

MINUTES OF THE HOUSE FEDERAL AND STATE AFFAIRS COMMITTEE

The meeting was called to order by Chairman Arlen Siegfroid at 1:30 P.M. on March 24, 2008, in Room 313-S of the Capitol.

All members were present except: Representative Michael Peterson-excused  
Representative Oletha Faust-Goudeau-excused  
Representative Ann Mah- excused  
Representative Henderson- excused  
Representative Melody Miller-McCray-excused

Committee staff present:

Kathie Sparks, Kansas Legislative Research Department  
Dennis Hodgins, Kansas Legislative Research Department  
Mike Heim, Revisor of Statutes Office  
Jason Long, Revisor of Statutes Office  
Jeannie Dillon, Committee Assistant

Conferees: Representative Don Dahl

Representative Lance Kinzer  
Phillip Crosby, National Coalition for the Protection of Children and Families  
Ron Hein, Motion Picture Association of America

Others attending:

See attached list.

Chairman Siegfroid opened the floor for bill introductions. Representative Donohoe requested a bill be accepted regarding child custody. Moved by Chairman Siegfroid, seconded by Representative Carlson, without objection, the bill was accepted. The second bill introduction concerns insurance companies and implants. Moved by Chairman Siegfroid, seconded by Representative Hodge, without objection, the bill was accepted.

Mike Heim, Revisor of Statutes, explained the bill to the Committee. A Committee member asked if the displaying of the flag pertains to all state agencies. Mr. Heim clarified his statements by saying that state agencies were encouraged to display the flag, but they were not mandated to do so.

The Chair opened the public hearing on **HB 2924** - **Civilian conservation corps day.**

Representative Dahl stood in support of **HB 2924** and stated that this bill is to establish one day annually in Kansas to be set aside to recognize the importance of the Civilian Conservation Corps (CCC) in the history of Kansas and to remember those individuals who served in the CCC. He asked the Committee to support the bill. (Attachment 1)

The Chair closed the public hearing on **HB 2924** and asked for a motion.

Representative Brunk moved that **HB 2924** be put on the consent calendar.

Representative Dillmore stated that he appreciated the request to put the bill on the consent calendar to expedite its passage but asked that this not be done. He said that some on the Committee feel that the greatest president ever to serve, Franklin D. Roosevelt, brought this program into existence and would like to acknowledge this on the House floor.

Representative Brunk withdrew his motion.

Representative Ruiz moved to pass **HB 2924** favorable for passage. Representative Hawk seconded the motion. Motion passed.

## CONTINUATION SHEET

MINUTES OF THE House Federal and State Affairs Committee at 1:30 P.M. on March 24, 2008. in Room 313-S of the Capitol.

Jason Long gave the Committee an overview of **HB 2835**. He stated that this act sets various regulations regarding the location of a sexually oriented business, the configuration of the interior of such business, the operation of such business and the conduct of employees and patrons on the premises. (Attachment 2)

A Committee member asked if there was a definition of semi-nudity. A follow-up question was asked if local laws would be voided. Mr. Long stated that any local law that was not as stringent would not be valid if this bill were passed.

A Committee member asked what constitutes "habitual violation". Mr. Long said that he would look into the term.

A Committee member asked how the law would relate to art classes on university campuses.

Chairman Siegfroid opened the public hearing on **HB 2835 - Creating the sexually oriented business regulation act.**

Representative Kinzer testified in support of **HB 2835** and stated that the pernicious secondary effects associated with the operation of adult oriented businesses are well documented. The question we face is whether or not the state of Kansas has a role to play in the mitigation of these effects. The purpose of **HB 2835** is to establish reasonable and unified regulations for the operation of sexually oriented businesses in Kansas. (Attachment 3) Representative Kinzer stood for questions.

A Committee member asked if this would pertain to adult videos. Representative Kinzer answered that he thought it would relate to adult videos.

A question was asked about limiting the space of a sexually oriented business and why this was necessary.

Phillip Cosby, National Coalition for the Protection of Children and Families, spoke as a proponent of the bill. Mr. Cosby presented the Committee with summaries of negative secondary effect studies within forty-three cities. He stated that the state's interest in regulating sexually oriented businesses extends to preventing future secondary effects of either current or future sexually oriented businesses that may locate in the State. (Attachment 4) He submitted a copy of National Law Center Summary of Sexually Oriented Business Land Use Study to the Committee. (Attachment 5)

The term semi-nudity in college art classes was again discussed.

Ron Hein, representing the Motion Picture Association of America, appeared in opposition to **HB 2835**. Mr. Hein stated that the objection that the movie industry has concerned the rating of movies in statutes. MPAA is a trade association representing the leading producers and distributors of motion pictures in the United States. MPAA also administers the Classification and Rating Administration which awards the ratings to motion pictures. He stated that **HB 2835** raises some constitutional concerns because it specifically identifies the MPAA rating system. The incorporation into law of the rating classifications is unconstitutional. (Attachment 6)

Philip Bradley representing the Kansas Licensed Beverage Association came before the Committee. Mr. Bradley was concerned with the businesses defined in this measure in Section 3. The concerns include requiring the changing of floor plans, interior rebuilds, installation of cameras/spying devices, hiring of additional personnel, and new additional operation procedures. (Attachment 7)

After discussion by Committee members the Chairman adjourned the meeting. The next meeting will be on March 25, 2008, at 1:30 pm in room 313-S.

House Federal and State Affairs  
Guest list

Name                      Date 3-24-08                      Organization

Phil BRADLEY

KLBA

Bill OTT

9x KS House

Ed KLUMPP

KACP + KPOP

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DONALD DAHL  
SPEAKER PRO TEM

March 24, 2008

Good afternoon Mr. Chairman and fellow legislators. The last time I appeared before you was to request that this bill be introduced as a Federal and State Bill and I appreciate the fact that you all honored my request.

Obviously, the purpose of this bill is to establish one day annually in Kansas to be set aside to recognize the importance of the Civilian Conservation Corps (CCC) in the history of Kansas and to remember those individuals who served in the CCC.

As a short history the CCC came into existence during the Great Depression and was part of President Franklin Roosevelt's New Deal legislation. It was designed to combat unemployment and it became one of the most popular New Deal programs and it operated in every U. S. State and several territories.

In many counties in Kansas the CCC established "camps". Each camp had an educational advisor, an Army chaplain and contracts were made locally for groceries, fuel, equipment and for medical services. Each camp had workers or "enrollees" who earned at least \$30.00 per month.

There were 505,000 enrollees in 2,650 camps during the peak. If you investigate your county, you will most likely find some CCC project such as a park, dam or recreational area.

The CCC lost importance as the Great Depression came to an end about 1940.

House Fed and State Committee  
March 24, 2008

Attachment /



**MARY ANN TORRENCE**, ATTORNEY  
REVISOR OF STATUTES

**JAMES A. WILSON III**, ATTORNEY  
FIRST ASSISTANT REVISOR

**GORDON L. SELF**, ATTORNEY  
FIRST ASSISTANT REVISOR



OFFICE OF REVISOR OF STATUTES  
KANSAS LEGISLATURE

Legal Consultation—  
Legislative Committees and Legislators  
Legislative Bill Drafting  
Legislative Committee Staff  
Secretary—  
Legislative Coordinating Council  
Kansas Commission on  
Interstate Cooperation  
Kansas Statutes Annotated  
Editing and Publication  
Legislative Information System

**Briefing on HB 2835**  
**Sexually Oriented Business Regulation Act**

Jason B. Long  
Assistant Revisor  
Office of Revisor of Statutes

March 24, 2008

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House bill 2835 establishes the sexually oriented business regulation act. This act sets various regulations regarding the location of a sexually oriented business, the configuration of the interior of such business, the operation of such business and the conduct of employees and patrons on the premises.

**Sexually Oriented Businesses**

A sexually oriented business is defined in subsection (s) of section 3 of the bill as including “an adult bookstore or adult video store, an adult cabaret, an adult motion picture theater, a semi-nude model studio, a sexual device shop or a sexual encounter center.” All of these terms are further defined in section 3 of the bill. Notable exceptions to the definition of sexually oriented business include:

- (1) No business shall be classified as a sexually oriented business solely by virtue of showing, selling or renting materials rated NC-17 or R by the MPAA; and
- (2) semi-nude modeling classes operated by public colleges or universities, by private colleges or universities whose credits are transferable to a public institution, or in a

structure that does not advertise the viewing of semi-nude models and requires at least 3-day advanced enrollment in its classes.

### **Regulations On Sexually Oriented Businesses**

Section 4 of the bill prohibits a sexually oriented business from being established within 1,000 feet of any school, church, state-licensed day care, library, park, residence or other sexually oriented business. This restriction does not apply to any sexually oriented business in existence on July 1, 2008. The bill also prohibits the establishment of a sexually oriented business if any of the following persons has been convicted of a specified criminal offense:

- (1) A person in actual control of the operation, management or policies of the business;
- (2) a person with at least a 30% ownership interest in the business; or
- (3) a person holding an executive office or serving as a managing member or director of a legal entity that operates the business.

Specified criminal offenses include sex offenses, promoting obscenity, violations of the Uniform Controlled Dangerous Substances Law, money laundering and tax evasion.

Section 5 of the bill prohibits full nudity in sexually oriented businesses. Semi-nudity is allowed, but must be performed on a fixed stage that is at least six feet from all patrons and at least 18 inches above the floor. Also, the interior room must have an area of at least 600 square feet. The touching of a patron by a semi-nude employee of the business is also prohibited.

Section 6 of the bill provides regulations regarding sexually oriented businesses that show sexually explicit videos. Such businesses must configure the interior of the establishment such that:

- (1) The operator's station has an unobstructed view of all interior areas where a patron is permitted access;
- (2) the operator's station cannot exceed 32 square feet in area; and
- (3) at least one employee must be in the operator's station whenever a patron is present on the premises.

Section 7 of the bill gives establishments that are not in compliance with the provisions of sections 5 and 6 an extension of 180 days starting on July 1, 2008, to remodel the establishment so that it is compliant.

Section 8 of the bill prohibits a sexually oriented business from being open between the hours of midnight and 6 a.m. No alcohol may be sold or consumed on the premises, and no one under the age of 18 is permitted on the premises.

### **Other Provisions**

Section 9 of the bill gives owners, officers and managers of a sexually oriented business a defense to violations of the act when the owner, officer or manager either (1) did not knowingly or recklessly allow the violation to occur, or (2) was powerless to prevent the violation from occurring.

Section 10 of the bill makes a violation of the act a class C misdemeanor. A class C misdemeanor is punishable by up to one month in the county jail, a fine of not more than \$500 or both.

Section 12 of the bill amends K.S.A. 22-3901 to include habitual violations of the act as common nuisances. When a common nuisance is present a civil action may be brought to abate such nuisance by the attorney general, or the attorney for the city or county pursuant to K.S.A. 22-3901 et seq.

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STATE OF KANSAS  
HOUSE OF REPRESENTATIVES



TOPEKA

LANCE KINZER  
REPRESENTATIVE, 14TH DISTRICT

COMMITTEE ASSIGNMENTS  
TAXATION  
JUDICIARY  
FEDERAL AND STATE AFFAIRS

### TESTIMONY REGARDING HB 2835

The pernicious secondary effects associated with the operation of adult oriented businesses are well documented. The question we face is whether or not the State of Kansas has a role to play in the mitigation of these pernicious effects. The purpose of HB 2835 is to establish reasonable and unified regulations for the operation of sexually oriented businesses in Kansas.

Crucial aspects of the bill include:

- Limiting the establishment of a sexually oriented business within 1,000 feet of any preexisting primary or secondary school, house of worship, state-licensed day care facility, public library, public park, residence or other sexually oriented business.
- Prohibiting establishment of a sexually oriented business by a person who has been convicted of a sex crime, of promoting obscenity or of tax fraud or evasion.
- Limits physical contact between nude or semi-nude dancers/performers and patrons of adult oriented businesses.
- Places restrictions on the operation of adult video booths.
- Limits hours of operation and service of alcohol at adult oriented businesses.

The purpose of this legislation are narrowly tailored and are of a type clearly allowed under applicable constitutional standards. As the Court noted in *CITY OF ERIE, et al., v. PAP'S A. M. tdba "KANDYLAND"* 529 U.S. 277 (2000):

So too here, the ordinance prohibiting public nudity is aimed at combating crime and other negative secondary effects caused by the presence of adult entertainment establishments like Kandyland and not at suppressing the erotic message conveyed by this type of nude dancing. Put another way, the ordinance does not attempt to regulate the primary effects of the expression, *i.e.*, the effect on the audience of watching nude erotic dancing, but rather the secondary effects, such as the impacts on public health, safety, and welfare, which we have previously recognized are "caused by the presence of even one such" establishment. *Renton v. Playtime Theatres, Inc.*, 475 U.S. 41, 47—48, 50 (1986); see also *Boos v. Barry*, 485 U.S. 312, 321 (1988).

HB 2835 is offered in the spirit of this decision. I hope you will give it your favorable consideration.

House Fed and State Committee  
March 24, 2008

Attachment 3

TESTIMONY OF PHILLIP COSBY  
BEFORE THE KANSAS HOUSE FEDERAL AND STATE AFFAIRS COMMITTEE  
HB 2835 March 24<sup>th</sup>, 2008

Chairman Siegfried and honorable members of the Fed & State Affairs Committee, my name is Phillip Cosby. I am a native of Kansas and currently the Executive Director for the Kansas City office of the National Coalition for the Protection of Children and Families. I am honored to have the privilege to speak to you in support of HB 2835 "The Sexually Oriented Business Act".

These past five years I have spoken to thousands of Kansans concerning the negative effects of Sexually Oriented Businesses (SOB) in our communities. Today I am providing each of you summaries of negative secondary effect studies within forty-three cities. With these summaries is a CD containing 1,500 pages of detailed court recognized studies of twenty cities and in addition twenty-two court cases all awarding municipalities the constitutional right to regulate Sexually Oriented Businesses and reduce negative secondary effects. Deleterious effects which constitute a harm which the State has a substantial government interest in preventing and/or abating.

Two famous examples, among dozens are (1) the cleaning up of NYC's Times Square and the subsequent decrease in crime and increase of tourism, and (2) the current reputation of Atlanta Ga. as the sex trafficking capital of the US. These are not my words but the words of Atlanta's current mayor, Shirley Franklin. (*Atlanta Journal-Constitution March 21<sup>st</sup> 2007*) Strip clubs promised Atlanta GA. prosperity and an "upscale cosmopolitan" appeal as they expanded to accommodate the International Olympics. What Atlanta inherited was a series of strip clubs that breed prostitution and sex trafficking or sexual slavery. Sex trafficking has now become the international #2 moneymaker for organized crime, right behind illegal drugs.

The evidence of harm is not anecdotal; the lawful regulation of the sex industry is based on real negative effects on communities and has been constitutionally upheld for over thirty years. (Reference attachment) Those documented effects are primarily increased crime, increased STD's, blight, property devaluation, prostitution, human trafficking and drug trafficking. One judge recently commented in his ruling "it is not just the evidence of negative effects, it is common sense."

We all sense it. Every day the news relays the latest heartbreaking story of abductions, child molestations, human trafficking, solicitations, sexual misconduct at the highest levels of sacred and secular trust, bestiality, fantasy driven rape and even murder. Our sense of safety, wholesomeness and innocence is evaporating. When you and I were in grade school we played freely with our friends on Saturdays in our neighborhoods and beyond. Our parents did not have to be unduly fraught with concerns for our personal safety. For us, the general rule was, when those street lights flicker on you better be home. Those days of experiencing such freedom and safety are long since gone for today's children. Outside of organized and supervised sports, where are those groups of playful youngsters today?

Today's parents and communities in general are overwhelmed or intimidated by an industry that boasts that their annual US revenue is greater than ABC, NBC & CBS combined. The SOB's profits are greater than all combined professional sports; football, baseball and basketball.

Many counties and multiple communities in Kansas have no regulatory protection in place. SOB's often pop up in unprotected rural areas, along the interstate system or cities and boldly declare that



there is nothing the community can do and if they try, their well heeled attorneys threaten lawsuits. Such intimidation strategies more often than not, work. Constitutional SOB ordinance protection is not a specialty many city and county attorneys are familiar with or are confident to tackle. SOB's behave like water seeking the lowest level, if a community is fortunate enough to be protected by a sound constitutional ordinance, that SOB will seek out and ambush a weaker target.

Legislative bodies on many levels are behind the curve in recognizing and reacting to the cause and effect relationship of the sex industry and its related negative secondary effects. These brick and mortar sex businesses may be the tip of the iceberg of a larger problem of easy access to pornography and obscenity but at least it is a place the courts have driven a stake where we can make a constitutional stand and begin to address this growing public safety and health crisis.

