

TOWN OF GREENVILLE
ORDINANCE NO. 2011-TO-019

**AN ORDINANCE ESTABLISHING LICENSING REQUIREMENTS
AND REGULATIONS OF SEXUALLY ORIENTED BUSINESSES
WITHIN TOWN OF GREENVILLE, INDIANA.**

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WHEREAS, the Town Council for the Town of Greenville, Indiana, in the interest of public health, safety and welfare, has deemed it necessary that the Town develop an Ordinance which Establishes Licensing and Regulations for Sexually Oriented Businesses within the corporate limits of the Town of Greenville;

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WHEREAS, sexually oriented businesses require supervision by the Greenville Town Council and the Greenville Marshal Department in order to protect and preserve the health, safety, and welfare of the patrons of such businesses as well as the citizens of the Town of Greenville, Indiana; and

WHEREAS, the Town Council for the Town of Greenville, Indiana finds that sexually oriented businesses, as a category of establishments, are frequently used for unlawful sexual activities, including but not limited to public indecency, prostitution, and sexual liaisons of a casual nature; and

WHEREAS, there is convincing documented evidence that sexually oriented businesses, as a category of establishments, have deleterious secondary effects and are often associated with crime and adverse impacts on surrounding properties; and

WHEREAS, the Greenville Town Council desires to minimize and control these adverse effects and thereby protect the health, safety, and welfare of the citizenry; protect the citizens from crime; preserve the quality of life; protecting nearby properties from adverse impacts, preserve the character of surrounding neighborhoods, and deter the spread of blight; and

WHEREAS, the Greenville Town Council recognizes its constitutional duty to interpret, construe, and amend its laws and ordinances to comply with constitutional requirements as they are announced; and

WHEREAS, with the passage of any ordinance, the Greenville Town Council accept as binding the applicability of general principles of criminal and civil law and procedure and the rights and obligations under the United States and Indiana Constitutions, Indiana Codes, and the Indiana Rules of Civil and Criminal Procedure; and

WHEREAS, it is not the intent of this ordinance to suppress any speech activities protected by the U.S. Constitution or the State of Indiana Constitution, but to enact an ordinance to further the content-neutral governmental interests of the Greenville Town Council, to wit, the controlling of secondary effects of sexually oriented businesses; and

WHEREAS, it is the intent of this Ordinance to preclude the operation of sexually oriented businesses, as defined herein, within 500 feet of the closest property line of any church, school, daycare center or preschool, residence, or another sexually oriented business and to add additional regulations for the operation of sexually oriented businesses;

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF GREENVILLE, INDIANA, AS FOLLOWS

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Section 1. Rationale and Findings:

{a} **Purpose.** It is the purpose of this ordinance to regulate sexually oriented businesses in order to promote the health, safety, moral, and general welfare of the citizens of the Town of Greenville, and to establish reasonable and uniform regulations to prevent the deleterious secondary effects of sexually oriented businesses within the Town of Greenville. 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.

{b} **Findings and Rationale.** Based on evidence of the adverse secondary effects of adult uses presented in hearings and in reports made available to the Town of Greenville Council, and on findings, interpretations, and narrowing constructions incorporated in the cases of *City of Littleton v. Z.J. Gifts D-4, L.L.C.*, 124 S.Ct. 2219 (June 7, 2004); *City of Los Angeles v. Alameda Books, Inc.*, 535 U.S. 425 (2002); *Pap's AM v. City of Erie*, 529 U.S. 277 (2000); *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986), *Young v. American Mini Theatres*, 426 U.S. 50 (1976), *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560 (1991); *California v. LaRue*, 409 U.S. 109 (1972); and

Schultz v. City of Cumberland, 26 F.Supp.2d 1128 (W.D. Wise. 1998), *aff'd in part, rev'd in part*, 228 F.3d 831 (7th Cir. 2000); *Blue Canary Corp. v. City of Milwaukee*, 270 F.3d 1156 (7th Cir. 2001); *Matney v. County of Kenosha*, 86 F.3d 692 (7th Cir. 1996); *Berg v. Health & Hospital Corp.*, 865 F.2d 797 (1989); *DiMa Corp. v. Town of Hallie*, 185 F.3d 823 (1999); *Graff v. City of Chicago*, 9 F.3d 1309 (1993); *North Avenue Novelties, Inc. v. City of Chicago*, 88 F.3d 441 (1996); *Chulchian v. City of Indianapolis*, 633 F.2d 27 (7th Cir. 1980); *Bigg Wolf Discount Video v. Montgomery County*, 256 F. Supp. 2d 385 (D. Md. 2003); *County of Cook v. Renaissance Arcade and Bookstore*, 122 Dl. 2d 123 (1988) (including cases cited therein); *World Wide Video of Washington, Inc. v. City of Spokane*, 368 F.3d 1186 (9th Cir. 2004); *Ben's*

Bar, Inc. v. Village of Somerset, 316 F.3d 702 (7th Cir. 2003); *People ex rel Deters v. Effingham Retail 27, Inc.*, No. 04-CH-26 (4th Judicial Circuit, Effingham County, Ill., June 13, 2005); *Annex Books, Inc. v. City of Indianapolis*, No. 1:03-CV-918, Summary Judgment Order, Aug. 27, 2004 and Order Denying Motion to Alter or Amend, Mar. 31, 2005 (S.D. Ind.); *Andy's Lounge et al. v. City of Gary*, No. 2:01-CV-327, Order Granting Summary Judgment, Mar. 31, 2005 (N.D. Ind.); *LLEH, Inc. v. Wichita County*, 289 F.3d 358 (5th Cir. 2002); *World Wide Video of Washington, Inc. v. City of Spokane*, 368 F.3d 1186 (9th Cir. 2004); *Ben's Bar, Inc. v. Village of Somerset*, 316 F.3d 702 (7th Cir. 2003); *Abilene Retail #30, Inc. v. Board of Commissioners*, 2005 U.S. Dist. LEXIS 30491 (D. Kan., Dec. 1, 2005); and based upon reports concerning secondary effects

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occurring in and around sexually oriented businesses, including, but not limited to, Austin, Texas - 1986; Indianapolis, Indiana - 1984; Garden Grove, California - 1991; Houston, Texas - 1983, 1997; Phoenix, Arizona - 1979, 1995-98; Chattanooga, Tennessee - 1999-2003; Minneapolis, Minnesota - 1980; Los Angeles, California - 1977; Whittier, California - 1978; Spokane, Washington - 2001; St. Cloud, Minnesota - 1994; Littleton, Colorado - 2004; Oklahoma City, Oklahoma - 1986; Dallas, Texas - 1997; Greensboro, North Carolina - 2003; Amarillo, Texas - 1977; New York, New York Times Square - 1994; and the Report of the Attorney General's Working Group On The Regulation Of Sexually Oriented Businesses, (June 6, 1989, State of Minnesota)

The Town of Greenville, Indiana Council finds:

{1} Sexually oriented businesses, as a category of commercial uses, are associated with a wide variety of adverse secondary effects including, but not limited to, personal and property crimes, prostitution, potential spread of disease, lewdness, public indecency, obscenity, illicit drug use and drug trafficking, negative impacts on surrounding properties, urban blight, litter, and sexual assault and exploitation.

{2} Sexually oriented businesses should be separated from sensitive land uses to minimize the impact of their secondary effects upon such uses, and should be separated from other sexually oriented businesses, to minimize the secondary effects associated with such uses and to prevent an unnecessary concentration of sexually oriented businesses in one area.

{3} Each of the foregoing negative secondary effects constitutes a harm which the Town of Greenville, Indiana has a substantial government interest in preventing and/or abating. This substantial government interest in preventing secondary effects, which is the Town of Greenville, Indiana's rationale for this ordinance, exists independent of any comparative analysis between sexually oriented and non-sexually oriented businesses. Additionally, the Town of Greenville, Indiana's interest in regulating sexually oriented businesses extends to preventing future secondary effects of either current or future sexually oriented businesses that may locate in the Town of Greenville, Indiana. The Town of Greenville, Indiana finds that the cases and documentation relied on in this ordinance are reasonably believed to be relevant to said secondary effects.

{4} The following reports; {1} Madison Wisconsin Planning and Zoning Commission Report 02-14-2011 Concerning Sexually Oriented Businesses and sub-reports mentioned there-in. {2} Adult Entertainment Businesses in Indianapolis 1984 an analysis and appendixes. {3} Crime Related Secondary Effects of Sexually Oriented Business Report to the City Attorney City of Los Angeles May 6th, 2007. {4} Greenville Comprehensive Land Use Map for 2011-TO-019 hereby are incorporated by reference and part of this Ordinance {2011-TO-019}.

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Section 2. Definitions.

For purposes of this ordinance, the words and phrases defined in the sections hereunder shall have the meanings therein respectively ascribed to them unless a different meaning is clearly indicated by the context.

"The Town of Greenville Council" means the Town of Greenville, Indiana Council.

"Adult Bookstore" means a commercial establishment which, as a principal part of its business, offers for sale or rental for any form of consideration any one or more of the following: books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, compact discs, digital video discs, slides, or other visual representations which are characterized by their emphasis upon the display of "specified sexual activities" or "specified anatomical areas."

A "principal part of its business" means that the commercial establishment:

{a} has at least 35% of its displayed merchandise which consists of said items, or

{b} has at least 35% of the wholesale value of its displayed merchandise which consists of said items, or

{c} has at least 35% of the retail value of its displayed merchandise which consists of said items, or

{d} derives at least 35% of its revenues from the sale or rental, for any form of consideration of said items, or

{e} maintains a section of at least 35% of its interior business space for the sale or rental of said items; or

{f} maintains an "adult arcade," which means any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are regularly maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are characterized by their emphasis upon matter exhibiting "specified sexual activities" or specified "anatomical areas."

"Adult Cabaret" means a nightclub, bar, juice bar, restaurant, bottle club, or other commercial establishment, whether or not alcoholic beverages are served, which regularly features persons who appear semi-nude.

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"Adult Mini Motion Picture Theater" means any commercial establishment which regularly offers rooms with a capacity of more than 5 but less than 50 persons, wherein films, motion pictures, video cassettes, slides, or similar visual images that are distinguished or characterized by an emphasis on specified sexual activities or specified anatomical areas are regularly presented for observation by patrons therein.

"Adult Motel" means a motel, hotel, or similar commercial establishment which:

{a} offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, other photographic reproductions, or live performances which are characterized by the display of "specified sexual activities" or "specified anatomical areas"; and which advertises the availability of such material by means of a sign visible from the public right-of-way, or by means of any on or off-premises advertising, including but not limited to, newspapers, magazines, pamphlets or leaflets, radio or television; or

{b} offers a sleeping room for rent for a period of time that is less than 10 hours; or

{c} allows a tenant or occupant of a sleeping room to sub rent the room for a period of time that is less than 10 hours.

"Adult Motion Picture Theater" means a commercial establishment where films, motion pictures, videocassettes, slides, or similar photographic reproductions which are characterized by their emphasis upon the display of "specified sexual activities" or "specified anatomical areas" are regularly shown to more than five persons for any form of consideration.

"Adult Service Establishment" means any building, premises, structure, or other facility that uses at least 35% of the building, premises, structure, or other facility for commercial activities involving the display of specified sexual activities or specified anatomical areas.

"Town of Greenville Council" means the Town Council of the Town of Greenville, Indiana, Indiana.

"Characterized by" means describing the essential character or quality of an item. As applied in this ordinance, no business shall be classified as a sexually oriented business by virtue of showing, selling or renting materials rated NC-17 or R by the Motion Picture Association of America.

"Employ, Employee, and Employment" describes and pertain to any person who performs any service on the premises of a sexually oriented business, on a full time, part time, or contract basis, whether or not the person is denominated an employee, independent contractor, agent, or otherwise. Employee does not include a person exclusively on the premises for repair or maintenance of the premises or for the delivery of goods to the premises.

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"Establish or Establishment" shall mean and include any of the following:

- {a} The opening or commencement of any sexually oriented business as a new business;
- {b} The conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business; or
- {c} The addition of any sexually oriented business to any other existing sexually oriented business.

"Hearing Body" shall mean the Town Council of the Town of Greenville, Indiana.

"Influential Interest" means any of the following: (1) the actual power to operate the sexually oriented business or control the operation, management or policies of the sexually oriented business or legal entity which operates the sexually oriented business, (2) ownership of a financial interest of thirty percent (30%) or more of a business or of any class of voting securities of a business, or (3) holding an office (e.g., president, vice president, secretary, treasurer, managing member, managing director, etc.) in a legal entity which operates the sexually oriented business.

"Licensee" shall mean a person in whose name a Resolution License to operate a sexually oriented business has been issued, as well as the individual or individuals listed as an applicant on the application for a sexually oriented business Resolution License. In case of an "employee," it shall mean the person in whose name the sexually oriented business employee Resolution License has been issued.

"Nudity or a State of Nudity" means the showing of the human male or female genitals, pubic area, vulva, anus, anal cleft or cleavage with less than a fully opaque covering, or the showing of the female breast with less than a fully opaque covering of any part of the nipple.

"Operate or Cause to Operate" shall mean to cause to function or to put or keep in a state of doing business.

"Operator" means any person on the premises of a sexually oriented business who causes the business to function or who puts or keeps in operation the business or who is authorized to manage the business or exercise overall operational control of the business premises. A person may be found to be operating or causing to be operated a sexually oriented business whether or not that person is an owner, part owner, or Resolution Licensee of the business.

"Person" shall mean individual, proprietorships, partnerships, corporation, association, or other legal entity.

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"Premises" means the real property upon which the sexually oriented business is located, and all appurtenances thereto and buildings thereon, including, but not limited to, the sexually oriented business, the grounds, any trailers, private walkways, and parking lots and/or parking garages adjacent thereto, under the ownership, control, or supervision of the licensee, as described in the application for a business Resolution License pursuant to Section 4 of this ordinance.

"Regularly" means and refers to the consistent and repeated doing of the act so described.

"Semi-Nude or State of Semi-Nudity" means the showing of the female breast below a horizontal line across the top of the areola and extending across the width of the breast at that point, or the showing of the male or female buttocks. This definition shall include the lower portion of the human female breast, but shall not include any portion of the cleavage of the human female breasts exhibited by a bikini, dress, blouse, shirt, leotard, or similar wearing apparel provided the areola is not exposed in whole or in part.

"Semi-Nude Model Studio" means a place where persons regularly appear in a state of semi-nudity for money or any form of consideration in order to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons.

This definition does not apply to any place where persons appearing in a state of semi-nudity did so in a modeling class operated:

{a} By a college, junior college, or university supported entirely or partly by taxation;

{b} By a private college or university which maintains and operates educational programs in which credits are transferable to college, junior college, or university supported entirely or partly by taxation; or:

{c} In a structure:

{1} Which has no sign visible from the exterior of the structure and no other advertising that indicates a semi-nude person is available for viewing; and

{2} Where, in order to participate in a class a student must enroll at least three days in advance of the class.

"Sexual Device" means any three (3) dimensional object designed and marketed for stimulation of the male or female human genital organ or anus or for sadomasochistic use or abuse of oneself or others and shall include devices such as dildos, vibrators, penis pumps, and physical representations of the human genital organs. Nothing in this definition shall be construed to include devices primarily intended for protection against sexually transmitted diseases or for preventing pregnancy.

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"Sexual Device Shop" means a commercial establishment that regularly features sexual devices. Nothing in this definition shall be construed to include any pharmacy, drug store, medical clinic, or any establishment primarily dedicated to providing medical or healthcare products or services, nor shall this definition be construed to include commercial establishments which do not restrict access to any portion of their premises by reason of age.

"Sexual Encounter Center" shall mean a business or commercial enterprise that, as one of its principal business purposes, purports to offer for any form of consideration, physical contact in the form of wrestling or tumbling between persons of the opposite sex when one or more of the persons is semi-nude.

"Sexually Oriented Business" means an "adult bookstore," an "adult cabaret," an "adult mini motion picture theater," an "adult motel," an "adult motion picture theater," an "adult service establishment," a "semi-nude model studio," a "sexual device shop," or a "sexual encounter center," as defined in this ordinance. The term "sexually oriented business" shall also include an "adult drive-in theater," an "adult live entertainment arcade," and an "adult motion picture arcade".

"Specified Anatomical Areas" means and includes:

{a} Less than completely and opaquely covered: human genitals, pubic region; buttock; and female breast below a point immediately above the top of the areola; and

{b} Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

"Specified Criminal Activity" means:

{a} any of the following specified crimes for which less than five years elapsed since the date of conviction, or the date of release from confinement for the conviction, whichever is the later date:

{1} rape, sexual assault, public indecency, statutory rape, rape of a child, sexual exploitation of a minor, indecent exposure;

{2} prostitution, patronizing prostitution, promoting prostitution;

{3} obscenity;

{4} dealing in controlled substances;

{5} racketeering, tax evasion, money laundering;

{b} any attempt, solicitation, or conspiracy to commit one of the foregoing offenses; or

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{c} any offense in another jurisdiction that, had the predicate act(s) been committed in Indiana would have constituted any of the foregoing; offenses.

"Specified Sexual Activity" means any of the following:

{a} intercourse, oral copulation, masturbation or sodomy; or

{b} excretory functions as a part of or in connection with any of the activities described in (a) above.

"Substantial" means at least thirty-five percent (35%) of the item(s) so modified.

"Transfer of Ownership or Control" of a sexually oriented business shall mean any of the following:

{a} The sale, lease, or sublease of the business;

{b} The transfer of securities which constitute an influential interest in the business, whether by sale, exchange, or similar means; or

{c} The establishment of a trust, gift, or other similar legal device which transfers the ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.

"Viewing Room" shall mean the room, booth, or area where a patron of sexually oriented business ordinarily would be positioned while watching a film, videocassette, or other video reproduction.

Section 3. Classifications.

The classifications for sexually oriented businesses shall be as follows:

{a} Adult bookstore;

{b} Adult cabaret;

{c} Adult motel;

{d} Adult mini motion picture theater;

{e} Adult motion picture theater;

{f} Adult service establishment;

{g} Semi-nude model studio;

{h} Sexual device shop;

{i} Sexual encounter center.

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Section 4. Resolution License Required.

{a} It shall be unlawful for any person to operate a sexually oriented business in the Town of Greenville, Indiana without a valid sexually oriented business Resolution License.

{b} It shall be unlawful for any person to be an "employee," as defined in this Ordinance, of a sexually oriented business in the Town of Greenville, Indiana without a valid sexually oriented business employee Resolution License.

{c} An applicant for a sexually oriented business Resolution License or a sexually oriented business employee Resolution License shall file in person at the office of the Greenville Town Clerk/Treasurer requesting a Town of Greenville Council to pass a Town of Greenville Resolution License. A completed application made on a form provided by the Town of Greenville Clerk/Treasurer shall be submitted to the Greenville Town Council for preparation of the Resolution License to be considered at the next Town of Greenville Council Meeting. The application shall be signed as required by subsection (e) herein and shall be notarized. An application shall be considered complete when it contains, for each person required to sign the application, the information and/or items required in Paragraphs 1 through 7 below, accompanied by the appropriate fee identified in Section 6: If completed application meets all ordinance requirements a resolution shall be passed and must be posted at entry of the place of business. Resolution License must be renewed each year on anniversary date.

{1} The applicant's full true name and any other names used by the applicants in the preceding five {5} years.

{2} Current business address or mailing address of the applicant.

{3} Written proof of age, in the form of a driver's license or a copy of a birth certificate accompanied by a picture identification document issued by a governmental agency.

{4} If the application is for a sexually oriented business license, the business name, location, legal description, mailing address and phone number of the sexually oriented business.

{5} Application is for a sexually oriented business Resolution License shall provide the name and business address of the statutory agent or other agent authorized to receive service of process.

{6} A statement of whether an applicant has ever been convicted of or has pled guilty or nolo contendere to a specified criminal activity as defined in this ordinance, and if so, each specified criminal activity involved, including the date, place, and jurisdiction of each as well as the dates of conviction and release from confinement, where applicable.

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{7} A statement of whether any sexually oriented business in which an applicant has had an influential interest has, in the previous five (5) years (and at a time during which the applicant had the influential interest):

- (i) been declared by a court of law to be a nuisance; or
- (ii) been subject to a court order of closure or padlocking.

The information provided pursuant to Paragraphs 1 through 7 of this subsection shall be supplemented in writing by certified mail, return receipt requested, to the Greenville Clerk/Treasurer within ten (10) working days of a change of circumstances which would render the information originally submitted false or incomplete.

{d} An application for a sexually oriented business license shall be accompanied by a legal description of the property where the business is located and a sketch or diagram showing the configuration of the premises, including a statement of total floor space occupied by the business. The sketch or diagram need not be professionally prepared but shall be drawn, to a

designated scale or drawn with marked dimensions of the exterior of the premises to an accuracy of plus or minus six (6) inches. Applicants who are required to comply with Sections 14 and 18 of this ordinance shall submit a diagram indicating that the interior configuration meets the requirements of those sections.

{e} If a person who wishes to operate a sexually oriented business is an individual, he shall sign the application for a Resolution License as applicant. If a person who wishes to operate a sexually oriented business is other than an individual, each person with an influential interest in the business shall sign the application for a license as applicant. Each applicant must be qualified under Section 5 and each applicant shall be considered a licensee if a Resolution License is granted.

{f} The information provided by an applicant in connection with an application for a Resolution License under this ordinance shall be maintained by the Greenville Town Hall of the Greenville Clerk/Treasurer on a confidential basis, and such information may be disclosed only as may be required, and only to the extent required, by law or court order.

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Section 5. Issuance of Resolution License.

{a} Upon the filing of a completed application under Section 4(c) for a sexually oriented business Resolution License, the Greenville Town Council shall within 30 days after approval of the Resolution License to the applicant. The Greenville Town Council shall issue a Resolution License unless:

{1} An applicant is less than eighteen (18) years of age.

{2} An applicant has failed to provide information as required by Section 4 for issuance of a Resolution License or has falsely answered a question or request for information on the application form.

{3} The Resolution License application fee required by this Ordinance has not been paid.

{4} The sexually oriented business, as defined herein, is not in compliance with the interior configuration requirements of this Ordinance or is not in compliance with locational requirements of this ordinance or the locational requirements of any other Town of Greenville, Indiana ordinances.

{5} Any sexually oriented business in which the applicant has had an influential interest, has, in the previous five (5) years (and at a time during which the applicant had the influential interest):

(i) been declared by a court of law to be a nuisance; or

(ii) been subject to an order of closure or padlocking.

{6} The applicant has been convicted of or pled guilty or nolo contendere to a specified criminal activity, as defined in this ordinance.

{7} The Greenville Town Council shall either issue a Resolution License or issue a written notice of denial of a Resolution License to the applicant with cause for denial. The Resolution License if approved shall contain the following:

(a) The Resolution License, if granted, shall state on its face the name of the person or persons to whom it is granted, the number of the Resolution License issued to the licensee(s), the expiration date, and, the address of the sexually oriented business. The sexually oriented business Resolution License shall be posted in a conspicuous place at or near the entrance to the sexually oriented business so that it may be read at any time. A sexually oriented business employee shall keep the employee's license on his or her person or on the premises where the licensee is then working or performing.

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Section 6. Fees.

(a) The initial Resolution License and annual renewal fees for sexually oriented business Resolution Licenses; and sexually oriented business employee Resolution Licenses shall be as follows: Five Thousand U.S. Dollars (\$5,000) for; the initial fee for a sexually oriented business Resolution License and Two Thousand Five Hundred U.S. Dollars; (\$2,500) for annual; renewal; Five Hundred U.S. Dollars (\$500.00) for the initial sexually oriented business employee Resolution License and Five Hundred U.S. Dollars (\$500.00) for annual renewal.

Section 7. inspection.

Sexually oriented businesses and sexually oriented business employees shall permit the Greenville Town Council or its designee {Greenville Marshal Department} to inspect, from time to time on an occasional basis, the portions of the sexually oriented business premises where patrons are permitted, for the purpose of ensuring compliance with the specific regulations of this Ordinance, during those times when the sexually oriented business is occupied by patrons or is open to the public. This section shall be narrowly construed by the Town of Greenville, Indiana Council to authorize reasonable inspections of the Resolution Licensed premises pursuant to this ordinance, but not to authorize a harassing or excessive pattern of inspections.

Section 8. Expiration of Resolution License.

(a) Each Resolution License shall remain valid for a period of one calendar year from the date of passage unless otherwise suspended or revoked. Such Resolution License may be renewed only by making application and payment of a fee as provided in Section 4 and Section 6.

(b) Application for renewal should be made pursuant to the procedures set forth in Section 4 at least ninety (90) days before the expiration date, and when made less than ninety (90) days before the expiration date, the expiration of the Resolution License will not be affected.

Section 9. Suspension Resolution License.

(a) The Town of Greenville, Indiana Council shall issue a written letter of intent to suspend a sexually oriented business Resolution License for a period not to exceed thirty (30) days if the sexually oriented business Resolution Licensee has knowingly violated this ordinance or has knowingly allowed an employee to violate this Ordinance.

(b) The Town of Greenville, Indiana Council shall issue a written letter of intent to suspend a sexually oriented business employee Resolution License if the employee has knowingly violated this Ordinance.

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Section 10. Revocation Resolution License.

(a) The Town of Greenville, Indiana Council shall issue a letter of intent to revoke a sexually oriented business Resolution License or a sexually oriented business employee license, as applicable, if the Resolution Licensee knowingly violates this ordinance or has knowingly allowed an employee to violate this ordinance and the licensee's Resolution License has been suspended within the previous twelve month (12-month) period.

(b) The Town of Greenville, Indiana Council shall issue written intent to revoke a sexually oriented business Resolution License or a sexually oriented business employee Resolution License, as applicable, if:

(1) The Resolution Licensee has knowingly given false information in the application for the sexually oriented business Resolution License.

(2) The Resolution Licensee has knowingly or recklessly engaged in or allowed possession, use, or sale of controlled substances on the premises;

(3) The Resolution Licensee has knowingly or recklessly engaged in or allowed prostitution on the premises;

(4) The Resolution Licensee knowingly or recklessly operated the sexually oriented business during a period of time when the Resolution License was finally suspended or revoked; or

(5) The Resolution Licensee has knowingly or recklessly engaged in or allowed any specified sexual activity to occur in or on the Resolution Licensed premises.

(c) The fact that any relevant conviction is being appealed shall have no effect on the revocation of the Resolution License, provided that, if any conviction which serves as a basis of a Resolution License revocation is overturned or reversed on appeal, that conviction shall be treated as null and of no effect for revocation purposes.

(d) When, after the notice and hearing procedure described in Section 11, the Town of Greenville, Indiana Council revokes a license, the revocation shall continue for one (1) year and the licensee shall not be issued a sexually oriented business Resolution License or sexually oriented business employee license for one (1) year from the date revocation becomes effective.

Section 11. Hearing; Resolution License denial, revocation, and suspension; appeal.

(a) When the Town of Greenville Council issues a written notice of intent to deny, suspend, or revoke a Resolution License, the Town of Greenville Council shall immediately send such notice, which shall include the specific grounds under this ordinance for such action, to the applicant or Resolution Licensee (respondent) by personal delivery or certified mail. The notice shall be directed to the most current business address or other mailing address on file with the

TOWN OF GREENVILLE ORDINANCE NO. 2011-TO-019

Town of Greenville Council Clerk/Treasurer for the respondent. The notice shall specify a date, not less than ten (10) days nor more than twenty (20) days after the date the notice is issued, on which the Town of Greenville Council shall conduct a hearing on the Town of Greenville Council's intent to deny, suspend, or revoke the license.

At the hearing, the respondent shall have the opportunity to present all of respondent's arguments and to be represented by counsel, present evidence and witnesses on his or her behalf, and cross-examine any of the Town of Greenville Council's witnesses. The Town of Greenville Council shall also be represented by counsel, and shall bear the burden of proving the grounds for denying, suspending, or revoking the Resolution License. The hearing shall take no longer than two (2) days, unless extended at the request of the respondent to meet the requirements of due process and proper administration of justice. The Town of Greenville Council shall issue a written decision, including specific reasons for the decision pursuant to

this ordinance, to the respondent within five (5) days after the hearing. Ten (10) days after the Board issues its written decision, said decision shall be deemed final and any Temporary License shall expire.

If the decision is to deny, suspend, or revoke the license, the decision shall include a statement advising the respondent of the right to appeal or challenge such decision in a court of competent jurisdiction. If the Town of Greenville Council's decision finds that no grounds exist for denial, suspension, or revocation of the license, the Town of Greenville Council shall, contemporaneously with the issuance of the decision, order the Town of Greenville Council to immediately withdraw the intent to deny, suspend, or revoke the license and to notify the respondent in writing by certified mail of such action. If the respondent is not yet Resolution Licensed, the Town of Greenville Council shall contemporaneously therewith issue the Resolution License to the applicant.

(b) If any court action challenging the Town of Greenville Council's decision is initiated, the Town of Greenville Council shall prepare and transmit to the court a transcript of the hearing within ten (10) days after receiving written notice of the filing of the court action. The Town of Greenville Council shall consent to expedited briefing and/or disposition of the action, shall comply with any expedited schedule set by the court, and shall facilitate prompt judicial review of the proceedings. The following shall apply to any sexually oriented business that is lawfully in operation, in all respects, as of the effective date of this ordinance: Upon the filing of any court action to appeal, challenge, restrain, or otherwise enjoin the Town of Greenville, Indiana's enforcement of the denial, suspension, or revocation, the Town of Greenville, Indiana shall immediately issue the respondent a Provisional License. The Provisional License shall allow the respondent to continue operation of the sexually oriented business or to continue employment as a sexually oriented business employee and will expire upon the court's entry of a judgment on the respondent's appeal or other action to restrain or otherwise enjoin the Town of Greenville, Indiana's enforcement.

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Section 12. Transfer of Resolution License.

A Resolution Licensee shall not transfer his or her Resolution License to another, nor shall a Resolution Licensee operate a sexually oriented business under the authority of a Resolution License at any place other than the address designated in the sexually oriented business Resolution License application.

Section 13. Hours of Operation.

No sexually oriented business shall be or remain open for business between 12:00 midnight and 6:00 a.m. on any day.

Section 14. Regulations pertaining to exhibition of sexually explicit films or videos.

(a) A person who operates or causes to be operated a sexually oriented business, other than an adult motel, which exhibits on the premises, through any mechanical or electronic image-producing device, a film, video cassette, or other visual reproduction characterized by an emphasis on the display of specified sexual activities or specified anatomical areas shall comply with the following requirements.

(1) Each application for a sexually oriented business Resolution License shall contain a diagram of the premises showing the location of all operator's stations, viewing rooms, overhead lighting fixtures, video cameras and monitors installed for monitoring purposes and restrooms, and shall designate all portions of the premises in which patrons will not be permitted. Restrooms shall not contain video reproduction equipment. The diagram shall also designate the place at which the Resolution License will be conspicuously posted, if granted. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however, each diagram shall be oriented to the north or to some designated street or object and shall be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus six inches. The Town of Greenville Council may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared.

(2) It shall be the duty of the operator, and of any employees present on the premises, to ensure that no patron is permitted access to any area of the premises which has been designated as an area in which patrons will not be permitted in the application filed pursuant to Paragraph 1 of this subsection.

(3) The interior premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than five (5.0) foot candles as measured at the floor level. It shall be the duty of the operator, and of any employees present on the premises, to ensure that the illumination described above is maintained at all times that the premises is occupied by patrons or open for business.

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(4) It shall be the duty of the operator, and of any employees present on the premises, to ensure that no specified sexual activity occurs in or on the Resolution Licensed premises.

(5) It shall be the duty of the operator to post conspicuous signs in well-lighted entry areas of the business stating all of the following:

- (i) That the occupancy of viewing rooms is limited to one person,
- (ii) That sexual activity on the premises is prohibited,
- (iii) That the making of openings between viewing rooms is prohibited,
- (iv) That violators will be required to leave the premises,
- (v) That violations of Subparagraphs (i), (ii) and (iii) of this paragraph, are unlawful.

(6) It shall be the duty of the operator to enforce the regulations articulated in (5)(i) through (iv) above.

(7) The interior of the premises shall be configured in such a manner that there is an unobstructed view from an operator's station of every area of the premises, including the interior of each viewing room but excluding restrooms, to which any patron is permitted access for any purpose. An operator's station shall not exceed thirty-two (32) square feet of floor area. If the premises has two (2) or more operator's stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose from at least one of the operator's stations. The view required in this paragraph must be by direct line of sight from the operator's station. It is the duty of the operator to ensure that at least one employee is on duty and situated in each operator's station at all times that any patron is on the premises. It shall be the duty of the operator, and it shall also be the duty of any employees present on the premises, to ensure that the view area specified in this paragraph remains unobstructed by any doors, curtains, walls, merchandise, display racks or other materials or enclosures at all times that any patron is present on the premises.

(a) It shall be unlawful for a person having a duty under this section to knowingly fail to fulfill that duty.

Section 15. Loitering, exterior lighting, visibility, and monitoring requirements.

(a) It shall be the duty of the operator of a sexually oriented business to: (1) post conspicuous signs stating that no loitering is permitted on such property; (2) designate one or more employees to monitor the activities of persons on such property by visually inspecting such property at least once every ninety (90) minutes or inspecting such property by use of video cameras and monitors; and (3) provide lighting of the exterior premises to provide for visual inspection or video monitoring to prohibit loitering. If used, video cameras and monitors shall operate continuously at all times that the premises are open for business. The monitors shall be installed within an operator's station.

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(b) It shall be unlawful for a person having a duty under this section to knowingly fail to fulfill that duty.

(c) No sexually oriented business shall erect a fence, wall, or other barrier that prevents any portion of the parking lot(s) for the establishment from being visible from a public right of way.

Section 16. Enforcement.

(a) Any sexually oriented business which engages in repeated or continuing violations of this ordinance shall constitute a public nuisance. For purposes of this ordinance, "repeated violations" shall mean three or more violations of this ordinance within a one (1) year period dating from the time of any violation, and a "continuing violation" shall mean a violation of this ordinance lasting for three or more consecutive days.

(b) The Town of Greenville, Indiana's legal counsel is hereby authorized to institute civil proceedings necessary for the enforcement of this ordinance to prosecute, restrain, or correct violations hereof. Such proceedings, including injunction, shall be brought in the name of the Town of Greenville, Indiana, provided, however, that nothing in this section and no action taken hereunder, shall be held to exclude such proceedings as may be authorized by other provisions of this ordinance, or any of the laws or ordinances in force in the Town of Greenville, Indiana or to exempt anyone violating this ordinance or any part of the said laws from any penalty which may be incurred.

Section 17. Applicability of ordinance to existing businesses.

This ordinance is necessary to the immediate preservation of the public health and safety, to prevent the negative secondary effects of sexually oriented businesses, and therefore shall become effective immediately upon passage. All sexually oriented businesses lawfully operating in all respects, and all sexually oriented business employees working in a lawfully operating sexually oriented business, on the effective date of this ordinance, are hereby granted a *De Facto* Temporary License to continue operation or employment without a Resolution License for a period of thirty (30) days following the effective date of this ordinance. By the end of said thirty (30) days, all sexually oriented businesses and sexually oriented business employees shall apply for a Resolution License under this ordinance. During said thirty (30) days, all requirements of this ordinance, except for the requirement of obtaining a Resolution License, shall be in full force and effect.

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Section 18. Prohibited activities.

It is unlawful for a sexually oriented business to knowingly violate the following regulations or to knowingly allow an employee or any other person to violate the following regulations.

(a) It shall be a violation of this ordinance for a patron, employee, or any other person to knowingly or intentionally, in a sexually oriented business, appear in a state of nudity, regardless of whether such public nudity is expressive in nature.

(b) It shall be a violation of this ordinance for a person to knowingly or intentionally, in a sexually oriented business, appear in a semi-nude condition unless the person is an employee who, while semi-nude, remains at least six (6) feet from any patron or customer and on a stage at least eighteen (18) inches from the floor in a room of at least one thousand (1,000) square feet.

(c) It shall be a violation of this ordinance for any employee who regularly appears semi-nude in a sexually oriented business to knowingly or intentionally touch a customer or the clothing of a customer on the premises of a sexually oriented business.

(d) It shall be a violation of this ordinance for any person to sell, use, or consume alcoholic beverages on the premises of a sexually oriented business.

(e) It shall be a violation of this ordinance for any person to knowingly allow a person under 18 years of age to be or remain on the premises of a sexually oriented business.

A sign in a form to be prescribed by the Town of Greenville Council, and summarizing the provisions of Paragraphs (a), (b), (c), (d), and (e) of this Section, shall be posted near the entrance of the sexually oriented business in such a manner as to be clearly visible to patrons upon entry.

Section 19. Scienter required to prove violation or business licensee liability.

This ordinance does not impose strict liability. Unless a culpable mental state is otherwise specified herein, a showing of a knowing or reckless mental state is necessary to establish a violation of a provision of this ordinance. Notwithstanding anything to the contrary, for the purposes of this ordinance, an act by an employee that constitutes grounds for suspension or revocation of that employee's resolution license shall be imputed to the sexually oriented Business Resolution Licensee for purposes of finding a violation of this ordinance, or for purposes of Resolution License denial, suspension, or revocation, only if an officer, director, or general partner, or a person who managed, supervised, or controlled the operation of the business premises, knowingly or recklessly allowed such act to occur on the premises. It shall be a defense to liability that the person to whom liability is imputed was powerless to prevent the act.

TOWN OF GREENVILLE
ORDINANCE NO. 2011-TO-019

Section 20. Failure of Town of Greenville, Indiana to meet deadline not to risk applicant Resolution Licensee rights.

In the event that a Town of Greenville, Indiana official is required to take an act or do a thing pursuant to this ordinance within a prescribed time, and fails to take such act or do such thing within the time prescribed, said failure shall not prevent the exercise of constitutional rights of an applicant or licensee. If the act required of the Town of Greenville, Indiana Council under this ordinance, and not completed in the time prescribed, includes approval of conditions necessary for approval by the Town of Greenville, Indiana Council of an applicant or Resolution Licensee's application for sexually oriented Business Resolution License or a sexually oriented business employee's Resolution License (including a renewal), the condition shall be deemed met the day after the deadline for the Town of Greenville, Indiana's Council action has passed.

Section 21. Location of sexually oriented businesses.

(a) Sexually oriented businesses shall not be issued a Special Resolution License. It shall be unlawful to operate a sexually oriented business except in the areas designated as mixed use by the Town of Greenville Land Use Map as General Commercial, Light Industrial and Mix Use. See attached map for these areas with hatch markings.

(b) It shall be unlawful to establish, operate, or cause to be operated a sexually oriented business in the Town of Greenville, Indiana, unless said sexually oriented business is at least:

(1) 500 feet from any parcel occupied by another sexually oriented business or by a business licensed by the State of Indiana to sell alcohol at the premises; and

(2) 500 feet from any parcel occupied by any church, public or private elementary or secondary school, daycare center or preschool, occupied residential home, or any public park.

(c) For the purpose of this section, measurements shall be made in a straight line in all directions without regard to intervening structures or objects, from the nearest portion of any building or structure on the premises where the sexually oriented business is located to the closest property line of the property containing the church, public or private elementary or secondary school, daycare center or preschool, occupied residential home or any public park.

TOWN OF GREENVILLE ORDINANCE NO. 2011-TO-019

(d) Notwithstanding anything to the contrary in any Town of Greenville, Indiana ordinance, a nonconforming sexually oriented business, lawfully existing in all respects under law prior to the effective date of this ordinance, may continue to operate for one (1) year following that date in order to make a reasonable recoupment of its investment in its current location. At the conclusion of said one (1) year, the use will no longer be recognized as a lawful nonconforming use, provided that a nonconforming sexually oriented business may apply for one or more six-month extensions of the original one year period upon a showing of financial hardship. An application for an initial extension based upon a showing of financial hardship ("hardship exception") shall be made at least sixty (60) days before the conclusion of the aforementioned one year (1-yr.) period. If a hardship extension is granted, subsequent applications for hardship extensions shall be made at least sixty (60) days before the conclusion of the non-conforming sexually oriented business's current extension period.

(e) Procedure for seeking hardship extension. An application for a hardship extension shall be filed in writing with the Town of Greenville, Indiana Council, and shall include evidence of purchase and improvement costs, income earned and lost, depreciation, and costs of relocation. Within ten (10) days after receiving the application, the Town of Greenville Council shall schedule a public hearing on the application before the Greenville, Indiana Town Council which public hearing shall be conducted within thirty (30) days after the Town of Greenville Council's receipt of the application. Notice of the time and place of such public hearing shall be published at least ten (10) days before the hearing in a newspaper of general circulation published within the Town of Greenville, Indiana, and shall contain the particular location for which the hardship extension is requested.

The Town of Greenville, Indiana Council shall issue a written decision within ten (10) days after the public hearing on the application for a hardship extension. The hardship extension shall be granted upon a showing that the nonconforming sexually oriented business is unable, absent the extension, to make a reasonable recoupment of its investment in its currently lawful, nonconforming use location.

Section 22. Severability.

This ordinance and each section and provision of said ordinance hereunder, are hereby declared to be independent divisions and subdivisions and, notwithstanding any other evidence of legislative intent, it is hereby declared to be the controlling legislative intent that if any provisions of said ordinance, or the application thereof to any person or circumstance is held to be invalid, the remaining sections or provisions and the application of such sections and provisions to any person or circumstances other than those to which it is held invalid, shall not be affected thereby, and it is hereby declared that such sections and provisions would have been passed independently of such section or provision so known to be invalid. Should any procedural aspect of this ordinance be invalidated, such invalidation shall not affect the enforceability of the substantive aspects of this ordinance.

TOWN OF GREENVILLE

ORDINANCE NO. 2011-TO-019

Section 23. Conflicting code provisions.

In the event of any conflict between any provision of this ordinance and any provision(s) in another Town of Greenville, Indiana Ordinance, the provisions of this ordinance shall prevail.

Section 24. Effective date, Enforcement, Fines and Penalties.

ENFORCEMENT:

Enforcement of this Ordinance shall be pursuant to I.C. 36-8-2-4, I.C. 36-8-2-10, I.C. 36-8-2-13, I.C.36-1-6-2, I.C.36-1-6-3, I.C.36-1-6-4, or a successor statute if said statute is repealed.

Fines and Penalties:

1. The Town of Greenville Council shall give all persons holding a substantial interest in any Real property, which is not in compliance with this Ordinance ten {10} days written notice to correct the condition and bring the property into compliance. Such notice may be in person by any member of the Greenville Marshal Department, or by mailing it by registered or certified mail with return receipt requested.
2. That for each day any person or entity shall be in violation of this Ordinance after the ten {10} day period set forth in paragraph one {1} above, said person shall be fined an amount not less than \$1,000.00 US Dollars {\$1,000.00} per day plus Attorney fees and Court Cost.
3. If levied fines are not paid within 30 days, a lien will be sought against person or person's responsible real estate in accordance with I.C. 36-1-6-2.
4. Furthermore, if the condition of said real estate has not been corrected within thirty {30} days after the aforesaid ten {10} day notice period, the Town of Greenville Council may cause to be certified to the County Auditor as a charge against the taxes due and payable to the County Treasurer in the following year together with Attorney Fees and Court Cost in accordance with IC 36-1-6-2 or successor statute, if said statute is repealed.
5. The Town of Greenville may pursue any and all penalties described in I.C. 36-1-6-3 in addition to the penalties described in I.C. 36-1-6-4, or a successor statute if said statute is repealed.
6. No penalty shall be levied for violation of this Ordinance, nor shall any action be taken by the Town to bring the real property into compliance with this Ordinance, unless all persons holding a substantial interest in the property are given a reasonable opportunity to bring the property into compliance.

TOWN OF GREENVILLE
ORDINANCE NO. 2011-TO-019

7. This Ordinance replaces Ordinance 2006-T-62 and 2006-T-62A. Ordinance 2006-T-62 and 2006-T-62A shall be moved to the voided Ordinance file after passage of this Ordinance.


8. The Town of Greenville Clerk/Treasurer shall publish this Ordinance within 30 days in the New Albany Tribune after passage.

9. The Town of Greenville Clerk/Treasurer shall attach a copy of the publication and related information to the original signed Ordinance and a PDF file shall be added to the electronic file copy of this Ordinance.

ADOPTED BY THE TOWN COUNCIL OF GREENVILLE, INDIANA, ON THE 18th DAY OF JULY, 2011.

PRESIDENT OF THE TOWN
COUNCIL OF GREENVILLE,
INDIANA


TALBOTTE RICHARDSON,


JACK TRAVILLIAN,
CLERK/TREASURER

PREPARED BY: RANDAL JOHNES

TOWN OF GREENVILLE

ORDINANCE NO. 2011-TO-019

IC 36-8-2-4

Regulation of dangerous conduct or property

Sec. 4. A unit may regulate conduct, or use or possession of property that might endanger the public health, safety, or welfare. *As added by Acts 1980, P.L.211, SEC.3.*

IC 36-8-2-10

Regulation of businesses and professions

Sec. 10. A unit may regulate the operation of businesses, crafts, professions, and occupations. *As added by Acts 1980, P.L.211, SEC.3.*

IC 36-8-2-13

Extraterritorial powers

Sec. 13. A municipality may exercise powers granted by sections 4, 5, and 6 of this chapter in areas within four (4) miles outside its corporate boundaries. *As added by Acts 1980, P.L.211,*

IC 36-1-6-1 Application of chapter

Sec. 1. This chapter applies to all municipal corporations having the power to adopt ordinances. *As added by Acts 1980, P.L.211, SEC.1.*

IC 36-1-6-2

Action to bring compliance with ordinance conditions; expense as lien against property; enforcement of delinquent fees and penalties

Sec. 2. (a) If a condition violating an ordinance of a municipal corporation exists on real property, employees or contractors of a municipal corporation may enter onto that property and take appropriate action to bring the property into compliance with the ordinance. However, before action to bring compliance may be taken, all persons holding a substantial interest in the property must be given a reasonable opportunity of at least ten (10) days but not more than sixty (60) days to bring the property into compliance. Continuous enforcement orders (as defined in IC 36-7-9-2) can be enforced and liens may be assessed without the need for additional notice. If the municipal corporation takes action to bring compliance, the expenses incurred by the municipal corporation to bring compliance constitute a lien against the property. The lien attaches when notice of the lien is recorded in the office of the county recorder in which the property is located. The lien is superior to all other liens except liens for taxes, in an amount that does not exceed:

(1)ten thousand dollars (\$10,000) for real property that:

(A)contains one (1) or more occupied or unoccupied single or double family dwellings or the appurtenances or additions to those dwellings; or

(B)is unimproved; or

(2) twenty thousand dollars (\$20,000) for all other real property not described in subdivision (1).

(b)The municipal corporation may issue a bill to the owner of the real property for the costs incurred by the municipal corporation in bringing the property into compliance with the ordinance, including administrative costs and removal costs.

(c)A bill issued under subsection (b) is delinquent if the owner of the real property fails to pay the bill within thirty (30) days after the date of the issuance of the bill.

(d)Whenever a municipal corporation determines it necessary, the officer charged with the

TOWN OF GREENVILLE
ORDINANCE NO. 2011-TO-019

collection of fees and penalties for the municipal corporation shall prepare:

(1) a list of delinquent fees and penalties that are enforceable under this section, including:

(A) the name or names of the owner or owners of each lot or parcel of real property on which fees are delinquent;

(B) a description of the premises, as shown on the records of the county auditor; and

(C) the amount of the delinquent fees and the penalty; or (2) an instalment for each lot or parcel of real property on which the fees are delinquent.

(e) The officer shall record a copy of each list or each instrument with the county recorder, who shall charge a fee for recording the list or instrument under the fee schedule established in IC 36-2-7-10.

(f) The amount of a lien shall be placed on the tax duplicate by the auditor. The total amount, including any accrued interest, shall be collected in the same manner as delinquent taxes are collected and shall be disbursed to the general fund of the municipal corporation.

(g) A fee is not enforceable as a lien against a subsequent owner of property unless the lien for the fee was recorded with the county recorder before conveyance to the subsequent owner. If the property is conveyed before the lien is recorded, the municipal corporation shall notify the person who owned the property at the time the fee became payable. The notice must inform the person that payment, including penalty fees for delinquencies, is due not later than fifteen (15) days after the date of the notice. If payment is not received within one hundred eighty (180) days after the date of the notice, the amount due may be considered a bad debt loss.

(h) The municipal corporation shall release:

(1) liens filed with the county recorder after the recorded date of conveyance of the property; and

(2) delinquent fees incurred by the seller; upon receipt of a written demand from the purchaser or a representative of the title insurance company or the title insurance company's agent that issued a title insurance policy to the purchaser. The demand must state that the delinquent fees were not incurred by the purchaser as a user, lessee, or previous owner and that the purchaser has not been paid by the seller for the delinquent fees.

(i) The county auditor shall remove the fees, penalties, and service charges that were not recorded before a recorded conveyance to a subsequent owner upon receipt of a copy of the written demand under subsection (h).

As added by Acts 1980, P.L.211, SEC.1 Amended by P.L.50-2002, SEC.1; P.L.144-2003, SEC.1; P.L.177-2003, SEC.2; P.L.131-2005, SEC.5; P.L.88-2006, SEC.7; P.L.194-2007, SEC.8; P.L.88-2009, SEC. 5.

