



CITY COUNCIL ACTION REPORT

DATE: June 12, 2007

TO: Phillip L. Nelson, City Manager

FROM: Brian P. Murphy, Assistant City Manager/Economic Development Services
Mark F. Miller, Planning Director

SUBJECT: Public Hearing - Zoning Ordinance Text Amendment (File Number: ZOTA 207) –
Articles IV and XXII – Adult Business Uses

Background:

- The Planning Commission held a public hearing for this item at the May 1, 2007 Regular meeting and recommended approval of ZOTA 207.
- Presently, adult use businesses are not regulated by the Zoning Ordinance. The attached map indicates all property currently zoned B-1, B-2, B-3, H-S, O-1, O-M and O-S-C that could be used for adult business uses under current Zoning Ordinance provisions.
- Regulating adult use businesses is complicated by the fact that courts have consistently held that such businesses are engaged in expressive conduct and therefore protected by the First Amendment. Court decisions have determined that communities can regulate these uses based on the secondary effects associated with a concentration of these uses. Specifically, secondary effects include higher crime rates and lower property values.
- A number of communities in the United States have completed studies that document the secondary effects of sexually oriented businesses. The National Law Center for Children and Families prepared summaries of reports prepared by eleven communities in the United States (see attached).
- The draft text amendment defines the types of uses and activities that are considered adult use businesses. These uses would be permitted subject to special use approval in the B-3 district. The standards limit potential sites to those parcels located at least 1000 feet to another adult use business and at least 500 feet from a church, school or childcare facility, public park or any residential zoning district or any parcel used for residential purposes. There are 28 parcels totaling approximately 118.49 acres available to be used for adult business uses.

- This item is tie-barred with the proposed new Chapter 76, Adult Use Business License, of the Code of the City of Troy.

Financial Considerations:

- There are no financial considerations associated with this item.

Legal Considerations:

- City Council has the authority to amend the Zoning Ordinance.

Policy Considerations:

- The proposed amendment is consistent with City Council Goal I (Enhance the livability and safety of the community).

Options:

- City Council can approve, deny or modify the proposed text amendment.

Approved as to form and legality:

Lori Grigg Bluhm, City Attorney

Attachments:

1. Draft ZOTA 207.
2. Letter prepared by L. Brooks Patterson, Oakland County Executive, February 18, 2003.
3. Memo prepared by City Attorneys Office.
4. Summary of reports prepared by the National Law Center for Children and Families.
5. Map: All parcels currently zoned B-1, B-2, B-3, H-S, O-1, O-M & O-S-C.
6. Map: All B-3 zoned parcels in Troy.
7. Map: B-3 zoned parcels not excluded by the proposed ordinance.
8. Minutes from May 1, 2007 Planning Commission Regular meeting.

Prepared by RBS/MFM

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CITY COUNCIL PUBLIC HEARING DRAFT

CITY OF TROY
AN ORDINANCE TO AMEND
CHAPTER 39 OF THE CODE
OF THE CITY OF TROY

The City of Troy ordains:

Section 1. Short Title

This Ordinance shall be known and may be cited as an amendment to Chapter 39 of the Code of the City of Troy.

Section 2. Amendment to Article IV and Article XXII of Chapter 39

Article IV – “Definitions” and Article XXII – “B-3 General Business District” of Chapter 39 of the Code of the City of Troy are hereby amended to provide definitions and to regulate adult use businesses by special use approval in the B-3 General Business subject to specific conditions and requirements.

Article IV is amended by the addition of the following new sections:

ARTICLE IV – DEFINITIONS

04.20.04A ADULT ARCADE: An establishment where, for any form of consideration, one or more still or motion picture projectors, slide projectors, compact discs or similar machines, or other image producing machines, (whether coin-operated, slug-operated or electronically, electrically, internet or mechanically controlled), for viewing by five (5) or fewer persons each, are used to show films, motion pictures, video cassettes, compact discs, slides or other photographic reproductions which are characterized by the depiction or description of “specified sexual activities” or “ specified anatomical areas”.

04.20.04B ADULT BOOK STORE, ADULT NOVELTY OR RETAIL STORE OR ADULT VIDEO STORE:

- 1. An establishment which, as one of its principal business purposes, offers any one or more of the following for sale, rental, or viewing at the site, for any form of consideration:**
 - a. Books, computer diskettes, tapes or hard drives, magazines, periodicals or other printed material, films, motion picture, video cassettes or video reproduction, slides or other visual representations which depict or describe “specified sexual activities” or “specified anatomical areas”; and/or**

- b. Instruments, devices, or paraphernalia which are designed for use in connection with "specified sexual activities"; and/or
- c. Items, materials, gimmicks, or paraphernalia depicting, displaying, advertising or packaged as "specified sexual activities" or depicting or describing "specified anatomical areas".

2. For purposes of this section, "principal business purpose" means:

- a. The devotion of a significant or substantial portion of its stock-in-trade or interior floor space; or
- b. The receipt of a significant or substantial portion of its revenues from; or
- c. The devotion of a significant or substantial portion of its advertising expenditures to the promotion of the sale, rental or viewing, of books, magazines, periodicals or other printed matter, or photographs, film, motion pictures, video cassettes, compact discs, slides or other visual representations, items, materials, gimmicks, or paraphernalia which are characterized by the depiction, description display, advertising or packaging of "specified sexual activities" or "specified anatomical areas".

3. An establishment may have other principal business purposes that do not involve the offering for sale, rental or viewing of materials depicting or describing "specified sexual activities" or "specified anatomical areas", and still be categorized as an adult bookstore, adult novelty or retail store or adult video store. Such other business purposes will not serve to exempt such establishment from being categorized as an adult bookstore, adult novelty store or adult video store, so long as the establishment falls within the definition of an adult bookstore, adult novelty store or adult video store as set forth above.

04.20.04C ADULT CABARET: A nightclub, club, bar, restaurant or similar commercial establishment which features one or more of the following:

- 1. Person(s) who appears nude or in a state of nudity or semi-nudity;
- 2. Live performances which are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities";
- 3. Films, motion pictures, video cassettes, compact discs, slides or other photographic reproductions which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas".

04.20.04D ADULT MOTEL: A motel, hotel or similar commercial establishment which:

- 1. Offers accommodations to the public for any form of consideration and provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, compact discs, slides or other photographic reproductions which are characterized by the depiction or description of "specified sexual activities" or

“specified anatomical areas” and which advertises the availability of this adult type of material by means of a sign, visible from the public right of way, or by means of any off-premises advertising, including but not limited to newspapers, magazines, pamphlets or leaflets, radio or television; and/or

2. Permits patrons to be filmed or photographed performing sexually explicit activities or displaying “specified anatomical areas”, including transmission over the World Wide Web; and/or
3. Offers a sleeping room for rent for intervals of time less than ten (10) hours; and/or
4. Allows a tenant or occupant to subrent a sleeping room for intervals of less than ten (10) hours.