Now we are inundated with wireless internet and emerging mobile technologies that eclipse the printed page. As wonderful as technology is in its application it is equally fearsome in its ability to quickly dispatch innocence and foment prurient interests. Easily accessible, intrusive and highly addictive pornographic images are the catalysts fueling fantasy driven criminal behavior. I believe there is much work to do to in providing protection from this cyber predator but such actions are needed at the Federal level which if not overwhelmed, seems paralyzed to do so. The disingenuous drum beat seems to be, let the parent be responsible, not us. How can parents and communities contend against such pervasive, aggressive and well funded nefarious enterprises? If the state legislature is truly the furnace where good public policy for a nation is forged and tested, let it be so in Kansas.

This is a real pocketbook issue. In Kansas prisons one third of the inmates are incarcerated for sexual crimes at a cost of \$30,000 annually per prisoner. As a matter of KDOC policy and common sense inmates are not provided with sexualized materials. You can't raise enough taxes, build enough prisons and buy enough ankle bracelets for this tsunami. Last week the Center for Disease Control reported that 26% of teen girls are now infected with a sexually transmitted disease. The list of STD's has now grown to over twenty-nine. Ladies and gentlemen what we have is an epidemic and we must act. HB 2835 is an act whose time has come. It is a compelling governmental interest.

This state statute model was provided by one of the most successful constitutional SOB ordinance attorneys in the nation. Law Office of Scott D. Bergthold, P.L.L.C. 8052 Standifer Gap Rd. Suite C Chattanooga, TN 37421. 423.899.3025 Office 423.899.3029 Fax 423.802.9459 Cell . email: [sbergthold@sdblawfirm.com](mailto:sbergthold@sdblawfirm.com) web site: [www.adultbusinesslaw.com](http://www.adultbusinesslaw.com)



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**Attachment to Cosby testimony presented on March 24<sup>th</sup> 2008 to the Kansas Federal & State  
Affairs Committee relative to HB 2835 "The Sexually Oriented Business Act"**

**Findings and Rationale.** Based on evidence of the adverse secondary effects of adult uses presented in hearings and in reports made available to the Kansas Legislature, and on findings, interpretations, and narrowing constructions incorporated in the cases of *City of Littleton v. Z.J. Gifts D-4, L.L.C.*, 541 U.S. 774 (2004); *City of Los Angeles v. Alameda Books, Inc.*, 535 U.S. 425 (2002); *City of Erie v. Pap's A.M.*, 529 U.S. 277 (2000); *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986), *Young v. American Mini Theatres*, 427 U.S. 50 (1976), *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560 (1991); *California v. LaRue*, 409 U.S. 109 (1972); *N.Y. State Liquor Authority v. Bellanca*, 452 U.S. 714 (1981); and

*Farkas v. Miller*, 151 F.3d 900 (8th Cir. 1998); *United States v. Evans*, 272 F.3d 1069 (8th Cir. 2002); *United States v. Mueller*, 663 F.2d 811 (8th Cir. 1981); *BZAPS, Inc. v. City of Mankato*, 268 F.3d 603 (8th Cir. 2001); *SOB, Inc. v. County of Benton*, 317 F.3d 856 (8th Cir. 2003); *United States v. Frederickson*, 846 F.2d 517 (1988); *ILQ Invs. v. City of Rochester*, 25 F.3d 1413 (8th Cir. 1994); *Ctr. for Fair Public Policy v. Maricopa County*, 336 F.4d 1153 (9th Cir. 2003); *North Avenue Novelties, Inc. v. City of Chicago*, 88 F.3d 441 (7th Cir. 1996); *World Wide Video of Washington, Inc. v. City of Spokane*, 386 F.3d 1186 (9th Cir. 2004); *Lady J. Lingerie, Inc. v. City of Jacksonville*, 176 F.3d 1358 (11th Cir. 1999); *Daytona Grand, Inc. v. City of Daytona Beach*, 490 F.3d 860 (11th Cir. 2007); *Déjà Vu of Nashville, Inc. v. Metropolitan Gov't of Nashville and Davidson County*, 274 F. 3d 377 (6th Cir. 2001); *Fantasy Ranch, Inc. v. City of Arlington*, 459 F.3d 546 (5th Cir. 2006);

and based upon reports concerning secondary effects occurring in and around sexually oriented businesses, including, but not limited to, Negative Secondary Effects of Sexually Oriented Businesses: Summaries of Key Reports; Austin, Texas - 1986; Indianapolis, Indiana - 1984; Garden Grove, California - 1991; Houston, Texas - 1983, 1997; Phoenix, Arizona - 1979, 1995-98; Chattanooga, Tennessee - 1999-2003; Los Angeles, California - 1977; Whittier, California - 1978; Spokane, Washington - 2001; St. Cloud, Minnesota - 1994; Littleton, Colorado - 2004; Oklahoma City, Oklahoma - 1986; Dallas, Texas - 1997; Greensboro, North Carolina - 2003; Amarillo, Texas - 1977; McCleary Expert Report - 2006; New York, New York Times Square - 1994; and the Report of the Attorney General's Working Group On The Regulation Of Sexually Oriented Businesses, (June 6, 1989, State of Minnesota),

- (1) Sexually oriented businesses, as a category of commercial enterprises, are associated with a wide variety of adverse secondary effects including, but not limited to, personal and property crimes, prostitution, potential spread of disease, lewdness, public indecency, obscenity, illicit drug use and drug trafficking, negative impacts on surrounding properties, urban blight, litter, and sexual assault and exploitation.
- (2) Sexually oriented businesses should be separated from sensitive land uses to minimize the impact of their secondary effects upon such uses, and should be separated from other sexually oriented businesses, to minimize the secondary effects associated with such uses and to prevent an unnecessary concentration of sexually oriented businesses in one area.
- (3) Each of the foregoing negative secondary effects constitutes a harm which the State has a substantial government interest in preventing and/or abating. This substantial government interest in preventing secondary effects, which is the State's rationale exists independent of any comparative analysis between sexually oriented and non-sexually oriented businesses. Additionally, the State's interest in regulating sexually oriented businesses extends to preventing future secondary effects of either current or future sexually oriented businesses that may locate in the State.



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# NATIONAL LAW CENTER FOR CHILDREN AND FAMILIES®

## NLC SUMMARIES OF “SOB LAND USE” STUDIES

### CRIME IMPACT STUDIES BY MUNICIPAL AND STATE GOVERNMENTS ON HARMFUL SECONDARY EFFECTS OF SEXUALLY-ORIENTED BUSINESSES

- |   |   |
|---|---|
| 1. <i>American Center for Law and Justice</i> | 23. <i>Austin, Texas</i>  |
| 2. <i>Phoenix, Arizona</i>                    | 24. <i>Beaumont, Texas</i>  |
| 3. <i>Tucson, Arizona</i>                     | 25. <i>Cleburne, Texas</i>  |
| 4. <i>Garden Grove, California</i>            | 26. <i>Dallas, Texas</i>  |
| 5. <i>Los Angeles, California</i>             | 27. <i>El Paso, Texas</i>   |
| 6. <i>Whittier, California</i>                | 28. <i>Houston, Texas 1983</i>  |
| 7. <i>Adams Co., Colorado</i>                 | 29. <i>...Houston, Texas 1986</i>                                       |
| 8. <i>Manatee Co., Florida</i>                | 30. <i>...Houston, Texas 1991</i>                                       |
| 9. <i>Indianapolis, Indiana</i>               | 31. <i>...Houston, Texas 1997</i>                                       |
| 10. <i>Minneapolis, Minnesota</i>             | 32. <i>Newport News, Virginia</i>                                       |
| 11. <i>Saint Paul, Minnesota</i>              | 33. <i>Bellevue, Washington</i>   |
| 12. <i>Las Vegas, Nevada</i>                  | 34. <i>Des Moines, Washington</i>                                       |
| 13. <i>Ellicottville, New York</i>            | 35. <i>Seattle, Washington</i>  |
| 14. <i>Islip, New York</i>                    | 36. <i>St. Croix Co., Wisconsin</i>                                     |
| 15. <i>New York, New York</i>                 | 37. <i>Rome, Georgia</i>  |
| 16. <i>Times Square, New York</i>             | 38. <i>Saint Marys, Georgia</i>   |
| 17. <i>New Hanover Co., North Carolina</i>    | 39. <i>Adams County, Colorado</i>                                       |
| 18. <i>Cleveland, Ohio</i>                    | 40. <i>...Saint Paul, Minnesota</i>                                     |
| 19. <i>Oklahoma City, Oklahoma</i>            | 41. <i>The State of Minnesota, Attorney<br/>General's working group</i> |
| 20. <i>Oklahoma City, Oklahoma II</i>         | 42. <i>Kennedale, Texas</i>   |
| 21. <i>Hamilton County, Tennessee</i>         | 43. <i>Effingham County, Effingham, Illinois</i>                        |
| 22. <i>Amarillo, Texas</i>                    |   |



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House Fed and State Committee  
March 24, 2008

Attachment 5

*National Law Center Summary of the*  
**AMERICAN CENTER FOR LAW AND JUSTICE**

**LAND USE STUDY**  
**DATED MARCH 31, 1996**

**OVERVIEW:** This report, compiled by the Environmental Research Group for the American Center for Law and Justice in 1996, reviews the current state of knowledge about the impact of sexually-oriented businesses (SOBs) upon nearby residential and commercial areas. The study particularly notes the effect of SOBs on smaller municipalities. The study finds that SOBs support detrimental activities (i.e. personal and property crimes, prostitution, drugs, etc.) within the vicinity that are incompatible with activities occurring within residential areas. SOBs also have a negative impact on local businesses. Evidence indicates that when SOBs are located near each other or near businesses that serve alcohol, the harmful impact increases. Noting that this is not a recent problem, the study points to many municipalities that have examined the impact of SOBs on surrounding communities, thereby building an ample record of evidence in support of regulation and restriction of location and concentration of SOBs.

**FINDINGS:** The study gives a "Historic Overview" of the issues of SOBs and their effects, dating back to the late eighteenth century. The "tableau vivant" and "concert saloon," were the forerunners of today's "topless bar," seemingly in response to the economic pressures of the young working male of that day. The clientele of today's SOBs has not changed very much over time, being mostly young, single, transient males. In the past, when these businesses operated in a legal, far less regulated climate, it was much easier to see the link between SOBs and crime. Today, the impact of SOBs on its surroundings is less clear, but broader in scope.

The report examines the Garden Grove, CA study by McCleary and Meeker (1991) in depth, which studies 10 years worth of crime statistics in the area, pointing out the significant increase in property (burglary, theft, auto theft) and personal (assault and robbery) crimes that occur within 1,000 feet of an SOB when it is located near an establishment that sells alcohol. They also cite the City of Indianapolis study, which found a 77% higher incidence of serious crime in the area with multiple SOBs compared to the control area (matched by demographic characteristics, building types, etc.). The study indicated that SOBs help create conditions that draw outsiders to the area and provide venues for opportunistic crimes. Sex-related crimes were 4 times higher in *residential* areas near an SOB than in *commercial* areas near an SOB. Similar findings regarding significant increases in crime and arrests in areas near SOBs are referenced from studies out of Minnesota, the City of Austin, Los Angeles, and Hollywood.

Public and semi-private spaces (such as parking lots, spaces between buildings, and parks) have questionable ownership, thereby furthering the opportunity for crime. When an SOB exists, these areas become used for illicit purposes. As a result, legitimate users and residents are driven away by the illicit activity. A public area devoid of women and elderly is an indication of the relative safety in a public space. As potential patrons avoid an area, other commercial businesses suffer. The study notes that women who do walk in areas near an SOB can be subject to harassment and propositioning from assumptions that the woman is associated with the SOB. This all contributes to a "climate of fear" that intimidates people and causes them to avoid the area altogether. This may also contribute to declining property values.



*National Law Center Summary of the*  
**AMERICAN CENTER FOR LAW AND JUSTICE**  
**LAND USE STUDY**  
(CONTINUED)

The study points to evidence that the presence of SOBs effects perceived reductions in the value of residential and commercial property. The City of Indianapolis conducted the most detailed survey, doing a 20% sample national survey of real estate appraisers and a 100% survey of appraisers in similarly-sized cities with a response rate of 33%. Seventy-five percent of those responding indicated that there was a significant negative impact on residential and commercial property values when SOBs are located nearby. In fact, no other type of facility (including drug rehab centers), have such a significant negative impact on property values. A City of Austin study stated that the presence of SOBs in a neighborhood leads mortgage lenders to the conclusion that it is in decline. Similar results have been found in other studies.

The study references trade area studies that indicate SOBs are regional facilities that primarily attract people from outside the neighborhood. A license plate study in Bothell, Washington showed that out of 321 cars in the parking lot of an SOB, only 8 (2.5%) were registered in Bothell. A regional customer base, as opposed to a neighborhood customer base makes SOB owners less responsive to neighborhood problems, decreases the informal social control of behavior, and increases the potential for opportunistic crime.

Finally, the study indicates that the negative effects of an SOB in a small town will likely be more magnified than in a bigger city. First, the compact nature of surrounding residential areas to the downtown area increases the reach that harmful, negative effects would have in the town. Also, smaller populations and shorter commercial business hours result in much lighter use of public, semi-private, uncontrolled spaces (i.e. parks, parking lots and recessed storefronts), thereby providing much greater potential for illicit activity in areas surrounding SOBs. Small towns typically experience more economic stress than larger cities. This is aggravated when SOBs locate in the downtown business district of a small town.





*National Law Center Summary of the*  
**PHOENIX, ARIZONA**  
**LAND USE STUDY**  
**DATED MAY 25, 1979**

The study examines crime statistics for 1978 comparing areas which have sexually-oriented businesses with those that do not. The results showed a marked increase in sex offenses in neighborhoods with sexually-oriented businesses, and also proved increases in property and violent crimes as well. This study is not unique but is unusually significant, in covering the issue of property crimes more extensively.

Three study areas (near locations of sexually-oriented businesses) and three control areas (with no sexually-oriented businesses) were selected. The study and control areas were paired according to the number of residents, median family income, percentage of non-white population, median age of population, percentage of dwelling units built since 1950, and percentage of acreage used for residential and non-residential purposes.

Three categories of criminal activity were included in the study: property crimes (burglary, larceny, auto theft), violent crimes (rape, murder, robbery, assault), and sex crimes (rape, indecent exposure, lewd and lascivious behavior, child molestation).

On average, the number of sex offenses was 506% greater in neighborhoods where sexually-oriented businesses were located. In one of the neighborhoods the number was 1,000% above the corresponding control area. Of the sex offenses, indecent exposure was the most common offense and the largest contributor to the increase of crimes in areas where sexually-oriented businesses were located. Even without considering the crime of indecent exposure, the number of other sex crimes, such as rape, lewd and lascivious behavior, and child molestation, was 132% greater than in control areas without sexually-oriented businesses.

On average the number of property crimes was 43% greater in neighborhoods where sexually-oriented businesses were located, and the number of violent crimes was 4% higher in those areas.

The Phoenix ordinance requires sexually-oriented businesses to locate at least 1,000 feet from another sexually-oriented business and 500 feet from a school or residential zone. Approval by the City Council and area residents can waive the 500 foot requirement. A petition 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.



*National Law Center Summary of the*  
**TUCSON, ARIZONA**  
**LAND USE STUDY**  
**DATED MAY 1, 1990**

**OVERVIEW:** This report is a memorandum from Police Department Investigative Services to the City Prosecutor describing events and activities at "adult entertainment bookstores and establishments" that demonstrate the need for stronger ordinances. Investigations had been in progress since 1986 following numerous complaints of illegal sexual activity and unsanitary conditions.

**FINDINGS:** Officers found a wide variety of illegal sexual conduct at all adult businesses. At virtually every such business, employees were arrested for prostitution or obscene sex shows. Dancers were usually prostitutes where, for a price, customers could observe them performing live sex acts. At several businesses, customers were allowed inside booths with dancers and encouraged to disrobe and masturbate. Many times, dancers would require customers to expose themselves before they would perform. Underage dancers were found, the youngest being a 15 year old female.

Within peep booths, officers found puddles of semen on the floor and walls. If customers had used tissues, these were commonly on the floor or in the hallway. On two occasions, fluid samples were collected from the booths. In the first instance, 21 of 26 samples (81%) tested positive for semen. In the second sampling, 26 of 27 fluid samples (96%) tested positive for semen. "Glory holes" in the walls between adjoining booths facilitated anonymous sex acts between men.