IC 36-1-6-3

Proceeding to enforce ordinance; law applicable

Sec. 3. (a) Certain ordinances may be enforced by a municipal corporation without proceeding in court through:

(1) an admission of violation before the violations clerk under IC 33-36; or

(2) administrative enforcement under section 9 of this chapter,

(b) Except as provided in subsection (a), a proceeding to enforce an ordinance must be brought in accordance with IC 34-28-5, section 4 of this chapter, or both.

TOWN OF GREENVILLE
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(c) An ordinance defining a moving traffic violation may not be enforced under IC 33-36 and must be enforced in accordance with IC 34-28-5.

As added by Acts 1980, P.L.211, SEC.1. Amended by Acts 1981, P.L.108, SEC.39; P.L.177-1988, SEC.8; P.L.130-1991, SEC.35; P.L.1-1998, SEC.202; P.L.98-2004, SEC.159.

IC 36-1-6-4

Civil action by municipal corporation; action by court

Sec. 4. (a) A municipal corporation may bring a civil action as provided in IC 34-28-5-1 if a person:

- (1) violates an ordinance regulating or prohibiting a condition or use of property; or
 - (2) engages in conduct without a license or permit if an ordinance requires a license or permit to engage in the conduct.
- (b) A court may take any appropriate action in a proceeding under this section, including any of the following actions:
- (1) Issuing an injunction.
 - (2) Entering a judgment.
 - (3) Issuing a continuous enforcement order (as defined in IC 36-7-9-2).
 - (4) Ordering the suspension or revocation of a license.
 - (5) Ordering an inspection.
 - (6) Ordering a property vacated.
 - (7) Ordering a structure demolished.
 - (8) Imposing a penalty not to exceed an amount set forth in IC36-1-3-8(a)(10).
 - (9) Imposing court costs and fees in accordance with IC 33-37-4-2 and IC 33-37-5.
 - (10) Ordering a defendant to take appropriate action to bring a property into compliance with an ordinance within a specified time.
 - (11) Ordering a municipal corporation to take appropriate action to bring a property into compliance with an ordinance in accordance with IC 36-1-6-2.

As added by Acts 1980, P.L.211, SEC.1. Amended by P.L. 194-2007, SEC. 9; P.L. 88-2009, SEC. 6.

TOWN OF GREENVILLE
ORDINANCE NO. 20XX-TR-XXX

**SEXUALLY ORIENTED RESOLUTION LICENSE / EMPLOYEE
RESOLUTION LICENSE FOR THE TOWN OF GREENVILLE, INDIANA**

WHEREAS, the Town Council for the Town of Greenville, Indiana, in the interest of public health, safety and welfare, has deemed it necessary that the Town issue Sexually Oriented Business and Sexually Oriented Business Employee License in accordance with Town of Greenville Ordinance Number 2011-TO-019 within the corporate limits of the Town of Greenville, Indiana;

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF GREENVILLE, INDIANA, AS FOLLOWS:

Printed name of Business: _____

Address: _____

Date: _____

Section 4. Resolution License Required.

{a} It shall be unlawful for any person to operate a sexually oriented business in the Town of Greenville, Indiana without a valid sexually oriented business Resolution License.

{b} It shall be unlawful for any person to be an "employee," as defined in this Ordinance, of a sexually oriented business in the Town of Greenville, Indiana without a valid sexually oriented business employee Resolution License.

{c} An applicant for a sexually oriented business Resolution License or a sexually oriented business employee Resolution License shall file in person at the office of the Greenville Town Clerk/Treasurer requesting a Town of Greenville Council to pass a Town of Greenville Resolution License. A completed application made on a form provided by the Town of Greenville Clerk/Treasurer shall be submitted to the Greenville Town Council for preparation of the Resolution License to be considered at the next Town of Greenville Council Meeting. The application shall be signed as required by subsection (e) herein and shall be notarized. An application shall be considered complete when it contains, for each person required to sign the application, the information and/or items required in Paragraphs 1 through 7 below, accompanied by the appropriate fee identified in Section 6: If completed application meets all ordinance requirements a resolution shall be passed and must be posted at entry of the place of business. Resolution License must be renewed each year on anniversary date.

TOWN OF GREENVILLE
ORDINANCE NO. 20XX-TR-XXX

{1} All applicant's full true name and any other names used by the applicants in the preceding five {5} years.

Printed Name: _____

Printed Prior Name: _____

Printed Prior Name: _____

Printed Name: _____

Printed Prior Name: _____

Printed Prior Name: _____

Printed Name: _____

Printed Prior Name: _____

Printed Prior Name: _____

Printed Name: _____

Printed Prior Name: _____

Printed Prior Name: _____

{2} Current business address or mailing address of the applicant.

Printed Address: _____

{3} Written proof of age, in the form of a driver's license or a copy of a birth certificate accompanied by a picture identification document issued by a governmental agency.

TOWN OF GREENVILLE
ORDINANCE NO. 20XX-TR-XXX

Submitted and approved by Greenville Town Clerk:

Printed Name: _____ Date: _____

Signed Name: _____

{4} If the application is for a sexually oriented business license, the business name, location, mailing address and phone number of the sexually oriented business.

Printed Business Name: _____

Printed Business Location: _____

Printed Mailing Address: _____

Printed Business, Personal and Cell Phone Number: _____

Information Verified By Town of Greenville Clerk:

Printed Name: _____ Date: _____

Signed Name: _____

{5} Application for a sexually oriented business Resolution License shall provide the name and business address of the statutory agent or other agent authorized to receive service of process.

Printed Name of the statutory agent or other agent authorized to receive service of process:

{6} A statement of whether an applicant has ever been convicted of or has pled guilty or nolo contendere to a specified criminal activity as defined in this ordinance, and if so, each specified criminal activity involved, including the date, place, and jurisdiction of each as well as the dates of conviction and release from confinement, where applicable.

Please Print: _____

TOWN OF GREENVILLE
ORDINANCE NO. 20XX-TR-XXX

Continue {6} _____

If additional space required please attach information on s supplemental paper and attach to back of license request.

{7} A statement of whether any sexually oriented business in which an applicant has had an influential interest has, in the previous five (5) years (and at a time during which the applicant had the influential interest):

- (i) been declared by a court of law to be a nuisance; or
- (ii) been subject to a court order of closure or padlocking.

Please Print: _____

The information provided pursuant to Paragraphs 1 through 7 of this subsection shall be supplemented in writing by certified mail, return receipt requested, to the Greenville Clerk/Treasurer within ten (10) working days of a change of circumstances which would render the information originally submitted false or incomplete.

Acknowledged Printed Name: _____ Date: _____

Acknowledge Signature Name: _____

TOWN OF GREENVILLE
ORDINANCE NO. 20XX-TR-XXX

{d} An application for a sexually oriented business license shall be accompanied by a legal description of the property where the business is located and a sketch or diagram showing the configuration of the premises, including a statement of total floor space occupied by the business. The sketch or diagram need not be professionally prepared but shall be drawn, to a designated scale or drawn with marked dimensions of the exterior of the premises to an accuracy of plus or minus six (6) inches. Applicants who are required to comply with Sections 14 and 18 of this ordinance shall submit a diagram indicating that the interior configuration meets the requirements of those sections.

Received Town of Greenville Clerk / Treasurer {please print}

_____ Date: _____

Written Signature: _____

{e} If a person who wishes to operate a sexually oriented business is an individual, he shall sign the application for a Resolution License as applicant. If a person who wishes to operate a sexually oriented business is other than an individual, each person with an influential interest in the business shall sign the application for a license as applicant. Each applicant must be qualified under Section 5 and each applicant shall be considered a licensee if a Resolution License is granted.

Applicant{s} please print:

_____ Date: _____

Written Signature: _____

_____ Date: _____

Written Signature: _____

_____ Date: _____

Written Signature: _____

TOWN OF GREENVILLE
ORDINANCE NO. 20XX-TR-XXX

Date: _____

Written Signature: _____

Date: _____

Written Signature: _____

Date: _____

Written Signature: _____

Date: _____

{f} The information provided by an applicant in connection with an application for a Resolution License under this ordinance shall be maintained by the Greenville Town Hall of the Greenville Clerk/Treasurer on a confidential basis, and such information may be disclosed only as may be required, and only to the extent required, by law or court order.

Section 5. Issuance of Resolution License.

{a} Upon the filing of a completed application under Section 4(c) for a sexually oriented business Resolution License, the Greenville Town Council shall within 30 days after approval of the Resolution License to the applicant. The Greenville Town Council shall issue a Resolution License unless:

{1} An applicant is less than eighteen (18) years of age.

{2} An applicant has failed to provide information as required by Section 4 for issuance of a Resolution License or has falsely answered a question or request for information on the application form.

{3} The Resolution License application fee required by this Ordinance has not been paid.

{4} The sexually oriented business, as defined herein, is not in compliance with the interior configuration requirements of this Ordinance or is not in compliance with locational requirements of this ordinance or the locational requirements of any other Town of Greenville, Indiana ordinances.

TOWN OF GREENVILLE

ORDINANCE NO. 20XX-TR-XXX

{5} Any sexually oriented business in which the applicant has had an influential interest, has, in the previous five (5) years (and at a time during which the applicant had the influential interest):

- (i) been declared by a court of law to be a nuisance; or
- (ii) been subject to an order of closure or padlocking.

{6} The applicant has been convicted of or pled guilty or nolo contendere to a specified criminal activity, as defined in this ordinance.

{7} The Greenville Town Council shall either issue a Resolution License or issue a written notice of denial of a Resolution License to the applicant with cause for denial. The Resolution License if approved shall contain the following:

(a) The Resolution License, if granted, shall state on its face the name of the person or persons to whom it is granted, the number of the Resolution License issued to the licensee(s), the expiration date, and, the address of the sexually oriented business. The sexually oriented business Resolution License shall be posted in a conspicuous place at or near the entrance to the sexually oriented business so that it may be read at any time. A sexually oriented business employee shall keep the employee's license on his or her person or on the premises where the licensee is then working or performing.

Section 6. Fees.

(a) The initial Resolution License and annual renewal fees for sexually oriented business Resolution Licenses; and sexually oriented business employee Resolution Licenses shall be as follows: Five Thousand U.S. Dollars (\$5,000) for; the initial fee for a sexually oriented business Resolution License and Two Thousand Five Hundred U.S. Dollars; (\$2,500) for annual; renewal; Five Hundred U.S. Dollars (\$500.00) for the initial sexually oriented business employee Resolution License and Five Hundred U.S. Dollars (\$500.00) for annual renewal.

Section 7. inspection.

Sexually oriented businesses and sexually oriented business employees shall permit the Greenville Town Council or its designee {Greenville Marshal Department} to inspect, from time to time on an occasional basis, the portions of the sexually oriented business premises where patrons are permitted, for the purpose of ensuring compliance with the specific regulations of this Ordinance, during those times when the sexually oriented business is occupied by patrons or is open to the public. This section shall be narrowly construed by the Town of Greenville, Indiana Council to authorize reasonable inspections of the Resolution Licensed premises pursuant to this ordinance, but not to authorize a harassing or excessive pattern of inspections.

Section 8. Expiration of Resolution License.

(a) Each Resolution License shall remain valid for a period of one calendar year from the date of passage unless otherwise suspended or revoked. Such Resolution License may be renewed only by making application and payment of a fee as provided in Section 4 and Section 6.

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(b) Application for renewal should be made pursuant to the procedures set forth in Section 4 at least ninety (90) days before the expiration date, and when made less than ninety (90) days before the expiration date, the expiration of the Resolution License will not be affected.

Section 9. Suspension Resolution License.

(a) The Town of Greenville, Indiana Council shall issue a written letter of intent to suspend a sexually oriented business Resolution License for a period not to exceed thirty (30) days if the sexually oriented business Resolution Licensee has knowingly violated this ordinance or has knowingly allowed an employee to violate this Ordinance. If license is suspended or revoked all fees paid are non-refundable.

(b) The Town of Greenville, Indiana Council shall issue a written letter of intent to suspend a sexually oriented business employee Resolution License if the employee has knowingly violated this Ordinance. If license is suspended or revoked all fees paid are non-refundable.

ADOPTED BY THE TOWN COUNCIL OF GREENVILLE, INDIANA, ON THE ____th DAY
OF _____, 20XX.

PRESIDENT OF THE TOWN
COUNCIL OF GREENVILLE,
INDIANA

TALBOTTE RICHARDSON,

JACK TRAVILLIAN,
CLERK/TREASURER

PREPARED BY: RANDAL JOHNES

I THE UNDERSIGN ACKNOWLEDGE THE WITNESSING OF THE SIGNING OF
APPLICANTS SIGNATURE {S}:

NOTARY PRINTED SIGNATURE: _____

NOTARY WRITTEN SIGNATURE: _____

MY COMMISSION EXPIRES: _____

NOTARY SEAL ABOVE

ADULT ENTERTAINMENT BUSINESSES IN INDIANAPOLIS

AN ANALYSIS

1984

ADULT ENTERTAINMENT BUSINESSES IN INDIANAPOLIS
AN ANALYSIS

Department of Metropolitan Development
Division of Planning
February, 1984

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SUMMARY AND RECOMMENDATIONS

During the past ten years, Indianapolis has experienced a significant growth in the number and variety of adult entertainment businesses located in its jurisdiction. An adult entertainment business, for the purposes of this study, is an establishment which primarily features sexually stimulating material or performances. As of mid-1983 there were sixty-eight such businesses operating in this City. They were located at forty-three separate sites.

The proliferation of these businesses heightened the community's awareness of their existence and resulted in numerous requests that the City control their presence. Beyond the moral objections raised by many citizens, it was also alleged that such businesses had a detrimental effect on property values and contributed to high crime rates where they were located.

The Indianapolis Division of Planning undertook this study in July of 1983. Of the existing adult entertainment sites, the study examined six representative locations (the Study Area) and the presence - or lack thereof - of certain relevant conditions therein. It then compared these sites with six physically similar locations (the Control Area) containing no adult entertainment business. Both groups of sites were compared with the City as a whole.

Because of their importance to the public welfare of the community, the study examined the factors of crime incidence during the period 1978 - 1982 and real estate value appreciation from 1979 - 1982. In support of limited real estate data on a small area level, the City collaborated with Indiana University in a national survey of real estate appraisers to develop a "best professional opinion" as to the effect of adult entertainment businesses on surrounding real estate values.

As discussed in Appendix III of this report, case law has firmly established the legal and constitutional basis for control of the use of land within their jurisdiction by states and municipalities in order to safeguard "the public health, safety, morals and general welfare of their citizens". The "public welfare", in this context, embraces the stabilization of property values and the promotion of desirable home surroundings. On the other hand, case law has also upheld the right of this business sector to operate in the community under the First and Fourteenth Amendments of the Constitution.

In establishing an empiric base to determine whether controls were warranted in order to direct the location of these businesses, analyses of the data showed:

- The average major crime rate (i.e., crimes per 10,000 population) in the IPD District was 748.55, the Control Area 886.34, and the Study Area 1090.51. Major crimes occurred in areas of the study that contained at least one adult entertainment establishment at a rate that was 23% higher than the six similar areas studied not having such businesses and 46% higher than the Police District at large.
- Although it was impossible to obtain a discrete rate for sex-related crimes at the police district level, it was possible to compare rates between the Control Areas and the Study Areas. The average sex-related crime rate in the Control Areas over the five year period was 26.2, while that rate for the Study Areas was 46.4.
- If the ratio of sex-related crimes was the same as that established for major crimes between the Control Area and the Study Area, however, we would expect a sex-related crime rate of 32.3. The actual rate of 46.4 is 77% higher than that of the Control Areas rather than the 23% that would be expected and indicates the presence of abnormal influences in the Study Areas.
- Close examination of crime statistics within the Study Areas indicate a direct correlation between crime and the residential character of the neighborhood. Crime frequencies were 56% higher in residential areas of the study than in its commercial areas.
- At the same time, sex-related crimes occurred four times more frequently within residential neighborhoods having at least one adult entertainment business than in neighborhoods having a substantially district-related commercial make-up having adult entertainment.
- Although the housing base within the Study Areas was of a distinctly higher value than that of the Control Areas, its value appreciated at only one-half the rate of the Control Areas' and one-third the rate of Center Township as a whole during the period 1979 - 1982.
- Pressures within the Study Areas caused the real estate market within their boundaries to perform in a manner contrary to that within the Control Areas, Center Township and the County. In a time when the market saw a decrease of 50% in listings, listings within the Study Areas actually increased slightly.

- As a result, twice as many houses were placed on the market at substantially lower prices than would be expected had the Study Area's market performance been typical for the period of time in question.
- The great majority of appraisers (75%) who responded to a national survey of certified real estate appraisers felt that an adult bookstore located within one block would have a negative effect on the value of both residential (80%) and commercial (72%) properties. 50% of these respondents foresaw an immediate depreciation in excess of 10%.
- At a distance of three blocks, the great majority of respondents (71%) felt that the impact of an adult bookstore fell off sharply so that the impact was negligible on both residential (64%) and commercial (77%). At the same time, it appears that the residual effect of such a use was greater for residential than for commercial properties.
- In answer to a survey question regarding the impact of an adult bookstore on property values generally, 50% felt that there would be a substantial-to-moderate negative impact, 30% saw little or no impact, and 20% saw the effect as being dependent on factors such as the predominant values (property and social) existing in the neighborhood, the development standards imposed on the use, and the ability of an existing commercial node to buffer the impact from other uses.

While the statistics assembled and analyzed in this study should not be construed as proving that adult businesses cause the negative impacts illuminated herein, an obvious variable in each instance of comparison is their presence. Crime rates - particularly those that are sex-related - show substantial deviation from normal rates for this population. Analyses of real estate listings and sales show a negatively abnormal performance of the real estate market in areas where adult entertainment is offered. In this latter case, the best professional judgement available indicates overwhelmingly that adult entertainment businesses - even a relatively passive use such as an adult bookstore - have a serious negative effect on their immediate environs.

Consequently, it would seem reasonable and prudent that the City exercise its zoning power to regulate the location of adult entertainment businesses so that they operate in areas of the community that, while accessible to their patrons, are yet located in districts that are least likely to injure the general welfare of residents.

IT IS, THEREFORE, RECOMMENDED:

- THAT ADULT ENTERTAINMENT BUSINESSES BE ALLOWED TO LOCATE IN AREAS THAT ARE PREDOMINANTLY ZONED FOR DISTRICT-ORIENTED COMMERCIAL ENTERPRISES - I. E., C4 OR MORE INTENSE USE CATEGORIES.
- THAT NO ADULT ENTERTAINMENT BUSINESS BE ALLOWED TO LOCATE IN AREAS THAT ARE PREDOMINANTLY ZONED FOR NEIGHBORHOOD-ORIENTED COMMERCIAL ENTERPRISES - I. E., C3 OR LESS INTENSIVE USE CATEGORIES.
- THAT EACH LOCATION REQUIRE A SPECIAL EXCEPTION WHICH, AMONG OTHER CONSIDERATIONS, WOULD REQUIRE APPROPRIATE DEVELOPMENT STANDARDS DESIGNED TO BUFFER AND PROTECT ADJACENT PROPERTY VALUES.
- THAT THESE USES NOT BE ALLOWED TO LOCATE WITHIN 500 FEET OF A RESIDENTIAL, SCHOOL, CHURCH OR PARK PROPERTY LINE NOR WITHIN 500 FEET OF AN ESTABLISHED HISTORIC AREA.

INTRODUCTION

As is the case in most large cities, Indianapolis has experienced a rapid growth in the number and variety of adult entertainment businesses over the past ten years. As of June, 1983 there were sixty-eight such businesses located singly and in clusters throughout Marion County.

For the purpose of this study, the term "adult entertainment business" is a general term utilized to collectively designate businesses which primarily feature sexually stimulating material and/or performances. These non-exclusively include adult bookstores, adult cabarets, adult drive-in theaters, adult mini motion picture theaters and arcades, adult entertainment arcades and adult service establishments.

These enterprises have posed a particular problem due, in part, to the moral implications attendant upon such businesses in the minds of many members of the community. While this is, perhaps, the view of the majority, case law on the subject has clearly established that the exclusion of such businesses from a community is an infringement of First Amendment rights. The proliferation of such businesses providing various forms of adult entertainment in Marion County has exacerbated this dilemma and given rise to additional charges of negative impacts on neighborhoods in proximity to their location.

Through the use of their zoning power, cities have within the past half century directed the physical growth of communities in order to assure a harmonious blend of land uses which foster the general welfare of the population. This power has been applied more recently to adult entertainment businesses in many communities and has served as a prime means of controlling possible negative impacts on neighborhoods.

This study was undertaken to examine these alleged negative impacts with the purpose of empirically establishing, to the extent possible, their existence or non-existence as well as their real dimensions in Indianapolis. The possible relationships between these impacts and the land use characteristics of the sites in which they are offered were also examined to ascertain whether certain land use classifications were better suited than others for the location of adult entertainment businesses.

STUDY METHODS

As described below, the study methodology employs the comparison of different land areas in Indianapolis. The two basic areas of comparison are Study Areas and Control Areas. They are distinguished by the existence of adult entertainment establishments within their boundaries (the Study Areas) or the absence thereof (the Control Areas).

These two designations are further differentiated as to the general purpose or emphasis of the land uses they contain. Those that generally serve the immediately surrounding residential uses are termed "Neighborhood-Related" while those that contain uses meant to serve a broader geographic area are designated "Community-Related".

STUDY SITE LOCATIONS

At the time of the study's inception, there were at least forty-three possible, distinct sites in Indianapolis where adult entertainment was offered either singly or in clusters of establishments. For manageability purposes, it was decided to select six of these sites that were representative. In choosing these subject locations (as well as the Control Areas of the study), the determinant characteristics were their zoning mix, population size and the relative age of housing stock. In each case, adult entertainment was offered during the time span of the study.

The selection process was additionally based on the number of establishments located in a given neighborhood, whether it was residential in nature and therefore neighborhood-related, or contained a significant portion of its land use in regional, commercial uses which made it community-related.

The designation "Neighborhood-Related" was applied where a preponderance (75% or more) of the area within 1000 feet of the site was zoned D1 through D12 (residential dwelling district classifications) and the commercial areas were neighborhood-related - principally C3 (a neighborhood commercial classification). Special Use designations were judged to be neighborhood-related or not on an individual basis. SU1 (church) & SU2 (school), for example, were judged to be generally neighborhood-related.

"Community-Related" areas were described as areas where a significant proportion (30% or more) of the zoning within the 1000-foot radius was C4 (Community-Regional Commercial) or more intense and the Special Uses within the boundaries were of a community-wide nature. SU6 (hospital) and SU21 (cemetery) were judged, therefore, to be related to the community generally.

Within these two broad classifications, six locations were chosen. Two of them were situated in residential settings, two in regional-commercial settings and two in areas that fell in between, i. e., areas that had a high percentage of residential zoning but also contained a certain proportion of regionally oriented commercial zoning. These six locations became the Study Areas of this investigation. (cf. Appendix I)

AREA ZONING CHARACTERISTICS STUDY AREAS

SITE	CHARACTERISTICS			
	Residential	Commercial	Special	Parks
<u>Residential</u>				
1.5431 East 38th St.	D4=82%	C1=7% C3=8%	SU1=3%	-
2.3155 East 10th St.	D5=75%	C3=24%	SU9=1%	-
<u>Coml./Residential</u>				
3.3555 West 16th St.	D5=78%	C4=22%	-	-
4.2101 W. Washington	D5=60%	C3=3% C4=18%	SU2=17%	PK1=2%
<u>Commercial</u>				
5.6116 E. Washington	D5=65% D8=5%	C4=30%	-	-
6.4441-63 N. Keystone	D5=15%	C2=5% C3=10% C5=40%	11U=12% 12U=13%	PK2=5%

Of the two sites chosen in residential areas, one contained an adult bookstore (Apollo Adult Books, 5431 East 38th St.) and a massage parlor (Eve's Garden of Relaxation, 5429 East 38th St.) The other residential location contained an adult movie house (Rivoli Theater, 3155 East 10th St.) and a topless bar (Ten-De Club, 3201 East 10th St.)

One of the commercial/residential areas had a topless bar within its boundaries (Blue Moon Saloon, 2101 West Washington), while the other harbored the White Front Bar which featured topless dancing (3535 West 16th St.)

The two commercial areas chosen were in the sixty-one hundred block of East Washington St. and the forty-four hundred block of North Keystone. The first site contained two adult bookstores (Modern Art Bookstore at 6118 and Adult Arcade at 6122) and a massage parlor (Spanish Moon at 6116.) The North Keystone location contained four massage parlors (Other World, 4441, Diamond's Angels, 4445, Pleasure Palace, 4461, and Town and Country, 4463), two adult bookstores (Video World, 4447 and Adult Bookstore, 4475) as well as a topless lounge (Devil's

Hideaway, 4451).

Six areas were also selected to serve as control sites for the study. These sites were chosen on the basis of their proximate location to the Study Areas (or their location on major thoroughfares in areas physically similar in location and types of development), size of population and zoning characteristics. None contained adult entertainment businesses. Selection was also made so that two of the sites were in predominantly residential areas, two in commercial areas and two in areas that contained a significant mix of residential and regional commercial zoning. These six sites became the Control Areas of the study, (cf. Appendix I.)

AREA ZONING CHARACTERISTICS CONTROL AREAS

<u>SITE</u>	<u>CHARACTERISTICS</u>			
	<u>Residential</u>	<u>Commercial</u>	<u>Special</u>	<u>Parks</u>
<u>Residential</u>				
1.2300 West 10th St.	D5=82%	C1=4% C3=14%	-	-
2.2500 East 10th St.	D5=80%	C2=12% C3=8%	-	-
<u>Coml./Residential</u>				
3.5420 E. Washington	D5=62% D6=8% D8=10%	C3=1% C4=19%	-	-
4.2600 W. Washington	D5=35% D4=34%	C1=2% C2=1% C5=13% C7=8%	SU1=3% SU2=3%	-
<u>Commercial</u>				
5.5200 N. Keystone	D2=7% D4=2% D5=15% D7=6%	C1=4% C3=9% C5=25% C7=20% CS=2%	11U=10%	-
6.750 N. Shadeland	D2=3% D3=15% D7=3%	C4=49% C5=10% CS=5%	SU1=15%	-

AREA ZONING CHARACTERISTICS

	NEIGHBORHOOD-RELATED	COMMUNITY-RELATED
<u>Residential</u>		
Study Area		
1.	100%	-
2.	99%	1%
Control Area		
1.	100%	-
2.	100%	-
<u>Coml./Residential</u>		
Study Area		
3.	78%	22%
4.	82%	18%
Control Area		
3.	81%	19%
4.	78%	22%
<u>Commercial</u>		
Study Area		
5.	70%	30%
6.	35%	65%
Control Area		
5.	43%	57%
6.	36%	64%

STUDY SITE COMPARISONS

Throughout the following analyses, a series of comparisons are made at several different levels of geography: i.e., County/Police District; Census Tract/Census Tract Cluster; and Control/Study Area.

Large Area

When dealing with crime statistics, the Indianapolis Police Department District is used as the largest universe of comparison. In the case of real estate information, Marion County is used as the largest geographic area of comparison. Center Township is also used as a basis of comparison in the analysis of adult entertainment impacts on property values.

Mid-Size Area

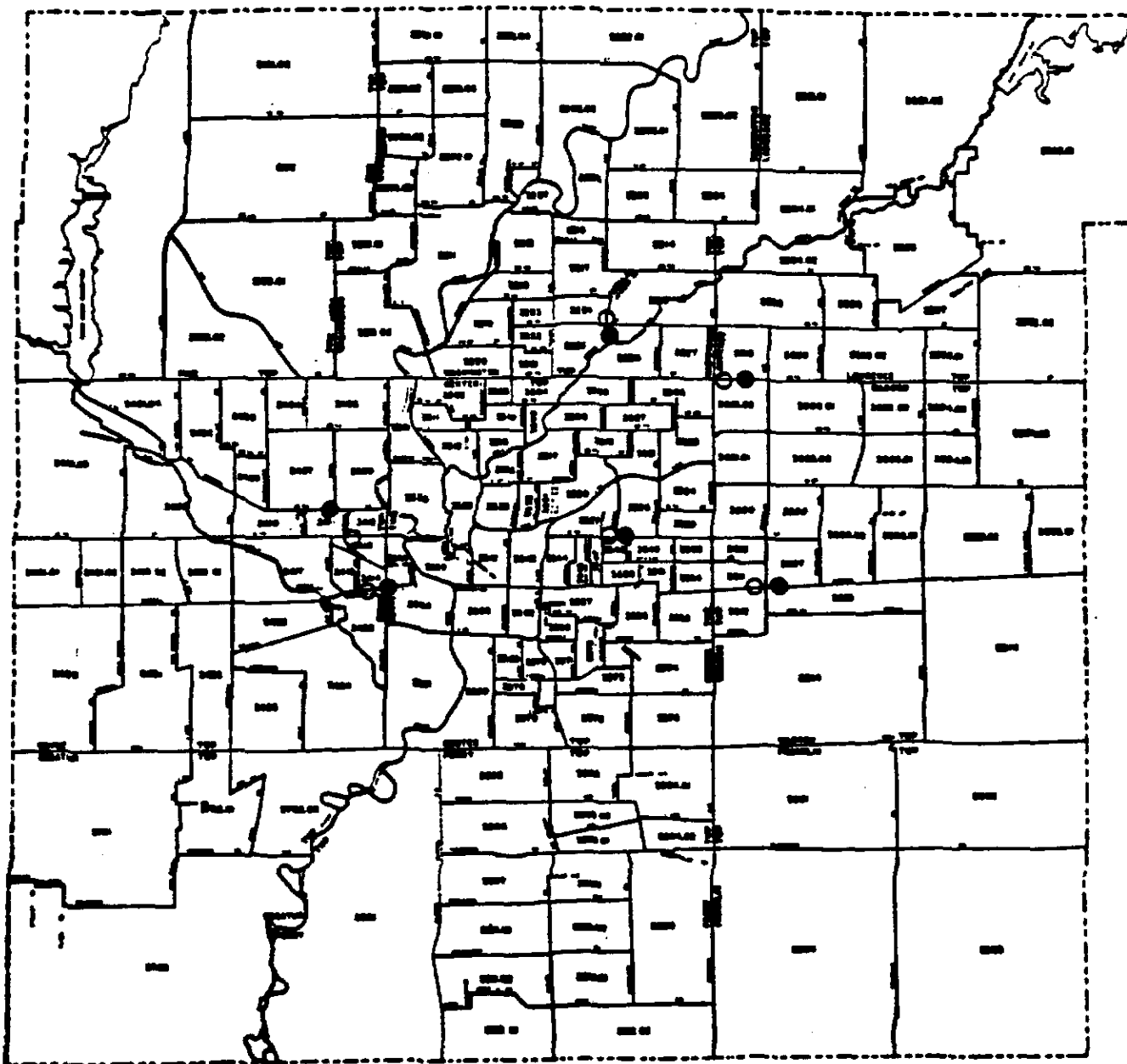
Intermediate geographic levels used for comparison in the study were census tracts when study sites were centrally located within their boundaries. Where they were not, those census tracts in proximity to the site were chosen as the basis of comparison.

CENSUS TRACTS/TRACT CLUSTERS
Study/Control Areas

	1	2	3	4	5	6
Control Areas	3412 2416	3527 3547 3548	3611 3612	3414 3426	3216 3217	3606 3607 3608
Study Areas	3310 3601	3526 3548 3549	3411	3414 3426 3538	3607	3216 3224 3225 3226

Sub-Area

The Control Areas and the Study Areas, as described above, formed the smallest geographic group of the study. These target areas were constituted using the criteria listed in the previous section of this report and data derived for them by aggregating block-level or addressed data within a 1000-foot radius of the area centroid.



1980 CENSUS TRACTS

ADULT ENTERTAINMENT BUSINESS STUDY

- Study Area
- Control Area



Source: U.S. Census Bureau, 1980 Census of the United States

CRIME INCIDENCE

The Data Processing Unit of the Indianapolis Police Department performed two computer runs of their "Incidence Files" ¹ in August of 1983 at the request of the City Division of Planning. The resultant printouts detailed all reported incidents to which police had been dispatched in the Control Areas and the Study Areas during the years 1978, 1979, 1980, 1981 and 1982. Data were assembled from these printouts on a year-by-year, area-by-area basis. They were then grouped by Major Crimes² and Sex-Related Crimes.³

Summary data for the Indianapolis Police District were also assembled for major crimes during the years 1978 through 1982. Unfortunately, sex-related crimes had not been discreetly assembled for the Police District and study constraints would not allow their tabulation manually.

The purpose of these tabulations was to identify any possible abnormalities that might have occurred in expected frequency and nature of crime between the Indianapolis Police District, the Control Areas which were chosen for their similarity to the Study Areas and the Study Areas themselves in which adult entertainment establishments were in operation.

As was demonstrated in the previous section, the Study Area locations were chosen as being representative of existing adult entertainment sites in zoning mix, size of population, age of housing stock and types of adult entertainment services offered in the area. Excepting the latter, these same criteria were used in the choice of Control sites. Because they were representative, it is possible to compare Control and Study Areas as well as infer findings to other adult entertainment locations in the community.

Based on the summaries of crimes, crime rates were computed for each area using 1980 Census data as the population constant. ⁴ The crime rate statistics portrayed the frequency of crime in each area for each 10,000 of population and allowed direct comparison of crime impacts between the three areas. The same technique was used to compare the magnitude of sex-related crime in the Control Areas and the Study Areas.

MAJOR CRIMES

The crimes of Criminal Homicide, Rape, Robbery, Aggravated Assault, Residence and Non-Residence Burglary, Larceny and Vehicle Theft are reported on a monthly basis by the Indianapolis Police Department as Major Crimes. During the period of this study (1978 - 1982), there were 175,796 major crimes reported in the IPD District with an annual high of 37,220 occurring in 1980. The crime rate for this year was 792.42 in the police district.

This represented an increase of 2,115 major crimes over the previous year total and an increase of 6% in the crime rate. The lowest annual total in the study period (33,898) was reported in 1981 which represented a drop of 10% in the crime rate from the previous year.

Indianapolis Police District Major Crimes/Rates 1978-1982					
Population- 489,700					
	1978	1979	1980	1981	1982
Murder	76/1.62	82/1.68	107/2.20	66/1.36	68/1.47
Rape	341/7.20	439/9.36	410/8.73	400/8.52	367/8.24
Robbery	1863/41.79	2063/43.71	2183/46.69	2184/46.71	1863/42.43
Aggravated Assault	1363/28.51	1684/33.94	1743/37.11	1880/40.03	1882/40.28
Residence Burglary	6346/136.11	6638/138.20	7486/169.57	7677/163.46	7783/166.70
Non-Residence Burglary	2382/50.93	2011/42.82	2578/54.91	2306/48.14	2213/47.12
Larceny	18882/397.96	18927/402.96	18806/402.51	16782/367.29	17487/372.51
Vehicle Theft	3674/78.22	3451/73.47	3787/80.83	2682/56.18	2802/61.78
Total	34837/741.88	36106/747.39	37220/792.42	33888/721.70	34736/738.54
Total Crimes: 175,796					
Per 10,000 Population					

Over the same period of time, the Control Area for this study had 5,170 major crimes committed within its boundaries - the highest number occurring in 1980 when 1,099 crimes were reported. The crime rate for this year was 942.05 in this area. This is compared to the lowest total of 912 and a crime rate of 781.76 for 1978. This represented an absolute difference of 187 total major crimes and a difference of 21% in the crime rate (160.29).

Control Area Major Crimes/Rates* 1978-1982					
(Population-11,886)					
	1978	1979	1980	1981	1982
Murder	1/0.86	4/3.43	3/2.57	6/4.29	2/1.71
Rape	8/6.86	12/10.29	15/12.86	8/6.86	13/11.14
Robbery	37/31.72	44/37.72	44/37.72	50/42.86	36/30.86
Aggravated Assault	18/16.29	35/30.00	29/24.86	30/25.72	37/31.72
Residence Burglary	151/129.42	229/196.30	262/224.58	272/233.16	198/169.72
Non-Residence Burglary	71/60.86	50/42.86	62/53.15	59/50.57	79/67.72
Larceny	484/414.88	544/466.31	574/492.03	588/504.03	578/496.31
Vehicle Theft	141/120.86	112/96.01	110/94.29	83/71.15	80/77.15
Total	912/781.76	1,030/882.91	1,099/942.05	1,095/938.63	1,034/886.34
					Total 5,170
*Per 10,000 Population					Average: 886.34

During the period 1978 - 1982, 4,657 major crimes were committed in the Study Area. As in the IPD District and the Control Area, the greatest volume of major crimes (1,103) occurred in 1980 which had a crime rate of 1,291.42. The fewest number of crimes in the study's time frame was 867 in 1978 which represented a differential in the total number of major crimes reported and the rate of crime of -236 and -276.32 respectively from 1980

Study Area Major Crimes/Rates* 1978-1982
(Population- 8,641)

	<u>1978</u>	<u>1979</u>	<u>1980</u>	<u>1981</u>	<u>1982</u>
Murder	2/3.51	0/-	2/2.34	6/5.85	0/-
Rape	2/3.51	12/14.05	11/12.88	9/10.54	8/9.37
Robbery	55/64.40	53/62.05	58/67.91	26/30.44	44/51.52
Aggravated Assault	25/29.27	18/21.06	22/25.76	18/18.73	29/33.95
Residence Burglary	181/188.50	200/234.17	244/285.68	190/222.48	189/221.29
Non-Residence Burglary	82/96.01	58/67.91	80/93.67	65/76.10	64/74.93
Larceny	462/540.92	450/526.87	596/686.10	580/655.66	484/543.26
Vehicle Theft	76/88.98	90/105.37	100/117.08	60/70.25	77/90.15
Total	867/1015.10	881/1031.50	1103/1291.42	831/1090.04	875/1024.47

*Per 10,000 Population

Total: 4,857

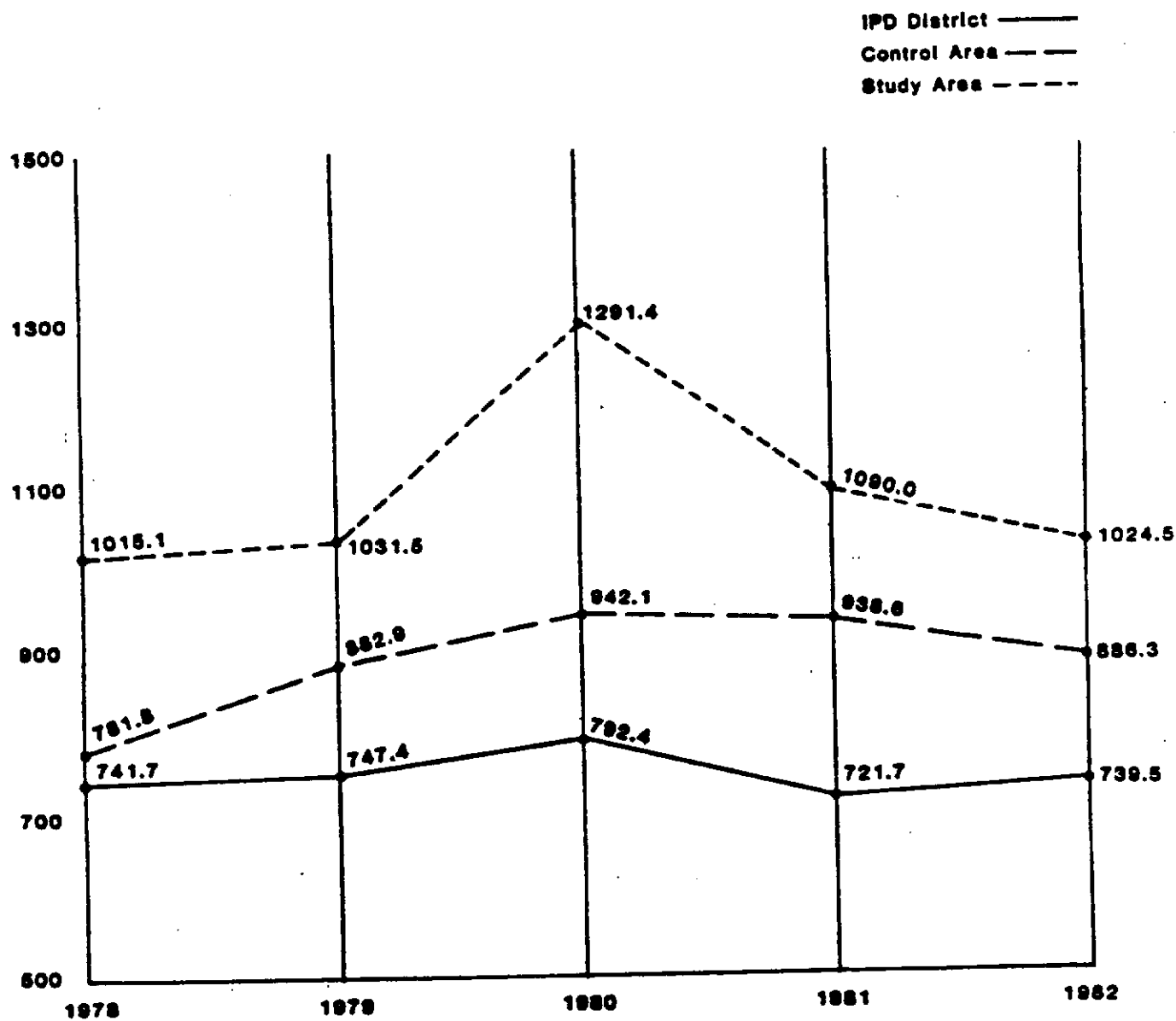
Average: 1090.51

The frequency of crimes in the IPD District, the Control Areas and the Study Areas showed approximately the same pattern. In each of the areas, the number of major crimes increased from 1978 to 1980 when they peaked. Subsequent years showed frequency levels below the 1980 high.

The average crime rate figure for the Indianapolis Police Department District was 748.55. The Control Area had a rate that was 137.79 higher than the overall police district, whereas the Study Area was 204.17 points higher than the Control Area. In other words, people living in the Control Area of the study were exposed to a major crime rate in their neighborhoods that was 18% higher than that of the IPD population generally.

Residents of the Study Area, however, were exposed to a major crime rate that was 23% higher than that of the Control Area and 46% higher than the population of the IPD District as a whole.

Major Crime Rate* 1978-1982



*The numerical instance of Criminal Homicide, Rape, Robbery, Aggravated Assault, Residence Burglary, Non-Residence Burglary, Larceny and Vehicle Theft- Per 10,000 Population.

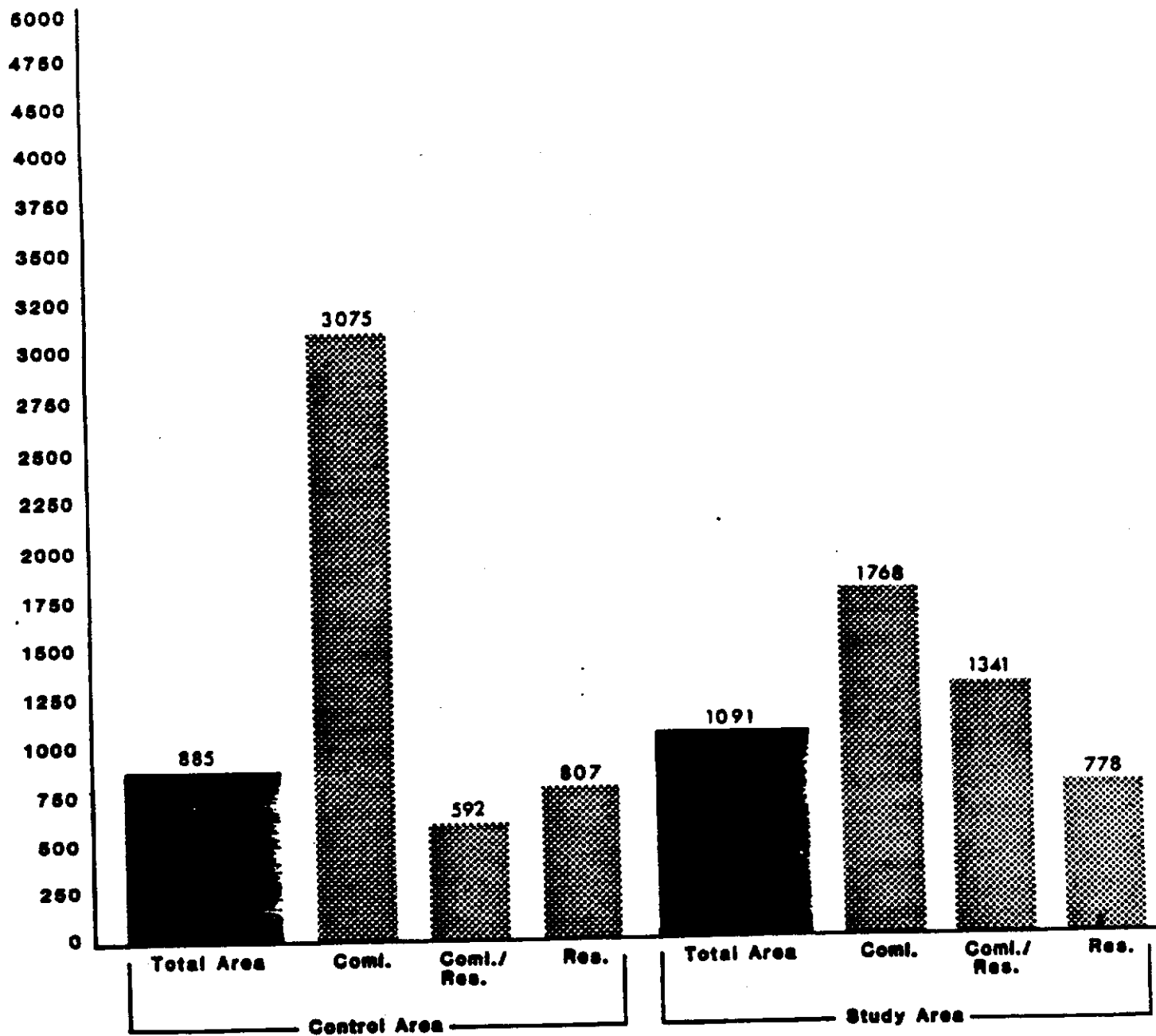
It is interesting to examine crime rates within the Control and Study Areas in relation to the land use characteristics of the locations in which they occurred.

Crime rates provide a better understanding of actual impact on the resident of the area than crime frequencies in that they establish a ratio of crime to each 10,000 of population. In this way, they tell us just how vulnerable a neighborhood is historically to crime within its boundaries.

1978-1982 ANNUAL AVERAGE MAJOR CRIME RATE								
BY LAND USE								
AREA	Commercial			Coml./Res.			Residential	
	Pop./Crime/Ann.Rt			Pop./Crime/Ann.Rt			Pop./Crime/Ann.Rt.	
<u>Control</u>								
1.	379	240	1267					
2.	523	1147	4386					
	<u>902</u>	<u>1387</u>	<u>3075</u>					
3.				2828	837	592		
4.				<u>2382</u>	<u>705</u>	<u>592</u>		
				<u>5210</u>	<u>1542</u>	<u>592</u>		
5.							2159	1173 1087
6.							<u>3395</u>	<u>1067</u> 629
							<u>5554</u>	<u>2240</u> 807
<u>Study</u>								
1.	219	439	4009					
2.	1218	831	1365					
	<u>1437</u>	<u>1270</u>	<u>1768</u>					
3.				1015	834	1643		
4.				<u>1203</u>	<u>653</u>	<u>1086</u>		
				<u>2218</u>	<u>1487</u>	<u>1341</u>		
5.							3656	1232 674
6.							<u>1230</u>	<u>668</u> 1086
							<u>4886</u>	<u>1900</u> 778

Accordingly, we find that this impact is 74% higher in district commercial areas of the Control Area than similar district commercial areas of the Study Area. However, while the rate is approximately the same in the residential areas of both, the Study Area exhibits a crime rate that is 127% higher than the Control Area in locations that are mixed district-commercial and residential in nature.