04.20.04E ADULT MOTION PICTURE THEATER: A commercial establishment where films, motion pictures, video cassettes, compact discs, slides of “specified sexual activities” or depictions or descriptions of “specified anatomical areas” are regularly shown for any form of consideration.

04.20.04F ADULT THEATER: A theater, concert hall, auditorium or similar commercial establishment which, for any form or consideration, regularly features persons who appear in a state of nudity or live performances which are characterized by exposure of “specified anatomical areas” or by “specified sexual activities.” This definition does not include a theater which features occasional live nude performances with serious literary, artistic, or political value and that have no adverse secondary effects.

04.20.04G ADULT USE BUSINESS: An adult arcade, adult bookstore, adult novelty or retail store, adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, escort agency, nude modeling studio and/or a sexual encounter establishments and any business determined by the Planning Director to be an adult use, due to the activities of the business which involve characteristics of adult uses, such as nudity, semi-nudity, exposure of “specified anatomical areas” and/or “specified sexual activities”. The definition of “adult use business” shall not include an establishment where a medical practitioner, psychologist, psychiatrist or similar professional person licensed by the State engages in medically approved and recognized sexual therapy.

04.20.46A EMPLOYEE: A person who works or performs in and/or for an adult use business, regardless of whether or not said person is paid a salary, wage or other compensation by the operator of said business.

04.20.46B ENTERTAINER: A person who performs some type of activity or pose with the intent of allowing others to witness that activity or pose.

04.20.46C ENTERTAINMENT: A performance of some type of activity, including, but not limited to, singing, dancing, acting, mime, comedy, recitations, demonstrations, magic tricks, modeling, posing, exhibition, with or without inanimate objects or animals, with the intent of allowing others to witness that activity in live or reproduced format.

- 04.20.50 ESCORT: A person who, for consideration in any form, agrees or offers to act as a companion, guide, or date for another person, (or who agrees to privately perform as an entertainer, including but not limited to, the modeling of lingerie, the removal of clothing, and the performance of a dance or skit. Under this definition, "privately" shall mean a performance for an individual and, that individuals guests.
- 04.20.50A ESCORT AGENCY: A person or business that furnishes, offers to furnish or advertises the furnishing of escorts as one of its primary business purposes, for a fee, tip or any other form of consideration.
- 04.20.54 ESTABLISHMENT: In regard to an adult use business, means and includes any of the following:
1. The opening or commencement of any such business as a new business;
 2. The conversion of an existing business, whether or not an adult use business, to any adult use business;
 3. The addition of any adult use business activities to any other existing adult use business; or
 4. The relocation of an adult use business.
- 04.20.76 LICENSEE: The individual listed as an applicant on the application for an adult use business license, or a person in whose name a license to operate an adult use business has been issued.
- 04.20.76A LICENSING OFFICER: The Clerk of the City of Troy or his/her designee.
- 04.20.104 MANAGER: An operator, other than a licensee, who is employed by an adult use business to act as a manager or supervisor of employees, or is otherwise responsible for the operation of the adult use business.
- 04.20.114A NUDE MODELING STUDIO: Any place where a person appears in a state of nudity or displays "specified anatomical areas", and is provided money or any form of consideration to be observed, sketched, drawn, painted, sculpted, photographed or similarly depicted by other persons. This includes modeling studios that provide for nude modeling on an occasional basis, but it does not include modeling studio whose primary function is to provide art classes as part of a college, university or educational institution and which is certified by the State of Michigan.
- 04.20.114B NUDITY OR STATE OF NUDITY:
1. The exposure of human male or female genitals, pubic area, buttocks, anus or the areola or nipple of the female breast; and/or
 2. A state of dress which fails to opaquely and fully cover human male or female genitals, pubic area, buttocks, anus or the areola or nipple of the female breast.

- 04.20.121A OPERATOR: Includes the owner, licensee, manager, or person in charge of any premises.
- 04.20.122A PEEP BOOTH: An adult motion picture theater with a viewing room or cubical of less than one hundred fifty (150) square feet of floor space.
- 04.20.124A PERSON: An individual, proprietorship, partnership, corporation, limited liability company, association or other entity.
- 04.20.127A PREMISES OR LICENSED PREMISES: Any premises that requires an adult use license and that is classified as an adult use business.
- 04.20.127B PRINCIPAL OWNER: Any person owning, directly or beneficially: a) ten percent (10%) or more of a corporation's equity securities; b) ten percent (10%) or more of the membership interests in a limited liability company; or c) in the case of any other entity, ten percent (10%) or more of the ownership interests in the entity.
- 04.20.127C PRIVATE ROOM: A room in a hotel/motel that is not a peep booth, has a bed, a bathtub, a shower, a toilet and/or a sink in the room or adjacent room, and is used primarily for lodging.
- 04.20.128A SEMI-NUDE: A state of dress in which clothing covers no more than the genitals, pubic region, and areola of the female breast, as well as portions of the body covered by supporting straps or devices.
- 04.20.130A SEXUAL ENCOUNTER ESTABLISHMENT: A business or commercial establishment that as one of its primary business purposes, offers a place where two (2) or more persons may congregate, associate, or consort for the purpose of "specified sexual activities" or the exposure of "specified anatomical areas" or any activities when one or more of the persons is in a state of nudity or semi-nudity and/or permits patrons to display or be filmed or photographed performing "sexually explicit activities" or displaying "specified anatomical areas" for recording or transmission over the World Wide Web or any other media, for any form of consideration. A hotel/motel will not be classified as a sexual encounter establishment, by virtue of the fact that it offers private rooms for rent.
- 04.20.132A SPECIFIED ANATOMICAL AREAS:
1. Less than completely and opaquely covered human genitals, pubic region, buttocks, anus or female breasts below a point immediately above the top of the areola; and/or
 2. Human male genitals in a discernibly turgid state, even if completely and opaquely covered.
- 04.20.132B SPECIFIED CRIMINAL ACTS: Sexual crimes against children, sexual abuse, criminal sexual conduct, rape, crimes classified as sexual crimes by the State of Michigan or any other state, or crimes connected with another adult use business, including but not limited to, the distribution of obscenity, prostitution and/or pandering.

04.20.132C SIGNIFICANT OR SUBSTANTIAL PORTION: Means thirty (30) percent or more of the term modified by such phrase.

04.20.133C SPECIFIED SEXUAL ACTIVITIES:

1. The fondling or other intentional touching of human genitals, pubic region, buttocks, anus or female breasts: and/or
2. Sex acts, actual or simulated, including but not limited to, intercourse, oral copulation or sodomy; and/or
3. Masturbation, actual or simulated; and/or
4. Human genitals in a state of sexual stimulation, arousal or tumescence; and/or
5. Excretory functions as part of or in connection with any of the activities set forth in subsections (1) through (4) of this definition.

04.20.146 TRANSFER OF OWNERSHIP OR CONTROL OF AN ADULT USE BUSINESS:

1. The sale, lease or sublease of the business; and/or
2. The transfer of securities which constitute a controlling interest in the business, whether by sale, exchange or similar means; and/or
3. The establishment of a trust, management arrangement, gift or other similar legal device which transfers ownership or control of the business, except for transfer by bequest or other operation of law upon the death of a person possessing the ownership or control.