**RECOMMENDATIONS:** (1) The bottom of the door in peep booths must be at least 30 inches from the floor so that an occupant can be seen from the waist down when seated. (2) The booth cannot be modified nor can a chair be used to circumvent the visibility of the client. (3) Employee licensing procedures that include a police department background check should be put in effect. (4) In the event of a denied or revoked license, the requirement of a hearing before any action is taken.



*National Law Center Summary of the*  
**GARDEN GROVE, CALIFORNIA**

**LAND USE STUDY**

**DATED SEPTEMBER 12, 1991**

**OVERVIEW:** This report by independent consultants summarizes statistics to determine whether adult businesses should be regulated because of their impact on the community in terms of crime, decreased property values and diminished quality of life. Statistics were measured from 1981 to 1990, and included crime data and surveys with real estate professionals and city residents. Garden Grove Boulevard, which has seven adult businesses, was selected as the study area. The study incorporated many control factors to insure accurate results. The report includes a brief legal history of adult business regulation and an extensive appendix with sample materials and a proposed statute.

**CRIME:** Crime increased significantly with the opening of an adult business, or with the expansion of an existing business or the addition of a bar nearby. The rise was greatest in "serious" offenses (termed "Part I" crimes: homicide, rape, robbery, assault, burglary, theft and auto theft). On Garden Grove Boulevard, the adult businesses accounted for 36% of all crime in the area. In one case, a bar opened less than 500 feet from an adult business, and serious crime within 1,000 feet of that business rose more than 300% the next year.

**REAL ESTATE:** Overwhelmingly, respondents said that an adult business within 200-500 feet of residential and commercial property depreciates that property value. The greatest impact was on single family homes. The chief factor cited for the depreciation was the increased crime associated with adult businesses.

**HOUSEHOLD SURVEYS:** 118 calls were completed in a random sample of households in the Garden Grove Boulevard vicinity. The public consensus was that adult businesses in that area were a serious problem. Nearly 25% of the surveyed individuals lived within 1,000 feet of an adult business. More than 21% cited specific personal experiences of problems relating to these businesses, including crime, noise, litter, and general quality of life. 80% said they would want to move if an adult business opened in their neighborhood, with 60% saying they "would move" or "probably would move." 85% supported city regulation of the locations of adult businesses, with 78% strongly advocating the prohibition of adult businesses within 500 feet of a residential area, school or church. Women commonly expressed fear for themselves and their children because of adult businesses.

**RECOMMENDATIONS:** The report concludes that adult businesses have a "real impact" on everyday life through harmful secondary effects and makes four recommendations: (1) Keep current requirement of 1,000 feet separation between adult businesses; (2) Prohibit adult establishments within 1,000 feet of residential areas; (3) Enact a system of conditional use permits for adult businesses with police department involvement in every aspect of the process; and (4) Prohibit bars or taverns within 1,000 feet of an adult business.



***National Law Center Summary of the***  
**LOS ANGELES, CALIFORNIA**  
**LAND USE STUDY**  
**DATED JUNE, 1977**

**OVERVIEW:** The Department of City Planning studied the effects of the concentration of sexually-oriented businesses on surrounding properties for the years 1969-75 (a time of proliferation for such businesses). The report focuses on five areas with the greatest concentration of these businesses (compared to five "control" areas free of them), and cites data from property assessments/sales, public meeting testimony, and responses from two questionnaires (one to business/residential owners within a 500 foot radius of the five study areas and a second to realtors/real estate appraisers and lenders). Crime statistics in the study areas were compared to the city as a whole. Also included: a chart of sexually-oriented business regulations in eleven major cities, details of current regulations available under state/municipal law, and appendices with samples of questionnaires, letters, and other study materials.

**PROPERTY:** While empirical data for 1969-75 did not conclusively show the relation of property valuations to the concentration of sexually-oriented businesses, more than 90% of realtors, real estate appraisers and lenders responding to city questionnaires said that a grouping of such businesses within 500-1,000 feet of residential property decreases the market value of the homes. Also, testimony from residents and business people at two public meetings spoke overwhelmingly against the presence of sexually-oriented businesses citing fear, concern for children, loss of customers and difficulty in hiring employees at non-adult businesses, and the necessity for churches to provide guards for their parking lots.

**CRIME:** More crime occurred in areas of sexually-oriented business concentration. Compared to city-wide statistics for 1969-75, areas with several such businesses experienced greater increases in pandering (340%), murder (42.3%), aggravated assault (45.2%), robbery (52.6%), and purse snatching (17%). Street robberies, where the criminal has face to face contact with his victim, increased almost 70% more in the study areas. A second category of crime, including other assaults, forgery, fraud, counterfeiting, embezzlement, stolen property, prostitution, narcotics, liquor laws, and gambling increased 42% more in the study areas over the city as a whole.

**RECOMMENDATIONS:** The study recommended distances of more than a 1,000 feet separating sexually-oriented businesses from each other, and a minimum of 500 feet separation of such businesses from schools, parks churches and residential areas.



*National Law Center Summary of the*  
**WHITTIER, CALIFORNIA**

**LAND USE STUDY**

**DATED JANUARY 9, 1978**

**OVERVIEW:** After experiencing a rapid growth of sexually-oriented businesses since 1969, the Whittier City Council commissioned a study of the effects of the businesses on the adjacent residential and commercial areas. At the time of the study, Whittier had 13 "adult" businesses: 6 model studios, 4 massage parlors, 2 bookstores, and 1 theater. Utilizing statistics, testimonies, and agency reports, the study compared two residential areas and four business areas over a span of 10 years (1968-1977). One residential area was near the largest concentration of adult businesses, the other had no commercial frontage but was chosen because of similar street patterns, lot sizes and number of homes. For businesses, Area 1 had six adult businesses, Area 2 had one, Area 3 had three, and Area 4 had none. 1973 was selected as the year to compare before and after effects of the adult businesses. Two chief concerns cited in the report are residential and business occupancy turnovers and increased crime.

**OCCUPANCY TURNOVER:** After 1973, 57% of the homes in the adult business area had changes of occupancy, compared to only 19% for the non-adult business area. Residents complained of "excessive noise, pornographic material left laying about, and sexual offenders (such as exhibitionist) venting their frustrations in the adjoining neighborhood." Citizens also expressed concern about drunk drivers coming into the area. Business Area 1, with the most concentration of adult businesses (6), experienced a 134% increase in annual turnover rate. Area 3, with three adult businesses at one location, showed a 107% turnover rate. Area 2 (with 1 adult business) had no measurable change and Area 4 (with no commercial or adult businesses) experienced a 45% decrease in turnover from similar periods.

**CRIME:** The City Council looked at the two residential areas for the time periods of 1970-73 (before adult businesses) and 1974-77 (after adult businesses). In the adult business area, criminal activity increased 102% (the entire city had only an 8.3% increase). Certain crimes skyrocketed (malicious mischief up 700%; all assaults up 387%; prostitution up 300%). All types of theft (petty, grand, and auto) increased more than 120% each. Ten types of crime were reported for the first time ever in the 1974-77 period.

**RECOMMENDATIONS:** The Council's report recommended a dispersal type ordinance that prohibits adult businesses closer than 500 feet to residential areas, churches and schools. Distances between adult businesses was recommended at 1,000 feet. In addition, the study proposed a 1,000 foot separation from parks because of their use by citizens after normal working hours. Adult businesses would be given an 18-36 month amortization period (if the change involved only stock in trade, a 90 day period was recommended).





*National Law Center Summary of the*  
**ADAMS CO., COLORADO**  
**LAND USE STUDY**  
**DATED APRIL, 1988**

OVERVIEW: This report, authored by Sgt. J.J. Long of the Adams County Sheriffs Department, was designed to accompany a new Nude Entertainment Ordinance. The report covers two parts: first, an April 1988 study of six representative locations in Adams County was undertaken to determine the transiency of adult business customers. Second, crime statistics in two Adams County areas featuring adult businesses were gathered for the years of 1986 and 1987. The study concluded that there was a clearly demonstrated rise in crime and violence, and an increase in the attraction to transients to the area as a result of nude entertainment establishments. This caused a danger to residents and an undesirable model for youth and the community at large.

FINDINGS: Adams County features 6 adult bookstores (all but one featuring nude entertainment), 1 all nude "pop shoppe," 7 massage parlors, 8 topless nightclubs (with liquor licenses), and 6 nude "rap," lingerie, and modeling-type studios (28 locations in all). An April 1988 study of six adult business locations in Adams County, revealed that 76% of patrons were transient. During the time when no adult ordinance was in effect in Adams County (1986 and 1987), 24 crimes were reported in one area featuring two adult businesses. Eighty-three percent of these crimes were linked to the adult businesses. Forty-two percent of these crimes occurred at the location of an all-nude establishment, and sixty-four percent occurred outside the hours of 4:00 p.m. to midnight. During 1987, 28 crimes were reported, 93% of which were linked to the adult businesses, 50% were alcohol-related offenses, and 77% occurred at a single establishment. Finally, 61% of those crimes occurred during hours other than those between 4:00 p.m. and midnight. Crime rates between 1986 and 1987 for another Adams County area featuring three adult bookstores, two topless nightclubs, a bar, a liquor store, and a beer outlet revealed a 15% increase in crime, (i.e., 55 crimes in 1986 as opposed to 63 in 1987). In 1986, 29 of those crimes involved alcohol, while in 1987, 41 were linked to alcohol (a 41% increase). A rural area of Adams County with a single topless nightclub experienced a 39% increase in crime between 1986 and 1987. There was a marked increase in the number of adult entertainment locations opening for business during 1986 and 1987. Further, a check of criminal histories of some of the offenders showed arrests for morals crimes, sexual assaults, alcohol-related offenses, and crimes of violence. A study of armed robbery in one area during the same time period revealed that 66% of all reported armed robberies occurred at the adult bookstores. Finally, seven homicides from 1977 to 1987 were directly linked to adult bookstores and nude entertainment businesses.

The 1988 enactment of the Nude Entertainment Ordinance, which was upheld by the Colorado Supreme Court, reduced the number of adult businesses in Adams County to only 14. The Adams County ordinance included the following provisions: 1) restricting hours of operation from 4:00 p.m. to midnight, Monday to Saturday; 2) restricting location of SOB's to 500 feet from sensitive uses; 3) an amortization clause requiring compliance within a six month period; and 4) a public nuisance provision for repeated or continuing violation of the ordinance.



*National Law Center Summary of the*  
**MANATEE CO., FLORIDA**  
**LAND USE STUDY**  
**DATED JUNE, 1987**

**OVERVIEW:** This report, conducted by the Manatee County Planning and Development Department, examines the ramifications of a proposed adult entertainment ordinance. It depends upon the findings of other jurisdictions to forecast the effects of adult businesses in Manatee County. It also examines other land use studies in order to determine appropriate land use controls for Manatee County.

**FINDINGS:** The **Boston Model** of concentrating adult businesses into on "combat zone" has the following advantages: 1) like uses are treated alike; 2) lower administrative costs; 3) control over growth of pornographic uses and the development of specific new uses; 4) no definitional vagueness; 5) apparent constitutionality; and 6) easier evaluation of total public services impact of pornographic uses (traffic, limited parking, higher police costs and other effects). Disadvantages of this model center on the blighting effect when a central zone is created. It may also attract "undesirables" to one area. The **Detroit Model** has these advantages: 1) apparent constitutionality (withstood challenge in *Young v. American Mini Theatres*); and 2) creates a separation zone between other adult businesses and residential areas. However, it suffers from definitional weaknesses. Most jurisdictions have adopted some form of the Detroit model. Other cities have added additional buffer requirements.

Studies of secondary effects in other cities (Austin, TX, Indianapolis, IN, Los Angeles, CA, and St. Paul, MN) have examined the impact of adult businesses on property value, crime rates, and incidences of blighting. Based upon the negative findings in these areas, cities have recommended zoning and other land use regulations.

There are five adult businesses currently in the County. All five are separated from one another by more than 1,000 feet. None meet the minimum residential buffer distance of 500 feet.

**RECOMMENDATIONS:** The dispersal model ordinance should be considered. The present zoning ordinance should be amended to add buffer requirements to provide distance from 1) residential districts, 2) churches, schools, child care facilities, and public recreation areas, and 3) other established adult businesses. There should be at least 500 feet of separation between an adult business and the nearest residential zone. A 2000 foot buffer should be established for churches, schools, child care facilities, and recreation areas. Adult businesses should be separated from one another by at least 1000'. A one year amortization period for compliance should be considered (as provided in the draft ordinance). "Sign controls should be considered which still protect a business's freedom to advertise, but also minimize public's exposure to such uses."

**INDIANAPOLIS, INDIANA**



***National Law Center Summary of the***  
**LAND USE STUDY**  
**DATED FEBRUARY, 1984**

**OVERVIEW:** After a 10 year growth in the number of sexually-oriented businesses (to a total of 68 on 43 sites) and numerous citizen complaints of decreasing property values and rising crime, the city compared 6 sexually-oriented business "study" areas and 6 "control" locations with each other and with the city as a whole. The study and control areas had high population, low income and older residences. In order to develop a "best professional opinion," the city collaborated with Indiana University on a national survey of real estate appraisers to determine valuation effects of sexually-oriented businesses on adjacent properties.

**CRIME:** From 1978-82, crime increases in the study areas were 23% higher than the control areas (46% higher than the city as a whole). Sex related crimes in the study areas increased more than 20% over the control areas. Residential locations in the study areas had a 56% greater crime increase than commercial study areas. Sex related crimes were 4 times more common in residential study areas than commercial study areas with sexually-oriented businesses.

**REAL ESTATE:** Homes in the study areas appreciated at only 1/2 the rate of homes in the control areas, and 1/3 the rate of the city. "Pressures within the study areas" caused a slight increase in real estate listings, while the city as a whole had a 50% decrease, denoting high occupancy turnover. Appraisers responding to the survey said one sexually-oriented business within 1 block of residences and businesses decreased their value and half of the respondents said the immediate depreciation exceeded 10%. Appraisers also noted that value depreciation on residential areas near sexually-oriented businesses is greater than on commercial locations. The report concludes: "The best professional judgment 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."

**RECOMMENDATIONS:** Sexually-oriented businesses locate at least 500 feet from residential areas, schools, churches or established historic areas.



*National Law Center Summary of the*  
**MINNEAPOLIS, MINNESOTA**  
**LAND USE STUDY**  
**DATED OCTOBER, 1980**

**OVERVIEW:** This report is divided into two sections: the relationship of bars and crime and the impact of "adult businesses" on neighborhood deterioration. In the study, an "adult business" is one where alcohol is served (including restaurants) or a sexually-oriented business (i.e., saunas, adult theaters and bookstores, rap parlors, arcades, and bars with sexually-oriented entertainment). Census tracts were used as study areas and evaluated for housing values and crime rates. Housing values were determined by the 1970 census compared to 1979 assessments. Crime rates were compared for 1974-75 and 1979-80. The study is strictly empirical and reported in a formal statistical manner; therefore it is difficult for layman interpretation of the data.

**FINDINGS:** The report concludes that concentrations of sexually-oriented businesses have significant relationship to higher crime and lower property values. Other than statistical charts, no statements of actual crime reports or housing values are included in the report. thus, the lay reader has only the most generalized statements of how the committee interpreted the empirical data.

**RECOMMENDATIONS:** First, that adult businesses be at least 1/10 mile (about 500 feet) from residential areas. Second, that adult businesses should not be adjacent to each other or even a different type of late night business (i.e., 24-hour laundromat, movie theaters). third, that adult businesses should be in large commercial zones in various parts of the city (to aid police patrol and help separate adult businesses from residential neighborhood). The report said "policies which foster or supplement attitudes and activities that strengthen the qualities of the neighborhoods are more likely to have desired impacts on crime and housing values than simple removal or restriction of adult businesses."



***National Law Center Summary of the***  
**ST. PAUL, MINNESOTA**  
**LAND USE STUDY**

**DATED APRIL, 1988 (SUPPLEMENTAL TO 1987 STUDY)**

OVERVIEW: As a "result of a growing concern among St. Paul citizens that the City's existing adult entertainment zoning provisions, adopted in 1983," did not "adequately address the land use problems associated with adult entertainment", the City Council directed the Planning Commission to study possible amendments to the Zoning Code. The Commission's proposed amendment was based on findings made during public hearings. The "substitute" "Amendment", adopted by the City Council, is a result of those findings and the findings made by the Council during its public hearings. The 1988 Study includes the findings, addresses the nine key features of the "substitute" "Amendment", and gives the rationale for each.

FINDINGS, "AMENDMENT", AND RATIONALE:

1) "[A]dult uses are harmful to surrounding commercial establishments but that significant spacing requirements between adult uses can minimize the harm in zones reserved for the most intensive commercial activity."

