cap.

Connelly-Walker: It does give the Planning Director the opportunity to look at each case on its own merits.

Rodgers: You have answered all my questions. Thank you.

Higgins: Any other questions? Mr. Eugster?

Eugster: I would move that, look at page 2 of the proposed ordinance. S-1. Look at page 2, section 3 of the ordinance, subparagraph B-2. I move that we take out paragraph A, B, and C and renumber the last four ABCD. After A would be one family resident, R-1 zone. B, two family residence (2 zone) ; F Multiple family residence (R3 and R4 zones) and G any residence office (RO) zone. We do not have a country residential zone, we don't have a country suburban zone and I see absolutely no reason to protect a cow.

Rodgers: But Latah Creek has some agricultural zoning and Five Mile Prairie has a zone. It's the only two cities I know in the city.

Higgins: Well there is a motion to make those changes. Is there a second? Is there a second to that motion. Here and done. It dies for a lack of a second. Mr. Eugster?

Eugster: I move that, on page 5, section 7, same ordinance, be amended to read 12 months as opposed to 6 months.

Rodgers: I will second that.

Higgins: The move has been seconded. We have a motion to make the ordinance to make it a 12 month amortization as opposed to 6 as proposed. In the original ordinance. Is there anyone that would like to speak to this? There are none. Are there any council that would like to speak to it Ms. Greene?

Greene: Thank you. This is the one part of the ordinance that is causing me any kind of pause. Everything else that you have done, and the planning commission has done is acceptable. The reason for this I just want to make sure that when we put something down, it's not going to be in concrete but it will be as close to that as possible and I know Patty, your abilities and qualifications in this issue, but your statement that other

attorneys who might be city attorneys, might not feel that that portion is defensible is something that is adding even more concern for me. So, I am tipping her right in the middle, trying to decide, because I did think the one year is the better recommendation. So I am going to have to listen to the others because right now I am still wavering.

Holmes: I have the same concerns but I would suggest that if we are going to consider the 12 months that at the same time that motion include 90 days to file written application with the planning director for an extension rather than the one month that is currently part of the proposal and I don't know if the maker of the motion would consider that.

Eugster: No I won't.

Higgins: Okay, so the Motion is just for the 12 months. Ms. Rodgers?

Rodgers: I also support the 12 month period because I know this is going to lead to litigation and the city is involved in many many lawsuits and you learn better be safe than sorry because we are facing a lot of costs with litigation because previous councils didn't think out the situation so I think we have to be overly carefully in this situation and this will probably be tied up for years in the courts.

Corker: I spent some time trying to read on some of what other cities have done. I am fully aware that this litigation could cost Spokane literally hundreds of thousands of dollars and I want to make sure that we have something that is defensible in court that prevented us from acting earlier that we needed to strengthen this ordinance and I remember counsel saying that this was a concern even though I know there were representations made before the planning commission and I share that same concern with the city that is very fragile with its budget and its ability to afford defense, so I am sharing the same concern that the six months might make the case if not harder to defender, lengthier in its defense. So I am just sharing my concern with the other council members.

Higgins: Anyone else wish to speak? I will call for the Motion before us—to amend the ordinance from six months to twelve months. I will speak against the ordinance. I have put a lot of confidence in Ms. Walker and I asked her pointedly if that could be defensible and she said she thought it could and you being the expert in this I will defer to your judgment on that. And I know from my communications that is what the citizens of Spokane desire. So I feel confident that the six months is something we should keep in the ordinance. Now, I will call for the question, all those in favor of the Amendment, say ay. Those opposed say no. Let the record show passed with a 4 to 2 vote. So we have 12 months on the ordinance. Ms. Holmes?

Holmes: I move to further amend by changing the terminology from 30 days to 90 days prior to the end of such 12 months.

Higgins: Is there a second to that Motion? The Motion dies for lack of a second. Are there any other motions to amend the ordinance.

Eugster: Just a clean. Lets say you want to leave the Ag in there. Can we take out the country residences and the residential suburban and have the R1, R2, and RO zones put in there. Leave the Ag zone, but we just don't have those zones folks.

Higgins: I really don't have a problem with that because when I saw that country residential. That is a county zone. Is that something we just transcribed over the ordinance Ms. Walker?

Walker: Um. Much of the ordinance was transcribed over. However, I do recall specific changes prior that we believed were in conformance with the city's and I know that was an issue before the Plan commission and some changes were made. I don't recall on that specific issues whether there were any recommended changes. The only thing that I would offer, my assumption would be that if those provisions don't currently exists, perhaps the Plan Commission was anticipating the possibility of those types of zones in the future. Simply because we don't have those types of uses doesn't mean we couldn't address those for future purposes. But I would leave it to the council.

Higgins: Would you have a problem with Mr. Eugster's proposal? I personally don't like crafting the ordinance while we sit here. I understand what you are saying and I tend to support what he is saying.

Eugster: Well, if we end up with a country residential, we'd amend this ordinance.

Connelly-Walker: I guess, my assumption is the Plan Commission addressed those issues, but assuming they did not, an amendment at a later date could be accomplished one way or the other. Either you take it out by amendment or add it in later if you chose to delete it now.

Eugster: Well, my problem if you want this to be specific and you want it to apply to an R-1 zone, you call it an R-1 zone or two family, you call it an R-2 and a residence office, I think we have a problem if we don't say any residence office because we have a whole slug of RO zones, ROL positions, you know limitations placed on them, which are intended to not include the limited residential office?

Higgins: Would you have a problem passing the ordinance as it is presented and referring this matter to the Plan Commission for their recommendation.

Eugster: To me it's a sloppy drafting, that's all. I am just trying to clean it up.

Higgins: I tend to agree with you.

Eugster: I will withdraw the Motion if its going to be that complicated.

Higgins No, its not. Any other comments. I think its something the Plan Commission should be looking at.

Eugster: Well, they've got the plate full Rob.

Higgins: Then I will call for the vote on S-1, Ordinance C32778 under special considerations, all those in favor, please signify by saying ay. Let the record show that the ordinance passed unanimously as amended. And Now we have Ordinance C32781. Anyone wish to speak to this?

Move approval.

Second.

Higgins: Its been moved and seconded that we pass Ordinance C32781. Any council member wish to comment: All those in favor signify by saying Ay. Let the record show the Ordinance passed unanimously.

Eugster: One other thing. I think for a legislative record, I would like to make a statement. The ordinance that we just passed has seven pages of whereas, it has a specific statement of purpose and it has specific statement of findings. In adopting the first ordinance, I had in mind the whereases and the purpose of and finding of the second ordinance and I would just like to say that. I think it would be important if others of you felt the same way, that is you were looking to those whereases in the second ordinance and you were looking to the findings and would recognize that that had an impact on your adoption of the first ordinance we might be in a bit better position on the legislative history issue.

Higgins: Thank you. It has been brought to my attention that these special considerations under our recommendation calls for a roll call vote.. So I am just going to make sure that we don't have problems later on. I am going to ask that council members to please record your vote on C32778. Please record your votes. Let the record show it passed unanimously. And now on Ordinance 32781, please record your vote it passed unanimously. Thank you.

SUMMARY OF REVIEW AND CONCLUSIONS
REGARDING THE CITY OF ST. CLOUD'S
REGULATION OF ADULT USE BUSINESSES

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December, 1994

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I. Introduction

This firm has been retained to conduct an independent review of various ordinances adopted by the City of St. Cloud for the purpose of regulating adult uses and sexually oriented businesses in that community. We have been asked to evaluate both the content and effect of these ordinances, but also the process that the City followed in developing these regulations.

To complete this assignment we contacted the Planning Advisory Service of the American Planning Association and requested copies of all of the studies and ordinances that the APA had on file related to the regulation of adult uses. We also reviewed our own files and contacted numerous planning departments and planners throughout the State of Minnesota to identify all of the available examples of local ordinances established to regulate adult uses and the studies of adverse secondary effects that supported the regulation of adult uses.

We also received a copy of the report published by the Working Task Force established by the Minnesota State Attorney General's office in 1989. This report includes a summary of the issues surrounding the regulation of adult uses, and provides guidance to communities that seek to establish zoning ordinances and other regulations to avoid the adverse secondary effects associated with adult uses.

In addition to assembling and reviewing numerous studies and ordinances, we also attempted to identify and gather copies of all of the court cases related to local adult use ordinances. Our purpose in completing this initial research was to identify the necessary components of a local program to regulate adult uses. We wanted to understand the limits of a local government's authority to regulate these uses. Our objective was to establish a model process that communities should follow in developing and enforcing regulations to control adult oriented businesses.

The next step in our research was to gather and review the minutes of meetings, staff correspondence, planning reports, and other public records related to meetings at which the City of St. Cloud considered adult use ordinances. When we had completed our research regarding the regulation of adult uses generally, and understood the required procedures and the legal limitations to the regulation of these uses, we compared the St. Cloud ordinance and process against this model.

Although there are many important elements that are discussed regarding the St. Cloud regulations and the process that the City followed in developing them, certainly one of the most important questions was to determine if the St. Cloud ordinances provide reasonable opportunities for adult uses to locate within that community. Therefore, the next segment of this study included a map of the available sites for the establishment of an adult use business, under the St. Cloud ordinances. In the completion of this research we collaborated with a local real estate broker. He was responsible for determining the availability of the various properties

identified in this research. A summary of that research is attached to this report.

Our conclusion following this analysis is that there are numerous sites available for the establishment of an adult use business, consistent with the St. Cloud Adult Use Ordinances. Also, there have been other sites available on the market during the amortization period for the A,B, & C facility that have since been purchased or leased for other uses. Furthermore, from our work on the St. Cloud Comprehensive Plan we understand that the City of St. Cloud is but a part of a much larger metropolitan area, consisting of four other cities and five townships. There are extensive opportunities within the same market area for the location of adult oriented businesses.

The final section of this report consists of an analysis and refutation of the assumptions and conclusions contained in a planning review commissioned by the owners of adult use establishments in St. Cloud. This report, titled, City of St. Cloud Minnesota Adult Use Regulations was written by R. Bruce McLaughlin, AICP and has been submitted as testimony on behalf of the Adult Bookstore & Cinema (A,B, and C) and seeks to invalidate the St. Cloud ordinances.

II. Description of a Model Process for the Establishment of Adult Use Ordinances

Background

The First Amendment Right to free speech prohibits cities from enacting an ordinance that would ban all forms of adult uses or regulate the content of adult material. Cities do, however, have the right to use zoning regulations limit or restrict the adverse secondary effects associated with adult use businesses.

A city may control regulate the effects of a sexually oriented business, without regulating the content of speech protected by the First Amendment, by drafting an ordinance that is aimed at controlling the adverse secondary effects of adult use businesses. Such regulation must be content neutral in its time, place and manner and must further a local government interest in protecting the health, safety and welfare of its citizens.

The Court ruled, in *United States v. O'Brien*, 391 U.S.367, 377, 88 S.Ct. 1673. 1679 (1968), that for an ordinance to be content neutral in time, place and manner a city must act within the constitutional power of the government. It must further a substantial government interest which is unrelated to the suppression of free expression and the incidental restriction on the First Amendment must not be greater than is essential to further that government interest. The U.S. Court of Appeals, 11th Circuit applied a four part analysis to determine whether an ordinance is content neutral in time, place and manner. The following considerations have since guided numerous court decisions.

- a.) Whether the type of adult use is protected by the first Amendment.
- b.) Whether the ordinance advances a substantial government interest
- c.) Whether the interest to be protected is unrelated to the suppression of free expression.
- d.) Whether the incidental restriction on free expression is narrowly tailored to advance that interest and allows for reasonable avenues of communication.

Zoning

Zoning is an important and effective tool used by local governmental units to implement land use planning. It is also one of the few controls local communities have over the establishment and location of adult entertainment facilities and the potential adverse secondary effects that may be associated with them. A zoning ordinance, when content-neutral, may regulate the time place and manner in which adult material is presented without expressly violating the First Amendment.

Adverse Secondary Effects

The authority of local governments to enact zoning regulations is one of the primary means by which a city may preserve and protect the public welfare. A city may place locational restrictions or limitations on sexually oriented businesses to keep the adverse secondary effects of these uses from degrading the quality of life in the community.

These effects, resulting from a proximate relationship to an adult use establishment, have been documented in studies conducted by cities across the county. The courts have reasoned that a local government does not have to experience negative effects in order to adopt a proactive ordinance. Local officials may rely on studies, reports, or findings generated by other cities if they reasonably believe the findings are relevant to their own situations. This "reasonable belief", the courts have held, must be documented by the city. *City of Renton v. Playtime Theaters Inc.*, 427 U.S 50, 96 S.Ct.926 (1986)

In the case of *Holmberg v. City of Ramsey*. 12F.3d 140 (8th Cir. 1993), the court upheld the city council's conclusion that if adult uses were not regulated, the secondary effects would occur. This conclusion was based on the recommendation of the city planning commission, whose reliance upon studies conducted by other cities met the court's standard of "reasonable belief". (see page II - 8 for a representative list of studies on adult uses and adverse secondary effects)

Definitions

Defining what constitutes an adult use establishment has been historically troublesome when an ordinance is challenged in the courts. The courts have ruled that a definition must enable planners, city officials and the public to distinguish between similar but not identical uses. Therefore, the ordinance must first define the characteristics of a particular adult use, which may be similar to other uses, and then must qualify the definition so as to distinguish it from uses which are not identical.

Many cities have adopted the wording or a variation of the wording from the Detroit ordinance, upheld in *Young v. American Mini Theaters, Inc.*, 427 U.S. 50 (1976), which qualifies its definitions with the phrase "which are distinguished or characterized by their emphasis on matter depicting, describing, or relating to 'specified sexual activities' or 'specified anatomical areas'". This type of qualifying statement, subsequent to *Young*, has been ruled confusing or vague and resulted in the ordinance being overturned by the courts.

In reaction to these decisions, some communities have attempted to quantify their definitions. The use of numbers or percentages to determine what is to be considered an adult use, the courts have ruled, must be justified. The ordinance would have to show how a number or percentage could be determined and the city would have to show that the same number or percentage could be reached by two people when applied to the same use.

Recently cities have begun to rely on their own state obscenity statutes which typically prohibit the distribution of pornography to minors. An ordinance, based on the statute, can qualify a certain use as an adult use when it must exclude any minor by reason of age. Thus when an establishment is found to be off limits to minors it concurrently becomes, by definition, subject to regulation by zoning.

Spacing and Distancing Requirements

There are two forms of locational restrictions and limitations that an adult use ordinance may impose to combat the adverse secondary effects. The first regulating method creates an adult entertainment district, concentrating all adult uses into one area. This district, established by means of a special overlay zone, serves two purposes: (1) to concentrate similar adult uses into one small area and (2) to prevent the spread of these uses and their associated adverse secondary effects to other parts of the city.

The second and most common is the dispersal method, originally drafted by the city of Detroit. This regulating method places linear restrictions between adult entertainment establishments and more sensitive uses such as residential districts, churches, schools, parks, daycare centers and nursing care facilities. The dispersal method also subjects certain defined uses from concentrating in one area, in order to insure that such uses and their effects will not contribute to the blighting or downgrading of the surrounding neighborhood.

Linear restrictions require a city to institute spacing standards. These standards typically dictate a specified distance to be maintained between certain uses and residentially-zoned land or between the same or similar uses. These spacing standards, when used as a means to control the adverse secondary effects of adult use businesses, should be based on the each community's own planning analysis. (see page II - 10 for an representative list of spacing standards from across the country) The following list, (*Spaced Out Zoning*, Gerald Luedtke, Planning and Zoning News, 1989),

presents a means, whereby, a city may justify its adoption of spacing standards:

- a. The prevention of blight and urban deterioration, (particularly with respect to residential neighborhoods and commercial shopping centers).
- b. Preventing deleterious effects on future community economic development potential.
- c. Preventing negative effects on environmental and personal health.
- d. Prevention of social disorganization and crime.
- e. Prevention of negative impacts on the community tax base.
- f. Prevention of negative effects on accepted standards of community aesthetics.

Although the dispersal method seeks to avoid a concentration of adult uses in one area, a city may specify, through zoning, certain districts where adult use establishments may operate. These districts, together with spacing standards or alone, must be in line with the cities objective of curbing the adverse secondary effects. They may not be used to deny an adult use business a reasonable opportunity to open or operate.

Amortization

At the time an ordinance, which regulates the secondary effects of an adult use is adopted, an existing adult use establishment may become nonconforming. When allowed by state statute, amortization can require the cessation of a nonconforming use, within a specified period of time, so long as the adult business is not denied access to new locations that meet the requirements of the new ordinance. The courts have ruled that for an amortization provision to be valid it must allow a reasonable, (determined by balancing the public gain against the private loss), amount of time for the owner to recoup his or her investment and it must not deny the public reasonable access to such entertainment.

Reasonable Avenues of Communication

Although the adverse secondary effects of an adult use business may be regulated through zoning, a city may not effectively deny an adult business the opportunity to open and operate. The courts have ruled zoning ordinances invalid when, through the albeit legitimate establishment of districts permitting adult businesses and spacing standards, there arises an actual or practical unavailability of alternative sites due to insuperable physical, legal, or economic barriers to the operation or development of an adult business.

The Ninth Circuit Court stated that the economics of site location is a valid inquiry, so long as the economic analysis focuses on whether a site is part of the relevant real estate market. The criteria

used by the court to determine commercial viability is: 1) When it is reasonable to believe that a particular site will become available for a commercial enterprise, 2) sites in industrial or manufacturing zones are reasonably accessible to the general public, have a proper infrastructure of sidewalks roads and lighting and are suitable for some type of commercial enterprise, and 3) commercially zoned locations are part of the real estate market. The Eighth Circuit went on to say that an adult business left to fend for itself in the real estate market on an equal footing with others does not violate the first amendment.

Recommendations

1. Communities should substantiate the need, rationale and factual basis for regulating the secondary adverse effects of adult use businesses.
2. City officials must document their intent to further a government interest in controlling the adverse secondary effects of adult use businesses.
3. Communities should document reports from the community regarding the deleterious effects of a proximate relationship to an adult business.
4. Planning officials may substantiate local problems by relying on studies, reports or findings completed by other communities.
5. City officials should document their reliance on studies conducted by other communities to substantiate or extrapolate the need to regulate the adverse adverse effects associated with adult use businesses.
6. City officials should analyze and document the reasonableness and necessity of each regulatory aspect of a proposed ordinance.
7. City officials must determine that the ordinance provides reasonable opportunities for adult businesses to open and operate within the community.

ADULT USE STUDIES

1. **Minneapolis City Planning Department Report**
Zoning Code Text Amendment Analysis
August 29, 1990
2. **City of Falcon Heights**
Report Related to Adult Uses
February 28, 1994
3. **New Hanover County Planning Department**
Regulation of Adult Entertainment Establishments in New Hanover County
July, 1989
4. **Manatee County, Florida County Planning and Development Department**
Adult Entertainment Business Study
June, 1987
5. **State of Minnesota**
Report of the Attorney General's Working Group on the Regulation of Sexually-Oriented
Businesses
June 6, 1989
6. **City of Brooklyn Park**
Staff Reports/Study on Adult Use Entertainment
February 24, 1992
7. **Department of Justice Canada**
The Impact of Pornography: A Decade of Literature
1984
8. **City of Lakeville**
Zoning Ordinance Revision Adult Uses - Part One
July 6, 1993
9. **City of Lakeville**
Zoning Ordinance Revision Adult Uses - Part Two
January 13, 1994

10. Rochester/Olmsted Consolidated Planning Department and Office of the Rochester City Attorney
Adult Entertainment Perspectives
1988
11. Division of Planning, Department of Planning and Economic Development, City of St. Paul
Adult Entertainment - A 40-Acre Study
1987
12. Division of Planning, Department of Planning and Economic Development, City of St. Paul
Adult Entertainment - Supplement to the 1987 Zoning Study
13. City of Phoenix
Relation of Criminal Activity and Adult Businesses
May, 1979
14. Indianapolis, IN
Adult Entertainment Businesses in Indianapolis
1984
15. Adams County, CO
Adams County Nude Entertainment Study, prepared by the Sherriff's Department
1987

SPACING STANDARDS

City	Residential	Adult Use	On or More of the Following: Daycare, Church, Park, School, Playground, etc.	Other
Islip, NY	500'	½ Mile	500'	
San Bernadino, CA	1,000'	2,000'	1,000'	
Wyoming, MI	500'	1,000'	500'	
Peoria, IL	700'	500'	500'	
Duluth, MN	250'		400'	
Minneapolis, MN	1,000'	1 per block face	500'	
Fargo, ND	1,200'		1,200'	Main Avenue 300' R.O.W.
St. Paul, MN	100'	300'		
Palm Beach City, FL	500'	2,000'	500 TO 1,500'	
Ramsey, MN	750'	1,000'	1,000'	
St. Louis Park, MN	500'	1,000'	1,000'	
Rochester, MN	750'	750'	750'	
Manatte City, FL	500'	1,000'	2,000 TO 2,500'	
Monticello, MN	700'	400'	700'	
Marion City, IN	500'		500'	
Whittier, CA	500'	1,000'	1,000'	
Champlin, MN	500'	500'	500'	

III. Summary of the St. Cloud Process to Establish an Adult Use Ordinance

Background

The City of St. Cloud began a process in 1978 to amend its zoning code to include an ordinance that would regulate adult bookstores and adult motion picture theaters, thereby limiting or restricting the associated adverse secondary effects. This action was initiated in response to community complaints of illicit behavior and unsanitary conditions at an adult bookstore located on T.H. 10.

A draft ordinance was prepared by city staff, subsequent to an investigation conducted by the health department. It provided definitions applicable to adult uses, created an adult use and service establishment district, and specified spacing standards. It was presented by the City Council at a public hearing. Public testimony opposed the ordinance and it was defeated. The adult bookstore continued its operation at the same location.

In 1982 the City Council held a public hearing on an ordinance pertaining to the unlawful display to minors of indecent publications, pictures, or articles. Public opinion favored the ordinance and it was passed unanimously. A motion was made that suggested a copy of the ordinance be displayed where books or magazines are sold. The motion passed unanimously.

Process

A letter to the editor was published by the *St. Cloud State University Chronicle* in 1991 describing the illicit behavior occurring at the adult bookstore located on T.H. 10, (the same bookstore that was investigated in 1978). During the same period the city was receiving numerous complaints from citizens and business owners. The City decided to prepare an ordinance, similar to the adult use ordinance adopted by the City of Minneapolis, to control the adverse secondary effects associated with the adult bookstore and other adult uses. In response, the City Council proposed an amendment to the ordinance relating to nuisances. This amendment would add a section entitled "High Risk Sexual Conduct" which would regulate adult bookstores and theaters where high risk sexual conduct was alleged to have occurred.

In August, 1991, the city attorney drafted an amendment to the nuisance ordinance, at the request of the city council, that would regulate adult uses. City staff together with the City Attorney reviewed studies conducted by other cities that document the adverse secondary effects associated with adult uses. These studies and/or memoranda that discussed the pertinent facts and findings were also reviewed by City Council prior to adopting the ordinance. According to information provided to us by the City of St. Cloud, the following studies were among those reviewed.

- *Report of the Attorney General's Working Group on the Regulation of Sexually Oriented Businesses*
St. Paul Minnesota
1989
- *Adult Entertainment, 1987, A 40 Acre Study*
Prepared by the division of planning
Department of Planning and Economic Development
St Paul, Minnesota
- *Study of the Effects of the Concentration of Adult Entertainment Establishments in Los Angeles*
Department of City Planning
Los Angeles, California
1977
- *Adams County Nude Entertainment Study*
Prepared by the Adams County Sheriff's Department
Adams County Colorado
1987

The draft ordinance provided definitions applicable to adult uses, taken verbatim from the American Planning Association's *Survey of Definitions*; it designated Light Industrial, Heavy Industrial and Highway Commercial as zoning districts that would allow an adult bookstore or adult theater as a permitted use; it provided 6.15% of the City as area appropriately zoned for adult uses; and specified spacing standards consistent with standards previously set for other uses regulated in the St. Cloud ordinance. Correspondence between the Planning Commission and the City Attorney document the City's desire to draft an ordinance that is consistent with the recent court decisions regarding the regulation of adult uses.

The city council considered the ordinance at a public hearing in August 1991. Public testimony was favorable and the ordinance was passed unanimously. The ordinance was subsequently amended to exclude Highway Commercial as a zoning district that would permit an adult use. The exclusion, it was determined, would still allow adequate opportunity for an adult use business to open and operate in the city. A two year amortization clause, similar to the Minneapolis ordinance, was added to deal with adult use businesses which under the new ordinance would become a nonconforming use.

The final step in the process was to add clarifying amendments to the ordinance. Section 4, is titled "The Purpose and Intent of Adult use Zoning Regulations". This section addresses the City's concern for the health safety and welfare of the community and outlines the actions taken

by the City to curb the adverse secondary effects associated with adult use businesses.

Conclusion

A review of the St. Cloud process to draft an adult use ordinance illustrates the City's intent to regulate the adverse secondary effects associated with an adult use business rather than to regulate the content of adult material protected by the 1st Amendment. The model process was based on the court's ruling in *United States v. O'Brien* which states that an ordinance must be content neutral in time, place and manner. The following is a comparison of the St. Cloud process with the model process presented in the previous section of this report.

Substantial Government Interest

The model process begins by documenting a substantial government interest to protect the health, safety and welfare of its citizens as it relates to the adverse secondary effects associated with adult use businesses. This can be accomplished in one of two ways. The City may rely on studies conducted by others, or may rely on its own evidence of adverse secondary effects.

The City of St. Cloud began documenting, in 1978, an increase in reported crimes and/or nuisances directly related to the bookstore on T.H. 10. Police reports and public testimony describe high risk sexual behavior and unsanitary conditions at this location. The City continued to document reports of crimes, nuisances and concerns regarding the adult bookstore as evidence of the adverse secondary effects associated with adult uses. Studies of adverse secondary effects, conducted by other cities, were also reviewed by the City Attorney, Planning Department and City Council.

Correspondence between the St. Cloud City Attorney, the Planning Commission, the Planning Department and the City Council document the City's belief that the adoption of an adult use ordinance would help the City control the increase in nuisances and crime in the area surrounding the adult bookstore. This ordinance, they felt, should be based on the facts and findings presented in the studies of adult uses and their associated adverse secondary effects, the ordinances from other cities which have been upheld by the courts, and police reports and public testimony regarding the illicit behavior associated with the adult bookstore.

Definitions

The model process defines adult uses in terms of the characteristics which may make it similar to other uses and qualifies the definition so as to distinguish it from uses which are not identical. The St. Cloud Ordinance defines the characteristics of adult uses which may be similar to other uses in a manner identical to the model process.

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 too 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.