1978-1982 Annual Average Major Crime Rates*: Selected Areas



* Per 10,000 Population

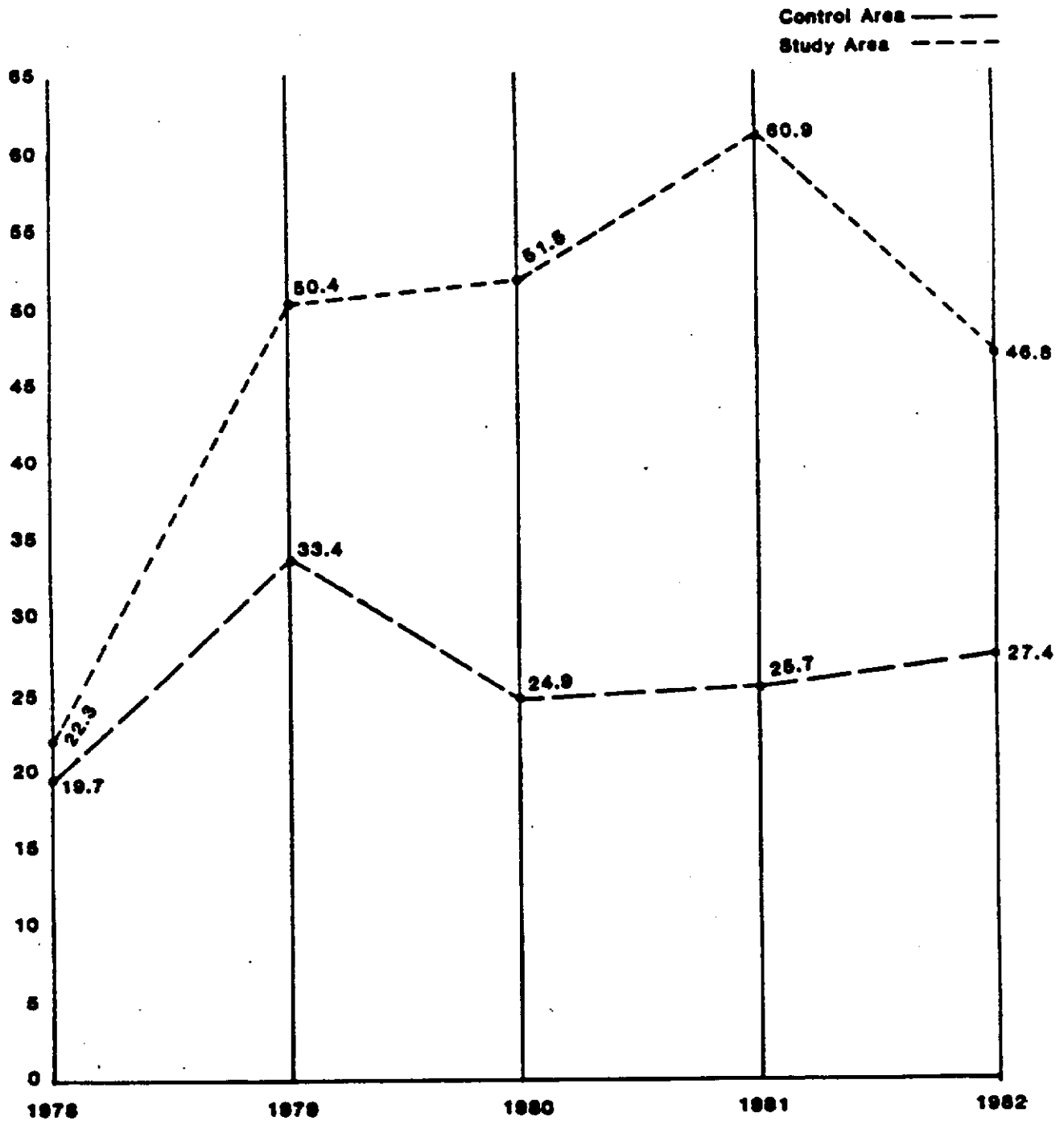
SEX-RELATED CRIME ⁵

Crimes of Rape, Indecent Exposure, Obscene Conduct, Child Molestation, Adult Molestation and Commercial Sex were segregated and then aggregated from police printouts of total crime incidence occurring within the Study Area and the Control Area for the period 1978 - 1982. A total of 153 sex-related crimes was reported in the Control area during this period, with a high of 39 having occurred in 1979. During the same period, the Study Area experienced 198 sex-related crimes, reaching a high of 52 in 1981.

Control Area Sex-Related Crimes/Rates*1978-1982					
(Population-11,000)					
	1978	1979	1980	1981	1982
Rape	8	18	15	8	12
Indecent Exposure	7	10	0	18	4
Obscene Conduct	0	2	0	0	1
Child Molestation	6	10	4	8	12
Adult Molestation	2	3	0	1	3
Commercial Sex	0	1	1	0	0
Total	23/19.7	39/33.4	29/24.8	30/25.7	38/27.4
					Total 153
* Per 10,000 Population					

Study Area Sex-Related Crimes/Rates*1978-1982					
(Population-6,541)					
	1978	1979	1980	1981	1982
Rape	2	12	11	10	8
Indecent Exposure	10	14	12	5	7
Obscene Conduct	0	0	0	1	0
Child Molestation	5	0	5	11	8
Adult Molestation	1	0	0	0	3
Commercial Sex	1	0	10	25	13
Total	19/22.9	43/60.4	44/51.5	62/80.9	40/46.9
					Total 198
* Per 10,000 Population					

Sex-Related Crime Rate* 1978-1982



* The numerical instance of Rape, Indecent Exposure, Obscene Conduct, Child Molestation, Adult Molestation and Commercial Sex- Per 10,000 Population.

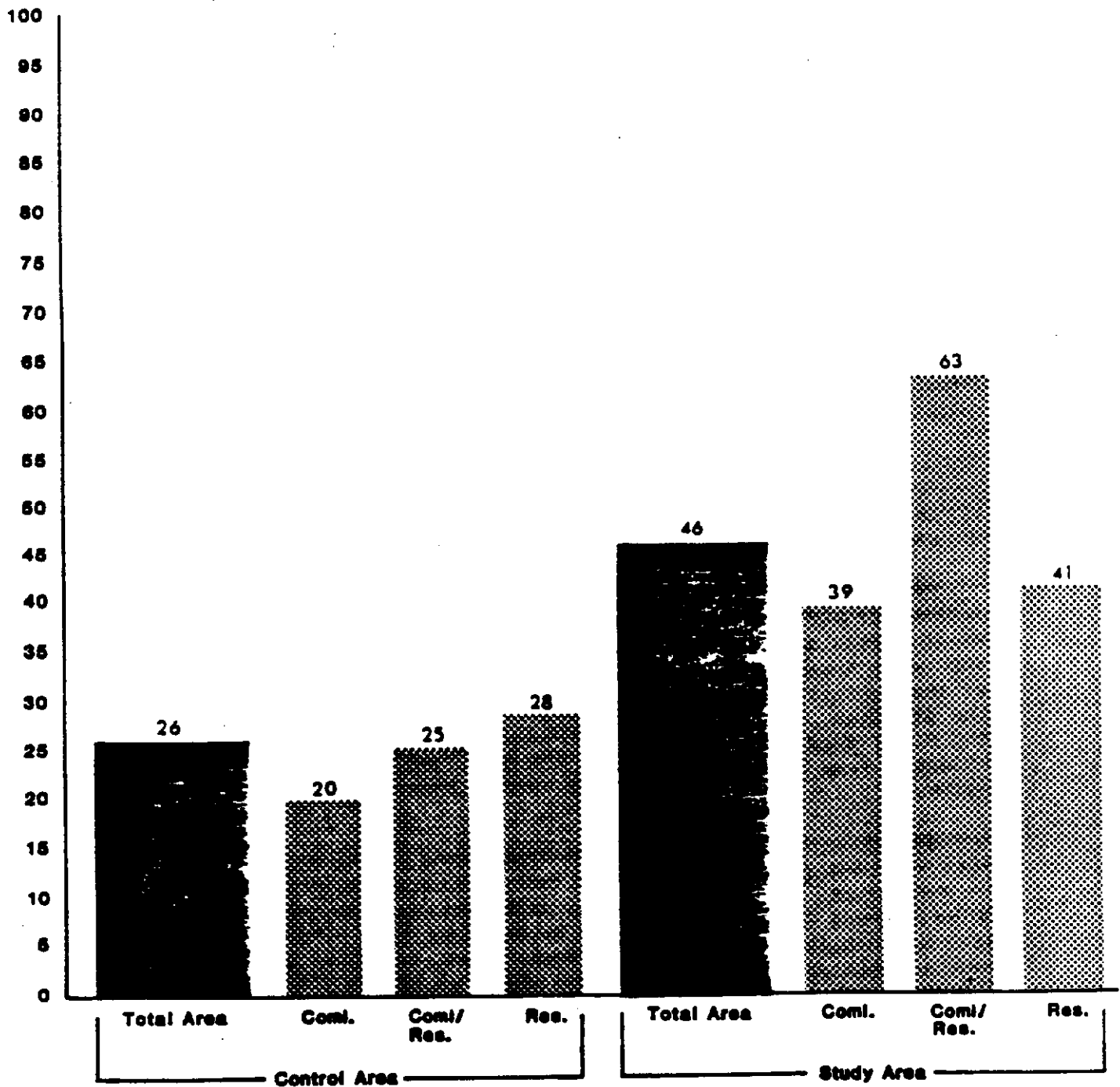
Whereas sex-related crime rates in the Control Areas varied from a low of 19.7 in 1978 to a high of 33.4 in 1979, the Study Areas increased from a low of 22.3 in 1978 to its peak of 60.9 in 1981.

The average sex-related crime rate in the Control Area was 26.2 over the five year period. The rate in the Study Area was approximately .77% higher than this average during the same period of time at 46.4.

Comparing the crime rate for sex-related crimes by land use categories in the Control and Study Areas, a different pattern than that for major crime rates emerges.

1978-1982 ANNUAL AVERAGE SEX-RELATED CRIME RATE BY LAND USE								
Area	Commercial			Coml./Res.			Residential	
	Pop./Crimes/Ann. Rt.			Pop./Crimes/Ann. Rt.			Pop./Crimes/Ann. Rt.	
<u>Control</u>								
1.	379	2	11					
2.	<u>523</u>	<u>7</u>	27					
	902	9	20					
3.				2828	35	25		
4.				<u>2382</u>	<u>29</u>	24		
				5210	64	25		
5.							2159	49
6.							<u>3395</u>	<u>29</u>
							5554	78
<hr/>								
<u>Study</u>								
1.	219	5	46					
2.	<u>1218</u>	<u>23</u>	38					
	1437	28	39					
3.				1015	38	75		
4.				<u>1203</u>	<u>32</u>	53		
				2218	70	63		
5.							3656	69
6.							<u>1230</u>	<u>31</u>
							4886	100
								41

1978-1982 Annual Average Sex-Related Crime Rates*: Selected Areas



* Per 10,000 Population

Whereas major crime rates were similar in residential areas of the Control and Study Areas, the Control Area rate was substantially higher in district commercial areas and lower in mixed district commercial/residential areas. In contrast to this, the sex-related crime rate was uniformly higher in all land use categories of the Study Area, ranging from +46% in residential areas to +152% in district commercial/residential areas.

SUMMARY OF FINDINGS

Both the Control and the Study Area experienced a significantly higher incidence of major crimes/10,000 population than the IPD District as a whole. Much of this increase would be expected given their location in generally older, less affluent and more populous areas of the city.

It is more difficult to explain the distinctly higher crime rate experienced in the Study Areas as compared to the Control Area - 1,090.51 versus 886.34.

This dicotomy is even more apparent in the instance of sex-related crime rates in the two areas. The average sex-related crime rate in the Control Areas was 26.2. The Study Areas had an average rate of 46.4.

If the same ratio between the Control and Study Areas established for major crime during this period were applied, we would expect a crime rate that was 23% higher - or 32.3 - in the Study Areas. The actual rate of 46.4 is 77% higher than that of the Control Area and underscores a distinct departure from the expected. Not only is the rate substantially higher in the Study Area, but it is twice the rate that would have been expected from the distribution of crimes generally in Indianapolis.

The anomalies demonstrated in the comparison of the Study Area with the general population and the Control Area will not, in themselves, establish a causal relationship between Adult Entertainment Businesses and the crime rates in the immediate area surrounding them. The fact does remain, however, that in each subsection of the Study Areas where adult entertainment is offered a substantially higher sex-related crime presence obtains over the corresponding subsections of the Control Area in which no adult entertainment is offered. The same is true regarding the rate of major crimes.

In areas chosen for their similarities otherwise, an obvious difference lies in the presence of one or more adult entertainment establishments.

FOOTNOTES

1. The Incidence File is a computerized listing of all reports made by police after initial investigation of an incident to which they were dispatched. It, therefore, provides a more reliable indication of crime incidence than the computerized "Police Run" file which logs police dispatches based on preliminary information on the incidents.
2. Criminal Homicide, Rape, Robbery, Aggravated Assault, Residence Burglary, Non-Residence Burglary, Larceny and Vehicle Theft.
3. Rape, Indecent Exposure, Obscene Conduct, Child Molestation, Adult Molestation and Commercial Sex.
4. Since population estimates were not available for each year of the survey, the 1980 Census figures were used because they were the result of an actual enumeration and, falling at the mid-point of the survey, they would tend to balance out population trends during the five year time span.
5. Sex-related crimes are not isolated and compiled on a routine basis for the IPD District as a whole. A manual compilation of these data was proscribed by the time limitations of the study.

IMPACT BY AREA TYPE

As it will be noted, sample size poses a distinct problem when attempting analysis at the small area level. This is particularly true in the instance of mortgage information. Due to this inadequacy, it is impossible to compare the impact of adult entertainment businesses on residential property value below a certain level of geography.

This is not the case, however, with crime statistics. In this case it is possible to compare sub-areas of the target areas since the comparisons are based on the actual instance of crime in the area (unlike mortgage data where average value is the basis of comparison.)

The sub-area comparisons were based on the nature of the areas in relation to their land use composition as determined by the Comprehensive General Land Use Plan of Marion County. Four sub-areas were of a distinct regional commercial nature, four were residential in nature and four were of a mixed residential-commercial makeup.

The three groupings were compared with each other to determine if crime, from a historical viewpoint, occurred more frequently in areas of one land use configuration than another.

Whether or not crime frequencies, at least in part, are determined by the land use characteristics in which they were committed cannot be definitively answered here. Several striking patterns do emerge from the comparison, however.

CRIME FREQUENCIES BY AREA TYPE

Of the 9,829 major crimes committed in the Control and Study Areas during 1978 - 1982, 27% were perpetrated in regional commercial areas, 31% in mixed commercial-residential areas and 42% in predominantly residential areas. In other words, crime frequencies were 56% higher in residential areas than commercial areas while mixed commercial-residential areas were 37% higher than commercial areas.

The following table displays major crime frequencies for the five year period by type of area, the existence or non-existence of adult entertainment and specific location.

MAJOR CRIME FREQUENCY							
	1978	1979	1980	1981	1982	Tot.	
<u>District Commercial</u>							
Study Area							
No. Keystone	83	71	112	87	86	439	
E. Washington	150	152	202	186	141	831	
	<u>233</u>	<u>223</u>	<u>314</u>	<u>293</u>	<u>227</u>	<u>1270</u>	
Control Area							
No. Shadeland	38	41	34	43	84	240	
No. Keystone	212	217	210	259	249	1147	
	<u>250</u>	<u>258</u>	<u>244</u>	<u>302</u>	<u>333</u>	<u>1387</u>	
						<u>2657</u>	27%
<u>Mixed Res./Coml.</u>							
Study Area							
W. Washington	123	184	190	185	152	834	
West 16th St.	177	128	140	104	104	653	
	<u>300</u>	<u>312</u>	<u>330</u>	<u>289</u>	<u>256</u>	<u>1487</u>	
Control Area							
W. Washington	110	182	211	184	150	837	
E. Washington	160	151	130	139	125	705	
	<u>270</u>	<u>333</u>	<u>341</u>	<u>323</u>	<u>275</u>	<u>1542</u>	
						<u>3029</u>	31%
<u>Residential</u>							
Study Area							
East 10th St.	219	235	294	242	242	1232	
East 38th St.	115	111	165	127	150	668	
	<u>334</u>	<u>346</u>	<u>459</u>	<u>369</u>	<u>392</u>	<u>1900</u>	
Control Area							
East 10th St.	211	239	269	210	243	1173	
West 10th St.	181	200	244	260	182	1067	
	<u>334</u>	<u>346</u>	<u>458</u>	<u>369</u>	<u>392</u>	<u>2240</u>	
						<u>4140</u>	42%

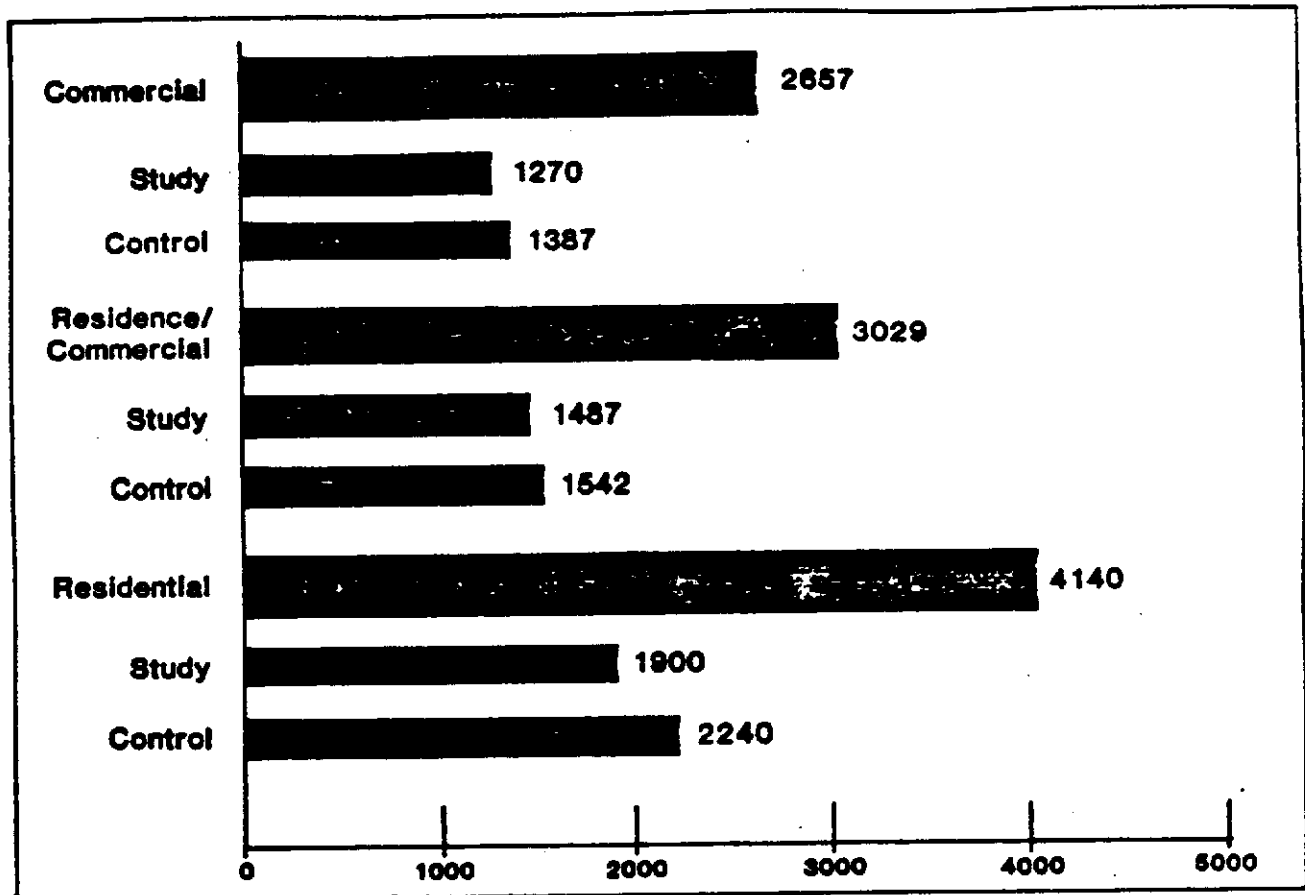
The pattern was similar in comparison of the frequency of sex-related crime within the three areas during the same period of time. It was more pronounced, however. Fifty-one percent of the total occurred in residential environments, while thirty-eight percent occurred in mixed commercial-residential areas. In comparison, only eleven percent of the total occurred in district commercial areas.

The following table displays sex-related crime frequencies for the five year period by type of area, the existence or non-existence of adult entertainment and the individual locations included in the study.

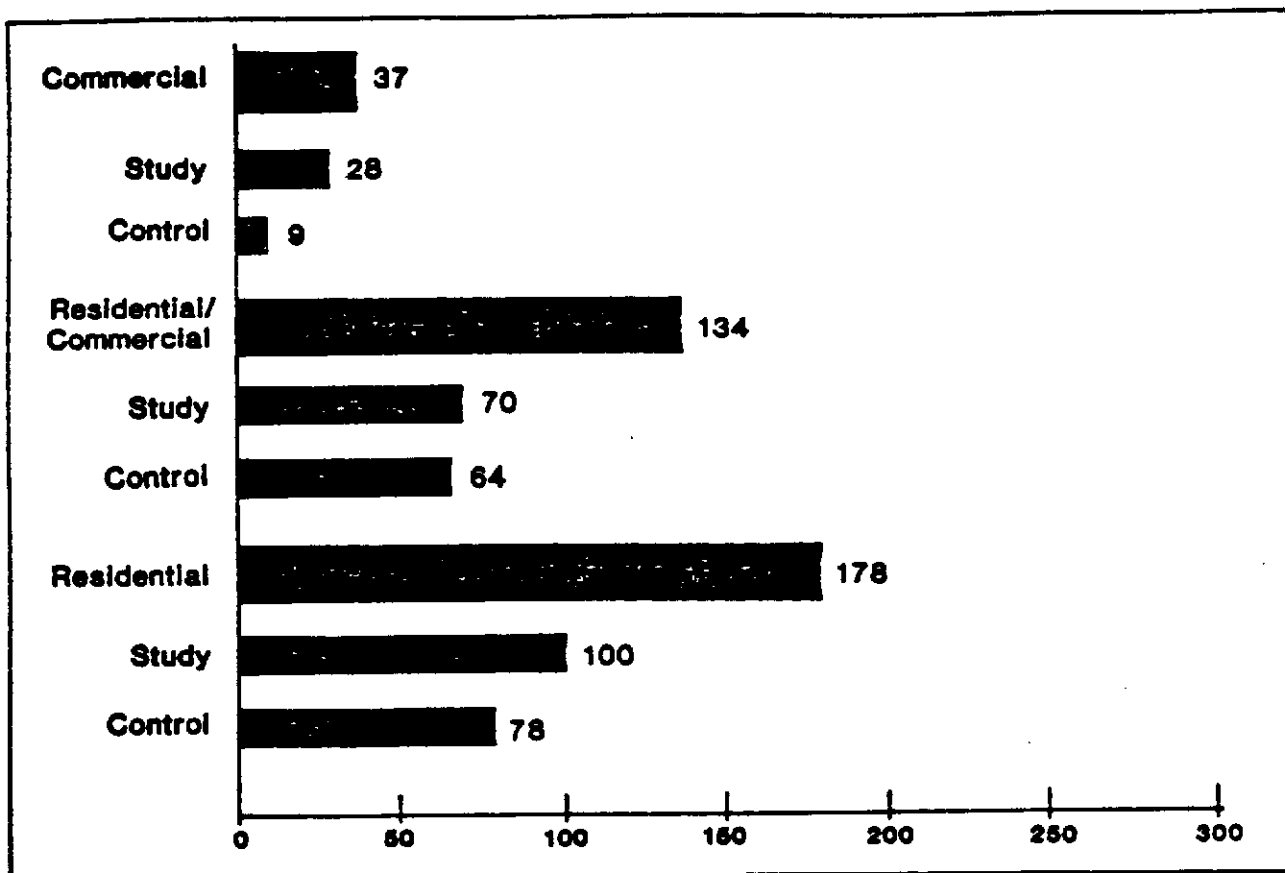
SEX-RELATED CRIME FREQUENCY						
	<u>1978</u>	<u>1979</u>	<u>1980</u>	<u>1981</u>	<u>1982</u>	<u>Tot. %</u>
<u>District Commercial</u>						
Study Area						
No. Keystone	-	2	2	-	1	5
E. Washington	-	4	4	8	7	23
	-	6	6	8	8	28
Control Area						
No. Shadeland	-	-	-	-	2	2
No. Keystone	1	3	1	1	1	7
	1	3	1	1	3	9
						37 11%
<u>Mixed Res/Coml.</u>						
Study Area						
W. Washington	5	10	12	8	3	38
West 16 St.	1	4	8	9	10	32
	6	14	20	17	13	70
Control Area						
W. Washington	3	8	11	8	5	35
E. Washington	4	10	3	8	4	29
	7	18	14	16	9	64
						134 38%
<u>Residential</u>						
Study Area						
East 10th St.	12	18	14	17	8	69
East 38th St.	1	5	4	10	11	31
	13	23	18	27	19	100
Control Area						
East 10th St.	11	13	7	7	11	49
West 10th St.	4	5	6	5	9	29
	15	18	13	12	20	78
						178 51%

These trends are not easily explained on the basis that "where there are more people there will be more crime." Community-related commercial areas draw clientele from a broad geographic area and can be expected to attract many times the residential population of the immediately surrounding area. This is the purpose of the district commercial zoning designation. Further, the transient nature of this population could be considered to contribute to the incidence of certain crimes.

Major Crimes / 1978-1982, Selected Areas



Sex-Related Crimes / 1978-1982, Selected Areas



SUMMARY OF FINDINGS

There appears to be a strong correlation between crime frequency and the residential character of neighborhoods, i.e., the more residential the nature of the neighborhood, the greater is the instance of crime in that neighborhood. Crime frequencies were, in fact, fifty-six percent higher in residential areas than district commercial areas.

The above correlation is even more acute when considering sex-related crimes. Sex-related crimes occurred four times more frequently in substantially residential milieus having one or more adult entertainment businesses than in commercial environments having one or more such businesses.

REAL ESTATE IMPACTS

This study also undertook the quantification of possible effects of the proximity of adult entertainment businesses on the value of residential properties within a one thousand foot radius of their locations.

In examining the potential impacts, three sources of residential property values were investigated: I.e., Indianapolis Residential Multiple Listing Summaries (MLS) of the Metropolitan Indianapolis Board of Realtors, the 1980 Census (tract and block occupied, single-unit housing valuation data); and, annual lending institution statements under the Federal Home Mortgage Disclosure Act (HMDA).

Summary data from the MLS were available over the period 1979 - 1982, while actual mortgage values reported by lending institutions were available for the period 1977 - 1982. The U.S. Bureau of the Census provides homeowner estimates of home value at the time of the 1980 Census (April 1, 1980).

The data available from these three sources differ in other ways. The 1980 Census, while relying on homeowner estimates of the worth of property, is a 100 percent survey and is described down to the block level. Home Mortgage Disclosure Act data provide a record of actual mortgages processed and reported by local lenders (only a portion of the total volume). The lowest geographic level at which this information is available is the Census Tract and, even at this level, at times poses a difficulty with the available sample size. Multiple Listing Summaries generally reflect an estimate of worth based on current market conditions for the area and can be assembled at virtually any geographic level since they are listed by address. As in the case of the Mortgage Disclosure Act statements, however, there are at times problems with the sufficiency of the sample size at the small area level.

Each of the data sets presents some weaknesses. Although the 1980 Census only reflects an estimate of housing value at one point in time, it has the advantage of being a 100 percent survey of occupied, single-unit housing. The other two sources offer time series data over periods of four and five years. They have the liability, however, of sometimes lacking a sufficient sample size at the small area level in any given year to allow an acceptable level of statistical confidence.

Due to these characteristics of the data, certain modifications were made in the study's original intent. Rather than doing annual comparisons of housing value, 1979 was chosen as the comparison year and the 1980 Census data set chosen due to the ability to summarize it at the county, tract and block level.

The geographic levels of comparison were the County as a whole, the Census Tract or Tract cluster in which the Study or Control Areas were located and the areas within a 1000-foot radius of the Study and Control location centroids.

A next step was to use the data available on real estate activity in the Multiple Listing Summaries to establish market performance between 1979 and 1982 in both the Control and Study Areas.* The results were compared to real estate activity in the residential market of Center Township which, in terms of value and general housing condition, most closely resembles the two areas among the nine Marion County townships.

COMPARISON RESULTS

AVERAGE MORTGAGE VALUES - 1979

<u>Marion County</u> ¹	\$ 41,854	
	<u>Control Areas</u>	<u>Study Areas</u>
<u>Tract/Tract Clusters</u> ¹	\$ 31,858	\$ 28,003
[<u>Tract/Tract Clusters</u> ²]	[27,872]	[21,605]
<u>1000-Foot Radius</u> ¹	23,721	24,616
[<u>1000-Foot Radius</u> ³]	[16,038]	[23,823]

1. Source: 1980 Census.

2. Source: Home Mortgage Disclosure Act Statements.

3. Source: Residential Multiple Listing Summaries.

Comparison of the 1980 Census data would indicate that the value of housing in the areas addressed in this study are from 40 to 73 percent below the Marion County average. While the average value of housing at the census tract level was somewhat higher in the census tracts in which the Control Areas were located than those in which the Study Areas were located (\$31,858 vs. \$28,003), the opposite was true when comparing the target areas themselves. Housing values within 1000 feet of adult entertainment businesses in the Study Areas were greater (although by a lesser margin) than those in the Control Areas (\$24,616 vs. \$23,721).

* Whereas the sample size is sufficient in most years to provide acceptable confidence levels for mortgage averages, the sample is only marginally acceptable in 1981 and 1982 for the Control Area.

This finding is borne out by an examination of actual mortgages executed within the affected census tracts of the Control and Study Areas, as well as real estate listings at the 1000-foot level.

Using mortgage and real estate listing data we find that, while consistent with the Census data findings, the disparities were more acute. Average mortgages at the tract level were \$27,872 vs. \$21,605 in the Control and Study Area tract clusters respectively. At the 1000-foot level, real estate listing values in the Control Areas dropped to \$16,038 while Study Area listings increased by approximately 10 percent over the average mortgage value in the tract clusters of the Study Area.

It would appear that, while property values at the tract cluster level are appreciably higher surrounding the Control Areas, housing within the Study Areas themselves is, on the average, of distinctly higher value than housing stock in the Control Areas.

TIME SERIES ANALYSIS RESULTS

During the period 1979 through 1982, mortgages processed in the Control Areas of the study showed an average annual appreciation rate of +24.7 percent. During the same time frame, mortgages appreciated at an average annual rate of only +8.7 percent in the Study Area. In comparison, residential mortgages in Center Township appreciated at a +16.7 percent average annual rate for the period.

AVERAGE MORTGAGE VALUES 1979 - 1982

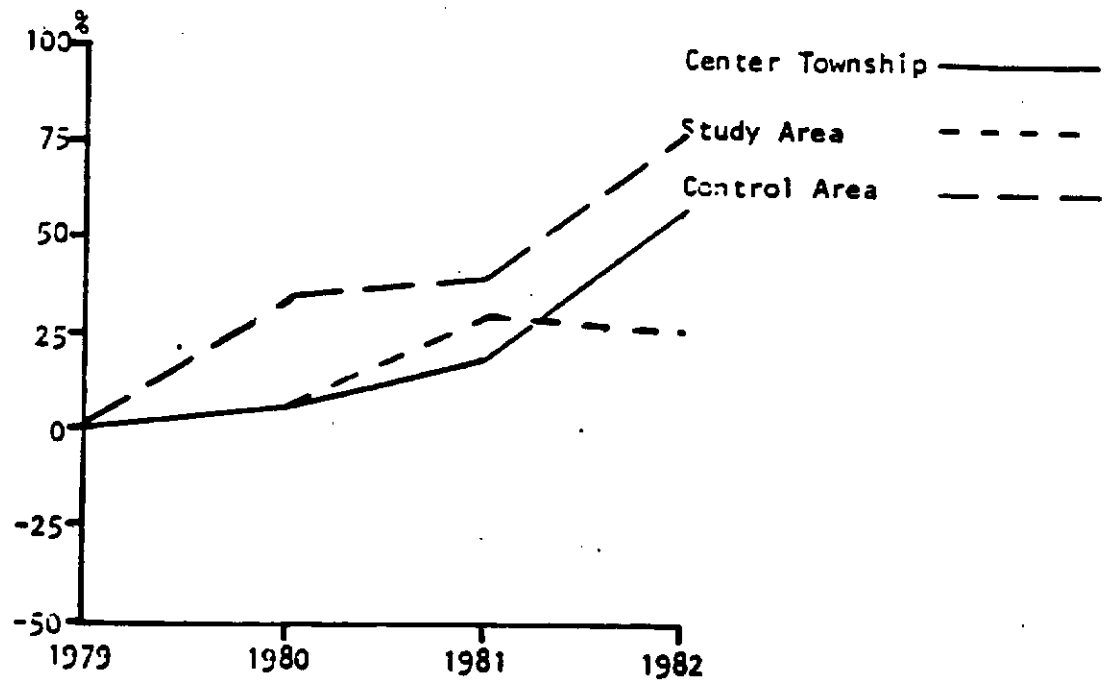
	<u>1979</u>	<u>1980</u>	<u>1981</u>	<u>1982</u>	<u>1979-1982</u> <u>% Change</u>
Control Area ¹	\$16,038	\$21,687	\$22,650	\$28,420	+ 77%
<u>Study Area¹</u>	23,823	25,432	30,964	30,090	+ 26%
<u>Center Township²</u>	16,100	17,178	18,903	25,099	+ 56%

1. Source: Indianapolis Multiple Listings for Residential Prop.

2. Source: Home Mortgage Disclosure Act Statements.

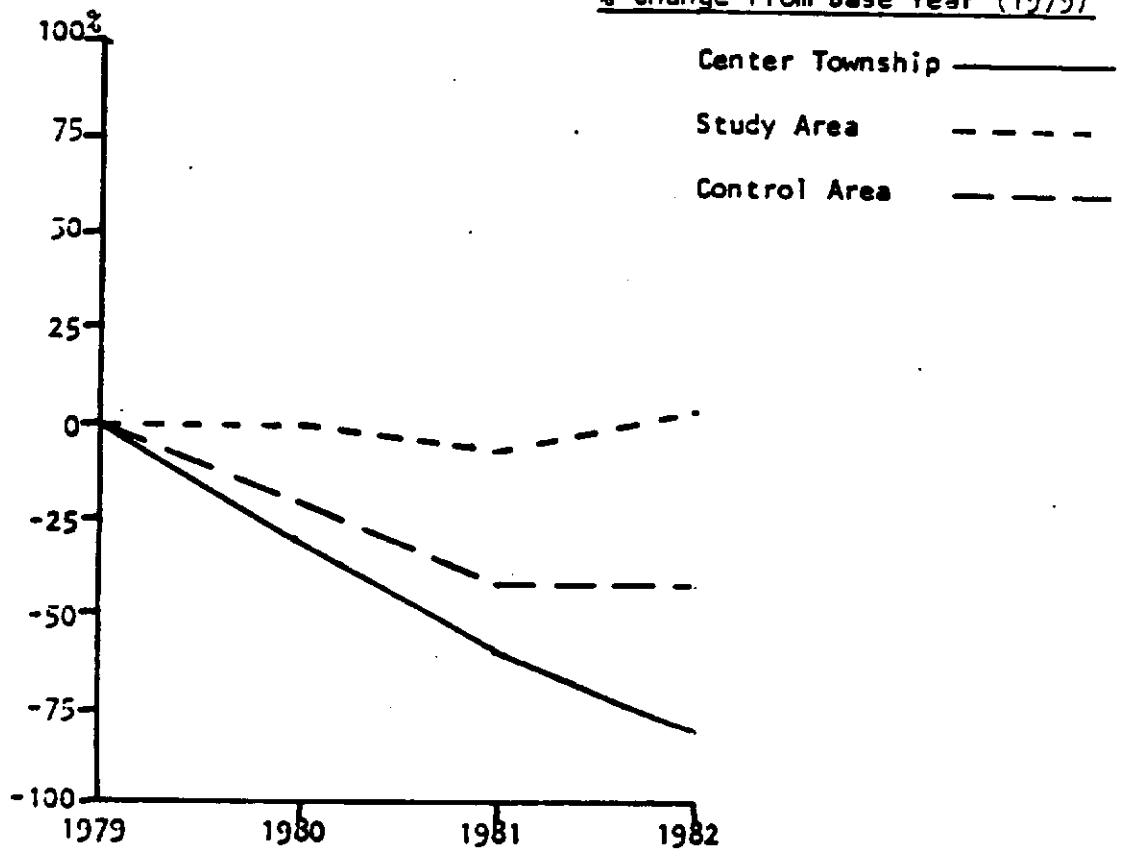
MORTGAGE VALUES

% Change From Base Year (1979)



REAL ESTATE LISTINGS

% Change From Base Year (1979)



The average value of mortgages from 1979 to 1982 in Center Township increased by 56 percent while Control Area values increased by 77 percent and the Study Area by 26 percent.

**RESIDENTIAL REAL ESTATE ACTIVITY
1979 - 1982**

	<u>1979</u>	<u>1980</u>	<u>1981</u>	<u>1982</u>	<u>% Change</u>
<u>Control Area Listings</u> ¹	29	23	15	15	- 52%
<u>Study Area Listings</u> ¹	28	28	26	29	+ 4%
<u>Center Township Mortgages</u> ²	898	635	377	182	- 80%

1. Source: Indpls. Multiple Listings, Residential Properties.
2. Source: Home Mortgage Disclosure Act Statements.

Both Center Township and the Control Area followed general market trends in the volume of real estate activity, falling by 80 percent and 52 percent, respectively, from 1979 to 1982. Once again, the Study Area performed in an atypical fashion, actually registering a slight increase in volume (4 percent) over the same period.

CONCLUSIONS

While bearing in mind the above-mentioned difficulties in certain cases with the sample size at the sub-area level, the following observations may be made on analysis of the data.

A comparison of residential real estate listings indicates that the areas chosen in this study which have adult entertainment establishments within their boundaries have, on the average, a residential housing base of substantially higher value than that located in the areas chosen as control sites.

Despite the higher value of housing stock in the Study Areas, property values appreciated at only one-half the rate of the Control Area and at one-third the rate of Center Township as a whole.

Another anomaly apparent in analysis of real estate activity within the three areas is that market forces within the Study Areas were present which caused real estate activity within its boundaries to run completely contrary to County, Township and Control Area trends.

In summary, the available data indicate that twice the expected number of houses were placed on the market at substantially lower prices than would be expected had the Study Area real estate market performed typically for the period of time in question.

PROFESSIONAL APPRAISAL OF IMPACTS

Because of the great number of variables that have the potential to cause a particular real estate market to perform erratically at a small area level, it was decided to solicit a "best available professional opinion" from real estate appraisers regarding the market effect of adult entertainment businesses on proximate land values.

The Indianapolis Division of Planning approached the Indiana University School of Business' Division of Research for assistance in polling the real estate appraisal community on the subject. The University proposed that the survey be national in scope and offered to design and pretest the survey instrument. Dr. Jeffrey Fisher of the University's School of Real Estate collaborated in drafting the instrument and conducted the initial test at a workshop in early September. Analysis of this pretest indicated the need for minor adjustments to the form.

In its final format, the instrument (cf. Appendix II) posited a hypothetical middle income, residential neighborhood in which an adult bookstore was about to locate. Respondents were asked to numerically rate the impact of this business on both residential and commercial property values within one block and three blocks of the store. They were also asked to rate a number of potential other uses as to whether they would increase or decrease property values. Finally, survey participants were asked to express what they generally felt the effect of adult bookstores was on property values.

The survey sample was drawn at two levels. Using the membership of the American Institute of Real Estate Appraisers as the survey universe, a twenty percent random sample of members was constructed for the entire nation. In addition, MAI (Member Appraisers Institute) members who practiced in 22 Metropolitan Statistical Areas¹ (MSAs - as defined by the U. S. Bureau of the Census) of a size similar to Indianapolis were surveyed at the one hundred percent level.

In January of 1984, 1527 questionnaires were mailed. As of February 22, 507 (33%) had been returned. These returns were split evenly between the 20% (249 returns) and 100% (258 returns) samples. In the national sample the rate of return by geographic region² was fairly consistent: East, 41 - 27%; North Central, 56 - 28%; South, 89 - 25%; and, West, 63 - 24%. Return rates from the 100% MSA survey varied from 14% from Newark, N. J. to 62% from Cleveland, OH.

20% NATIONAL SURVEY RESULTS

Survey respondents overwhelmingly (80%) felt that an adult bookstore located in the hypothetical neighborhood described would have a negative impact on residential property values of premises located within one block of the site. Of these, 21% felt that the property value would decrease in excess of 20%, while 59% foresaw a value decrease of from 1% to 20%. One-fifth of the respondents saw no resulting change in residential property values.

Seventy-two percent of the respondents also felt that there would be a detrimental effect on commercial property values at the same one block radius. Only 10%, however, felt that the effect would exceed 20% of worth with the majority (62%) seeing a 1% to 20% decrease in value. 28% of the survey predicted that there would be no negative effect.

While the great majority of appraisers felt that the effect of an adult bookstore on property within one block of the site would decrease property values, they felt that this impact fell off sharply as the distance from the site increased.

At a distance of three blocks, only 36% of the respondents felt that there would be a negative impact on residential properties, whereas 64% felt that there would be no impact at all. Better than three-fourths (77%) of the survey saw no impact on commercial property at this distance.

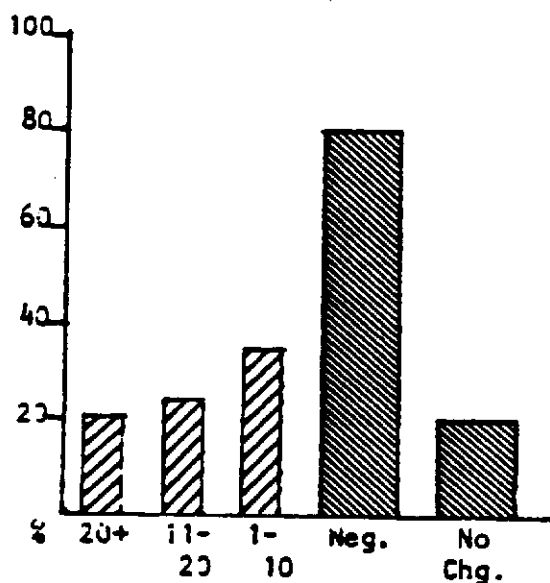
In summary:

- The great majority of appraisers who responded to this survey felt that there is a negative impact on residential and commercial property values within one block of an adult bookstore.
- This negative impact dissipates markedly as the distance from the site increases, so that at three blocks the estimate of negative impact decreases by more than one half judged by the number of respondents indicating negative impact at three blocks.
- The majority of respondents felt that the negative impact of an adult bookstore is slightly greater for residential properties than for commercial properties and decreases less dramatically with distance for residences.

NATIONAL SURVEY OF APPRAISERS

Impact of Adult Bookstores On Property Values

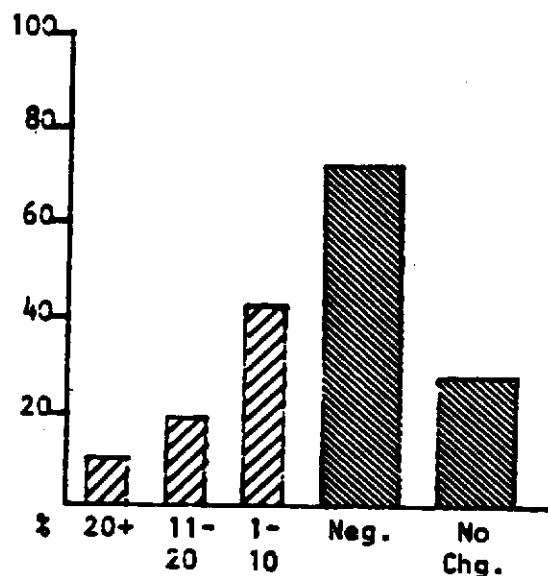
RESIDENTIAL PROPERTY AT ONE BLOCK ²



REGION	REGION					TOTAL
	COUNT	EAST	NORTH-CENTRAL	SOUTH	WEST	
	PER PCT COL. PCT TOT. PCT	1	2	3	4	
DECREASE > 20%	1	7	17	21	0	45
		13.2	32.1	29.6	15.1	21.3
		17.1	30.4	23.4	12.7	
		2.8	8.0	0.4	3.2	
DECREASE > 10% < 20%	2	13	10	20	10	53
		31.3	16.6	32.0	20.5	24.3
		21.7	17.9	22.6	20.0	
		8.8	6.6	8.0	7.2	
DECREASE 1% TO 10%	3	32	22	30	21	105
		14.1	26.0	26.2	24.7	24.1
		29.3	34.3	33.7	32.3	
		3.0	0.0	12.0	8.0	
NO CHANGE	4	0	7	18	10	35
		10.0	14.0	20.0	22.0	20.1
		0	12.5	20.0	20.0	
		0.0	2.0	7.2	0.0	
COLUMN TOTAL	10	52	56	89	63	200
		10.0	22.0	20.7	20.5	100.0

COMMERCIAL PROPERTY AT ONE BLOCK

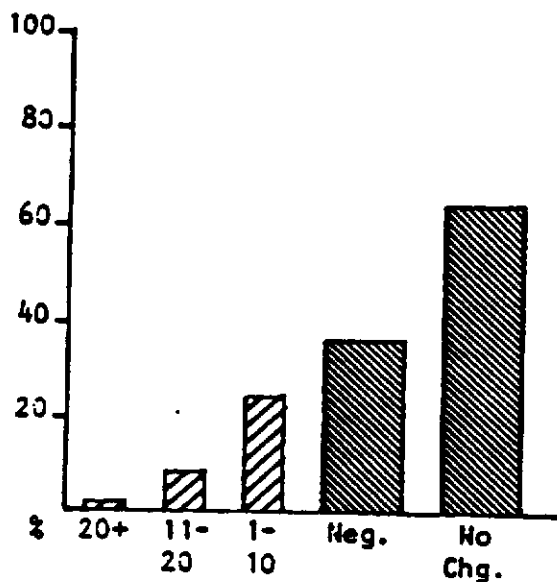
REGION	REGION					TOTAL
	COUNT	EAST	NORTH-CENTRAL	SOUTH	WEST	
	PER PCT COL. PCT TOT. PCT	1	2	3	4	
DECREASE > 20%	1	3	7	11	4	25
		32.0	20.0	44.0	16.0	18.0
		7.5	12.5	12.0	6.3	
		1.0	2.0	0.0	1.0	
DECREASE > 10% < 20%	2	3	10	20	11	44
		6.3	20.0	41.7	22.0	16.3
		7.5	25.0	22.5	17.0	
		1.0	0.0	0.0	0.0	
DECREASE 1% TO 10%	3	20	22	22	20	104
		20.0	10.0	20.0	20.0	20.0
		22.7	20.0	20.0	20.0	
		0.0	2.0	12.0	12.0	
NO CHANGE	4	10	10	20	17	57
		10.0	20.0	27.3	20.3	20.1
		11.7	20.0	20.0	17.0	
		0.0	0.0	10.0	0.0	
COLUMN TOTAL	10	55	69	83	63	200
		10.0	22.0	20.7	20.5	100.0



NATIONAL SURVEY OF APPRAISERS

Impact of Adult Bookstores On Property Values

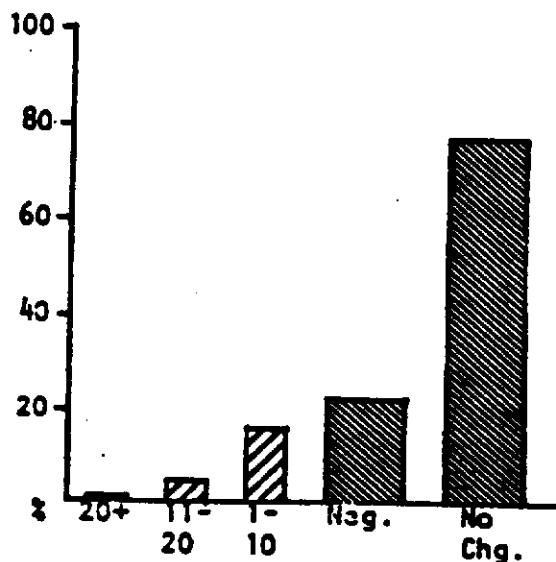
RESIDENTIAL PROPERTY AT THREE BLOCKS



	COUNT	ROW PCT	REGION				ROW TOTAL
			EAST	NORTH CENTRAL	SOUTH	WEST	
			1	2	3	4	
DECREASE - 20%	1	0.0	25.0	25.0	0.0	0.0	50.0
			7.3	1.0	0.0	0.0	8.3
			1.0	0.0	0.0	0.0	1.0
DECREASE - 10-20%	2	0.0	0.0	0.0	12.5	0.0	12.5
			0.0	20.1	20.0	0.0	40.1
			0.0	10.7	10.0	0.0	20.7
			0.0	0.0	0.0	0.0	0.0
DECREASE - 1-10%	3	0.0	0.0	10.0	20.0	10.0	40.0
			0.0	27.2	44.4	22.0	93.6
			14.0	20.0	21.0	22.0	77.0
			2.0	0.0	11.0	0.0	13.0
NO CHANGE	4	20.0	20.0	44.4	40.0	0.0	104.4
			19.1	22.2	29.2	29.2	100.7
			73.0	62.0	64.0	71.0	269.0
			12.0	14.1	10.0	10.0	46.1
INCREASE - 1-10%	5	0.0	0.0	0.0	0.0	0.0	0.0
			0.0	0.0	100.0	0.0	100.0
			0.0	0.0	1.0	0.0	1.0
			0.0	0.0	0.0	0.0	0.0
COLUMN TOTAL			61	96	90	41	288
			10.0	20.0	20.0	20.0	100.0

COMMERCIAL PROPERTY AT THREE BLOCKS

	COUNT	ROW PCT	REGION				ROW TOTAL
			EAST	NORTH CENTRAL	SOUTH	WEST	
			1	2	3	4	
DECREASE - 20%	1	0.0	0.0	100.0	0.0	0.0	100.0
			0.0	3.0	0.0	0.0	3.0
			0.0	0.0	0.0	0.0	0.0
DECREASE - 10-20%	2	23.1	0.0	0.0	0.0	0.0	23.1
			7.3	0.0	0.0	0.0	7.3
			1.0	0.0	0.0	0.0	1.0
DECREASE - 1-10%	3	0.0	0.0	00.0	00.0	17.1	37.1
			0.0	21.0	20.0	11.1	52.1
			1.0	0.0	7.0	0.0	8.0
NO CHANGE	4	20.0	20.0	22.2	20.0	20.0	82.2
			17.0	21.0	22.1	20.0	80.1
			60.0	71.0	60.0	67.0	258.0
			12.0	10.1	20.0	22.0	64.1
INCREASE - 1-10%	5	0.0	0.0	0.0	00.0	00.0	0.0
			0.0	0.0	1.0	1.0	2.0
			0.0	0.0	0.0	0.0	0.0
COLUMN TOTAL			61	20	60	41	182
			10.0	20.0	20.0	20.0	100.0



Respondents were also asked to evaluate the impact on residential property within one block of a number of alternate uses for the hypothetical site described in the survey.