2) The "Amendment" treats all nine defined adult uses the same. Included are: "adult bookstores", "cabarets", "conversation/rap parlors", "health/sport clubs", "massage parlors", "mini-motion picture theaters", "motion picture theatres", "steamroom/bathhouse facilities", and "other adult uses." Each is defined as providing "matter", "entertainment", or "services" which is "distinguished or characterized by an emphasis on the "depiction", "description", "display" or "presentation" of "specified sexual activities" or "specified anatomical areas." "Most, if not all, existing statistical studies of the impact of adult uses do not differentiate between different types of adult uses and do not recognize that the land use impact of various types of adult uses is significantly different." "[E]qual treatment is consistent with the emphasis on deconcentration".

3) The "Amendment" set spacing between adult uses at 2,640 feet outside of the downtown area and 1,320 feet downtown. A six-block goal could not be met because of the necessity to provide a "sufficient land mass". The Phoenix and Indianapolis land use studies indicate that "the negative land use impact of a single adult use extends for up to three blocks".

4) Distances between adult uses and residential zones were increased from 200 feet to 800 feet "outside of downtown" and from 100 to 400 feet downtown in the substitute "Amendment". The goal of 1,980 feet outside of "downtown" and 990 feet downtown could not be met because of the necessity to provide "enough land and sites for potential future adult uses."

5) Distances from "protected uses" outside of downtown were increased from zero to 400 feet and from 100 to 200 feet downtown. Protection for zones "other than residential or small neighborhood business zones" was "justified" because their populations are "particularly vulnerable to the negative impacts of adult uses." "Protected uses" are: day care centers; houses of worship; public libraries; schools; public parks/parkways/public recreation centers and facilities; fire stations (because of use for bicycle registration and school field trips); community residential facilities; missions; hotels/motels (which often have permanent residents).





***National Law Center Summary of the***  
**ST. PAUL, MINNESOTA**  
**LAND USE STUDY**  
**(CONTINUED)**

6) Limiting one type of adult use per building was justified by experience with two pre-existing "multi-functional" adult businesses, numerous studies by other cities, and St. Paul's own study in 1978, which documented significantly higher crime rates associated with two adult businesses in an area, and significantly lower property values associated with three adult uses in an area. The 1987 study included statistics showing that most "prostitution arrests in the city occur within four blocks on either side of the concentration of four adult businesses." Other problems included "the propositioning" and "sexual harassment of neighborhood women mistaken for prostitutes", "discarding of hard-core pornographic literature" ("which is "most strongly associated with adult bookstores") "on residential property where it becomes available to minors", a "generally high crime rate," and "a general perception" that such an area "is an unsafe place due to the concentration of adult entertainment that exists there". Redevelopment experience in St. Paul showed that adult use areas caused a "blighting influence inhibiting development". Multi-functional adult uses will attract more customers which "increases the likelihood that such problems will occur." A "Sex for Sale Image" attracts more street prostitutes and their customers, and demoralizes other businesses and neighborhood residents".

7) Amount of land available for 24 existing adult uses (which includes split-off of two multi-functional businesses with three-four types per business) was 6.5% of the City's total land mass, for a maximum of 44 sites based on "absolute site capacity", calculated without regard for existing infrastructure, or 28 sites based on "relative site capacity" on existing street frontage calculated without regard for existing development or suitability of land for development.

8) Annual review of the "Special Condition Use Permit" was included in the "Amendment" "to ensure that no additional uses are added to the type of adult use that is permitted."

9) Prohibition of obscene works and illegal activities was included in the "Amendment" to "guard against the conclusion that the Zoning Code permits activities which the City can and should prohibit as illegal."



***National Law Center Summary of the***  
**LAS VEGAS, NEVADA**  
**LAND USE STUDY**  
**DATED MARCH 15, 1978**

**OVERVIEW:** Prior to adopting a zoning ordinance for adult businesses, the City of Las Vegas conducted a survey of businesses, residences, and real estate brokers and agents. The results of the survey are included in this report. Also included in the report: minutes of the March 15, 1978, City Commission meeting on the matter of adding an adult business zoning chapter to the City code; an affidavit from Donald Saylor, Director of the Department of Community Planning and Development for Las Vegas, on the blighting effect of adult businesses; an affidavit from William Powell, Vice and Narcotics detective with the Las Vegas Metropolitan Police Department, on the link between a high concentration of adult businesses and an increase in criminal activity; and an affidavit from Donald Carns, professor of Sociology at the University of Nevada, Las Vegas, on the problems adult businesses pose for the economic well-being and vitality of a city.

**FINDINGS:** Among brokers and realtors, overwhelming majorities said that adult entertainment establishments had negative effects on the market value (82%), saleability/rentability (78%), and rental value (76%) of properties located near these establishments. According to 81%, there is a decrease in the annual income of businesses in the vicinity of adult establishments. Strong majorities reported that a concentration of adult businesses near other businesses (from under 500 feet to more than 1000 feet) has negative effects on market values, rental values, and rentability/saleability of residential property. Among surveyed homeowners and residents living near adult businesses, the consensus was similar: adult establishments have a negative effect on the 1) neighborhood; 2) business conditions (sales and profits) in the area (2-square block radius); and 3) value and appearance of homes in the vicinity (within 500 feet). Reportedly, 85% said that their normal living habits had been limited or hindered in some way due to the presence of adult businesses in the area. Among surveyed business owners and proprietors, the results were mixed. The majority of respondents did report that adult businesses had a negative effect on homes immediately adjacent to and in the area (500 feet or more) of adult businesses. A majority believed adult businesses had the following secondary effects: complaints from customers (66%), additional crime (58%), and deteriorated neighborhood appearance (58%). Finally, among residents living in areas not located near adult businesses, the consensus was clear: adult establishments have negative effects on neighborhoods, business conditions in the City, the value and appearance of homes, property values, the amount of crime, and resident transiency. These residents were nearly unanimous (96%) in the belief that their living habits had been limited or hindered by the operation of adult businesses.

**RECOMMENDATIONS:** Adult businesses should be prohibited from locating in residential areas. They should also be restricted to designated areas and dispersed throughout those designated areas. Adult businesses should be located at least 1000 feet from playgrounds, churches, schools, and parks.



***National Law Center Summary of the***  
**ELLICOTTVILLE, NEW YORK**  
**LAND USE STUDY**  
**DATED JANUARY, 1998**

**OVERVIEW:** On April 28, 1997, the Ellicottville Village Board of Trustees and Town Board placed a moratorium on approvals of new sexually-oriented establishments. There were four purposes for the move: 1) to allow the community time to study the effects of adult entertainment businesses; 2) "to determine if a regulatory response was necessary;" and 3) "if stronger land use controls were warranted to draft the regulatory changes for the legislative board's consideration." As there were no adult businesses in Ellicottville at the time of the study, the report cites secondary effects studies in other jurisdictions as a means of forecasting the effects of an Ellicottville adult business. The negative secondary effects examined included: economic impacts, property values, fear of crime, and negative impact on community character.

**FINDINGS:** Ellicottville is a community that relies upon attracting tourists. As such, "the atmosphere and aesthetic features of the community take on an economic value." Though active land use controls have been practiced to maintain the look and vitality of the community, currently there are no differentiations made between the regulation of an adult business and, say, a juice bar. To assess potential secondary effects, studies administered in other New York jurisdictions will be helpful. The 1994 NYC Adult Entertainment study found the following: adult businesses tend to cluster in certain areas, a rise in crime is linked to clusters of adult businesses, negative reactions toward adult businesses were common among adjacent business and home owners, isolation of adult businesses limited secondary effects, real estate brokers believe property values are negatively impacted by nearby adult establishments, and adult business signs are often larger and more graphic.

Allowing adult businesses to locate within the historic business district would negatively impact Ellicottville's efforts to provide a family-friendly community. Similarly, permitting adult businesses to locate near residences would have an eroding effect on "aesthetic qualities" and property values. The type of signage typically used by adult businesses would run counter to the business district. The following uses seemed most prone to negative secondary effects: the Ellicottville historic district, places of worship (6 churches in Ellicottville), the school, the child care facility, recreation parks/areas/playgrounds and public/civic facilities, and residential neighborhoods.

**RECOMMENDATIONS:** The Town and Village should adopt zoning regulations that create a land use category, and regulate adult establishment uses, allowing them to locate in industrial zones and the industrial-service commercial district. The establishment of adult businesses should be considered Conditional Uses (requiring approval of a special use permit). Exterior advertising, signs, and loudspeakers and sound equipment should be regulated. The following distance buffers should be set for: 500 feet (town) or 300 feet (Village) from residential areas; 1000 feet (town) or 500 feet (Village) from other adult businesses; and 500 feet (town and Village) from a church, school, day care center, park, playground, civic facility or historic resource. Definitions for adult uses should be added to existing zoning regulations.



***National Law Center Summary of the***  
**ISLIP, NEW YORK**  
**LAND USE STUDY**  
**DATED SEPTEMBER 23, 1980**

**OVERVIEW:** This report, compiled by Daniel Dollmann of the Islip Department of Planning, features an analysis of studies and ordinances from other jurisdictions, a case study of an adult business in Islip, research of public outcry against the establishment of adult businesses in Islip, and a survey by hamlet of adult entertainment businesses in Islip. The study includes a lengthy appendix with news articles detailing the history of the Islip zoning ordinance, letters of complaint from local residents, a historical perspective about the Detroit ordinance, copies of ordinances from other jurisdictions, and a copy of the proposed Islip zoning ordinance, reflecting the findings in this report.

**FINDINGS:** The study looks at the Detroit ordinance, upheld by the U.S. Supreme Court in 1976, which restricted sexually-oriented businesses (SOBs) from locating within 1,000 feet of other SOBs, and within 500 feet of residential areas. The Islip ordinance is modeled after the Detroit ordinance's approach to disperse SOBs ("anti-skid row") as opposed to creating a "combat zone," which was unsuccessfully attempted by the Town of Islip in 1975. The study notes that the ordinance incorporates "adults-only" definitions in an attempt to avoid First Amendment issues. In determining its distance requirement between adult businesses and sensitive uses, the Town of Islip took into consideration: distance requirements used in Detroit, MI, Norwalk, CA, Dallas, TX, Prince George's Co., MD, and New Orleans, LA zoning ordinances; it's own measurements on an Islip zoning map of several distance proposals; information from the local case study; and resident feedback. The study analyzes the problems unique to an area called Sunrise Highway (23% of businesses are adult) and compares the differences between Islip and Detroit, including population size and number of SOBs, to justify needs for greater distance limitations between SOBs.

One of the goals of the Town is to protect its historic downtown district and keep it from further deterioration (which occurred in the past due to an increase in multi-family dwellings, transients and bars). The Study noted that limiting SOBs to the Town's light industrial zone would be in keeping with this goal. Currently, there is a "dead zone" in one of the healthier parts of the downtown area due to two adult businesses located there.

The Study includes a case study of the Bohemia Book Store which was located extremely close to a residential area. In 1980 the store was temporarily closed down by court order, as a result of citizen picketing and subsequent violence against the picketers. The operators of this particular SOB were reported to have associations with organized crime (i.e., mob-operated national porno ring, multiple obscenity charges and convictions).

**RECOMMENDATIONS:** the proposed zoning ordinance requires 500 feet between an adult business and residential areas or other sensitive uses, like churches and schools, and a ½ mile distance between SOBs. The ordinance includes a waiver clause for certain conditions, and an amortization clause.



*National Law Center Summary of the*  
**NEW YORK CITY, NEW YORK**

**LAND USE STUDY**  
**DATED NOVEMBER, 1994**

**OVERVIEW:** This study of the secondary impacts of adult entertainment uses on communities in New York City (NYC), prepared by the Department of City Planning (DCP), includes: a survey of studies in other jurisdictions, a description of the adult entertainment business in NYC, a review of studies previously done in NYC, a DCP survey of the impacts on NYC communities, and maps showing SOB locations.

**FINDINGS:** Recent trends in sexually-oriented businesses (SOBs) in NYC show a 35% increase over the last decade (75% of which were located in zoning districts that permit residences). However, since the survey for this information focused only on XXX video and bookstores, adult live or movie theaters, and topless or nude bars, this may be an underestimate of total SOB uses. Also in the past decade the availability of pornographic material has increased, the price has decreased greatly, and the image of nude bars has become more sophisticated or "upscale", contributing to the wide-spread availability of SOBs in NYC. SOBs have continued to concentrate in specific areas, specifically in three communities within Manhattan. Between 1984 and 1993: the concentrated areas of SOBs have nearly tripled; the number of SOBs has increased from 29 to 86 (74% of which were adult video stores – not included in the 1984 survey); adult theaters declined from 48 to 23, and topless/nude bars increased from 54 to 68 (54%).

After examining studies from other jurisdictions, this study concludes that the negative secondary impacts are similar in every jurisdiction, despite size of city, variations in land use patterns, and other local conditions. The study specifically examines the negative secondary impacts documented in Islip, NY, Indianapolis, IN, Whittier, CA, Austin, TX, Phoenix, AZ, Los Angeles, CA, New Hanover Co., NC, Manatee Co., FL, and MN, which evidenced problems with "dead zones", declining property values, high turnover rates in adjacent businesses, and higher sex crime rates. Various studies done on the City of New York (including Times Square) showed that concentration of SOBs had resulted in significant negative impacts, including economic decline, decreased property values, and deterrence of customers, and significantly increased crime incidence. Business owners strongly believed their businesses were adversely affected by SOBs. The DCP did its study in NYC boroughs where there was less concentration of SOBs. The negative impacts in these areas were harder to measure, but there was a definite negative perception among residents about the presence of SOBs. It has been shown that negative perceptions related to SOBs can lead to disinvestment and tendency to avoid shopping in adjacent areas – leading to economic decline. Residents reared potential proliferation of SOBs and the resultant negative impact on traditional neighborhood-oriented shopping areas. Eighty percent of real estate brokers surveyed responded that an SOB would have a negative impact on property values (consistent with a national survey). Residents were also concerned about exposure to minors of sexual images.

The DCP concluded that it would be appropriate to regulate SOBs differently from other commercial businesses, based on the significant negative impact caused by SOBs.





***National Law Center Summary of the***  
**TIMES SQUARE, NEW YORK**  
**LAND USE STUDY**  
**DATED APRIL, 1994**

**OVERVIEW:** The Times Square Business Improvement District (BID) conducted a study of the secondary effects of adult businesses on the Times Square area. Due to an increase in the number of adult use establishments from 36 in 1993<sup>1</sup> to 43 in 1994 the BID conducted this study to obtain evidence and documentation on the secondary effects of adult use businesses in the Times Square BID, and of their dense concentrations along 42nd Street and Eighth Avenue. The study was performed by combining available data on property values and incidence of crime, plus in-person and telephone interviews with a broad range of diverse business and real estate enterprises, including major corporations, smaller retail stores, restaurants, theatres and hotels, as well as with Community Boards, block associations, activists and advocates, churches, schools, and social service agencies.

**FINDINGS:** The study made the following four findings:

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

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

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

4) Anecdotal evidence - Many property owners, businesses, experts, and officials provided anecdotal evidence that proximity to adult establishments hurts businesses and property values.

**CONCLUSION:** BID's findings support the results from other national studies and surveys. Adult use businesses in Times Square have a negative effect on property values, cause a greater number of criminal complaints, and have an overall negative impact on the quality of life for the residents and small businesses of Times Square.

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<sup>1</sup> This number is a great deal lower than the all time high of 140 in the late 1970s. During that time the Times Square area was referred to as a "sinkhole" by the (The Daily News, August 1<sup>4</sup>, 1975).



*National Law Center Summary of the*  
**NEW HANOVER CO., NORTH CAROLINA**  
**LAND USE STUDY**  
**DATED JULY, 1989**

**OVERVIEW:** This Planning Department report cites several studies and reports outlining adverse economic, physical, and social effects of adult businesses generally and specifically in jurisdictions across the country. While noting that New Hanover County does not currently have a noticeable problem with adult establishments, the report emphasizes the need to institute "preventative" zoning measures to protect and preserve the quality of life. It also offers an overview of common zoning approaches and the attendant constitutional issues.

**FINDINGS:**

- 1) Municipalities across the country have documented, both empirically and anecdotally, the adverse effects of adult businesses on property values, rental values, neighborhood conditions, and other commercial businesses in the immediate area.
- 2) Cities have documented a link between adult businesses and urban blight, increased traffic, and light and noise pollution.
- 3) Studies have linked concentrations of adult businesses to an increase in crime, specifically prostitution, drugs, assault, and other sex crimes.
- 4) Community reputations and general quality of life are also negatively impacted by the presence of adult businesses.
- 5) An adult bookstore has been closed and re-opened several times after raids by law enforcement authorities. It is also reported that a topless dancing establishment may be opened in the County.
- 6) New zoning regulations would control the establishment of adult businesses near churches, schools, and residential areas.