Amortization

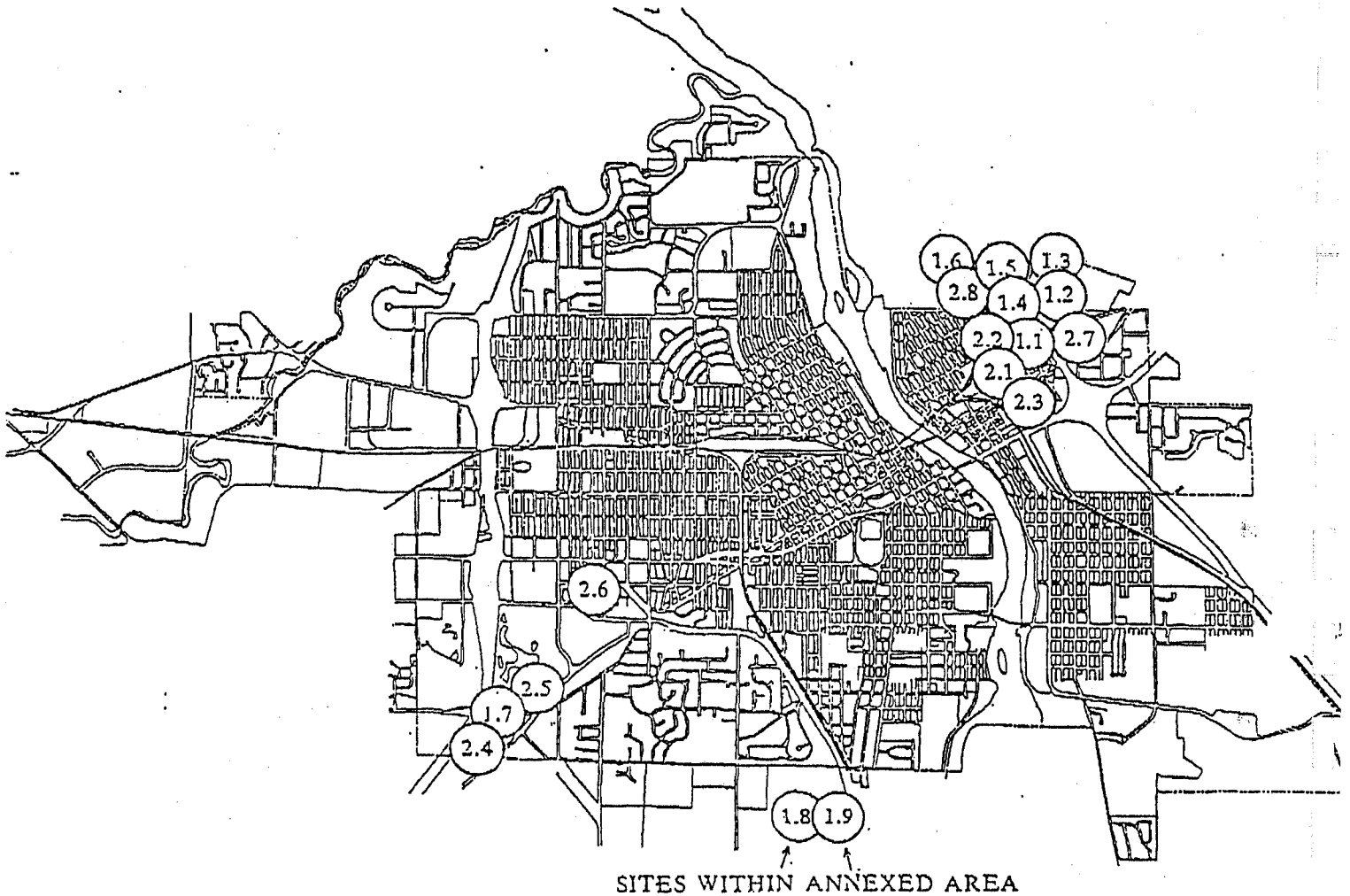
The model process reflects the courts' decisions that amortization is valid when the owner is given a reasonable opportunity to first recoup his or her investment and secondly to relocate within the city. The City of St. Cloud added an amortization amendment that allows two years for a nonconforming 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 than 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



- 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.

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Conducted by:

PLANNING DEPARTMENT
CITY OF PHOENIX

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.

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 created 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

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:

1. Number of residents
2. Median family income
3. Percentage of non-white population
4. Median age of the population
5. Percentage of dwelling units built since 1950
6. Percentage of acreage used residentially and non-residentially

Appendix II states a more detailed process of how each control area

Adult business locations are based on information furnished by the
Department and verified by the Planning Department.

TABLE I

THE STUDY AND CONTROL AREA LOCATIONS

STUDY AREA I

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.

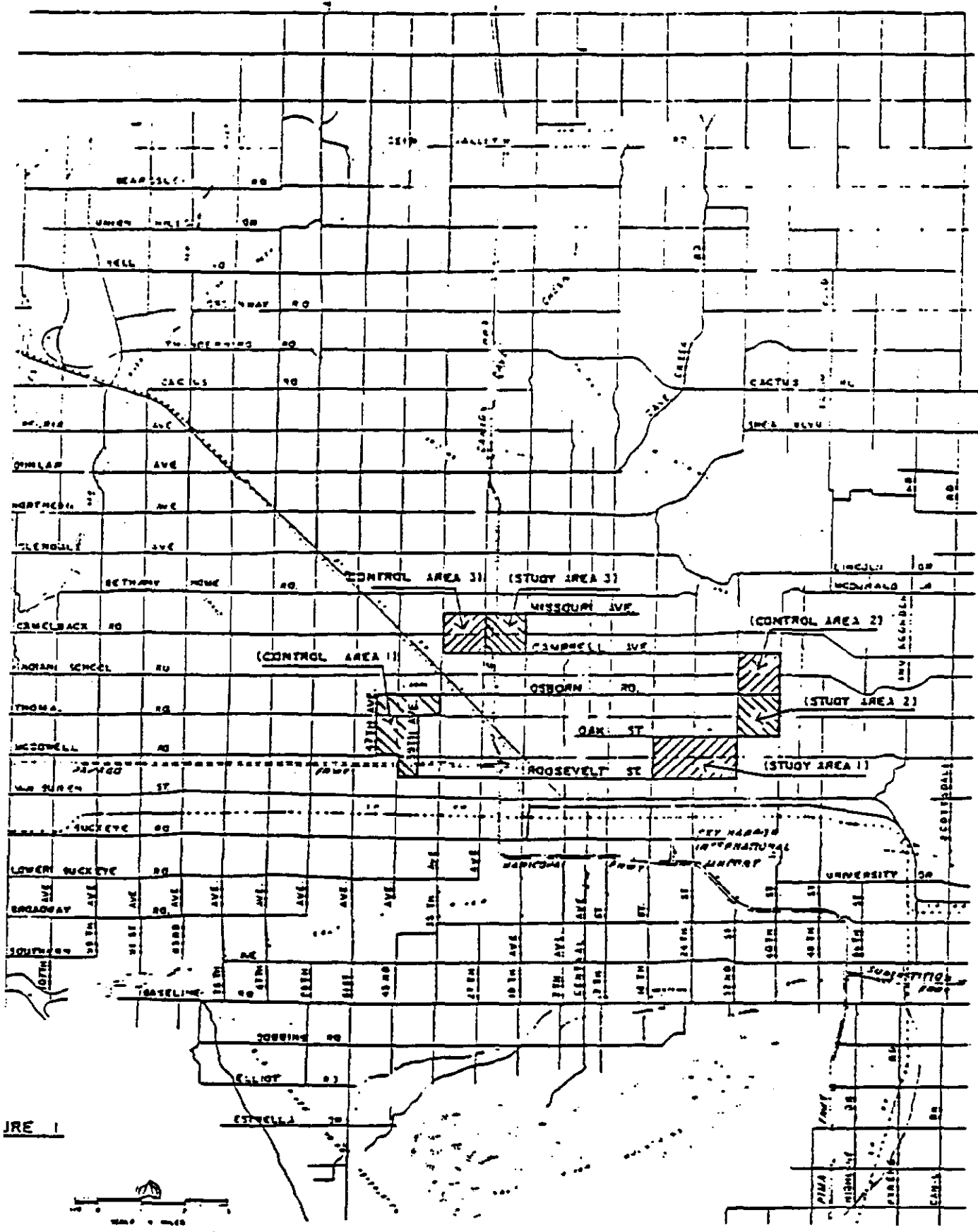
STUDY AREA III

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.



JRE 1

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 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.

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%

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.

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 to 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.

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.

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:

WEIGHTING OF POPULATION CHARACTERISTICS BY CENSUS TRACT
FOR STUDY AND CONTROL AREAS

Census Tract	% Non-White Population	% Dwelling Units Built Since 1950	Median Family Income	Median Age of Population	% of Acreage Used Residentially
<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

City of Austin



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REPORT ON ADULT ORIENTED BUSINESSES IN AUSTIN

Prepared By
Office of Land Development Services
May 19, 1986

ACKNOWLEDGEMENTS

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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.

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.

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.

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.

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.

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. McClendon, Bruce W.; Zoning for Adults Only, (Zoning news; American Planning Association, August, 1985).

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

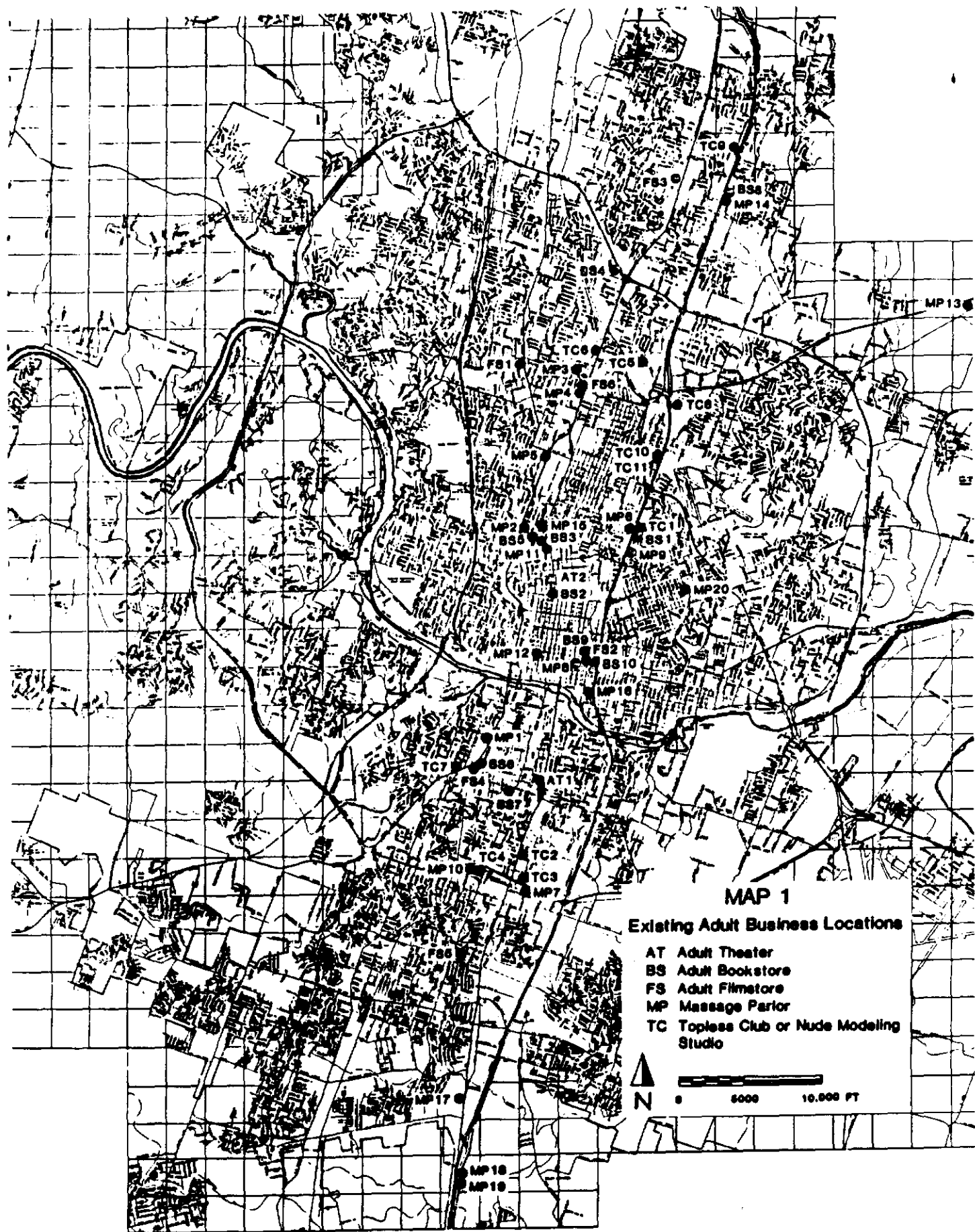
CHAPTER III
ADULT ORIENTED BUSINESSES IN AUSTIN

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.



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



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 |

- | | |
|------------------------------|---------------------|
| 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?

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

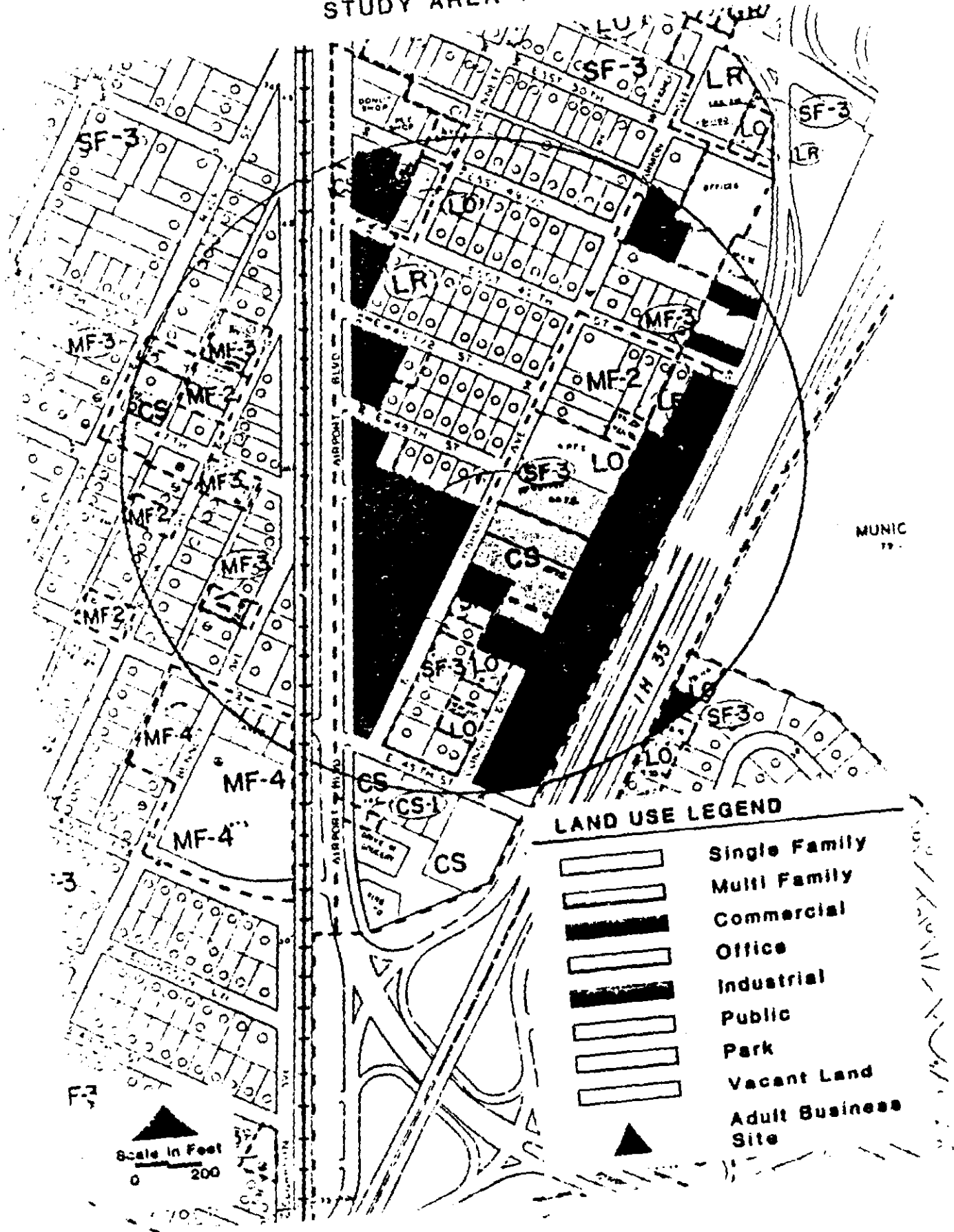
Study Area 1	
Burlesque Modeling Studio	4912 N. IH-35
Pearls Place	4814 N. IH-35
Study Area 2	
Southside News	2053 S. Lamar
Video Barn	2055 S. Lamar
Study Area 3	
The Pleasure Shoppe	610 W. Oltorf
Study Area 4	
The Yellow Rose	6528 N. Lamar Blvd

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.

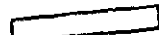

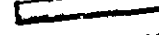

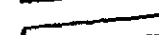


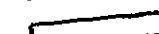

The highest concentration of adult businesses is located just west of the University of Texas campus along West 29th Street. This area was considered unsuitable because the transient population associated with the University of Texas might unduly influence the results of the evaluation. The concentration 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.

MAP 2
STUDY AREA 1

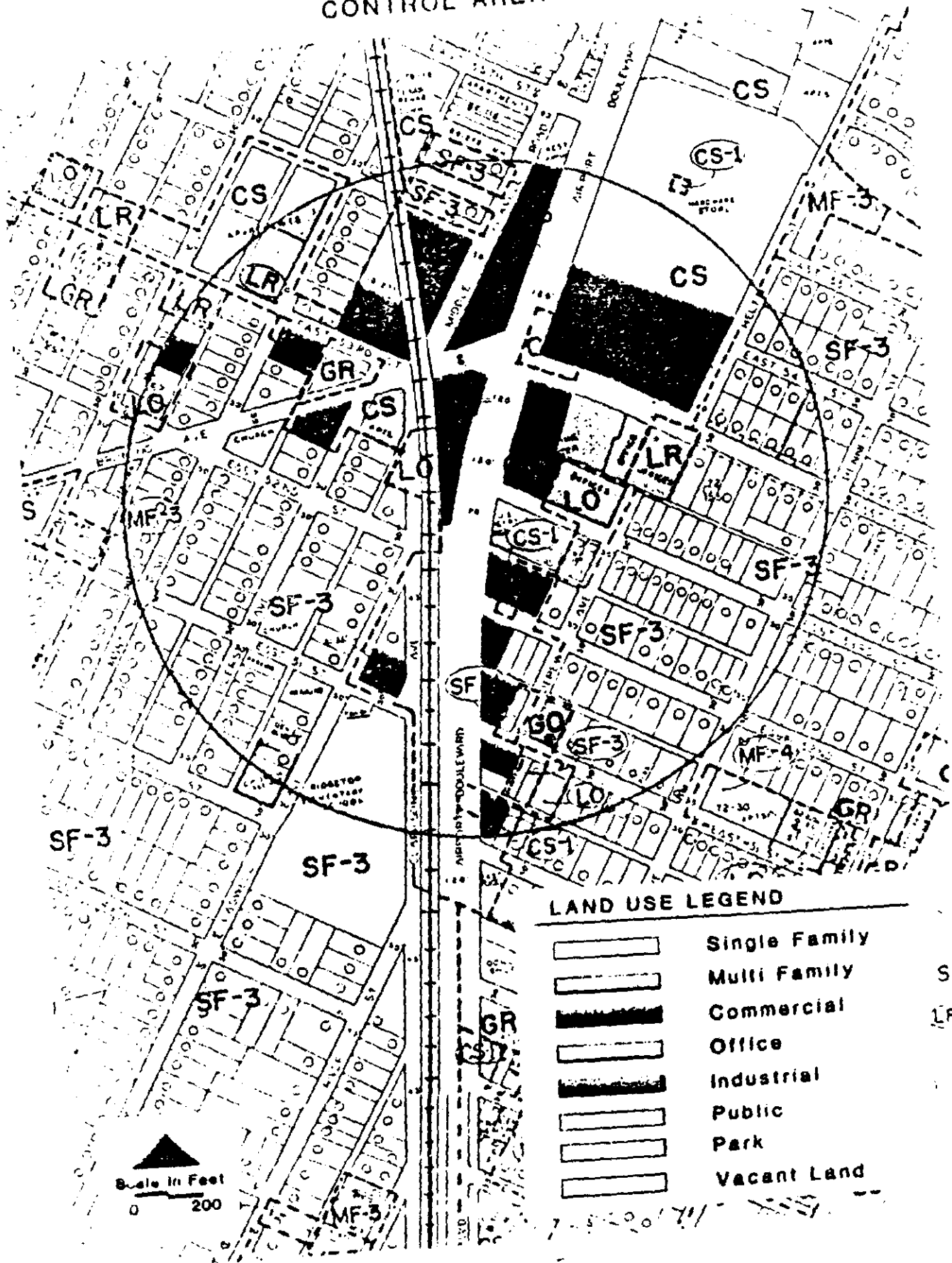


LAND USE LEGEND

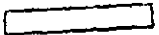


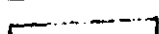


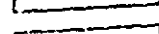

-  Single Family
-  Multi Family
-  Commercial
-  Office
-  Industrial
-  Public
-  Park
-  Vacant Land
-  Adult Business Site

Scale in Feet
0 200

MAP 3 CONTROL AREA 1

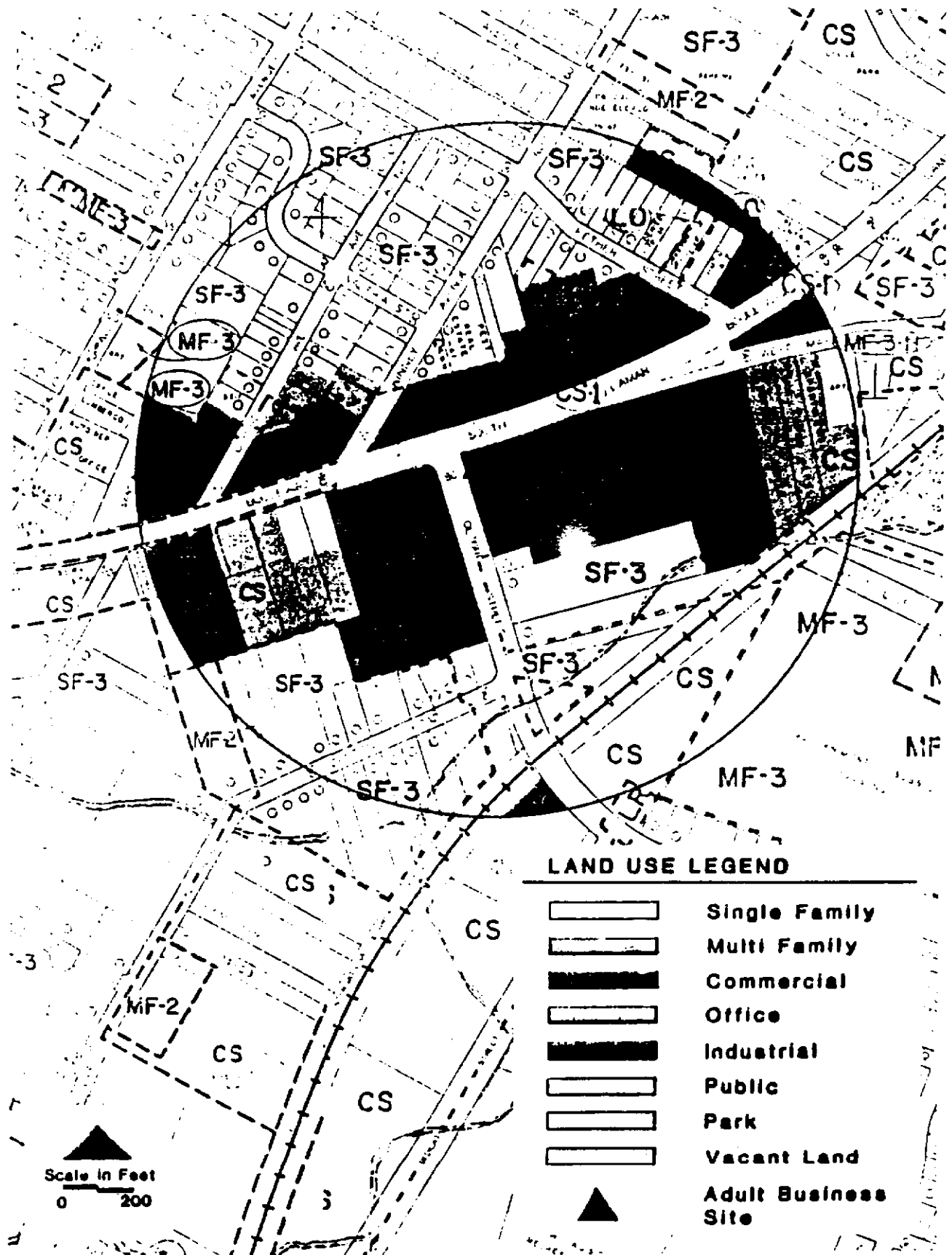


LAND USE LEGEND







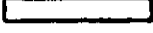


-  Single Family
-  Multi Family S
-  Commercial LR
-  Office
-  Industrial
-  Public
-  Park
-  Vacant Land

Scale in Feet
0 200

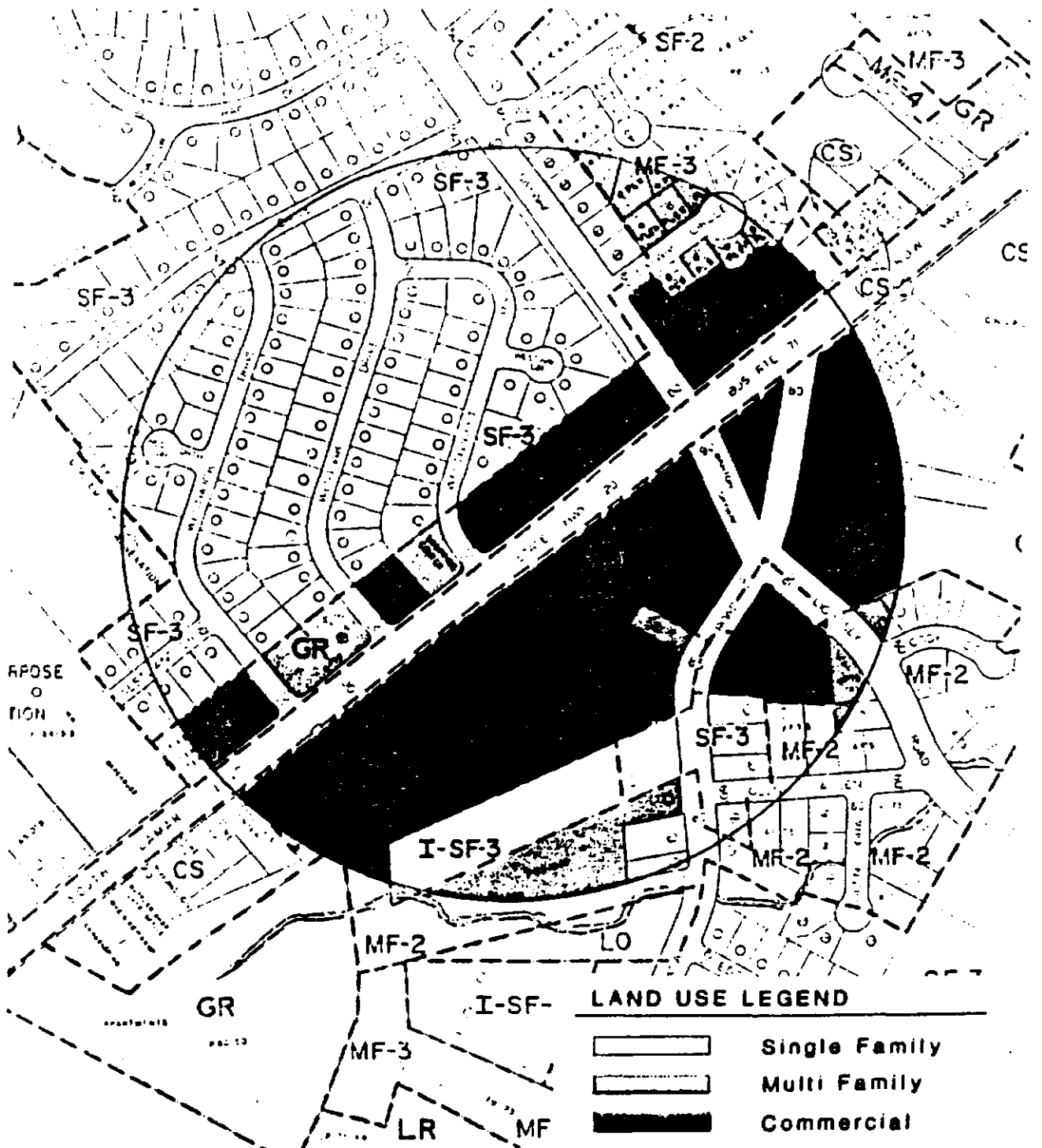
MAP 4 STUDY AREA 2



LAND USE LEGEND

- | | |
|--|---------------------|
|  | Single Family |
|  | Multi Family |
|  | Commercial |
|  | Office |
|  | Industrial |
|  | Public |
|  | Park |
|  | Vacant Land |
|  | Adult Business Site |