Of the alternate uses proposed, a clear majority felt that a medical office or a branch library would increase the value of surrounding residential property. A store-front church, welfare office, tavern, record store, ice cream parlor or video-game parlor were generally felt to neither improve nor decrease residential property values significantly. On the other hand, a substantial majority felt that a pool hall, drug rehabilitation center or a disco would decrease property values - although not as overwhelmingly as an adult bookstore.

**NATIONAL SURVEY OF APPRAISERS
Impact On Residential Properties**

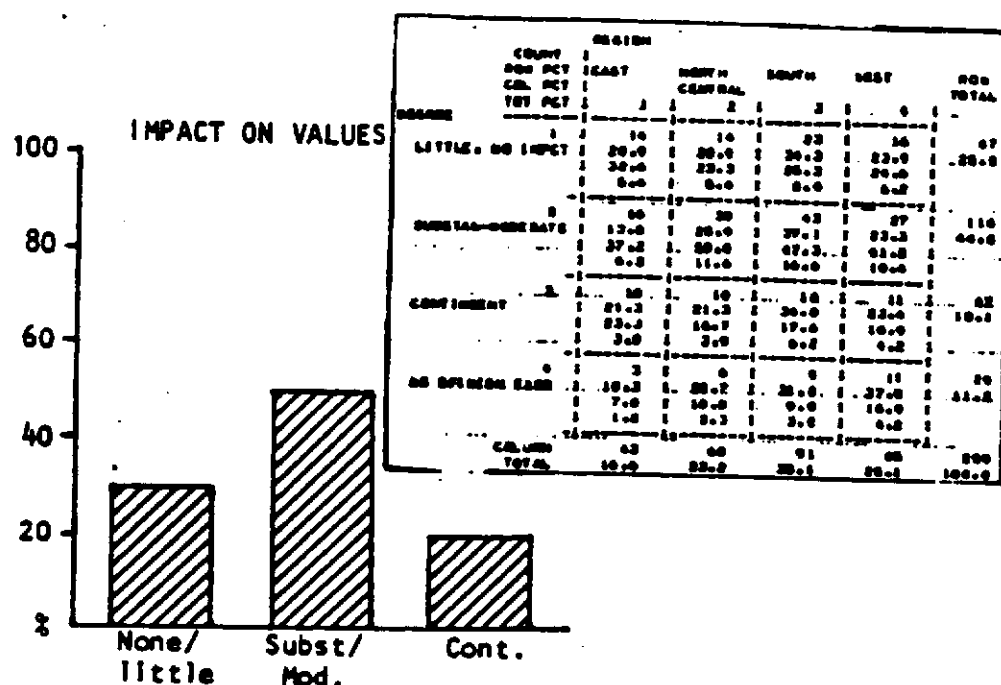
<u>Land Use</u>	<u>Higher</u>		<u>Value</u>		
	<u>Much</u>	<u>Some</u>	<u>Same</u>	<u>Lower</u> <u>Some</u>	<u>Much</u>
Store-front church	5%	20%	58%	16%	1%
Pool hall	1%	8%	45%	38%	8%
Welfare office	-	12%	46%	33%	8%
Neighborhood tavern	2%	18%	45%	32%	4%
Record store	8%	27%	61%	5%	-
Medical office	24%	38%	35%	2%	-
Drug rehab Center	-	7%	35%	42%	17%
Ice cream parlor	15%	30%	53%	3%	-
Video-game parlor	1%	18%	50%	27%	5%
Disco	-	11%	42%	35%	12%
Branch library	24%	34%	38%	4%	-

The survey also asked the degree to which adult bookstores affect property values generally and the basis for this opinion.

Twenty-nine percent of those expressing an opinion saw little or no effect as the result of adult bookstores on surrounding property values. They based this opinion on their own professional experience (13%), the observation that this use usually occurs in an already-deteriorated neighborhood (24%) and the feeling that only one such adult entertainment use would be inconsequential.

A substantial-to-moderate negative impact was projected by 50% of the respondents. Twenty-nine percent felt that this was because it attracted "undesirables" to the neighborhoods in which they were located, while 14% felt that it creates a bad image of the area and 15% felt that the use offended prevailing community attitudes so that home buyers/customers would be discouraged. 13% based their opinion on professional experience.

A number of survey respondents (20%) saw the potential impact on a neighborhood as being contingent on certain variables. 28% of these felt that it would depend on the existing property values in the area as well as the subjective values of its residents. 23% felt that development standards such as facade and signage would determine impact and 11% saw the nature of the existing commercial area and its buffering capacity as being most important.



NATIONAL SURVEY OF APPRAISERS

Impact Of Adult Bookstores on Property Values

LITTLE/NO IMPACT						
	Q1	Q2	Q3	Q4	Q5	Q6
No reason given	0.0	0.0	0.0	0.0	0.0	0.0
Appraisal experience	0.0	0.0	0.0	0.0	0.0	0.0
Area in decline	0.0	0.0	0.0	0.0	0.0	0.0
Area in declining	0.0	0.0	0.0	0.0	0.0	0.0
Not an interval	0.0	0.0	0.0	0.0	0.0	0.0
Only one case not matter	0.0	0.0	0.0	0.0	0.0	0.0
Commercial but for	0.0	0.0	0.0	0.0	0.0	0.0
Market adjusts quickly	0.0	0.0	0.0	0.0	0.0	0.0
Tolerated by current owner	0.0	0.0	0.0	0.0	0.0	0.0
Other	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

SUBSTANTIAL/MODERATE IMPACT						
	Q1	Q2	Q3	Q4	Q5	Q6
No reason given	0.0	0.0	0.0	0.0	0.0	0.0
Appraisal experience	0.0	0.0	0.0	0.0	0.0	0.0
Prevailing Attitudes negative	0.0	0.0	0.0	0.0	0.0	0.0
Unharmonious	0.0	0.0	0.0	0.0	0.0	0.0
Perpetuates decline	0.0	0.0	0.0	0.0	0.0	0.0
Bad image	0.0	0.0	0.0	0.0	0.0	0.0
Attracts undesirable	0.0	0.0	0.0	0.0	0.0	0.0
Bad influence on the young	0.0	0.0	0.0	0.0	0.0	0.0
Attracts more similar uses	0.0	0.0	0.0	0.0	0.0	0.0
Other	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

CONTINUOUS IMPACT						
	Q1	Q2	Q3	Q4	Q5	Q6
No reason given	0.0	0.0	0.0	0.0	0.0	0.0
Not enough info	0.0	0.0	0.0	0.0	0.0	0.0
Local attitudes/controls	0.0	0.0	0.0	0.0	0.0	0.0
History of zoning commercial	0.0	0.0	0.0	0.0	0.0	0.0
Value/type of customer	0.0	0.0	0.0	0.0	0.0	0.0
Owner/management	0.0	0.0	0.0	0.0	0.0	0.0
Owner/management	0.0	0.0	0.0	0.0	0.0	0.0
Type neighborhood values	0.0	0.0	0.0	0.0	0.0	0.0
Attract other A	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

100% MSA SURVEY RESULTS

The 100% survey of Metropolitan Statistical Areas similar in size to Indianapolis produced results that were consistent in virtually all respects with the results of the 20% national survey.

As in the nationwide survey, respondents overwhelmingly (78%) indicated that an adult bookstore would have a negative effect on residential property values in the neighborhood described if they were within one block of the premises. 19% felt that this depreciation would be in excess of 20%, whereas 59% foresaw a decrease in value of from 1% to 20%.

Sixty-nine percent saw a similar decrease in commercial property values within one block of the adult bookstore. As in the national survey, far fewer (only 10%) felt that a devaluation of over 20% would occur. The majority (59%) saw the depreciation as being in the 1% to 20% range.

Once again, the negative impact observed within a one block radius of the adult bookstore fell off sharply when the distance was increased to three blocks - although, judged on the number of those indicating no impact, there would appear to be more of a residual effect on residential properties than on commercial properties.

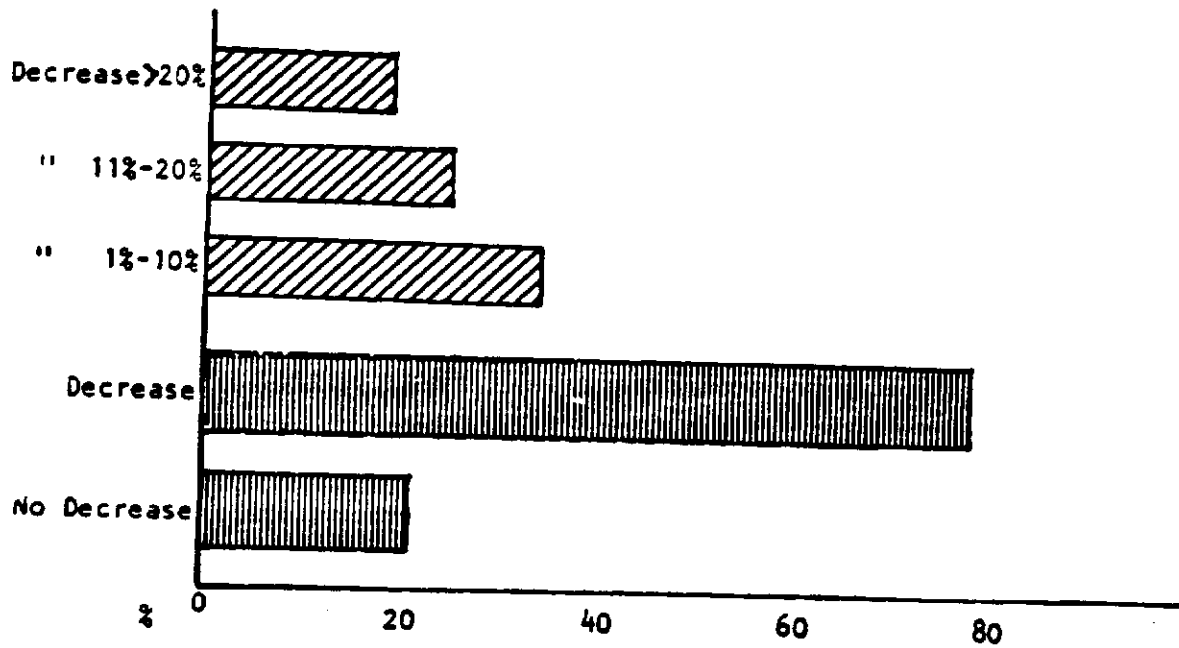
39% of the appraisers felt that a negative impact on residential properties would still obtain at three blocks from the site. Only three percent felt that this impact would be in excess of twenty percent. The remaining 36% felt that depreciation would be somewhere in the one to twenty percent range. 61% saw no appreciable effect at all at three blocks.

Commercial property was judged to be negatively impacted at three blocks by 23% of the survey. 76% saw no change in value as a result of the bookstore.

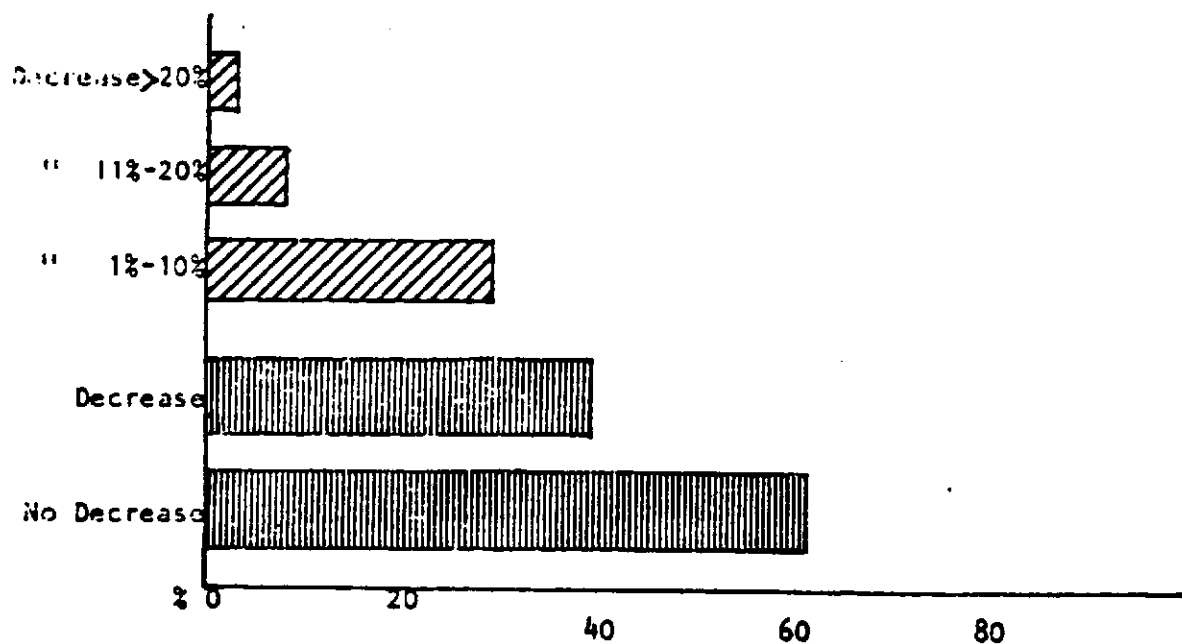
In summary:

- Appraisers assigned a negative value to an adult bookstore located within one block of residential and commercial properties at an approximate three-to-one ratio.
- At a three block distance, this ratio tended to be reversed.
- The number of those indicating a decrease in value at three blocks decreased at only one half the rate for residential property as for commercial property.

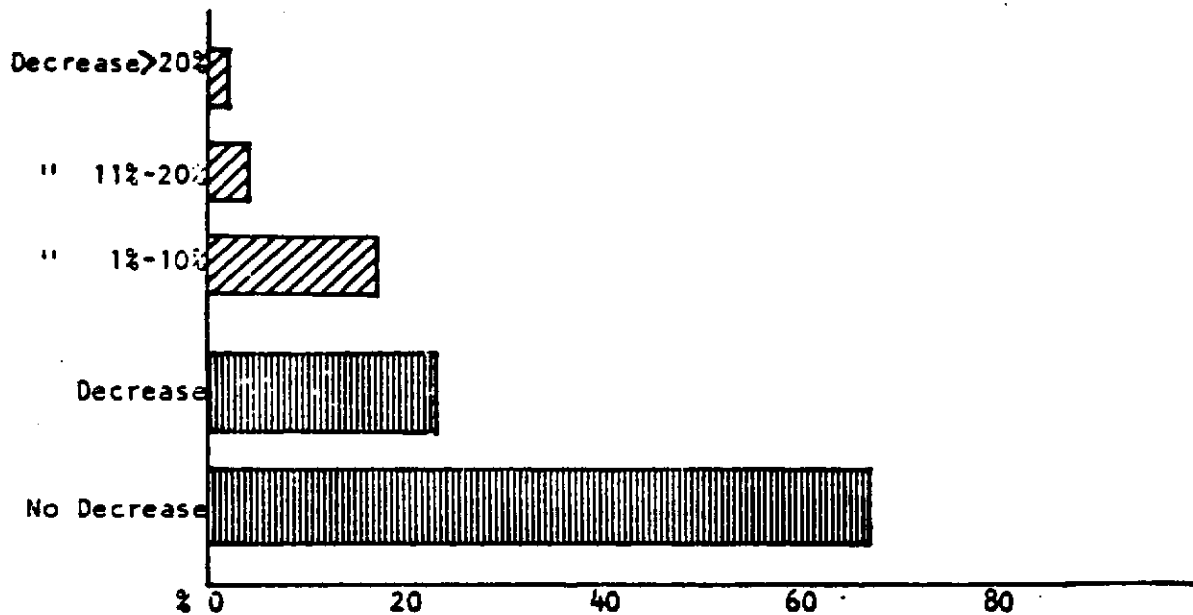
IMPACT OF ADULT BOOKSTORES ON RESIDENTIAL PROPERTY AT ONE BLOCK



DECREASE	10%	20%	30%	40%	50%	60%	70%	80%	90%	100%	TOTAL
DECREASE >20%	10.0	20.0	30.0	40.0	50.0	60.0	70.0	80.0	90.0	100.0	100.0
" 11%-20%	10.0	20.0	30.0	40.0	50.0	60.0	70.0	80.0	90.0	100.0	100.0
" 1%-10%	10.0	20.0	30.0	40.0	50.0	60.0	70.0	80.0	90.0	100.0	100.0
DECREASE	10.0	20.0	30.0	40.0	50.0	60.0	70.0	80.0	90.0	100.0	100.0
NO DECREASE	10.0	20.0	30.0	40.0	50.0	60.0	70.0	80.0	90.0	100.0	100.0
TOTAL	10.0	20.0	30.0	40.0	50.0	60.0	70.0	80.0	90.0	100.0	100.0

[illegible]

IMPACT OF ADULT BOOKSTORES ON COMMERCIAL PROPERTY AT THREE BLOCKS

[illegible][illegible]

In response to a question asking appraisers to rate the impact of a number of different commercial uses at the same location on residential properties within one block, the majority felt that a medical office or a branch library would have a favorable impact while a welfare office or drug rehabilitation center would have an undesirable impact. The majority felt that a store-front church, pool hall, neighborhood tavern, record store, ice cream parlor or a video-game parlor would not have much of an impact and were about equally split as to whether the effect of a disco would be neutral or negative.

**MSA SURVEY OF APPRAISERS
Impact On Residential Properties**

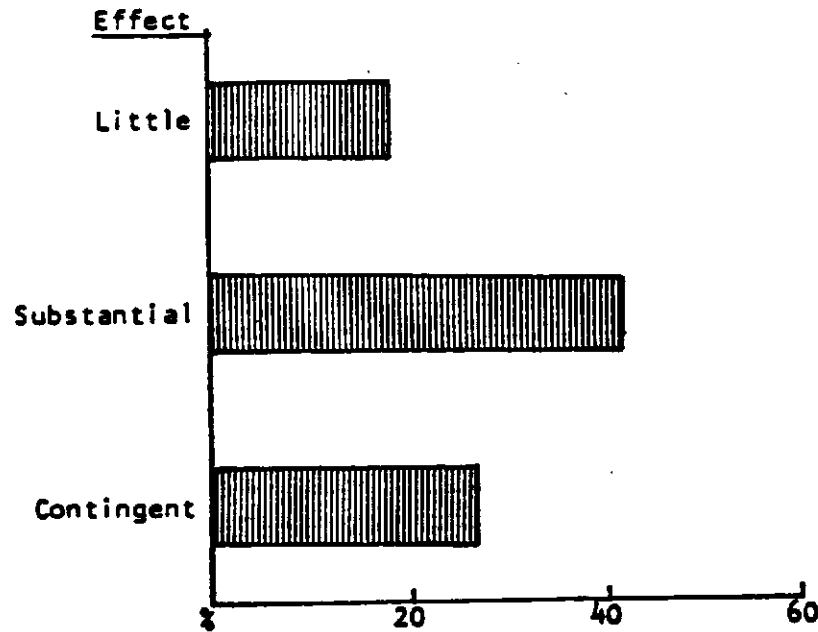
<u>Land Use</u>	<u>Higher</u>		<u>Value</u>	<u>Lower</u>	
	<u>Much</u>	<u>Some</u>	<u>Same</u>	<u>Some</u>	<u>Much</u>
Store-front church	4%	24%	52%	20%	1%
Pool hall	1%	12%	48%	33%	6%
Welfare office	1%	13%	41%	37%	7%
Neighborhood tavern	-	17%	52%	25%	6%
Record store	6%	29%	54%	10%	-
Medical office	20%	37%	39%	4%	-
Drug rehab center	-	6%	39%	40%	15%
Ice cream parlor	14%	29%	52%	5%	-
Video-game parlor	1%	17%	51%	28%	3%
Disco	-	13%	44%	33%	10%
Branch library	24%	37%	34%	5%	1%

In response to the question about their evaluation of the impact of adult bookstores generally on surrounding property values, 21% of those expressing an opinion felt that there would be little or no impact with such a use. They principally based this opinion on their experience as appraisers (20%) and the observation that such uses usually located in areas that had already deteriorated (26%).

47% of the survey felt that there is a substantial-to moderate impact. Their opinions were based on professional appraisal experience (18%), and the observations that: given current mores, an adult bookstore would discourage home buyers and customers (14%); the use precipitated decline and discouraged improvement (11%); and, it would attract "undesirables" to the neighborhood (29%).

The nature of this impact on property was contingent on a number of factors in the minds of 32% of the respondents. 13% felt that it depended on local attitudes and the adequacy of legal controls on their operation. Exterior factors such as signage and building facade quality were seen by 16% as the determinant. 30% felt the impact would be directly related to the values (both monetary and human) prevalent in the neighborhood. And 20% felt that the answer depended on whether or not the business was likely to attract other such businesses.

EFFECT OF ADULT BOOKSTORES ON PROPERTY VALUE MSA SURVEY OF APPRAISERS



COUNT	MINNEAPOLIS	SACRAMENTO	SAN FRANCISCO	SAN JOSE	SEATTLE	ST. LOUIS	ST. PAUL	TEMPLE	ATLANTA	INDIANAPOLIS	LOUISVILLE
NO. OF	42	2	3	4	5	6	7	8	9	10	11
PERCENT	1	2	3	4	5	6	7	8	9	10	11
LITTLE - NO IMPACT	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
CONTINGENT	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
SUBSTANTIAL	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

MINNEAPOLIS	SACRAMENTO	SAN FRANCISCO	SAN JOSE	SEATTLE	ST. LOUIS	ST. PAUL	TEMPLE	ATLANTA	INDIANAPOLIS	LOUISVILLE
12	10	12	10	12	10	12	10	12	10	12
1	1	1	1	1	1	1	1	1	1	1
2	2	2	2	2	2	2	2	2	2	2
3	3	3	3	3	3	3	3	3	3	3
4	4	4	4	4	4	4	4	4	4	4
5	5	5	5	5	5	5	5	5	5	5
6	6	6	6	6	6	6	6	6	6	6
7	7	7	7	7	7	7	7	7	7	7
8	8	8	8	8	8	8	8	8	8	8
9	9	9	9	9	9	9	9	9	9	9
10	10	10	10	10	10	10	10	10	10	10
11	11	11	11	11	11	11	11	11	11	11
12	12	12	12	12	12	12	12	12	12	12
13	13	13	13	13	13	13	13	13	13	13
14	14	14	14	14	14	14	14	14	14	14
15	15	15	15	15	15	15	15	15	15	15
16	16	16	16	16	16	16	16	16	16	16
17	17	17	17	17	17	17	17	17	17	17
18	18	18	18	18	18	18	18	18	18	18
19	19	19	19	19	19	19	19	19	19	19
20	20	20	20	20	20	20	20	20	20	20
21	21	21	21	21	21	21	21	21	21	21
22	22	22	22	22	22	22	22	22	22	22
23	23	23	23	23	23	23	23	23	23	23
24	24	24	24	24	24	24	24	24	24	24
25	25	25	25	25	25	25	25	25	25	25
26	26	26	26	26	26	26	26	26	26	26
27	27	27	27	27	27	27	27	27	27	27
28	28	28	28	28	28	28	28	28	28	28
29	29	29	29	29	29	29	29	29	29	29
30	30	30	30	30	30	30	30	30	30	30
31	31	31	31	31	31	31	31	31	31	31
32	32	32	32	32	32	32	32	32	32	32
33	33	33	33	33	33	33	33	33	33	33
34	34	34	34	34	34	34	34	34	34	34
35	35	35	35	35	35	35	35	35	35	35
36	36	36	36	36	36	36	36	36	36	36
37	37	37	37	37	37	37	37	37	37	37
38	38	38	38	38	38	38	38	38	38	38
39	39	39	39	39	39	39	39	39	39	39
40	40	40	40	40	40	40	40	40	40	40
41	41	41	41	41	41	41	41	41	41	41
42	42	42	42	42	42	42	42	42	42	42
43	43	43	43	43	43	43	43	43	43	43
44	44	44	44	44	44	44	44	44	44	44
45	45	45	45	45	45	45	45	45	45	45
46	46	46	46	46	46	46	46	46	46	46
47	47	47	47	47	47	47	47	47	47	47
48	48	48	48	48	48	48	48	48	48	48
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99	99	99	99	99	99	99	99	99	99	99
100	100	100	100	100	100	100	100	100	100	100

LITTLE OR NO EFFECT

SCHEMATIC										SCHEMATIC									
LINE	NO.	DESCRIPTION	QTY	UNIT	PRICE	AMOUNT	TAX	TOTAL	REMARKS	LINE	NO.	DESCRIPTION	QTY	UNIT	PRICE	AMOUNT	TAX	TOTAL	REMARKS
1	1	100.00	1	100.00	100.00	100.00	100.00	100.00		1	1	100.00	1	100.00	100.00	100.00	100.00	100.00	
2	2	100.00	1	100.00	100.00	100.00	100.00	100.00		2	2	100.00	1	100.00	100.00	100.00	100.00	100.00	
3	3	100.00	1	100.00	100.00	100.00	100.00	100.00		3	3	100.00	1	100.00	100.00	100.00	100.00	100.00	
4	4	100.00	1	100.00	100.00	100.00	100.00	100.00		4	4	100.00	1	100.00	100.00	100.00	100.00	100.00	
5	5	100.00	1	100.00	100.00	100.00	100.00	100.00		5	5	100.00	1	100.00	100.00	100.00	100.00	100.00	
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14	14	100.00	1	100.00	100.00	100.00	100.00	100.00		14	14	100.00	1	100.00	100.00	100.00	100.00	100.00	
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16	16	100.00	1	100.00	100.00	100.00	100.00	100.00		16	16	100.00	1	100.00	100.00	100.00	100.00	100.00	
17	17	100.00	1	100.00	100.00	100.00	100.00	100.00		17	17	100.00	1	100.00	100.00	100.00	100.00	100.00	
18	18	100.00	1	100.00	100.00	100.00	100.00	100.00		18	18	100.00	1	100.00	100.00	100.00	100.00	100.00	
19	19	100.00	1	100.00	100.00	100.00	100.00	100.00		19	19	100.00	1	100.00	100.00	100.00	100.00	100.00	</

- | | |
|-------------------------------|---------------------------------|
| 0 = No reason given. | 6 = Commercial buffer. |
| 1 = Appraisal experience. | 7 = Market adjusts quickly. |
| 2 = Area in decline. | 8 = Tolerated by current mores. |
| 3 = Area in decline. | 9 = Other. |
| 4 = Not an intense use. | |
| 5 = Only one does not matter. | |

SUBSTANTIAL OR MODERATE EFFECT

0 = No reason given.
1 = Appraisal experience.
2 = Prevailing attitudes are negative.
3 = Unharmonious use.
4 = Precipitates decline.
5 = Creates a bad image.
6 = Attracts undesirable.
7 = Bad Influence on the young.
8 = Attracts similar uses.
9 = Other.

CONTINGENT EFFECT

[illegible]

1 - No reason given.
2 - Not enough information.
3 - Local attitudes and controls.
4 - Nature of existing commercial uses.

- 5 = Volume/type of customer.
- 6 = Decore/management.
- 7 = Decore/management.
- 8 = Type of nleghborhood values.
- 9 = If attracts similar uses.

SUMMARY OF FINDINGS

The great majority of appraisers (75%) who responded to the national survey of certified real estate appraisers felt that an adult bookstore located within one block would have a negative effect on the value of both residential (80%) and commercial (72%) properties. 50% of these respondents foresaw an immediate depreciation in excess of 10%.

At a distance of three blocks, the great majority of respondents (71%) felt that the impact was negligible on both residential (64%) and commercial (77%) properties. Even so, it would appear that this residual effect of such a use was greater for residential than for commercial premises.

In answer to a survey question regarding the impact of an adult bookstore on property values generally, 50% felt that there would be a substantial-to-moderate negative impact, 30% saw little or no impact, and 20% saw the effect as being dependent on factors such as the predominant values (property and social) existing in the neighborhood, the development standards imposed on the use, and the ability of an existing commercial node to buffer the impact from other uses.

The results of the 20% national sample and the 100% survey of Metropolitan Statistical Areas were virtually identical. The one significant variation that did occur was in the response to the question asked as to the effect of adult bookstores on property values generally. Respondents in the MSA survey placed more emphasis (32% versus 20%) on conditional factors at the site.

FOOTNOTES

1. Metropolitan Statistical Areas (MSAs) surveyed at 100% were chosen on the basis of having a one to two million population at the time of the 1980 U. S. Census. They were: Phoenix, Arizona; Sacramento, San Diego and San Jose, California; Denver/Boulder, Colorado; Hartford, Connecticut; Fort Lauderdale, Miami and Tampa, Florida; Indianapolis, Indiana; New Orleans, Louisiana; Kansas City, Missouri; Newark, New Jersey; Buffalo, New York; Cincinnati, Cleveland and Columbus, Ohio; Portland, Oregon; San Antonio, Texas; Seattle, Washington; and Milwaukee, Wisconsin. Although slightly outside the population parameters for this selection, Louisville, Kentucky and Atlanta, Georgia were also included.
2. Regional designations used were those employed by the U. S. Bureau of the Census for the 1980 Census. The data were processed and crosstabulations performed using the Statistical Package for the Social Sciences.
3. The discrepancy between the number of survey responses and the number of responses to the question in this and subsequent tables is the result of some respondents having omitted answers to questions 6 and 7 of the survey.

APPENDIX I

Area Maps

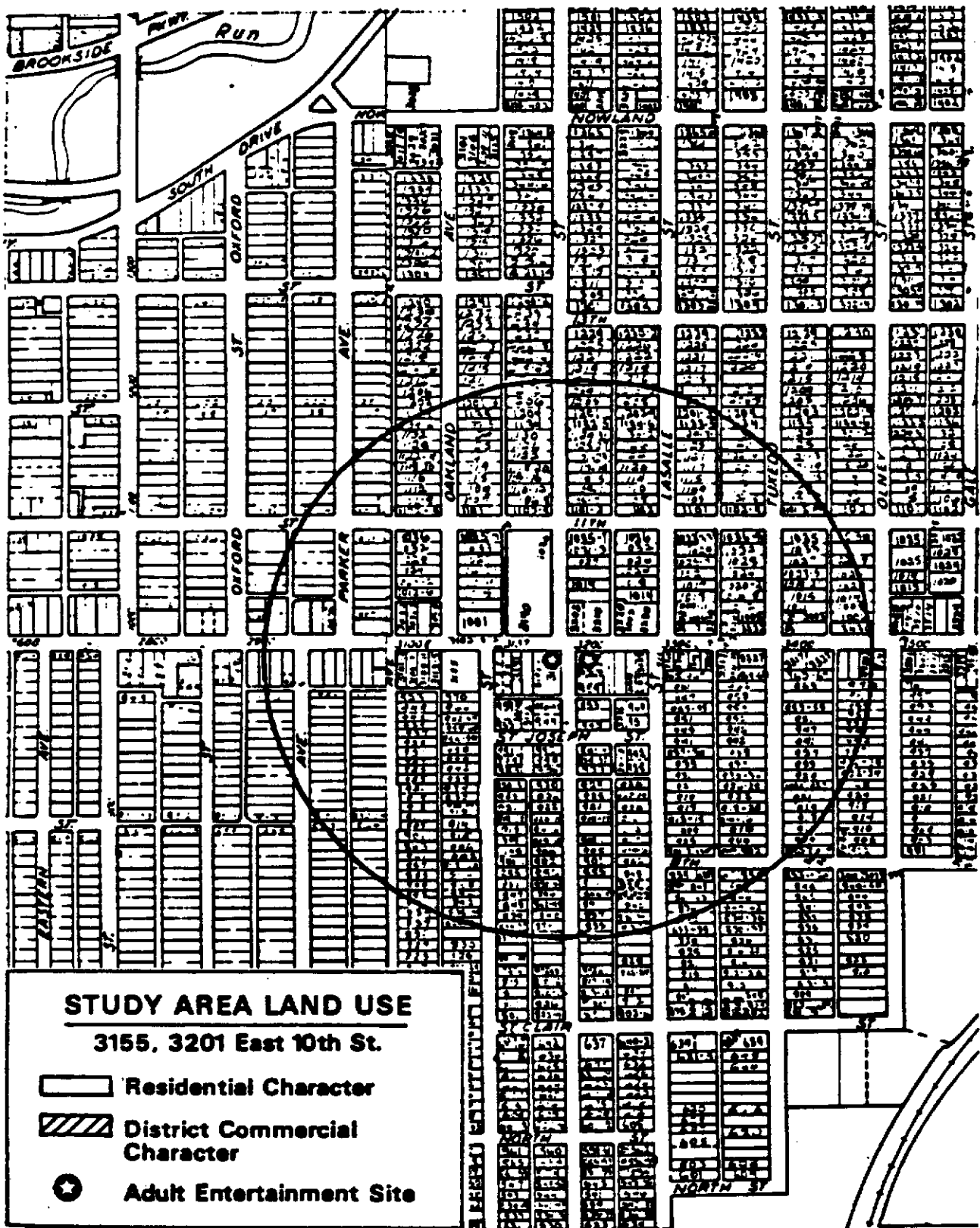
NOTE

For the purpose of this study, the maps included in this Appendix categorize existing land uses within the Study and Control Areas as having a Residential or a District Commercial Character.

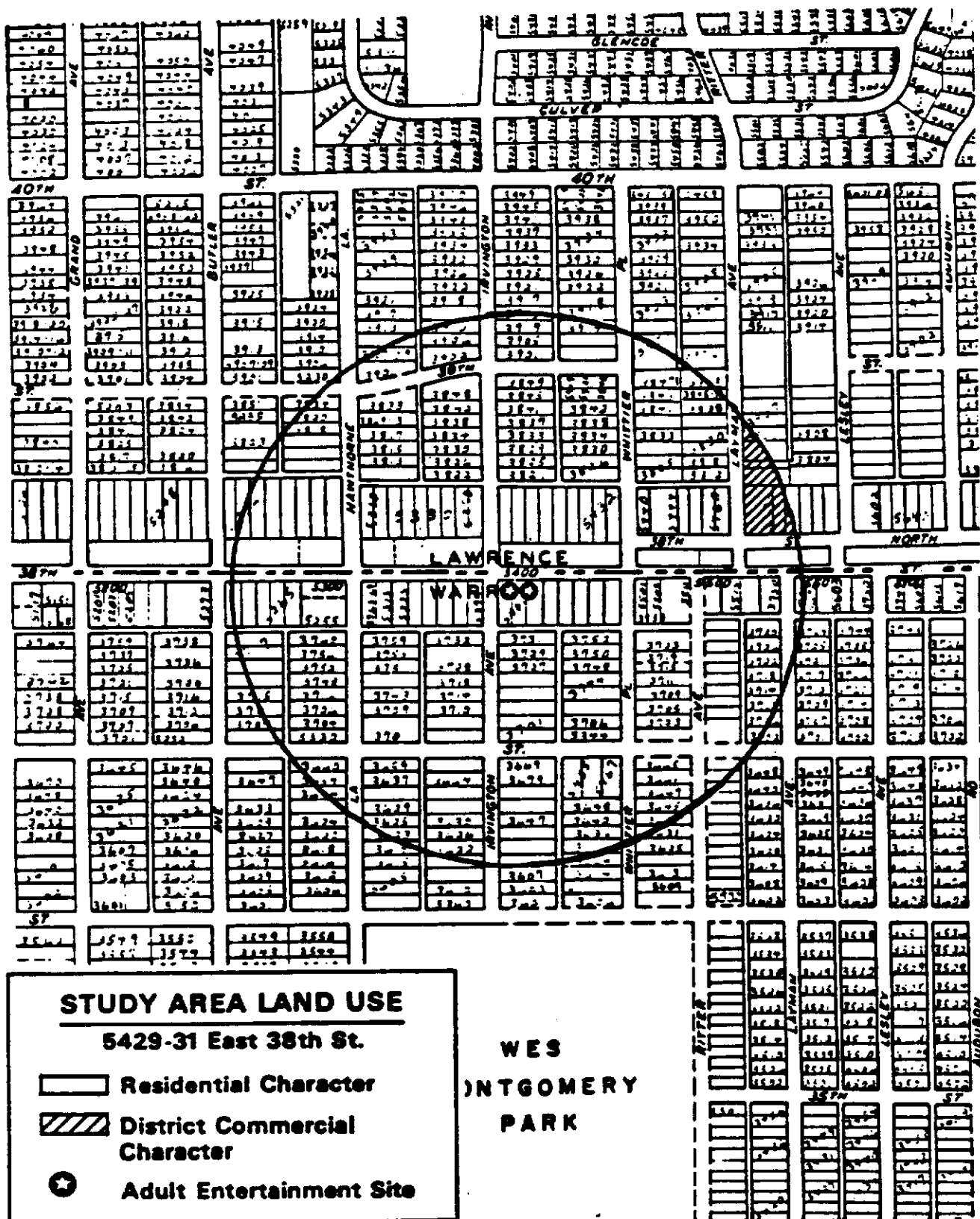
All dwelling district, neighborhood-related commercial and special use zoning classifications are designated as being of "Residential Character".

More intense commercial uses, industrial uses and district-related special uses are considered to have a "District Commercial Character".