Article XXII is amended by the addition of the following new section:

ARTICLE XXII – GENERAL BUSINESS DISTRICT

22.30.08 Adult use business, as defined in this section, shall be permitted subject to the conditions set out herein:

- A) The purpose and intent of this section is to regulate adult use businesses, to promote the health, safety, morals and general welfare of the citizens of the City, and to establish reasonable and uniform regulations to prevent the deleterious location and concentration of adult use businesses within the City, thereby reducing or eliminating the adverse secondary effects from such adult use businesses. The provisions of this section have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including adult materials. Similarly, it is not the intent nor effect of this section to restrict or deny access by adults to adult materials protected by the Constitution of the United States or the Michigan Constitution, or to deny access

by the distributors and exhibitors of adult entertainment or adult use businesses to their intended market. It is also not the intent nor effect of this section to condone or legitimize the distribution of obscene material.

- B) It shall be unlawful to operate or cause to be operated an adult use business in any location in the City, except as provided in Troy's Zoning Ordinance, Chapter 39, Article XXII, Section 22.30.08 of the Code of Ordinances.
- C) It shall be unlawful to operate or cause to be operated an adult use business within five hundred feet (500'), measured from the nearest lot line to the nearest lot line on a straight-line basis, of any of the following:
1. A church;
 2. A school or childcare facility;
 3. A public park (not including public trails);
 4. Any residential zoning district or any parcel used for residential purposes.
- D) It shall be unlawful to cause or permit the operation of an adult use business within one thousand feet (1,000') of another adult use business. The distance between any such businesses shall be measured from the nearest lot line to the nearest lot line on a straight-line basis.
- E) It shall be unlawful to cause or permit the operation or maintenance of more than one adult use business in the same building, structure or portion thereof.
- F) All off street parking areas and entry door areas of adult use businesses shall be illuminated from dusk until the closing time of the business with a lighting system which provides an average maintained horizontal illumination of one foot-candle of light on all parking surfaces and/or walkways. This requirement level is to help ensure the personal safety of patrons and employees and to reduce the incidence of vandalism and other criminal conduct.
- G) The premises of all adult use businesses, except adult motion picture theaters, shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place where patrons are permitted, at an illumination level of not less than two (2) foot-candles of light, as measured at the floor level.
- H) Adult motion picture theaters shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place where patrons are permitted at an illumination level of not less than one foot-candle of light, as measure at the floor level.
- I) No person shall conduct an adult use business without first having obtained an annual adult use business license from the City.

- J) No person(s) shall reside on or permit any other persons to reside on the premises of an adult use business.
- K) All adult use businesses shall be subject to the same requirements of the Zoning Ordinance.
- L) An adult use business lawfully operating is not rendered a nonconforming use by the subsequent location of a church, school, childcare facility, public park, residential district, or a residential lot within five hundred feet (500') of the adult use business. However, if the adult use business ceases operation for a period of one hundred eighty (180) days or more, regardless of any intent to resume operation, it may not recommence operation in that location, unless it achieves conformity with the City of Troy Ordinances.

Section 3. Savings

All proceedings pending, and all rights and liabilities existing, acquired or incurred, at the time this Ordinance takes effect, are hereby saved. Such proceedings may be consummated under and according to the ordinance in force at the time such proceedings were commenced. This ordinance shall not be construed to alter, affect, or abate any pending prosecution, or prevent prosecution hereafter instituted under any ordinance specifically or impliedly repealed or amended by this ordinance adopting this penal regulation, for offenses committed prior to the effective date of this ordinance; and new prosecutions may be instituted and all prosecutions pending at the effective date of this ordinance may be continued, for offenses committed prior to the effective date of this ordinance, under and in accordance with the provisions of any ordinance in force at the time of the commission of such offense.

Section 4. Severability Clause

Should any word, phrase, sentence, paragraph or section of this Ordinance be held invalid or unconstitutional, the remaining provision of this ordinance shall remain in full force and effect.

Section 5. Effective Date

This Ordinance shall become effective upon the adoption, publication and effective date of amendments to Chapters 3, 60, and the enactment of Chapter 76 relating to Adult Business Uses.

This Ordinance is enacted by the Council of the City of Troy, Oakland County, Michigan, at a regular meeting of the City Council held at City Hall, 500 W. Big Beaver, Troy, MI, on the _____ day of _____, _____.

Louise Schilling, Mayor

Tonni Bartholomew, City Clerk

RECEIVED

February 18, 2003

FEB 20 2003

CITY OF TROY
CITY MANAGER'S OFFICE

Mayor Matt Pryor
City of Troy
500 West Big Beaver Road
Troy MI 48084-5285

Dear Mayor Pryor:

As you can see from the attached article in the Oakland Press from February 16, 2003, Oakland County's 61 communities are free of the scourge of topless bars, x-rated theaters, and massage parlors. This is no accident. Back in the 70's, while I was Prosecutor, with the support of several local communities, we waged a successful campaign to rid the community of this blight in our neighborhoods.

We still enjoy the fruits of our combined efforts even to this day.

However, it is inevitable that what has become a cottage industry in Wayne County will begin to spill over into Oakland County if we are not careful. The smut peddlers and the topless bar entrepreneurs continue to cast a wishful eye on Oakland County and its communities:

Our communities are a natural target. We are safe, we are wealthy, and we have no adult forms of entertainment presently thriving within our 910 square miles.

With this letter I am encouraging you, as the elected leader in your community, to review with your city or township attorney the status of your ordinances that prohibit adult forms of entertainment. There no doubt will be a probe coming in the not-too-distant future, and we should be ready for that assault. You may wish to have your attorney update your local ordinances, if it is called for, including but not limited to x-rated movie houses, massage parlors, adult bookstores, and topless bars. The Liquor Control Commission can be a valuable ally in this regard as well.

If we at the County can be of any service, please do not hesitate to contact us.

Very truly yours,



L. Brooks Patterson
Oakland County Executive

LBP/ks
Enclosure

c: J Szerlag
~~Bob~~
G. Shripka



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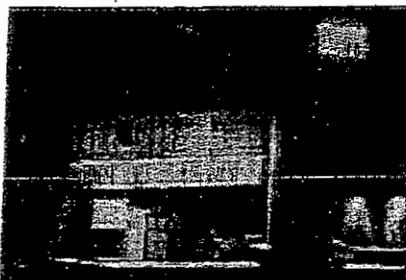
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Main Page

How Oakland chased away the skin trade

By JOHN WISELY, Of The Oakland Press

02/16/2003



Trumpps is a strip club on the Wayne County side of Eight Mile Road in Detroit, just east of Lahser Road. Oakland Press photo/JOSE JUAREZ

February 16, 2003

Oakland County is home to more than a million people and more than 59,000 businesses. And there isn't a strip joint to be found. Elsewhere in the state, the skin trade has local officials in turmoil. In Detroit, they worry that a new topless bar slated for Grand River Avenue will detract from downtown redevelopment.