MAP 5 CONTROL AREA 2

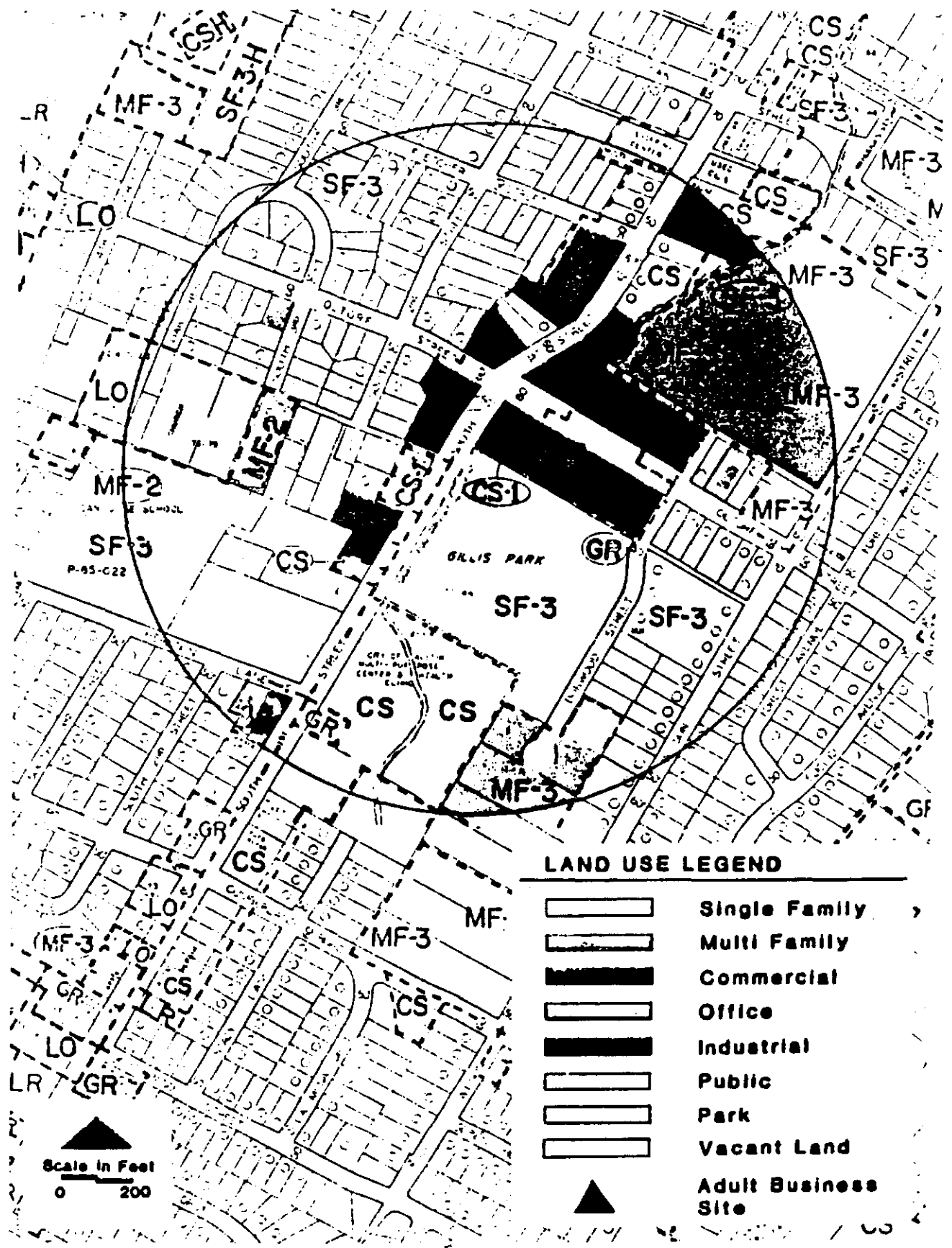


PROPOSED
TOWN

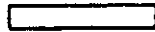










LAND USE LEGEND	
	Single Family
	Multi Family
	Commercial
	Office
	Industrial
	Public
	Park
	Vacant Land

MAP 6 STUDY AREA 3

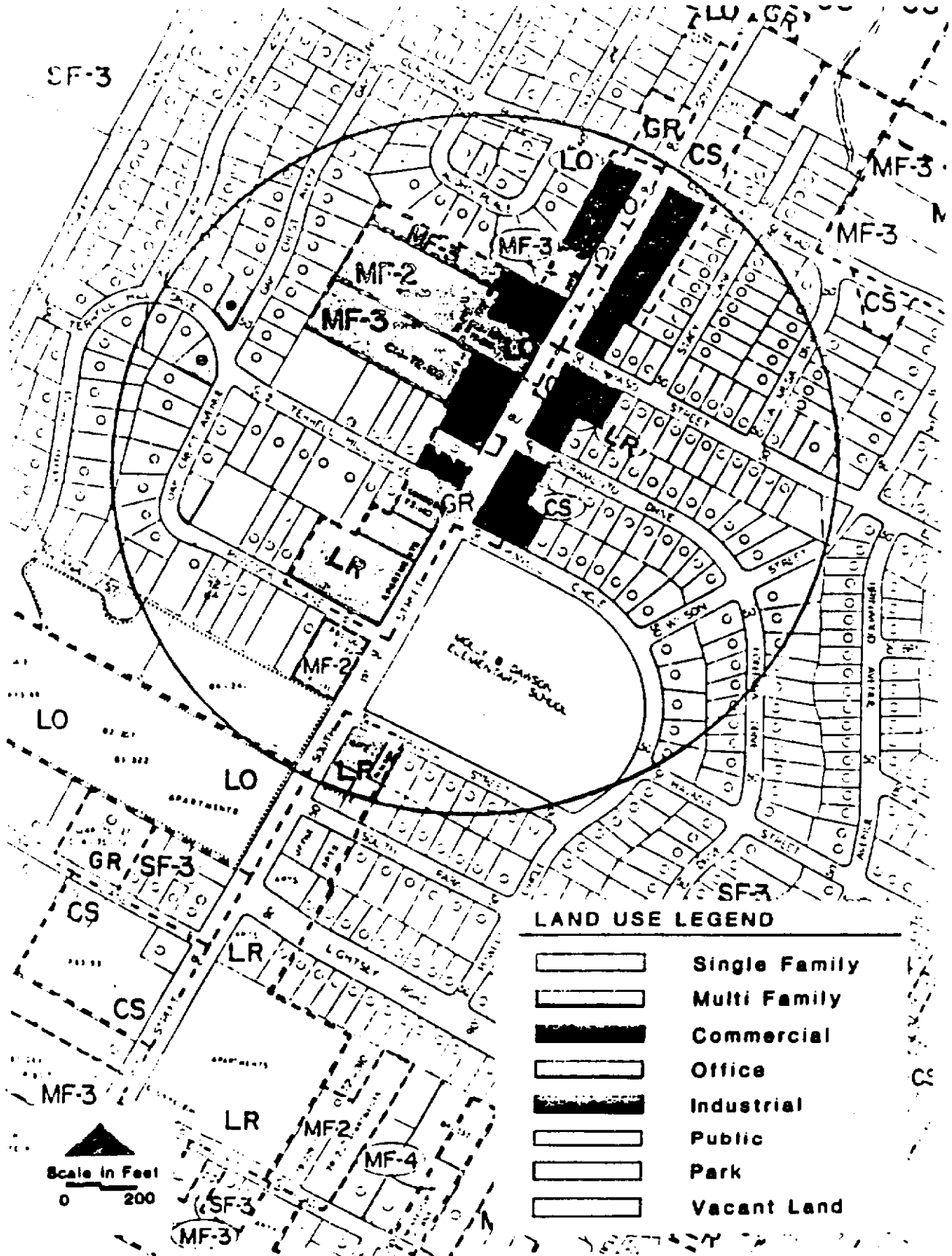


LAND USE LEGEND

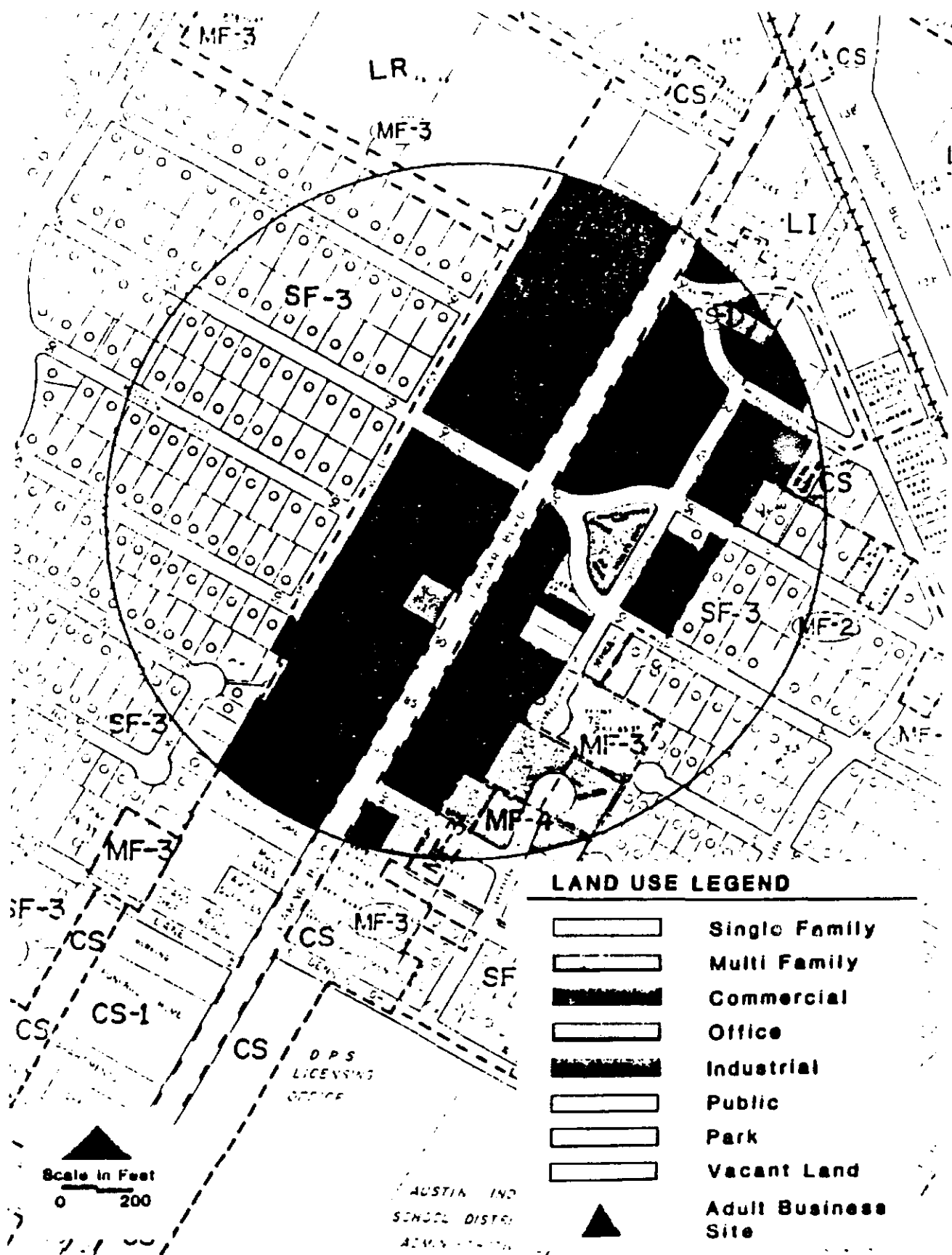
-  Single Family
-  Multi Family
-  Commercial
-  Office
-  Industrial
-  Public
-  Park
-  Vacant Land
-  Adult Business Site

Scale in Feet
0 200










MAP 7 CONTROL AREA 3



MAP 8 STUDY AREA 4



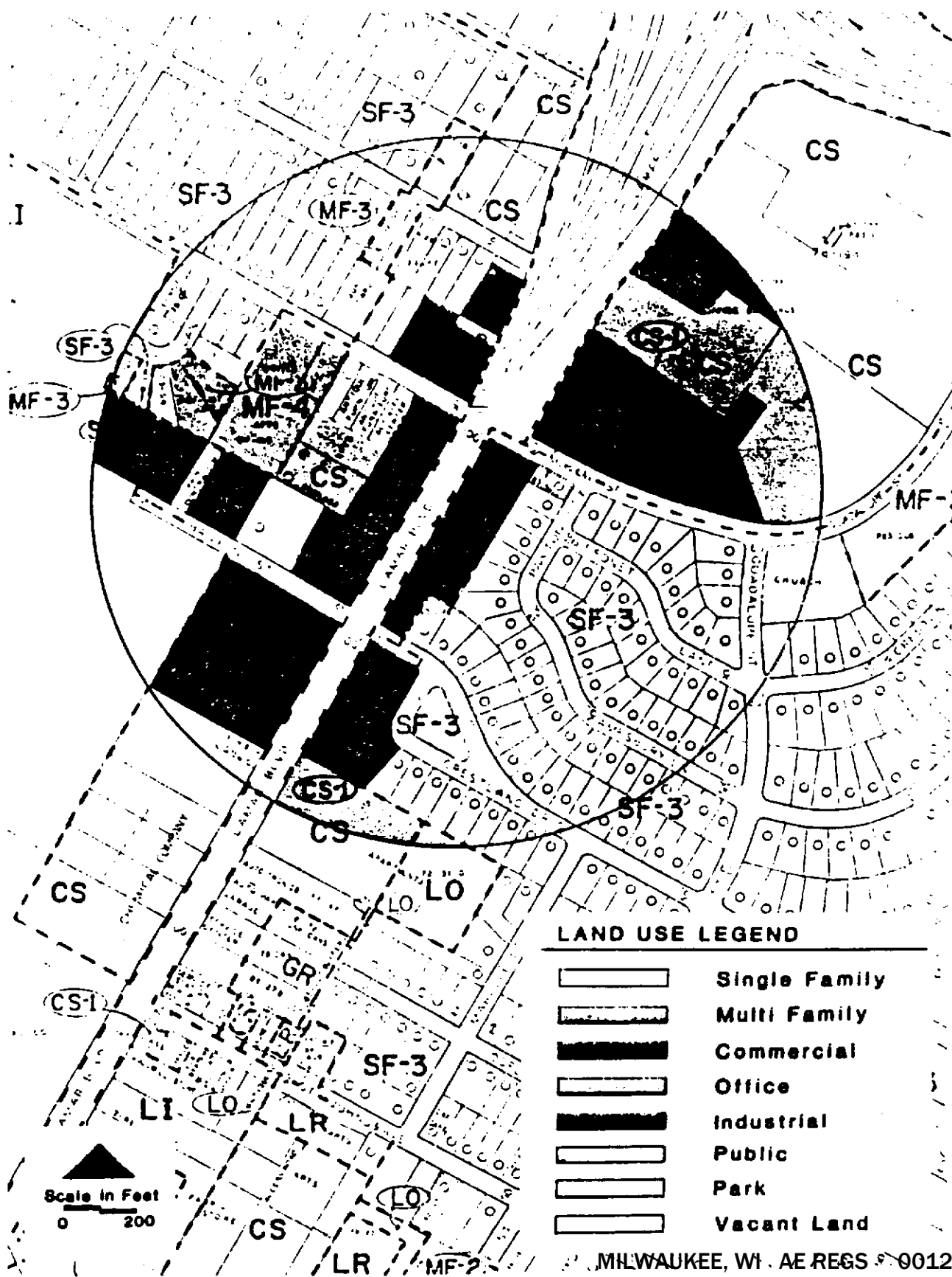
LAND USE LEGEND

-  Single Family
-  Multi Family
-  Commercial
-  Office
-  Industrial
-  Public
-  Park
-  Vacant Land
-  Adult Business Site

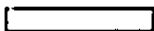
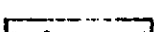


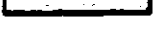



Scale in Feet
0 200

AUSTIN IND
SCHOOL DISTRICT
ADMINISTRATION

MAP 9 CONTROL AREA 4



LAND USE LEGEND

- | | |
|--|---------------|
|  | Single Family |
|  | Multi Family |
|  | Commercial |
|  | Office |
|  | Industrial |
|  | Public |
|  | Park |
|  | Vacant Land |

Scale in Feet
0 200

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

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	23.8
% 18 to 64	69.4	0.5
% 65 and over	14.5	5.7
% Owner Occupancy	38.2	24.8

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

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

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

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.

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.

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.

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.

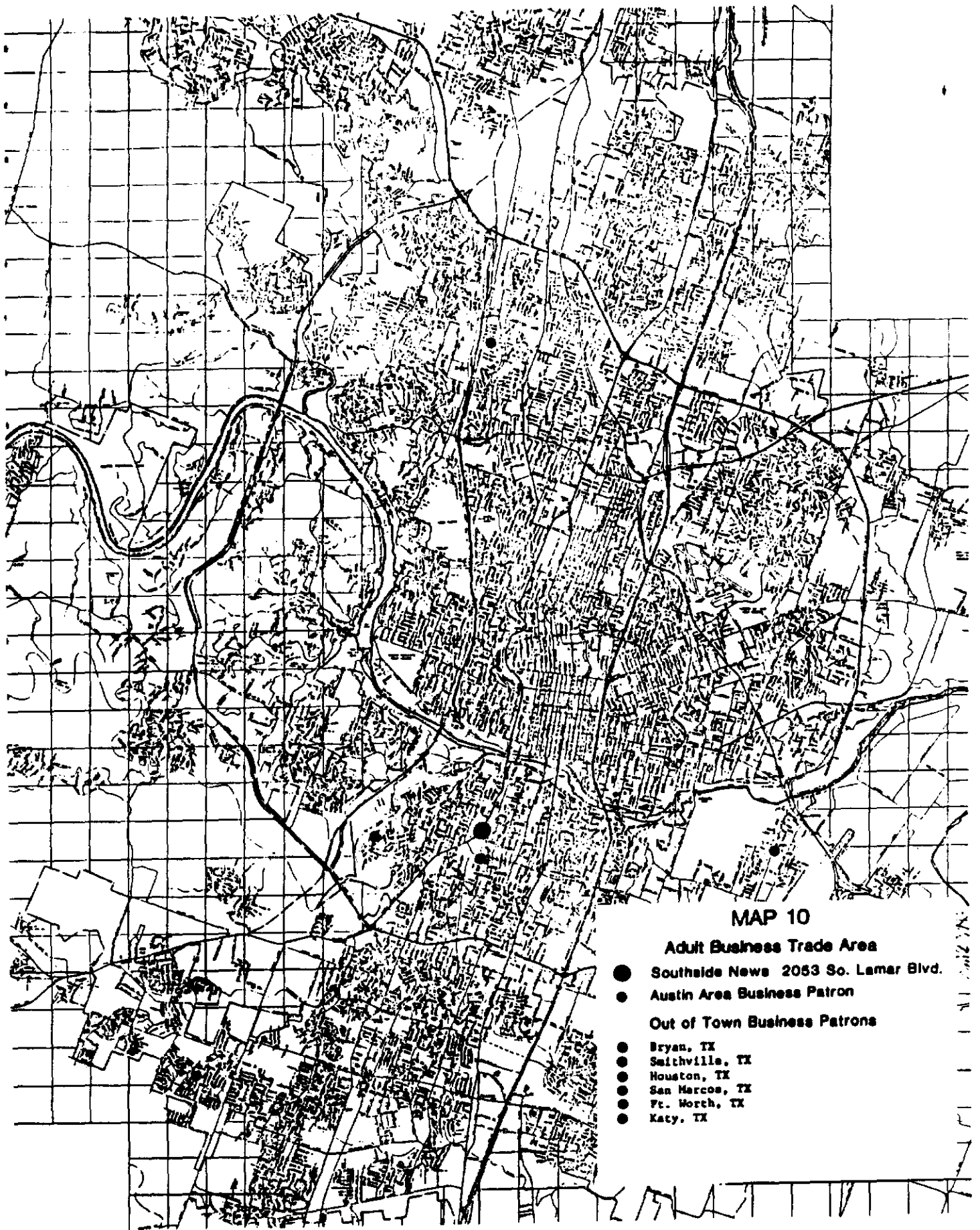
In summary, most appraisers and lenders believe that adult businesses will contribute to a decrease in surrounding property values, particularly residential properties within a one block radius. The appraisers opinions will affect property values because their lending and appraisal policies will, to 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.

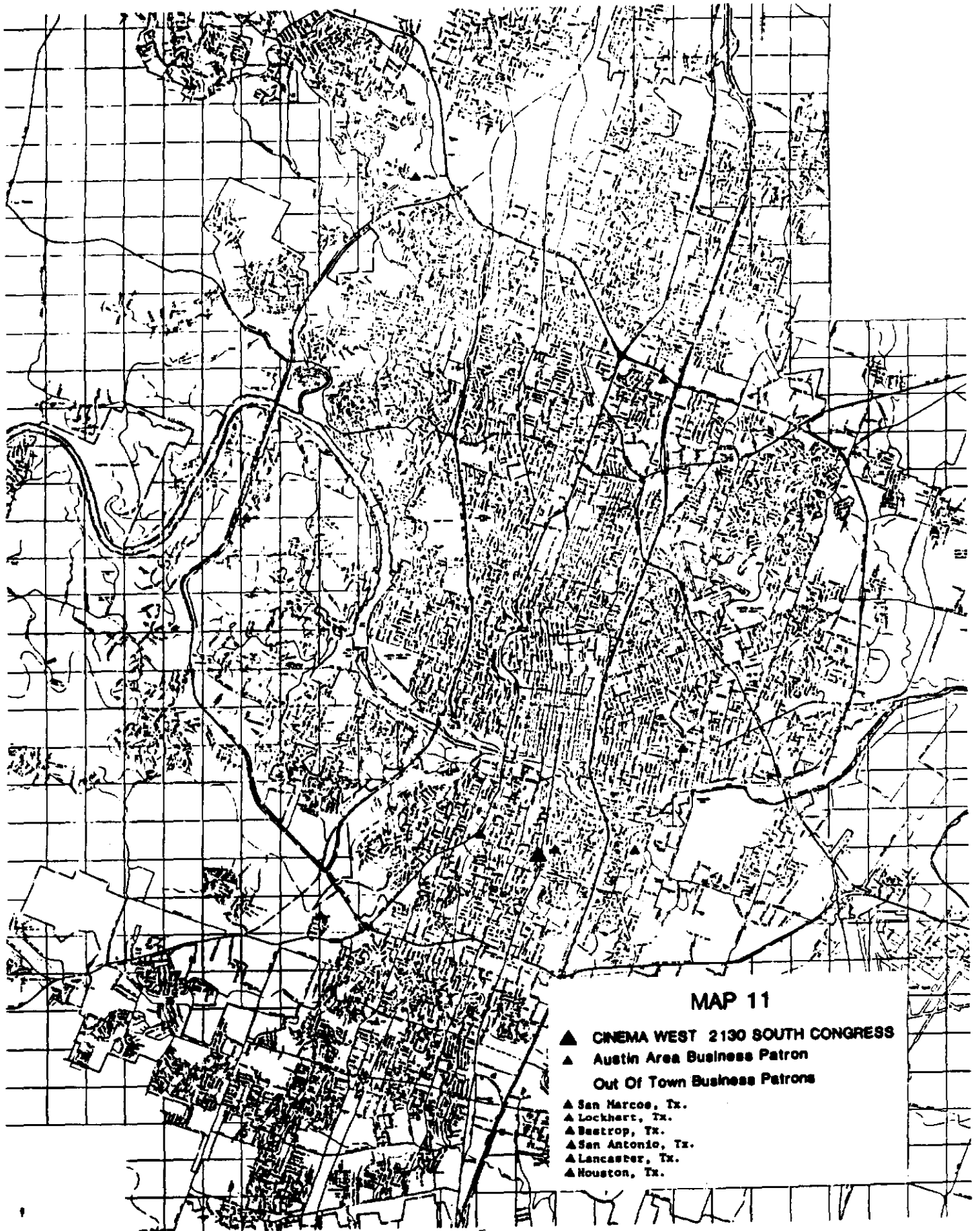
Methodology

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.