**RECOMMENDATIONS:** 1) New Hanover should adopt the dispersal (Detroit) zoning approach. 2) Adult businesses should not be permitted to locate within 1,000 feet of each other. 3) Adult businesses should not be permitted within 500 feet of any school, church, park, or residential zone. 4) Adult businesses should only be allowed to locate in designated business and industrial districts, and only by a special use permit. 5) Signs and displays used by adult businesses should be regulated to protect the public, especially teenagers and children, from exposure to obscene material ("any display, device or sign that depicts or describes sexual activities or specified anatomical areas should be out of view of the public way and surrounding property"). 6) The County Attorney's Office and Sheriff's Department should explore the viability of requiring licensing for adult businesses. 7) Definitions for "adult business establishments," "specified sexual activities," and "specified anatomical areas" should be added to the zoning ordinance.



***National Law Center Summary of the***  
**CLEVELAND, OHIO**  
**LAND USE STUDY**  
**DATED AUGUST 24, 1977**

**OVERVIEW:** This is a Cleveland Police Department report from Captain Carl Delau, commander of the City's vice and obscenity enforcement units and reported by him while he participated in a panel discussion at the National Conference on the Blight of Obscenity held in Cleveland July 28-29, 1977. The topic was "The Impact of Obscenity on the Total Community." Crime statistics are included for 1976 robberies and rapes. Areas evaluated were census tracts (204 in the whole city, 15 study tracts with sexually-oriented businesses). At the time of the study, Cleveland had 26 pornography outlets (8 movie houses and 18 bookstores with peep shows). their location was not regulated by city zoning laws.

**FINDINGS:** For 1976, study tracts had nearly double the number of robberies as the city as a whole (40.5 per study tract compared to 20.5 for other city tracts). In one study tract with five sexually-oriented businesses and 730 people, there were 136 robberies. In the city's largest tract (13,587 people, zero pornography outlets) there were only 14 robberies. Of the three tracts with the highest incidence of rape, two had sexually-oriented businesses and the third bordered a tract with two such businesses. In these three, there were 41 rapes in 1976 (14 per tract), nearly seven times the city average of 2.4 rapes per census tract.

**CONCLUSION:** "Close scrutiny of the figures from the Data Processing Unit on any and every phase of the degree of crime as recorded by census tracts indicates a much higher crime rate where the pornography outlets are located."



***National Law Center Summary of the***  
**OKLAHOMA CITY, OKLAHOMA**  
**LAND USE STUDY**  
**DATED MARCH 3, 1986**

**OVERVIEW:** This study contains the results of a survey of 100 Oklahoma City Real Estate Appraisers. Appraisers were given a hypothetical situation and a section to comment on the effects of sexually-oriented businesses in Oklahoma City. The hypothetical situation presented a residential neighborhood bordering an arterial street with various commercial properties which served the area. A building vacated by a hardware store was soon to be occupied by an "adult" bookstore. No other sexually-oriented businesses were in the area and no other vacant commercial space existed. With less than a one month response time, 34 completed surveys were received by the city.

**FINDINGS:** 32% of the respondents said that such a bookstore within one block of the residential area would decrease home values by at least 20%. Overwhelmingly, respondents said an "adult" bookstore would negatively effect other businesses within one block (76%). The level of depreciation is greater for residents than businesses. The negative effects on property values drop sharply when the sexually-oriented business is at least three blocks away. In the subjective portion, 86% of the respondents noted a negative impact of sexually-oriented businesses on Oklahoma City. Frequent problems cited by the appraisers included the attraction of undesirable clients and businesses, safety threats to residents and other shoppers (especially children), deterrence of home sales and rentals, and immediate area deterioration (trash, debris, vandalism).

**CONCLUSIONS:** Oklahoma City's findings supported results from other national studies and surveys. Sexually-oriented businesses have a negative effect on property values, particularly residential properties. The concentration of sexually-oriented businesses may mean large losses in property values.



***National Law Center Summary of the***  
**OKLAHOMA CITY, OKLAHOMA II**  
**LAND USE STUDY**  
**DATED JUNE 1992**

This study, written by Jon Stephen Gustin, a retired sergeant for the Oklahoma City Police Department, examines a history of the successful abatement of sexually-oriented businesses (SOBs) in Oklahoma City between 1984 - 1989, which ultimately reduced an alarmingly high crime rate in the city, which is one of many harmful secondary effects related to the operation of SOBs in the community.

This study indicates that in the early 1980's there was a large growth of SOBs in Oklahoma City in conjunction with a boom in the oil industry resulting in a large influx of oil field workers in the area. Houses of prostitution, nude bars and adult theaters spread throughout the city. SOB promoters and entrepreneurs from around the country came to the area to compete for their share in the market. By 1984, over 150 SOBs and an estimated 200 prostitutes operated in the city. SOB owners competed by using more and more blatant signs and advertising. As a result, the city experienced epidemic proportions of crime problems associated with the SOBs. Citizens began to voice concerns over the decay of community moral standards, the increased crime rate, and decreased property values.

Although Oklahoma City had a history of unsuccessful prosecution of cases related to pornography, prostitution, and related SOBs, public pressure from citizens and elected officials ultimately resulted in support by the Chief of Police, the City Council and the city's District Attorney to prosecute SOBs that were in violation of the law. Abating prostitution and related businesses was the first priority. The media aided this effort by publishing names of arrested customers and prostitutes, and airing live coverage of arrests and raids. This bolstered citizen support of police and prosecutors.

At adult bookstores and peep booths arrests were made for customers propositioning undercover officers to engage in sex acts, for the sale and possession of pornography, the display of pornography and for health department violations (including seminal fluids on the walls and floors of peep show booths). [Note that the author uses the term "pornography" referring to illegal pornography, also known as "obscenity."]

The city next focused on prosecution for violations at nude and semi-nude dance bars, where customers engaged in sexual favors with nude employees in exchange for the purchase of expensive cocktails. Repeated arrests in these bars forced them into compliance, causing a lack of customer support. Simple arrests at escort services, which were organized fronts for prostitution, did little to abate the illegal activity. Therefore, police worked undercover, arresting solicitors of the service. Also an attempt was made to prohibit businesses that had been convicted on prostitution charges from having access to phone service.

As a result of the aggressive arrest and prosecution efforts, only a handful of the original 150 SOBs remained by early 1990. All remaining SOBs operated within statutory guidelines. It has been documented that incidents of reported rape in Oklahoma City decreased 27% during that period, while it increased 16% in the rest of the state. In 1983 nearly one-half of the rapes in Oklahoma occurred in Oklahoma City, decreasing to one-third by 1989. This is an example of the benefits of stringent enforcement and prosecution of the so called "victimless crimes" associated with SOBs.





***National Law Center Summary of the***  
**HAMILTON COUNTY AND**  
**CITY OF CHATTANOOGA, TENNESSEE**  
**LAND USE STUDY**  
**DATED MAY 1997**

OVERVIEW: The Community Protection Committee, established by County Resolution 794-18, undertook a 2 ½ year study of vice-related laws and law enforcement activities in Hamilton County, Tennessee. The mission of the Committee was the renewal of efforts to protect children and families, relating to public health and safety. Members of the Committee represented the Hamilton County Executive, the Board of Commissioners, the Mayor of Chattanooga, and the Chattanooga City Council. The resolution requested that all federal, state and local law enforcement agencies and legislature renew their commitments to enforcing existing vice-related laws, and enacting necessary legislation. In 1996, the Committee met bi-monthly to hear national and local experts and law enforcement officials. They finished preparing recommendations in December 1996 and presented the full report in May 1997.

SUMMARY OF THE REPORT: In preparing and researching for this report the Committee operated from the following questions: is the presence of vice related activity harmful to the community? If so, how does it harm the community? The Committee first focused on "prostitution" and "pornography" along with the corresponding "harmful effects on the community, finding that prostitution posed a danger to Chattanooga and Hamilton County.

The report found that prostitution is extremely dangerous to public health, primarily due to the spread of STDs, which currently infect one in five Americans. In Chattanooga, four people control all the escort services, which serve as a front for prostitution. The report cited statistics for Shelby County, TN, including 33% of all prostitutes jailed in 1990 tested positive for VD, and 13% of all prostitutes jailed tested positive for HIV, (all dying within 3-5 years at an estimated cost of \$500,000 per person, at tax payer expense). In one topless club 8 out of 9 female employees tested positive for VD.

Other issues researched in the report include:

- addiction to obscenity and the danger it poses to Hamilton County (i.e. promoting violence and perpetuating the "rape myth");
- victims of the sex business (Performers - often runaway, drug-using girls from abusive backgrounds that are lured into stripping by promise of more money, then abused further by patrons; and Customers – addiction to pornography can produce aggression, depression, debt, and eventually, loss of family);
- the harm of pornography on children (the 12-17 yr. old male is the largest group of consumers of pornography; early exposure to porn related to greater involvement in deviant sexual practices; pedophiles use porn to molest children; in Hamilton County there were 585 cases of child molestation reported in 1994; the cost to Hamilton County to counsel sexually abused children in 1994 was over \$1.5 Million; child molesters report from 30-60 victims each before arrested the first time);



***National Law Center Summary of the***  
**HAMILTON COUNTY AND**  
**CITY OF CHATTANOOGA, TENNESSEE**  
**LAND USE STUDY**  
**(CONTINUED)**

- the relationship of pornography and organized crime (organized crime has historically been involved in 95% of the adult business establishments);
- the harmful secondary effects of sex businesses on the community (including increased crime, good businesses abandoning area, reduced property values, eroded tax base, and lost revenue for law enforcement);
- a look at the what the law allows regarding the regulation of pornography and the establishing of a “Community Standard”;
- an examination of the positive results from enforcement of zoning and obscenity laws (specifically looking at Oklahoma City, OK which strictly enforced obscenity during the late 1980s and experienced a 27% drop in the rape rate over 6 years);
- an assessment of law enforcement manpower and training necessary to be effective;
- analysis by Bruce Taylor (NLC) of related TN statutes that need to be amended or enacted by the State legislature to protect children and families from pornography-related vice crimes (i.e. making wholesaling a felony).

RECOMMENDATIONS: The Committee’s recommendations included:

(1) Hamilton County - adopting a zoning ordinance to regulate SOBs; imposing reasonable gross receipt taxes on SOBs to fund additional enforcement; appropriating funds for a Special D.A. expert in prosecuting obscenity; developing a computer network in the Sheriff’s department to track child sex abuse and obscenity cases; enforcing TN State law requiring persons arrested for prostitution to be tested for STDs; and establishing a committee to assist in the implementation of these recommendations.

(2) Hamilton County Sheriff’s Department and Chattanooga Police Department - establishing a child sex abuse task force; educating the public about the relationship between child sex abuse and pornography.

(3) City of Chattanooga - strengthening zoning laws; continuing dispersement policy, which prohibits SOBs from clustering; revoking certain grandfather clause protections; hiring additional vice officers (currently only one officer); and regulating SOBs from locating within 500 feet of a business selling alcohol.

(4) Small Communities within Hamilton County – enacting SOB zoning laws to limit location of SOBs in the smaller communities; closely tracking child sex abuse and obscenity cases with Hamilton County Sheriff’s Department.

(5) State of Tennessee – strengthening the State’s Public Indecency and Obscenity laws; encouraging an officer exchange program to assist with local enforcement; encouraging Tennessee Bureau of Investigation to review organized crime activities and connections to the sex industry across the State; enacting legislation making it a felony for an adult to solicit sex from a minor, or to use pornography to solicit sex from a minor; enacting legislation giving local governments authority to restrict SOB operating hours; and revoking applicable licenses if an SOB sells pornography to a minor.



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***National Law Center Summary of the***  
**AMARILLO, TEXAS**  
**LAND USE STUDY**  
**DATED SEPTEMBER 12, 1977**

**OVERVIEW:** This Planning Department report cites several sources including national news magazines, "adult business" ordinances from other cities, an American Society of Planning Officials report and pertinent Supreme Court decisions. Lengthy explanation of the *Miller* test (with legal definitions), discussion of *Young v. American Mini Theatres*, and a comparison of the Boston and Detroit zoning models are included. The city defined "adult businesses" as taverns, lounges, lounges with semi-nude entertainment, and bookstores or theaters with publications featuring nudity and explicit sexual activities. (At the time, Amarillo had 3 such theaters and 4 bookstores with space for such publications).

**FINDINGS:** The police department provided an analysis showing that areas of concentrated "adult only" businesses had 2 1/2 times the street crime as the city average. The Planning Department concluded that concentrations of these businesses have detrimental effects on residential and commercial activities caused by 1) noise, lighting and traffic during late night hours 2) increased opportunity for street crimes and 3) the tendency of citizens to avoid such business areas. The study noted that lack of zoning regulations would lead to concentrations of sexually-oriented businesses (causing increased crime) or more such establishments locating near residential areas or family and juvenile oriented activity sites (churches, parks, etc.)

**RECOMMENDATIONS:** 1) Adult businesses locate 1,000 feet from each other. No recommended distance was specified from residential zones or family/juvenile activities. 2) City development of an amortization schedule and permit/licensing mechanism. 3) City regulation of signs and similar forms of advertising. 4) Vigorous enforcement of State Penal Code, especially relating to "Harmful to Minors." 5) City amendments prohibiting minors from viewing or purchasing sexually-oriented materials (enforced physical barriers).



***National Law Center Summary of the***  
**AUSTIN, TEXAS**  
**LAND USE STUDY**  
**DATED MAY 19, 1986**

**OVERVIEW:** The report was the basis for developing an amendment to existing sexually-oriented business ordinances. At the time, 49 such businesses operated in Austin, mostly bookstores, theaters, massage parlors and topless bars. The study examined crime rates, property values, and trade area characteristics.

The report focused on sexually related crimes in four study areas (with sexually-oriented businesses) and four control areas (close to study areas and similar). Two study areas had one sexually-oriented business and the others had two such businesses. To determine the effects of these businesses on property values, the city sent surveys to 120 real estate appraising or listing firms (nearly half responded). For trade area characteristics, three businesses (a bookstore, theater and topless bar) were observed on a weekend night to determine customer addresses.

**CRIME:** Sexually related crime ranged from 177-482% higher in the four study areas than the city average. In the two study areas containing two sexually-oriented businesses, the rate was 66% higher than in the study areas with one such business. All control areas had crime rates near the city average.

**REAL ESTATE:** 88% said that a sexually-oriented business within one block of a residential area decreases the value of the homes (33% said depreciation would be at least 20%). Respondents also said such a business is a sign of neighborhood decline, making underwriters hesitant to approve the 90-95% financing most home buyers require. They said commercial property is also negatively effected by such businesses.

**TRADE AREA CHARACTERISTICS:** Of 81 license plates traced for owner address, only 3 lived within one mile of the sexually-oriented business. 44% were from outside Austin.

**RECOMMENDATIONS:** 1) Sexually-oriented businesses should be limited to highway or regionally-oriented zone districts. 2) Businesses should be dispersed to avoid concentration. 3) Conditional use permits should be required for these businesses.



*National Law Center Summary of the*  
**BEAUMONT, TEXAS**  
**LAND USE STUDY**  
**DATED SEPTEMBER 14, 1982**

**OVERVIEW:** This report by the city Planning Department encourages amendments to existing "adult business" ordinances to include eating or drinking places featuring sexually-oriented entertainment (strippers, etc.). Zoning laws required "adult uses" to locate 500 ft. from residential areas; 300 ft. from any other adult bookstore, adult theater, bar, pool hall or liquor store; and 1,000 feet from a church, school, park, or recreational facility where minors congregate.

**CRIME:** Police verified that bars, taverns, and lounges (especially those with sexually-oriented entertainment) are frequent scenes of prostitution and the sale/use of narcotics. On the whole, all criminal activity was higher at sexually-oriented businesses.

**RECOMMENDATIONS:** 1) Add eating/drinking places that exclude minors (under Texas law), unless accompanied by a consenting parent, guardian or spouse. 2) Require specific permits for areas zoned as General Commercial-Multiple Family Dwelling Districts. 3) Reduce the required distance of sexually-oriented businesses from residential areas, schools, parks, and recreational facilities from 1,000 to 750 ft.





*National Law Center Summary of the*  
**CLEBURNE, TEXAS**  
**LAND USE STUDY**  
**DATED October 27, 1997**

**OVERVIEW:** This is a report by Regina Atwell, City Attorney for the City of Cleburne, Texas, on how and why the city organized a joint, county-wide sexually-oriented business (SOB) task force. The purpose of this report is to educate and provide assistance to other jurisdictions on what the author considers important aspects of organizing, drafting and adopting an SOB ordinance or amendment to an SOB ordinance. In the introduction, Ms. Atwell cautions that although SOBs now appear more sophisticated and have begun to integrate into the mainstream, the secondary effects of these businesses are still harmful to the community. She offers a set of questions to help assess a local government's needs to enact or update its SOB ordinance. Also, she gives a brief legal history of zoning regulations for SOBs.