In Lansing, the state Liquor Control Commission has introduced a new rule to ban "lap dancing."

So how did Oakland County escape all this?

"Oakland County has good ordinances," said John L. Hamilton of Northville, who operates four topless clubs in Wayne County. "I'd love to have one in Oakland County. But it would take too much money to fight Oakland."

Eight Mile Strip

Michigan Liquor Control Commission statistics show Wayne County leads the state with 43 topless activity permits, including five along the south side of Eight Mile Road facing Oakland County.

Macomb, Livingston and Genesee counties each have at least one such establishment. Even Kent County in western Michigan, known for its conservative voting habits, has two in Grand Rapids. But Oakland County has not a one.

"With all due humility, I'll take a bit of a bow on that statistic," said county Executive L. Brooks Patterson. "I fought long and hard to rid the county of topless bars and X-rated movies, not because I was a prude but because it's a quality-of-life issue."

As prosecutor in the late 1970s and 1980s, Patterson cracked down on such establishments. Police arrested nude dancers and confiscated pornographic films. Prosecutors charged them with obscenity, being disorderly persons and nuisances.

"I would remind some of my critics in the Religious Right that I have been carrying the banner on a lot of their issues for a long time," said Patterson.

When he was leader of the county Republican Party, Patterson came under fire from religious conservatives who said his efforts to woo moderates caused him to go soft on moral issues.

Patterson insists his principles haven't changed.

The closest thing

While Oakland County has no topless bars, a demand persists for adult entertainment, and creative club owners have found ways to tap into it.

Local leaders also have kept close tabs on such establishments.

When a new bar opened in downtown Pontiac last month, owners wanted to call it Sin.

The bar features a \$100 admission VIP room where guests can watch women in swimsuits take showers. The bar opened on time, but Mayor Willie Payne objected to its name, and owners agreed to change the name to Sevin.

Larry Dixon has run Shenanigans, a "bikini dance bar" on Kennett Street just off Oakland Avenue in Pontiac, for years. Women in swimsuits dance on stage and work throughout the bar, which caters mostly to a blue-collar crowd.

"They're scantily clad, but they're not undressed," Dixon said. "It's always been a good business."

Dixon said that, at one time, he tried to get a topless license for his bar. He said he never wanted to operate it that way himself, but thought it would be worth more when he sold it if it had a topless license.

City officials protested, and he gave up his fight. Dixon believes he could have prevailed in court, but the legal fight would have been expensive.

"I'm not a sex salesman," Dixon said. "I never wanted to do topless, myself. If a person did it now, it would probably be too expensive."

Still, Dixon said, a topless bar in Oakland County would be a moneymaker for its owner, despite opposition in some quarters.

"Oakland County is pretty affluent," Dixon said. "They look down their nose on it. They'd rather have something illicit somewhere else. They don't want their sons going to it."

Dixon said he battles

constantly with the city, which has cited him for liquor violations. He has also sued Pontiac, claiming police officers beat him in his bar during a raid. The suit is pending.

"I've lost my will to be in Pontiac," Dixon said.

In Oxford, the owners of Zim's Diner and Irish Tavern sparked similar controversy with "Coyote Girls" shows, which featured dancers in bras and G-strings gyrating against poles in the bar.

The Liquor Control Commission later revoked the liquor license for the establishment, and it closed.

Still, such shows are tame compared with the kind that flourished in the 1970s and 1980s.

'A no-no'

If Oakland County had a father of exotic entertainment, it was Benjamin Bundo. The hard-driving Army veteran started with a 12-lane bowling alley on Maple Road in Walled Lake in 1957. Eight years later, he converted it to the Camelot Inn and ushered in an era of jazz, show tunes and country western entertainment.

In late January 1972, as President Richard Nixon was preparing for his historic visit to open the door to China, Bundo made a little history on his own. In Walled Lake, Bundo opened the door to topless dancing.

Within two weeks, city officials were in court trying to button up exotic entertainment.

Bundo responded by expanding his hours and placing a sign on his marquee that asked: "Are we a no-no?"

For a few years, the answer seemed to be, well, no. The following year, Bundo put male dancers on stage.

"The place was packed," Bundo later told The Oakland Press in an interview. By 1975, dancers were completely nude on stage.

The Liquor Control Commission responded with a rule that banned below-waist nudity in bars and taverns.

Stage and screen

As local authorities battled Bundo, other establishments began popping up.

In February 1980, much of the nation was watching the Winter Olympics on television, including the "Miracle on Ice" victory of the American Hockey team over the famed Soviets.

That same month, the Northcrest Cinema opened on Tienken Road in Avon Township, featuring less wholesome fare. The first two movies to appear on the screen were "Deep Throat," which had been around for years, and "Devil in

Miss Jones."

Community outrage mounted immediately. Some 220 people picketed outside the theater. Patterson asked a court to shut the place down, saying the movies violated Michigan obscenity laws. But a few months later, when a jury found theater managers innocent, the protests subsided and the shows went on.

Wednesday nights became "amateur night." Women would dance naked for a chance to win \$100 for first place and lesser amounts for place and show.

Police at the time doubted the amateur status of the dancers, saying they were paid for their performances and traveled a circuit of similar establishments.

The Studio North in Ferndale and the Cabaret in Southfield offered similar fare.

Cracking down

State liquor control commissioners had revoked Bundo's liquor license in 1979. He continued his shows and, officially at least, served juice and soft drinks to patrons. But, gradually, his business was beginning to feel the effects of the law enforcement efforts.

In 1981, Bundo pleaded guilty to five violations of state liquor laws and was fined \$750. The Supreme Court refused to hear a lawsuit Bundo filed contesting the revocation of his liquor license. He then converted the place into a video arcade for teens.

Within two years, he closed the doors on the arcade business. Bundo died in June 1986 at age 59.

Sheriff's Lt. Mark Newman was a young detective working at the Rochester Hills substation and assigned to the Northcrest Cinema case. He and some older detectives sat in the theater on a Wednesday night, watching the movies and the live dancers perform. While the older detectives were taking in the show, Newman kept busy.

"I'm in there taking notes on the performances because we had to document the violations," he said.

Newman wrote down what kind of scenes appeared on screen and logged the running time of the movie. He wrote out longhand, in detail, the movements and actions of the dancers.

"When I came back to the prosecutor's office, they loved my report, and that launched my career as a porn investigator," Newman said. "I did this for, like, six months, every week. My wife wanted to divorce me."

In February 1984, Newman and other detectives arrested dancers in various stages of undress and cited them this time for disorderly conduct and being a public nuisance. Theater crowds booed the cops and jeered the whole process.

to rely on the courts to define obscenity.

'The only county'

In March 1984, Circuit Judge Hilda Gage issued a restraining order barring the Northcrest from: "Conducting, maintaining, permitting or allowing persons to gather and engage in indecent or obscene conduct."

In May of that year, a porn star named Hyapatia Lee hoped to dance naked at the Northcrest to hype the world premiere of her movie, "Body Girls."