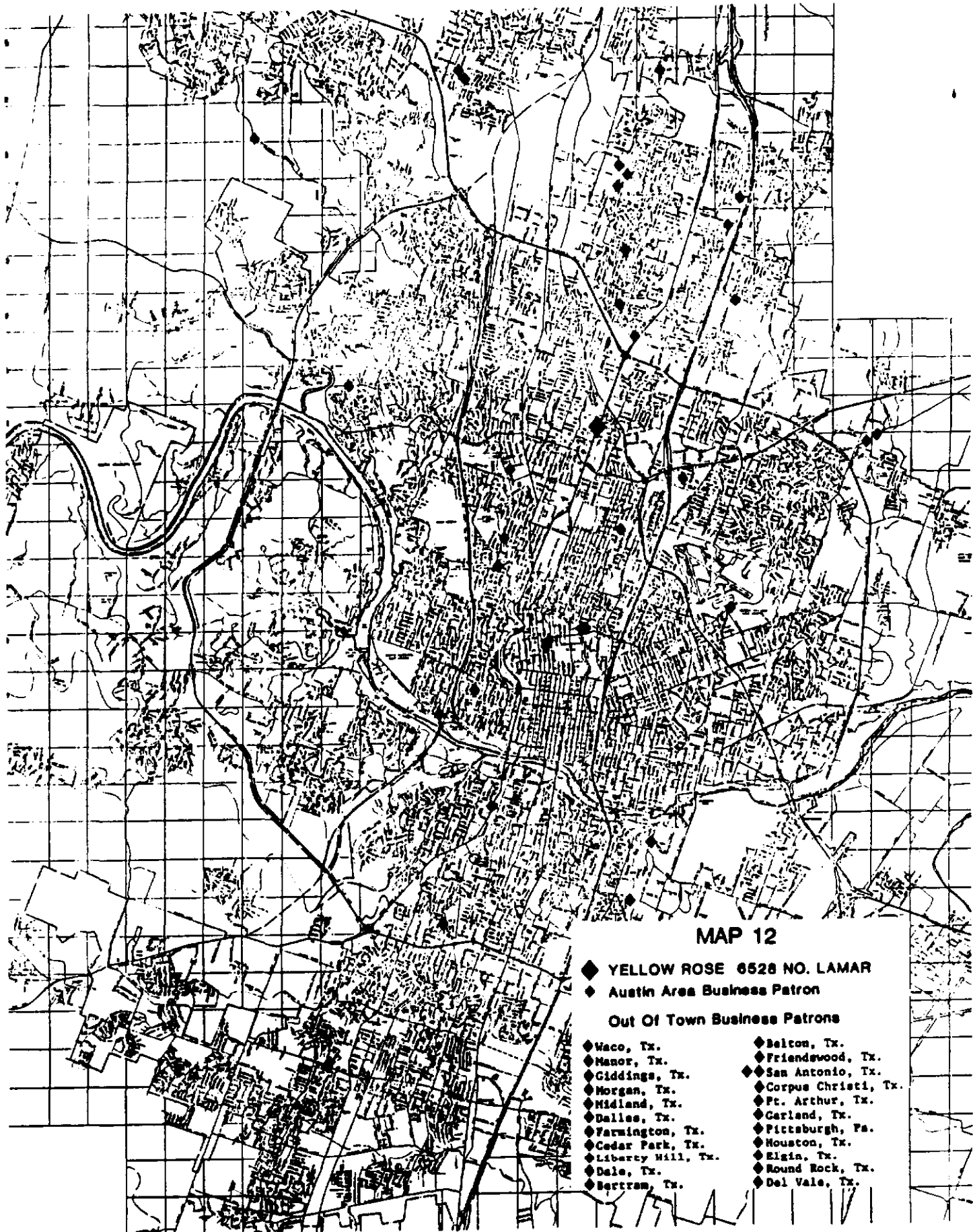
MAP 10

- 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



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.**



MAP 12

◆ **YELLOW ROSE 6528 NO. LAMAR**
 ◆ **Austin Area Business Patron**

Out Of Town Business Patrons

- | | |
|---------------------|-----------------------|
| ◆ Waco, Tx. | ◆ Belton, Tx. |
| ◆ Manor, Tx. | ◆ Friendswood, Tx. |
| ◆ Giddings, Tx. | ◆ San Antonio, Tx. |
| ◆ Morgan, Tx. | ◆ Corpus Christi, Tx. |
| ◆ Midland, Tx. | ◆ Ft. Arthur, Tx. |
| ◆ Dallas, Tx. | ◆ Carland, 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. |

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

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.

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

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.

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.

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.

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

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.

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.

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.

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.

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

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

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

ADULT ENTERTAINMENT BUSINESSES IN INDIANAPOLIS

AN ANALYSIS

1984

ADULT ENTERTAINMENT BUSINESSES IN INDIANAPOLIS
AN ANALYSIS

Department of Metropolitan Development
Division of Planning
February, 1984

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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:

- 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.

- 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 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.

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.

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.

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.

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.

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

SITE	CHARACTERISTICS			
	Residential	Commercial	Special	Parks
<u>Residential</u>				
1.2300 West 10th St.	D5=82%	C1=4%	-	-
2.2500 East 10th St.	D5=80%	C3=14%	-	-
		C2=12%		
		C3=8%		
<u>Coml./Residential</u>				
3.5420 E. Washington	D5=62%	C3=1%	-	-
	D6=8%	C4=19%		
	D8=10%			
4.2600 W. Washington	D5=35%	C1=2%	SU1=3%	-
	D4=34%	C2=1%	SU2=3%	
		C5=13%		
		C7=8%		
<u>Commercial</u>				
5.5200 N. Keystone	D2=7%	C1=4%	11U=10%	-
	D4=2%	C3=9%		
	D5=15%	C5=25%		
	D7=6%	C7=20%		
		C8=2%		
6.750 N. Shadeland	D2=3%	C4=49%	SU1=15%	-
	D3=15%	C5=10%		
	D7=3%	C8=5%		

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

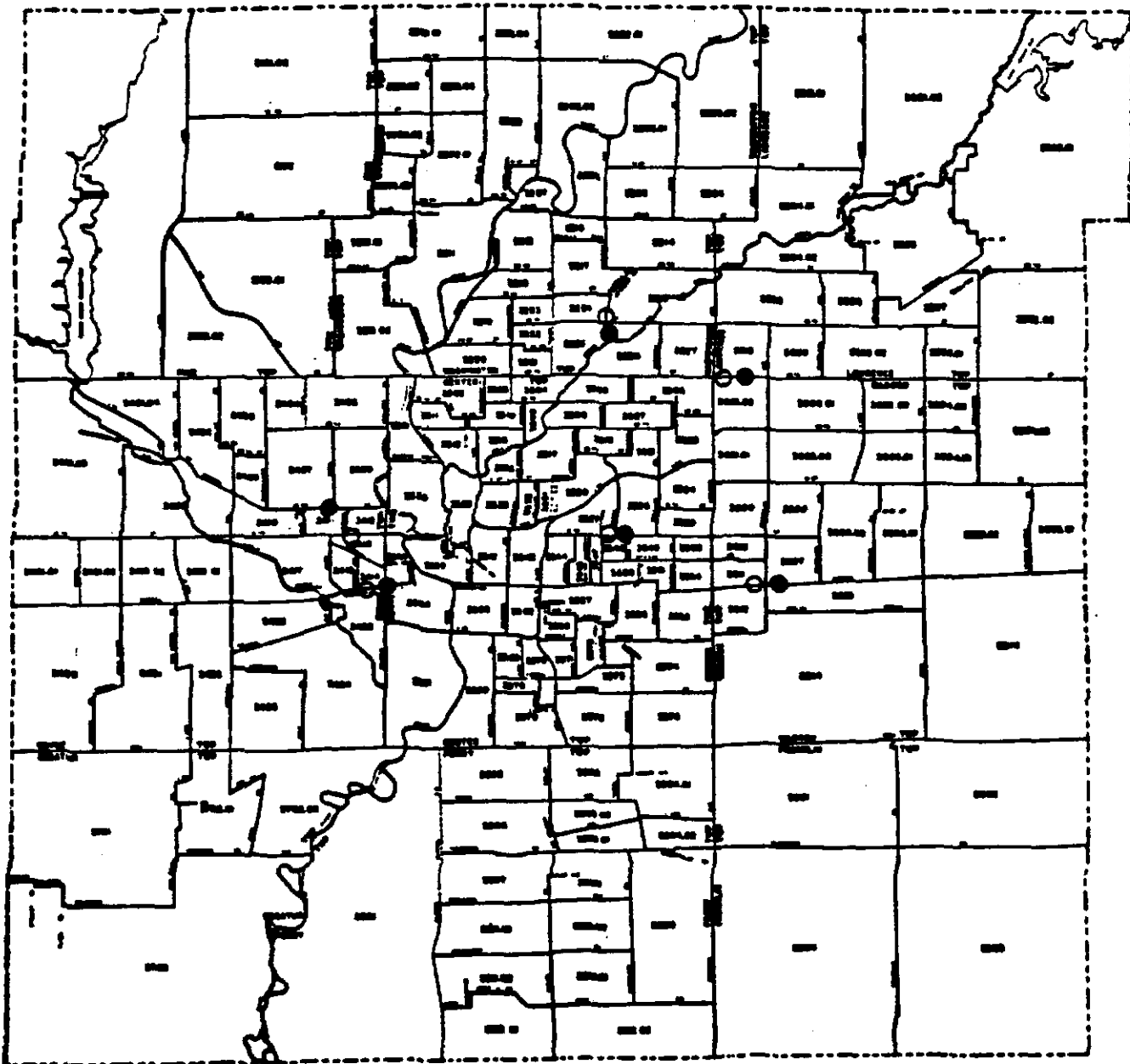
Intermediate geographic levels used for comparison in the study were census tracts when study sites were centrally located within their boundaries. Where they were not, those census tracts in proximity to the site were chosen as the basis of comparison.

**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 2416	3527 3547 3548	3611 3612	3414 3426	3216 3217	3606 3607 3608
Study Areas	3310 3601	3526 3548 3549	3411	3414 3426 3538	3607	3216 3224 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.



1980 CENSUS TRACTS
ADULT ENTERTAINMENT BUSINESS STUDY

- Study Area
- Control Area



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.

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	82/1.68	107/2.20	65/1.36	68/1.47
Rape	241/7.26	439/8.98	410/8.73	400/8.52	387/8.24
Robbery	1863/41.78	2063/43.71	2183/46.89	2184/46.71	1863/42.43
Aggravated Assault	1383/28.81	1694/33.94	1743/37.11	1890/40.09	1892/40.28
Residence Burglary	6346/136.11	6538/138.20	7486/160.57	7677/163.46	7783/166.70
Non-Residence Burglary	2382/50.93	2011/42.82	2678/54.91	2308/48.14	2213/47.12
Larceny	18892/397.96	18927/402.96	18906/402.51	16782/367.29	17497/372.51
Vehicle Thefts	3674/78.22	3451/73.47	3787/80.63	2682/56.18	2902/61.78
Total	34837/741.88	36106/747.38	37220/792.42	33898/721.70	34736/738.54
Total Crimes: 175,796					
Per 10,000 Population					

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-11,888)					
	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	15/12.86	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	229/196.30	292/224.58	272/233.16	199/189.72
Non-Residence Burglary	71/60.86	50/42.86	62/53.15	59/50.57	79/67.72
Larceny	484/414.86	544/466.31	574/492.03	588/604.03	578/436.31
Vehicle Theft	141/120.86	112/96.01	110/94.29	83/71.15	90/77.15
Total	912/781.76	1,030/882.91	1,099/942.05	1,095/938.63	1,034/886.34
				Total 5,170	
				Average: 888.34	

*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

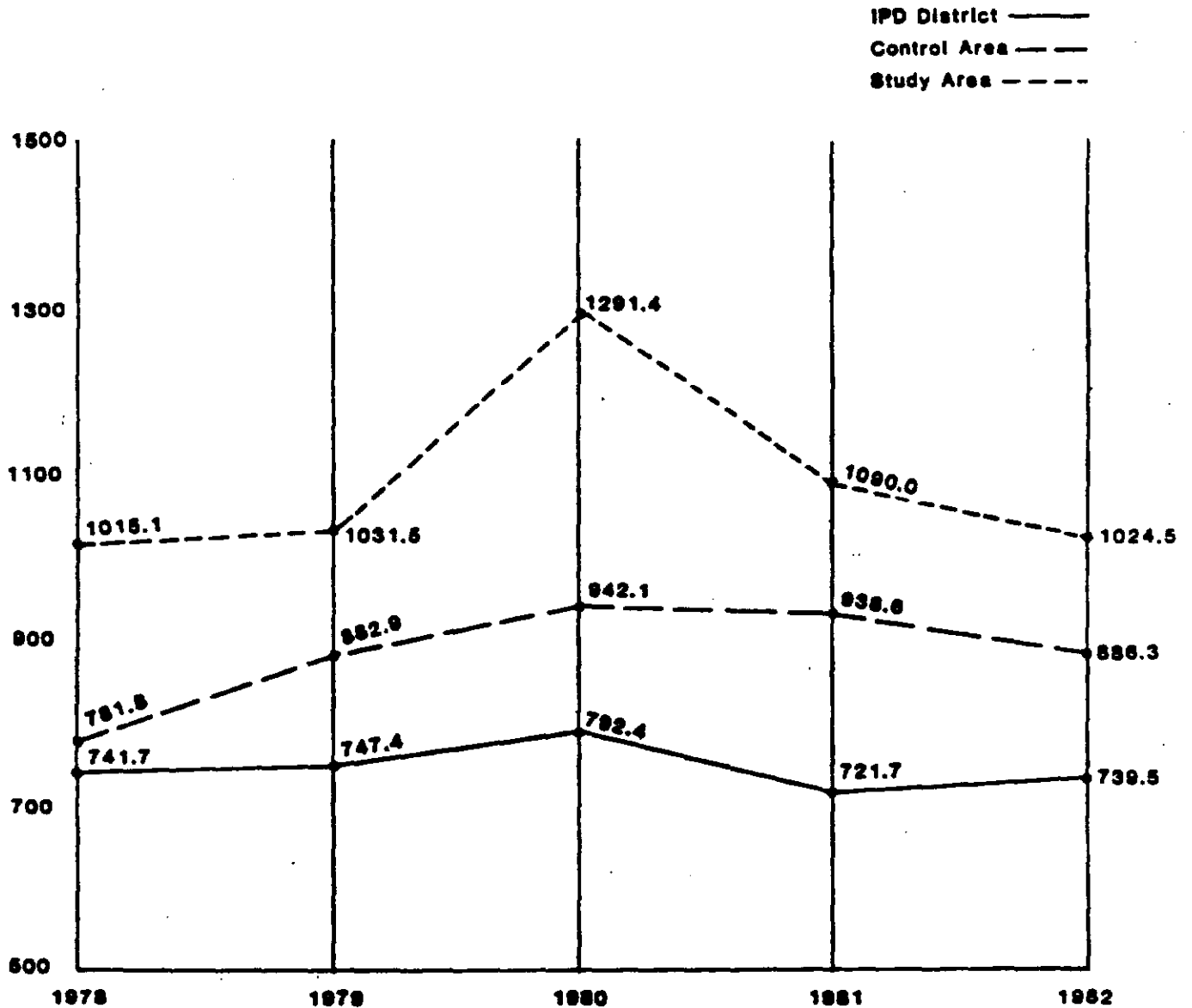
Study Area Major Crimes/Rates* 1978-1982					
(Population= 8,541)					
	<u>1978</u>	<u>1979</u>	<u>1980</u>	<u>1981</u>	<u>1982</u>
Murder	2/3.51	0/-	2/2.34	5/5.85	0/-
Rape	3/3.51	12/14.05	11/12.86	6/10.54	8/9.37
Robbery	55/64.40	53/62.05	58/67.91	26/30.44	44/51.52
Aggravated Assault	25/29.27	18/21.05	22/25.76	16/18.73	26/33.95
Residence Burglary	161/188.50	200/234.17	244/285.88	190/222.46	189/221.29
Non-Residence Burglary	82/96.01	58/67.91	80/93.67	65/76.10	64/74.93
Larceny	482/540.92	450/526.87	586/686.10	560/655.88	484/543.26
Vehicle Theft	76/88.96	90/105.37	100/117.08	60/70.25	77/90.15
Total	867/1015.10	881/1031.50	1103/1291.42	831/1090.04	875/1024.47
					Total 4,857
*Per 10,000 Population					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.

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.

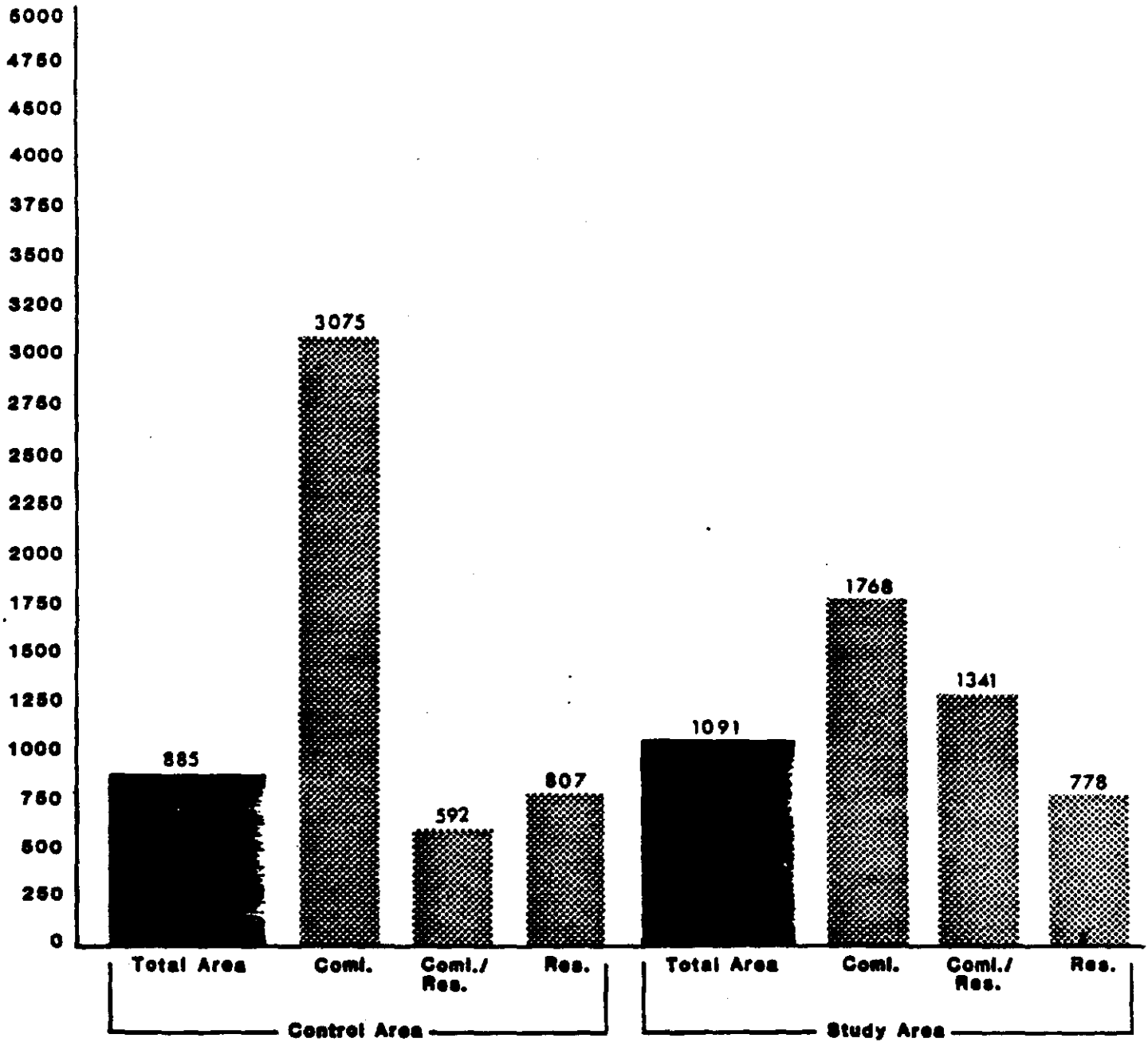
It is interesting to examine crime rates within the Control and Study Areas in relation to the land use characteristics of the locations in which they occurred.

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.	523	1147	4386						
	<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.	1218	831	1365						
	<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.

1978-1982 Annual Average Major Crime Rates*: Selected Areas



* Per 10,000 Population

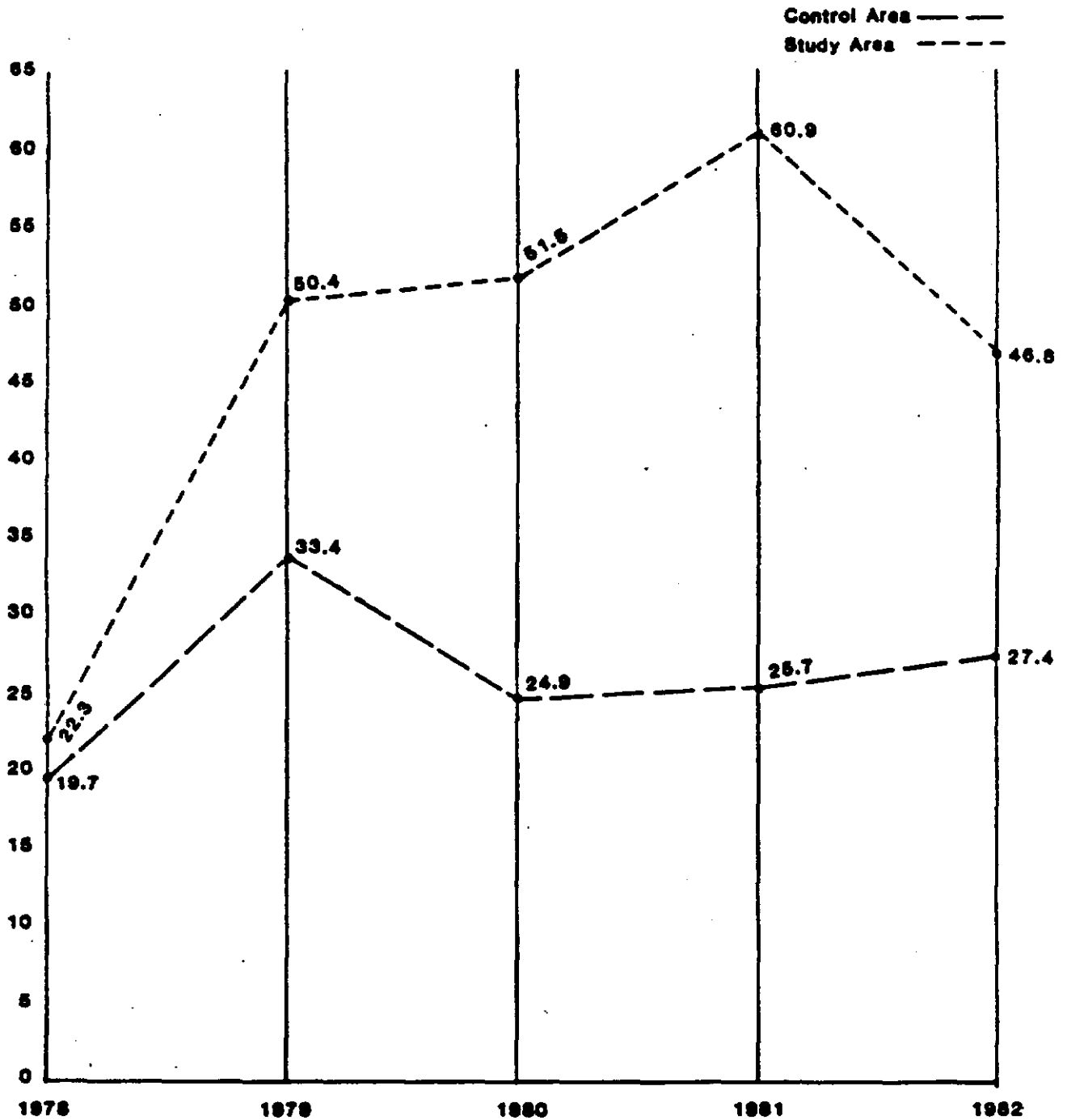
SEX-RELATED CRIME ⁵

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-11,888)					
	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	3
Commercial Sex	0	1	1	0	0
Total	23/19.7	39/33.4	29/24.8	30/25.7	38/27.4
					Total 153
* Per 10,000 Population					

Study Area Sex-Related Crimes/Rates*1978-1982					
(Population-8,841)					
	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	0	5	11	5
Adult Molestation	1	0	0	0	3
Commercial Sex	1	0	10	25	13
Total	19/22.3	49/55.4	44/51.5	62/69.9	40/45.9
					Total 198
* Per 10,000 Population					

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.

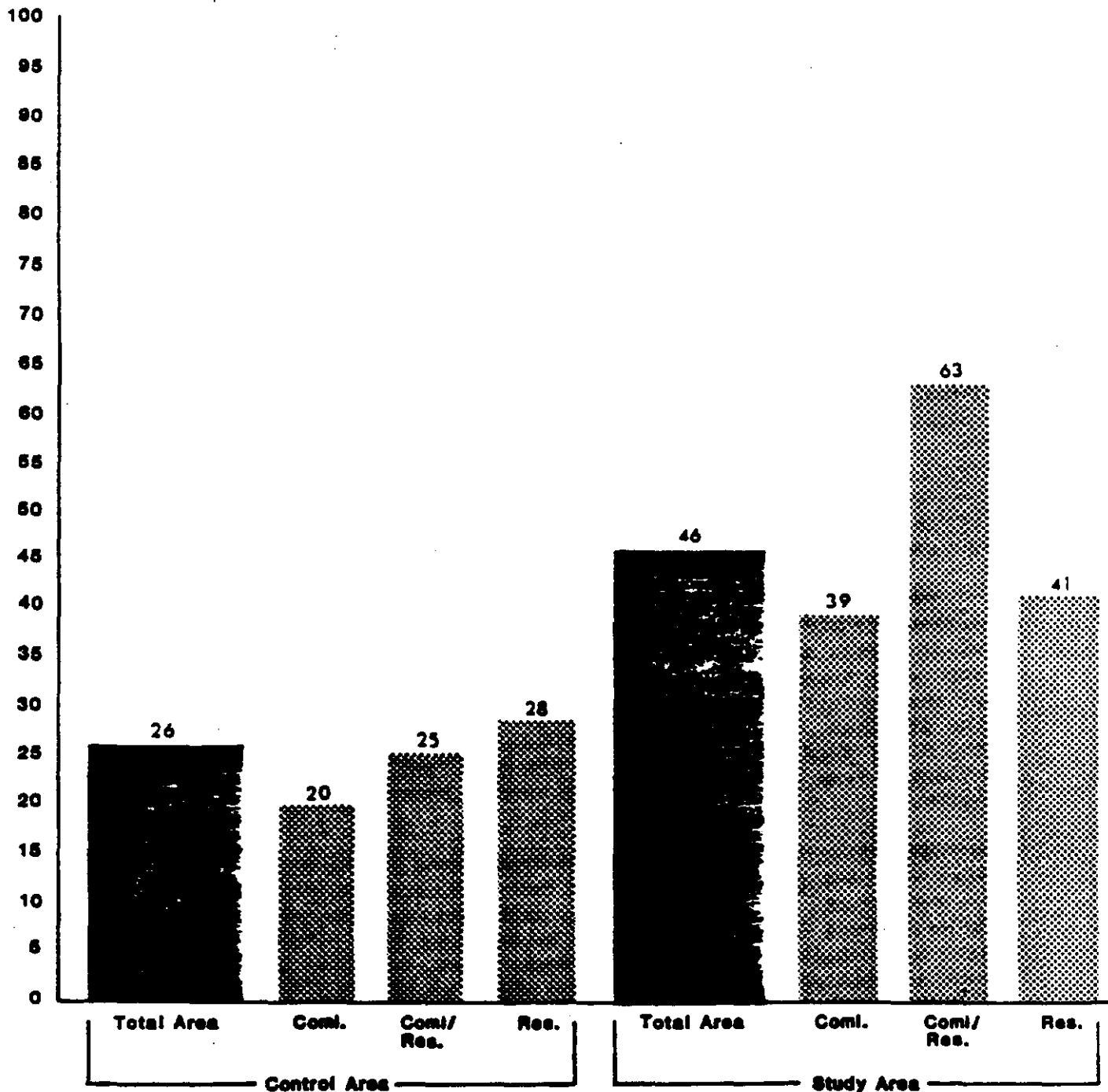
Whereas sex-related crime rates in the Control Areas varied from a low of 19.7 in 1978 to a high of 33.4 in 1979, the Study Areas increased from a low of 22.3 in 1978 to its peak of 60.9 in 1981.