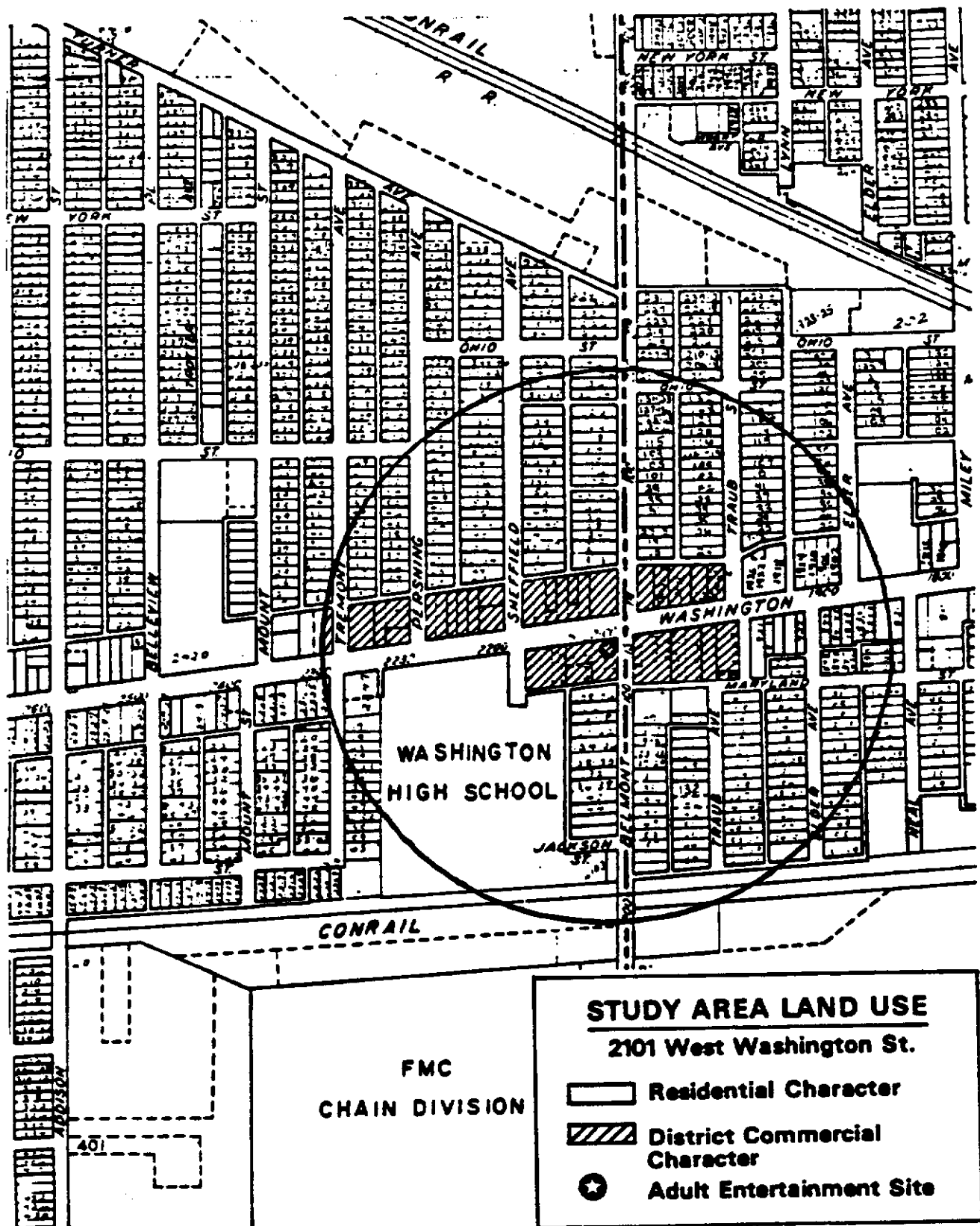
ADULT ENTERTAINMENT BUSINESS STUDY



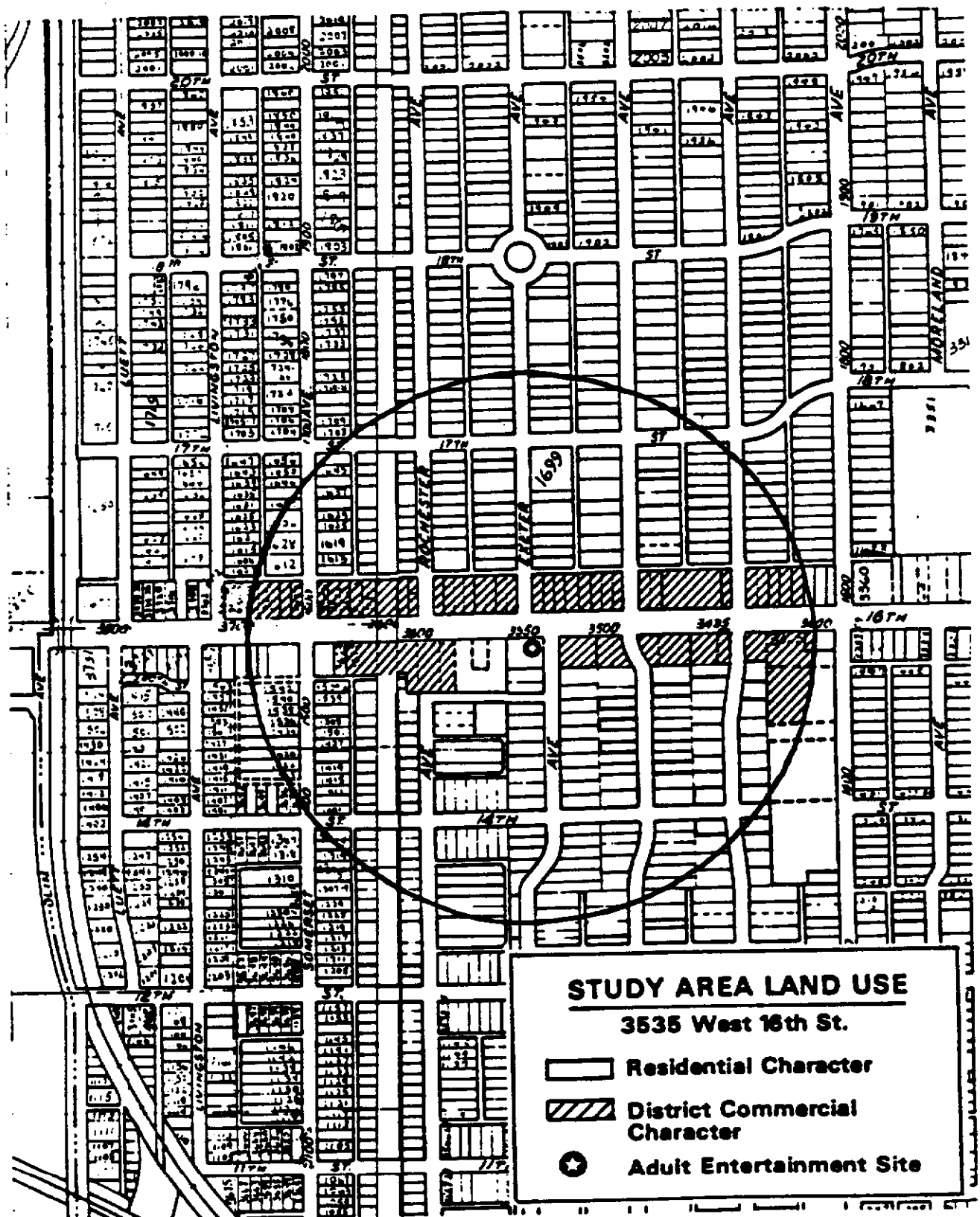
ADULT ENTERTAINMENT BUSINESS STUDY



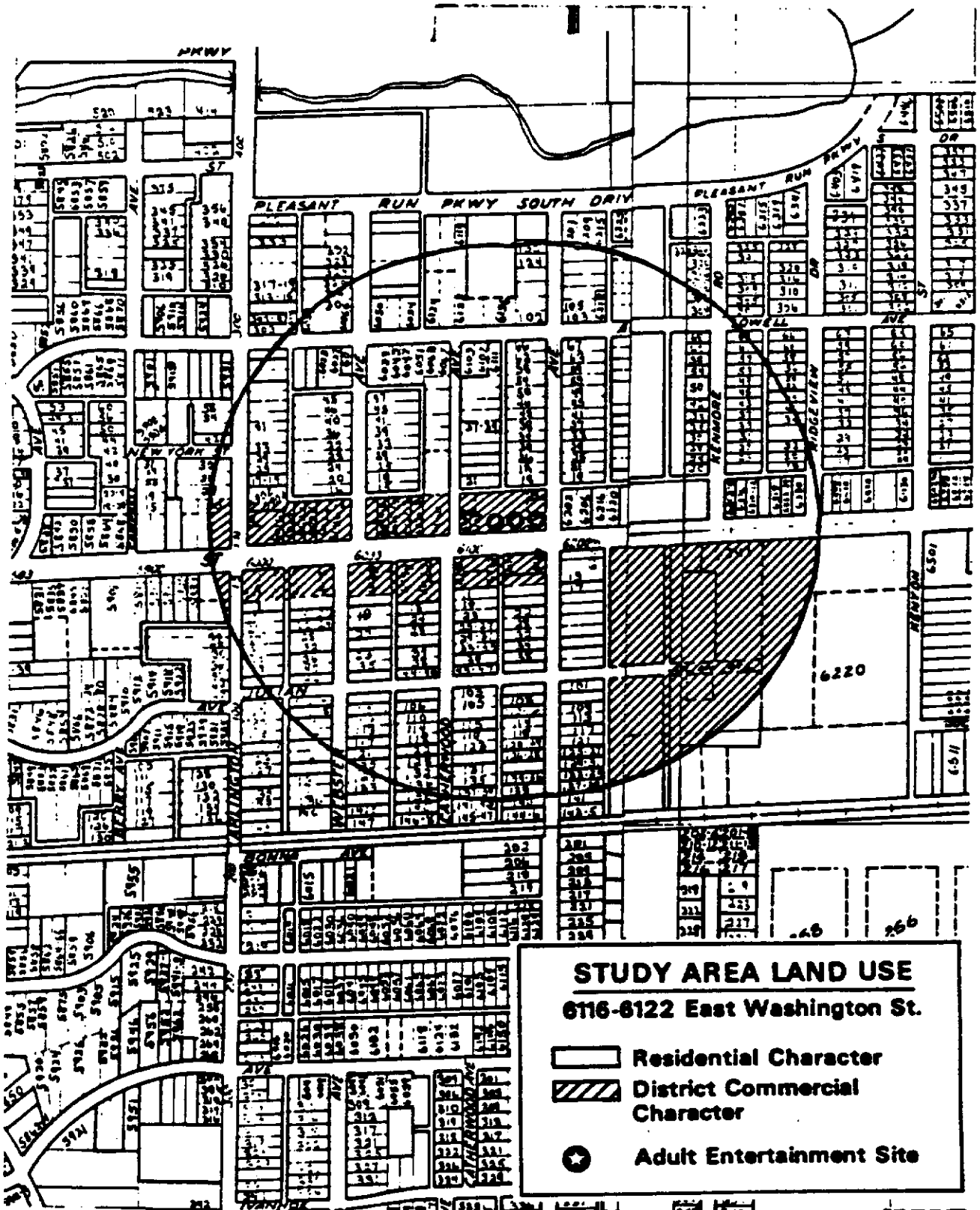
ADULT ENTERTAINMENT BUSINESS STUDY



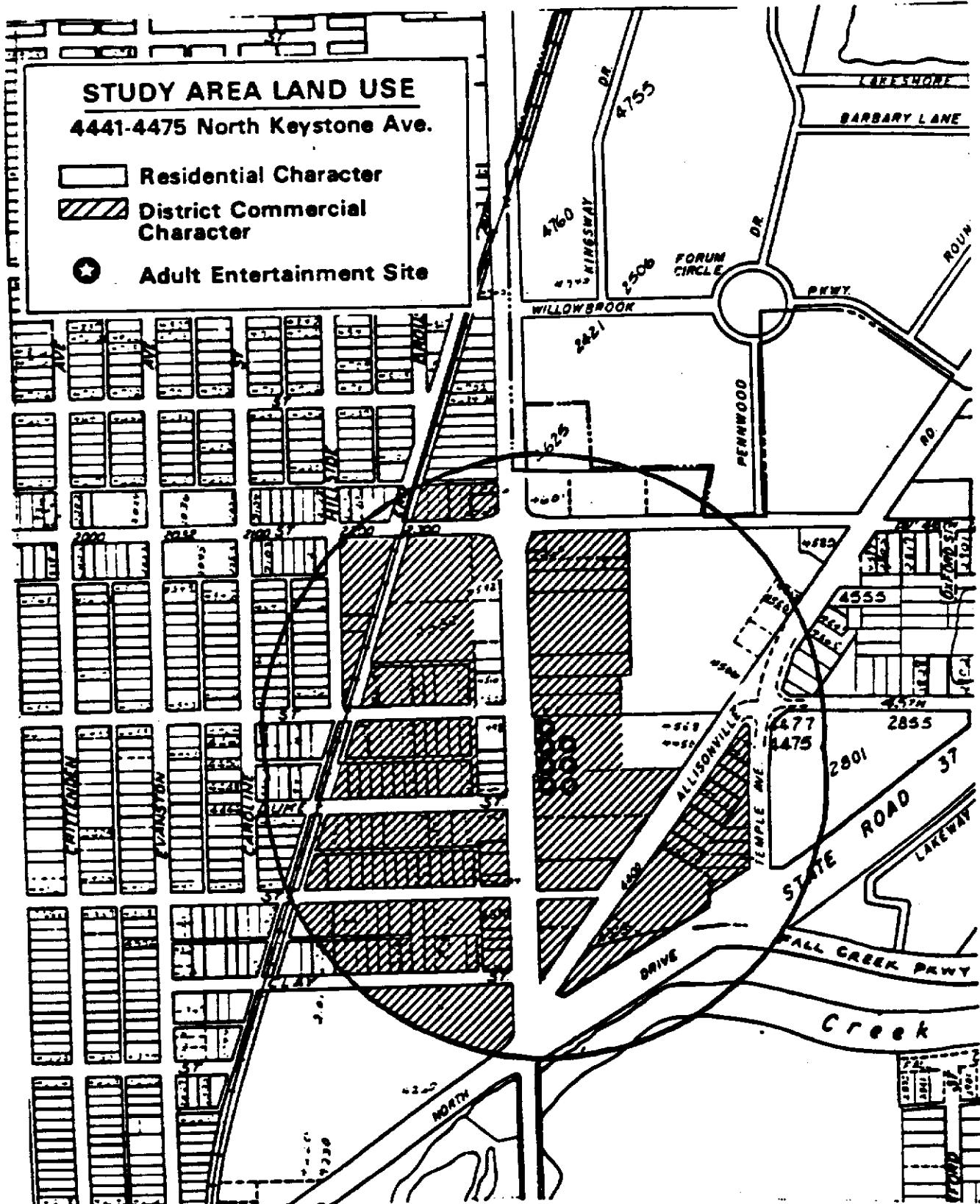
ADULT ENTERTAINMENT BUSINESS STUDY



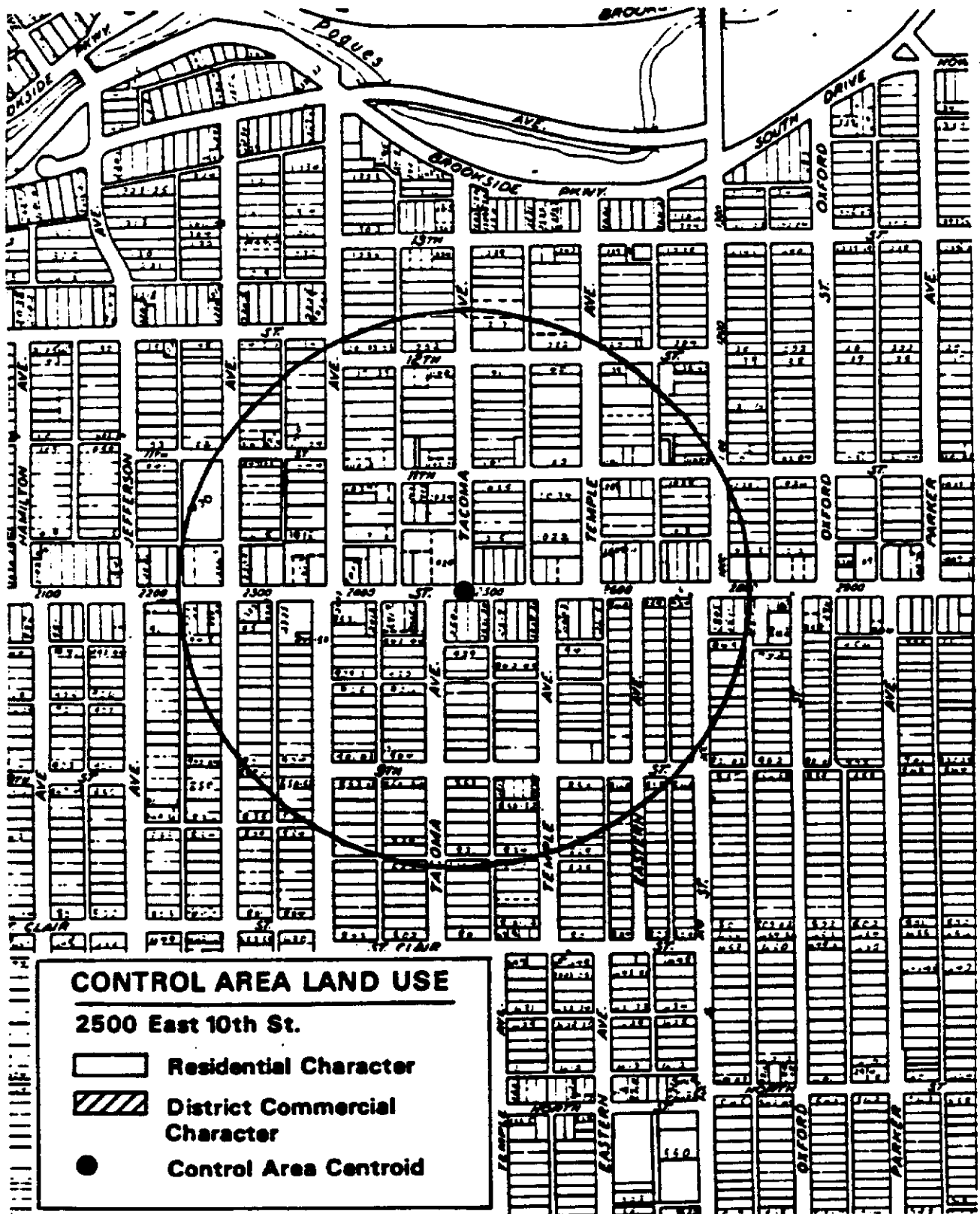
ADULT ENTERTAINMENT BUSINESS STUDY



ADULT ENTERTAINMENT BUSINESS STUDY



ADULT ENTERTAINMENT BUSINESS STUDY



CONTROL AREA LAND USE

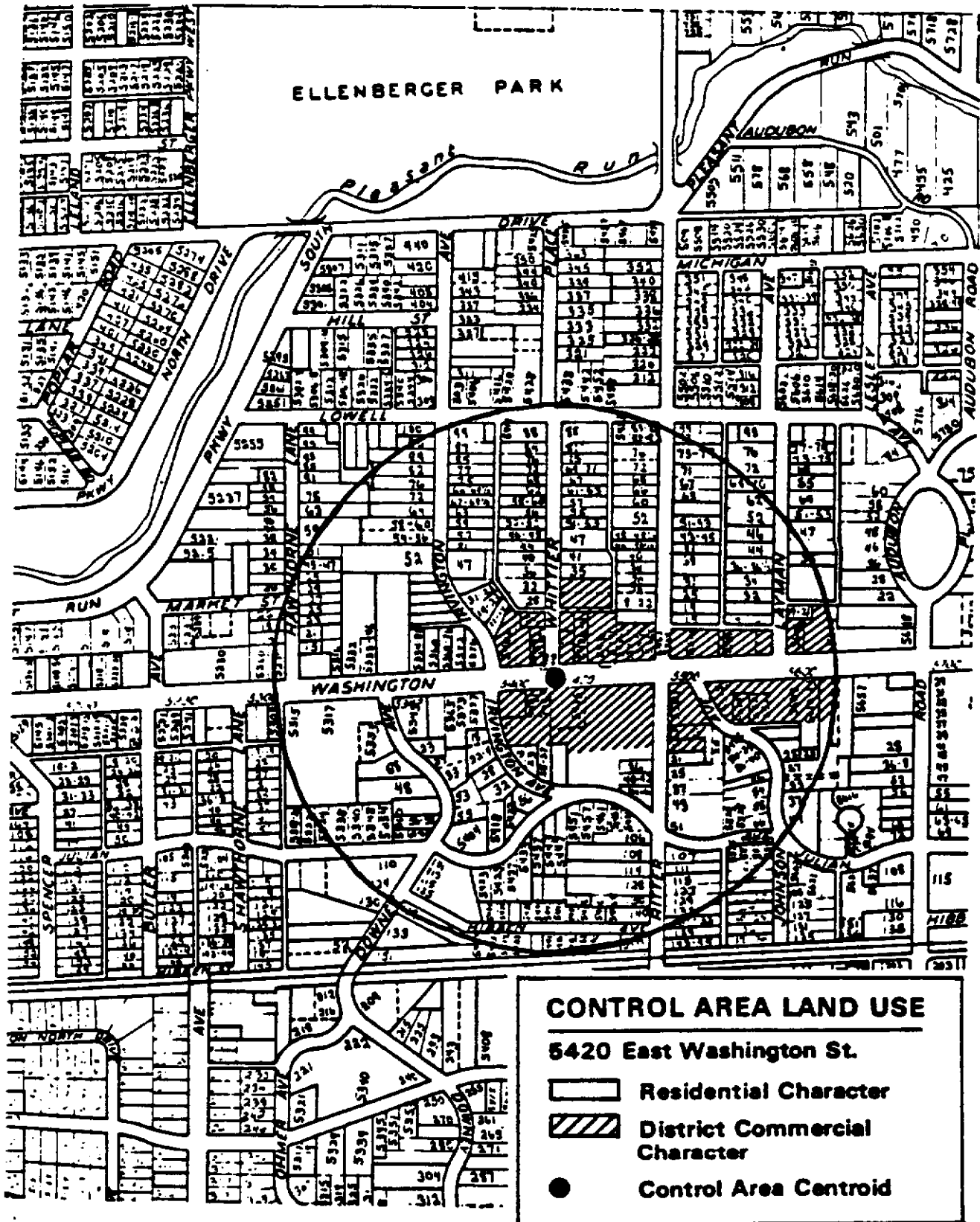
2300 West 10th St.

Residential Character

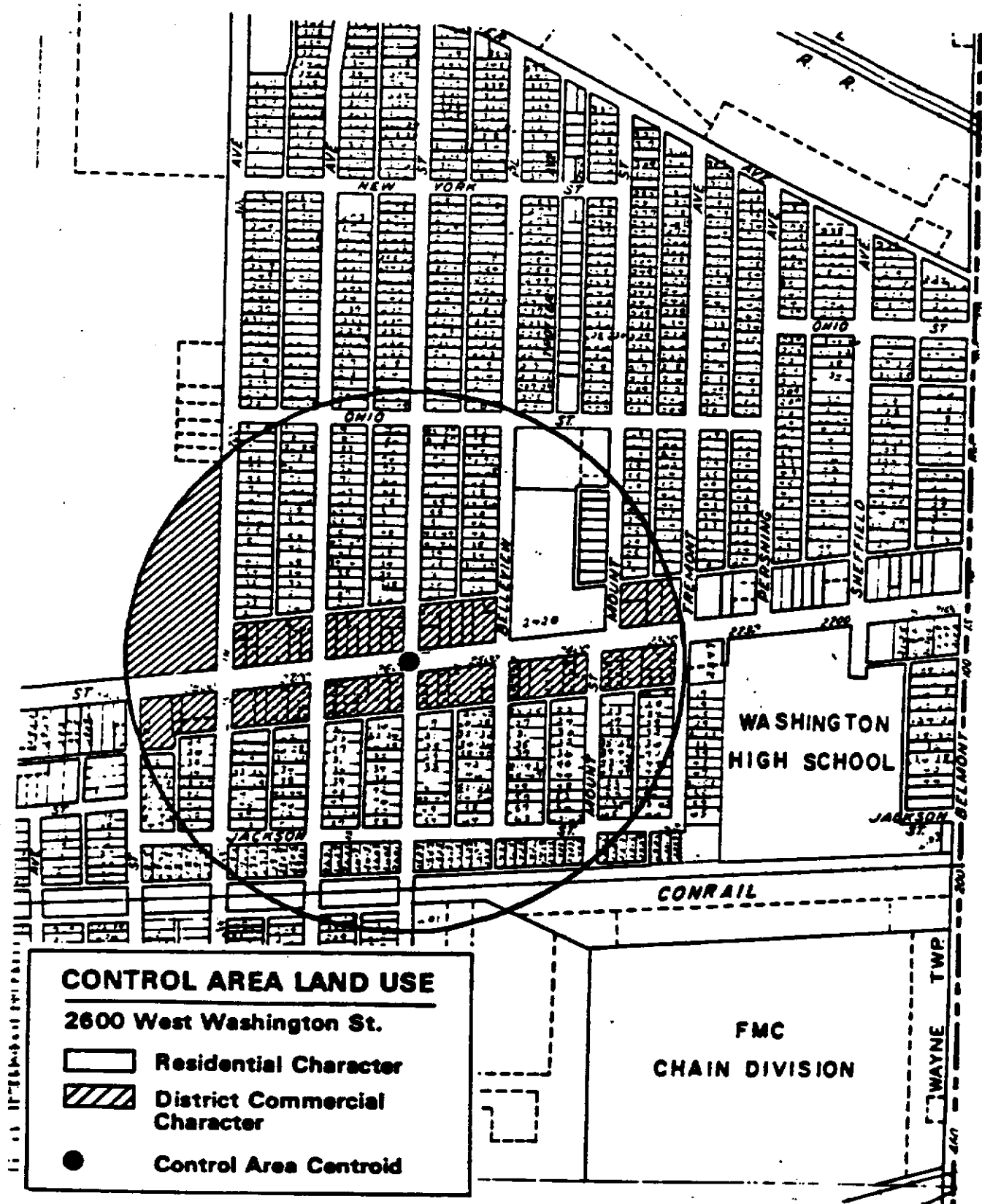
District Commercial Character

Control Area Centroid

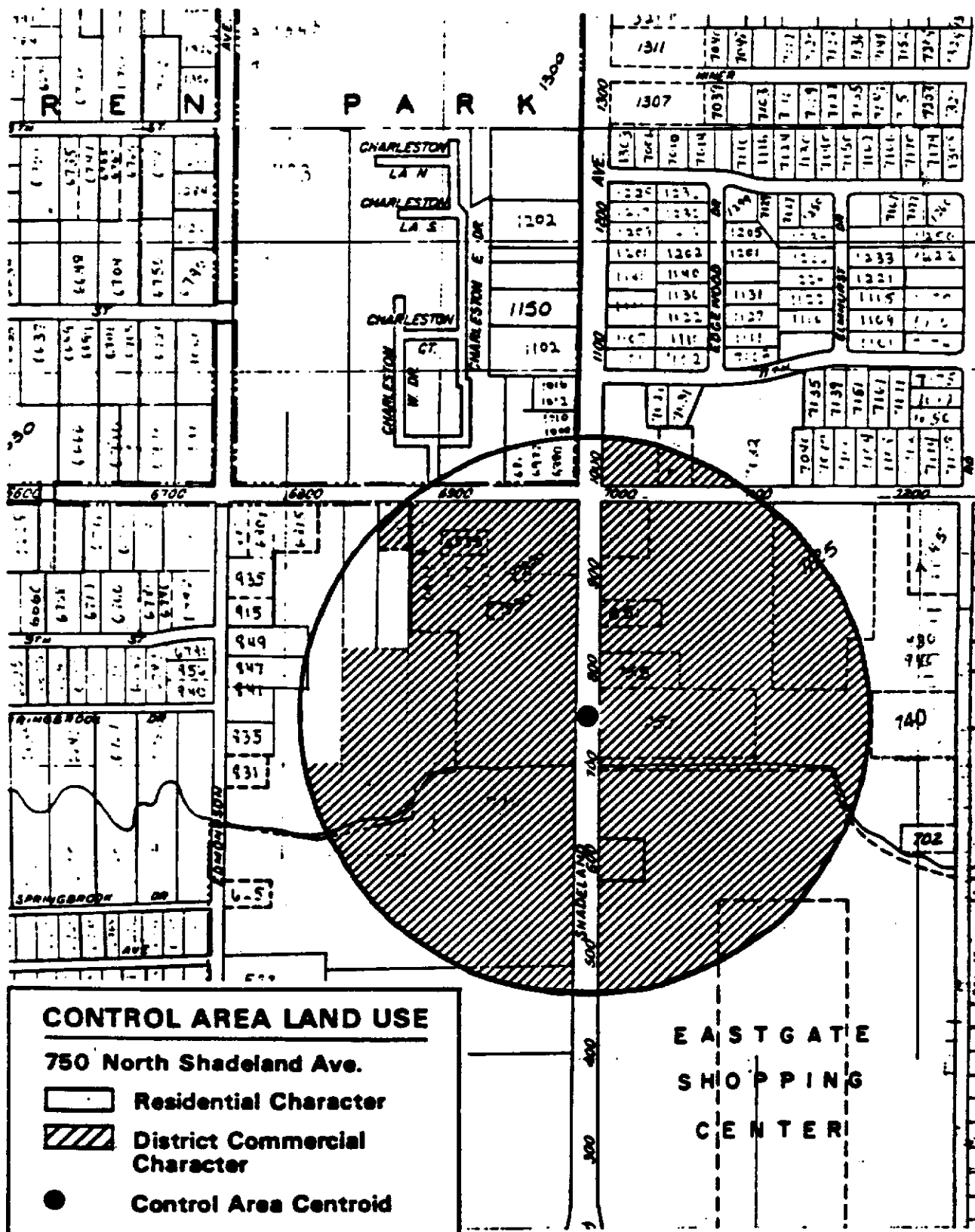
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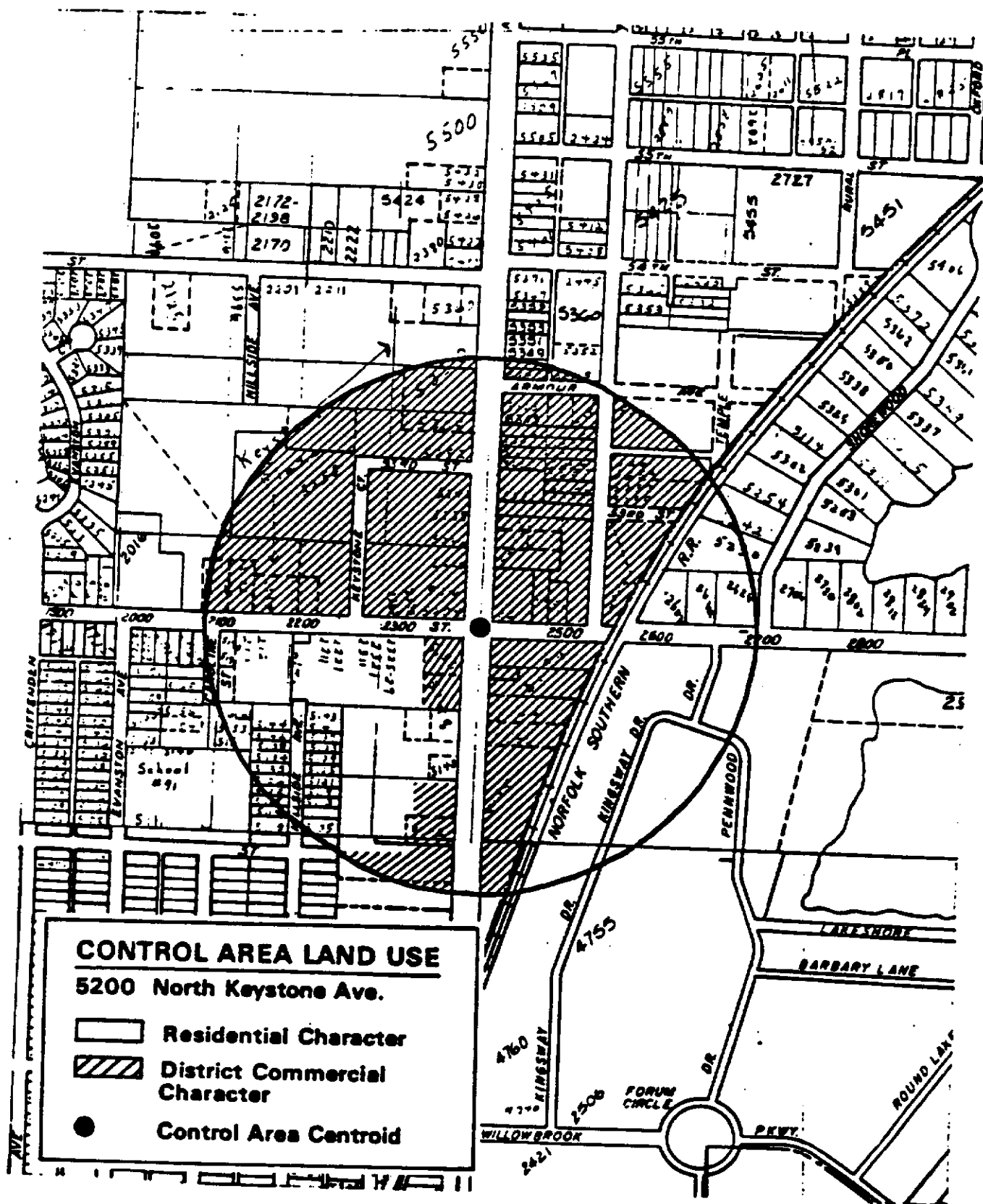
ADULT ENTERTAINMENT BUSINESS STUDY



ADULT ENTERTAINMENT BUSINESS STUDY



ADULT ENTERTAINMENT BUSINESS STUDY



APPENDIX II

Appraiser Survey



CITY OF INDIANAPOLIS

WILLIAM H. HUDNUT, III
MAYOR

DAVID E. CARLEY
DIRECTOR

DEPARTMENT OF METROPOLITAN DEVELOPMENT

January 20, 1984

Dear MAI Member:

The City of Indianapolis, Indiana is currently in the process of preparing a new local ordinance that will regulate the location of adult entertainment businesses in relation to residential neighborhoods in our community.

In an effort to provide a basis for the proposed legislation that is equitable and legally defensible, I would like to ask your help in establishing a "best professional opinion" on the matter. As a real estate professional, the opinions you share with us on the enclosed survey forms would be very valuable to us in the development of a positive legislative approach to this difficult local issue.

Thank you very much for your assistance.

Sincerely,


David E. Carley

cc. L. Carroll



INDIANA UNIVERSITY

Division of Research

SCHOOL OF BUSINESS
Bloomington/Indianapolis
10th and Fee Lane
Bloomington, Indiana 47405
(812) 337-5507

TO: Professional Real Estate Appraisers

FROM: Indiana University, School of Business, Division of Research

Please help us in this brief national survey. The information provided will help clarify an important question. Read the following information about a hypothetical neighborhood and respond to a few questions in terms of your professional experience and judgment.

A middle income residential neighborhood borders a main street that contains various commercial activities serving the neighborhood. There is a building that was recently vacated by a hardware store and will open shortly as an adult bookstore. There are no other adult bookstores or similar activities in the area. There is no other vacant commercial space presently available in the neighborhood.

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

SCALE: A Decrease 20% or more
 B Decrease more than 10% but less than 20%
 C Decrease from 0 to 10%
 D No change in value
 E Increase from 0 to 10%
 F Increase more than 10% but less than 20%
 G Increase 20% or more

- 1) How would you expect the average values of the RESIDENTIAL property within one block of the bookstore to be affected? _____
- 2) How would you expect the average values of the COMMERCIAL property within one block of the adult bookstore to be affected? _____
- 3) How would you expect the average values of RESIDENTIAL property located three blocks from the bookstore to be affected? _____
- 4) How would you expect the average values of the COMMERCIAL property three blocks from the adult bookstore to be affected? _____

- 5) Suppose the available commercial building is used for something other than an adult bookstore. For each of the following potential uses, would the average value of residential property within one block of the new business be...

- | | |
|-------------------|--------------------|
| A much higher | |
| B somewhat higher | than if an |
| C about the same | adult bookstore |
| D somewhat lower | occupied the site. |
| E much lower | |

In the space provided, write the appropriate letter for each potential use.

Store-front church	_____	Drug rehabilitation center	_____
Pool hall	_____	Ice cream parlor	_____
Welfare office	_____	Video-game parlor	_____
Neighborhood tavern	_____	Disco	_____
Record store	_____	Branch library	_____
Medical office	_____		

- 6) In general, to what degree do you feel adult bookstores affect property values?

- 7) Why do you feel this way?

- 8) Where do you practice?

City _____ State _____

Your name _____

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

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

APPENDIX III

**Land Use Control of
Adult Entertainment**

APPENDIX III

LAND USE CONTROL OF ADULT ENTERTAINMENT

LEGAL BASIS

Zoning has traditionally been defined as a process by which a municipality legally controls the use which may be made of property and the physical configuration of development upon tracts of land within its jurisdiction. This is accomplished by means of zoning ordinances which are locally adopted to divide the land into different districts permitting only certain uses within each district for the protection of public safety, welfare, health and morality.¹

Zoning regulations not only regulate the use to which buildings or property may be put within designated districts, but also the purpose or object of the use beyond the mere conditions or circumstances of the use.²

In a 1920 landmark decision, the New York Court of Appeals upheld New York City's comprehensive zoning legislation,³ and reaffirmed this legislation as a proper exercise of the city's police powers.

In 1926, the practice of comprehensive zoning received substantial support when the United States Department of Commerce promulgated the Standard State Zoning Enabling Act. This Act became the model for most of the early zoning enabling legislation in the country.

While the courts have reaffirmed that municipalities are properly exercising their police powers through zoning regulation, it is generally held that they have no inherent power to zone except (as is the case with the police power itself) as such power is delegated to them by the state legislature through statutory enactment. The right of state legislatures to delegate comprehensive zoning power to municipalities, on the other hand, is uniformly recognized by the courts.⁴

Because municipalities in the state had to be enabled to exercise zoning powers within their jurisdictions, the Indiana State Legislature, by means of enabling legislation, delegated this power to local units of government.⁵

Control of the use of private land inevitably raised a number of constitutional questions. In the landmark 1926 case of Euclid v. Ambler Realty Co.,⁶ the United States Supreme Court upheld the city of Euclid, Ohio's municipal zoning ordinance which had been claimed to involve an unconstitutional deprivation of property by deciding that comprehensive zoning ordinances are a proper

exercise of the police power and do not constitute an unconstitutional deprivation of property. This position was reaffirmed by the Supreme Court of the United States in 1927.⁷

Thus, the general legality of zoning is established beyond doubt. Subsequent decisions by this court⁸ established that such ordinances, however, could be unconstitutional when applied to a particular property. This established the basis for the system under which the City of Indianapolis currently operates where each variance or rezoning request is decided on its own merits.

THE PUBLIC WELFARE

The police power authorizes a government to adopt and enforce all laws necessary to protect and further the public health, safety, morals and general welfare of its citizens.⁹

Limitations on the exercise of zoning power are essentially the same as those restricting the police power under the U. S. Constitution, i. e., they must be reasonable and guarantee due process and equal protection. It may not be exercised in an unreasonable, oppressive, arbitrary or discriminatory way. Zoning laws, then, must have a real, substantive relation to the legitimate governmental objective of the protection and furtherance of the public health, safety, morals and general welfare of citizens.

The public welfare, in these contexts, means the stabilization of property values, promotion of desirable home surroundings, and happiness,¹⁰ and embraces the orderliness of community growth, land value and aesthetic objectives¹¹ and is reasonably designed to further the advancement of a community as a social, economic and political unity.¹²

CONTROL OF ADULT ENTERTAINMENT¹³

Reacting to the increased availability of pornography in the United States and attendant pressures at the community level for its control, a number of municipal governments have addressed the proliferation of adult entertainment businesses through, among various methods, land use controls. The validity of such an approach was upheld in 1976 in the landmark decision Young v. American Mini Theatres, Inc.¹⁴ in which the Court upheld a Detroit zoning ordinance which prohibited more than two adult movie theaters or other sexually-orientated enterprises from locating within 1000 feet of one another or certain other designated businesses. Against

attacks grounded in the First and Fourteenth Amendments to the Constitution of the United States, the Court sustained the ordinance on the dual bases that:

1. The ordinance was a reasonable response to demonstrated adverse land-use and property value effects associated with sexually-oriented enterprises; and
2. the ordinance silenced no message or expression but merely placed geographic restrictions upon where such expression could occur.

While an exhaustive analysis of the Young decision is beyond the scope of this discussion, the following generalized principles may be gleaned from the plurality, concurring and dissenting opinions of the Justices. First, hostility to constitutionally protected speech is an impermissible motive. The more apparent and rational the relationship of the adult use restrictions to recognized zoning objectives, such as the preservation of neighborhoods and the grouping of compatible uses, the greater the likelihood that the restrictions will be upheld.

Second, even a properly motivated ordinance will be invalidated if it unduly burdens first amendment rights. For example, an ordinance imposing locational restrictions that are so severe as to result in an inability to accommodate the present or anticipated number of adult businesses in a municipality will certainly be struck down. The Young court repeatedly moored its decision upholding the Detroit ordinance upon the finding that numerous sites complying with the zoning requirements were available to adult businesses and that the market for sexually-explicit fare, viewed as an entity, was therefore "essentially unrestrained".

Third, ordinances which are so vague in wording and definitions that a non-pornographic entrepreneur is unclear whether he falls within its proscriptions may be violative of due process. A vague ordinance may operate to hinder free speech through use of language so uncertain or generalized as to allow the inclusion of protected speech within its prohibitions or leave an individual or law enforcement officers with no specific guidance as to the nature of the acts subject to punishment.

Finally, an ordinance which authorizes the exercise of broad discretionary power by administrative officials to determine which adult business will be allowed to operate, especially if the exercise of such discretion is not grounded on objective, ascertainable criteria, will probably be disapproved as contrary to the precept that, in the First Amendment area, "government may regulate only with narrow specificity".

Any community, then, which would employ its zoning power to regulate adult uses within its jurisdiction must be particularly concerned that the adoptive ordinance be demonstrably motivated by and founded on sound land use principles, it allow reasonable accommodation for such uses within its jurisdiction, and that it clearly define both the nature and regulations of the use in order to avoid, to the extent possible, the need for subjective interpretation of each proposed use.

The Young decision has encouraged a great amount of experimentation on the part of municipalities in an effort to prevent deterioration of their commercial districts and adverse impact upon adjacent areas. The effectiveness of these innovations will be determined by time and the legal tests to which they will be subject as this business segment establishes itself.

For the time being, however, this decision encourages an approach in which localities have tended to control the siting of adult entertainment businesses on the basis of land use.

FOOTNOTES

1. Cf Smith v. Collison, 119 Cap App 180, 6 P2d (1931); Devaney v. Bd. of Zoning Appeals, 132 Conn. 537, 45 Ad2 828 (1946); Toulouse v. Bd. of Zoning Adjustment, 147 Me 387, 87 Ad2 670 (1952).
2. Cf American Sign Co. V. Fowler, 276 SW2d 651 (Ky 1955).
3. Cf Lincoln Trust Co. v. Williams Bldg. Corp., 229 NY 313, 128 NE 209 (1920).
4. Jonas v. Fleming Town Bd. & Zoning Bd. of Appeals, 51 Ad2d 473, 382 NYS 2d 394 (4th Dep't 1976).
5. I.C. 36-7-4.
6. Euclid v. Ambler Realty Co., 272 U.S. 365, 47 S Ct 114, 71 L Ed 303 (1926).
7. Cf Zahn v. Bd. of Pub. Works, 274 U.S. 325, 47 S Ct 574, 71 L Ed 1074 (1927); and Garieb v. Fox, 274 U.S. 603, 47 S. Ct. 675, 71 L Ed 1228 (1927).
8. Cf Sup. Ct. in Nectow v. Cambridge (U.S. 183, 48 S. Ct. 447, 72 L Ed 842 (1928)).
9. Cf Scrutton v. County of Sacramento, 275, Cal App 2nd, 79 Cal Rptr 872 (1969); Troiano v. Zoning Comm'n of Town of No. Branford, 155 Conn 265, 231 A2d 536 (1967); and, Trust Co of Chicago v. City of Chicago, 408 Ill 91, 96 NE 2nd 499 (1951).
10. Cf State v. Bessent, 27 Wisc. 2d 537, 135 NW 2d 317 (1965).
11. Ibid., and J.D. Construction Co. v. Bd. of Adj., 119 NJ Super 140, 290 A2d 452 (1972).
12. Ibid., and Fischer v. Bedminster Twp., 11 NJ 194, 93 A2d 378 (1952).
13. For a more complete discussion of this subject, see Mathew Bender, Book V, Chapter III, Sections 11.01, 11.02 and 11.03.
14. Cf 421 US 50, 96 S Ct 2440, 49 L Ed 2d 310, reh denied 97 S Ct 191 (1976), rev'd 518 F2d 1014 (6th Cir 1975).

FOOTNOTES

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12. Ibid., and Fischer v. Bedminster Twp., 11 NJ 194, 93 A2d 378 (1952).
13. For a more complete discussion of this subject, see Mathew Bender, Book V, Chapter III, Sections 11.01, 11.02 and 11.03.
14. Cf 421 US 50, 96 S Ct 2440, 49 L Ed 2d 310, reh denied 97 S Ct 191 (1976), rev'd 518 F2d 1014 (6th Cir 1975).

Appendix A

Analysis of Adult Business studies in Indianapolis, Indiana and Los Angeles, California.

A. INDIANAPOLIS, INDIANA

In February, 1984, the Division of Planning in Indianapolis published a report entitled Adult Entertainment Businesses in Indianapolis: An Analysis. This report contained the results of an evaluation of the impact of adult business upon the surrounding area in terms of crime rates and real estate values.

Incidence of Crime

Methodology. The Indianapolis study assessed the impact of adult entertainment businesses on crime rates by researching six areas containing adult businesses and six similar areas containing no adult businesses. The six study Areas were selected from among the forty three adult business locations. The criteria used to select the Study Areas were their zoning mix, population size, and the relative age of their housing stock. The Control Areas (having no adult businesses) were chosen on the basis of their approximate location to the Study Areas and their similarity in terms of population size and zoning mix. Of the six study Areas, two consisted primarily of residential zoning, two consisted primarily of commercial zoning, and two contained a mix of both residential and commercial zoning. All Study and Control Areas were circular in shape with a 1000 foot radius.

The Indianapolis study evaluated crimes in the Study and Control Areas for the years 1978 through 1982. The study compiled all reported incidents to which police were dispatched. This data were assembled into two groups: Major Crimes and Sex-Related Crimes. Major Crimes included Criminal Homicide, Rape, Robbery, Aggravated Assault, Residence and Non-Residence burglary, Larceny, and vehicle Theft. Sex-Related Crimes included Rape, Indecent Exposure, obscene Conduct, Child Molestation, Adult Molestation, and Commercial Sex.

Results. The evaluation found that for both the Study and Control Areas, the rate of major crimes

was higher than the corresponding rate for the Indianapolis Police District as a whole. The average annual rate for major crimes in the Study Areas was 23 percent higher than the corresponding rate in the Control Areas. Comparison of the rates for sex-related crimes indicated a considerably larger difference between the Study and Control Areas. The average annual rate for sex-related crimes in the study Area was 77 percent higher than the corresponding rate in the Control Area. The study also found a strong correlation between the crime frequency and the residential character of the study areas. Crime rates were 56 percent higher in predominantly residential areas than in predominantly commercial areas. The study found a more acute difference regarding sex-related crimes. Sex-related crimes occurred four times more frequently in predominantly residential areas than in areas that were substantially commercial in nature.

Appendix B

Real Estate Impacts

Methodology. The Indianapolis report also evaluated the impact of adult businesses on property values. The report approached the evaluation from two perspectives. The first approach compared the residential property appreciation rates of the study Areas to those of the control Areas and to a larger geographical area that included the study and Control Areas. The second approach surveyed professional

real estate appraisers to establish a "best professional opinion" regarding the market effect of adult businesses on surrounding land values.

The first part of the evaluation examined three sources in the assessment of residential property appreciation. These sources were: the Indianapolis Residential Multiple Listing Summaries of the Metropolitan Indianapolis Board of Realtors; 1980 Census Data; and the annual lending institution statements required by the Federal Home Mortgage Disclosure Act. The second part of the evaluation solicited the opinions of members of the American Institute of Real Estate Appraisers (AIREA). The survey sample was drawn at two levels. A 20 percent random sample of AIREA members from across the nation was constructed. A 100 percent sample of professional appraisers with the MAI (Member Appraisal Institute) designation, who practiced in the 22 Metropolitan statistical Areas similar in size to Indianapolis, was compiled. The survey questionnaire was formulated to solicit information concerning the effect of adult businesses on residential and commercial property located within one to three blocks of the business site.

Results. The report adopted the following conclusions regarding the appreciation of residential

properties. First, residential properties within the study Areas appreciated at only one-half the rate of the Control Areas and one-third the rate of Center Township (representing the performance of the market at a broader scale). Second, while residential listing activity declined 52 percent in the Control Areas and 80 percent in Center Township in the study Area listings increased 4 percent. The report found that "twice the expected number of houses were placed on the market at substantially lower prices than would be expected had the Study Area real estate market performed typically for the period of time in question."

The tabulated results of the professional appraiser survey are depicted in Table 1. From these results, the report concluded that:

1. The large majority of appraisers felt that there is a negative impact on residential and commercial property values within one block of an adult bookstore.
2. The negative impact decreased markedly with distance from the adult bookstore. At a distance of three blocks the negative impact was judged by appraisers to be less than half that when compared to a distance of one block.
3. The majority felt that the negative impact was greater for residential properties than for commercial properties.

Table I

Effect of Adult Businesses on Property values in Indianapolis, Indiana

Decrease 10% or more	Decrease 10% to 20%	Decrease 20% to 50%	No change	Increase 10% to 20%	Increase 20% or more
10%	20%	10%	10%	10%	10%

Residential Property

One Block Radius

20% National

Survey 21.3 24.5 34.1 20.1 0.0 0.0

100% MSA

Survey 19.0 25.4 33.6 21.1 0.9 0.0

--

Commercial Property

One Block Radius

20% National

Survey 10.0 19.3 42.6 28.1 0.0 0.0

100% MSA

Survey 9.5 20.3 39.9 29.9 0.9 0.4

--

Residential Property

Three Block Radius

20% National

Survey 1.6 9.3 25.4 63.3 0.4 0.0

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Survey 2.6 7.8 28.9 60.3 0.4 0.0

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Commercial Property

Three Block Radius

20% National

Survey 0.8 5.2 16.5 76.6 0.8 0.0

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The Indianapolis appraiser survey included a question designed to help establish the basis for their opinions regarding the degree to which adult businesses affect property values in general. Almost 90 percent of those responding to the survey provided responses to this question. In the national survey, 29 percent saw little or no effect on surrounding property values resulting from adult businesses. They listed as a basis their professional experience; the observation that this use generally occurs in already deteriorated neighborhoods; and the feeling that the effect of only one adult business would be inconsequential.

One half of the respondents projected a substantial to moderate negative impact on surrounding property values. Their responses were based on the feeling: that adult businesses attract "undesirables" to the neighborhood; that adult businesses create a bad image of the area; and that this type of use offends the prevailing community attitudes thus discouraging homebuyers and customers from frequenting the area. Twenty percent of the respondents indicated that the potential impact on surrounding property values was contingent on other variables. Many felt the impact would be contingent on the existing property values in the area and the subjective value of area residents. Some felt that development standards controlling facade and signage would determine the degree of impact, while others indicated that the nature of the existing commercial area and its buffering capacity as the most important factor influencing the impact on surrounding property values.

The MSA survey results closely paralleled those of the national survey. Two additional responses are noteworthy. First, some respondents indicating a substantial to moderate negative impact based their opinion on the feeling that such uses precipitate decline and discourage improvements in the area. second, some respondents felt that the impact on property values was contingent on whether or not it was likely that other adult businesses would be attracted to the area.

B. LOS ANGELES, CALIFORNIA

In June, 1977 the Department of City Planning of the City of Los Angeles published a report entitled Study of the Effects of the Concentration of Adult Entertainment establishments in the City of Los Angeles. The study includes an evaluation of the impact of adult businesses on both crime rates and property values.

Incidence of Crime

Methodology. The City's study evaluated the impact of adult businesses on criminal activity by comparing crime rates in Hollywood to crime rates for the city. Hollywood was selected as a study area because of its high concentration of adult businesses. The study focused on the years 1969 to 1975, during which time adult businesses in Hollywood proliferated from 11 to 88 establishments.

Results. The City's study monitored trends in Part 1 crimes. Part 1 crimes include homicide, rape, aggravated assault, robbery, burglary, larceny, and vehicle theft. The number of reported incidents of Part 1 crimes in the Hollywood area increased 7.6 percent from 1969 to 1975. This was nearly double the citywide average increase of 4.2 percent for the same time period. This report also monitored Part I crimes committed against a person (as opposed to those committed against property) and found that they increased at a higher than average rate in brie Hollywood Area. Street robberies and purse snatchings, where in the victims were directly accosted by their assailant, increased by 93.7 percent and 51.4 percent. respectively; compared to the city wide average increase of 25.6 percent and 36.8 percent.

The increase in arrests for part II crimes indicated an alarming differential between the Hollywood area and the city as a whole. Arrests for these crimes increased 45.5 percent in the Hollywood area but only 3.4 percent city wide. prostitution arrests in the Hollywood area increased at a rate 15 times greater than the city average. While the city showed a 24.5 percent increase, prostitution arrests in Hollywood increased 372.3 percent. in 1969, arrests for prostitution in the Hollywood area announced for only 15 percent of the city total; however, by 1975 they accounted for over 57 percent of the total. In the Hollywood area pandering arrests increased by 475 percent, which was 3 1/2 times greater than the city wide average. In 1969 pandering arrests in the Hollywood area accounted for 19 percent of the city total. By 1975, the share had increased to 46.9 percent.

The Los Angeles police Department increased their deployment of police personnel at a substantially higher rate in the Hollywood area in response to the surge in crime. The report emphasized that sexually-oriented business either contributed to or were directly responsible for the crime problems in the Hollywood area.

Real Estate Impacts

Methodology. The study prepared by the City of Los Angeles utilized a two point approach in evaluating the impact of adult businesses on surrounding property values. The primary approach sought to establish the impact on property values by monitoring changes in assessed value from 1970 to 1976 for selected areas having concentrations of adult businesses and for appropriate control areas. The report selected five study areas containing 4 to 12 adult entertainment businesses. Three study areas were in Hollywood and the other two were in the San Fernando valley. Four control areas, having no adult businesses were selected. The study examined property assessment data, U.S. census data, and other pertinent information to determine the rate of appreciation over the six year study period. The rates for the Study Areas were compared to the

rates for the Control Areas to gauge the impact of adult businesses on property values.

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The second approach of the study used survey questionnaires to subjectively establish the impact of adult businesses on surrounding residential and commercial properties. Two questionnaires were prepared. The first questionnaire was distributed to all members of the American Institute of Real Estate Appraisers having a Los Angeles address and to members of the California Association of Realtors having offices in the vicinity of the study Areas. The second questionnaire was distributed to all property owners (other than single family residential) within 600 feet of the Study Areas. The results of these surveys were supplemented with input from the general public obtained at two public meetings held in the area.

Results. The evaluation found that there was some basis to conclude that the assessed valuation of property within the Study Areas had generally tended to increase at a lesser rate than similar areas having no adult businesses. However, the report noted that in the opinion of the planning staff there was insufficient evidence to support the contention that concentrations of adult businesses have been the primary cause of these patterns of change in assessed valuation.

The appraiser questionnaire was distributed to 400 real estate professionals with 20 percent responding. The results can be summarized as follows:

1. 87.7% felt that the concentration of adult businesses would decrease the market value of business property located in the vicinity of such establishments.
2. 67.9% felt that the concentration of adult businesses would decrease the rental value of business property located in the vicinity of such establishments.
3. 59.3% felt that the concentration of adult businesses would decrease the rentability/salability of business property located in the vicinity of such establishments.
4. 72.8% felt that the concentration of adult businesses would decrease the annual income of businesses located in the vicinity of such establishments.
5. Over 90% felt that the concentration of adult businesses would decrease the market value of private residences located within 1000 feet.
6. Over 36% felt that the concentration of adult businesses would decrease the rental value of residential income property located within 1000 feet.
7. Almost 90% felt that the concentration of adult businesses would decrease the rentability/salability of residential property located within 1000 feet.

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Respondents to the appraisers' survey commented that the adverse effects are related to the degree of concentration and the type of adult business. They indicated that one free standing adult business may have no effect. A few comments indicated that property values and business volume might increase for businesses that are compatible with adult entertainment businesses (e.g.: other adult businesses, bars). A high percentage of appraisers and realtors commented on the adverse effect of adult businesses on neighborhood appearance, litter, and graffiti.

The survey of property owners indicated that almost 85 percent felt that adult entertainment establishments had a negative effect on the sales and profits of businesses in the area. Over 80 percent felt that adult businesses had a negative affect on the value and appearance of homes in the area immediately adjacent to such businesses. Area property owners and businessmen cited the following adverse effects resulting from adult entertainment establishments.

1. Difficulty in renting office space.
2. Difficulty in keeping desirable tenants.
3. Difficulty in recruiting employees.
4. Limits hours of operation (evening hours).
5. Deters patronage from women and families.
6. Generally reduces business patronage.

Respondents emphasized their concerns about the high incidence of crime. A high percentage of respondents commented that the aesthetics of adult businesses are garish, sleazy, shabby, blighted, tasteless, and tend to increase the incidence of litter and graffiti.

Testimony received at the two public meeting on this subject revealed that there was serious public concern over the proliferation of adult entertainment businesses particularly in the Hollywood area.

Citizens testified that they are afraid to walk the streets, particularly at night. They expressed concern that children might be confronted by unsavory characters or exposed to sexually explicit material.

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Appendix B

TYPES OF CRIMES

Part I Crimes

Murder

Capital Murder

Criminal Negligent Homicide/Non-Traffic

Criminal Negligent Homicide/Traffic

Involuntary Manslaughter/Traffic justified Homicide

Sexual Assault

Attempted Sexual Assault

Aggravated Sexual Assault

Attempted Aggravated Sexual Assault

Rape of a Child

Attempted Rape of a Child

Aggravated Robbery/Deadly weapon

Attempted Aggravated Robbery/Deadly Weapon

Aggravated Robbery by Assault

Robbery by Assault

Attempted Robbery by Assault

Attempted Murder

Attempted Capital Murder

Aggravated Assault

Aggravated Assault on a Peace officer

Deadly Assault

Serious Injury to a Child

Arson with Bodily Injury

Burglary of a Residence

Attempted Burglary of a Residence

Burglary of a Non-Residence

Attempted Burglary of a Non-Residence

Theft

Burglary of a vehicle

Burglary of a Coin-Operated Machine

Theft from Auto

Theft of Auto Parts

Pocket Picking

Purse Snatching

Shoplifting

Theft of Service

Theft of Bicycle

Theft from Person

Attempted Theft

Theft of Heavy Equipment

Theft of vehicle/Other

-

Auto Theft

Attempted Auto Theft

Unauthorized use of a vehicle

Sex Related Crimes

Sexual Assault

Attempted Sexual Assault

Aggravated sexual Assault

Attempted Aggravated sexual Assault

Rape of a Child

Attempted Rape of a Child

Prostitution

Promotion of Prostitution

Aggravated Prostitution of Prostitution

Compelling prostitution

Sexual Abuse

Aggravated Sexual Abuse

Attempted Aggravated sexual Abuse

Public Lewdness

Indecent Exposure

sexual Abuse of a Child

Attempted Sexual Abuse of a Child

Indecency with a Child

Incest

Solicitation

-

Appendix C

COMPOSITION OF STUDY & CONTROL AREAS

BY ZONING DISTRICT

	Area One		Area Two		Area Three		Area Four	
	Study	Control	Study	Control	Study	Control	Study	Control
1-SF-3				2.92				
SF-3	18.78	26.97	25.43	22.31	33.26	47.29	22.49	22.39
SF-3-H								

MF-2	3.30			2.64	.77	2.32	1.72	
MF-3	.94		1.93	1.38	7.88	2.64	1.03	1.00
MF-4	.28							2.69
MF-5								
LO	4.47	1.45	.57	1.17	2.72	1.02		
GO		.43						
CS	13.90	15.88	26.54	13.06	10.31	1.21	13.16	24.99
CS-1	1.12	.78		.34	.40		15.44	1.55
CS-H								
GR	.98	.34		7.40	2.27	1.12	.77	1.55
LR	.54	.89		.37		3.78		
LI								3.62
AVIATION		3.05						
UNZ								
ROAD ROW	22.59	22.33	17.65	20.53	14.51	12.74	17.51	14.34
TOTAL	72.12	72.12	72.12	72.12	72.12	72.12	72.12	72.12

Appendix D

QUESTIONNAIRE

Please complete this brief survey and return it to the office of Land Development Services by

December 4, 1985. Read the following information about a hypothetical neighborhood and respond to a few questions in terms of your professional experience and judgement.