**ORDINANCE ENACTMENT:** The City of Cleburne decided to update its existing SOB ordinance in response to plans by Houston and Dallas to revise their SOB ordinances, as well as related concerns that Dallas-Ft. Worth SOBs might subsequently infiltrate the Cleburne area. After learning that the County did not have an SOB ordinance, county officials and officials from all cities in the county were invited to appoint task force members to join the Cleburne's SOB Task Force. Due to an excellent response from the county and many cities within the county, a Joint County-Wide SOB Task Force was formed, realizing that a united stand on this issue was imperative.

After researching the law, consulting experts, examining sample ordinances from other jurisdictions, thoroughly investigating SOBs and their negative secondary effects on the community, and deciding which time/place/manner regulations were most appropriate to protect the governmental interests of their area, the Joint Task Force presented a draft of an SOB Ordinance to their city and county officials. For all its functions, the Task Force relied on the following guidelines: (1) Drafting an ordinance is done by the city planning office, the city attorney and the ordinance review committee, in reliance on case studies discussing secondary effects of SOBs. It is important that the actual studies be presented to legislators; (2) Public hearings should be held to discuss the ordinance and a legislative record created to preserve testimony, studies, maps, and other evidence; (3) Draft a good "Preamble" indicating the council's concern with secondary effects of SOBs; (4) Keep legislative record clean from any suggestions that impermissible motives have influenced the legislative process; (5) Be sure the ordinance allows reasonable "alternative avenues of communication" for SOBs to locate, and include zoning maps with measurements and available sites for the record; and (6) If interested in enacting a licensing ordinance, be sure that it is narrowly drawn to serve legitimate state interests without restricting 1A speech of SOBs. The report also gives extensive tips for how to hold public hearings.

**CONCLUSIONS:** Regulation of SOBs, including licensing, was necessary to combat the detrimental effects of SOBs, including high crime rate, depreciated property values, and spread of communicable diseases. In addition, the Task Force recommended enforcement of public nuisance laws, diligent prosecution of obscenity and sexual offense cases, and specialized training for local police and sheriffs.



*National Law Center Summary of the*

**DALLAS, TEXAS**

**LAND USE STUDY**

**DATED APRIL 29, 1997**

This study, which is an update of a December 14, 1994 report prepared by The Malin Group, analyzes the effects of sexually-oriented businesses (SOBs), specifically those that offer or advertise live entertainment and operate as an adult cabaret, on the property values in the surrounding neighborhoods. The study concludes that there is a much greater impact on the surrounding neighborhoods when there is a high concentration of these businesses in one locale.

The study found that the presence of an SOB in an area can create a "dead zone" which is avoided by shoppers and families with children that do not want to be in areas that also have adult uses. Also, the late hours of operation combined with loitering by unsavory people in the area where SOBs are located, appear to lead to higher crime in the area. In fact, a look at police calls for service over a four year period (1993-1996) shows that SOBs were a major source of the calls. One area averaged more than one call to police per day, where there was a concentration of seven SOBs. In that same area there was a much higher incidence of sex crime arrests than in similar areas with none or fewer SOBs.

This study applied the conclusions of several other studies completed by New York, Phoenix, Indianapolis, Austin, and Los Angeles, finding that the methodology used was appropriate and the conclusions were sound. This study concludes that the finding in these other studies would not be any different in Dallas. The studies found that SOBs have negative secondary impacts such as increased crime rates, depreciation of property values, deterioration of community character and the quality of life. In addition, real estate brokers interviewed in the Dallas area reported that SOBs are "perceived to negatively affect nearby property values and decrease market values." There were similar results from surveys taken in New York City and a national survey completed in Indianapolis and Los Angeles. The study also showed that community residents were concerned that the business signs used by SOBs were out of keeping with neighborhood character and could expose minors to sexual images. In areas where SOBs were concentrated, the signs were larger more visible and more graphic, to compete for business.

The study shows that a concentration of SOBs has a higher negative impact on the surrounding communities than an area with one isolated SOB. When concentrated, SOBs tend to be a magnet for certain businesses such a pawn shops, gun stores, liquor stores, etc., while driving away more family-oriented businesses. It can be harder to rent or sell vacant land in areas where SOBs are located. In fact, the negative perceptions associated with these areas have a significant impact on declining property values, even where other negative effects of SOBs are difficult to measure. Interviews with owners of commercial property near SOBs confirmed that the loss of property value manifested in a variety of ways, including: increased operating costs, like additional security patrols, burglar alarms, and trash cleanup; properties selling at much lower sales prices; and extreme difficulty in leasing properties. Owners thought that if the SOBs were gone, their property values would increase.



*National Law Center Summary of the*

**EL PASO, TEXAS**

**LAND USE STUDY**

**DATED SEPTEMBER 26, 1986**

**OVERVIEW:** This study done by the Department of Planning, Research and Development, the City Attorney's Office, the Police Department Data Processing Division, and New Mexico State University involved one year of studying the impacts of SOBs on the El Paso area. A separate report by the New Mexico State University on perceived neighborhood problems is also included. The study is in response to resident concern about the negative impacts resulting from the significant growth in SOBs over the past ten years. The study results show that SOBs are an important variable in the deviation from normal rates for real estate market performance or crime. Also included in the study are detailed maps showing the locations of SOBs in El Paso and within the selected study areas.

**FINDINGS:** In studying the impacts caused by SOBs, three study areas (with SOBs located in the area) and three control areas (similar areas in size and population, but without SOBs) within El Paso were identified and studied. Using the results of the study areas and the attitudes of the residents living near SOBs, the study concluded that the following conditions existed within the study areas: (1) the housing base within the study area decreases substantially with the concentration of SOBs; (2) property values decrease for properties located within a 1-block radius of SOBs; (3) there is an increase in listings on the real estate market for properties located near SOBs; (4) the presence of SOBs results in a relative deterioration of the residential area of a neighborhood; (5) there is a significant increase in crime near SOBs; (6) the average crime rate in the study areas was 72% higher than the rate in the control areas; (7) sex-related crimes occurred more frequently in neighborhoods with even one SOB; (8) residents in the study areas perceived far greater neighborhood problems than residents in control areas; (9) residents in study areas had great fear of deterioration and crime than residents in control areas.

The study of perceived neighborhood problems done by the New Mexico State University revealed strong concern by residents of the impact of SOBs on children in the neighborhood. In addition, some respondents told survey interviewers they feared retaliation from SOBs if they gave information about problems related to SOBs. Overall, this survey showed a strong, consistent pattern of higher neighborhood crime, resident fear and resident dissatisfaction in the neighborhoods containing SOBs.

**RECOMMENDATIONS:** The main recommendations included that a zoning ordinance be adopted with distance requirements between SOBs and sensitive uses, that a licensing system be established, that annual inspections be required, that signage regulations be established, and that a penalty/fine section be included for violations.



*National Law Center Summary of the*  
**HOUSTON, TEXAS**  
**LAND USE STUDY**  
**DATED NOVEMBER 3, 1983**

**OVERVIEW:** Report by the Committee on the Proposed Regulation of Sexually-Oriented Businesses determining the need and appropriate means of regulating such businesses. Four public hearings provided testimony from residents, business owners, realtors, appraisers, police, and psychologists. The committee and legal department then reviewed the transcripts and drafted a proposed ordinance. More hearings obtained public opinion on the proposal and the ordinance was refined for vote by the City Council.

**TESTIMONY:** The testimony was summarized into six broad premises: (1) The rights of individuals were affirmed. (2) Sexually-oriented businesses can exist with regulations that minimize their adverse effects. (3) The most important negative effects were on neighborhood protection, community enhancement, and property values. (4) Problems increased when these businesses were concentrated. (5) Such businesses contribute to criminal activities. (6) Enforcement of existing statutes was difficult.

**ORDINANCE:** (1) Required permits for sexually-oriented businesses (non-refundable \$350 application fee). (2) Distance requirements: 750 ft. from a church or school; 1,000 ft. from other such businesses; 1,000 ft. radius from an area of 75% residential concentration. (3) Amortization period of 6 months that could be extended by the city indefinitely on the basis of evidence. (4) Revocation of permit for employing minors (under 17), blighting exterior appearance or signage, chronic criminal activity (3 convictions), and false permit information. (5) Age restrictions for entry.



***National Law Center Summary of the***  
**HOUSTON, TEXAS II**  
**LAND USE STUDY**  
**DATED JANUARY 7, 1986**

OVERVIEW: This is a Legislative Report prepared by the Committee on the Regulation of Sexually-Oriented Businesses for the Houston City Council. This report was prepared to explain to the members of City Council, and to the public, why the Committee has recommended certain amendments to the "original ordinance." History behind the ordinance includes the formation by the Mayor of a committee of Council Members to determine the need for regulation of sexually-oriented businesses in Houston. This was in response to growing community concern over the proliferation of SOBs. After public hearings, the Legal Department reviewed testimony and research on the subject. A final version of the "original ordinance" was adopted in December 1983.

The Committee reconvened in 1985 to revisit several possible changes in the SOB ordinance, including whether *SOBs licensed to sell alcohol* should be subject to the distance provisions of the ordinance. Originally it appeared that State law preempted municipalities from regulating SOBs that sold alcoholic beverages. But in 1985 the Texas Legislature enabled municipalities to regulate businesses selling alcohol. The Committee also wanted to consider amendments regarding consolidating administrative responsibility for enforcement of the ordinance, and review possible procedural changes that would expedite and strengthen enforcement.

FINDINGS & CONCLUSIONS: The Committee found that the feedback from the hearing was similar to that received when passing the "original ordinance." Therefore the Committee reaffirmed those findings, including: (a) that SOBs have a substantial negative impact on their surrounding neighborhoods by adversely affecting area security, property values, potential for economic development, general quality of life, suitability for family activities, and stability of the neighborhood environment; (b) that problems created by SOBs increase in intensity if clustered together; and that it is reasonable to restrict exterior signage and features to protect properties in the vicinity; and finally, (c) that SOBs are likely contributory factors to criminal activities in and around the premises.

Additional findings and conclusions for the current amendments included: (a) that the proliferation of SOBs selling alcohol contributed to the City's difficulties in economic development (expert testimony explained that Houston had a "bad reputation," making it difficult to persuade employees to move and live there); (b) that all SOBs have adverse impacts on stability and attractiveness for investment in neighborhoods, whether residential or mixed use; (c) that the "original ordinance" had a substantially positive impact on encouraging neighborhood stability and economic development, as well as lowering the incidents of crime (prostitution, drug sales) and substantial traffic jams related to clustering of SOBs; (Example: A 10-block span on Westheimer Road had a cluster of 14 SOBs and suffered from tremendous amounts of criminal activity associated with them. The passing of the "original ordinance" served as an impetus for the area turning around. Today only there are only 4 SOBs and new economic development is occurring.); (d) that applying the existing distance requirements to SOBs that serve alcohol would not unduly, unfairly or improperly limit the ability of SOBs to locate within Houston, according to a study and testimony by a member of the Planning and Development Department; (e) that continuing an amortization provision instead of grandfathering in the existing SOBs selling alcohol





*National Law Center Summary of the*  
**HOUSTON, TEXAS II**  
**(CONTINUED)**

would be more effective, since there was recourse for those businesses showing they could not reasonably recoup their investment within the allotted 6-month amortization period; and (f) that testimonies of committee members and the Police Department Vice Squad revealed inadequacies and inconsistencies within the permitting and enforcement process that needed to be addressed.

**RECOMMENDATIONS:** The Committee recommended that (1) SOBs selling alcohol be included under the same distance limitations of the "original ordinance"; (2) that the principal responsibility for overseeing the permitting process be transferred from the Department of Finance and Administration to the Police Department; (3) that the processes for enforcement of the amended ordinance be streamlined; and (4) that licensed day care centers be added to churches and schools as a protected category.



***National Law Center Summary of the***  
**HOUSTON, TEXAS III**  
**LAND USE STUDY**  
**DATED JANUARY 7, 1991**

**OVERVIEW:** This is a Legislative Report prepared by the Committee on the Regulation of Sexually-Oriented Businesses for the Houston City Council. This report was prepared and adopted by the City Council as part of the legislative record regarding proposed legislation to include adult bookstores and movie theaters within the ambit of the Houston City SOB Ordinance and to amend certain permit procedures. This report is intended to supplement the 1986 report issued when the City adopted an amendment to regulate premises serving alcoholic beverages (i.e. topless bars). All of the above amendments were based on changes in the Texas state enabling statute. This report relies in part on evidence gathered in 1983 and 1986 relating to adult bookstores and movie theaters.

**FINDINGS:** The Committee held several hearings regarding the secondary effects of adult bookstores and movie theaters on surrounding communities. The committee heard from expert witnesses, including representatives from the police department, real estate appraisal experts, local political scientists, and dozens of citizens. The overwhelming consensus of the evidence received indicated that adult bookstores and movie theaters exert the same sorts of impacts upon surrounding communities as other forms of adult uses currently regulated. The impacts included: reduction in property values, dehumanizing impact upon nearby social institutions (i.e. churches, schools, etc.) de-stabilization of community character, and psychological concerns regarding exposure to children. These findings were the basis for the Committee to begin formal consideration of regulating adult bookstores and movie theaters.

**CONCERNS & RECOMMENDATIONS:** The Committee had concerns about whether the change to the ordinance would require a revision in existing distance limitations (750 feet from sensitive uses and 1000 feet from other SOBs). It concluded that leaving the distance requirements the same would still allow more than an adequate number of sites for SOBs to locate. A one-time grandfathering provision would be available to those existing SOBs that could not quite comply with the 1000-ft requirement from other SOBs, but complied with all other locational requirements.

The Committee considered various revisions of the permit provisions to fix minor administrative problems raised by the Police Department, including sites applied for but not used, time extensions for signage issues, appeals, relocation, subdivision of property, compliance and "use of pasties", and miscellaneous areas of conformity with court decisions and city code.

The Committee considered addressing perceived loopholes in the ordinance that seemed to allow SOBs to achieve conspicuous exterior signage and premises, negatively affecting the surrounding community. However, conflicting public response to proposed amendments resulted in the Committee delaying any amendments on this issue till a future date.

**HOUSTON, TEXAS III**  
**(CONTINUED)**



## *National Law Center Summary of the*

The Committee considered whether to add exposure of "male breasts" to the definition of "Specified Anatomical Areas", because of a Texas Supreme Court case examining this issue in light of Equal Rights. However, the Committee decided not to amend the ordinance based on expert testimony and lack of probative evidence based on actual experience in local SOBs that exposure to male breasts was considered sexually arousing.

At the second public hearing, which was poorly attended except for a few SOB business representatives, the Committee addressed various issues raised, including questions about amortization that the ordinance was being used to put SOBs out of business. The Committee maintained that the 6-month amortization was reasonable, given that extensions could be granted in certain circumstances. Also, the Committee affirmed that the ordinance does not regulate the substance of the speech, but only serves to minimize the secondary effects of adult uses on the community by addressing location, appearance, signage and related matters regarding SOBs.

**CONCLUSIONS:** The Committee recommended the ordinance as a logical step to complete the scope of the City's land use controls for adult uses.

**HOUSTON, TEXAS IV  
LAND USE STUDY  
DATED JANUARY 7, 1997**



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## *National Law Center Summary of the*

**OVERVIEW:** This is a summary of a legislative report prepared by the Sexually-Oriented Business Revision Committee for the Houston City Council, analyzing the strengths and weaknesses of the City's current SOB ordinance, and making recommendations for amendments and additions principally pertaining to employee licensing, lighting configurations, location requirements, prohibition of "glory holes," elimination of closed-off areas, public notification of SOB applications, clear lines of vision inside SOBs, and dancer "no-touch" policies. This report summary includes discussion of prior regulation efforts, testimony by HPD Vice Department, citizen correspondence, industry memos, legal research, and summaries of public testimony.