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.
<u>Control</u>									
1.	379	2	11						
2.	523	7	27						
	<u>902</u>	<u>9</u>	<u>20</u>						
3.				2828	35	25			
4.				<u>2382</u>	<u>29</u>	<u>24</u>			
				<u>5210</u>	<u>64</u>	<u>25</u>			
5.							2159	49	45
6.							<u>3395</u>	<u>29</u>	<u>17</u>
							<u>5554</u>	<u>78</u>	<u>28</u>
<u>Study</u>									
1.	219	5	46						
2.	1218	23	38						
	<u>1437</u>	<u>28</u>	<u>39</u>						
3.				1015	38	75			
4.				<u>1203</u>	<u>32</u>	<u>53</u>			
				<u>2218</u>	<u>70</u>	<u>63</u>			
5.							3656	69	38
6.							<u>1230</u>	<u>31</u>	<u>50</u>
							<u>4886</u>	<u>100</u>	<u>41</u>

1978-1982 Annual Average Sex-Related Crime Rates*: Selected Areas



* Per 10,000 Population

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.

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					Tot.	%
	1978	1979	1980	1981	1982		
<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>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>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.

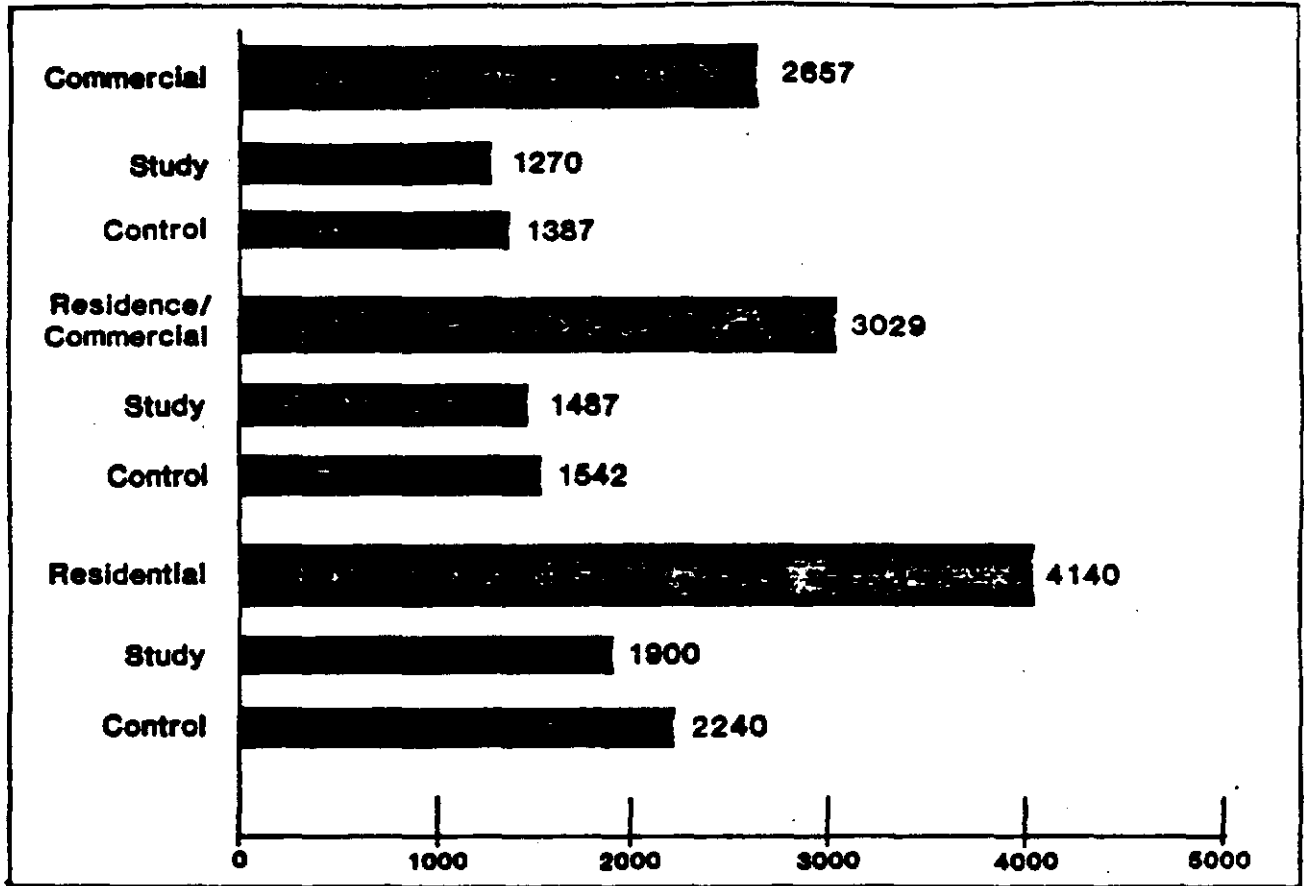
The following table displays sex-related crime frequencies for the five year period by type of area, the existence or non-existence of adult entertainment and the individual locations included in the study.

SEX-RELATED CRIME FREQUENCY

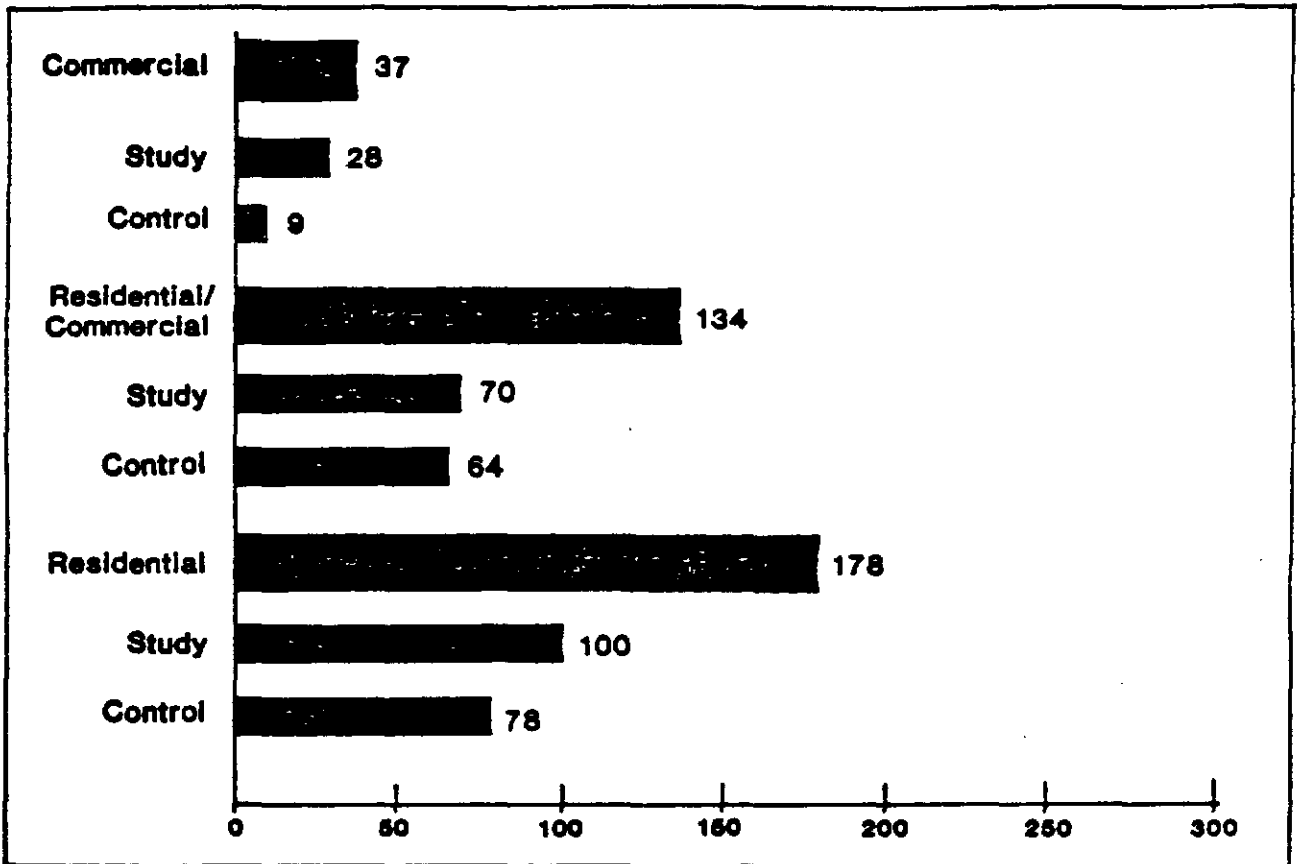
	<u>1978</u>	<u>1979</u>	<u>1980</u>	<u>1981</u>	<u>1982</u>	<u>Tot.</u>	<u>%</u>
<u>District Commercial</u>							
Study Area							
No. Keystone	-	2	2	-	1	5	
E. Washington	-	4	4	8	7	23	
	<u>-</u>	<u>6</u>	<u>6</u>	<u>8</u>	<u>8</u>	<u>28</u>	
Control Area							
No. Shadeland	-	-	-	-	2	2	
No. Keystone	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>	11%
<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>	38%
<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>	51%

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.

Major Crimes / 1978-1982, Selected Areas



Sex-Related Crimes / 1978-1982, Selected Areas



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

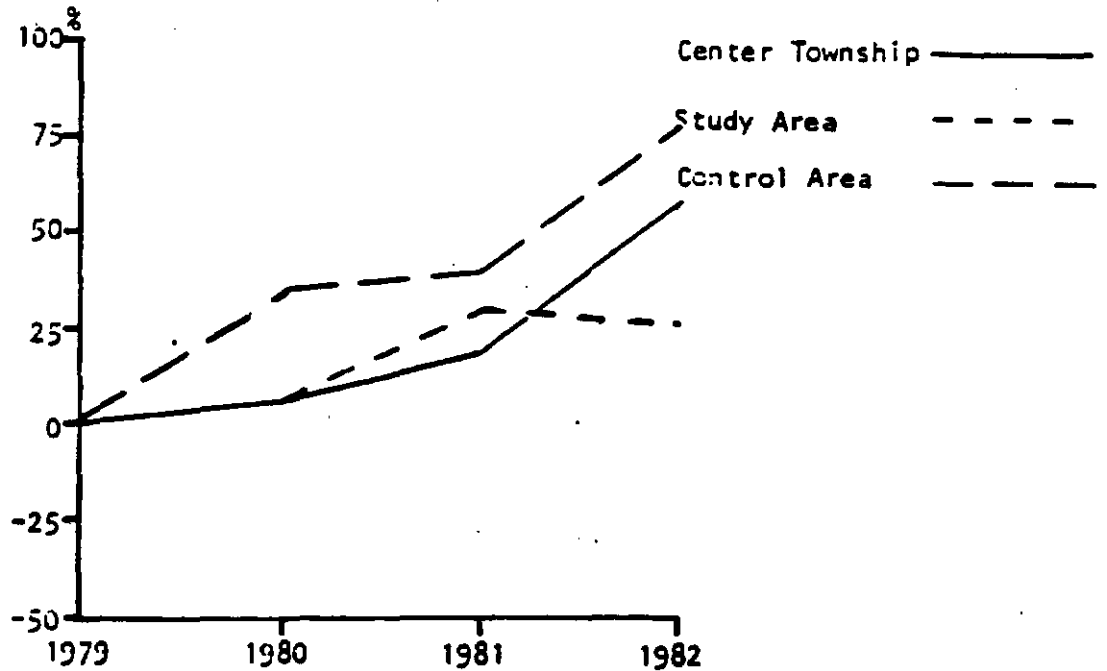
	<u>1979</u>	<u>1980</u>	<u>1981</u>	<u>1982</u>	<u>1979-1982</u> <u>% Change</u>
<u>Control Area</u> ¹	\$16,038	\$21,687	\$22,650	\$28,420	+ 77%
<u>Study Area</u> ¹	23,823	25,432	30,964	30,090	+ 26%
<u>Center Township</u> ²	16,100	17,178	18,903	25,099	+ 56%

1. Source: Indianapolis Multiple Listings for Residential Prop.

2. Source: Home Mortgage Disclosure Act Statements.

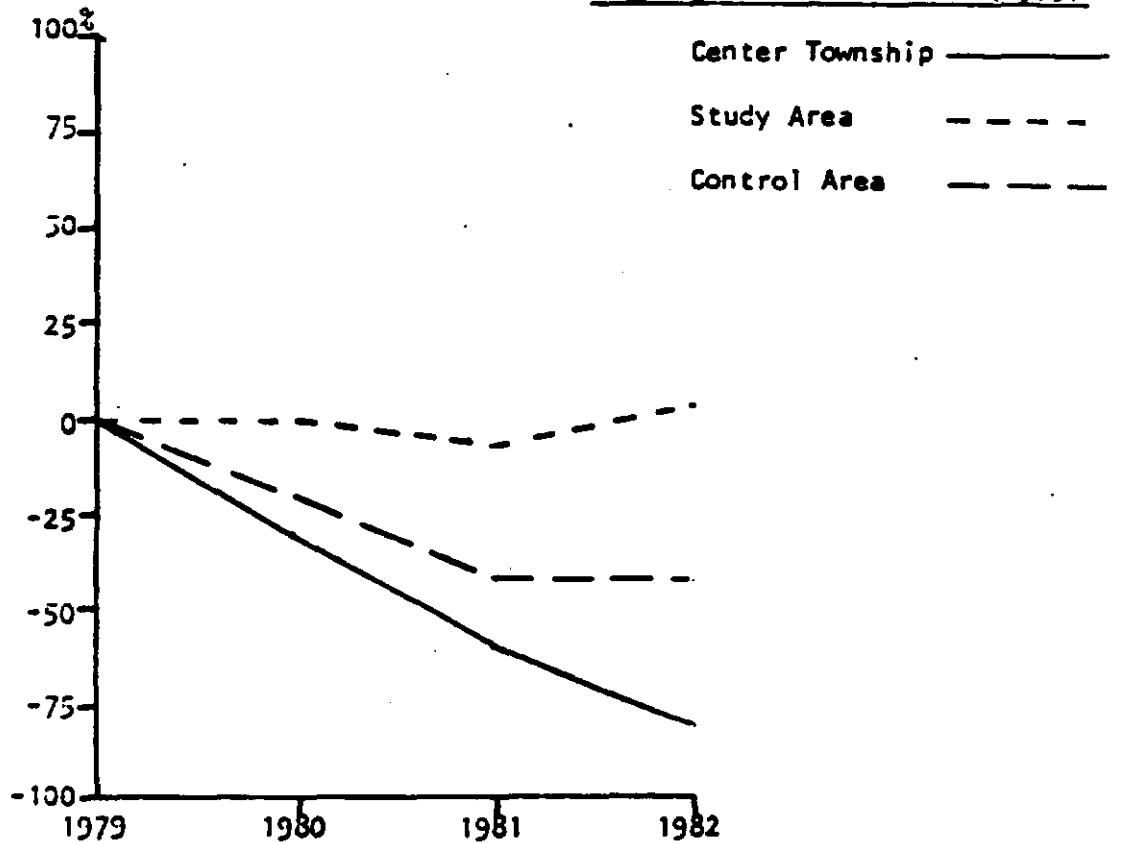
MORTGAGE VALUES

% Change From Base Year (1979)



REAL ESTATE LISTINGS

% Change From Base Year (1979)



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 Listings</u> ¹	29	23	15	15	- 52%
<u>Study Area Listings</u> ¹	28	28	26	29	+ 4%
<u>Center Township Mortgages</u> ²	898	635	377	182	- 80%

1. Source: Indpls. Multiple Listings, Residential Properties.
2. Source: Home Mortgage Disclosure Act Statements.

Both Center Township and the Control Area followed general market trends in the volume of real estate activity, falling by 80 percent and 52 percent, respectively, from 1979 to 1982. Once again, the Study Area performed in an atypical fashion, actually registering a slight increase in volume (4 percent) over the same period.

CONCLUSIONS

While bearing in mind the above-mentioned difficulties in certain cases with the sample size at the sub-area level, the following observations may be made on analysis of the data.

A comparison of residential real estate listings indicates that the areas chosen in this study which have adult entertainment establishments within their boundaries have, on the average, a residential housing base of substantially higher value than that located in the areas chosen as control sites.

Despite the higher value of housing stock in the Study Areas, property values appreciated at only one-half the rate of the Control Area and at one-third the rate of Center Township as 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.

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.

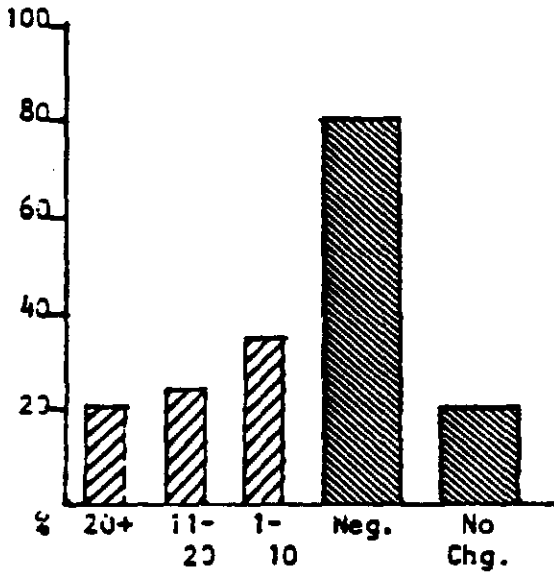
In summary:

- 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

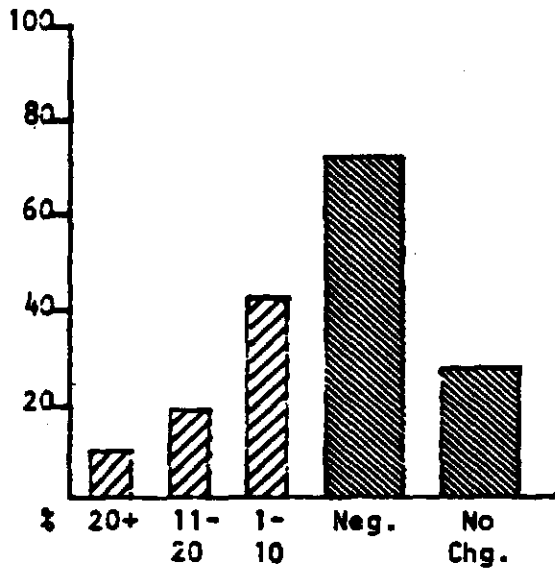
Impact of Adult Bookstores On
Property Values

RESIDENTIAL PROPERTY AT ONE BLOCK ²



REGION	REGION					NO. TOTAL	
	COUNTY		EAST	SOUTH CENTRAL	SOUTH		WEST
	NO. PCT	COL. PCT	1	2	3		4
DECREASE 20-40%	1	7	17	21	0	65	
	17.2	20.4	22.4	12.7		21.2	
	0.0	0.0	0.0	3.7			
DECREASE 10-20%	2	10	20	10		60	
	21.2	17.0	22.0	20.0		20.2	
	0.0	0.0	0.0	7.0			
DECREASE 1-10%	3	22	10	21		66	
	14.2	20.0	20.7	22.5		24.1	
	0.0	0.0	10.0	0.0			
NO CHANGE	4	0	7	10	10	60	
	10.0	10.0	20.0	22.0	20.0	20.2	
	0.0	0.0	7.0	0.0			
TOTAL		61	66	66	63	256	
TOTAL		10.0	20.0	20.7	20.2	100.0	

COMMERCIAL PROPERTY AT ONE BLOCK

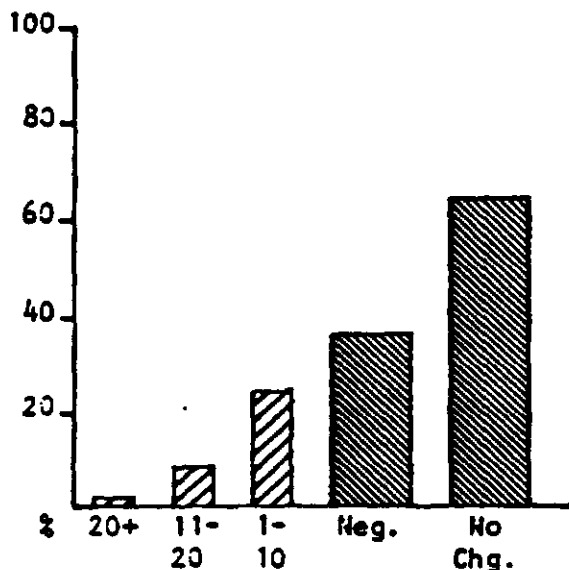


REGION	REGION					NO. TOTAL	
	COUNTY		EAST	SOUTH CENTRAL	SOUTH		WEST
	NO. PCT	COL. PCT	1	2	3		4
DECREASE 20-40%	1	3	7	11	0	23	
	12.2	20.0	10.0	10.0		10.0	
	7.0	12.0	0.0	0.0			
DECREASE 10-20%	2	10	20	11		61	
	6.0	20.2	21.7	22.0		19.2	
	1.2	0.0	0.0	0.0			
DECREASE 1-10%	3	21	20	21		100	
	20.0	10.0	20.0	20.0		20.0	
	0.0	0.0	0.0	10.0			
NO CHANGE	4	10	10	20	17	70	
	10.0	20.0	20.0	20.0	20.0	20.2	
	0.0	0.0	10.0	0.0			
TOTAL		61	66	66	63	256	
TOTAL		10.0	20.0	20.7	20.2	100.0	

NATIONAL SURVEY OF APPRAISERS

Impact of Adult Bookstores On
Property Values

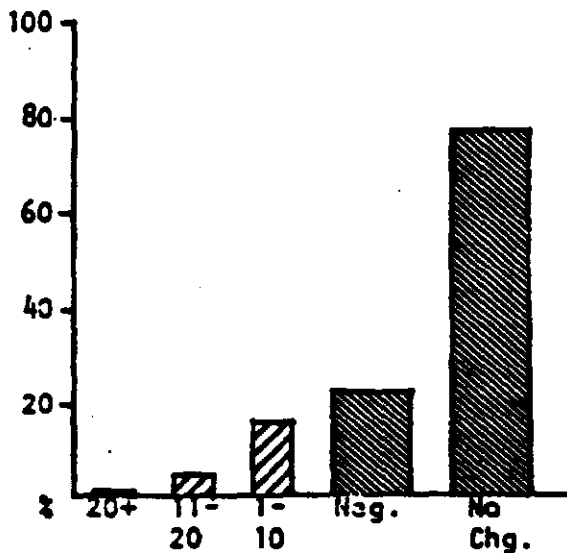
RESIDENTIAL PROPERTY AT THREE BLOCKS



CONCLUSION	COUNT	REGION				TOTAL
		EAST	NORTH	SOUTH	WEST	
		CENTRAL	CENTRAL	CENTRAL	CENTRAL	
DECREASE 2000	1	0	0	0	0	1
DECREASE 100-200	2	0	0	0	0	2
DECREASE 10-100	2	0	0	0	0	2
DECREASE 1-10	3	0	0	0	0	3
NO CHANGE	6	0	0	0	0	6
INCREASE 1-10	0	0	0	0	0	0
INCREASE 10-100	0	0	0	0	0	0
INCREASE 100-200	0	0	0	0	0	0
INCREASE 200+	0	0	0	0	0	0
TOTAL	12	0	0	0	0	12

COMMERCIAL PROPERTY AT THREE BLOCKS

CONCLUSION	COUNT	REGION				TOTAL
		EAST	NORTH	SOUTH	WEST	
		CENTRAL	CENTRAL	CENTRAL	CENTRAL	
DECREASE 2000	1	0	0	0	0	1
DECREASE 100-200	2	0	0	0	0	2
DECREASE 10-100	2	0	0	0	0	2
DECREASE 1-10	3	0	0	0	0	3
NO CHANGE	6	0	0	0	0	6
INCREASE 1-10	0	0	0	0	0	0
INCREASE 10-100	0	0	0	0	0	0
INCREASE 100-200	0	0	0	0	0	0
INCREASE 200+	0	0	0	0	0	0
TOTAL	12	0	0	0	0	12



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.

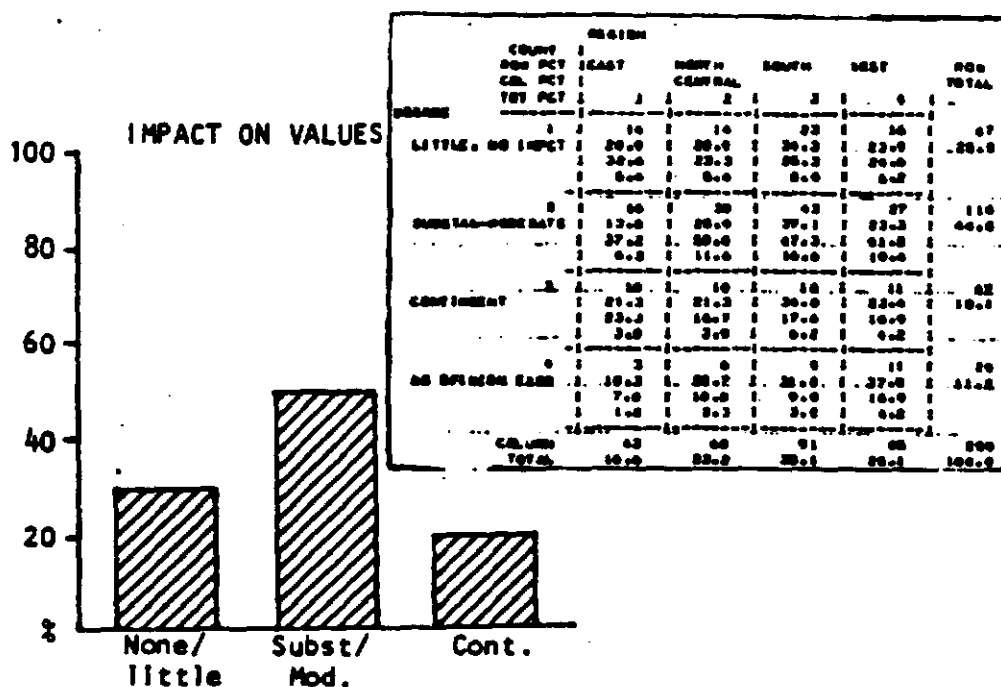
NATIONAL SURVEY OF APPRAISERS Impact On Residential Properties					
<u>Land Use</u>	<u>Higher</u>		<u>Value</u> <u>Same</u>	<u>Lower</u>	
	<u>Much</u>	<u>Some</u>		<u>Some</u>	<u>Much</u>
Store-front church	5%	20%	58%	16%	1%
Pool hall	1%	8%	45%	38%	8%
Welfare office	-	12%	46%	33%	8%
Neighborhood tavern	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.