A middle-income, single-family residential neighborhood borders a main street that contains various commercial activities that serve the neighborhood. There is a building that recently has become vacant and will open shortly as an adult bookstore. There are no other adult bookstores or similar activities in the area. There is no other vacant commercial space presently available in the area.

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

scale: (A) Decrease 20% or more

(B) Decrease more than 10 % but less than 20%

(C) Decrease from 0 to 10%

(D) No change in value

(E) Increase from 0 to 10%

(F) Increase more than 10% but less than 20%

(G) Increase 20% or more

1) How would you expect the average values of the single-family residential property within one block of the bookstore to be affected?

2) How would you expect the average values of the commercial property 'within one block of the bookstore to be affected?

3) How would expect the average values of the single-family residential property within three blocks of the bookstore to be affected?

4) How would you expect the average values of commercial property within three blocks to affected?

5) Suppose the available commercial building is used for something other than an adult bookstore. For each of the following potential uses, would the average value of the residential property within one block of the new business be:

(A) much higher;

(B) somewhat higher;

(C) about the same;

(D) somewhat lower; or

(E) much lower;

than if an adult bookstore occupied the site.

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Store-Front Church	Drug Rehabilitation Center
Pool Hall	Ice Cream parlor
Welfare office	Video game parlor
Neighborhood Tavern	Adult Video Arcade
Record Store	Topless Bar
Medical Office	Massage parlor
Branch Library	Adult theater

6) In general, to businesses affect what degree do property values?

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7) Why do you feel this way?

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8) Are you affiliated with a professional real estate appraisal organization? If so, please specify.

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OPTIONAL: Name and Name of Firm

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Appendix A

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A. INDIANAPOLIS, INDIANA

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Table I

Effect of Adult Businesses on Property values in Indianapolis, Indiana

Decrease 10%	Decrease 20%	Decrease No change	Increase 10%	Increase 20%	10 to 20%	1 to 2	1 to 3	1 to 4	1 to 5 or more
10%	20%								

Residential Property

One Block Radius

20% National

Survey 21.3 24.5 34.1 20.1 0.0 0.0

100% MSA

Survey 19.0 25.4 33.6 21.1 0.9 0.0

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5. Over 90% felt that the concentration of adult businesses would decrease the market value of private residences located within 1000 feet.
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-

Respondents to the appraisers' survey commented that the adverse effects are related to the degree of concentration and the type of adult business. They indicated that one free standing adult business may have no effect. A few comments indicated that property values and business volume might increase for businesses that are compatible with adult entertainment businesses (e.g.: other adult businesses, bars). A high percentage of appraisers and realtors commented on the adverse effect of adult businesses on neighborhood appearance, litter, and graffiti.

The survey of property owners indicated that almost 85 percent felt that adult entertainment establishments had a negative effect on the sales and profits of businesses in the area. Over 80 percent felt that adult businesses had a negative affect on the value and appearance of homes in the area immediately adjacent to such businesses. Area property owners and businessmen cited the following adverse effects resulting from adult entertainment establishments.

1. Difficulty in renting office space.
2. Difficulty in keeping desirable tenants.
3. Difficulty in recruiting employees.
4. Limits hours of operation (evening hours).
5. Deters patronage from women and families.
6. Generally reduces business patronage.

Respondents emphasized their concerns about the high incidence of crime. A high percentage of respondents commented that the aesthetics of adult businesses are garish, sleazy, shabby, blighted, tasteless, and tend to increase the incidence of litter and graffiti.

Testimony received at the two public meeting on this subject revealed that there was serious public concern over the proliferation of adult entertainment businesses particularly in the Hollywood area.

Citizens testified that they are afraid to walk the streets, particularly at night. They expressed concern that children might be confronted by unsavory characters or exposed to sexually explicit material.

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Appendix B

TYPES OF CRIMES

Part I Crimes

Murder

Capital Murder

Criminal Negligent Homicide/Non-Traffic

Criminal Negligent Homicide/Traffic

Involuntary Manslaughter/Traffic justified Homicide

Sexual Assault

Attempted Sexual Assault

Aggravated Sexual Assault

Attempted Aggravated Sexual Assault

Rape of a Child

Attempted Rape of a Child

Aggravated Robbery/Deadly weapon

Attempted Aggravated Robbery/Deadly Weapon

Aggravated Robbery by Assault

Robbery by Assault

Attempted Robbery by Assault

Attempted Murder

Attempted Capital Murder

Aggravated Assault

Aggravated Assault on a Peace officer

Deadly Assault

Serious Injury to a Child

Arson with Bodily Injury

Burglary of a Residence

Attempted Burglary of a Residence

Burglary of a Non-Residence

Attempted Burglary of a Non-Residence

Theft

Burglary of a vehicle

Burglary of a Coin-Operated Machine

Theft from Auto

Theft of Auto Parts

Pocket Picking

Purse Snatching

Shoplifting

Theft of Service

Theft of Bicycle

Theft from Person

Attempted Theft

Theft of Heavy Equipment

Theft of vehicle/Other

-

Auto Theft

Attempted Auto Theft

Unauthorized use of a vehicle

Sex Related Crimes

Sexual Assault

Attempted Sexual Assault

Aggravated sexual Assault

Attempted Aggravated sexual Assault

Rape of a Child

Attempted Rape of a Child

Prostitution

Promotion of Prostitution

Aggravated Prostitution of Prostitution

Compelling prostitution

Sexual Abuse

Aggravated Sexual Abuse

Attempted Aggravated sexual Abuse

Public Lewdness

Indecent Exposure

sexual Abuse of a Child

Attempted Sexual Abuse of a Child

Indecency with a Child

Incest

Solicitation

-

Appendix C

COMPOSITION OF STUDY & CONTROL AREAS

BY ZONING DISTRICT

	Area One		Area Two		Area Three		Area Four	
	Study	Control	Study	Control	Study	Control	Study	Control
1-SF-3				2.92				
SF-3	18.78	26.97	25.43	22.31	33.26	47.29	22.49	22.39
SF-3-H								

MF-2	3.30			2.64	.77	2.32	1.72	
MF-3	.94		1.93	1.38	7.88	2.64	1.03	1.00
MF-4	.28							2.69
MF-5								
LO	4.47	1.45	.57	1.17	2.72	1.02		
GO		.43						
CS	13.90	15.88	26.54	13.06	10.31	1.21	13.16	24.99
CS-1	1.12	.78		.34	.40		15.44	1.55
CS-H								
GR	.98	.34		7.40	2.27	1.12	.77	1.55
LR	.54	.89		.37		3.78		
LI								3.62
AVIATION		3.05						
UNZ								
ROAD ROW	22.59	22.33	17.65	20.53	14.51	12.74	17.51	14.34
TOTAL	72.12	72.12	72.12	72.12	72.12	72.12	72.12	72.12

Appendix D

QUESTIONNAIRE

Please complete this brief survey and return it to the office of Land Development Services by

December 4, 1985. Read the following information about a hypothetical neighborhood and respond to a few questions in terms of your professional experience and judgement.

A middle-income, single-family residential neighborhood borders a main street that contains various commercial activities that serve the neighborhood. There is a building that recently has become vacant and will open shortly as an adult bookstore. There are no other adult bookstores or similar activities in the area. There is no other vacant commercial space presently available in the area.

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

scale: (A) Decrease 20% or more

(B) Decrease more than 10 % but less than 20%

(C) Decrease from 0 to 10%

(D) No change in value

(E) Increase from 0 to 10%

(F) Increase more than 10% but less than 20%

(G) Increase 20% or more

1) How would you expect the average values of the single-family residential property within one block of the bookstore to be affected?

2) How would you expect the average values of the commercial property 'within one block of the bookstore to be affected?

3) How would expect the average values of the single-family residential property within three blocks of the bookstore to be affected?

4) How would you expect the average values of commercial property within three blocks to affected?

5) Suppose the available commercial building is used for something other than an adult bookstore. For each of the following potential uses, would the average value of the residential property within one block of the new business be:

(A) much higher;

(B) somewhat higher;

(C) about the same;

(D) somewhat lower; or

(E) much lower;

than if an adult bookstore occupied the site.

-

Store-Front Church	Drug Rehabilitation Center
Pool Hall	Ice Cream parlor
Welfare office	Video game parlor
Neighborhood Tavern	Adult Video Arcade
Record Store	Topless Bar
Medical Office	Massage parlor
Branch Library	Adult theater

6) In general, to businesses affect what degree do property values?

--

--

7) Why do you feel this way?

--

8) Are you affiliated with a professional real estate appraisal organization? If so, please specify.

--

OPTIONAL: Name and Name of Firm

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

REPORT TO THE CITY ATTORNEY

Richard McCleary, Ph.D.

May 6, 2007

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

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

Throughout my career, I have applied my expertise in statistics and criminology to the problem of measuring site-specific public safety hazards, especially the hazards associated with sexually-oriented businesses (SOBs). These hazards are also called “ambient crime risks” or “crime-related secondary effects.” I have advised local, county, and state governments on these problems for nearly 30 years. I have been deposed or testified in fifteen cases in the last four years.

The City of Los Angeles has asked me to review the facts and materials in this suit¹ and to express opinions on certain issues. Based on my background and research, I have three general opinions:

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

Opinion 2: In the last thirty years, empirical studies employing a wide range of quasi-experimental designs have found that SOBs have large, significant crime-related secondary effects.

¹ *Alameda Books v. City of Los Angeles*. U.S. District Court, Central District of California, Case No. CV 95-7771

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

In addition to these three general opinions, I have three opinions that are specific to *Alameda Books*.

Opinion 4: Since the theoretical risk factors specified in my first opinion are common to all SOB subclasses, all are expected to pose ambient public safety hazards. The qualitative nature of the hazard may vary by subclass nevertheless. This will occur when the defining characteristic of a subclass creates opportunities for a particular type of crime; or when the characteristic interferes with routine policing strategies.

Opinion 5: In this suit, the two relevant subclasses are SOBs that sell video tapes and DVDs for off-site viewing (hereafter, “stand-alone bookstores” or “bookstores”) and SOBs that sell video tapes and DVDs for off-site viewing while, also, providing private or semi-private booths for on-site viewing of video tapes and DVDs (hereafter, “combined bookstore-arcade” or “bookstore-arcade”). Although both subclasses have large, significant crime-related secondary effects, there are salient qualitative differences. Compared to stand-alone bookstores, *e.g.*, combined bookstore-arcades pose higher risks for crime. Geo-coded crime incident data for the neighborhoods around 19 Los Angeles SOBs corroborate this theoretical expectation.

Opinion 6: Poisson regression analyses of crime incidents in the vicinity of 19 Los Angeles SOBs demonstrate a significant relationship between ambient crime victimization risk and distance from the site. Victimization risk at the site of a combined bookstore-arcade is more than double the risk at the site of a stand-alone bookstore. For both subclasses, victimization risk diminishes rapidly with distance until, at approximately 900 feet, the risks are roughly equal for the two subclasses. In general, victimization risk for bookstore-arcades is more densely concentrated in the immediate vicinity of the site.

My report begins with a necessary introduction to the concept of ambient crime risk. The fundamental question in this suit is whether combined SOBs pose lower ambient risks than stand-alone SOBs. Based on my analyses, the answer is, Yes. Readers who are familiar with implicit concepts can skip directly to the results of my analyses in Section 3 below. But most readers will benefit from the following introduction.

1. AMBIENT CRIME RISK

Crime “risk” is a novel concept to most readers. To the individual, crime *risk* is

synonymous with the annual crime *rates* reported in the news media. To illustrate, in 2000, the per capita robbery rates for Los Angeles and San Diego were 0.0041 and 0.0014. For purely aesthetic reasons, newspapers report these rates as whole numbers per 1,000 residents. So the Los Angeles and San Diego rates could be expressed identically as 4.1 and 1.4 robberies per 1,000 residents per year. Since *per capita* rates have practical advantages, however, that metric is preferred.

In either the *per capita* or per 1,000 metric, Los Angeles is nearly three times *riskier* than San Diego. The risk ratio statistic makes this point:

$$\text{Risk Ratio} = 0.0041 / 0.0014 \approx 2.93$$

A tourist who spends a week in Los Angeles and a week in San Diego is three times more likely to be robbed in Los Angeles. In either city, of course, the risk is exceedingly low. This point is made clear by the waiting time statistic. In San Diego, a hypothetical average tourist will spend more than 714 years waiting to be robbed:

$$\text{Waiting Time} = 1 / 0.0014 \approx 714.3 \text{ years}$$

In Los Angeles, on the other hand, the wait is only 244 years:

$$\text{Waiting Time} = 1 / 0.0041 \approx 243.9 \text{ years}$$

The waiting time statistic illustrates one practical advantage of *per capita* rates; the average waiting time is the inverse of the *per capita* rate. This relationship depends on simple Poisson assumptions that will be developed at a later point in this report. For now, I will say only that these assumptions may not hold exactly for inter-city comparisons, so these waiting times are rough approximations.

Intra-city heterogeneity complicates the *per capita* crime rate analogy. Put simply, “bad” neighborhoods in low-risk cities are more dangerous to the hypothetical tourist than “good” neighborhoods in high-risk cities. Temporal heterogeneity presents another complication. Since the hypothetical tourist cannot be in two places at the same time, inter-city risk comparisons require imagination. At the smaller geographical scales that are relevant to this suit, however, the effects of both complications vanish. Given a reasonably small area – say, a few city blocks – a simple ambient crime rate captures all the essential features of crime risk.

To define the *ambient* crime rate, divide the area of a city into a large sample of parcels. The division algorithm can be wholly arbitrary or haphazard. The parcels can be trapezoids, squares, circles, or any irregular shape. No two parcels must have the same shape. The only requirement is that each have a calculable surface area. Following the division, wait a fixed

period – say, one year – and count the number of crimes that occurred in each of the parcels. If $CRIME_d$ denotes the number of crimes that occurred in the d^{th} parcel, then the ambient crime rate for the d^{th} parcel is

$$RATE_d = CRIME_d / AREA_d$$

where $AREA_d$ is the surface area of the d^{th} parcel. $RATE_d$ is a property of the d^{th} parcel. Unlike the *per capita* crime rates that we read about in newspapers, this ambient rate has no inevitable consequences for individuals. If $RATE_d$ is particularly high, individuals can avoid the risk by avoiding the d^{th} parcel (and other “bad” neighborhoods).

Figure 1a Here

When ambient risk emanates from a point-source, a sensible division algorithm results in a set of concentric circular parcels as shown in Figure 1a. Noise is a good model of ambient crime risk in many respects. Noise emanates from its point-source in all directions, for instance, and decays rapidly with distance. So does ambient crime risk when it emanates from a source such as, in this instance, an SOB. Like noise, ambient crime risk emanates in all directions and diminishes with distance from the point-source. In the real-world, of course, the orderly emanation process will be distorted by buildings, walls, and other obstacles. If we have a reasonably large sample of point-sources, however, the effects of these obstacles will “average out,” revealing the expected ambient risk pattern.

Figure 1b Here

Figure 1b illustrates this point for a sample of 19 Los Angeles SOBs. The horizontal axis in Figure 1b is calibrated in 50-foot increments from 50 to 1,100 feet from the SOB address, yielding concentric circular parcels with radii of 50, 100, 150, ..., 1,100 feet. The area of the d^{th} concentric circle is

$$AREA_d = \pi (50d)^2 - \pi [50(d-1)]^2 \quad \text{for } d = 1, 2, 3, \dots$$

The vertical axis in Figure 1b plots the ambient victimization rate for personal crimes such as homicide, robbery, assault, and so forth.

The ambient risk function in Figure 1b is the mean (or *average*) ambient risk for 19 Los Angeles SOBs. *On average*, these SOBs are the point-sources of ambient crime risk. The ambient risk decays rapidly with distance from the SOB address. Walking toward the address, the hypothetical pedestrian is confronted with exponentially increasing risk; walking away from the address, on the other hand, risk decays.

Figure 1c Here

Figure 1c plots the same function as a *risk ratio*. To facilitate interpretation, these risk ratios are standardized by the mean ambient rate of the entire 1,100-foot circle. Standing within 50-feet of an SOB, the hypothetical pedestrian's victimization risk is approximately eleven times higher than the neighborhood average. At 300 feet, ambient victimization risk is "only" twice the neighborhood average. After 750 to 850 feet, the difference between the point-source and neighborhood background risks is practically imperceptible. This is not to say that the point-source risk is zero (or that it does not exist); but it is difficult to measure at that distance. It is like noise in that respect.

2. THE LOS ANGELES DATA

To address the central questions of this suit, data were collected from the City's Department of Building and Safety and from the LAPD. Site visits and interviews were conducted to assess the properties and quality of these data.

2.1 THE STUDY SITE SAMPLE

Selecting a sample of SOB sites involves balancing three considerations. First, for purely statistical reasons, the sample should be as *large* as possible; more sites means greater statistical power. Second, for the same reason, the sample sites should be as *homogeneous* as possible; extraneous dissimilarities among the sampled sites reduces statistical power. Third, the history of each sampled site must be well characterized. We must know how long each SOB has been operating, *i.e.*, what subclass it belongs to, and so forth.

Table 2.1 Here

The sample of 20 SOBs listed in Table 2.1 reflects a careful balance of the three considerations. Because the list was compiled by the City's Department of Building and Safety, the history of each site is known. Since the list is limited to stand-alone bookstores and combined bookstore-arcades, it consists of two homogeneous sub-samples. Finally, compared to my experience in other studies, this is a relatively large sample. Although "more data" is always preferred to "less data," the sample proved sufficiently large.

Between April, 2006 and the present, the suitability of each of the 20 sites was assessed. The assessment included internet searches and telephone inquiries in many instances and "eyeball" site visits in every instance. This process led to the exclusion of the site (in green) located at 6315½ Hollywood Boulevard because it was located within a few feet of a live-entertainment SOB. Keeping this site in the sample would have introduced an unnecessary element of heterogeneity. Excluding this site left seven stand-alone bookstores (in blue) and twelve combined bookstore-arcades (in red).

2.2 THE CRIME INCIDENT SAMPLE

Selecting a sample of crime incidents involves an analogous balancing process. The sample should be as large as possible, *e.g.*, but yet optimally homogeneous, reliable, and interpretable. Each crime incident has several bits of information, including the type of crime, the location, the time of occurrence, and so forth. Since the location of the incident was the most important bit of information, given our study goals, we began (and ended) our search for data at the LAPD's COMPSTAT unit.²

The architecture of the COMPSTAT database supports retrieval of crime incidents by LAPD Reporting Districts. To ensure the completeness of our data, we requested geo-coded crime incident reports for every Reporting District that was located within 1,500 feet of any of the 20 SOBs, beginning January 1, 2001. To comply with an existing policy, COMPSTAT excluded all information on rape cases and stripped unique internal identifiers from each incident record. The unique case identifiers were saved in a separate linkable file held by COMPSTAT.

The COMPSTAT file was initially processed with ARCMap 9.0. COMPSTAT latitudes and longitudes were converted to State Plane 9 foot-unit Cartesian co-ordinates. Euclidean distances from crime incidents to SOB sites were computed by the Pythagorean formula. Exploratory analyses suggested that errors in the Euclidean distances were smaller than ten percent. Accordingly, for each site, incidents with distances greater than 1,100 feet were discarded, leaving all incidents in an 1,100-radius of the sites.

The COMPSTAT files described each crime incident with one or more non-exclusive labels drawn from a set of 155. To facilitate analysis, the 155 categories were collapsed into five categories:

- UCR Part I Personal (Homicide, Aggravated Assault, Robbery, and Rape)
- UCR Part I Property (Burglary, Larceny, Auto Theft, and Arson)
- UCR Part II Personal
- UCR Part II Property
- All Other Incidents

An FBI NIBRS-UCR translation protocol was used to construct the five categories. The translation map and frequency distributions are listed in an appendix. Table 2.2 reports incident totals and subclass means for the five crime categories for each of the 19 sites. Across all sites, the residual "other" category constitutes less than 13 percent of the incidents.

² Headed by Detective Jeff Gowdown, the COMPSTAT statistical analysis unit collects and disseminates geo-coded crime incidents for planning and budgeting.

Table 2.2 Here

2.3 CONCLUDING NOTE ON THE SAMPLES

Sites and incidents were excluded from the analytic sample strictly on methodological grounds, usually relating to “missing” data. Incidents involving forcible rape are the exception. These incidents were withheld from us in order to comply with an existing LAPD policy. These exclusions appear to have no substantive impact on the results. To confirm this point, models were replicated with and without excluded sites and crime categories. None of these replications produced results that would be inconsistent with or that would lead me to doubt the reported results.

3. STATISTICAL RESULTS

To address the central questions in this suit, I conducted a statistical analysis based on the Poisson family of models. The analysis compared the ambient crime risk functions of bookstore-arcades to the ambient risk functions of stand-alone bookstores. The results of this analysis demonstrate that the two SOB subtypes have significantly different patterns of ambient risk. Whereas the ambient crime risk of bookstore-arcades is heavily concentrated near the address, the ambient risk of at stand-alone bookstores is more pervasive. From a theoretical perspective, these differences point to qualitatively different policing strategies. The differences legitimate the view that, compared to stand-alone SOBs, the ambient crime risk for combined SOBs is considerably higher and more serious at the source.

3.1 CRIME AS A POISSON PROCESS

In the early 19th Century, French mathematician, S.D. Poisson developed an interest in the scattered distribution of crimes across Paris neighborhoods.³ Poisson proposed the probability density function that bears his name to describe the spatial scattering of crime incidents.⁴ Briefly, if x is the number of crimes that occur in a neighborhood (or any other fixed area) during a year (or any other fixed period of time), the probability that exactly k crimes will occur in the

³ Published in 1837 as *Recherches sur la probabilité des jugements en matière criminelle et matière civile*. Although I’m certain that one exists, I couldn’t find an English translation on Amazon.com. In any event, the history and technical details are given in F. Haight, *Handbook of the Poisson Distribution* (John Wiley and Sons, New York 1967).

⁴ If x is the number of crimes that occur in a fixed area – say, one city block – in a fixed period of time – say, one year – the probability that exactly k crimes occur on any block in any year is $\text{Prob}(x=k) = \lambda^k e^{-\lambda} / k!$ (for $k = 0, 1, 2, \dots$). The parameter λ (lambda) is the Poisson mean, estimated in the ordinary way. In this instance, since there are 48 crime incidents scattered over 1,210,000 square feet, $\lambda = 48/1,210,000 \approx 0.00004$ incidents per square foot.

neighborhood during the next year is given by the Poisson density function,

$$\text{Prob}(x = k) = \lambda^k e^{-\lambda} / k! \quad \text{where } \lambda \text{ is the crime rate}$$

To illustrate how this density function works, in 2000, the robbery rate in Los Angeles was

$$\lambda = .0041 \text{ per capita robberies}$$

Plugging this mean into the Poisson density function, the probability a randomly selected resident of Los Angeles will be robbed in the next year is

$$\text{Prob}(x = 0) = (0.0041)^0 e^{-0.0041} / 0! \approx 0.99591$$

In the next year, 99.59 percent of the resident population will not experience a robbery in the next year. The proportion who will experience $k=1$ robbery is,

$$\text{Prob}(x = 1) = (0.0041)^1 e^{-0.0041} / 1! \approx 0.00408$$

which, not surprisingly, is the *per capita* robbery rate. A very small (and unfortunate) proportion of these cases will experience a second robbery. For $k=2$ robberies,

$$\text{Prob}(x = 2) = (0.0041)^2 e^{-0.0041} / 2! \approx 0.00000584$$

and so forth. Using the same Poisson density function formula, one can calculate the proportion of individuals who experience $k = 3, 4, \dots$ robberies. The proportions approach zero rapidly.

These probabilities apply to a randomly selected individual who spends one year wandering the streets of Los Angeles. The way think about crime rates, these probabilities are inherently temporal or longitudinal. The same Poisson density function can be used to calculate the probabilities of inherently spatial phenomena, however. To illustrate, the simulated Poisson processes in Figure 3.1 have distributed or scattered 48 crime incidents across virtually identical 1,210,000 square-foot neighborhoods. Although both Poisson distributions were generated with the same crime rate ($\lambda=48$ crimes/area/year), in terms of their visual appearance, the two distributions are as different as night and day.

Figure 3.1 Here

The left-hand distribution in Figure 3.1 is *completely random*.⁵ Crime risk is distributed

⁵ P.J. Diggle (*Statistical Analysis of Spatial Point Patterns*, 2nd Ed., Arnold, 2002) uses “complete spatial randomness” as a synonym for “Poisson.” The Cartesian (X_i, Y_i) co-ordinates

evenly across the blocks of this neighborhood. The right-hand distribution has the same crime rate but risk emanates from a point-source, hence the name *point-source random*.⁶ As one moves away from the point-source, risk diminishes exponentially. Spatial distributions of this type rarely arise by chance alone but, in most instances, are generated by point-sources such as SOBs.

3.2 AMBIENT CRIME RISK AS A FUNCTION OF DISTANCE FROM THE SITE

Risk-distance relationships (or loosely speaking, functions) long been used to document the ambient crime risks of SOBs.⁷ The model used here is an application of a statistical model that Dr. Mark Stiger and I developed some years ago for a similar problem on an isolated site.⁸ The present model is adapted to multi-site analyses by incorporating appropriate error terms for the sites. The resulting family of models are known, variously, as Poisson hierarchical,⁹ multi-level,¹⁰ or random co-efficient models.¹¹

At its simplest stage, the model equates the Poisson *mean* of a parcel with the *area* of the parcel and, hypothetically, with the *distance* of the parcel from the SOB. To implement this simplest model, select any of the 19 SOBs and construct 22 concentric circles (see Figure 1a) with radii of 50, 100, 150, ..., 1,100 feet from the address. The number of crime incidents in the i^{th} concentric parcel – and hence, the Poisson *mean* – is a function of the *area* of the parcel and, hypothetically, the *distance* of the parcel from the SOB site. That is,

of the i^{th} *completely random* crime were drawn from a uniform distribution of the segment (-6,6).

⁶ The polar (θ_i, δ_i) co-ordinates of the i^{th} *point-source random* crime were drawn from a uniform distribution of the segment $(0, 2\pi)$ for θ_i and an exponential distribution of the segment $(0, 6)$ for δ_i . Polar co-ordinates (θ_i, δ_i) translate into the Cartesian plane as $X_i = \delta_i \cos(\theta_i)$ and $Y_i = \delta_i \sin(\theta_i)$.

⁷ McPherson, M. and G. Silloway. *An Analysis of the Relationship between Adult Entertainment Establishments, Crime, and Housing Values*. Minnesota Crime Prevention Center, Inc. October, 1980.

⁸ E.g., in “Confirmatory spatial analysis by regressions of a Poisson variable,” (*Journal of Quantitative Anthropology*, 1989, 2:13-38) Mark Stiger and I model the spatial distribution of bones at an archaeological site.

⁹ Bryk, A.S. and S.W. Raudenbush. *Hierarchical Linear Models: Applications and Data Analysis Methods*. Sage, 2002.

¹⁰ Goldstein, H. *Multilevel Statistical Models*, 2nd Ed. Halsted Press, 1995.

¹¹ Longford, N.T. *Random Coefficient Models*. Oxford University Press, 1993.

$$\lambda_i = \text{function}(\text{Area}_i, \text{Distance}_i) \quad i = 1, \dots, 22 \text{ concentric parcels}$$

A log-linear (“link”) function is conventionally specified in order to take advantage of maximum likelihood theory.¹² Thus,

$$\text{Log}(\lambda_i | \text{Area}_i) = \beta_0 + \beta_1 \text{Distance}_i + \tau_i \quad \text{where } \tau_i \sim N(\mu, \phi)$$

The stochastic term τ_i accounts for the effects of the many small measurement errors that accrue from various sources. Finally, since there are 19 distinct SOB sites, it will be useful to add a second subscript to the simple model. Thus,

$$\text{Log}(\lambda_{ij} | \text{Area}_i) = \beta_0 + \beta_1 \text{Distance}_i + \tau_{ij} \quad j = 1, \dots, 19 \text{ SOB sites}$$

Adding a second subscript allows for ($i \times j = 22 \times 19 \Rightarrow$) 418 distinct means.

The next step in the model-building process involves incorporating explanatory variables that correspond to systematic sources of variance in the λ_{ij} . Hypothetically, the Poisson mean varies by SOB subclass; bookstore-arcades and bookstores pose qualitatively different ambient risks and, thus, have distinct means. Likewise, as a matter of fact, each of the five crime categories has a distinct mean. Incorporating these two variables into the model,

$$\text{Log}(\lambda_{ij} | \text{Area}_{ij}) = \beta_0 + \beta_1 \text{Distance}_{ij} + \beta_2 \text{Subclass}_{ij} + \beta_3 \text{Crime}_{ij} + \tau_{ij}$$

Coding both variables as dichotomous (0,1) indicators allows parameters β_2 and β_3 to be interpreted as intercepts. More important for our purposes, defining both variables as dichotomous indicators allows for straightforward estimation of subclass interactions with distance and crime categories.

$$\begin{aligned} \text{Log}(\lambda_{ij} | \text{Area}_{ij}) = & \beta_0 + \beta_1 \text{Distance}_{ij} + \beta_2 \text{Subclass}_{ij} + \beta_3 \text{Crime}_{ij} \\ & + \gamma_1 \text{Subclass}_{ij} \cdot \text{Distance}_{ij} + \gamma_2 \text{Crime}_{ij} \cdot \text{Distance}_{ij} + \tau_{ij} \end{aligned}$$

Finally, to account for residual site-specific variance, independent of all other considerations, each of the 19 SOBs is allowed to have its own stochastic term. Conceptually, this can be written as

$$\begin{aligned} \text{Log}(\lambda_{ij} | \text{Area}_{ij}) = & \zeta_j + \beta_1 \text{Distance}_{ij} + \beta_2 \text{Subclass}_{ij} + \beta_3 \text{Crime}_{ij} \\ & + \gamma_1 \text{Subclass}_{ij} \cdot \text{Distance}_{ij} + \gamma_2 \text{Crime}_{ij} \cdot \text{Distance}_{ij} + \tau_{ij} \end{aligned}$$

¹² McCullagh, P. and J.A. Nelder. *Generalized Linear Models, 2nd Edition*. Chapman and Hall, 1989.

where $\zeta_j \sim \Gamma(\beta_0, \psi)$.

Table 3.2 Here

Parameter estimates from GLLAMM in Stata Version 9.2 are reported in Table 3.2. The columns of this table defined as follows:

- The numbers in the column labeled “ β ” are the actual regression parameter estimates. Since these numbers are reported in the natural logarithm metric, their substantive interpretation is difficult.
- The numbers in the column labeled “ $s(\beta)$ ” are the associated standard errors derived from maximum likelihood. The ratio of a β to the corresponding $s(\beta)$ is used to test the statistical significance of an effect.
- The numbers in the column labeled “ $t(\beta)$ ” are the ratios of corresponding β and $s(\beta)$. Under the null hypothesis, absolute values of $t(\beta)$ larger than 2.0 are statistically significant at the conventional 95 percent confidence level.
- The column of numbers labeled “ $\exp(\beta)$ ” are exponentiated parameter estimates. Whereas a β is difficult to interpret, $\exp(\beta)$ is interpreted as the multiplicative effect of the variable. After taking care of a somewhat more important matter, I will explain how to interpret these numbers.

Since all (but one) of the t-statistics reported in Table 3.2 are statistically significant, all (but one) of the null hypotheses are rejected at the conventional 95 percent confidence level. This supports two conclusions:

- Both subclasses pose large, significant ambient crime risks; both are point-sources of ambient risk.
- Nevertheless, the ambient risks of the two subclasses are qualitatively different.

To explore the qualitative differences between the two subclasses, the parameter estimates reported in Table 3.2 were used to plot the risk functions in Figures 3.2a-c.

Figures 3.2a-c Here

Figures 3.2a-c plot the ambient risks by distance for the UCR Personal, Property, and Serious crime categories. In all three figures, the horizontal axis is calibrated in distance from an SOB site in 50-foot increments. The vertical axes range from zero to 0.0003 and are interpreted as distance-specific Poisson means.

To illustrate the interpretation of these functions, Figure 3.2a reports the means for UCR Personal crimes within 50 feet of an SOB address as

$$\lambda_{\text{combined}} = 0.000138 \quad \text{and} \quad \lambda_{\text{stand-alone}} = .000038$$

for the two subclasses. If these rates seem “small,” it is because they have been averaged over a circular area with a 50-foot radius, an area of approximately $(50 \times 50 \times 3.142 =) 7,855$ square feet. Multiplying the two rates by 7,855 yields

$$\lambda_{\text{combined}} = 1.084 \quad \text{and} \quad \lambda_{\text{stand-alone}} = 0.298$$

These rates apply to the 50-foot circular parcel. If these rates now seem too “large,” it is because they are integrated over the period between January 1st, 2001 and March 7th, 2007, approximately 6.18 years. Dividing $\lambda_{\text{combined}}$ and $\lambda_{\text{stand-alone}}$ by 6.18,

$$\lambda_{\text{combined}} = 0.175 \quad \text{and} \quad \lambda_{\text{stand-alone}} = 0.048$$

Plugging these annual rates into the Poisson density function, the probability that exactly zero UCR Personal crimes will occur within 50 feet the SOB’s address of a combined bookstore-arcade is,

$$\text{Prob}(k=0) \approx (0.175)^0 e^{-(0.175)} / 0! \approx 0.8394$$

For the subclass of stand-alone bookstores, in contrast

$$\text{Prob}(k=0) \approx (0.048)^0 e^{-(0.048)} / 0! \approx 0.9531$$

The complements of these probabilities are interpreted as the probabilities that at least one UCR Personal crime will occur within 50 feet the SOB’s address. For combined bookstore-arcades,

$$\text{Prob}(k \geq 1) \approx 1 - 0.8394 \approx 0.1606$$

And for stand-alone SOBs,

$$\text{Prob}(k \geq 1) \approx 1 - 0.9531 \approx 0.0469$$

In fact, these numbers are very close to what we see in the data.

Figures 3.2d Here

Figure 3.2d plots the risk ratios for the three UCR categories. For UCR Personal, Property, and Serious crime, ambient risk is highest for the subclass of combined bookstore-arcades at any distance from the address. The risk ratio of most pronounced for UCR Personal crimes, however. The rapid decay of the risk ratios with distance from the site can be deceptive. To a large degree, the distance decay reflects the simple fact that, after several hundred feet, ambient risk diminishes rapidly for all SOB subclasses.

4. SUMMARY

The findings of my analyses can be summarized succinctly. Regardless of subclass, Los Angeles SOBs are ambient crime risk point-sources. As a hypothetical pedestrian walks toward the site, victimization risk rises; walking away from the site, victimization risk falls. The nature of the ambient risk varies by subclass nevertheless. Compared to stand-alone SOBs, the ambient risk functions of combined SOBs are more acute, quantitatively and qualitatively, nearer the point-source. With respect to separating the subclasses, the difference in ambient risk functions supports the City's ordinance.

The perspective of criminological theory supports separating the subclasses of SOBs. Few criminologists would find Figure 3.2d surprising or controversial. To demonstrate this point, I will review the relevant criminological theory of secondary effects.

4.1 THE CRIMINOLOGICAL THEORY OF SECONDARY EFFECTS

Adapted to secondary effects phenomena, the routine activity theory of crime¹³ holds that ambient crime risk is the product of four factors:

$$\text{Ambient Crime Risk} = \frac{\text{Targets} \times \text{Value}}{\text{Police Presence}} \times \text{Offenders}$$

SOB sites have relatively high ambient crime risks because they attract relatively many *targets* to their sites; and because, in the eyes of the rational offender, the targets have high *values*. The

¹³ This theory is due to L.E. Cohen and M. Felson, Social change and crime rate trends: A routine activity approach. *American Sociological Review*, 1979, 44:588-608. See also, M. Felson's *Crime and Everyday Life, Second Edition* (Thousand Oaks, CA: Pine Forge Press, 1998). The routine activity theory that predicts the SOB-crime relationship is one of the most widely tested and accepted theories in modern social science. In 2005 alone, according to the *Social Science Citation Index*, the 1979 Cohen-Felson article was cited 621 times. In the last 30 years, the routine activity theory of crime risk has been tested thousands of times. Each test has confirmed the theory.

product of these two risk factors attracts predatory *offenders* with predictable consequences. Finally, since these offenders are rational, they avoid sites with visible *police presence*.

The rational offenders in this theory move freely from site to site, stopping at sites with high expected values¹⁴ and low police presence. They are “professional” criminals in the sense that they lack legitimate means of livelihood and devote substantial time to illegitimate activities. Some are vice purveyors who dabble in crime; others are criminals who use the promise of vice to lure and lull victims. In either case, they view SOB patrons as exceptionally valuable targets.

The characteristics that give adult business patrons their high values are inherent to the commercial activities that attracted them to the site. They are disproportionately male and open to vice overtures; they carry cash; but most important of all, when victimized, they are reluctant to involve the police. From the offender’s perspective, they make “perfect” victims.

The connection between crime and vice has been depicted in popular literature for at least 250 years. John Gay’s *Beggar’s Opera* (ca. 1765), e.g., concerns a predatory criminal MacHeath and the vice ring composed of Lucy, Jenny, and Peachum. This popular view is reinforced by the empirical literature on criminal lifestyles and thought processes. In the earliest and best-known empirical study, Clifford R. Shaw describes the daily life of “Stanley,” a delinquent who lives with a prostitute and preys on her clients.¹⁵

Criminological thinking on this point has changed very little in the 75 years since Shaw’s *The Jack-Roller*. To document the rational choices of predatory criminals, Richard Wright and Scott Decker interviewed 86 active armed robbers.¹⁶ Asked to describe a perfect victim, all mention a victim who is involved in vice, either as a seller or buyer. Indeed, three of the armed robbers interviewed by Wright and Decker worked as prostitutes:

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

¹⁴ If a site has N targets with values v_1, \dots, v_N , the site’s *expected value* is $E(v) = 1/N (v_1 + \dots + v_N)$. This is the “average” that an offender would expect to take from a randomly selected victim at the site.

¹⁵ Shaw, C.R. *The Jack-Roller: A Delinquent Boy's Own Story*. University of Chicago Press, 1966 [1930]). See also, Snodgrass, J. *The Jack-Roller at Seventy*. Lexington, MA: Lexington Books, 1982.

¹⁶ Wright, R.T. and S.H. Decker. *Armed Robbers in Action: Stickups and Street Culture*. Northeastern University Press, 1997.

The rational calculus described by these three prostitute-robbers echoes the descriptions of other professional predators. A synthesis of the extensive literature leads to the conclusion that, from the perspective of the predatory criminal, SOB patrons are high-value targets.

Given a choice of SOB sites with roughly equal expected values, rational offenders prefer the site with the lowest level of police presence. One ordinarily thinks of police presence in strictly physical terms. An increase or decrease in the number of police physically at a site reduces ambient risk. But police presence can also be virtual through remote camera surveillance or even the presence of potential witnesses.

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

4.2 THE THEORETICAL ROLE OF SUBCLASSES

Since all SOB subclasses draw valuable targets to their sites, criminological theory holds that all will have crime-related secondary effects. Nevertheless, if the defining characteristic of a subclass affects any of the risk factors – the number and/or value of the targets at the site, the number of offenders who have pursued targets to the site, or the effectiveness of police presence at the site – criminological theory allows for qualitative differences in ambient crime risk among the subclasses.

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

But in addition to subclass-specific opportunity structures, the defining characteristic of an SOB subclass may compromise the effectiveness of common policing strategies. Although the opportunity structures of combined bookstore-arcades and stand-alone bookstores present different opportunity structures, differences in the policing strategies required by the two SOB subclasses represented in this suit are a more important consideration.

In the first case, the optimal policing strategy for arcades requires that a police officer

inspect the interior premises. Since this places the officer at risk of injury, policing arcades requires specially trained and equipped officers, prior intelligence, specialized backup manpower, and other resources. Since potential offenders can wait inside the premises without arousing suspicion, routine drive-by patrols to “show the flag” are ineffective.

In the second case, routine drive-by patrols are central to the optimal policing strategy for stand-alone bookstores. Since the ambient risk function for this subclass can cover a several-block area (see Figures 3a-c), drive-by patrols are an efficient way to provide a visible police presence to the neighborhood. Visibility is *per se* a deterrent. Routine patrols can keep watch for known offenders and suspicious activity. When problems are spotted, the routine patrol can forward the information to a specialized unit or, if necessary, handle it on the spot, requesting backup resources only as needed.

To some extent, differences between the optimal policing strategies for the two SOB subclasses represented in this suit amount to differences in cost. The cost of policing arcades is more expensive than the cost of policing bookstores. Even if the cost-differential were ignored, however, the optimal strategy for policing bookstore-arcades would be ineffective for policing bookstores. Indeed, neighborhood patrols by plainclothes officers in unmarked cars would be inefficient. Whereas visibility is a key component of the optimal policing strategy for bookstores, for arcades, the optimal strategy requires invisible police presence.

“Problem-oriented policing,” the prevailing philosophy of policing in Los Angeles (and for that matter, in the U.S. and Europe), points to legitimate rationale for the spatial separation of SOB subclasses.”¹⁷ In simple terms, problem-oriented policing consists of analyzing a public safety problem *qua* problem; of developing an intervention that reflects the problem’s unique properties and that utilizes the local environment; and of measuring the effectiveness of the intervention.¹⁸ The analyses reported in Section 3 above demonstrate that, while both SOB subclasses have crime-related secondary effects, qualitative differences in their effects dictate very different optimal policing strategies. In light of these differences, implementing a single procrustian policing strategy for all SOB subclasses would be wasteful and inoptimal.

¹⁷ William J. Bratton, the current LAPD Chief, is an early, well-known proponent of problem-oriented policing. See, e.g., Bratton, W.J. The New York City Police Department's civil enforcement of quality-of-life crimes. *Journal of Law and Policy*. 1994, 3:447-464; or Kelling, G.L. and W.J. Bratton. Declining crime rates: Insiders' views of the New York City story. *Journal of Criminal Law and Criminology*, 1998, 88:1217-1232. A recent speech by Chief Bratton (A Practitioner's Perspective, From the Streets. National Institute of Justice Annual Conference, July 17th, 2006) is posted on the LAPD website. For a background discussion, see Goldstein, H. *Problem-Oriented Policing*. Wiley, 1990.

¹⁸ See, e.g., National Research Council. *Fairness and Effectiveness in Policing: The Evidence*. National Academies Press, 2004.

Technical Appendices

A. Converting latitude and longitude to Cartesian Co-ordinates

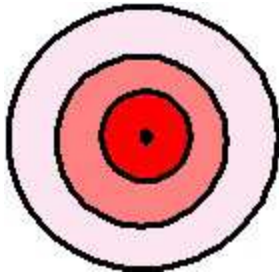
The COMPSTAT data file identified the locations of crime incidents by address and by longitude and latitude (CRIMELOCX and CRIMELOCY). The North American Datum 1927 projection was used for the co-ordinates was North American Datum 1927. To translate the latitudes and longitudes to Cartesian co-ordinates, the plotted data were read into ArcMap 9.0 and were reprojected in State Plane California 1983 (feet) area V. The results were exported to an MS Access database file.