But when a federal judge refused to overrule Gage's restraining order, Lee's lawyer, Stephen Taylor of Southfield, advised her to keep her clothes on.

"I've been doing this for three years, and this is the first time anyone has tried to stop me," Lee told The Oakland Press in an interview at the Federal Courthouse in Detroit.

The following year, the courts dealt two legal setbacks to law enforcement officials.

In the course of one week in October 1985, a federal judge ruled Michigan's obscenity law unconstitutionally vague, and the Michigan Court of Appeals overturned Gage's restraining order that halted the dancing at the Northcrest.

"This kind of dancing has been going on all over the state," Taylor said at the time. "The only county that I know of that has attempted to use the statute is Oakland County."

Zoned out

Meanwhile, cities worked to restrict adult entertainment through zoning laws. Rochester Hills passed an ordinance after the theater opened that restricted where adult entertainment facilities could operate.

The Northcrest was allowed to stay open but wasn't allowed to remodel or expand because it didn't conform with the zoning ordinance. When the city denied permits for a renovation, theater operators sued in federal court. U.S. District Judge Horace Gilmore dismissed the suit, saying the theater was in violation of zoning ordinances.

Other cities followed suit, limiting how close an adult establishment could operate in proximity to schools, churches, parks and other adult entertainment businesses.

Bloomfield Township effectively banned adult entertainment by requiring all applications to receive approval from police.

"So far, we've never had one allowed," bragged then-Police Chief Donald Zimmerman in 1991.

More than a decade later, that still holds true.

Ken Wozniak, manager of Executive Services Division of the Liquor Control

Commission, said the state grants topless activity permits, but it defers to local communities.

"Local governments are allowed to further restrict it," he said. "That permission is allocated to them specifically in the Liquor Control Act. We can't issue it if the local government disapproves."

The VCR

Adult movie theaters sparked similar protests but were more difficult for local governments to regulate because they didn't serve liquor.

The Campus Theater in Pontiac, the Keego Cinema and others across the county were ticketed for showing pornographic movies. But they typically prevailed on First Amendment grounds when the cases went to court.

Taylor, representing strippers from the Northcrest, said the decline of X-rated movie houses had more to do with the increasing popularity of the VCR than the efforts of police and community activists.

"It's a question of economics," he said. "If someone wants to see a movie, they can go rent it and enjoy it at home. Now with the Internet, they can get whatever they want."

Encore?

So, could topless dancing or other adult entertainment return to Oakland County?

Most people in the club business say probably not.

John Hamilton said if someone wanted to legally challenge the zoning restrictions and other ordinances that work against such establishments, they could probably prevail. But the legal fees would be enormous.

"It would take too much money," Hamilton said.

Dixon said strip club operators in New York and Las Vegas have approached him about turning Shenanigans into a topless bar, but he wasn't interested.

Along with the local politicians, community activists, clergy and other groups would rally to oppose the proposition, he said.

"Topless bars, the deck is stacked against them," Dixon said.

Taylor said they face too much competition. Adult entertainment is available on video and on the Internet. Across the river in Canada, strip clubs feature full nudity, and the exchange rate on the American dollar makes it cheaper.

"The go-go bar is a dying breed," Taylor said.

That's just fine with otherwise pro-business Patterson. He said he saw the first ones open in Detroit in the 1960s and thought they would only bring trouble.

They spread quickly.

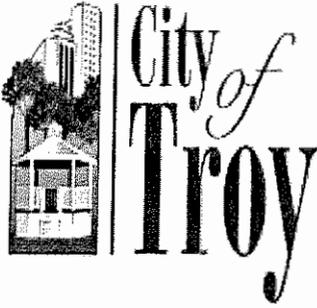
"Unfortunately, Wayne County didn't get on it quick enough, and now they've got a lot of them," Patterson said. "They'll have a hell of time getting rid of them now."

Patterson credits local residents with driving the skin trade out of Oakland County.

"You've got to give them credit - they rose up," Patterson said.

"They didn't want it here. What we are is a county that is interested in healthy entertainment. If we had not done it, I don't think Oakland County would be the kind of place it is now. We're definitely better off."

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TO: Planning Commission
FROM: Susan M. Lancaster, Assistant City Attorney
DATE: November 22, 2006
SUBJECT: Adult Use Businesses - Zoning

The following information is a very brief summary of pertinent cases that have established the law regarding adult use businesses. There are numerous cases with different factual issues in this area of the law. It would be impossible to summarize all of them. However, there are some basic general principles that are pronounced by the courts in pivotal cases.

Adult uses are afforded First Amendment protection as free speech and communication. An ordinance can regulate content only not expression. A city must articulate a reason for adoption of a non-content based ordinance. That reason must not be related to the suppression of public expression. Secondary effects of adult businesses on a community have been held by the courts to be a substantial government interest. Therefore, adult use businesses can be regulated. The basic regulatory options available to a city include zoning, licensing, nuisance abatement, conventional law enforcement (laws against prostitution, drug use, criminal sexual conduct, obscenity and other crimes) and the banning of nudity. Content-neutral public nudity ordinances which incidentally impact protected expression will be upheld if they (1) are within the constitutional power of the government to enact; (2) further a substantial government interest; (3) are unrelated to the suppression of free expression; and, (4) restrict First Amendment freedoms no greater than necessary to further the government interest. *United States v. O'Brien*, 391 U.S. 367, 88 S. Ct. 1673, 20 L. Ed. 2d 672 (1968).

Generally, nudity is banned in establishments that hold liquor licenses pursuant to MCLA 436.1916. The United States Supreme Court in *Barnes v Glen Theater, Inc.*, 501 U.S. 560, 111 S. Ct. 2456, 115 L. Ed. 2d 504 (1991) upheld an Indiana ordinance which banned nudity by requiring that all dancers wear pasties and a G-string. After the *Barnes* case was decided, Michigan adopted MCLA 117.5h allowing a city to ban nudity by ordinance in all establishments whether or not they serve liquor. There has been no constitutional challenge to MCLA 117.5h, however, an ordinance with similar language has been held to be overboard. *City of Erie v Pap's AM*, 529 U.S. 277, 120 S. Ct. 1382, 146 L. Ed. 3d 265 (2000).

Zoning cannot be used to ban adult use businesses from a community. Cities can regulate adult uses by zoning them to a specific location. Further, a city cannot adopt an ordinance which has the effect of banning all adult uses from its boundaries, for example, by forcing them into zoning districts which are fully occupied. The courts will make a finding that an ordinance is unconstitutional if it has not provided for reasonable alternative avenues of communication. In other words, that there are a reasonable number of sites within the city to locate adult use businesses.

Having stated these general principals, it is important to know that there have been many constitutional challenges to a wide variety of ordinances regulating adult uses. Therefore, the courts analyze each ordinance to make sure it does not suppress free expression.