NATIONAL SURVEY OF APPRAISERS

Impact Of Adult Bookstores on
Property Values

LITTLE/NO IMPACT	Percent				
	1967	1968	1969	1970	1971
No reason given	0.0	0.0	0.0	0.0	0.0
Appraisal experience	0.0	0.0	0.0	0.0	0.0
Area in decline	0.0	0.0	0.0	0.0	0.0
Area in decline	0.0	0.0	0.0	0.0	0.0
Not an income area	0.0	0.0	0.0	0.0	0.0
Only one case history	0.0	0.0	0.0	0.0	0.0
Commercial indicator	0.0	0.0	0.0	0.0	0.0
Market adjusts quickly	0.0	0.0	0.0	0.0	0.0
Tolerated by current users	0.0	0.0	0.0	0.0	0.0
Other	0.0	0.0	0.0	0.0	0.0
TOTAL	100.0	100.0	100.0	100.0	100.0

SUBSTANTIAL/MODERATE IMPACT	Percent				
	1967	1968	1969	1970	1971
No reason given	0.0	0.0	0.0	0.0	0.0
Appraisal experience	0.0	0.0	0.0	0.0	0.0
Prevailing Attitudes negative	0.0	0.0	0.0	0.0	0.0
Information	0.0	0.0	0.0	0.0	0.0
Perceives decline	0.0	0.0	0.0	0.0	0.0
Bad image	0.0	0.0	0.0	0.0	0.0
Attracts undesirable	0.0	0.0	0.0	0.0	0.0
Bad influence on the young	0.0	0.0	0.0	0.0	0.0
Attracts more squalid uses	0.0	0.0	0.0	0.0	0.0
Other	0.0	0.0	0.0	0.0	0.0
TOTAL	100.0	100.0	100.0	100.0	100.0

CERTAIN IMPACT	Percent				
	1967	1968	1969	1970	1971
No reason given	0.0	0.0	0.0	0.0	0.0
Bad enough info	0.0	0.0	0.0	0.0	0.0
Local attitudes/controls	0.0	0.0	0.0	0.0	0.0
Nature of existing commercial	0.0	0.0	0.0	0.0	0.0
Volume/type of customer	0.0	0.0	0.0	0.0	0.0
Owner/management	0.0	0.0	0.0	0.0	0.0
Owner/management	0.0	0.0	0.0	0.0	0.0
Type neighborhood values	0.0	0.0	0.0	0.0	0.0
Attract other	0.0	0.0	0.0	0.0	0.0
TOTAL	100.0	100.0	100.0	100.0	100.0

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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.

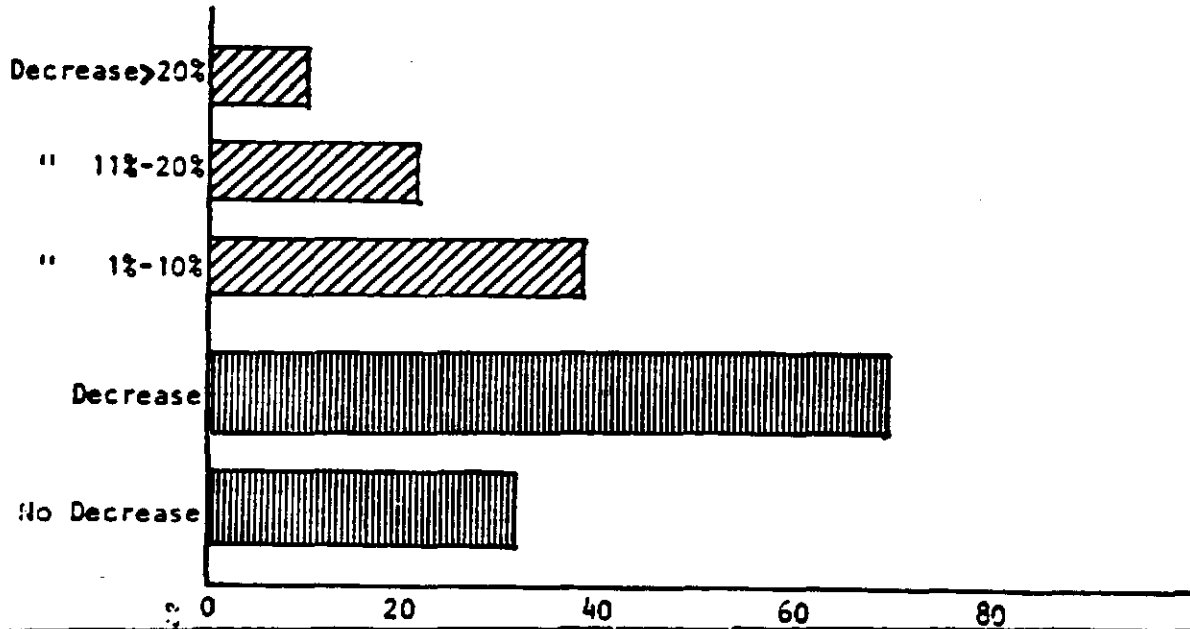
39% of the appraisers felt that a negative impact on residential properties would still obtain at three blocks from the site. Only three percent felt that this impact would be in excess of twenty percent. The remaining 36% felt that depreciation would be somewhere in the one to twenty percent range. 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.

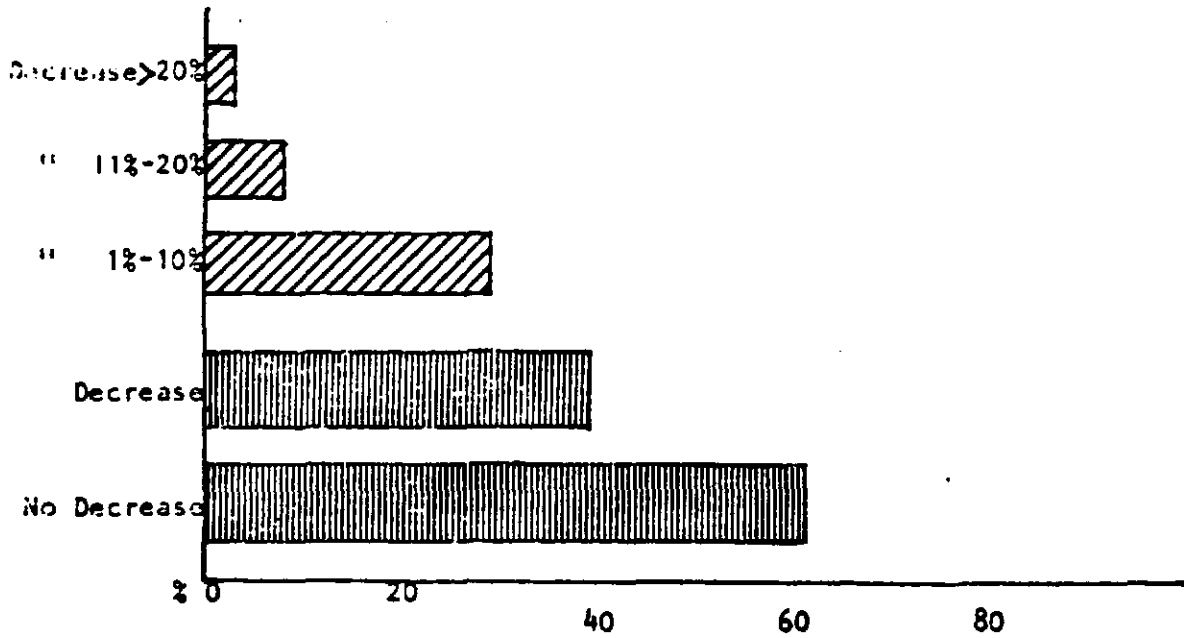
IMPACT OF ADULT BOOKSTORES ON COMMERCIAL PROPERTIES AT ONE BLOCK



PROPERTY TYPE	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20
OFFICE BUILDING	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
RETAIL STORE	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
RESTAURANT	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
APARTMENT	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
INDUSTRIAL	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
OTHER	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0

PROPERTY TYPE	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20
OFFICE BUILDING	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
RETAIL STORE	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
RESTAURANT	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
APARTMENT	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
INDUSTRIAL	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
OTHER	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0

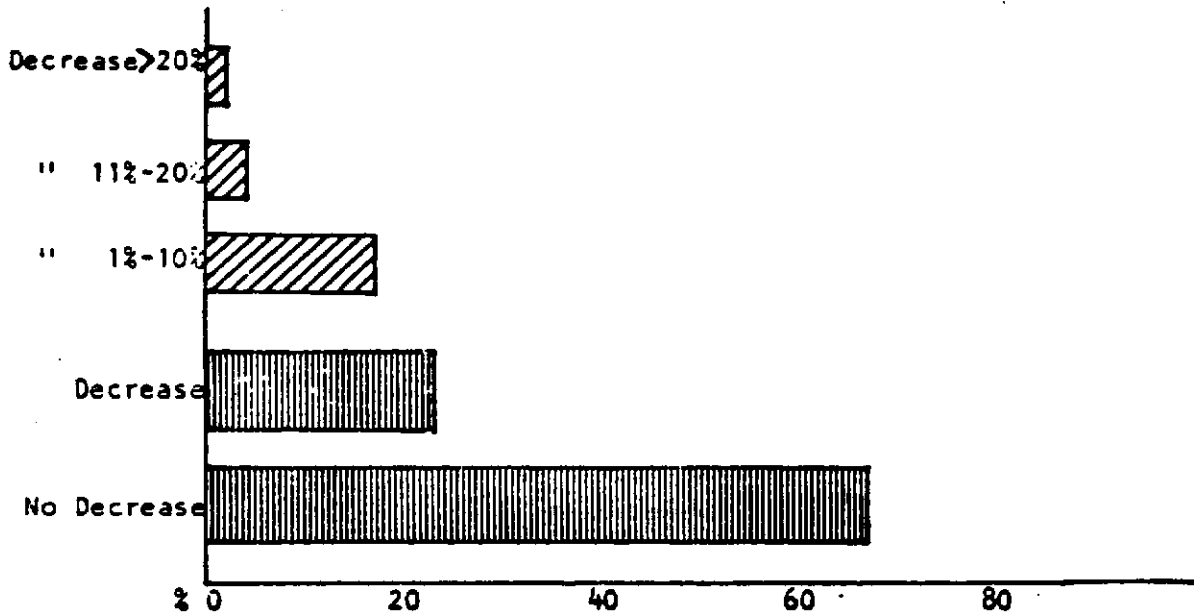
IMPACT OF ADULT BOOKSTORES ON RESIDENTIAL PROPERTY AT THREE BLOCKS



AGE	18-24	25-34	35-44	45-54	55-64	65-74	75-84	85+	TOTAL
WOMEN	10.7	16.7	7.0	0.0	0.0	0.0	0.0	0.0	34.4
MEN	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	10.7	16.7	7.0	0.0	0.0	0.0	0.0	0.0	34.4

AGE	18-24	25-34	35-44	45-54	55-64	65-74	75-84	85+	TOTAL
WOMEN	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
MEN	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

IMPACT OF ADULT BOOKSTORES ON COMMERCIAL PROPERTY AT THREE BLOCKS



BLOCK	BLOCK 1										BLOCK 2										BLOCK 3									
	1	2	3	4	5	6	7	8	9	10	1	2	3	4	5	6	7	8	9	10	1	2	3	4	5	6	7	8	9	10
DECREASE >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
DECREASE 11 1/2-20%	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
DECREASE 1 1/2-10%	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
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
NO DECREASE	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
TOTAL	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	

BLOCK	BLOCK 1										BLOCK 2										BLOCK 3									
	1	2	3	4	5	6	7	8	9	10	1	2	3	4	5	6	7	8	9	10	1	2	3	4	5	6	7	8	9	10
DECREASE >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
DECREASE 11 1/2-20%	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
DECREASE 1 1/2-10%	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
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
NO DECREASE	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
TOTAL	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	

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**

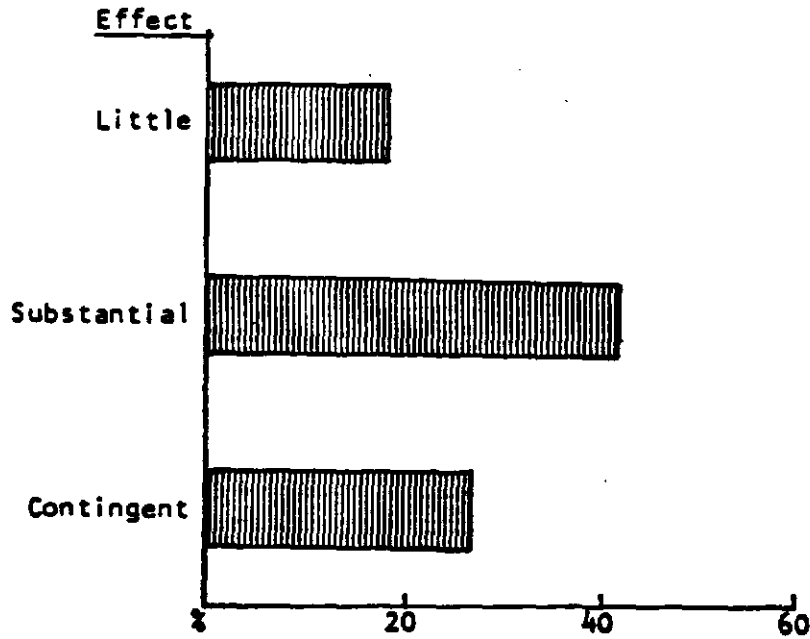
<u>Land Use</u>	<u>Value</u>				
	<u>Higher</u>		<u>Same</u>	<u>Lower</u>	
	<u>Much</u>	<u>Some</u>		<u>Some</u>	<u>Much</u>
Store-front church	4%	24%	52%	20%	1%
Pool hall	1%	12%	48%	33%	6%
Welfare office	1%	13%	41%	37%	7%
Neighborhood tavern	-	17%	52%	25%	6%
Record store	6%	29%	54%	10%	-
Medical office	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



COUNT	MINN.	SACRA-	SAN DIEGO	LOS ANGELES	JOHN	DENVER	MILWAUKEE	ST. LOUIS	PHILADELPHIA	TEMPA.	ATLANTA	INDIANAPOLIS	LOUISIANA
NO. PER	1	2	3	4	5	6	7	8	9	10	11	12	
TOT. PER	1	2	3	4	5	6	7	8	9	10	11	12	
LITTLE - NO IMPACT	0.7	0.2	0.2	2.2	13.0	2.2	0.2	0.2	0.2	0.2	0.2	0.2	
CONTINGENT	20.0	13.2	20.0	70.0	20.0	20.0	20.7	27.5	20.2	10.2	10.2	10.2	
SUBSTANTIAL	1.0	0.0	1.2	0.0	0.0	0.0	0.0	0.0	1.2	0.0	1.2	0.0	
TOTAL	21.7	13.4	21.4	72.2	33.0	20.0	20.7	27.7	21.4	10.2	11.4	10.2	

COUNT	MINN.	SACRA-	SAN DIEGO	LOS ANGELES	JOHN	DENVER	MILWAUKEE	ST. LOUIS	PHILADELPHIA	TEMPA.	ATLANTA	INDIANAPOLIS	LOUISIANA
NO. PER	1	2	3	4	5	6	7	8	9	10	11	12	
TOT. PER	1	2	3	4	5	6	7	8	9	10	11	12	
LITTLE - NO IMPACT	0.7	0.2	0.2	2.2	13.0	2.2	0.2	0.2	0.2	0.2	0.2	0.2	
CONTINGENT	20.0	13.2	20.0	70.0	20.0	20.0	20.7	27.5	20.2	10.2	10.2	10.2	
SUBSTANTIAL	1.0	0.0	1.2	0.0	0.0	0.0	0.0	0.0	1.2	0.0	1.2	0.0	
TOTAL	21.7	13.4	21.4	72.2	33.0	20.0	20.7	27.7	21.4	10.2	11.4	10.2	

EFFECT OF ADULT BOOKSTORES ON PROPERTY VALUE
MSA SURVEY OF APPRAISERS

LITTLE OR NO EFFECT

CAMPDEN										MILWAUKEE										TOTAL		
ALTON	ARLINGTON	BADEN	BELLEVILLE	BRIDGEVIEW	CLAYTON	CRANFORD	ELSTON	EVANSTON	FRANKLIN	GRANVILLE	HAZELBROOK	IRVINGTON	LAKEVIEW	LAUREL	MILWAUKEE	NEWBURN	ROSELAND	WILSON	WILSON		WILSON	
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
2	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
4	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
6	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
8	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
TOTAL	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0

- 0 = No reason given.
- 1 = Appraisal experience.
- 2 = Area in decline.
- 3 = Area in decline.
- 4 = Not an intense use.
- 5 = Only one does not matter.

- 6 = Commercial buffer.
- 7 = Market adjusts quickly.
- 8 = Tolerated by current mores.
- 9 = Other.

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

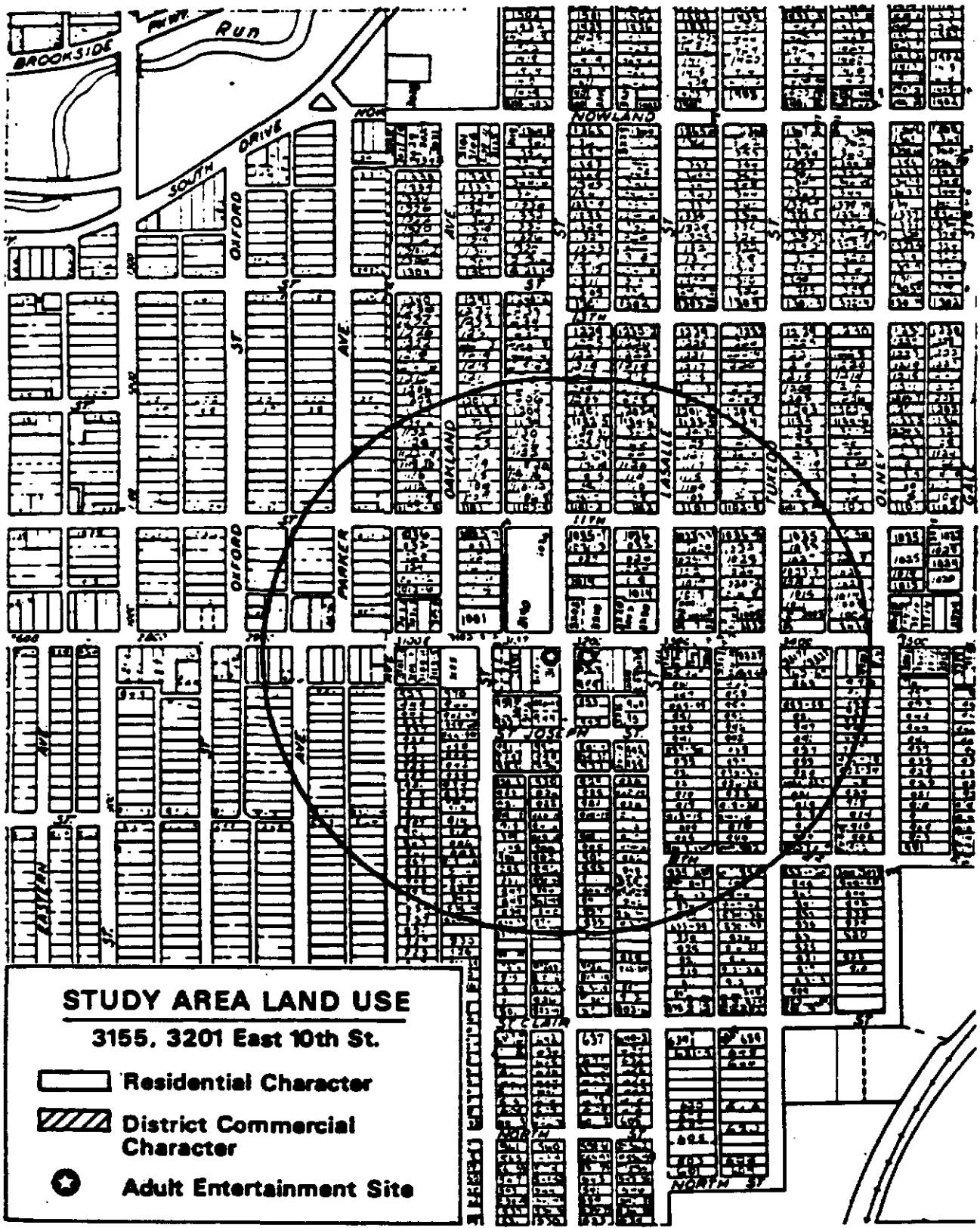
NOTE

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.

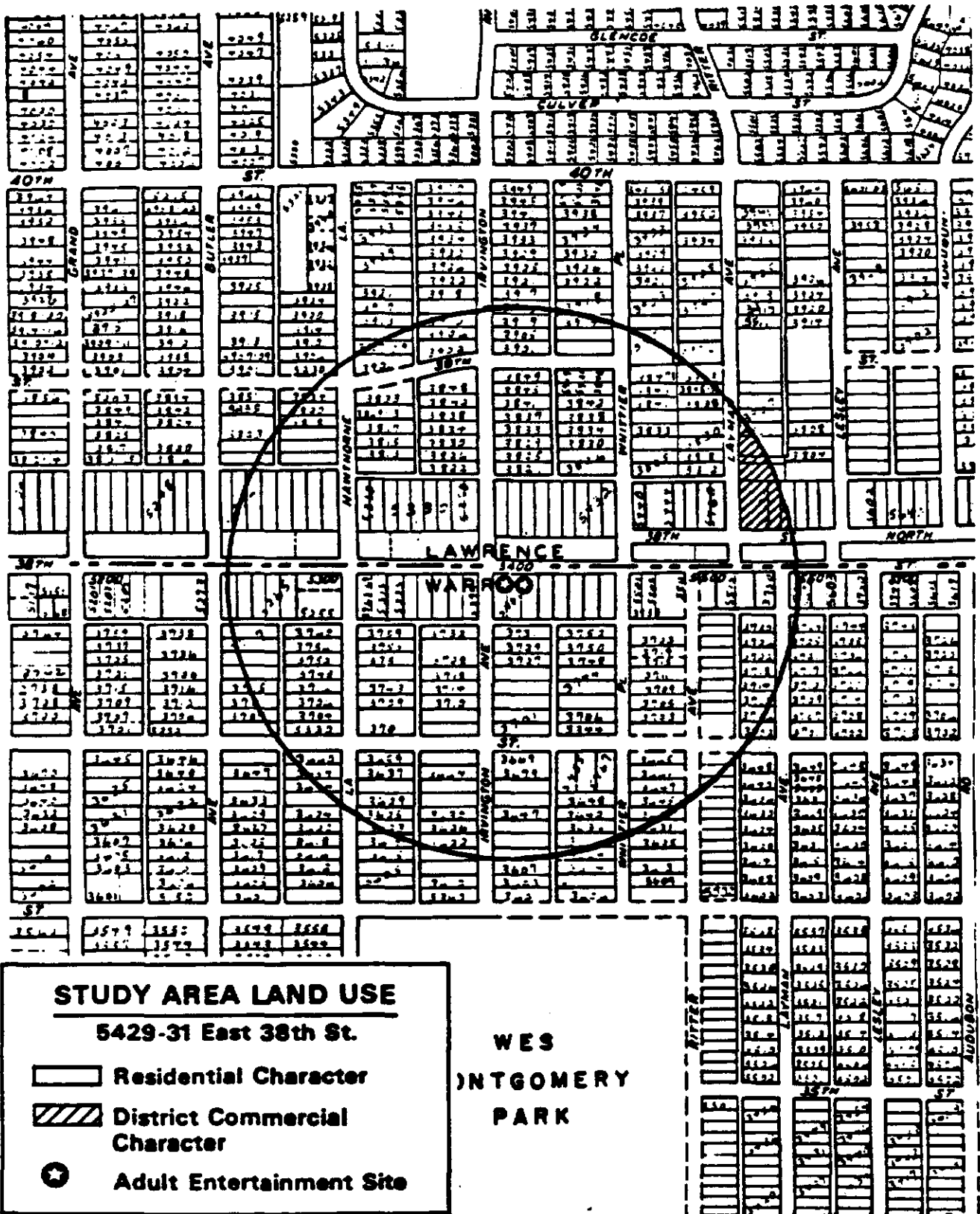
All dwelling district, neighborhood-related commercial and special use zoning classifications are designated as being of "Residential Character".

More intense commercial uses, industrial uses and district-related special uses are considered to have a "District Commercial Character".