**SUMMARY:** This study was a result of increasing community concern over increasing proliferation of SOBs under the existing SOB ordinance and the HPD's need for better control over increasingly repetitive serious violations at numerous SOBs. The Committee made the following findings: (1) Due to criminal activity associated with SOBs, licenses should be required for all SOB employees (requiring criminal background investigations); (2) There are obstacles to successful enforcement of public lewdness, prostitution, indecent exposure, and other criminal activities (i.e. entertainers can detect when a patron is an undercover cop); (3) "Glory holes" between enclosed booths promote anonymous sex and facilitate the spread of disease, so prohibition of these openings was recommended; (4) The lack of a clear line of vision between manager's stations and booths or secluded areas (VIP rooms) encourages lewd behavior and sexual contact (also difficult to observe during inspections); (5) Multi-family tracts were being counted as one tract, so new formula devised based on homeowners' property size; (6) Inadequate lighting in SOBs makes it difficult for SOB managers and police to monitor illegal activities, so minimum requirements for "exit" signs in Uniform Building Code was suggested; (7) Locked rooms within SOBs are usually fronts for prostitution, so prohibition of enclosed rooms recommended; (8) Public and expert testimony requested the inclusion of "public parks" as a sensitive use in the zoning location ordinance; (9) Repeated testimony requested notification to public regarding pending SOB permits, so posting of a sign notifying of pending permit was required; and (10) Continuing amortization provisions was preferable to grandfathering in those SOBs not in compliance with the amended ordinance (i.e. 6 months plus extensions for recouping investment).

**CONCLUSIONS:** The Committee concluded that strengthening the ordinance would achieve expedited revocation process, accountability to SOB employees through licensing, aid to police investigations by improved lighting and configurations, protections to the community by increasing distance requirements, and reduction of disease from anonymous spread by eliminating "glory holes."



*National Law Center Summary of the*  
**NEWPORT NEWS, VIRGINIA**

**LAND USE STUDY**

**DATED MARCH, 1996**

**OVERVIEW:** As of November, 1995, there were 31 "adult use" establishments: 14 "adult entertainment" establishments ("exotic dancing girls", "go-go" bars, "gentlemen's clubs", etc.); 8 "adult book/video stores" (outlets selling and renting pornographic magazines, videos, and sex devices); and 9 night clubs (music, dancing, or other live entertainment). Of the 31 uses, 17 are in the General Commercial zone, 5 in the Regional Business District zone, 7 in the Retail Commercial zone, and 2 are in the Light Industrial zone. They are dispersed along two streets with a few clusters. A proposed ordinance would require "adult uses" to be 500 feet from other "adult" uses and to locate at least 500 feet away from sensitive uses (churches, schools, homes, etc.), with no distance limits in the downtown zone.

**CRIME:** The Police Department researched calls for police responses to the 31 businesses, by address, for the period of January 1, 1994, to October 31, 1995, with a cross-check to assure accuracy of the calls to the correct address. The effects of concentrations of "adult uses" were also checked by comparing study areas with control areas. Study area 1, with 4 "adult" uses, had 81% more police calls than nearby control area 1. When adjusted for population differences, the study area had 57% higher police calls and 40% higher crimes than the control area. For the 31 sexually-oriented businesses, there were 425 calls of those: 65% were to strip clubs and go-go bars, averaging 23 calls per "adult entertainment" business; night clubs had 30% of the calls, averaging 14 calls per business; and "adult" bookstores and video stores had 4%, averaging 2 calls per business; . The reasons for the calls included: 25 assaults; 18 malicious destructions of property; 39 intoxications; 60 fights; and 151 disorderly conduct incidents. A selected list of restaurants with ABC licenses averaged 11 calls for service during the same period. One particular downtown "adult entertainment" establishment had 116.7 "police calls per 100 occupancy" compared to a regular restaurant, non-adult use, located across the street, with 50 calls per 100 occupancy.

**MERCHANTS/REAL ESTATE:** A very high percentage of realtors indicated that having "adult uses" nearby can reduce the number of people interested in occupying a property by 20 to 30%; would hurt property values and resale of adjacent residential property. Realtors expressed concern for personal safety, increased crime, noise, strangers in the neighborhood, and parking problems. Merchants associations surveyed supported strengthening the city's regulations of "adult uses" and expressed a common concern that additional "adult uses" would contribute to deterioration of their areas.





***National Law Center Summary of the***  
**BELLEVUE, WASHINGTON**  
**LAND USE STUDY**  
**DATED FEBRUARY, 1988**

**OVERVIEW:** This is a compilation of materials prepared for the City Council Members of Bellevue, Washington for use in enacting an SOB zoning ordinance. The study includes general information about regulation of SOBs, secondary impacts from SOBs, experiences from nearby communities, description of Bellevue's current situation, and recommendations for appropriate forms of regulation of SOBs within Bellevue. Also included is a bibliography of land use studies, articles, correspondence and reference materials from adjacent municipalities made available for council members' use. Minutes from two public hearings about regulation of SOBs, maps showing the location of current SOBS, and memos from the planning department are also included.

**FINDINGS:** The study begins by explaining the legal basis history behind regulating SOBs. Existing provisions in the State and local codes relating to obscenity or licensing are mentioned. The study notes that the goal of regulating SOBs is to mitigate the secondary impacts of these uses in the communities. It concludes that the implications of the data and experience studied in other jurisdictions are significant to Bellevue. It discusses the link between crime rates and areas with concentrations of SOBs, as revealed by police research, noting the "skid row" effect that occurred in Detroit, and the higher percentages of crime documented in Cleveland (in the 1970's), and other cities. The study noted that while police crime statistics showed a strong connection between criminal activity and some adult uses, there is no clear consensus (in psychological studies) that exposure to pornography causes criminal behavior. The study also discusses the impact to property values. It notes a Kent survey of real estate appraisers that revealed an overall consensus that the impact on residential property values is probably negative. In Bellevue, the three existing SOBs are widely dispersed and centrally located in commercial areas, which have thus far not experienced deterioration in surrounding structures and areas. Based on a Puget Sound study, it was noted that SOBs are incompatible with residential, educational and religious uses. *The Northend Cinema v. Seattle* case agreed that the goal of preserving the quality of residential neighborhoods by prohibiting disruptive adult uses was a valid, substantial interest. This case also points out that residents' perceptions may be a major factor in siting SOBs. Overall the study concludes that research has shown SOBS may lead to the secondary effects mentioned above, but it is not possible to say definitely in each case. The study goes on to review regulations adopted by different jurisdictions, analyzing approaches of dispersal and concentration of SOBs. The study enumerates several sections of code showing public policy concerns to be considered when deciding Bellevue's approach to regulating SOBs. Currently, the three existing SOBs in Bellevue show no particular negative impacts on the surrounding community, and are widely dispersed from each other and other sensitive uses (residences, etc). However, there is not guarantee that future concentrations of SOBs will not occur.

**RECOMMENDATIONS:** The study recommended the adoption of a modified dispersal/concentration approach (i.e. dispersal within CB, OLB and CBD zones), with a 600-foot distance limitation between SOBs and other sensitive uses.



***National Law Center Summary of the***  
**DES MOINES, WASHINGTON**  
**LAND USE STUDY**  
**DATED AUGUST, 1984**

OVERVIEW: This land use study includes an independent report prepared by R. W. Thorpe & Associates, Inc for the Des Moines City Council, and a report from the City Administration on the impacts of Sexually-Oriented Businesses (SOBs) on the area. Appendices include: a theater admission report, a 1978 Des Moines Community opinion survey, a copy of a Des Moines ordinance requiring an impact study of SOBs on the city, a list of criminal incidents related to the adult theater, a business activity chart of businesses adjacent to the adult theater, a copy of *Northend Cinema, Inc. v. City of Seattle*, 585 P.2d 1153 (1978), and transcripts of the hearing and testimonies.

FINDINGS: When the study was made, Des Moines had an adult theater operating in the Revitalization area/central business district of the city. It had been operating as such since the 1970's. The Administration report noted a 1978 Community Opinion Survey reporting that the majority of residents in the area were opposed to the theater. The Administration's report also lists several negative impacts caused by the presence of the adult theater in the community, including: decreased property values, refusal to shop in stores adjacent to the adult theatre, noticeable deterioration of the district, deferred maintenance, parking and traffic problems, attraction of transients, increased crime, and interference with parental responsibilities for children. As a result, the study noted that there had been numerous business failures and high business turnover in the commercial areas near the adult theater. Public testimony, staff studies and the independent study all concluded that the continued presence of the adult theater would nullify any investment in the revitalization efforts of downtown Des Moines. The study examined efforts to regulate SOBs in North Carolina, Detroit, Maryland, and Seattle. The Administration's study took particular note of Seattle's zoning ordinance, which restricted location of SOBs to a certain part of the city. It was upheld by that state's highest court, which said the city's important interest in regulating the use of its property for commercial purposes was sufficient justification.

The independent study submitted by R. W. Thorpe & Associates, Inc for the Des Moines City Council mostly focused on and made comparisons to studies done in cities in the western part of Washington State. However, the study also looked at other jurisdictions like Boston, and New Orleans. It looks at various negative impacts on the community including crime, decline in adjacent land uses, economic impact (decreased property values), and community impact (incompatibility with sensitive uses and areas where minors may meet collectively). It discussed differing approaches to regulating SOBs, including clustering and dispersal.

RECOMMENDATIONS: The Administration's report, based partly on the independent study, concluded that a zoning ordinance should be enacted, locating adult businesses in the CG zone along Highway 99. This would keep SOBs away from the central business district that the city was trying to revitalize and maintain a family friendly atmosphere there. Dispersal of SOBs was also recommended to minimize impact of crime potential volatile situations associated with close proximity of SOBs.



***National Law Center Summary of the***  
**SEATTLE, WASHINGTON**  
**LAND USE STUDY**  
**DATED MARCH 24, 1989**

**OVERVIEW:** The report concerns a proposed amendment to add topless dance halls to existing land use regulations for "adult entertainment establishments." Seattle had eight such dance halls (termed "adult cabarets"), six established since 1987. The study relies on reports from a number of cities, including Indianapolis, Los Angeles, Phoenix, Austin and Cleveland.

**FINDINGS:** The increased number of cabarets resulted in citizen complaints, including phone calls, letters (from individuals and merchants associations), and several petitions with hundreds of signatures. Protests cited decreased property values; increased insurance rates; fears of burglary, vandalism, rape, assaults, drugs, and prostitution; and overall neighborhood deterioration. The report notes that patrons of these cabarets most often are not residents of nearby neighborhoods. Without community identity, behavior is less inhibited. Increased police calls to a business, sirens, and traffic hazards from police and emergency vehicles are not conducive to healthy business and residential environments.

**RECOMMENDATIONS:** Since city zoning policy is based on the compatibility of businesses, the report recommends that the cabarets locate in the same zones as "adult motion picture theaters." This plan allows about 130 acres for such businesses to locate throughout the city.



***National Law Center Summary of the***  
**ST. CROIX CO., WISCONSIN**  
**LAND USE STUDY**  
**DATED SEPTEMBER, 1993**

**OVERVIEW:** At the time the St. Croix County Planning Department did this study, the County had two adult cabarets, but did not have a problem with concentration of sexually-oriented businesses (SOBs). The study acknowledges that SOB zoning ordinances have generally been upheld by the courts as constitutional and suggests the County consider following the lead of other communities who have enacted similar ordinances. The main concern surrounded possible growth of SOBs resulting from future plans for an interstate highway system linking St. Croix County and the great Twin Cities metro area. To preserve the County's "quality of life" the study indicates the need to take preventative vs. after-the-fact action.

**SUMMARY:** The study notes the continued growth of the SOB industry and analyzes the economic, physical, and social impact it has on the community. It examines documented economic impact of SOBs in Los Angeles, CA, Detroit, MI, Beaumont, TX, and Indianapolis, IN, noting that concentrations of SOBs results in decreased property values, rental values, and rentability/salability. General economic decline is also associated with concentration of SOBs. Residents surveyed in other studies perceived a less negative impact on property values of residential and commercial areas the further away SOBs were located. The study also noted that economic decline caused physical deterioration and blight. During night time operation hours, traffic congestion and noise glare could also be problems. Social impacts studied included negative effects on morality, crime, community reputation and quality of life. It noted the 1970 Commission on Obscenity and Pornography saying porn has a deleterious effect upon the individual morality of American citizens. It cites the Phoenix, AZ study reporting a tremendous increase in crime in three study areas containing SOBs (43% more property crimes, 4% more violent crimes, and over 500% more sex crimes). The study mentions Justice Powell's quote in *Young v. American Mini-Theatres* regarding using zoning to protect "quality of life."

The study analyzes different zoning techniques, including dispersal and concentration of SOBs, and their constitutionality. It also discusses the use of "special use" and "special exception" permits. Other regulatory techniques discussed include licensing ordinances, active law enforcement, sign regulations, and nuisance provisions. The study includes detailed examples of SOB definitions, a proposed zoning ordinance, and a bibliography of the sources used for this study.

**RECOMMENDATIONS:** The study recommended that the county adopt a zoning ordinance using the dispersal technique. It also suggested the county explore the possibility of licensing SOBs.



*National Law Center Summary of the*  
**ROME, GEORGIA CITY COMMISSION**

**LAND USE STUDY**

**DATED MARCH 6, 1995**

**OVERVIEW:** Captain Marshall Smith, the Commander of the Detective Division of Rome (GA) City Police Department presented a report to the City Commission in respect the effects of crime rates surrounding adult entertainment and the impacts on other Georgia communities.

**SUMMARY OF THE REPORT:** The Captain reported several Georgia communities had sufficient increases of reported crimes in several Georgia communities. Specifically, Captain Smith reported the following:

- An investigator in La Grange, Georgia stated that after an adult entertainment business opened in this community, there was an increase in the number of calls. Specifically, the La Grange Police Department responded to 106 calls relating to one adult club in the year 1994.
- The Augusta Police Department reported that for a two-year period between January of 1993 and December 1994, the Police Department responded to 971 calls from three different adult entertainment businesses. The calls for service ranged from thefts and fights to aggravated assaults with weapons involved.
- The Whitfield County Sheriff's Office stated they have had instances involving prostitution, drugs, thefts, and aggravated assaults involving discharging of firearms.





*National Law Center Summary of the*  
**THE CITY OF SAINT MARYS, GEORGIA**  
**DIGEST OF RESEARCH ON THE EVIDENCES OF RELATIONSHIPS BETWEEN**  
**ADULT ORIENTATED BUSINESSES AND COMMUNITY CRIME AND DISORDER**

The Police Department of Saint Marys, Georgia, was requested to gather evidence relating to the evidence of the relationship between crime and adult businesses, if any.

**THE REPORT:** The report summarizes studies from across the United States and specifically in the State of Georgia with respect to the adverse secondary effects of all adult oriented businesses in those communities. The report took those various studies together and other sources of evidence and found that the amount of crime and the type of crime, especially sexual related crimes, would increase at statistically significant levels with the introduction of adult oriented businesses in their community.



*National Law Center Summary of the*  
**THE ADAMS COUNTY SHERIFF'S DEPARTMENT**  
**ADAMS COUNTY NUDE ENTERTAINMENT STUDY**  
**DATED JUNE 20, 1991**

OVERVIEW: The Adams County Sheriff's Department performed research related to a proposed nude entertainment ordinance for Adams County, Colorado. In this study six representative locations were selected at random representing six different areas in the unincorporated portions of Adams County.

SUMMARY OF THE REPORT:

- The study in April of 1988 determined that 76 percent of the patronage of adult businesses in their community were transient, coming from counties other than Adams County, Colorado.
- A one-block area of the community was selected because it contained two nude entertainment establishments, a Seven Eleven, a convenience store, a neighborhood tavern, three fast food businesses, and a gas station. In this block in 1986, 24 crimes were reported from the area of which 83 percent were attributed to the two nude entertainment establishments.
- In 1987 the same area was surveyed and 28 crimes were reported, 93 percent of which were attributed to the two adult businesses. It was also noted in this block that 61 percent of the crimes occurred between 4:00 p.m. and 12:00 p.m.
- A study of another block, which included three adult book stores, two topless night clubs, one neighborhood bar, one liquor store, and one beer outlet found that during 1986, 55 crimes were reported compared to 63 crimes in 1987, a 15 percent increase.
- In a more rural and isolated section of the county where a topless night club was located, 13 crimes were reported in 1986, compared to 18 crimes in 1987, a 39 percent increase.
- This study was updated looking at 1990 statistics and reported no significant changes in these areas with a few exceptions. One such exception was that one block in question in the original study reported crimes increased by 900 percent of which a 290 percent increase was attributed to adult businesses which offered nude entertainment and/or alcohol.



*National Law Center Summary of the*  
**MINNESOTA ATTORNEY GENERAL'S WORKING GROUP ON**  
**THE REGULATIONS OF SEXUALLY-ORIENTED BUSINESSES**

**DATED JUNE 6, 1989**

OVERVIEW: The Attorney General of the State of Minnesota created a working group with respect to the regulation of adult businesses. The working group for a testimony conducted briefings on the impact of adult businesses on crime and communities with methods available to reduce the secondary effects of adult businesses. Additional research was done to evaluate strategy use in other states and cities and the ramifications of those strategies.