The case which is the foundation for the zoning of adult use businesses is the United States Supreme Court case of *Young v. American Mini Theatres, Inc.*, 427 U.S. 50, 96 S. Ct. 2440, 49 L. Ed. 2d 310 (1976). That case was a challenge to an anti-skid row ordinance adopted by the City of Detroit, which provided that adult theaters could not be located within 1,000 feet of any two other "regulated uses" or adult type uses or within 500 feet of a residential area. The ordinance also defined "regulated uses" to include adult bookstores, cabarets, bars, taxi dance halls and hotels. The Supreme Court held that a city had the power to classify adult entertainment businesses by the content of the movies, performances, books, magazines or pictures that are displayed. It also held that the city had the right to disperse the classified businesses by specifying minimum distances between them and other identified land use. The Court noted that when adopting the ordinance, Detroit Common Council made a finding that some uses of property are especially injurious to a neighborhood when they are concentrated in limited areas. The ordinance also recognized that some uses by their very nature are recognized as having serious objectionable operational characteristics that have a deleterious effect upon the adjacent areas. The ordinance was necessary to insure that the adverse effects will not contribute to the blighting or downgrading of the surrounding neighborhood. The ordinance did not ban regulated uses but rather allowed reasonable alternative locations for such uses.

In *City of Renton v Playtime Theaters*, 475 U.S. 41, 106 S. Ct. 925, 89 L. Ed. 2d 29 (1986), the United States Supreme Court upheld Renton's zoning ordinance that defined and dispersed adult motion picture theatres, even though Renton had no such business within its boundaries. Unlike Detroit, Renton had done no independent studies regarding deleterious effects on the community and had no experience with a skid row concentration of adult entertainment businesses. The Supreme Court held that Renton could rely on the studies and experience of other cities to establish the intent of the ordinance to prohibit secondary effects of adult business uses.

One of the most recent adult use business case considered by the United States Supreme Court is *City of Littleton, Colorado v. Z.J. Gifts D-4, L.L.C.*, 541 U.S. 774, 124 S. Ct. 2219, 159 L.Ed.2d 84 (2004), the Supreme Court upheld an adult uses licensing and zoning ordinance. That ordinance required that any adult use business, including bookstores, novelty stores or video stores with a "substantial portion" of their inventory, floor space, revenue, or advertising expenditures dedicated to, or derived from, sexually explicit materials, locate in a specific zoning district, and at least 500 feet away from churches, residential districts and day-care centers. Z.J. Gifts claimed that the definition of "adult bookstore, adult novelty store or adult video store" was unconstitutionally vague. It also claimed that the ordinance did not provide sufficient zoning sites for adult businesses. The Supreme Court rejected these claims but did hold that Z.J. Gifts' due process rights were violated by the lengthy administrative delays under its adult use business licensing ordinance. During litigation, Littleton amended its ordinance to provide for prompt planning and licensing review with an appeals procedure.

Since *Littleton*, the United States District Court for M.D. Florida, Orlando Division, in the case of *Daytona Grand, Inc. v. City of Daytona Beach*, 410 F. Supp. 2d 1173 (2006) ruled that a public nudity ordinance was unconstitutional. Although, the city presented a substantial amount of evidence in the form of studies of secondary effects of adult use businesses, the Plaintiff presented its own studies, which contradicted the city's studies and concluded that nude dancing was not the source of crime or secondary effects. The court reasoned that the city had the opportunity to

undermine the methodology of the Plaintiff's experts but did not do so. Therefore, the city failed to meet its burden of proving that it had a substantial government interest in adopting the ordinance.

Recently, the United States District Court for the Eastern District of Michigan in *Jo-Bet, Inc. v. City of Southgate*, 415 F. Supp. 2d 725 (2006), upheld all provisions of the Southgate ordinance that provided for a content-neutral ordinance defining adult use businesses and location requirements. However, the court also held that part of Southgate's adult use business ordinance was unconstitutional because it was overbroad. The court stated that although a city could ban nudity, it must do so without the suppression of expression. The court held that the ordinance was unconstitutional since it prohibited "all public nudity, including live performances with serious literary, artistic, or political value". The court made reference to such live plays as *Hair* and *Equus*. We have taken the *Jo-Bet* case into consideration in designing the proposed Troy ordinance.

Due to the ever changing culture of adult use businesses, designing a zoning ordinance requires contemplation of current adult use businesses and trends of future adult uses. While writing an ordinance, it is important to keep in mind that the purpose is not to suppress First Amendment protected speech and expression but to control secondary effects on the community. The city must provide reasonable alternative means within the city for the inclusion of adult use businesses. It is also important to draft an ordinance which is not overbroad. There are many activities that are First Amendment protected artistic expressions and do not have secondary effects on a community. If an ordinance has the effect of prohibiting those activities, the courts, using a strict scrutiny test, will declare an ordinance unconstitutional as suppression of free speech.

The summary of cases about only presents a portion of analysis done by the various courts. If anyone would like to read the case, please contact me and I will provide you with a copy. Also, if you have any questions concerning this issue please feel free to call me.



“NLC”

**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. *Tucson, Arizona*
2. *Garden Grove, California*
3. *Ellicottville, New York*
4. *New York, New York*
5. *Times Square, New York*
6. *Oklahoma City, Oklahoma II*
7. *Cleburne, Texas*
8. *Dallas, Texas*
9. *Houston, Texas II*
10. *Newport News, Virginia*
11. *St. Croix Co., Wisconsin*



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
ELLCOTTVILLE, 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
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 ARIL, 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 1993¹ 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.

¹ 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 1⁴, 1975).



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
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
HOUSTON, TEXAS II
LAND USE STUDY
DATED JANUARY 7, 1997

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 (V IP 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 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
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.

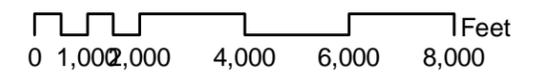


ZONING ORDINANCE TEXT AMENDMENT (ZOTA 207)
PROPERTY POTENTIALLY
AVAILABLE FOR ADULT USE BUSINESSES
UNDER EXISTING ORDINANCE