B. Converting COMPSTAT Crime Categories to UCR Categories

UCR Part I				UCR Part II				All	
Personal		Property		Personal		Property		Other	
110	32	310	2212	250	7	442	909	234	89
210	2207	320	151	251	19	444	4	237	33
220	308	330	3248	624	4292	471	7	762	11
230	2008	331	323	626	409	474	2	805	9
231	33	341	1959	627	16	475	2	806	17
235	16	343	34	753	19	649	346	810	39
236	687	345	4	755	57	651	176	812	87
350	206	347	1	756	9	652	170	813	49
351	44	410	76	761	137	653	22	850	74
352	31	420	1147	763	23	654	20	900	251
354	432	421	8	886	83	660	15	901	85
434	2	430	3	888	302	661	4	902	3
437	7	431	1	910	44	662	27	903	10
439	4	433	4	920	14	664	14	943	5
450	5	440	2821	922	24	666	2	946	1445
451	1	441	36	928	175	668	32	954	6
622	6	480	19	930	1341	670	7	975	1
623	126	485	1	956	504	740	819	976	276
647	39	487	2	970	31	745	2294	978	518
860	182	510	3237	972	10	924	3	979	210
940	20	520	86			948	6	980	560
		521	264			949	3	986	31
		648	21					997	2889
		932	21					998	9480
		933	13					999	13009
		942	3						

950	9
951	38

Figure 1a - Concentric Parcels Centered on a Point-Source



$d = 1, 2, 3, \dots$ parcels

Radius of the d^{th} parcel = $r d$ feet

Area of the d^{th} parcel = $\pi (r d)^2 - \pi [r (d-1)]^2$ square feet

Figure 1b - Mean Ambient Risk for Nineteen Los Angeles SOBs

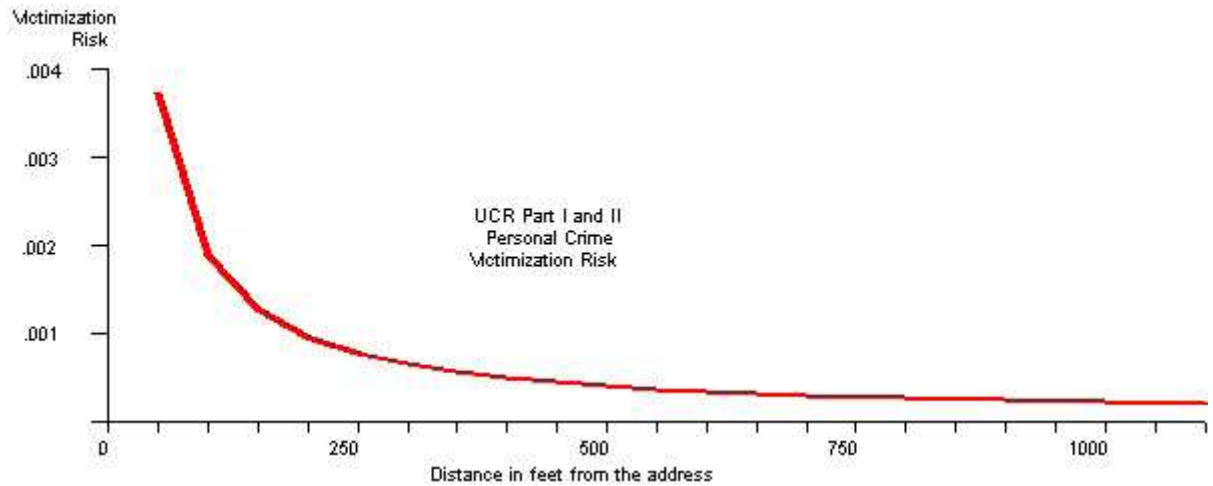


Figure 1c - Mean Risk Ratios for Nineteen Los Angeles SOBs

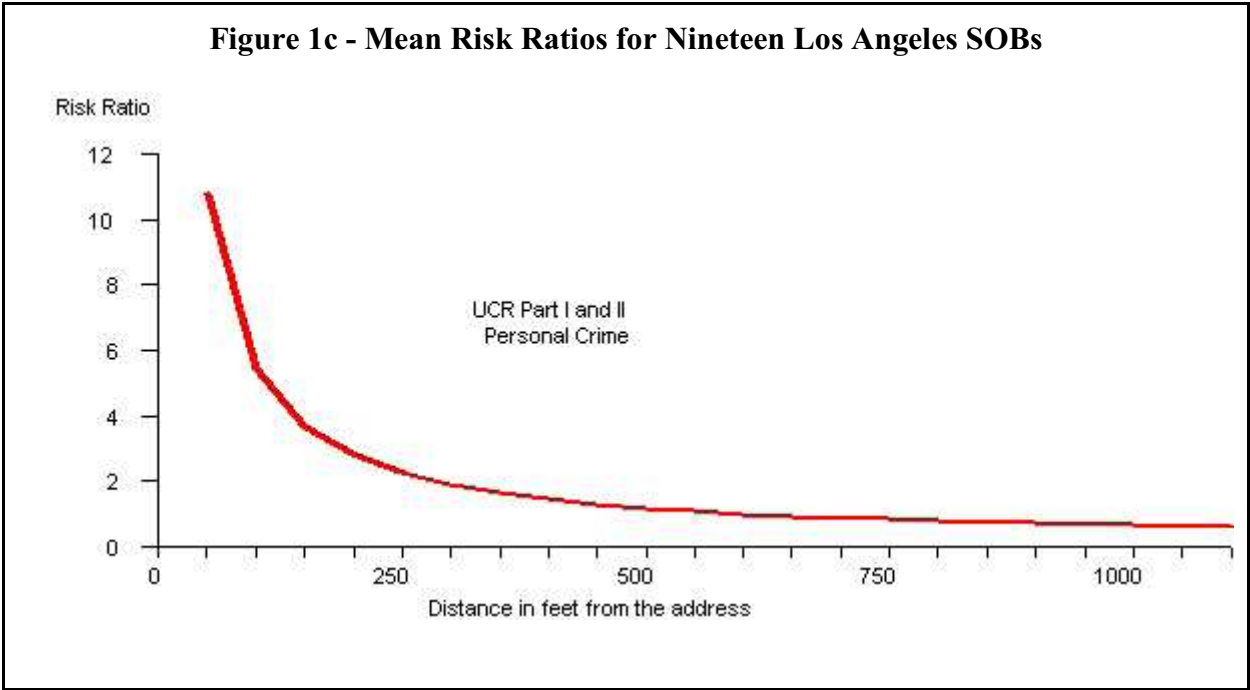


Table 2.1 - SOBs in the City of Los Angeles

<i>Business Name</i>	<i>Business Address</i>
Talk of the Valley	15452 Devonshire
Le Sex Shoppe	21625 Sherman Way
Sherman Way Adult Books	11841 Sherman Way
Drake's	7566 Melrose Ave
Circus of Books	4001 W. Sunset Blvd
Bruce & Jeffrey's Bird Cage	12300 ½ West Pico Blvd
Adult Video Warehouse	9718 Glenoaks Blvd
Le Sex Shoppe	4539 Van Nuys Blvd
Brand X Videos	6161 Van Nuys Blvd
Adult World Video	6406 Van Nuys Blvd
J&B Book and Video	10930 Vanowen Street
X-Spot 2 (aka Alameda Books)	1901 S. Alameda Street, #101
Stan's Bookstore	1117 N. Western
X-Spot 1 (aka Le Sex Shoppe)	5507 Hollywood Blvd.
X-Spot 3 (aka Highland Books)	6775 Santa Monica Blvd, #6
Le Sex Shoppe	3147 N San Fernando Road
Le Sex Shoppe	4877 Lankershim Blvd
Le Sex Shoppe	12323 Ventura Blvd
Jasons II	6408 Tujunga Ave
Le Sex Shoppe	6315 ½ Hollywood Blvd

Bookstores

Bookstore-Arcades

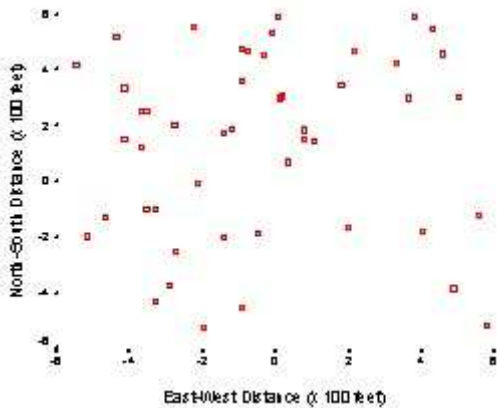
Excluded from sample

Table 2.2 - Total Crimes, Jan 1, 2001 - March 6, 2007

	UCR Personal		UCR Property		Other
	Part I	Part II	Part I	Part II	
15452 Devonshire	207	157	631	322	123
21625 Sherman	195	188	468	199	227
12300 W. Pico	51	47	149	38	105
7566 Melrose	177	157	588	266	127
4001 W. Sunset	138	182	438	130	108
11841 Sherman Way	68	35	274	44	84
9718 Glenoaks	10	12	109	21	29
Subclass Mean	120.9	111.1	379.6	145.7	114.7
1901 S Alameda	91	46	362	28	119
6775 Santa Monica	516	541	1192	238	229
1117 N. Western	745	603	878	525	300
5507 Hollywood	563	560	1045	460	273
3147 N. San Fernando	125	121	710	108	109
12323 Ventura	75	74	363	166	70
4539 Van Nuys	148	220	620	223	211
4877 Lankershim	207	179	808	161	180
6161 Van Nuys	225	590	498	236	495
6406 Van Nuys	317	537	730	275	271
10930 Vanowen	111	147	383	62	99
6408 Tujunga	67	62	234	45	109
Subclass Mean	265.8	306.7	651.9	210.6	205.4

Figure 3.1a - Simulated Spatial Distributions of 48 Crimes

Completely Random



Point-Source Random

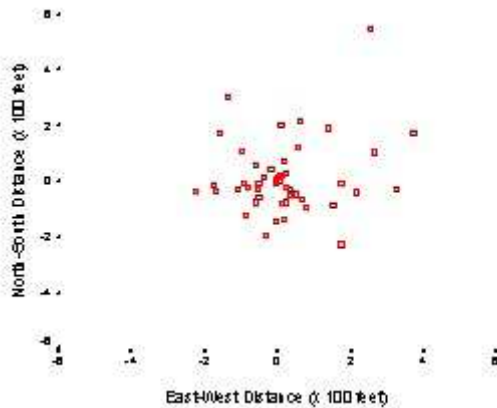


Table 3.2 - Parameter Estimates for the Poisson Regression Model

	β/γ	$s(\beta/\gamma)$	$t(\beta/\gamma)$	$\exp(\beta/\gamma)$
Constant	-9.6311	0.24454	-39.38	.00007
Distance	-0.0011	0.00005	-20.64	0.999
Combined SOB	0.8117	0.29833	2.72	2.252
UCR Personal	-0.4886	0.05264	-9.28	0.613
UCR Property	0.2824	0.04842	5.83	1.326
UCR Serious	0.7033	0.03366	20.89	2.020
Combined • Distance	-0.0003	0.00006	-5.51	0.999
Combined • Personal	0.4932	0.05853	8.43	1.638
Combined • Property	0.1320	0.05436	2.43	1.141
Combined • Serious	-0.1299	0.03722	-3.49	0.878
ζ	0.3422	0.10854		

Figure 3.2a - Victimization Risk by Distance from Site, UCR Personal Crime

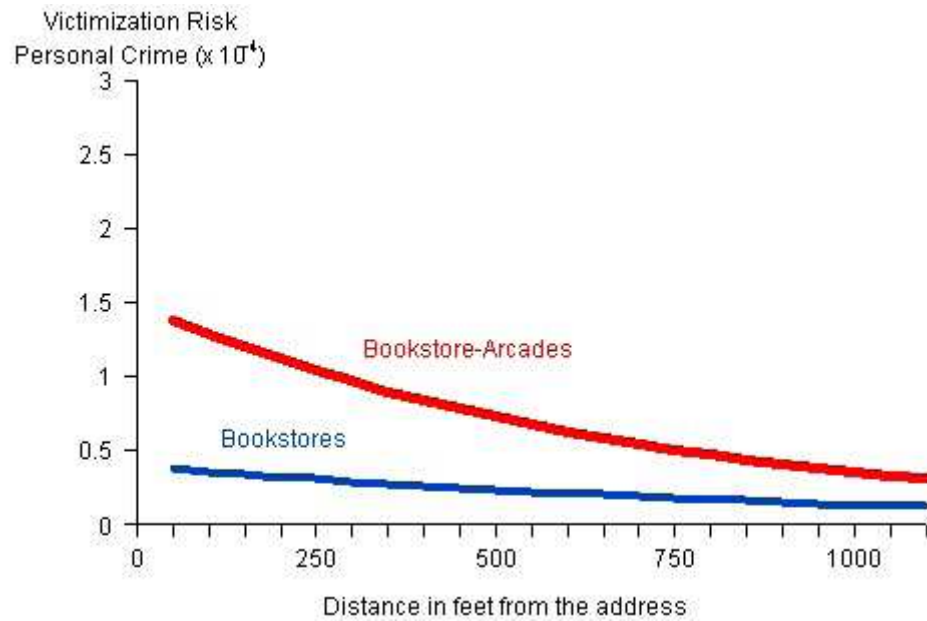


Figure 3.2b - Victimization Risk by Distance from Site, UCR Property Crime

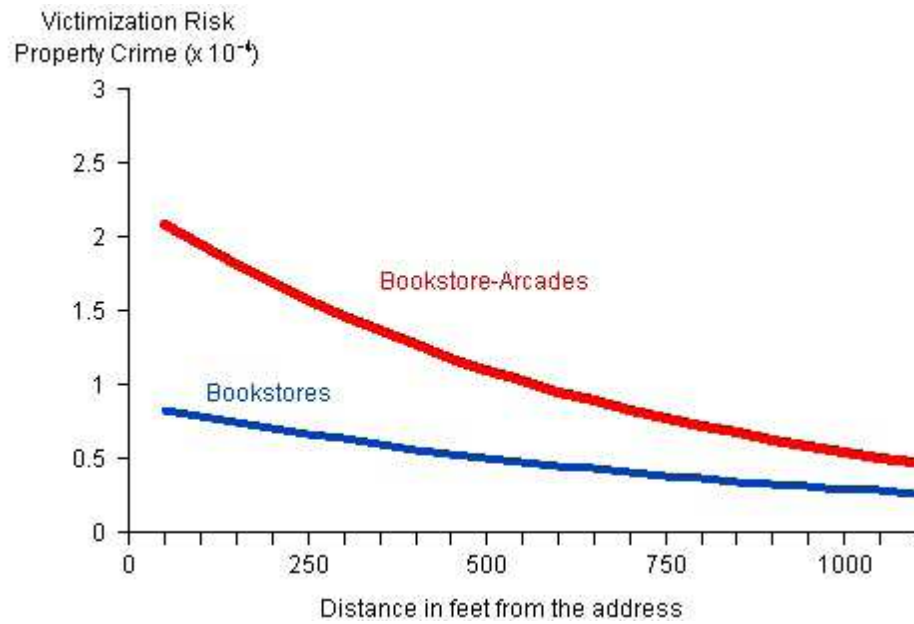


Figure 3.2c - Victimization Risk by Distance from Site, UCR Serious Crime

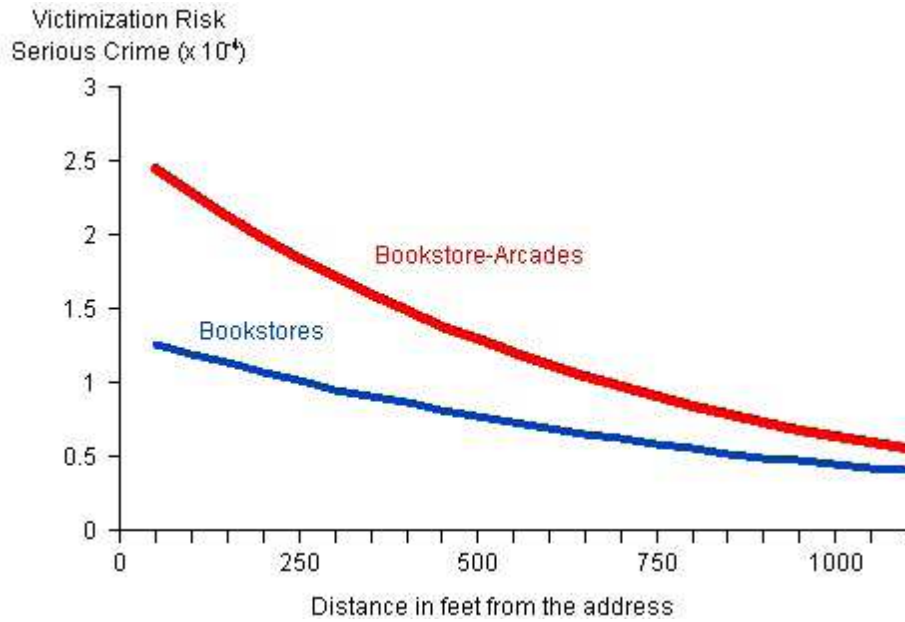
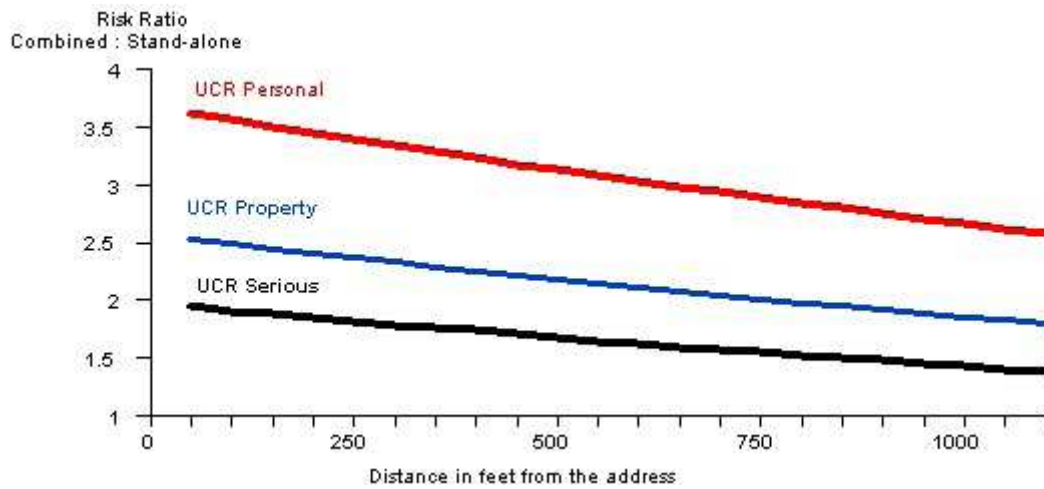


Figure 3.2d - Risk Ratios for Three UCR Crime Categories



**REPORT OF THE MADISON PLANNING
AND ZONING COMMISSION
CONCERNING SEXUALLY ORIENTED BUSINESSES**

Meeting Date: 02.14.11

I. The Adverse Secondary Effects of Sexually Oriented Businesses.

A. Introduction.

The body of research that exists concerning the adverse secondary effects of sexually oriented businesses¹ now spans a four decade time period and samples the country from the east to west coasts and points in between. These adverse effects pose substantial concerns for communities seeking to preserve property values, control crime, and further the general welfare.

It is recognized at the outset that many of the studies discussed herein were conducted in major cities. Consequently, it may be suggested that the experiences of such large urban districts cannot be applied to communities the size of Madison. This contention may be rejected outright.

The phenomenon of adverse secondary effects generated by sexually oriented businesses is not limited to large urban areas. As will be seen, studies in small and mid-sized communities alike also have found like adverse secondary effects associated with these businesses.

Communities such as Madison actually have cause for heightened concern. Studies have shown that the adverse secondary effects of sexually oriented business are most pronounced against single-family residential districts; which is precisely the pattern of development that typifies the Village's residential built environment.

Relative scale is also an important consideration. In a large urban area, the physical space occupied by a sexually oriented business may be a very small percentage of its surrounding built environment. That relative scale assists in mitigating adverse secondary effects, in particular, the negative impacts on the value of adjacent properties.

Madison's built environment is small-scaled, with one and two-story commercial and residential structures the norm in all zoning districts. The end result is considerable visibility for a sexually oriented business located in any commercial

¹ The phrases "sexually oriented business" and "adult business" and their variations are used herein as having the same meaning. Notwithstanding what they may be called for reference purposes by different communities, the businesses at issue include adult bookstores and video stores, movie theaters, cabarets and nightclubs, and nude model studios. Massage parlors are sometimes grouped under this class of business as well, though not for purposes of this report.

district in the Village. Visibility is one of the key contributing components to the adverse secondary effects these businesses generate.

For these and other reasons to be discussed, it is reasonably believed that the research, studies, and case law discussed herein both apply to the Village and are cause for great concern that, if left unregulated, sexually oriented businesses which may locate in near proximity to sensitive adjacent uses will cause substantial adverse secondary effects in such areas.

This report will initially focus on the research and other studies which have been conducted in this area. The legal framework which must guide any regulations will then be addressed. Finally, recommendations are made.

B. Crime.

The effect of sexually oriented businesses on crime in a community is an often-cited concern. Numerous studies have been conducted to analyze whether this concern is only perception, or whether it is fact-based. Results have uniformly indicated that it is a real phenomenon.²

One of the earliest comprehensive studies occurred in Los Angeles.³ The study focused on the effects of sexually oriented businesses on areas in which they were concentrated; which in this case was the Hollywood area. When crime in the Hollywood area was compared to city-wide statistics for the years 1969 through 1975, it was found that dramatically greater increases in crime occurred. These included pandering (nearly 342%), homicide (42%), aggravated assault (45%), robbery (close to 53%), and purse snatching (14.6%).⁴ "Street robberies" increased 68% more in the study area. Other categories of crime, including other assaults, forgery, fraud, counterfeiting, embezzlement, stolen property, prostitution, narcotics, liquor law violations and gambling increased 42% more in the study areas compared to the city as a whole. As a consequence of these findings, the study recommended a distance

² See, Chattanooga, Tennessee, "Community Protections Committee's Final Report on Vice in Hamilton County with Recommendations" (1997) at pg. 29; Cleveland, Ohio, Special Investigative Unit Report (1977); Minneapolis, Minnesota, "An Analysis of the Relationship Between Adult Entertainment Establishments, Crime, and Housing Values" (1980).

³ Los Angeles, California, "Study of the Effects of the Concentration of Adult Entertainment Establishments in the City of Los Angeles" (1977).

⁴ Id. at 73-74.

separation of 1,000 feet between sexually oriented businesses and a minimum of 500 feet of separation from schools, parks, churches and residential areas.

The magnifying effect caused by sexually oriented businesses concentrating in one area has been found as well in other communities. An Austin, Texas study examined the effects of adult businesses on surrounding neighborhoods.⁵ The study analyzed areas within a 1,000 feet radius surrounding such businesses. "Control" areas (those without such businesses) which were in similar proximity were compared. The study noted significant increases in sex-related crime in the study areas (177% to 482%) compared to the control areas. Further, the percentage increase was highest in areas with more than one adult business. Similar findings have been made in Dallas (discussed below), in El Paso⁶ (average crime rate 72% higher in the study area than in control areas; with a significantly higher incidence in sex-related crimes); and in Phoenix⁷ (concluding that not only was there a higher rate of sex-related crimes in areas where adult businesses were located, but that rate was significantly higher where there were several adult businesses adjacent to one another).

In Dallas, an analysis of the effects of sexually oriented businesses on their surrounding neighborhoods was completed by The Malin Group in 1994 and supplemented in 1997.⁸ This study compared two control areas (one with no sexually oriented businesses and one with two sexually oriented businesses more than a half mile apart) with a study area having similar land-use and traffic patterns and containing a high concentration of sexually oriented businesses. Interviews were conducted with property owners, real estate brokers and agents who were actively leasing, listing, managing, buying or selling properties in the study and control areas. Crime statistics within the study areas and the two control areas were collected and analyzed.

The study revealed that the number of sex-crime arrests in the study area containing sexually oriented businesses was 5x higher than in the control area with no

⁵ Austin, Texas, "Report on Adult Oriented Businesses in Austin" (1986) (49 such businesses were reported at the time of the study, inclusive of adult book stores, theatres, and massage parlors).

⁶ El Paso, Texas, "Effects of Adult Entertainment Businesses on Residential Neighborhoods" (1986).

⁷ Phoenix, Arizona, "Adult Business Study" (1979).

⁸ Dallas, Texas, "An Analysis of the Effects of SOBs on the Surrounding Neighborhoods in Dallas, Texas" (1997).

sexually oriented businesses, and nearly 3x higher than in the control area with two isolated sexually oriented businesses.⁹ Records of police calls emanating from 10 different sexually oriented businesses over a four-year period from 1993 through 1996 found that these businesses were a major source of police calls. The seven sexually oriented businesses in the study area collectively averaged more than one call to the police per day.¹⁰ The evidence demonstrated that there were increased arrests for sex crimes, other criminal acts, and disturbances that required increased police presence in the vicinity of sexually oriented businesses. The study results indicated that even one sexually oriented business impacts the properties immediately surrounding it, and that those adverse impacts increase in proportion to the visibility of the business.

Adding support to the link between sexually oriented businesses and crime is the effect observed when such businesses close. In 1994 a Times Square study was performed by Insight Associates one year after New York passed extensive legislation that restricted and regulated sexually oriented businesses.¹¹ The study focused on the Times Square Business Improvement District and, in particular, on the areas of sexually oriented business concentration.

The researchers combined analysis of available data on property values and incidence of crime with a demographic and commercial profile of the area to show relationships between the concentration of adult-use establishments and negative impacts on businesses and community life. The study also included anecdotal evidence from property owners, businesses, community residents and others regarding public perceptions of the impact of sexually oriented businesses on their neighborhoods. Using crime and pollution statistics from 1992 and 1993, the study showed that the streets were significantly less polluted and overall crime in the area had dropped drastically since the increase in regulation. Survey respondents acknowledged the improvements in the area and voiced optimism about the future of Times Square.

⁹ Id. at 9.

¹⁰ Id. at 10.

¹¹ New York City, New York, "Report on the Secondary Effects of the Concentration of Adult Use Establishments in the Times Square Area" (1994).

The link between sexually oriented businesses and rises in criminal activity is not a phenomenon limited to large urban areas, nor is it dependent upon multiple sexually oriented establishments concentrating in one area. A study conducted in Centralia, Washington (pop. 14,747) revealed that incidents of serious crime¹² in the vicinity of a sexuality oriented business increased 84% after it opened. That percentage increase was in dramatic contrast to the 3% reduction in those crimes city-wide during the same time period.

Adams County, Colorado issued a report in 1988 which examined the correlation between “nude entertainment” establishments and crime in their surrounding neighborhoods.¹³ Unincorporated areas of the county were examined. A two-year statistical survey of crime in these areas attributed the vast majority (over 80%) of crime directly to the nude entertainment establishments. The survey also indicated that 76% of the patrons at these establishments were from out-of-county. Their transient nature was viewed as contributing to the crime problem. Further, during the study period, many additional nude entertainment establishments had opened. A resulting increase in criminal activity was seen.

Garden Grove, California's 1991 report by independent consultants summarized statistics measured from 1981 to 1990, including crime data and surveys of real estate professionals, to determine whether adult businesses should be regulated because of their impact on crime, property values and quality of life.¹⁴ Garden Grove Boulevard, which had seven adult businesses, was selected as the study area.

The study found that crime increased significantly with the opening of an adult business, with the expansion of an existing business, or the addition of a bar nearby. The rise was greatest in "serious" offenses.¹⁵ On Garden Grove Boulevard, the adult businesses accounted for 36% of all crime in the area. In one case, a bar opened less

¹² Centralia, Washington, “Crime Risk in the Vicinity of a Sexually Oriented Business: A Report to the Centralia City Attorney’s Office – Revised” (2004) (serious crime was defined as homicide, rape, assault, robbery, burglary, theft, auto theft, and arson).

¹³ Adams County, Colorado, “Adams County Nude Entertainment Study (1991 update) (“nude entertainment” per the study consisted of live nude entertainment offered in various establishments, including adult bookstores, nightclubs, and model studios).

¹⁴ Garden Grove, California, “Final Report to the City of garden Grove: The Relationship Between Crime and Adult Business Operations on Garden Grove Boulevard” (1991).

¹⁵ Homicide, rape, robbery, assault, burglary, theft and auto theft.

than 500 feet from an adult business, and serious crime within 1,000 feet of that business rose more than 300% the next year.

The study's scope included a telephone poll made to 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 those surveyed 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 issues. Eighty percent said they would want to move if an adult business opened in their neighborhood.

In summation, the link between high crime rates and sexually oriented businesses is now a well-recognized phenomenon.¹⁶ Its existence neither depends upon the geographic locale of the community nor its relative size. To effectively combat this adverse secondary effect, jurisdictions have passed laws to both (1) allow for adequate separation between sexually oriented businesses and incompatible adjacent uses as well as (2) mandating distance separation between sexually oriented businesses to prevent the magnifying effect seen in adverse secondary effects when clustering occurs.

B. Property Values.

Real estate professionals believe that there is a significant negative impact from sexually oriented businesses on both residential and commercial properties. Proximity is the key factor.¹⁷ Studies show a simple ratio: the closer a property is to a sexually oriented business, the greater its negative impact on the property's value. The impact is significantly lessened if there is sufficient distance separation from the sexually oriented business. Further, heightened concentrations of sexually oriented businesses correlate to an even greater impact on their surrounding neighborhoods. As noted in the Dallas report:

Their presence influences the public's perception of the neighborhood in which they are located. SOBs [sexually oriented businesses] "can create 'dead zones' in commercial areas where shoppers do not want to be

¹⁶ See, also, State of Minnesota, "Report of the Attorney General's Working Group on the Regulation of Sexually Oriented Businesses" (1989); Ellicottville, New York, "Adult Business Study" (1998).

¹⁷ See, Newport News, Virginia, "Adult Use Study" (1996).

associated in any way with adult uses, or have their children walk by adult uses.” This influence appears to be the same whether the dancers are appearing in a state of nudity or semi-nudity. The public perception is that it is a place to be avoided by families with women and children.¹⁸

The Dallas study also indicated that the location of multiple sexually oriented businesses in one neighborhood can have a major impact on the neighborhood by contributing to crime, driving away family oriented businesses, and impacting nearby residential neighborhoods. When concentrated, sexually oriented businesses typically compete with one another for customers through larger, more visible signs and graphic advertising. The study also found that they tend to be magnets for certain types of businesses such as pawnshops, gun stores, liquor stores, check-cashing storefronts and late-night restaurants. Residences in the vicinity of concentrated sexually oriented businesses tend to be relegated to rental use as families move out of them but find them difficult to market due to diminished resale value.¹⁹ As noted, not even large urban commercial districts are immune from these adverse effects. In New York, from 1985 to 1993, property values increased 26% less in areas where sexually oriented businesses were concentrated.²⁰

Des Moines, Washington (pop. 29,267) presents a good case study of the effects just one sexually oriented business can have on its environment.²¹ Within its business district, a movie theater operated which exhibited movies of an explicit sexual nature. The city found that this one business altered people’s perception of the area: that it was an “adult” area and not desirable for shopping, that there was crime, and that it was deteriorating, amongst other concerns. That public perception, regardless of the objective reality, was found to be sufficient to modify people’s behavior to the extent that adverse effects materialized. Numerous businesses in proximity to the theater failed and business turn-over was 4x the average for comparable areas within the downtown.

¹⁸ Dallas, supra, at 2, quoting from New York City, New York, “Adult Entertainment Study” (1994) at 3.

¹⁹ Id. at 9.

²⁰ New York, Times Square report, supra at 7.

²¹ Des Moines, Washington, “Des Moines Adult Use Study” (1984).

The El Paso study, discussed as well in the previous section, was prompted after that city saw a significant increase in the number of adult entertainment uses. At the time of the study, 3 adult movie theaters, 7 adult movie theaters / bookstores, and 23 live nude entertainment establishments were in operation. Adult uses had a significant negative effect on people's attitude toward areas in which they were located. Local real estate appraisers who were surveyed, by a significant majority, opined that the existence of adult uses negatively affected property values for both residential and commercial properties within a one block radius of the business.²²

A 1986 Oklahoma City, Oklahoma report contained the results of a survey of 100 Oklahoma City Real Estate Appraisers.²³ They were presented a hypothetical situation where a residential neighborhood bordered a street with various commercial properties; a circumstance analogous to Madison. A building vacated by a hardware store was soon to be occupied by an adult bookstore. The hypothetical further stated that no other sexually oriented businesses were in the area and no other vacant commercial space existed. Thirty-two percent of the respondents said that such a bookstore within one block of the residential area would decrease home values by at least 20%. Seventy-six percent said that an adult bookstore would negatively affect other businesses within one block, albeit that the level of depreciation is greater for residences than for businesses. Further, it appeared that the negative effects on property values dropped sharply when the sexually oriented business is at least three blocks away.

In 1984, Indianapolis, Indiana conducted a national survey of the membership of the Members Appraisal Institute (MAI) and the American Institute of Real Estate Appraisers.²⁴ Findings regarding the effect of one adult book store revealed that, in a one block radius, 80% of the respondents opined that it would cause a significant negative impact on residential property values, and 72% of the respondents opined it would cause a negative impact on commercial property values within that same

²² See, also, New York City, New York, "Adult Entertainment Study" (1994) at 74 (real estate brokers' opinions placed the negative effect in a radius extending anywhere from 500 to 1,000 feet).

²³ Oklahoma City, Oklahoma, "Adult Entertainment Businesses in Oklahoma City: A Survey of Real Estate Appraisers" (1986) (results based upon 34% response rate).

²⁴ Indianapolis, Indiana, "Adult Entertainment Businesses in Indianapolis" (1984).

radius.²⁵ Properties directly adjacent were most affected. The value of commercial properties recovered more quickly than residential properties as the distance separation increased from the sexually oriented business. The report recommended that sexually oriented businesses locate at least 500 feet from residential areas, schools, churches, park property, or established historic areas.²⁶

More recent studies continue to confirm the adverse secondary effects of sexually oriented businesses on property values. A 2004 survey of appraisers in the Fort Worth-Dallas area documented professional opinions about the effects of sexually oriented businesses on the values of surrounding properties in a survey submitted to persons who carry the MAI and SRA (Senior Residential Appraiser) certifications.²⁷ The appraisers were nearly unanimous that adult oriented businesses of any kind (stores, arcades, or cabarets) would decrease single-family home property values. More than 70% of the appraisers judged the influence of adult-oriented businesses on property values to extend beyond 3,000 feet (approximately 6 blocks). Even the lowest estimates put the distance at 1,000 feet.

The appraisers considered the property values of community shopping centers to be equally detrimentally affected by their proximity to adult-oriented businesses. More than 75% considered adult uses to decrease commercial property values. The only use considered to be comparable in its decreasing of property values was homeless shelters. Pawnshops and bars were next in their impact on lowering appraised values for community shopping centers, but to a much lower degree (53% and 32%, respectively). Further, the vast majority of appraisers agreed that a concentration or cluster of such uses had a greater negative impact than isolated uses. “Grouping” was considered to occur if uses were within approximately 1,000 feet of each other.²⁸

²⁵ Id. at 42.

²⁶ Id. at 7.

²⁷ Fort Worth, Texas, “Survey of Appraisers Fort Worth & Dallas Effects of Land Uses on Surrounding Property Values” (2004) (results based on 22% response rate).

²⁸ Id. at 13.

II. The Legal Framework.

A. Recent State Activity.

Historically, legal controls for adult and sexually oriented businesses in Ohio have been left to the municipalities. However, the state has in the past few years begun to regulate these establishments. House Bill 23, effective 8/17/06, added several criminal statutes to the Revised Code which make it a state offense to:

(a) Operate viewing booths which depict sexual conduct in violation of specific operational controls that are intended to reduce privacy and the potential for sexual conduct to occur therein. See, R.C. §2907.38.

(b) Prohibit and punish operators of adult entertainment establishments who may allow juveniles access to the premises. See, R.C. §2907.39.

(c)(1) Limit the hours of operation for sexually oriented businesses, to wit:

They must be closed between midnight and 6 a.m. unless they hold a liquor permit. They are allowed to remain open during the hours allowed by the liquor permit, provided that during those additional hours (i.e., between midnight and 6 a.m.) they may not have any nude sexually oriented entertainment.²⁹

(2) Prohibits any patron or employee from touching while the employee is nude or seminude. See, R.C. §2907.40.

These statutes also define the terms and phrases used therein. They mirror the model codes that have been developed over the years from primarily local ordinances that have withstood court challenges; both within and outside of Ohio.

It is recommended that consideration be given to harmonizing Madison's definitions with pertinent Revised Code definitions to avoid any potential for confusion, excepting for areas in which Madison may desire regulations beyond the minimums established by the state or where they may not be appropriate for zoning purposes.

B. Zoning.

The regulation of sexually oriented businesses necessitates careful attention as it is well-established that First Amendment implications arise. Legal challenges to such ordinances generally assert several grounds, such as claims that the restrictions are

²⁹ The state prohibition against nudity in establishments holding liquor licenses appears in the Ohio Administrative Code at 4301:1-1-52.

too vague, amount to prior restraints, control competition, do not serve a substantial governmental interest, or were not narrowly drawn.

1. Time, Place, and Manner Restrictions.

In order to pass constitutional scrutiny zoning restrictions related to sexually oriented businesses must be content neutral. Any restraint of speech on the basis of content presumptively violates the First Amendment. *Carey v. Brown* (1980), 447 U.S. 455, 65 L.Ed.2d 263.

On the other hand, content-neutral time, place and manner restrictions are acceptable so long as they are designed to serve a substantial government interest and do not unreasonably limit alternative avenues of communication. *Clark v. Community for Creative Non-Violence* (1984), 468 U.S. 288, 82 L.Ed.2d 221. Accordingly, a city may regulate the location of sexually oriented businesses within a comprehensive zoning scheme as long as the regulations are designed to serve a substantial governmental interest and do not unreasonably limit alternative avenues of communication. *Renton v. Playtime Theatres, Inc.* (1986), 475 U.S. 41, 89 L.Ed.2d 29; (finding constitutional an ordinance which prohibited any adult motion picture theater from locating within 1,000 feet of any residential zone, single or multi-family dwelling, church, park, or school -- effectively concentrating such establishments in an area); *Young v. American Mini Theatres, Inc.* (1976), 427 U.S. 50, 49 L.Ed.2d 310 (finding constitutional an ordinance which limited the location of adult theaters by requiring they be located at least 1,000 feet apart from any two other "regulated uses" (i.e., adult bookstores, cabarets, bars) and 500 feet away from any residential area -- this had the effect of dispersing them throughout the city and avoiding any concentration of such establishments).

On the face of the matter, these zoning regulations may appear to be aimed at the content of the materials available at sexually oriented businesses. And, in fact, where it is apparent that content-based regulation was the predominate intent behind a zoning restriction; it will not be upheld as constitutional. But where regulations are content-neutral, the courts have upheld the validity of these zoning restrictions based upon the body of evidence, as discussed herein above, that has accumulated regarding the secondary effects of such establishments: crime, a negative impact on

retail trade, diminished property values, and generally diminished quality of a city's neighborhoods, commercial districts, and of urban life. Many of the studies discussed in the previous section were presented in various court cases in support of zoning regulations applicable to sexually oriented businesses. Favorable court decisions have been reached based upon the strength of those studies and others.

It is now well-recognized that the adverse secondary effects generated by these businesses are a substantial governmental interest which warrants zoning restrictions. The United States Supreme Court has explicitly recognized this as a substantial governmental interest in *Renton*, supra, 475 U.S. at 50, 89, L.Ed.2d at 39, stating that "[c]ities may regulate adult theaters by dispersing them, as in Detroit, or by effectively concentrating them, as in Renton." Id. at 52, 89 L.Ed.2d at 41. Thus, it is no longer open to debate whether a substantial governmental interest exists in the regulation of the location of adult businesses to prevent urban blight. See, e.g., *Alexander v. Minneapolis* (D.Minn.1989), 713 F.Supp. 1296, 1301-1304.

In sum, where the purpose of zoning related to adult oriented businesses (its predominate intent) is to abate or protect against these adverse secondary effects, the zoning restrictions will not be found unconstitutional as impermissible content-based regulations.

2. Drawing the Zoning Restrictions.

As indicated above, zoning related to sexually oriented has usually taken one of two options: (1) concentrating them in an area or (2) dispersing them throughout a city. The key consideration is that the restrictions may not be so limiting as to effectively deny such businesses the de facto opportunity to locate within a community.

Zoning restrictions can be drawn so narrowly as to effectively preclude the establishment of sexually oriented businesses in a community. Such was the case with the city of Cleveland's ordinance. In *Brookpark News & Books, Inc. v. Cleveland* (1990), 66 Ohio App.3d 613, Brookpark News successfully argued Cleveland's ordinance was unduly restrictive. The court wrote:

In order to pass constitutional muster, Cleveland Ordinances 343.01 and 343.11 must also be narrowly tailored to meet the city's objectives leaving open adequate channels of communication. Although appellee has not prohibited the operation of adult establishments within its

boundaries, but has set one-thousand-foot limitations analogous to the one-thousand-foot restrictions upheld in *Renton* and *Young*, the effect of these restrictions, according to Brookpark News' evidence, is to limit the availability of adult bookstores to three areas constituting 3.6 acres, which is only seven one-hundred-thousandths of one percent (.00007) of the 48,384 acres comprising the city of Cleveland. Appellant's evidence was un rebutted. This percentage of available adult usage in a city the size of Cleveland on its face is unduly restrictive and significantly curtails freedom of expression and access to protected speech.

Id. at 617-618.

It has also been held that an ordinance is not rendered unconstitutional simply because a new sexually oriented business may have to compete with existing adult operations for space. See, *Renton*, supra, 475 U.S. at 53-56, 89 L.Ed.2d at 41-44. In the *Brookpark News* case, it was the fact that only 3.6 acres out of nearly fifty thousand acres were available for adult expression which rendered the ordinance unconstitutional. That much said, there is no specific formula for determining how much restriction is too much and the issue will be decided on a case-by-case basis.

In accord with *Renton* and *Young*, the vast majority of ordinances do not attempt to go beyond a 1,000 feet distance requirement. Many are less restrictive. A mixed approach is also taken. For example, in *Union Twp. Bd. of Trustees v. Old 74 Corp.* (2000), 137 Ohio App.3d 289, a resolution was upheld which allowed sexually oriented businesses to locate only within their "B-1" business zone and, further, that they were not located within 1,000 feet of the property line of any church, school, public park, or property used for residential purposes. In addition, no such business could locate within 1,000 feet of another such adult business. This did seriously limit the number of available sites at which these businesses could operate but, on the facts of this case, that number was sufficient to survive challenge. Id. at 485.

An example of aggregating such businesses can be viewed in *Town of Islip v. Caviglia* (1989), 73 N.Y.2d 544. In that case, Islip was confronted with a downtown commercial and business district that was badly in need of revitalization. There existed in this area an unregulated proliferation of adult businesses. Islip undertook an extensive study to ascertain the effects these businesses were having on the

surrounding community. (The study included an analysis specific to each business and the harmful secondary effects it was causing.) It was determined that revitalization of the area was dependent on relocating these businesses. The town subsequently adopted a comprehensive plan for community development. An ordinance related to regulation of adult businesses was enacted as part of this plan.

The subject ordinance sought to limit the location of adult businesses (i.e., bookstores, theaters, motels, cabarets and massage parlors) to areas zoned for industrial use. Further, the town's ordinance also provided that nonconforming adult uses were to be amortized over a period of years based on a graduated scale of investment in the business.

In regard to providing sufficient alternate locations, the reviewing court noted that the amount of land available for these businesses consisted of over 6,000 acres and included 85.6 miles of roadway frontage. There was no evidence that the number of adult businesses would decrease nor that fewer potential customers would be available to them. *Id.* at 555. (The amortization period (up to 5¼ years depending on the amount of capital investment) also was held to be reasonable.)

3. Factual Findings.

In *Renton* the city relied heavily on the experiences and studies of other communities (in particular Seattle). "The First Amendment does not require a city, before enacting such an ordinance, to conduct new studies or produce evidence independent of that already generated by other cities, so long as whatever evidence the city relies upon is reasonably believed to be relevant to the problem that the city addresses." *Renton, supra* at 51-52. See, also, *Old 74 Corp., supra*. Accordingly, it is now common practice for cities not to commission any specific studies but, rather, to rely on the lessons learned (both anecdotal and via study) of other communities. Nonetheless, it is still important that such factual findings both be referenced and adopted within the legislation. It may be noted that, in the context of HB 23, the General Assembly did make extensive pertinent findings in this regard.

C. Business and Employee Licensing.

One of the most problematic aspects of regulating adult businesses is in the area of business and employee licensing. Many cities as part of their legislation

regulating adult businesses include provisions requiring the businesses (and even the employees) first apply for licenses or permits to operate (or work) and further subjects them to various requirements before approval is given.

The concept of prior restraint is what makes licensing schemes potentially problematic. “A ‘prior restraint’ exists when speech is conditioned upon the prior approval of public officials.” *Nightclubs, Inc. v. City of Paducah* (6th Cir. 2000), 202 F.3d 884, 889. “Prior restraints are presumptively invalid because they typically involve ‘two evils that will not be tolerated’: (1) the risk of censorship associated with the vesting of unbridled discretion in government officials; and (2) ‘the risk of indefinitely suppressing permissible speech’ when a licensing law fails to provide for the prompt issuance of a license.” *Id.*, citing to, *FW/PBS, Inc. v. City of Dallas* (1990), 493 U.S. 215, 107 L.Ed.2d 603. Accordingly, any system of prior restraint carries a heavy presumption against its validity.

Three procedural safeguards are required in instances involving a prior restraint: (1) the decision whether or not to grant a license must be made within a specified, brief period, and the status quo must be preserved pending a final judicial determination on the merits, (2) the licensing scheme must assure a prompt judicial decision to minimize the deterrent effect of an interim and possibly erroneous denial of a license, and (3) the licensing scheme must place the burden of instituting judicial proceedings and proving that expression is unprotected on the licensor rather than the exhibitor. *Freedman v. Maryland* (1965), 380 U.S. 51, 13 L.Ed.2d 649.

Licensing schemes involving the regulation of sexually oriented businesses must incorporate at least the first two of these safeguards. See, *Deja Vu of Nashville, Inc. v. Metropolitan Government of Nashville* (6th Cir. 2001), 274 F.3d 377 (licensing scheme which did not assure prompt judicial review, even though temporary license would issue pending final court determination, was held unconstitutional); *Huber Hts. v. Liakos* (2001), 145 Ohio App.3d 35 (sexually oriented business ordinance provided that the city manager was to determine if grounds existed to deny a permit, if so, notice of probable denial was sent to the applicant and a formal hearing would be held before the city manager who would then make a decision; held: that the ordinance impermissibly combined administrative and judicial functions in the city manager and

was unconstitutional); *Cincinnati v. Jenkins* (2001), 146 Ohio App.3d 27 (hearing before city treasurer upon denial of license did not provide for prompt judicial review as the applicant had no right under Revised Code Chapter 2506 to appeal a decision made in anything other than a quasi-judicial proceeding); but see, *Currence v. Cincinnati* (6th Cir. 2002), 28 Fed. Appx. 438 (licensing procedure held constitutional which provided for appeal to BZA of administrative decision to deny a permit and subsequent Revised Code Chapter 2506 appeal where operation of business was permitted pending final court determination).

In response to this important concern, the General Assembly, as part of HB 23, also amended Chapter 2506 of the Revised Code, which sets forth the procedures for administrative appeals. R.C. §2506.05, et seq., now provide for an expedited administrative appeal process in the event of the denial, suspension, or revocation of licensure for adult entertainment establishments.³⁰

In regard to issuing permits to employees, some ordinances seek to prohibit minors or those convicted of sex offenses from being employed at these establishments. Accordingly, some permit applications require disclosure of personal information, such as: a full name, height, weight, hair color, eye color, date of birth, current residential address, residential addresses for a given number of preceding years, fingerprints, and photographs. Again, this is for the purpose of facilitating a criminal background check. This seemingly simple procedure itself raises issues as some courts have found that, pursuant to a state's public record's law, the potential disclosure of this personal information may act as a deterrent to individuals desiring to exercise constitutionally protected expressive conduct and, therefore, is invalid.

Fees associated with issuing licenses or permits may be problematic because the government may not tax the exercise of a constitutionally protected right. *Northeast Ohio Coalition for the Homeless v. City of Cleveland* (6th Cir. 1997), 105 F.3d 1107. Nonetheless, requiring payment of a fee for a license or permit does not violate the constitution as long as the purpose of the fee is limited to defraying the expenses incurred in furtherance of a legitimate state activity. (Enforcement costs can be factored in.)

³⁰ This includes any such similar establishments as may be defined by local codes.

As noted, licensing requirements need to be carefully reviewed both for their capacity to act as impermissible prior restraints or, by their operation, found invalid as having an unreasonable deterrent effect on expressive conduct (as may be the case with the disclosure of personal information). Further, it should be noted that requirements for mandatory inspections have raised concerns for some courts as to whether the Fourth Amendment is violated thereby.

In sum, business and employee licensing for sexually oriented businesses is an area requiring a great deal of studied attention. It is recommended that no action be taken at this time but, rather, that further investigation into such a program be made prior to final recommendations.

III. Recommendations.

A. Separation from Sensitive Uses.

Sexually oriented businesses at present are not regulated by Madison's zoning ordinance. This means that a sexually oriented business can open in a zoning district generally appropriate to the use (e.g., retail, food and beverage service, etc.) and immediately adjacent to a sensitive user. Once established, it would be legally problematic to then pass an ordinance regulating the location of such establishments and retroactively enforce it against the existing business. For this reason, it is legally important to have an existing ordinance which addresses the adverse secondary effects of sexually oriented businesses.

It should be noted that at present there are no sexually oriented businesses operating within the Village. As detailed, this has nothing to do with any legal restraints on their ability to locate in Madison. It being axiomatic that businesses locate where there is a market for their goods and services, Madison is apparently not such a market at present.

In consideration of the adverse secondary effects discussed herein above, it is recommended that the lands available for sexually oriented business locations be narrowed in a manner which will still afford such businesses reasonable opportunities to locate within the Village, as mandated by the United States Supreme Court.

Crime, particularly the noted increases in sex-related crimes, is of great concern for the Village as it has historically enjoyed a low crime index. Maintaining low

incidents of crime is important, of course to protect the health and well-being of citizens and visitors, but also to protect and preserve the Village's reputation as a sound community in which to live, work, invest, and visit. Any rise in crime rates in the Village, and in particular sensitive areas, will have serious and lasting deleterious effects, both localized and generally.

Uses in the Village identified as particularly sensitive to the adverse secondary effects of sexually oriented business are:

- (1) Churches, synagogues, mosques, temples or other buildings used primarily for religious worship and related religious activities;
- (2) Public or private educational facilities including, but not necessarily limited to, nursery schools, child day care centers, preschools, kindergartens, elementary schools, private schools, intermediate schools, junior high schools, middle schools, high schools, vocational schools, secondary schools, continuation schools, special education schools, junior colleges, colleges and universities ("school" includes the school grounds, but does not include facilities used primarily for another purpose);
- (3) A public park or recreational area which has been designated for park or recreational activities including, but not necessarily limited to, a park, playground, nature trails, swimming pool, reservoir, athletic field, basketball or tennis courts, wilderness areas, or similar public land within the Village which is under the control, operation, or management of either the Village park and recreation authorities or which is controlled, operated or managed by any such like county, state, or federal agencies.

The rationale for inclusion of these uses is, amongst other factors, their focus as centers for children and families' education, recreation, and worship. The higher incidents of crime in areas proximate to sexually oriented businesses poses increased risk to children and families both while on the grounds of property devoted to these uses as well while en route to same in the areas immediately adjacent to them. Further, the preservation of the property values of these uses, both public and private, is a substantial governmental interest.

As noted in the studies reviewed, even the negative public perception which sexually oriented businesses generate towards areas in which they locate is sufficiently strong to modify people's behavior; causing persons to avoid those areas.

For the sensitive uses specific, this behavior modification threatens to undermine the important, even vital, functions of these uses.

Areas zoned for residential use (and those structures lawfully utilized as such as non-conforming) have been shown to be particularly sensitive to the adverse secondary effects of sexually oriented businesses, both due to diminished property values and increased incidents of crime. Preventing such adverse secondary effects raises substantial concerns for the Village as the integrity of its status as a safe place to live and raise a family, as well as a sound investment for home buyers, is critical to its future. Reduction in property values undermines personal wealth and the funding of the public agencies tied to those values. So while the effect of a sexually oriented business may be felt most heavily in a localized area, its effects ripple throughout the community.

Madison has a traditional development pattern with a centralized (and now historic) business district in the center core of the Village with residential uses and agricultural uses dominant outside that area. A second general business-zoned district exists at the central northern end of the Village but is largely undeveloped.

The dominant industrial lands are located primarily in two zones, one centrally located within the Village north of the CSX and Norfolk-Southern railroad right-of-ways and the second in the area around the S.R. 528 and Interstate 90 interchange.

In order to minimize the impact of sexually oriented businesses on residential neighborhoods and other sensitive uses, it is recommended that any new or expanding sexually oriented business be located no closer than 1,000 feet from these uses and properties. It is recognized that sound justification may be found to modify this separation distance, either generally or in specific areas.

When this separation overlay is applied to the Zoning Map, the land available for the location of sexually oriented businesses becomes very limited. This result is a function of Madison's development pattern.

The B-1, General Business, district encompasses lands along Main Street to Lake Street and further north along Lake Street until just south of the aforementioned railroad right-of-ways. This specific area, being the historic downtown, is a narrow area of commercially zoned lands only several hundred feet deep from the right-of-way

lines. Immediately adjacent are residentially zoned lands presently used as such, together with additional sensitive users, such as houses of worship. In addition, many of the historic structures have lawful conforming residential apartments located on the upper floors of the structures, which would place sensitive users in direct contact with any sexually oriented businesses that may locate in this area. The result of these factors is that there exists no practical way to accommodate sexually oriented businesses within this area and achieve any meaningful separation of those businesses from existing sensitive uses.

The second major area of lands zoned B-1 is to the northwest of the intersection of Middle Ridge Road and S.R. 528. There are existing sensitive uses in this area as these lands are bounded on all sides by residentially zoned property as well as an existing house of worship at said intersection. Maintaining 1,000 feet of distance separation from these adjacent users effectively negates this area as one in which sexually oriented businesses could be accommodated. Finally, there are a few acres of B-1 lands at the intersection of North Lake Street and Lexington. These lands are immediately adjacent to developed residentially zoned parcels. The size of the parcels is so small that it would not be possible to achieve even a modest amount of distance separation from any sexually oriented businesses and the adjacent sensitive uses.

Turning to B-2, Highway Business, district zoned lands, there is only a few acres in the entire Village zoned under this district classification. The parcels so zoned are so small and in such close proximity to adjacent residentially zoned lands that it would not be possible to achieve any meaningful distance separation. The B-2 lands consist of two strips of land just to the south of the railroad right-of-ways on either side of North Lake Street. The second area of B-2 zoned lands is immediately adjacent to the S.R. 528 and Middle Ridge Road intersection on its northwest and southwest corners.