**FINDINGS RECOMMENDATIONS:**

1. City and county attorneys' offices in the Twin Cities metropolitan area should designate a prosecutor to pursue obscenity prosecutions and support that prosecutor with specialized training.
2. The Legislature should consider funding a pilot program to demonstrate the efficacy of obscenity prosecution and should encourage the pooling of resources between urban and suburban prosecutor offices by making such cooperation a condition for receiving any such grant funds.
3. The Attorney General should provide informational resources for city and county attorneys who prosecute obscenity crimes.
4. Obscenity prosecutions should begin with cases involving those materials which most flagrantly offend community standards.
5. The Legislature should amend the present forfeiture statute to include as grounds for forfeiture all felonies and gross misdemeanors pertaining to solicitation, inducement, promotion, or receiving profit from prostitution and operation of a "disorderly house."
6. The Legislature should consider the potential for a RICO-like statute with an obscenity predicate.
7. Prosecutors should use the public nuisance statute to enjoin operations of sexually-oriented businesses which repeatedly violate laws pertaining to prostitution, gambling, or operating a disorderly house.
8. Communities should document findings of adverse secondary effects of sexually-oriented businesses prior to enacting zoning regulations to control these uses so that such regulations can be upheld if challenged in court.



*National Law Center Summary of the*  
**MINNESOTA ATTORNEY GENERAL'S WORKING GROUP ON**  
**THE REGULATIONS OF SEXUALLY-ORIENTED**  
**BUSINESSES**  
(CONTINUED)

9. To reduce the adverse effects of sexually-oriented businesses, communities should adopt zoning regulations which set distance requirements between sexually-oriented businesses and sensitive uses, including but not limited to residential areas, schools, child care facilities, churches and parks.
10. To reduce adverse impacts from concentration of these businesses, communities should adopt zoning ordinances which set distances between sexually-oriented businesses and between sexually-oriented businesses and liquor establishments, and should consider restricting sexually-oriented businesses to one use per building.
11. Communities should require existing businesses to comply with new zoning or other regulation of sexually-oriented businesses within a reasonable time so that prior uses will conform to new laws.
12. Prior to enacting licensing regulations, communities should document findings of adverse secondary effects of sexually-oriented businesses and the relationship between these effects and proposed regulations so that such regulations can be upheld if challenged in court.
13. Communities should adopt regulations which reduce the likelihood of criminal activity related to sexually-oriented businesses, including but not limited to open booth ordinances and ordinances which authorize denial or revocation of licenses when the licensee has committed offenses relevant to the operation of the business.
14. Communities should adopt regulations which reduce exposure of the community and minors to the blighting appearance of sexually-oriented businesses, including but not limited to regulations of signage and exterior design of such businesses, and should enforce state law requiring sealed wrappers and opaque covers on sexually-oriented material.



*National Law Center Summary of the*  
**REPORT TO THE CITY OF ATTORNEY OF KENNEDALE,  
TEXAS, ON CRIME-RELATED SECONDARY EFFECTS OF  
ADULT BUSINESSES**

The City Attorney for Kennedale, Texas retained Professor Richard McCleary to express an opinion as to four questions relating to litigation in which the city was involved regarding sexually-oriented businesses (SOBs). Specifically, Professor McCleary reported on the crime-related secondary effects of SOBs.

The following are the questions asked and opinions rendered by Dr. McCleary:

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

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

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

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 sight. 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.

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

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

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

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





*National Law Center Summary of the*  
**REPORT OF DR. RICHARD MCCLEARY TO EFFINGHAM  
COUNTY, EFFINGHAM, ILLINOIS**

OVERVIEW: Dr. McCleary was asked to review materials sent to him by the Effingham County State's Attorney's office and the empirical studies of crime-related secondary effects. Dr. McCleary provided his opinions with respect crime-related secondary effects.

FINDINGS AND OPINIONS: Dr. McCleary offered the following opinions to the stated questions and those opinions are stated herein:

Question 1: Do sexually-oriented businesses, as a general class, pose significant ambient public safety hazards?

Opinion 1: As a class, SOBs pose a significant ambient public safety hazards. These hazards involve not only "victimless" crimes (prostitution, e.g.) plus, also, "serious" crimes," (robbery, e.g.) and "opportunistic" crimes, (vandalism, e.g.) that are associated with vice. The ambient public safety hazard (for crime victimization risks) can be ameliorated by regulation.

Question 2: Given an affirmative answer to the first question, how valid is the evidence upon which this opinion is based?

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 sexually-oriented business sites, and 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.



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**Testimony re: HB 2835**  
**House Federal and State Affairs Committee**  
**Presented by Ronald R. Hein**  
**on behalf of**  
**Motion Picture Association of America**  
**March 24, 2008**

Mr. Chairman, Members of the Committee:

My name is Ron Hein, and I am legislative counsel for the Motion Picture Association of America (MPAA), the trade association representing the nation's leading producers and distributors of motion pictures on film, home video, the Internet, satellite, cable, subscription and over-the-air television broadcast. MPAA is a trade association representing the leading producers and distributors of motion pictures in the United States. All MPAA member companies produce and distribute motion pictures for theatrical exhibition and for subsequent release on DVD, videocassette, pay, cable, satellite, Internet and broadcast television. MPAA also administers the Classification and Rating Administration (CARA) which awards the familiar G, PG, PG-13, R, or NC-17 ratings to motion pictures. CARA was established in 1968 to provide parents with information to help them determine which motion pictures their children should see.

The MPAA opposes HB 2835. MPAA supports the right of parents to know and participate in what their children view. However, our concerns relate to the provisions of HB 2835 which incorporate the voluntary Motion Picture rating system into law. We believe incorporating the rating system into law compromises its integrity and has the potential to jeopardize participation by film makers. Moreover, courts have determined that incorporation of the voluntary rating system violates the U.S. Constitution.

Unless a movie meets the definition of obscenity for adults set forth by the Supreme Court in *Miller v. California*, or for minors in *Ginsberg v. New York*, it may not be prohibited. Legislation that utilizes the rating system to prohibit viewing by certain exceeds the parameters of the *Miller* and *Ginsberg* decisions and relies instead on the CARA rating system, violating the Due Process clause as well as the First Amendment to the U.S. Constitution.

I have attached a copy of the MPAA memorandum regarding the issues raised with HB 2835.

For these reasons, MPAA respectfully urge the defeat of HB 2835, or the deletion of references to the MPAA rating system.

House Fed and State Committee  
March 24, 2008



MOTION PICTURE ASSOCIATION  
OF AMERICA, INC.  
1600 EYE STREET, NORTHWEST  
WASHINGTON, D.C. 20006  
(202) 293-1966

## MEMORANDUM IN OPPOSITION TO KANSAS HOUSE BILL 2835

*On behalf of the Motion Picture Association of America, Inc. (MPAA), I am writing to respectfully submit our opposition to House Bill 2835, a bill to create the Sexually Oriented Business Regulation Act. While we have no objection to legislation that regulates these types of businesses, we must oppose the HB 2835 as it incorporates the voluntary Motion Picture rating system in law.*

*MPAA supports the right of parents to know and participate in what their children view we believe incorporating the rating system into law compromises its' integrity and has the potential to jeopardize participation by filmmakers. Moreover, courts have determined that incorporation of the voluntary rating system violates the U.S. Constitution.*

*MPAA\* is a trade association representing the leading producers and distributors of motion pictures in the United States. All MPAA member companies produce and distribute motion pictures for theatrical exhibition and for subsequent release on DVD, videocassette, pay, cable, satellite, Internet and broadcast television. MPAA also administers the Classification and Rating Administration (CARA) which awards the familiar G, PG, PG-13, R, or NC-17 ratings to motion pictures. CARA was established in 1968 to provide parents with information to help them determine their children's viewing.*

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*\*The MPAA members include: Paramount Pictures Corporation; Sony Pictures Entertainment Inc.; Twentieth Century Fox Film Corporation; Universal City Studios LLLP; Walt Disney Studios Motion Pictures and Warner Bros. Entertainment Inc.*

## INCORPORATION OF VOLUNTARY MOVIE RATINGS SYSTEM INTO LAW THREATENS EFFECTIVENESS OF THE SYSTEM

The MPAA and its member companies are concerned that if this proposed statute is enacted, it would seriously erode the effectiveness of the voluntary MPAA-administered Motion Picture Rating System. It is important to recognize that the MPAA Rating System is voluntary and strictly advisory with no force of local, state or federal law. We strongly encourage voluntary enforcement of the MPAA-administered Motion Picture Rating System by theaters, retailers and others. However, CARA would be unable to fulfill its mandate of providing parents with information if it were forced to become part of a state's statutory framework. Tied to government regulation, the rating system could lose its independent ability to respond to changes in social attitudes and judgments in making recommendations about the suitability of motion pictures for particular age groups. Once the rating system becomes subject to state regulation, producers may simply stop submitting their films for rating in order to get around regulation. The movie rating system has stood the test of time and is better left without the force of law imposed by any state.

## UNLAWFUL DELEGATION OF LEGISLATIVE AUTHORITY

House Bill 2835 raises some constitutional concerns because it specifically identifies the MPAA rating system. The incorporation into law of the rating classifications is unconstitutional. Enforcement of the rating system cannot be tied to any governmental body, and identifying the system in the legislation impermissibly puts the government imprimatur on those ratings. Courts throughout the country have invalidated the incorporation of MPAA ratings in a variety of statutory contexts. See Swope v. Lubbers, 560 F.Supp. 1328 (W.D. Mich, S.D. 1983) (use of MPAA ratings was improper as a criteria for determination of constitutional protection); Drive-In Theater v. Huskey, 305 F.Supp. 1232 (W.C.N.C. 1969) *aff'd* 435 F.2d 228 (4<sup>th</sup> Cir. 1970) (sheriff enjoined from prosecuting exhibitors for obscenity based on "R" or "X" rating).

Furthermore, the delegation of legislative authority to any entity such as the MPAA to legally determine which motion pictures may be viewed by segments of the population is a violation of the Due Process clause of the U.S. Constitution. Due Process is violated when a government regulation or

ordinance delegates the regulations for the operation and enforcement of a statute to a body or process that is not subject to narrowly and reasonably drawn definitive standards. The MPAA rating system is a voluntary system not governed by the necessary definitive standards. See Rosen v. Budco, Inc., et al., 10 Phila. 112 (1983); Engdahl v. Kenosha, 317 F.Supp. 1133 (E.D. Wisc. 1970) (criminal statute that prohibited minors from viewing "R" and "X" rated films found to be unconstitutional prior restraint); Motion Picture Association v. Specter, 315 F.Supp. 824 (E.D. Pa 1970) (statute that penalized exhibitors who showed films and previews that were "not suitable" for children as determined by MPAA ratings found unconstitutional for vagueness).

### ONLY MOTION PICTURES FOUND OBSCENE

### OR HARMFUL TO MINORS CAN BE PROHIBITED

Only motion pictures that fall within the narrow definitions of either "obscene" or "harmful to minors" can be prohibited, even to minors, under United States Supreme Court decisions.

The exhibition of a motion picture to an adult may be proscribed only if the motion picture is obscene, which requires a finding that such a film "if taken as a whole, appeals to the prurient interest in sex, portrays sexual conduct in a patently offensive way, and taken as a whole, does not have serious literary, artistic, political or scientific value...", Miller v. California, 413 U.S. 15, 21 (1973). The recent Court ruling in Pope v. Illinois, 481 U.S. 497 (1987) reaffirms Miller.

Regulations pertaining to the exhibition of a motion picture to a minor face similar constitutional scrutiny: it may be proscribed only if the motion picture is "harmful to minors", which requires a finding that the motion picture depicts nudity, sexual conduct, sexual excitement, or sadomasochistic abuse which "predominantly appeals to the prurient, morbid, or shameful interests of minors, which is patently offensive to prevailing standards in the adult community concerning what is suitable for minors and which is utterly without redeeming social importance for minors." Ginsberg v. New York, 390 U.S. 639 (1968).



## INCORPORATION OF MOVIE RATINGS

### SYSTEM CONTRAVENES THE FIRST AMENDMENT

Incorporation of the MPAA Rating System by governmental entities also has serious constitutional problems because it relies on the ratings as a standard to permit or prohibit access to films on videocassette or in the theatre that have received that self-applied classification. Motion pictures are a form of expression which are protected by the First Amendment to the U.S. Constitution, Joseph Burstyn, Inc. v. Wilson, 343 U.S. 495 (1952); Eronoznik v. City of Jacksonville, 422 U.S. 205 (1975); Jenkins v. Georgia, 417 U.S. 153 (1974). As noted above, the exhibition of a motion picture to an adult may be proscribed only if the motion picture is legally found obscene, and in regard to minors, access may be prohibited only if the motion picture is found legally "harmful to minors."

House Bill 2835 is unconstitutional in that it prohibits or permits access to rated movies that are not harmful to minors under the standards enunciated by the Supreme Court in Ginsberg v. New York, 390 U.S. at 629; and are thus protected by the First Amendment. See also Swope v. Lubbers, 560 F.Supp. 1328 (W.D. Mich. S.D. 1983); Engdahl v. City of Kenosha, 317 F.Supp. 1133 (E.D. Pa 1970) Rosen v. Budco, Inc., et al. 10 Phila. at 112 (1983). This statutory prohibition constitutes an impermissible prior restraint of expression and bears a heavy presumption against its constitutional validity. Bantam Books v. Sullivan, 372 U.S. 58 (1963). In Engdahl v. Kenosha, 317 F.Supp. at 1133, the ordinance that similarly prohibited the admission of unaccompanied children to films rated "R" or "X" was stricken.

It is important to keep in mind that the ratings are strictly advisories, and are not determinations that particular motion pictures are obscene or harmful to minors based on aforementioned U.S. Supreme Court decisions.

## CONCLUSION

Unless a movie meets the definition of obscenity for adults set forth by the Supreme Court in Miller v. California, or for minors in Ginsberg v. New York, it may not be prohibited. Legislation that utilizes the rating system to prohibit viewing by certain persons exceeds the parameters of the Miller and Ginsberg decisions and relies instead on the CARA rating system, violating the Due Process clause as well as the First Amendment to the U.S. Constitution.

For these reasons, we respectfully urge that the legislature defeat House Bill 2835.

March, 2008



*Kansas  
Licensed  
Beverage  
Association*

March 24, 2008  
Testimony on HB 2835, House Federal and State Affairs

Mr. Chairman, and Members of the Committee,

I am Philip Bradley representing the Kansas Licensed Beverage Assn., the men and women, in the hospitality industry, who own, manage and work in Kansas bars, breweries, clubs, caterers, hotels and restaurants where beverage alcohol is served. These are the over 3000 places you frequent, enjoy and the tens of thousands of employees that are glad to serve you. Thank you for the opportunity to speak today.

This measure addresses many issues that appear simple on the surface but are very complex when attempting to further expand government regulations. While one may or may not agree with current law and the courts interpretations of that law, those elements together have attempted to find a balance; the very important and critical balance, between individual rights, freedoms and personal responsibilities and the duties of the government to restrict and protect its citizens. Our country is founded on the principles and beliefs that although certain practices and beliefs may not be shared by all and even be disapproved by some, they are worthy of protecting in the greater cause of our rights and freedoms.

These subjects are difficult to discuss objectively, and especially difficult to discuss in a forum such as this on a short schedule. They are embarrassing to many and distasteful to some. These issues are complex and need a thoughtful considered, deliberation before altering the status quo. This measure covers several areas including retail establishments and entertainment venues that may and probably should be considered individually.

These are serious issues and need serious consideration. My members are primarily concerned with the businesses defined in this measure in New Section 3, (c) "*Adult cabaret*" means a nightclub, bar, juice bar, restaurant, bottle club or other commercial establishment, regardless of whether alcoholic beverages are served, which regularly features persons who appear semi-nude...

, and generally limit themselves to those places serving/selling beverage alcohol.

While we couldn't complete a thorough evaluation in the time allowed we have at least the following concerns. And those areas of concern include requiring the changing of floor plans, interior rebuilds, installation of cameras/spying devices, hiring of additional personnel, and new additional operation procedures. With all of these new requirements to be completed within 180 days. We also feel that the word "habitual", leaves it open to subjective and varied interpretations.

We suggest if the committee wishes to pursue this wide reaching and comprehensive act, that a sub-committee be appointed and we offer to work with such a group.

Thank you for your time.

Philip B. Bradley

House Fed and State Committee  
March 24, 2008

*The difficulty in life is the choice*

*. The Bending of the Bough. Act*

Attachment

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CEO  
Philip Bradley

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**Drink Responsibly.**  
**Drive Responsibly.**