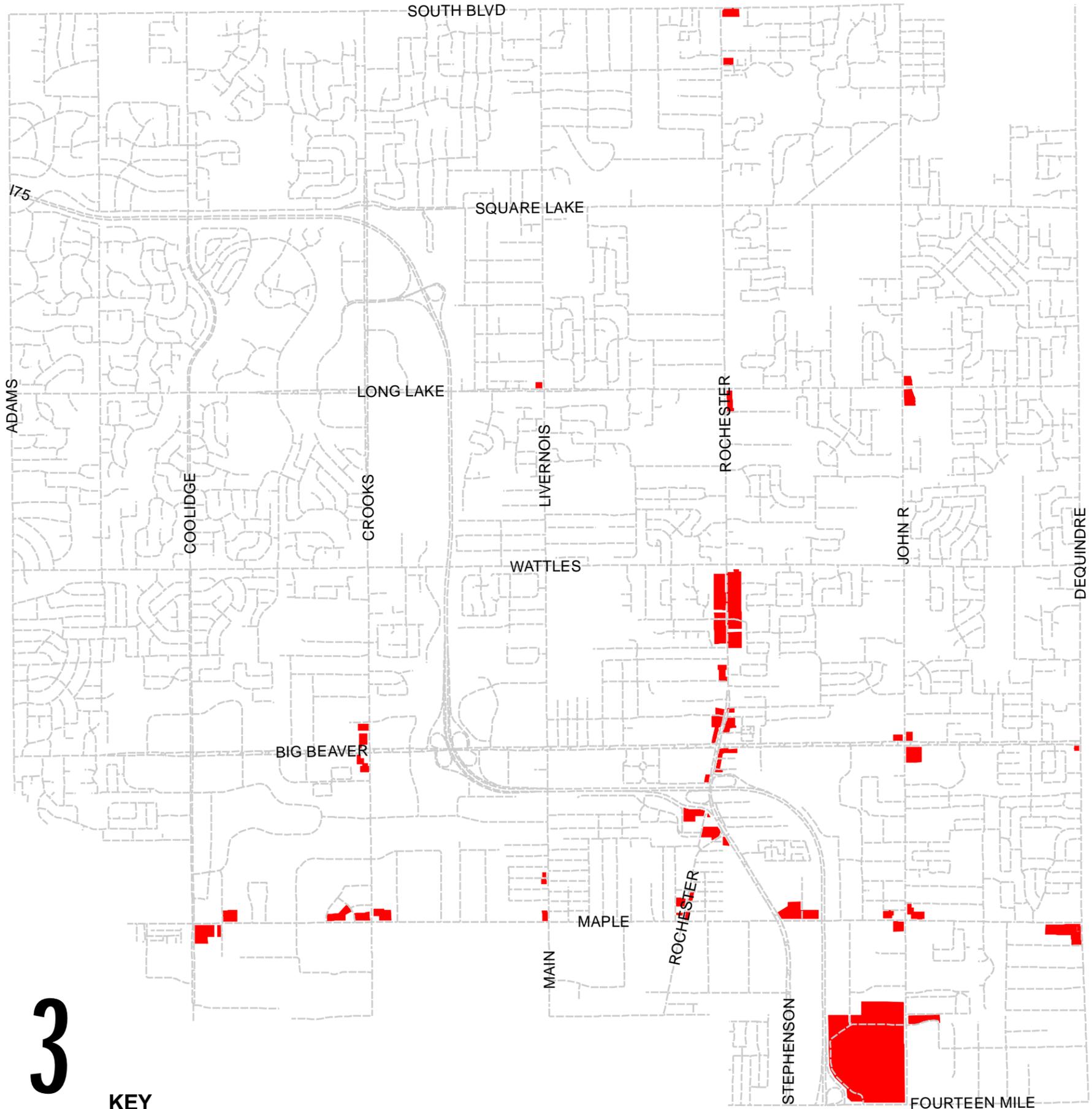


KEY
[Red Box] PARCELS CURRENTLY ZONED
B-1, B-2, B-3, H-S, O-1, O-M, & O-S-C

3



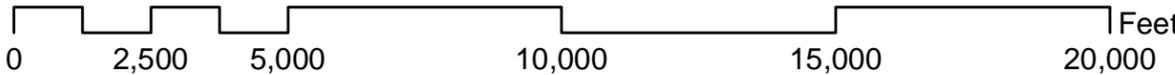
ZONING ORDINANCE TEXT AMENDMENT (ZOTA 207)
ALL PROPERTY CURRENTLY ZONED B-3



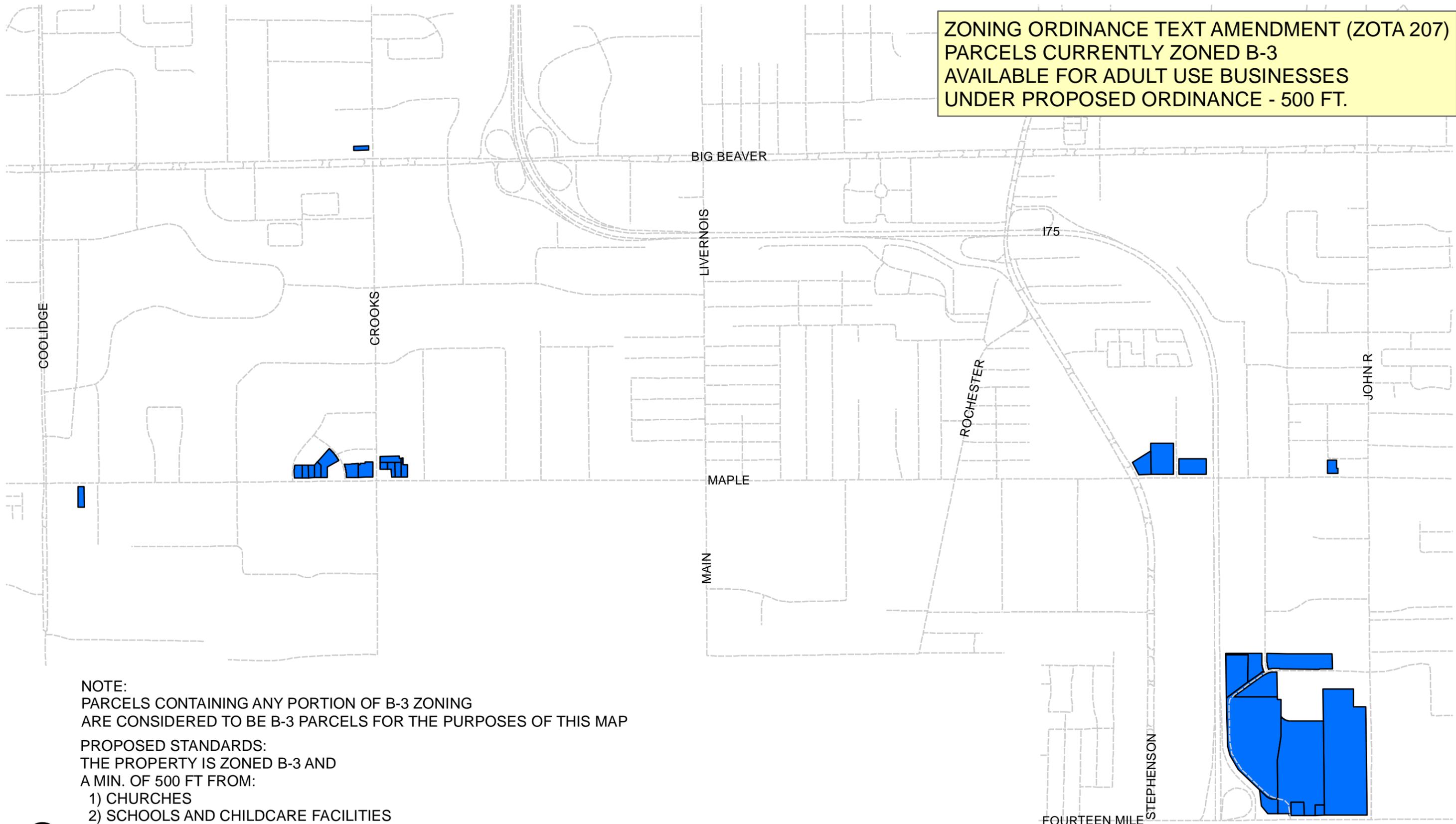
3

KEY

 PROPERTY CURRENTLY B-3 ZONED



ZONING ORDINANCE TEXT AMENDMENT (ZOTA 207)
 PARCELS CURRENTLY ZONED B-3
 AVAILABLE FOR ADULT USE BUSINESSES
 UNDER PROPOSED ORDINANCE - 500 FT.