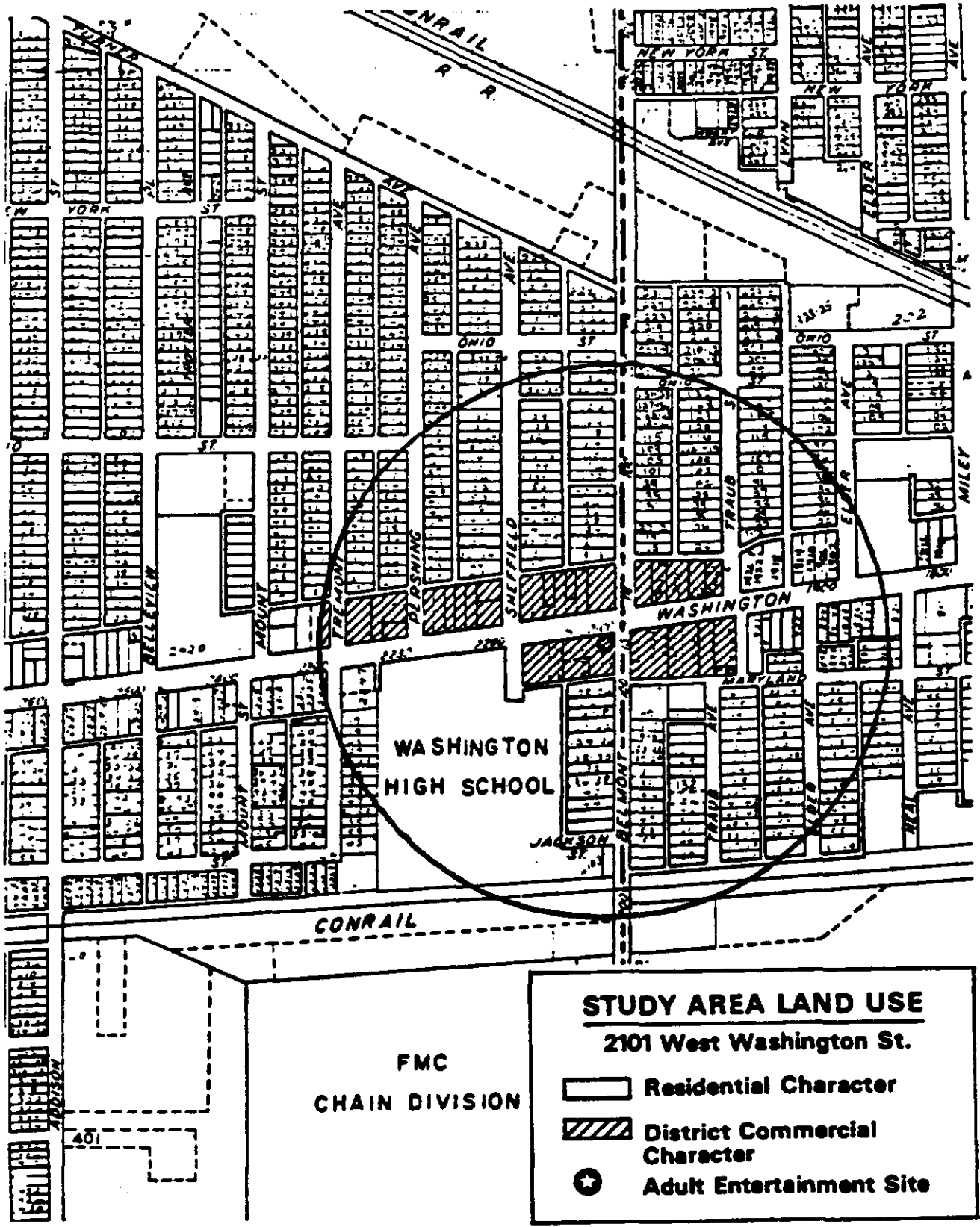
ADULT ENTERTAINMENT BUSINESS STUDY






ADULT ENTERTAINMENT BUSINESS STUDY



ADULT ENTERTAINMENT BUSINESS STUDY



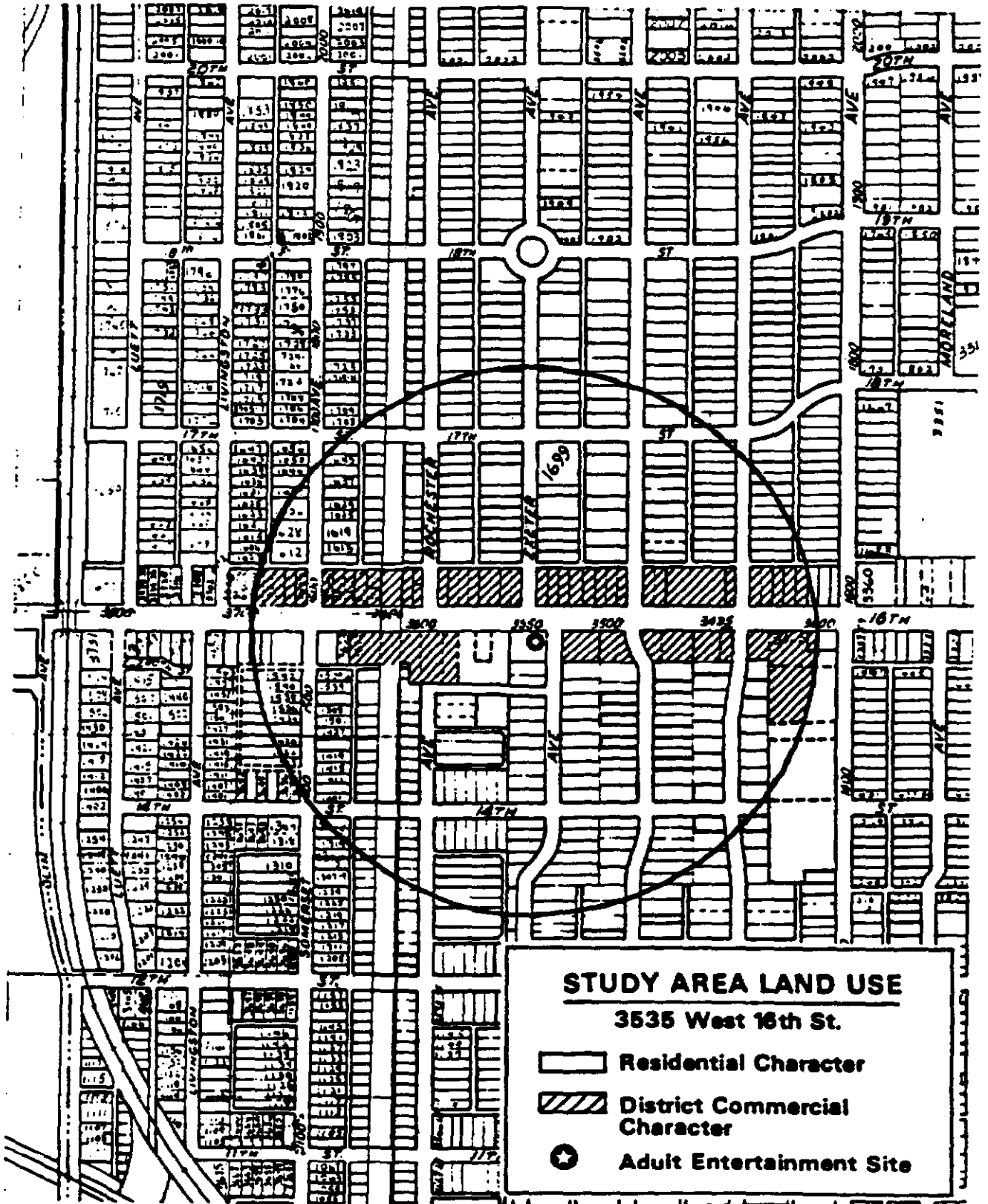
STUDY AREA LAND USE
2101 West Washington St.

-  Residential Character
-  District Commercial Character
-  Adult Entertainment Site

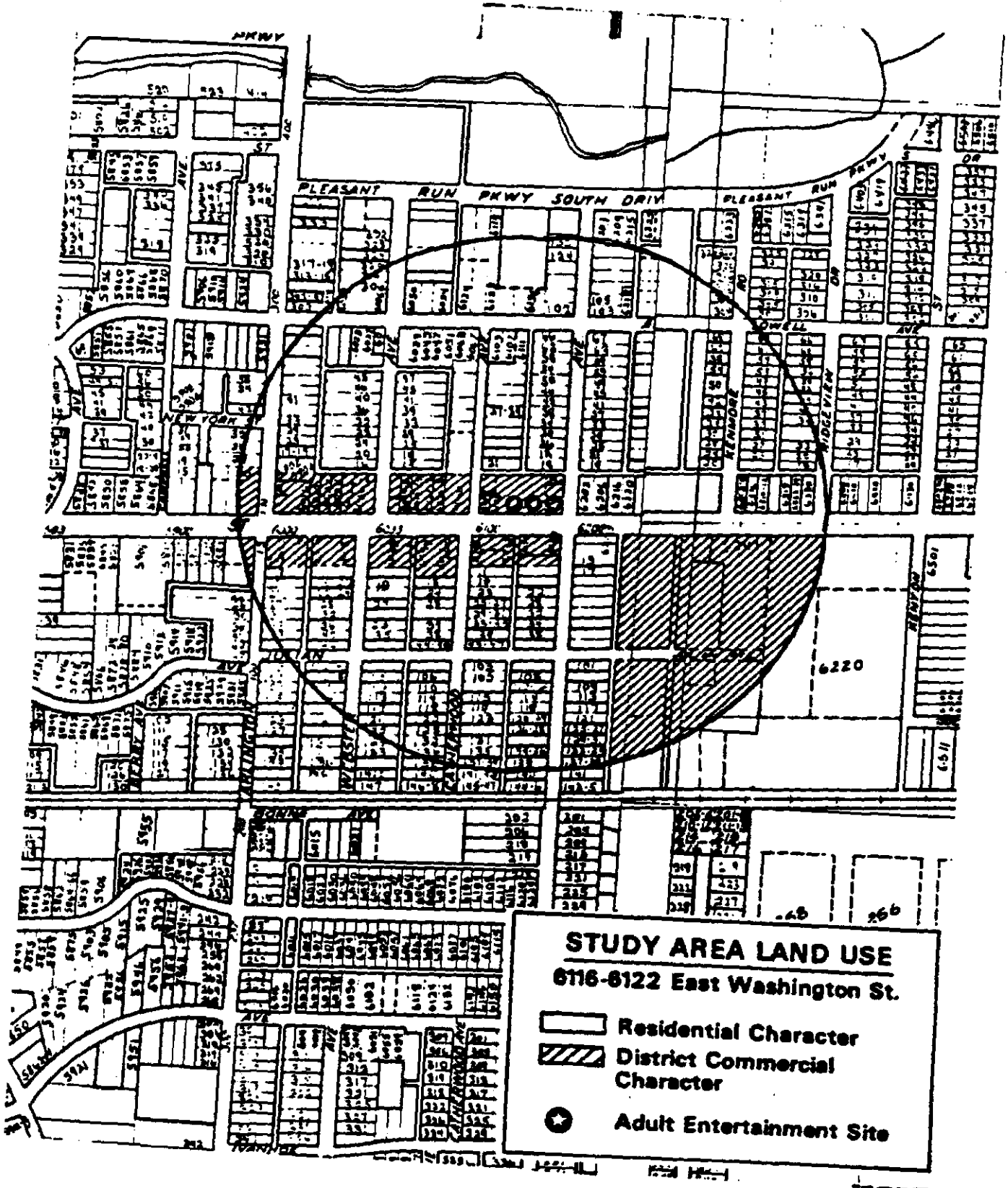
FMC
 CHAIN DIVISION

WASHINGTON
 HIGH SCHOOL

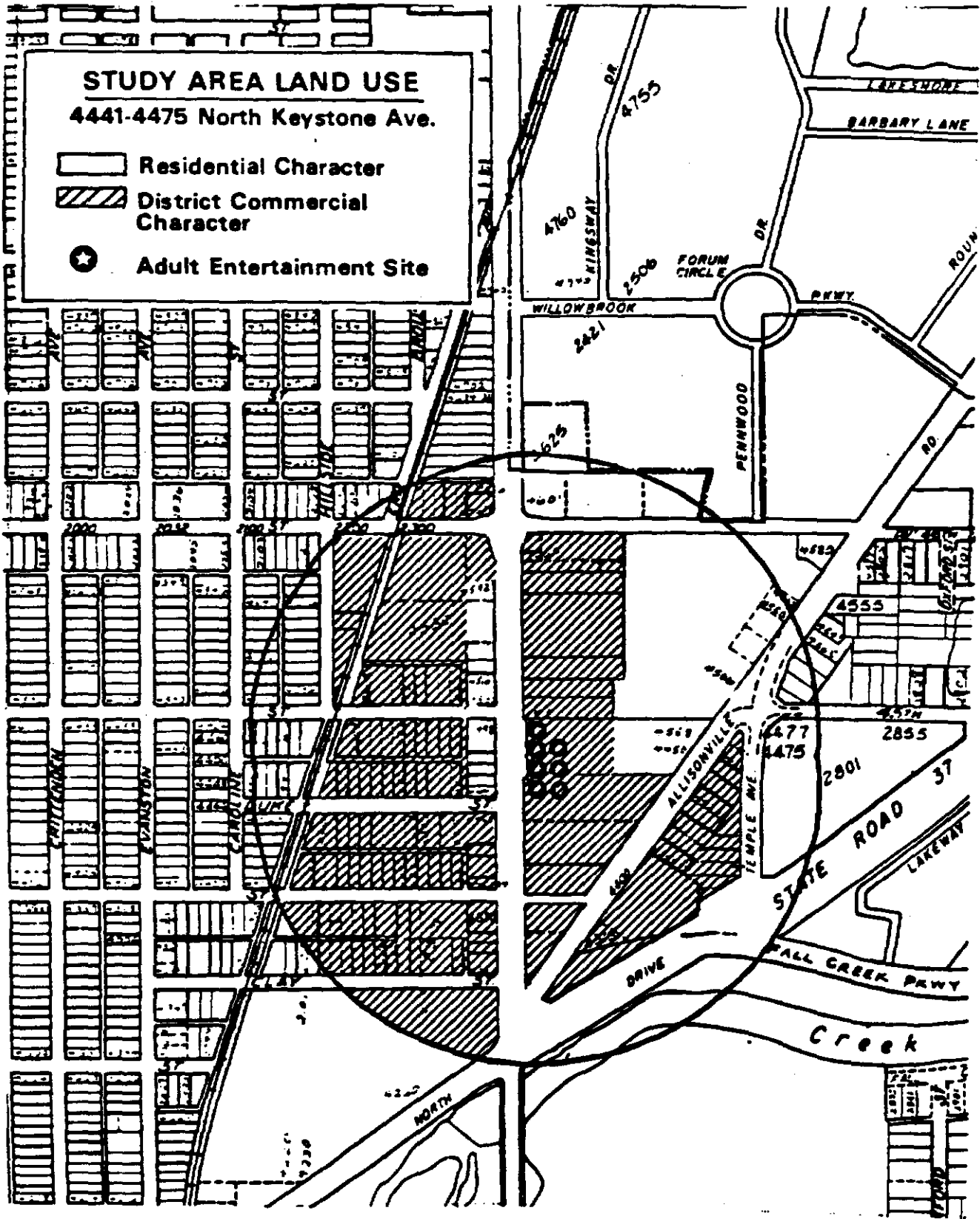
ADULT ENTERTAINMENT BUSINESS STUDY



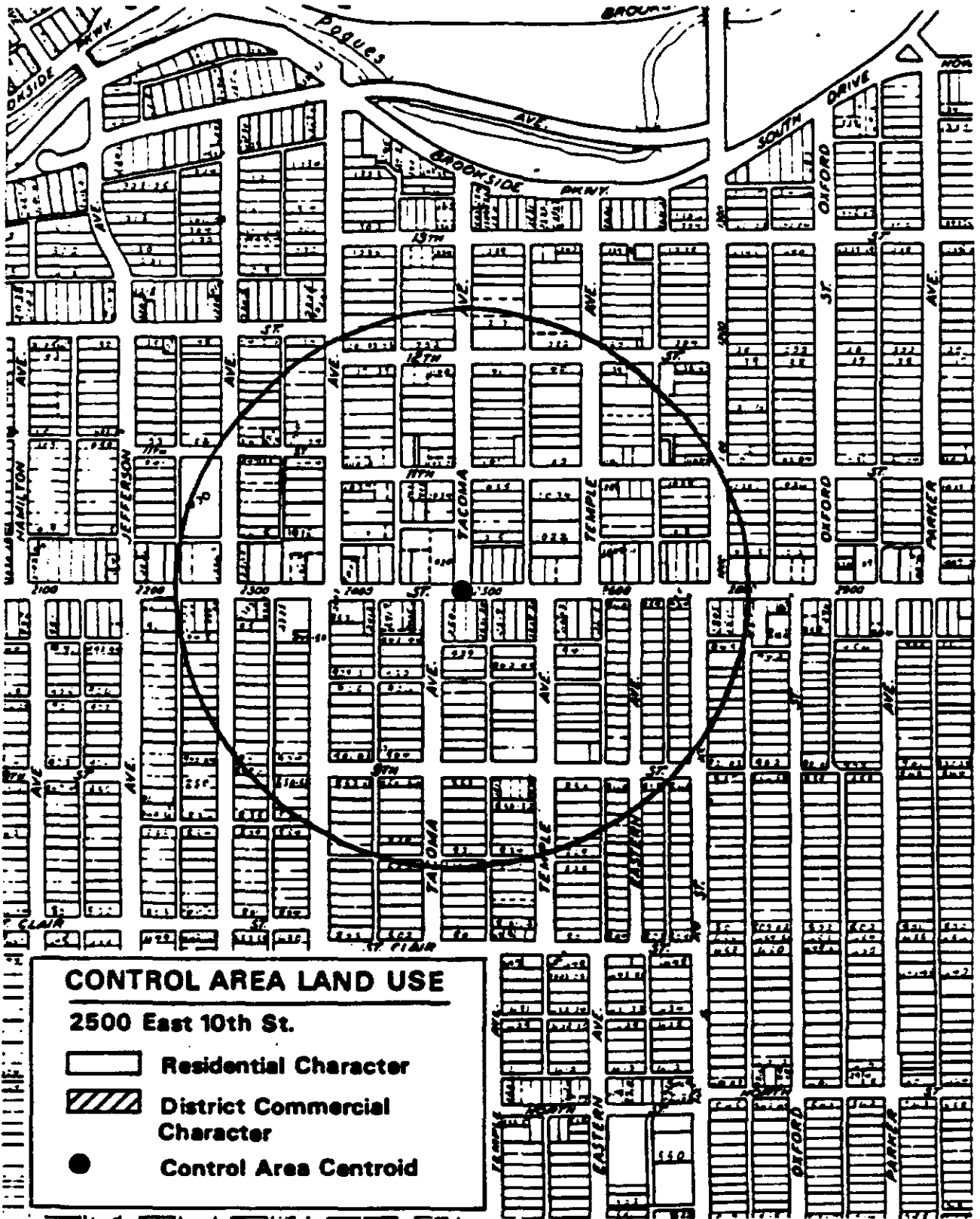
ADULT ENTERTAINMENT BUSINESS STUDY



ADULT ENTERTAINMENT BUSINESS STUDY



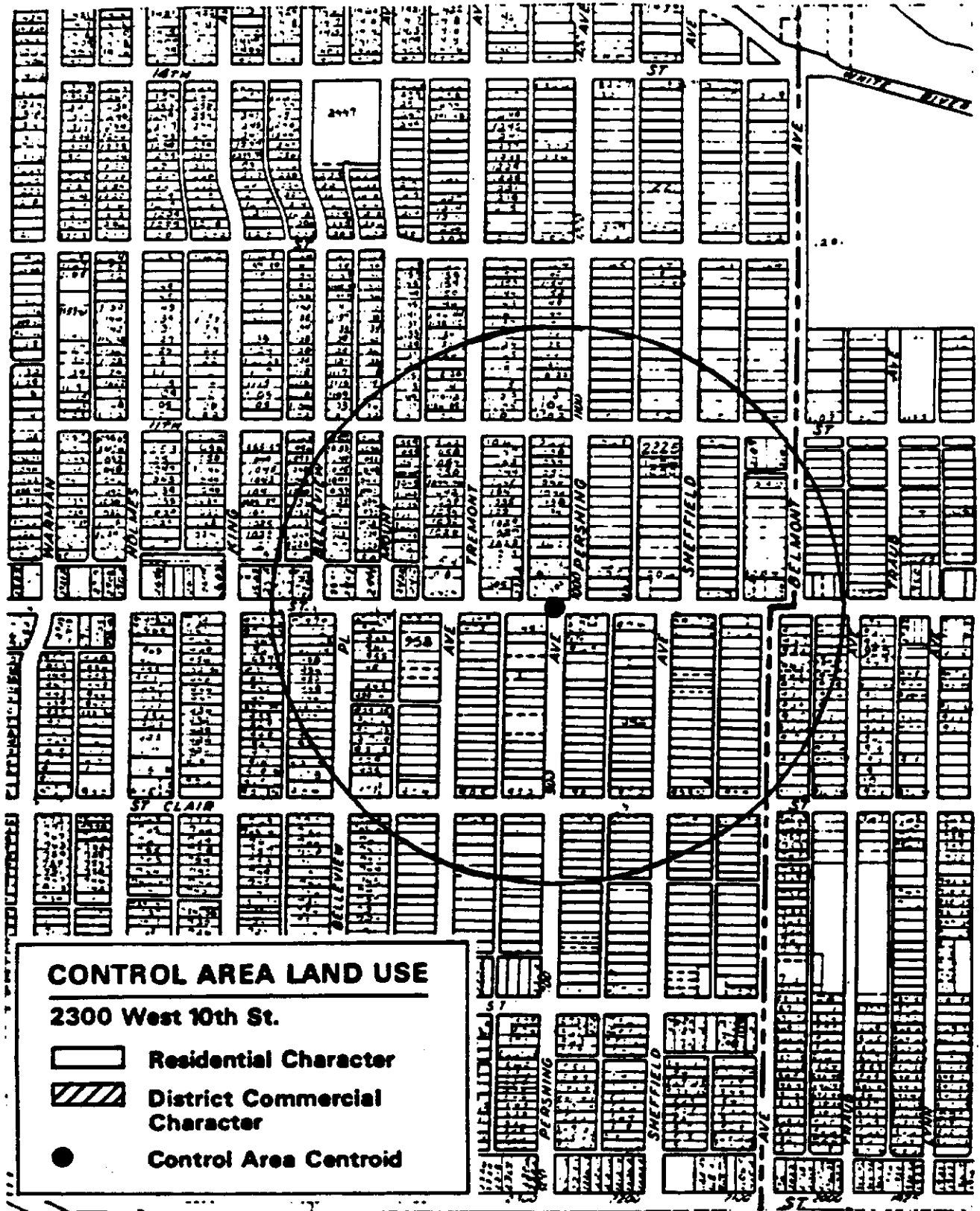
ADULT ENTERTAINMENT BUSINESS STUDY



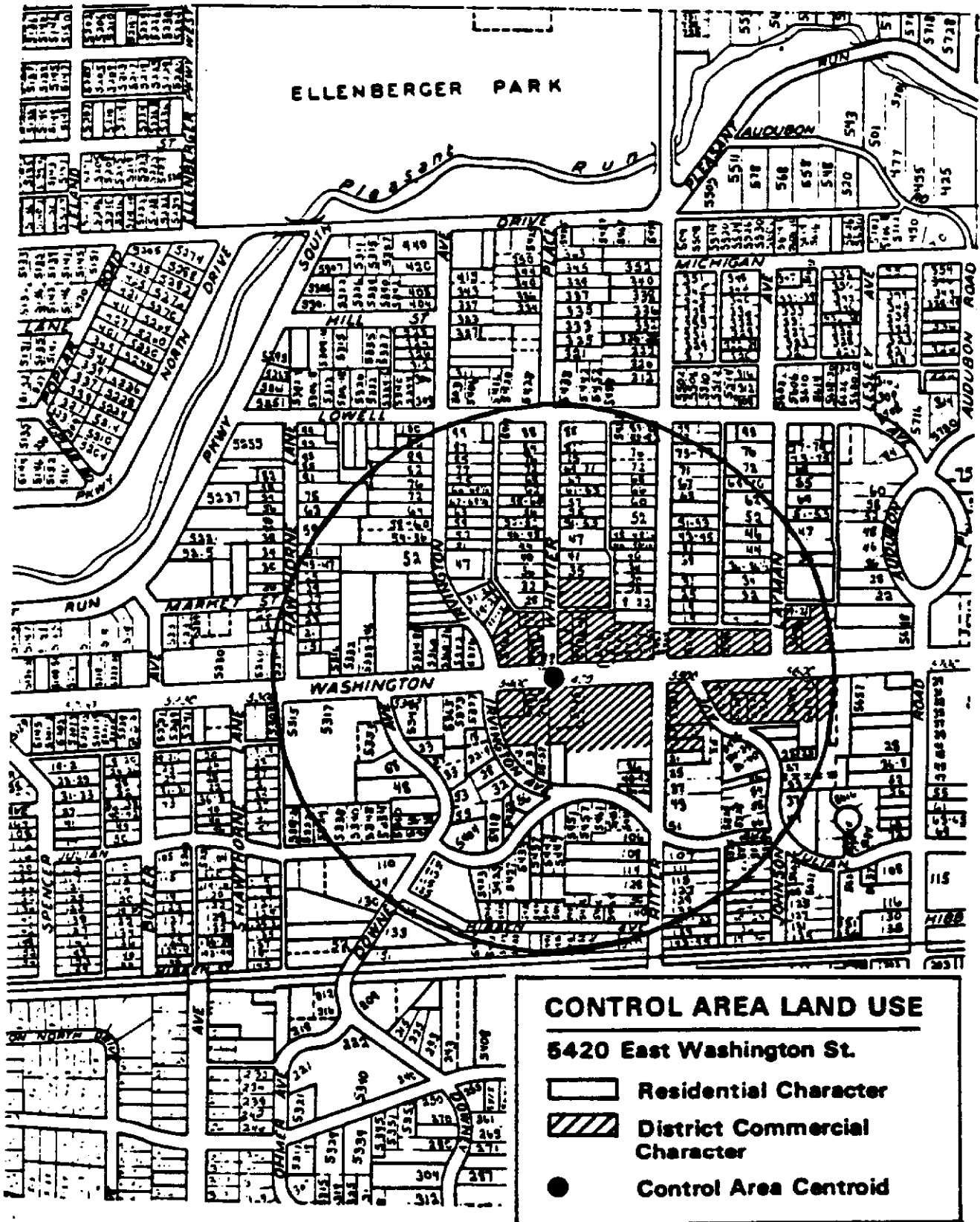
CONTROL AREA LAND USE
2500 East 10th St.