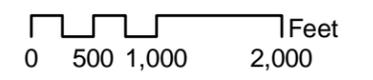
NOTE:
 PARCELS CONTAINING ANY PORTION OF B-3 ZONING
 ARE CONSIDERED TO BE B-3 PARCELS FOR THE PURPOSES OF THIS MAP

PROPOSED STANDARDS:
 THE PROPERTY IS ZONED B-3 AND
 A MIN. OF 500 FT FROM:
 1) CHURCHES
 2) SCHOOLS AND CHILDCARE FACILITIES
 3) PUBLIC PARKS
 4) RESIDENTIALLY ZONED OR USED PARCELS
 IN TROY OR ABUTTING COMMUNITY

3

KEY

B-3 ZONED PARCELS
 PARCELS AVAILABLE UNDER PROPOSED ORDINANCE



PREPARED BY CITY OF TROY PLANNING DEPT.
 REVISION DATE: 04-26-2007

ZONING ORDINANCE TEXT AMENDMENT

6. **PUBLIC HEARING – ZONING ORDINANCE TEXT AMENDMENT (ZOTA 207) – Proposed Article 22.30.08 Adult Business Uses**

Mr. Miller briefly reviewed the proposed zoning ordinance text amendment relating to adult business uses. He summarized the impacts of distance requirements of adult business uses from a church, school, childcare facility, public park or any residential zoning district or any parcel used for residential purposes, ranging from 500 feet to 1,000 feet.

Ms. Lancaster detailed the legal aspects of an adult business use text amendment in relation to the First Amendment. She addressed court decisions based on the secondary effects associated with a concentration of adult business uses, and what the courts look for when an ordinance is challenged. Ms. Lancaster said courts recognize the need for a balance between the First Amendment and deleterious affects of an adult business use. She said the bottom line is the Zoning Ordinance must be content-neutral, and the City cannot deny the First Amendment use or access to our City to have these uses. The Legal Department recommends a distance requirement of 500 feet of adult business uses from a church, school, childcare facility, public park or any residential zoning district or any parcel used for residential purposes.

PUBLIC HEARING OPENED

No one was present to speak.

PUBLIC HEARING CLOSED

Ms. Kerwin said the Legal Department and Planning Department served the City very well in their recommendations on adult business uses, and the need to have an ordinance in place. It is recognized that adult business uses have a deleterious effect on surrounding properties. Ms. Kerwin said that personally, as an advocate for youth, she could not support the 500-foot distance requirement from a church, school, childcare facility, public park or residential zoning.

Mr. Vleck indicated he would favor a minimal of 600 feet from a church, school, childcare facility, public park or residential zoning.

Mr. Hutson addressed the viewpoint of a judge, and questioned if anything in excess of 600 feet from a church, school, childcare facility, public park, or residential zoning would stand up to a test in court. He indicated the safest course to take would be to adopt an ordinance with the 500-foot distance, as recommended by the Legal Department. Mr. Hutson said he would not support anything over 600 feet.

Ms. Troshynski said her concern is with the concentrations of adult business uses along Big Beaver, Maple and 14 Mile Roads. She asked if there were other options that could be considered in that respect.

Ms. Lancaster said the uses cannot be zoned out of business, and the court wants an ordinance that is content-neutral. She said the City could amend the ordinance to allow adult business uses in other zoning districts, but she is not sure that would help with the concentration aspect. Ms. Lancaster said an open mind must be kept in terms of providing access for such a use.

Chair Schultz said he would support the recommendation of the City Attorney's office. He said it is understood that the majority of residents do not want any adult business use in our City, but they cannot be prohibited.

Resolution # PC-2007-05-089

Moved by: Hutson

Seconded by: Strat

RESOLVED, To move the adoption of Proposed Resolution # PC-2007-05 relating to Article 22.30.08, and that the motion should recognize when it is voted upon, that the written resolution is the one moved.

WHEREAS, it is recognized that there are some uses which, because of their very nature, have serious objectionable operational characteristics, particularly when several of them are concentrated under certain circumstances or when one (1) or more of them are located in near proximity to a residential zone, thereby having a deleterious effect upon the adjacent areas. Special regulation of these uses is necessary to ensure that these adverse effects will not contribute to the blighting or downgrading of the surrounding neighborhood. These controls are for the purpose of preventing a concentration of these uses within any one (1) area, or to prevent deterioration or blighting of a nearby residential neighborhood. These controls do not legitimize activities that are prohibited by other applicable laws.

AND WHEREAS, in regulating adult business uses, it is the purpose of this ordinance to promote the health, safety, and general welfare of the citizens of the City of Troy, and to establish reasonable and uniform regulations to prevent the deleterious secondary effects of adult business uses within the City of Troy. The provisions of this ordinance have neither the purpose nor effect of imposing a limitation or restriction on the content or reasonable access to any communicative materials, including sexually oriented materials. Similarly, it is neither the intent nor effect of this ordinance to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent nor

effect of this ordinance to condone or legitimize the distribution of obscene material.

AND WHEREAS, based on evidence of the adverse secondary effects of adult business uses presented in reports made available to the Planning Commission, and on findings incorporated in the cases of *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986), *Young v. American Mini Theatres*, 426 U.S. 50 (1976), and other cases; and reports of secondary effects occurring in and around adult business uses, including, but not limited to, Tucson AZ, Garden Grove CA, Ellicottville NY, New York NY, Times Square (New York City) NY, Oklahoma City OK, Cleburne TX, Dallas TX, Houston TX, Newport News VI, and St. Croix County WI, the Planning Commission finds that adult business uses as a category of establishments are correlated with harmful secondary effects, and that the foregoing reports are reasonably believed to be relevant to the problems that the City of Troy is seeking to abate and prevent in the future.

THEREFORE BE IT RESOLVED, That the Planning Commission hereby recommends to the City Council that Articles IV DEFINITIONS and XXII B-3 GENERAL BUSINESS DISTRICT, pertaining to permitting Adult Business Uses subject to Special Use Approval in the B-3 District, be approved as printed on the proposed Zoning Ordinance Text Amendment, Planning Commission Public Hearing Draft.

Yes: Hutson, Schultz, Strat, Tagle, Troshynski, Wright
No: Kerwin, Vleck
Absent: Littman

MOTION CARRIED

Mr. Vleck said he is in agreement with the motion with the exception that he would like to see a distance of 600 feet from a church, school, childcare facility, public park or any residential zoning district, or any parcel used for residential purposes.