- Residential Character
- District Commercial Character
- Control Area Centroid

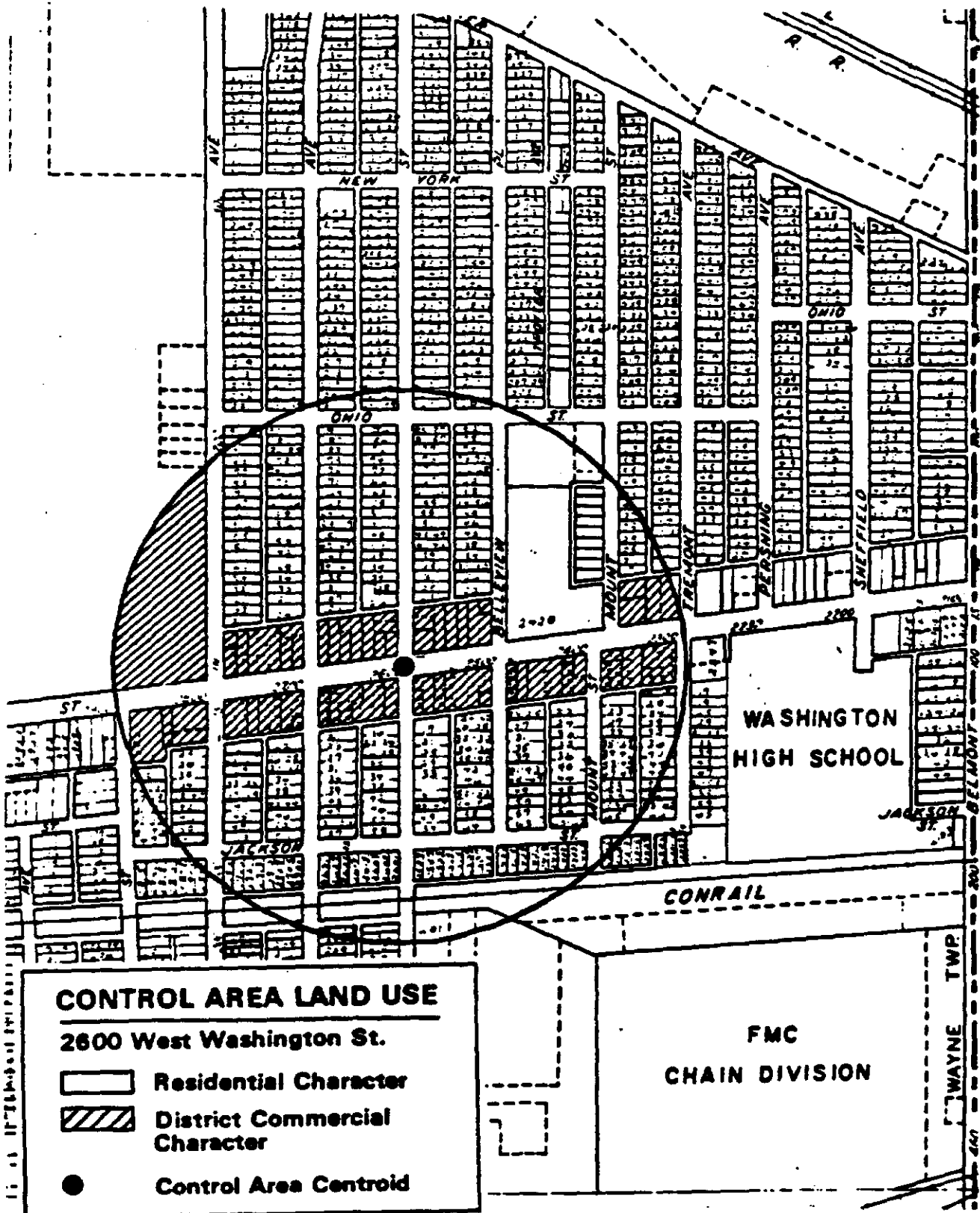
ADULT ENTERTAINMENT BUSINESS STUDY



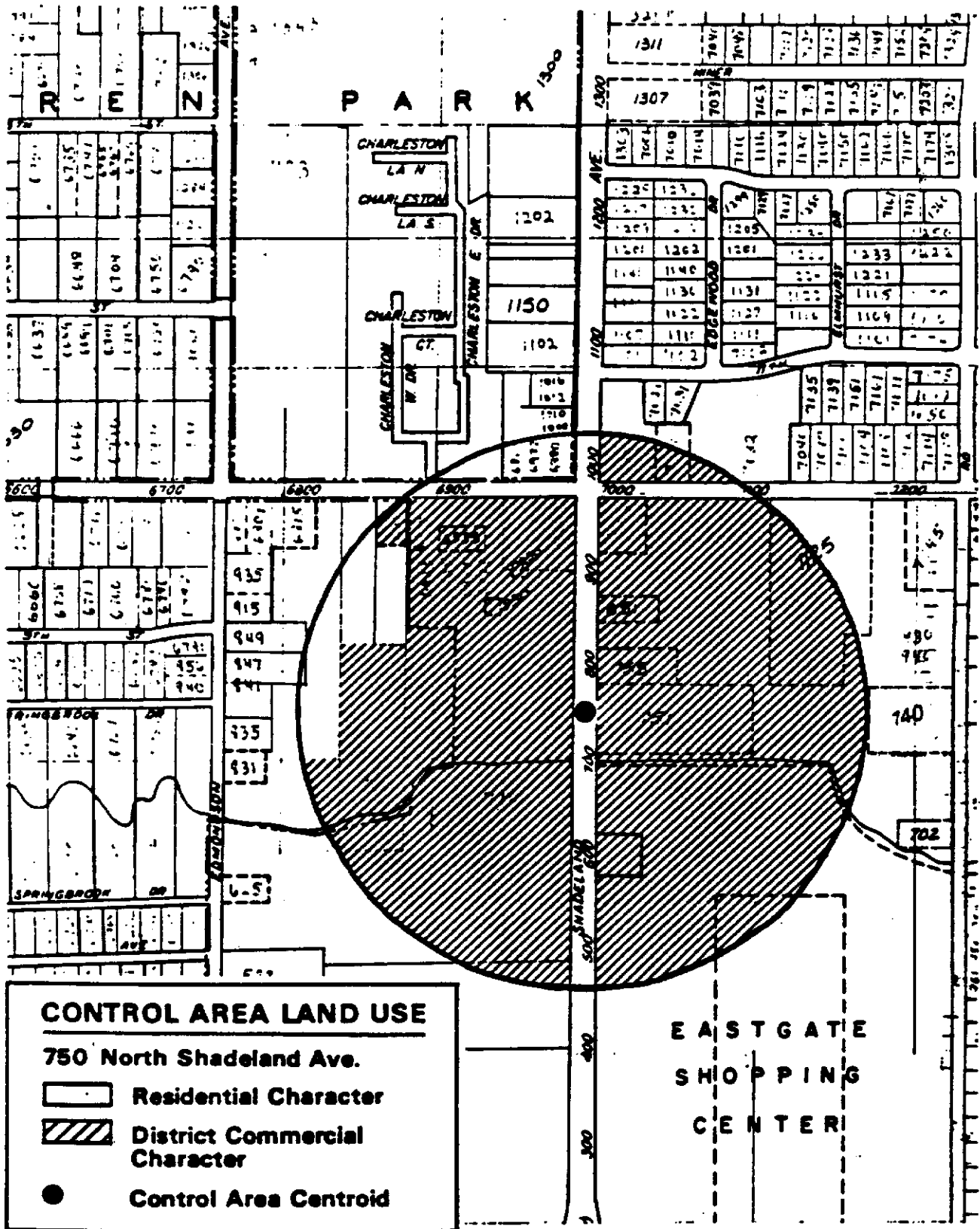
ADULT ENTERTAINMENT BUSINESS STUDY



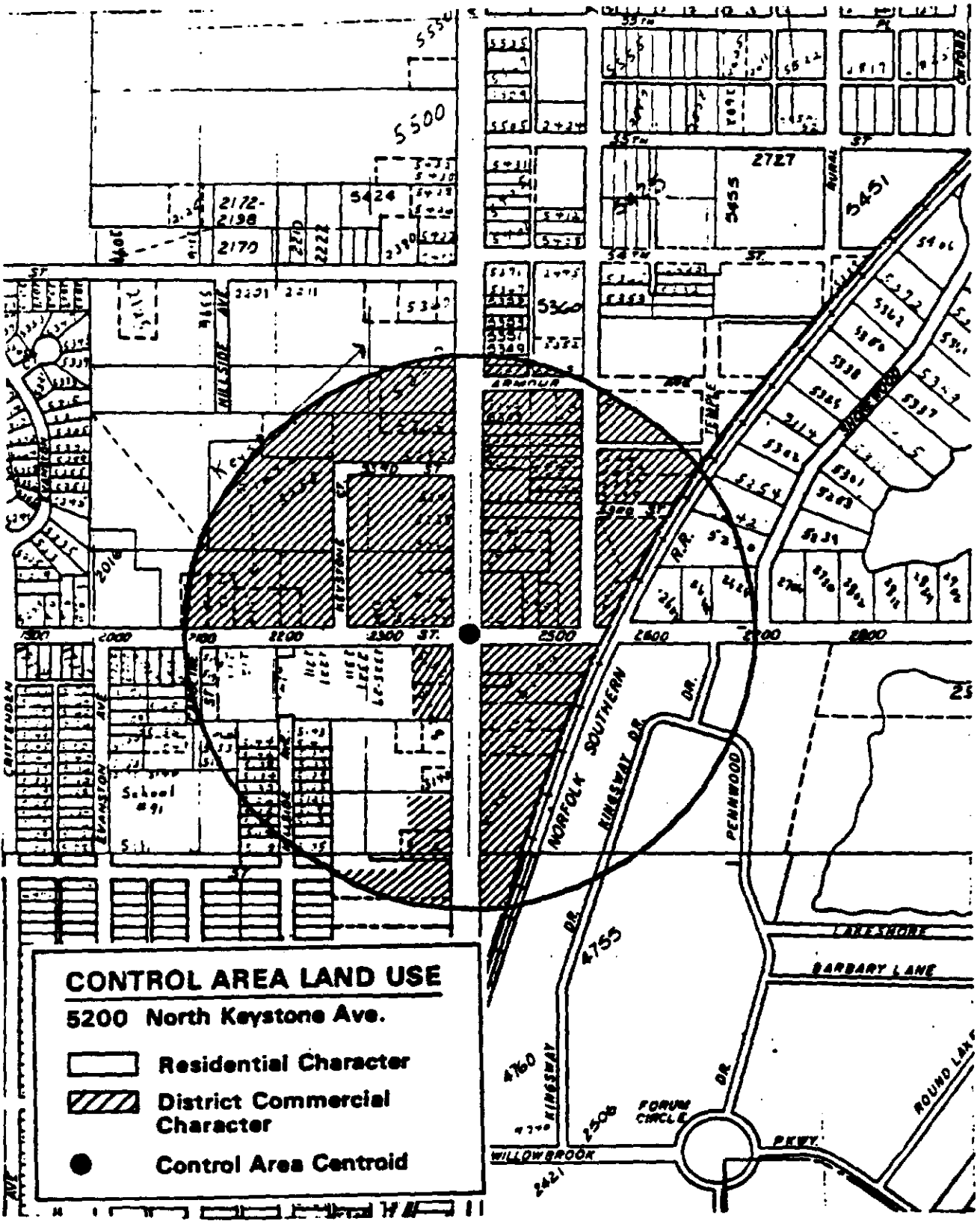
ADULT ENTERTAINMENT BUSINESS STUDY



ADULT ENTERTAINMENT BUSINESS STUDY



ADULT ENTERTAINMENT BUSINESS STUDY



APPENDIX II

Appraiser Survey



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



INDIANA UNIVERSITY

SCHOOL OF BUSINESS
Bloomington/Indianapolis
10th and Fee Lane
Bloomington, Indiana 47405
(812) 337-5507

Division of Research

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?

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.

APPENDIX III

Land Use Control of
Adult Entertainment

APPENDIX III

LAND USE CONTROL OF ADULT ENTERTAINMENT

LEGAL BASIS

Zoning has traditionally been defined as a process by which a municipality legally 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.

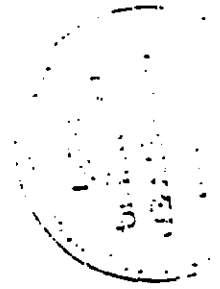
FOOTNOTES

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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100 N. ...
Upland CA. 91786
att: John Atwater



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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Household Instrument	
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I. Introduction and Executive Summary

This report summarizes an exhaustive series of statistical analyses conducted over a ten-month period by Richard McCleary, Ph.D., James W. Meeker, 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

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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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:

● 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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- 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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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.

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.

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.

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.

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.

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).

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).

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.

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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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.

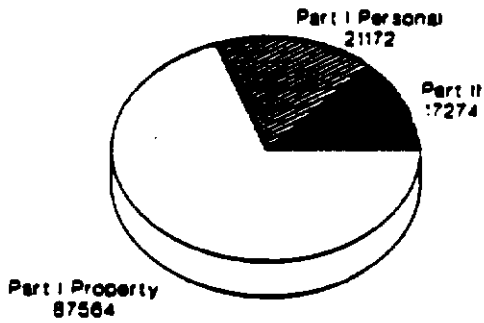
III. Crime in Garden Grove, 1981-1990

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.

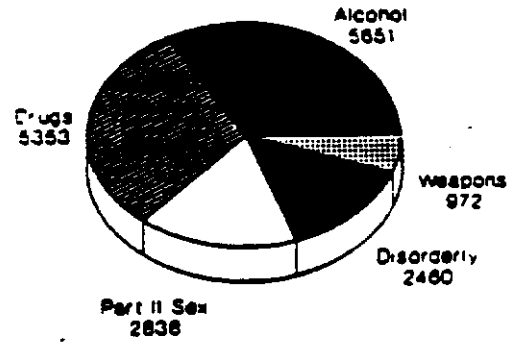
As shown in Figure 1, Part I crimes can be divided further into Personal and Property categories. Personal crimes (or crimes against the person) account for approximately twenty percent of the Part I total. Seventy-eight percent of Personal crimes are assaults; 18 percent are robberies, three percent are rapes,

Figure 1 - Distribution of Crimes in Garden Grove, 1981-1990

Total Crime



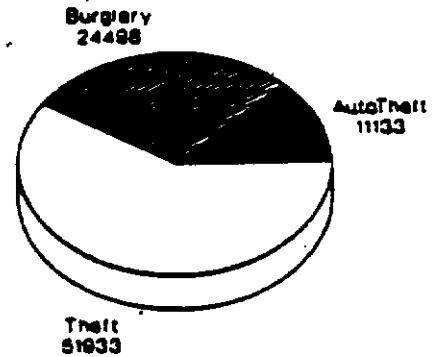
Part II



Part I Personal



Part I Property



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.

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.
Berkeley	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

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

Annual Crime Trends

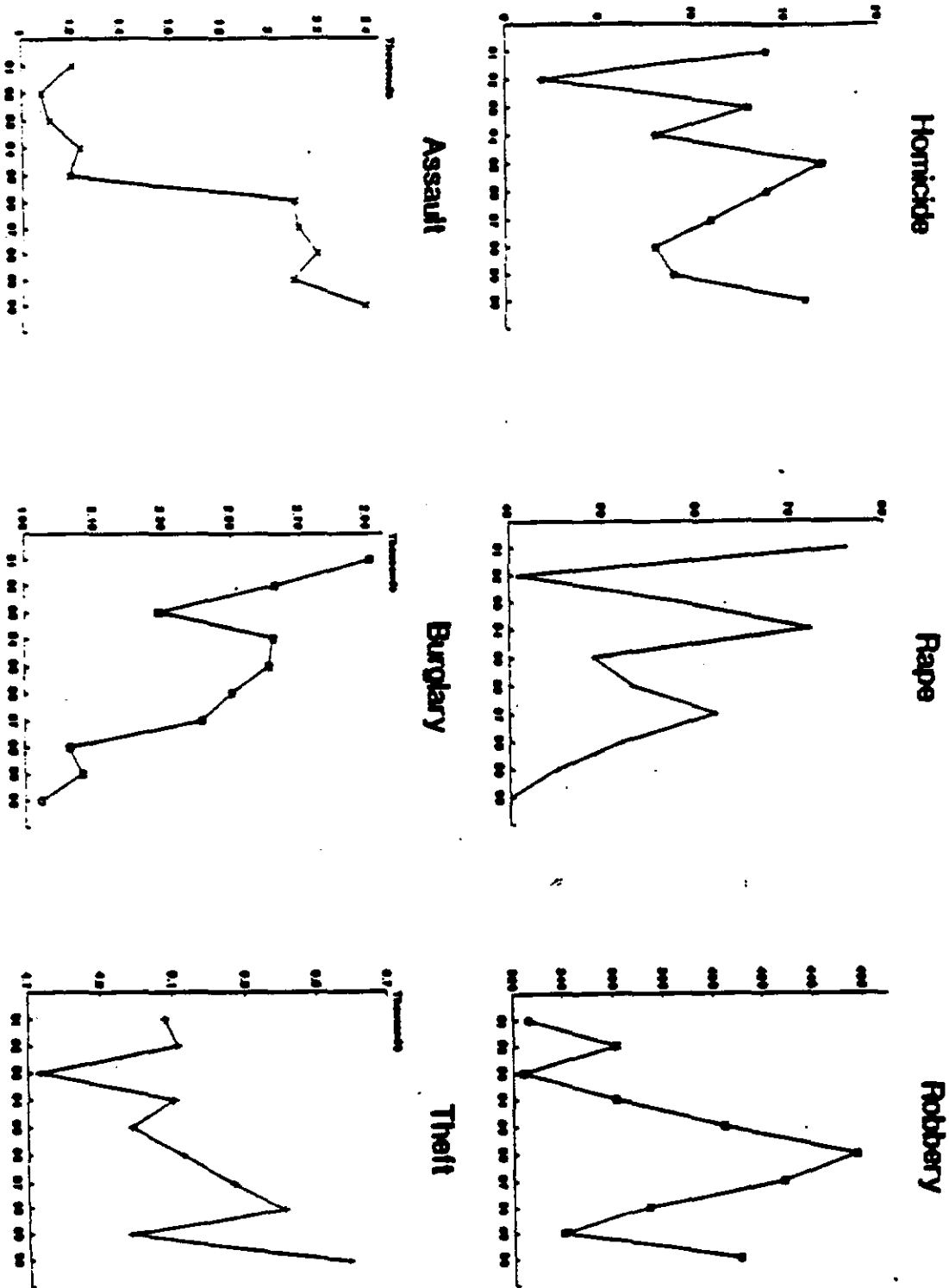
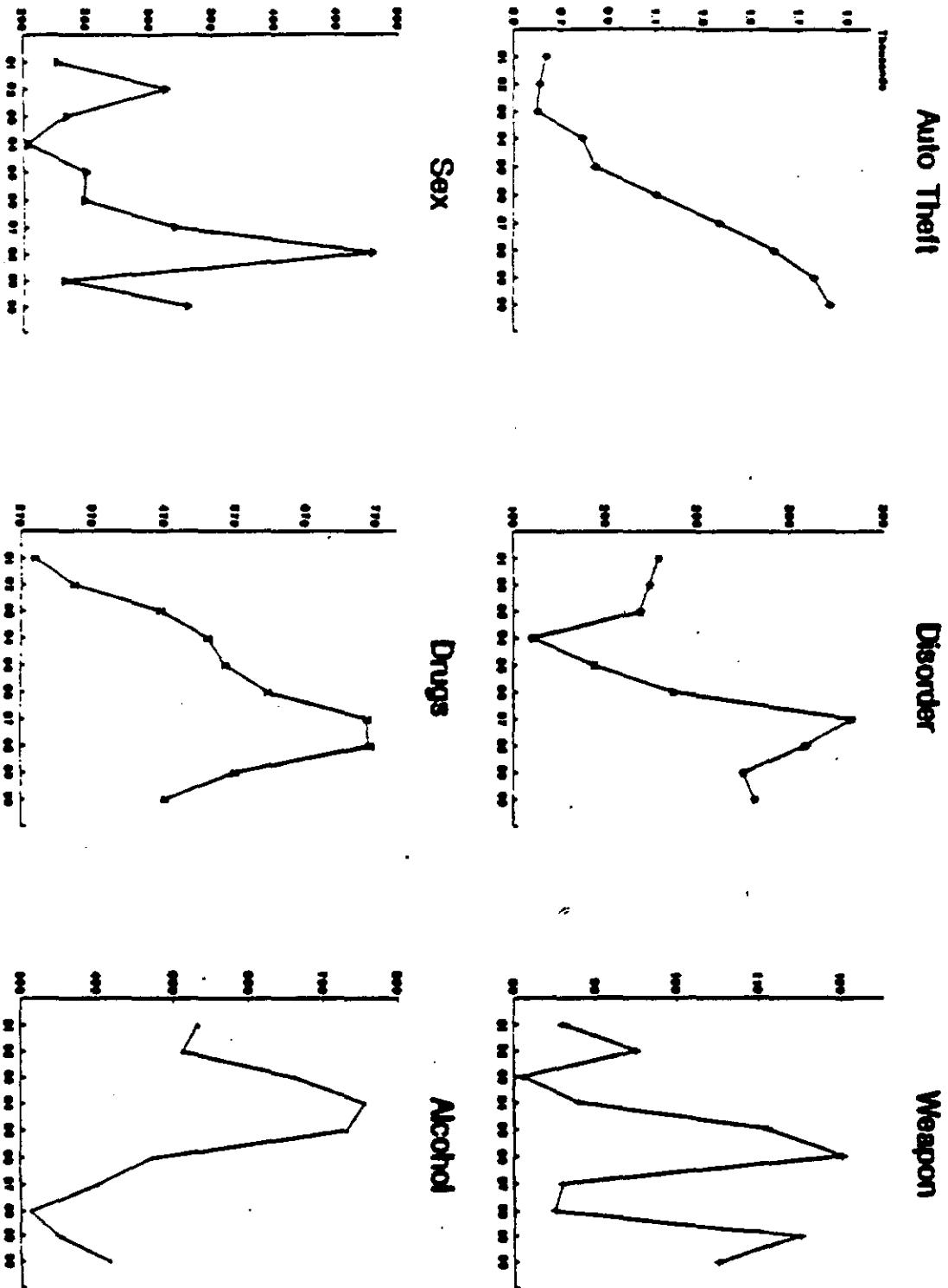


Figure 2 - Annual Crime Trends in Garden Grove, 1981-1990

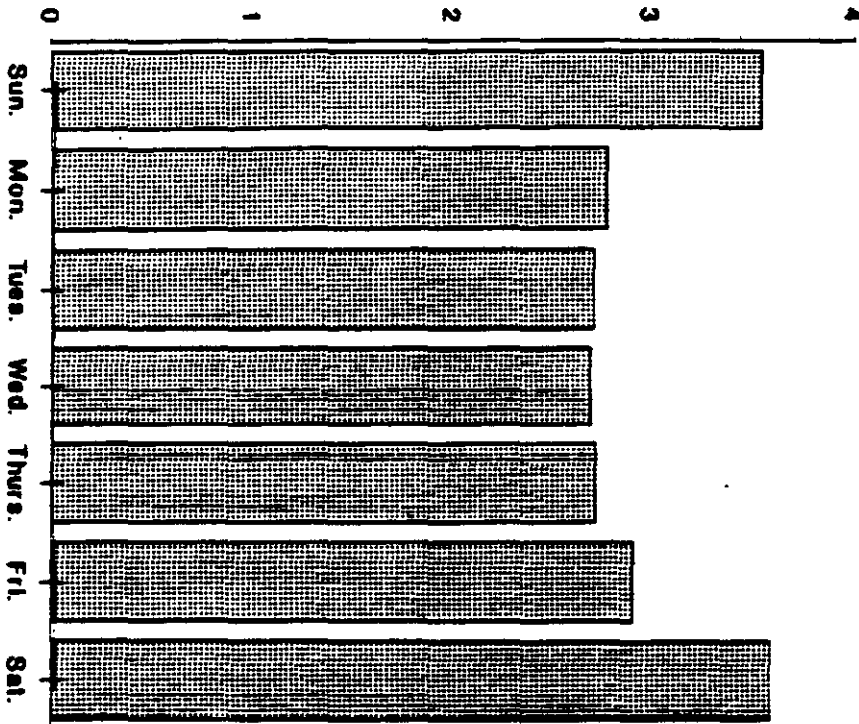
Annual Crime Trends



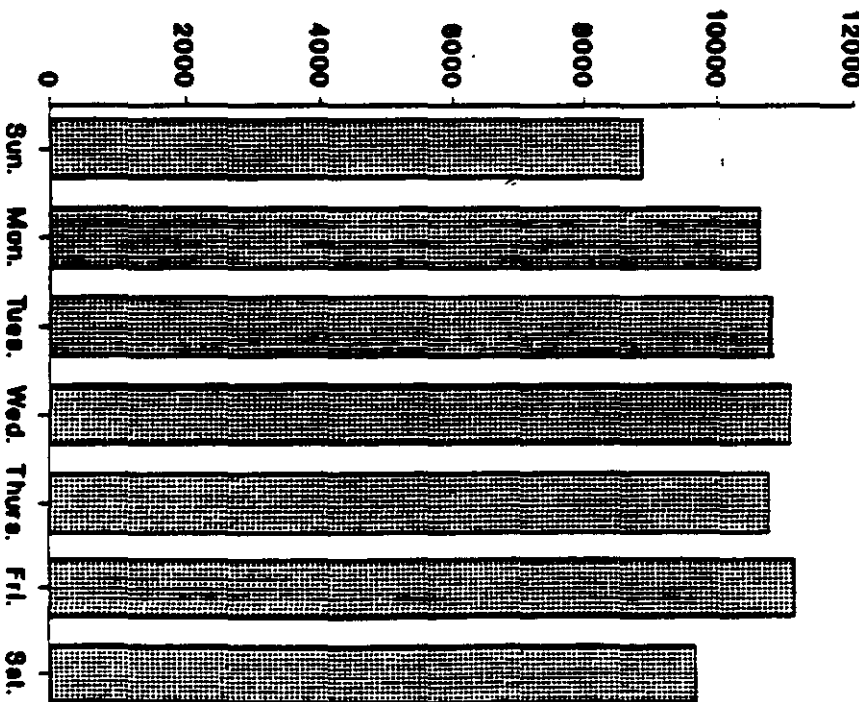
understood by popular media or the public. Nevertheless, each of the seven Part I crime trends is consistent with a "random" process and, hence, each is amenable to a statistical analysis. The five Part II crime trends, in contrast, are not at all consistent with a "random" process. To illustrate, note 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

Figure 3 - Crimes Weekday in Garden Grove, 1981-1990



Part I Personal Crimes



Part I Property Crimes

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

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.

**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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business addresses, but this may be expected.

Of course, one can argue that the relationship is noncausal or spurious; that these businesses simply moved into a neighborhood that happened to already have a high crime rate. We test and reject this hypothesis in the next section. For now, we draw attention to the Bar/Tavern addresses in Table 2. If the alternative hypothesis is that the Garden Grove Boulevard neighborhoods had high crime rates before the seven adult businesses moved in, we would expect to these addresses to have high crime rates as well (more so given that alcohol is served at these addresses). On the contrary, however, we find that these addresses have generally lower crime rates than the adult business addresses. Whereas three of seven adult business addresses are in the top ten Part I crime "hot spots," only two of nine bar/tavern addresses make the top-ten list. In this sense, the seven adult business addresses on Garden Grove Boulevard constitute serious, significant public safety hazards.

V. Quasi-Experimental Contrasts

The address-specific crime counts in Table 2 are compelling evidence of the public safety hazard posed by the adult businesses on Garden Grove Boulevard. Simple counts do not satisfy the criterion of scientific validity, however, for there are many *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

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:

	One Year Before				One Year After			
Test Site	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

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

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

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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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:

	One Year Before				One Year After			
Test Site	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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Information from the Police Department suggests, however, that the increase in Part II crimes was the result of an unrelated enforcement campaign.

Failure to find any significant effect in this case suggests that the interaction effect observed in the preceding case is limited to 1000 feet. While we strongly recommend that no new adult business be located within 1000 feet of a bar (and *vice versa*), there is no evidence of interaction at distances exceeding 1000 feet.

VI. Survey 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.

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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	<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*

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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of the crime data. The data from this survey clearly indicates that real estate professionals feel that adult businesses are associated with decreased property values and decreased quality of neighborhood for both residential and commercial areas.

VII. Household Survey Results

The final component of this research project was a survey of Garden Grove households to assess citizen perceptions of the issues. Toward this end, we first developed a questionnaire instrument based on instruments used in prior research but modified to reflect the particular circumstances of Garden Grove. After field-testing an early version of the instrument on a random sample of Santa 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.

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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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

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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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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	<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.

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	<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
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	80	34	114	63	52	115

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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.

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*

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

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 Departments 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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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.

A P P E N D I X

Real Estate Survey Frequencies

Household Survey Frequencies

Real Estate Instrument

Household Instrument

Proposed Statute

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	

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	

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	

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	

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	

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	

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?

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	

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	

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	

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	

Consultants' Final Report - A13

Household Survey Response Tabulations

To the best of your knowledge, how close is the nearest adult bookstore or adult entertainment establishment?

200 Feet	6	5.1	5.1
500 Feet	2	1.7	1.7
1000 Feet	8	6.8	6.8
1 Block	6	5.1	5.1
2 Blocks	15	12.7	12.7
3+ Blocks	46	39.0	39.0
Don't Know	35	29.7	29.7

I am going to ask a series of questions concerning what the impact of an adult entertainment business has or would have if it were located within 500 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	

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	

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	

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	

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	

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

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:

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?

200 feet

500 feet

1000 feet

Don't know

1 block

2 blocks

3+ blocks

2. Which adult entertainment establishment is it?

(Prompt respondent for identifying information, ie the exact business name, or location, or general identification)

6. The courts have ruled that cities must provide a place for adult businesses to operate. How far away from your neighborhood would these businesses have to be to have a negligible effect on your neighborhood?

- Less than 500 feet
- 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

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)

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

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:

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

19. 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.

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,

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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.

8. 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

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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

19. 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 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:

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