B-3, Planned Commercial Development, district zoning exists only in one area of the Village on the westerly side of North Lake Street between the Lexington and Deerfield intersections. It is bounded on three sides with residentially zoned parcels. The dimensions of the B-3 zoned land consist of just over 1,000 feet of frontage along Lake Street and the area is approximately 1,000 feet deep from the Lake Street right-

of-way. This effectively makes achieving a 1,000 feet of distance separation from these adjacent sensitive uses impossible.

The B-4, Interstate Business, district consists of lands just north of I-90 immediately adjacent to Water Tower Drive and R.W. Parkway. Adjacent to the north of these B-4 zoned lands are R-2 zoned parcels. Maintaining a 1,000 feet of distance separation from these residentially zoned lands would effectively eliminate any frontage on R.W. Parkway and most frontage on Water Tower Drive. There is also an existing sensitive user on Water Tower in the form of a college branch campus near the end of the roadway. Maintaining 1,000 feet of distance separation from this user eliminates most of Water Tower Drive as the entire roadway is only 1,540 feet long. That portion of Water Tower furthest away from the college is the portion near the intersection of S.R. 528, however, that is also the section of Water Tower that is nearest to the R-2 residentially zoned lands. Any sexually oriented business would be only a few hundred feet from that residential land and, thereby, precluded from locating in that area if any distance separation is maintained from those sensitive uses.

B-5, Interstate Business-Industrial, district lands are located south of I-90. The parcels are generally very deep with limited frontage on S.R. 528. There are adjacent residential uses primarily bordering the B-5 lands located on the south-east quadrant of the interchange along Warner Road and also in the area in the immediate vicinity of the Warner Road/528 intersection. That would negate considerable area in which a sexually oriented business could locate.

M-1, Limited Industry, district lands are located immediately north of the railroad right-of-ways to the east and west sides of North Lake Street. To the immediate north of this district are residentially zoned lands, which narrows the effective area in which sexually oriented business could locate if adequate distance separation from these sensitive uses is to be maintained. Locating sexually oriented businesses in this district is further complicated by the existence of several lawful non-conforming residential structures, presently used as such, which are located at the intersection of North Lake Street and Edwards Street. When distance separation from all of these sensitive users is calculated, the only areas within the M-1 district that could then be used for sexually oriented businesses would be effectively land-locked (i.e., there would be no frontage

or direct access to any public right-of-way). Being mindful of the need to provide reasonable locations for sexually oriented businesses to locate strongly mitigates against designated M-1 lands for these users.

M-2, General Industry, district consists of lands in two areas of the Village. The first area is centrally located on Edwards Street and the second is at the southern end of the Village along S.R. 528. There are no permitted or conditionally permitted uses in this district which would be sensitive uses, as that phrase has been defined and discussed herein. The Edwards Street M-2 zoned land, approximately 22 acres in area, presents a unique opportunity insofar as it is bordered on the east and north by M-1 zoned lands. The railroad right-of-ways border it on the south side. Finally, to the west are presently undeveloped R-1 parcels. It is a short distance down Edwards Street to its intersection with North Lake Street, which is the Village's main north/south highway. The adjacent industrial and rail tracks create good buffers for any sexually oriented business which may locate in this area such that mitigation of adverse secondary effects becomes a probable result. The M-2 zoned land along S.R. 528, consisting of just over 75 acres, is bordered in part by residential users along Warner Road, but unlike the B-5 zoned lands on the north side of Warner Road, it has no frontage along it. There are a few existing residential users on the west side of S.R. 528 that would be of concern.

However, the remaining surrounding areas are mostly undeveloped and devoted to agricultural use at present. The area may not be ideally suited for mitigation of adverse secondary effects, but it presents one of the few areas in which reliable mitigation is likely while still affording a sexually oriented business a reasonable site in which to locate. Expanding on this last point, it may not reasonably be suggested that these are not good business locations. To the contrary, the areas in question have quick and direct access to major roadways and are served by all utilities. The M-2 zoned lands on S.R. 528 have approximately 2,000 linear feet of frontage on S.R. 528.

The M-2 lands present the best option for sexually oriented businesses to locate with this Village and be viable businesses while at the same time controlling the adverse secondary effects these businesses generate such that the sensitive uses in the Village are reasonably protected from such effects. Finally, it should be noted that

locating such uses primarily within an industrial district has been deemed the best available alternative by other communities.³¹

One problem is that if 1,000 feet of distance separation is used, it will significantly reduce the area available for sexually oriented businesses to use in the M-2 district. It has been discussed above that the M-2 lands are particularly suited to control adverse secondary effects due to existing development conditions, albeit there are still several sensitive uses located in the nearby vicinity. Some compromise has to be made between these competing interests.

It is recommended that distance separation for purposes of locating sexually oriented businesses in the M-2 district be set at 300 linear feet. In the case of M-2 land on Edwards Street, the only adjacent sensitive uses would be the R-1 zoned land immediately to the west. As noted, that land is not developed at present. Using 300 feet of separation would still give the businesses frontage on Edwards Street, pull them away from the R-1 lands which, if developed, can take into account the potential users on the M-2 zoned lands in site planning, additional buffer zones, and like measures.

The M-2 zoned lands along S.R. 528 are primarily bounded by agricultural uses at present, however, as noted there are several sensitive uses near and along Warner Road. Three hundred feet of distance separation is not ideal, however, as noted there may not be sufficient room for sexually oriented businesses to locate if some compromise is not made. Distance separation of 300 feet is one aspect of the compromise. The second aspect is limiting the area of sexually oriented businesses to mitigate the effects of a reduced distance separation.

It has been noted that the size of an establishment has a correlation with the potential for secondary impacts associated with the business.³² In other words, larger businesses generate more traffic, have a higher number of patrons on site at any one time, and the business itself may be more impactful given enhanced visibility that results from size itself. Some communities have accordingly sought to limit the area sexually oriented businesses may occupy. To mitigate the effects of having only a modest 300 feet of distance separation from sensitive adjacent uses, it is

³¹ Seattle, Washington, "Adult Cabarets in Seattle" (2006).

³² Seattle, *supra*.

recommended that such an area limitation be imposed in the amount of 3,000 square feet of total floor area for such businesses.

For all of these reasons, it is recommended that the M-2 district regulations be amended to specifically permit sexually oriented businesses to locate on such lands, as of right, but subject to additional regulations to address the adverse secondary effects these establishments generate and to ensure the public health, safety and welfare.

B. Distance Separation Between Sexually Oriented Businesses.

At present, the Village has no regulation which explicitly mandates that a sexually oriented business locate a certain distance away from another sexually oriented business. The studies discussed above clearly and uniformly found that allowing such establishments to cluster in an area magnifies the adverse secondary effects generated by these businesses.

The sole effective remedy to this effect is to prohibit such businesses from locating in close proximity to one another. The studies and experiences of other communities, as well as the case law, indicates that a 1,000 feet separation distance is a minimal standard to prevent the effects of clustering and, accordingly, that is recommended for the Village. A draft ordinance has been prepared and attached hereto which incorporates the foregoing recommendations.

C. Signs.

In regard to signs, the obtrusive nature of the graphics, color scheme, and lighting which typifies signage associated with sexually oriented businesses has been recognized as being in conflict with more typical commercial sign copy.³³ The goal, of course, is to maximize visibility. As the above reports have noted, the visibility of sexually oriented businesses contributes to their adverse effects on adjacent property values. Some additional time, place, and manner controls on the signage is warranted to combat this effect. Likewise, ensuring that there is no exterior display of goods, activities, or other materials which are of an explicit nature is necessary to combat adverse secondary effects.

³³ New York City, New York, "Adult Entertainment Study" (1994) at 63.

D. Business Operations.

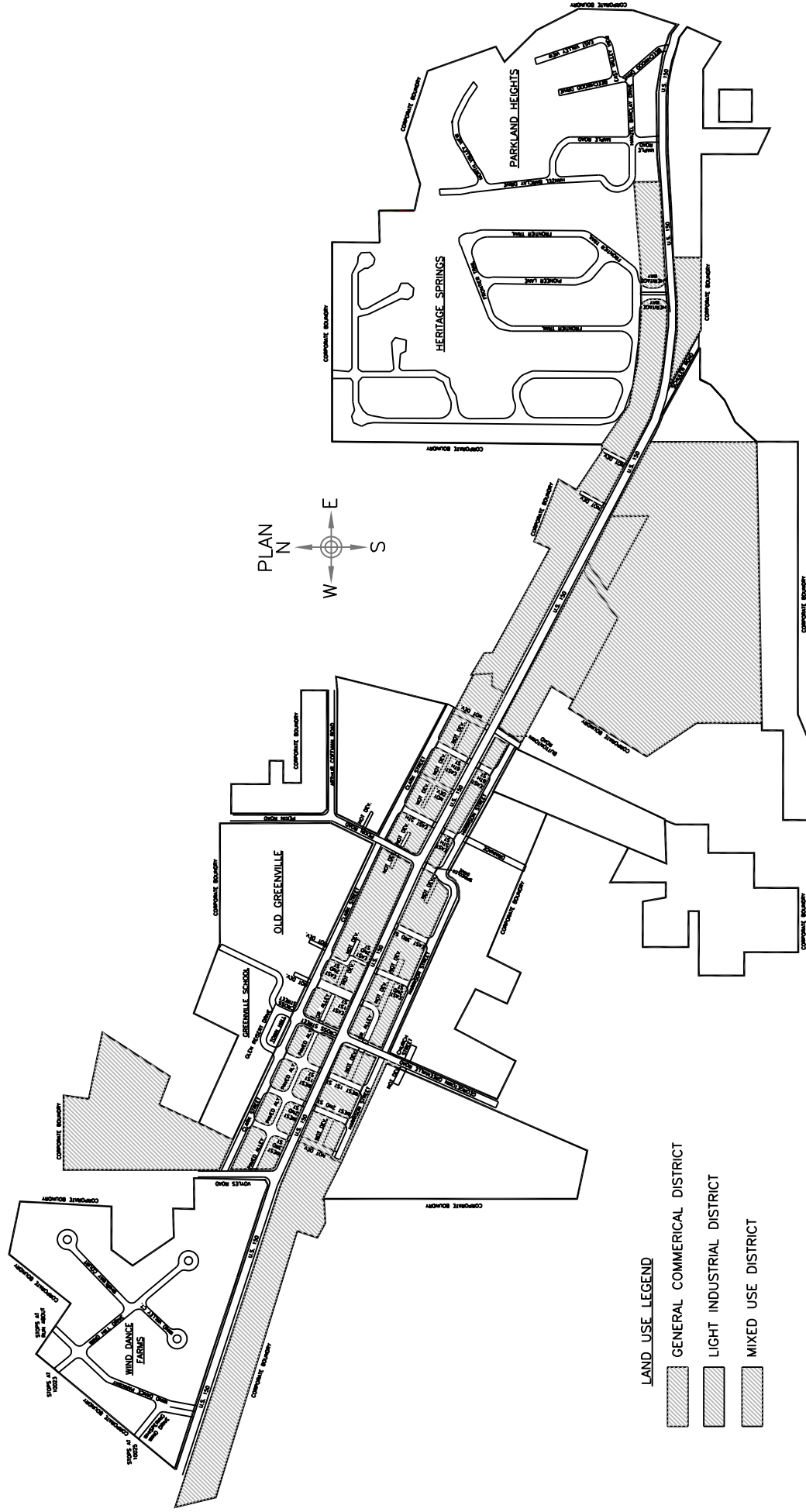
Finally, business operations have been viewed as problematic to health and safety. Disease transmission, illegal activities, and other concerns have led communities to explore business and employee licensing schemes as well as to have additional regulations controlling the physical layout of these establishments. Ohio's recent initiatives in this regard were noted herein above.

Maintaining adequate lighting and monitoring of the interior and exterior of the premises is needed to prevent unlawful activity, such as prostitution, and to deter other crimes both of a sexual nature and those of opportunity (robbery and the like). Employees should at all times be in a position to detect and deter such unlawful activities. By the same measure, regulations which prevent improper contact between employees engaged in performance from patrons is needed to ensure that no unlawful contacts occur as well as for the safety of employees who will be in a vulnerable state.

The draft regulations deemed reasonably necessary to carry into effect these substantial governmental interests is attached. It is the recommendation of the Planning and Zoning Commission that the Council of Madison Village enact same for all of the reasons set forth herein.

Respectfully submitted,

Madison Planning and Zoning Commission



COMPREHENSIVE PLANNING MAP FOR THE TOWN OF GREENVILLE 2011
 ADOPTED BY RESOLUTION 2009-R-037 DATED 10-12-2009
 PUBLIC HEARING NOTICE FOR REVISED PLAN PUBLISHED IN THE NEW ALBANY TRIBUNE ON 11-18-2010
 PUBLIC HEARING HELD ON 12-13-2010
 AMENDED BY ORDINANCE 2010-T-083 DATED 12-13-2010
 SCALE: NONE

Public Notices**Public Notices****Public Notices****Public Notices**

**TOWN OF GREENVILLE
ORDINANCE NO. 2011-TO-019**

**AN ORDINANCE ESTABLISHING LICENSING REQUIREMENTS AND
REGULATIONS OF SEXUALLY ORIENTED BUSINESSES WITHIN TOWN OF GREENVILLE, INDIANA.**

SECTIONS

- Preamble
- 1. Purpose and Findings.
- 2. Definitions.
- 3. Classifications.
- 4. Resolution License Required.
- 5. Issuance of Resolution License.
- 6. Fees.
- 7. Inspection.
- 8. Expiration of Resolution License.
- 9. Suspension.
- 10. Revocation.
- 11. Hearing; Resolution License Denial, Suspension, Revocation; Appeal.
- 12. Transfer of Resolution License.
- 13. Hours of Operation.
- 14. Regulations Pertaining to Exhibition of Sexually Explicit Films or Videos.
- 15. Loitering, Exterior Lighting, Visibility and Monitoring Requirements.
- 16. Enforcement.
- 17. Applicability of Ordinance to Existing Businesses.
- 18. Prohibited Activities.
- 19. Scienter Required to Prove Violation or Business Resolution Licensee Liability.
- 20. Failure of Town of Greenville, Indiana to Meet Deadline Not to Risk Applicant/Resolution Licensee Rights.
- 21. Location of Sexually Oriented Businesses.
- 22. Severability.
- 23. Conflicting Code Provisions.
- 24. Effective Date, Enforcement, Fines and Penalties.

WHEREAS, the Town Council for the Town of Greenville, Indiana, in the interest of public health, safety and welfare, has deemed it necessary that the Town develop an Ordinance which Establishes Licensing and Regulations for Sexually Oriented Businesses within the corporate limits of the Town of Greenville;

WHEREAS, sexually oriented businesses require supervision by the Greenville Town Council and the Greenville Marshal Department in order to protect and preserve the health, safety, and welfare of the patrons of such businesses as well as the citizens of the Town of Greenville, Indiana; and

WHEREAS, the Town Council for the Town of Greenville, Indiana finds that sexually oriented businesses, as a category of establishments, are frequently used for unlawful sexual activities, including but not limited to public indecency, prostitution, and sexual liaisons of a casual nature; and

WHEREAS, there is convincing documented evidence that sexually oriented businesses, as a category of establishments, have deleterious secondary effects and are often associated with crime and adverse impacts on surrounding properties; and

WHEREAS, the Greenville Town Council desires to minimize and control these adverse effects and thereby protect the health, safety, and welfare of the citizenry; protect the citizens from crime; preserve the quality of life; protecting nearby properties from adverse impacts, preserve the character of surrounding neighborhoods, and deter the spread of blight; and

WHEREAS, the Greenville Town Council recognizes its constitutional duty to interpret, construe, and amend its laws and ordinances to comply with constitutional requirements as they are announced; and

WHEREAS, with the passage of any ordinance, the Greenville Town Council accept as binding the applicability of general principles of criminal and civil law and procedure and the rights and obligations under the United States and Indiana Constitutions, Indiana Codes, and the Indiana Rules of Civil and Criminal Procedure; and

WHEREAS, it is not the intent of this ordinance to suppress any speech activities protected by the U.S. Constitution or the State of Indiana Constitution, but to enact an ordinance to further the content-neutral governmental interests of the Greenville Town Council, to wit, the controlling of secondary effects of sexually oriented businesses; and

WHEREAS, it is the intent of this Ordinance to preclude the operation of sexually oriented businesses, as defined herein, within 500 feet of the closest property line of any church, school, daycare center or preschool, residence, or another sexually oriented business and to add additional regulations for the operation of sexually oriented businesses;

ATTACH COPY OF ADVERTISMENT HERE

Prescribed by State Board of Accounts

Town of Greenville
(Governmental Unit)
Floyd County, Indiana

To:
NEWS AND TRIBUNE
221 SPRING STREET
PO BOX 867
JEFFERSONVILLE, IN 47130

PUBLISHER'S CLAIM

LINE COUNT

Display Master (Must not exceed two actual lines, neither of which shall total more than four solid lines of the type in which the body of the advertisement is set) -- number of equivalent lines

Head -- number of lines 853

Body -- number of lines

Tail -- number of lines

Total number of lines in notice 853

COMPUTATION OF CHARGES

853 lines, 4 columns wide equals 3412 equivalent lines at .2674 cents per line \$ 912.37

Additional charges for notices containing rule or tabular work (50 per cent of above amount)

Charge for extra proofs of publication (\$1.00 for each proof in excess of two)

TOTAL AMOUNT OF CLAIM \$ 912.37

DATA FOR COMPUTING COST

Width of single column in picas 6 P 10

Size of type 7 point.

Number of insertions

Pursuant to the provisions and penalties of IC 5-11-10-1, I hereby certify that the foregoing account is just and correct, that the amount claimed is legally due, after allowing all just credits, and that no part of the same has been paid.

I also certify that the printed matter attached hereto is a true copy, of the same column width and type size, which was duly published in said paper 1 times. The dates of publication being as follows:

7-21-11

Additionally, the statement checked below is true and correct:

..... Newspaper does not have a Web site.

☒ Newspaper has a Web site and this public notice was posted on the same day as it was published in the newspaper.

..... Newspaper has a Web site, but due to technical problem or error, public notice was posted on

..... Newspaper has a Web site but refuses to post the public notice.

Kelly Juiles

Date 7-27-11

Legal Clerk

Ref # 065 27855

**TOWN OF GREENVILLE
ORDINANCE NO. 2011-TO-019**

**AN ORDINANCE ESTABLISHING LICENSING REQUIREMENTS AND
REGULATIONS OF SEXUALLY ORIENTED BUSINESSES WITHIN TOWN OF GREENVILLE, INDIANA.**

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WHEREAS, the Town Council for the Town of Greenville, Indiana, in the interest of public health, safety and welfare, has deemed it necessary that the Town develop an Ordinance which Establishes Licensing and Regulations for Sexually Oriented Businesses within the corporate limits of the Town of Greenville;

WHEREAS, sexually oriented businesses require supervision by the Greenville Town Council and the Greenville Marshal Department in order to protect and preserve the health, safety, and welfare of the patrons of such businesses as well as the citizens of the Town of Greenville, Indiana; and

WHEREAS, the Town Council for the Town of Greenville, Indiana finds that sexually oriented businesses, as a category of establishments, are frequently used for unlawful sexual activities, including but not limited to public indecency, prostitution, and sexual liaisons of a casual nature; and

WHEREAS, there is convincing documented evidence that sexually oriented businesses, as a category of establishments, have deleterious secondary effects and are often associated with crime and adverse impacts on surrounding properties; and

WHEREAS, the Greenville Town Council desires to minimize and control these adverse effects and thereby protect the health, safety, and welfare of the citizenry; protect the citizens from crime; preserve the quality of life; protecting nearby properties from adverse impacts, preserve the character of surrounding neighborhoods, and deter the spread of blight; and

WHEREAS, the Greenville Town Council recognizes its constitutional duty to interpret, construe, and amend its laws and ordinances to comply with constitutional requirements as they are announced; and

WHEREAS, with the passage of any ordinance, the Greenville Town Council accept as binding the applicability of general principles of criminal and civil law and procedure and the rights and obligations under the United States and Indiana Constitutions, Indiana Codes, and the Indiana Rules of Civil and Criminal Procedure; and

WHEREAS, it is not the intent of this ordinance to suppress any speech activities protected by the U.S. Constitution or the State of Indiana Constitution, but to enact an ordinance to further the content-neutral governmental interests of the Greenville Town Council, to wit, the controlling of secondary effects of sexually oriented businesses; and

WHEREAS, it is the intent of this Ordinance to preclude the operation of sexually oriented businesses, as defined herein, within 500 feet of the closest property line of any church, school, daycare center or preschool, residence, or another sexually oriented business and to add additional regulations for the operation of sexually oriented businesses;

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF GREENVILLE, INDIANA, AS FOLLOWS

Section 1. Rationale and Findings:

(a) **Purpose.** It is the purpose of this ordinance to regulate sexually oriented businesses in order to promote the health, safety, moral, and general welfare of the citizens of the Town of Greenville, and to establish reasonable and uniform regulations to prevent the deleterious secondary effects of sexually oriented businesses within the Town of Greenville. 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.

(b) **Findings and Rationale.** Based on evidence of the adverse secondary effects of adult uses presented in hearings and in reports made available to the Town of Greenville Council, and on findings, interpretations, and narrowing constructions incorporated in the cases of *City of Littleton v. Z.J. Gifts D-4, L.L.C.*, 124 S.Ct. 2219 (June 7, 2004); *City of Los Angeles v. Alameda Books, Inc.*, 535 U.S. 425 (2002); *Pap's AM v. City of Erie*, 529 U.S. 277 (2000); *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986); *Young v. American Mini Theatres*, 426 U.S. 50 (1976); *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560 (1991); *California v. LaRue*, 409 U.S. 109 (1972); and

Schultz v. City of Cumberland, 26 F.Supp.2d 1128 (W.D. Wise. 1998), *aff'd in part, rev'd in part*, 228 F.3d 831 (7th Cir. 2000); *Blue Canary Corp. v. City of Milwaukee*, 270 F.3d 1156 (7th Cir. 2001); *Matney v. County of Kenosha*, 86 F.3d 692 (7th Cir. 1996); *Berg v. Health & Hospital Corp.*, 865 F.2d 797 (1989); *DiMa Corp. v. Town of Hallie*, 185 F.3d 823 (1999); *Graff v. City of Chicago*, 9 F.3d 1309 (1993); *North Avenue Novelties, Inc. v. City of Chicago*, 88 F.3d 441 (1996); *Chulchian v. City of Indianapolis*, 633 F.2d 27 (7th Cir. 1980); *Bigg Wolf Discount Video v. Montgomery County*, 256 F. Supp. 2d 385 (D. Md. 2003); *County of Cook v. Renaissance Arcade and Bookstore*, 122 Dl. 2d 123 (1988) (including cases cited therein); *World Wide Video of Washington, Inc. v. City of Spokane*, 368 F.3d 1186 (9th Cir. 2004); *Ben's*

Bar, Inc. v. Village of Somerset, 316 F.3d 702 (7th Cir. 2003); *People ex rel Deters v. Effingham Retail 27, Inc.*, No. 04-CH-26 (4th Judicial Circuit, Effingham County, Ill., June 13, 2005); *Annex Books, Inc. v. City of Indianapolis*, No. 1:03-CV-918, Summary Judgment Order, Aug. 27, 2004 and Order Denying Motion to Alter or Amend, Mar. 31, 2005 (S.D. Ind.); *Andy's Lounge et al. v. City of Gary*, No. 2:01-CV-327, Order Granting Summary Judgment, Mar. 31, 2005 (N.D. Ind.); *LLEH, Inc. v. Wichita County*, 289 F.3d 358 (5th Cir. 2002); *World Wide Video of Washington, Inc. v. City of Spokane*, 368 F.3d 1186 (9th Cir. 2004); *Ben's Bar, Inc. v. Village of Somerset*, 316 F.3d 702 (7th Cir. 2003); *Abilene Retail #30, Inc. v. Board of Commissioners*, 2005 U.S. Dist. LEXIS 30491 (D. Kan., Dec. 1, 2005); and based upon reports concerning secondary effects occurring in and around sexually oriented businesses, including, but not limited to, Austin, Texas - 1986; Indianapolis, Indiana - 1984; Garden Grove, California - 1991; Houston, Texas - 1983, 1997; Phoenix, Arizona - 1979, 1995-98; Chattanooga, Tennessee - 1999-2003; Minneapolis, Minnesota - 1980; Los Angeles, California - 1977; Whittier, California - 1978; Spokane, Washington - 2001; St. Cloud, Minnesota - 1994; Littleton, Colorado - 2004; Oklahoma City, Oklahoma - 1986; Dallas, Texas - 1997; Greensboro, North Carolina - 2003; Amarillo, Texas - 1977; New York, New York Times Square - 1994; and the Report of the Attorney General's Working Group On The Regulation Of Sexually Oriented Businesses, (June 6, 1989, State of Minnesota)

The Town of Greenville, Indiana Council finds:

{1} Sexually oriented businesses, as a category of commercial uses, are associated with a wide variety of adverse secondary effects including, but not limited to, personal and property crimes, prostitution, potential spread of disease, lewdness, public indecency, obscenity, illicit drug use and drug trafficking, negative impacts on surrounding properties, urban blight, litter, and sexual assault and exploitation.

{2} Sexually oriented businesses should be separated from sensitive land uses to minimize the impact of their secondary effects upon such uses, and should be separated from other sexually oriented businesses, to minimize the secondary effects associated with such uses and to prevent an unnecessary concentration of sexually oriented businesses in one area.

{3} Each of the foregoing negative secondary effects constitutes a harm which the Town of Greenville, Indiana has a substantial government interest in preventing and/or abating. This substantial government interest in preventing secondary effects, which is the Town of Greenville, Indiana's rationale for this ordinance, exists independent of any comparative analysis between sexually oriented and non-sexually oriented businesses. Additionally, the Town of Greenville, Indiana's interest in regulating sexually oriented businesses extends to preventing future secondary effects of either current or future sexually oriented businesses that may locate in the Town of Greenville, Indiana. The Town of Greenville, Indiana finds that the cases and documentation relied on in this ordinance are reasonably believed to be relevant to said secondary effects.

{4} The following reports; {1} Madison Wisconsin Planning and Zoning Commission Report 02-14-2011 Concerning Sexually Oriented Businesses and sub-reports mentioned there-in. {2} Adult Entertainment Businesses in Indianapolis 1984 an analysis and appendixes. {3} Crime Related Secondary Effects of Sexually Oriented Business Report to the City Attorney City of Los Angeles May 6th, 2007. {4} Greenville Comprehensive Land Use Map for 2011-TO-019 hereby are incorporated by reference and part of this Ordinance {2011-TO-019}.

Section 2. Definitions.

For purposes of this ordinance, the words and phrases defined in the sections hereunder shall have the meanings therein respectively ascribed to them unless a different meaning is clearly indicated by the context.

"The Town of Greenville Council" means the Town of Greenville, Indiana Council.

"Adult Bookstore" means a commercial establishment which, as a principal part of its business, offers for sale or rental for any form of consideration any one or more of the following: books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, compact discs, digital video discs, slides, or other visual representations which are characterized by their emphasis upon the display of "specified sexual activities" or "specified anatomical areas."

A "principal part of its business" means that the commercial establishment:

{a} has at least 35% of its displayed merchandise which consists of said items, or

{b} has at least 35% of the wholesale value of its displayed merchandise which consists of said items, or

{c} has at least 35% of the retail value of its displayed merchandise which consists of said items, or

{d} derives at least 35% of its revenues from the sale or rental, for any form of consideration of said items, or

{e} maintains a section of at least 35% of its interior business space for the sale or rental of said items; or

{f} maintains an "adult arcade," which means any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are regularly maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are characterized by their emphasis upon matter exhibiting "specified sexual activities" or specified "anatomical areas."

"Adult Cabaret" means a nightclub, bar, juice bar, restaurant, bottle club, or other commercial establishment, whether or not alcoholic beverages are served, which regularly features persons who appear semi-nude.

"Adult Mini Motion Picture Theater" means any commercial establishment which regularly offers rooms with a capacity of more than 5 but less than 50 persons, wherein films, motion pictures, video cassettes, slides, or similar visual images that are distinguished or characterized by an emphasis on specified sexual activities or specified anatomical areas are regularly presented for observation by patrons therein.

"Adult Motel" means a motel, hotel, or similar commercial establishment which:

{a} offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, other photographic reproductions, or live performances which are characterized by the display of "specified sexual activities" or "specified anatomical areas"; and which advertises the availability of such material by means of a sign visible from the public right-of-way, or by means of any on or off-premises advertising, including but not limited to, newspapers, magazines, pamphlets or leaflets, radio or television; or

{b} offers a sleeping room for rent for a period of time that is less than 10 hours; or

{c} allows a tenant or occupant of a sleeping room to sub rent the room for a period of time that is less than 10 hours.

"Adult Motion Picture Theater" means a commercial establishment where films, motion pictures, videocassettes, slides, or similar photographic reproductions which are characterized by their emphasis upon the display of "specified sexual activities" or "specified anatomical areas" are regularly shown to more than five persons for any form of consideration.

"Adult Service Establishment" means any building, premises, structure, or other facility that uses at least 35%

of the building, premises, structure, or other facility for commercial activities involving the display of specified sexual activities or specified anatomical areas.

"Town of Greenville Council" means the Town Council of the Town of Greenville, Indiana, Indiana.

"Characterized by" means describing the essential character or quality of an item. As applied in this ordinance, no business shall be classified as a sexually oriented business by virtue of showing, selling or renting materials rated NC-17 or R by the Motion Picture Association of America.

"Employ, Employee, and Employment" describes and pertain to any person who performs any service on the premises of a sexually oriented business, on a full time, part time, or contract basis, whether or not the person is denominated an employee, independent contractor, agent, or otherwise. Employee does not include a person exclusively on the premises for repair or maintenance of the premises or for the delivery of goods to the premises.

"Establish or Establishment" shall mean and include any of the following:

- (a) The opening or commencement of any sexually oriented business as a new business;
- (b) The conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business; or
- (c) The addition of any sexually oriented business to any other existing sexually oriented business.

"Hearing Body" shall mean the Town Council of the Town of Greenville, Indiana.

"Influential Interest" means any of the following: (1) the actual power to operate the sexually oriented business or control the operation, management or policies of the sexually oriented business or legal entity which operates the sexually oriented business, (2) ownership of a financial interest of thirty percent (30%) or more of a business or of any class of voting securities of a business, or (3) holding an office (e.g., president, vice president, secretary, treasurer, managing member, managing director, etc.) in a legal entity which operates the sexually oriented business.

"Licensee" shall mean a person in whose name a Resolution License to operate a sexually oriented business has been issued, as well as the individual or individuals listed as an applicant on the application for a sexually oriented business Resolution License. In case of an "employee," it shall mean the person in whose name the sexually oriented business employee Resolution License has been issued.

"Nudity or a State of Nudity" means the showing of the human male or female genitals, pubic area, vulva, anus, anal cleft or cleavage with less than a fully opaque covering, or the showing of the female breast with less than a fully opaque covering of any part of the nipple.

"Operate or Cause to Operate" shall mean to cause to function or to put or keep in a state of doing business.

"Operator" means any person on the premises of a sexually oriented business who causes the business to function or who puts or keeps in operation the business or who is authorized to manage the business or exercise overall operational control of the business premises. A person may be found to be operating or causing to be operated a sexually oriented business whether or not that person is an owner, part owner, or Resolution Licensee of the business.

"Person" shall mean individual, proprietorships, partnerships, corporation, association, or other legal entity.

"Premises" means the real property upon which the sexually oriented business is located, and all appurtenances thereto and buildings thereon, including, but not limited to, the sexually oriented business, the grounds, any trailers, private walkways, and parking lots and/or parking garages adjacent thereto, under the ownership, control, or supervision of the licensee, as described in the application for a business Resolution License pursuant to Section 4 of this ordinance.

"Regularly" means and refers to the consistent and repeated doing of the act so described.

"Semi-Nude or State of Semi-Nudity" means the showing of the female breast below a horizontal line across the top of the areola and extending across the width of the breast at that point, or the showing of the male or female buttocks. This definition shall include the lower portion of the human female breast, but shall not include any portion of the cleavage of the human female breasts exhibited by a bikini, dress, blouse, shirt, leotard, or similar wearing apparel provided the areola is not exposed in whole or in part.

"Semi-Nude Model Studio" means a place where persons regularly appear in a state of semi-nudity for money or any form of consideration in order to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons.

This definition does not apply to any place where persons appearing in a state of semi-nudity did so in a modeling class operated:

- (a) By a college, junior college, or university supported entirely or partly by taxation;
- (b) By a private college or university which maintains and operates educational programs in which credits are transferable to college, junior college, or university supported entirely or partly by taxation; or
- (c) In a structure:
 - (1) Which has no sign visible from the exterior of the structure and no other advertising that indicates a semi-nude person is available for viewing; and
 - (2) Where, in order to participate in a class a student must enroll at least three days in advance of the class.

"Sexual Device" means any three (3) dimensional object designed and marketed for stimulation of the male or female human genital organ or anus or for sadomasochistic use or abuse of oneself or others and shall include devices such as dildos, vibrators, penis pumps, and physical representations of the human genital organs. Nothing in this definition shall be construed to include devices primarily intended for protection against sexually transmitted diseases or for preventing pregnancy.

"Sexual Device Shop" means a commercial establishment that regularly features sexual devices. Nothing in this definition shall be construed to include any pharmacy, drug store, medical clinic, or any establishment primarily dedicated to providing medical or healthcare products or services, nor shall this definition be construed to include commercial establishments which do not restrict access to any portion of their premises by reason of age.

"Sexual Encounter Center" shall mean a business or commercial enterprise that, as one of its principal business purposes, purports to offer for any form of consideration, physical contact in the form of wrestling or tumbling between persons of the opposite sex when one or more of the persons is semi-nude.

"Sexually Oriented Business" means an "adult bookstore," an "adult cabaret," an "adult mini motion picture theater," an "adult motel," an "adult motion picture theater," an "adult service establishment," a "semi-nude model studio," a "sexual device shop," or a "sexual encounter center," as defined in this ordinance. The term "sexually oriented business" shall also include an "adult drive-in theater," an "adult live entertainment arcade," and an "adult motion picture arcade".

"Specified Anatomical Areas" means and includes:

- {a} Less than completely and opaquely covered: human genitals, pubic region; buttock; and female breast below a point immediately above the top of the areola; and
- {b} Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

"Specified Criminal Activity" means:

- {a} any of the following specified crimes for which less than five years elapsed since the date of conviction, or the date of release from confinement for the conviction, whichever is the later date:
 - {1} rape, sexual assault, public indecency, statutory rape, rape of a child, sexual exploitation of a minor, indecent exposure;
 - {2} prostitution, patronizing prostitution, promoting prostitution;
 - {3} obscenity;
 - {4} dealing in controlled substances;
 - {5} racketeering, tax evasion, money laundering;
- {b} any attempt, solicitation, or conspiracy to commit one of the foregoing offenses; or
- {c} any offense in another jurisdiction that, had the predicate act(s) been committed in Indiana would have constituted any of the foregoing offenses.

"Specified Sexual Activity" means any of the following:

- {a} intercourse, oral copulation, masturbation or sodomy; or
- {b} excretory functions as a part of or in connection with any of the activities described in (a) above.

"Substantial" means at least thirty-five percent (35%) of the item(s) so modified.

"Transfer Of Ownership or Control" of a sexually oriented business shall mean any of the following:

- {a} The sale, lease, or sublease of the business;
- {b} The transfer of securities which constitute an influential interest in the business, whether by sale, exchange, or similar means; or
- {c} The establishment of a trust, gift, or other similar legal device which transfers the ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.

Viewing Room" shall mean the room, booth, or area where a patron of sexually oriented business ordinarily would be positioned while watching a film, videocassette, or other video reproduction.

Section 3. Classifications.

The classifications for sexually oriented businesses shall be as follows:

- {a} Adult bookstore;
- {b} Adult cabaret;
- {c} Adult motel;
- {d} Adult mini motion picture theater;
- {e} Adult motion picture theater;
- {f} Adult service establishment;
- {g} Semi-nude model studio;
- {h} Sexual device shop;
- {i} Sexual encounter center.

Section 4. Resolution License Required.

{a} It shall be unlawful for any person to operate a sexually oriented business in the Town of Greenville, Indiana without a valid sexually oriented business Resolution License.

{b} It shall be unlawful for any person to be an "employee," as defined in this Ordinance, of a sexually oriented business in the Town of Greenville, Indiana without a valid sexually oriented business employee Resolution License.

{c} An applicant for a sexually oriented business Resolution License or a sexually oriented business employee Resolution License shall file in person at the office of the Greenville Town Clerk/Treasurer requesting a Town of Greenville Council to pass a Town of Greenville Resolution License. A completed application made on a form provided by the Town of Greenville Clerk/Treasurer shall be submitted to the Greenville Town Council for preparation of the Resolution License to be considered at the next Town of Greenville Council Meeting. The application shall be signed as required by subsection (e) herein and shall be notarized. An application shall be considered complete when it contains, for each person required to sign the application, the information and/or items required in Paragraphs 1 through 7 below, accompanied by the appropriate fee identified in Section 6: If completed application meets all ordinance requirements a resolution shall be passed and must be posted at entry of the place of business. Resolution License must be renewed each year on anniversary date.

{1} The applicant's full true name and any other names used by the applicants in the preceding five (5) years.

{2} Current business address or mailing address of the applicant.

{3} Written proof of age, in the form of a driver's license or a copy of a birth certificate accompanied by a picture identification document issued by a governmental agency.

{4} If the application is for a sexually oriented business license, the business name, location, legal description, mailing address and phone number of the sexually oriented business.

{5} Application is for a sexually oriented business Resolution License shall provide the name and business address of the statutory agent or other agent authorized to receive service of process.

{6} A statement of whether an applicant has ever been convicted of or has pled guilty or nolo contendere to a specified criminal activity as defined in this ordinance, and if so, each specified criminal activity involved, including the date, place, and jurisdiction of each as well as the dates of conviction and release from confinement, where applicable.

{7} A statement of whether any sexually oriented business in which an applicant has had an influential interest has, in the previous five (5) years (and at a time during which the applicant had the influential interest):

- (i) been declared by a court of law to be a nuisance; or
- (ii) been subject to a court order of closure or padlocking.

The information provided pursuant to Paragraphs 1 through 7 of this subsection shall be supplemented in writing by certified mail, return receipt requested, to the Greenville Clerk/ Treasurer within ten (10) working days of a change of circumstances which would render the information originally submitted false or incomplete.

{d} An application for a sexually oriented business license shall be accompanied by a legal description of the property where the business is located and a sketch or diagram showing the configuration of the premises, including a statement of total floor space occupied by the business. The sketch or diagram need not be professionally prepared but shall be drawn, to a

designated scale or drawn with marked dimensions of the exterior of the premises to an accuracy of plus or minus six (6) inches. Applicants who are required to comply with Sections 14 and 18 of this ordinance shall submit a diagram indicating that the interior configuration meets the requirements of those sections.

{e} If a person who wishes to operate a sexually oriented business is an individual, he shall sign the application for a Resolution License as applicant. If a person who wishes to operate a sexually oriented business is other than an individual, each person with an influential interest in the business shall sign the application for a license as applicant. Each applicant must be qualified under Section 5 and each applicant shall be considered a licensee if a Resolution License is granted.

{f} The information provided by an applicant in connection with an application for a Resolution License under this ordinance shall be maintained by the Greenville Town Hall of the Greenville Clerk/Treasurer on a confidential basis, and such information may be disclosed only as may be required, and only to the extent required, by law or court order.

Section 5. Issuance of Resolution License.

{a} Upon the filing of a completed application under Section 4(c) for a sexually oriented business Resolution License, the Greenville Town Council shall within 30 days after approval of the Resolution License to the applicant. The Greenville Town Council shall issue a Resolution License unless:

- {1} An applicant is less than eighteen (18) years of age.
- {2} An applicant has failed to provide information as required by Section 4 for issuance of a Resolution License or has falsely answered a question or request for information on the application form.
- {3} The Resolution License application fee required by this Ordinance has not been paid.
- {4} The sexually oriented business, as defined herein, is not in compliance with the interior configuration requirements of this Ordinance or is not in compliance with locational requirements of this ordinance or the locational requirements of any other Town of Greenville, Indiana ordinances.
- {5} Any sexually oriented business in which the applicant has had an influential interest, has, in the previous five (5) years (and at a time during which the applicant had the influential interest):
 - (i) been declared by a court of law to be a nuisance; or
 - (ii) been subject to an order of closure or padlocking.
- {6} The applicant has been convicted of or pled guilty or nolo contendere to a specified criminal activity, as defined in this ordinance.
- {7} The Greenville Town Council shall either issue a Resolution License or issue a written notice of denial of a Resolution License to the applicant with cause for denial. The Resolution License if approved shall contain the following:
 - (a) The Resolution License, if granted, shall state on its face the name of the person or persons to whom it is granted, the number of the Resolution License issued to the licensee(s), the expiration date, and, the address of the sexually oriented business. The sexually oriented business Resolution License shall be posted in a conspicuous place at or near the entrance to the sexually oriented business so that it may be read at any time. A sexually oriented business employee shall keep the employee's license on his or her person or on the premises where the licensee is then working or performing.

Section 6. Fees.

{a} The initial Resolution License and annual renewal fees for sexually oriented business Resolution Licenses; and sexually oriented business employee Resolution Licenses shall be as follows: Five Thousand U.S. Dollars (\$5,000) for; the initial fee for a sexually oriented business Resolution License and Two Thousand Five Hundred U.S. Dollars; (\$2,500) for annual; renewal; Five Hundred U.S. Dollars (\$500.00) for the initial sexually oriented business employee Resolution License and Five Hundred U.S. Dollars (\$500.00) for annual renewal.

Section 7. Inspection.

Sexually oriented businesses and sexually oriented business employees shall permit the Greenville Town Council or its designee (Greenville Marshal Department) to inspect, from time to time on an occasional basis, the portions of the sexually oriented business premises where patrons are permitted, for the purpose of ensuring compliance with the specific regulations of this Ordinance, during those times when the sexually oriented business is occupied by patrons or is open to the public. This section shall be narrowly construed by the Town of Greenville, Indiana Council to authorize reasonable inspections of the Resolution Licensed premises pursuant to this ordinance, but not to authorize a harassing or excessive pattern of inspections.

Section 8. Expiration of Resolution License.

- {a} Each Resolution License shall remain valid for a period of one calendar year from the date of passage unless otherwise suspended or revoked. Such Resolution License may be renewed only by making application and payment of a fee as provided in Section 4 and Section 6.
- {b} Application for renewal should be made pursuant to the procedures set forth in Section 4 at least ninety (90) days before the expiration date, and when made less than ninety (90) days before the expiration date, the expiration of the Resolution License will not be affected.

Section 9. Suspension Resolution License.

- {a} The Town of Greenville, Indiana Council shall issue a written letter of intent to suspend a sexually oriented business Resolution License for a period not to exceed thirty (30) days if the sexually oriented business Resolution Licensee has knowingly violated this ordinance or has knowingly allowed an employee to violate this Ordinance.
- {b} The Town of Greenville, Indiana Council shall issue a written letter of intent to suspend a sexually oriented business employee Resolution License if the employee has knowingly violated this Ordinance.

Section 10. Revocation Resolution License.

(a) The Town of Greenville, Indiana Council shall issue a letter of intent to revoke a sexually oriented business Resolution License or a sexually oriented business employee license, as applicable, if the Resolution Licensee knowingly violates this ordinance or has knowingly allowed an employee to violate this ordinance and the licensee's Resolution License has been suspended within the previous twelve month (12-month) period.

(b) The Town of Greenville, Indiana Council shall issue written intent to revoke a sexually oriented business Resolution License or a sexually oriented business employee Resolution License, as applicable, if:

(1) The Resolution Licensee has knowingly given false information in the application for the sexually oriented business Resolution License.

(2) The Resolution Licensee has knowingly or recklessly engaged in or allowed possession, use, or sale of controlled substances on the premises;

(3) The Resolution Licensee has knowingly or recklessly engaged in or allowed prostitution on the premises;

(4) The Resolution Licensee knowingly or recklessly operated the sexually oriented business during a period of time when the Resolution License was finally suspended or revoked; or

(5) The Resolution Licensee has knowingly or recklessly engaged in or allowed any specified sexual activity to occur in or on the Resolution Licensed premises.

(c) The fact that any relevant conviction is being appealed shall have no effect on the revocation of the Resolution License, provided that, if any conviction which serves as a basis of a Resolution License revocation is overturned or reversed on appeal, that conviction shall be treated as null and of no effect for revocation purposes.

(d) When, after the notice and hearing procedure described in Section 11, the Town of Greenville, Indiana Council revokes a license, the revocation shall continue for one (1) year and the licensee shall not be issued a sexually oriented business Resolution License or sexually oriented business employee license for one (1) year from the date revocation becomes effective.

Section 11. Hearing: Resolution License denial, revocation, and suspension: appeal.

(a) When the Town of Greenville Council issues a written notice of intent to deny, suspend, or revoke a Resolution License, the Town of Greenville Council shall immediately send such notice, which shall include the specific grounds under this ordinance for such action, to the applicant or Resolution Licensee (respondent) by personal delivery or certified mail. The notice shall be directed to the most current business address or other mailing address on file with the Town of Greenville Council Clerk/Treasurer for the respondent. The notice shall specify a date, not less than ten (10) days nor more than twenty (20) days after the date the notice is issued, on which the Town of Greenville Council shall conduct a hearing on the Town of Greenville Council's intent to deny, suspend, or revoke the license.

At the hearing, the respondent shall have the opportunity to present all of respondent's arguments and to be represented by counsel, present evidence and witnesses on his or her behalf, and cross-examine any of the Town of Greenville Council's witnesses. The Town of Greenville Council shall also be represented by counsel, and shall bear the burden of proving the grounds for denying, suspending, or revoking the Resolution License. The hearing shall take no longer than two (2) days, unless extended at the request of the respondent to meet the requirements of due process and proper administration of justice. The Town of Greenville Council shall issue a written decision, including specific reasons for the decision pursuant to

this ordinance, to the respondent within five (5) days after the hearing. Ten (10) days after the Board issues its written decision, said decision shall be deemed final and any Temporary License shall expire.

If the decision is to deny, suspend, or revoke the license, the decision shall include a statement advising the respondent of the right to appeal or challenge such decision in a court of competent jurisdiction. If the Town of Greenville Council's decision finds that no grounds exist for denial, suspension, or revocation of the license, the Town of Greenville Council shall, contemporaneously with the issuance of the decision, order the Town of Greenville Council to immediately withdraw the intent to deny, suspend, or revoke the license and to notify the respondent in writing by certified mail of such action. If the respondent is not yet Resolution Licensed, the Town of Greenville Council shall contemporaneously therewith issue the Resolution License to the applicant.

(b) If any court action challenging the Town of Greenville Council's decision is initiated, the Town of Greenville Council shall prepare and transmit to the court a transcript of the hearing within ten (10) days after receiving written notice of the filing of the court action. The Town of Greenville Council shall consent to expedited briefing and/or disposition of the action, shall comply with any expedited schedule set by the court, and shall facilitate prompt judicial review of the proceedings. The following shall apply to any sexually oriented business that is lawfully in operation, in all respects, as of the effective date of this ordinance: Upon the filing of any court action to appeal, challenge, restrain, or otherwise enjoin the Town of Greenville, Indiana's enforcement of the denial, suspension, or revocation, the Town of Greenville, Indiana shall immediately issue the respondent a Provisional License. The Provisional License shall allow the respondent to continue operation of the sexually oriented business or to continue employment as a sexually oriented business employee and will expire upon the court's entry of a judgment on the respondent's appeal or other action to restrain or otherwise enjoin the Town of Greenville, Indiana's enforcement.

Section 12. Transfer of Resolution License.

A Resolution Licensee shall not transfer his or her Resolution License to another, nor shall a Resolution Licensee operate a sexually oriented business under the authority of a Resolution License at any place other than the address designated in the sexually oriented business Resolution License application.

Section 13. Hours of Operation.

No sexually oriented business shall be or remain open for business between 12:00 midnight and 6:00 a.m. on any day.

Section 14. Regulations pertaining to exhibition of sexually explicit films or videos.

(a) A person who operates or causes to be operated a sexually oriented business, other than an adult motel, which exhibits on the premises, through any mechanical or electronic image-producing device, a film, video cassette, or other visual reproduction characterized by an emphasis on the display of specified sexual activities or specified anatomical areas shall comply with the following requirements.

(1) Each application for a sexually oriented business Resolution License shall contain a diagram of the premises showing the location of all operator's stations, viewing rooms, overhead lighting fixtures, video cameras and monitors installed for monitoring purposes and restrooms, and shall designate all portions of the premises in which patrons will not be permitted. Restrooms shall not contain video reproduction equipment. The diagram shall also designate the place at which the Resolution License will be conspicuously posted, if granted. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however, each diagram shall be oriented to the north or to some designated street or object and shall be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of

the premises to an accuracy of plus or minus six inches. The Town of Greenville Council may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared.

(2) It shall be the duty of the operator, and of any employees present on the premises, to ensure that no patron is permitted access to any area of the premises which has been designated as an area in which patrons will not be permitted in the application filed pursuant to Paragraph 1 of this subsection.

(3) The interior premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than five (5.0) foot candles as measured at the floor level. It shall be the duty of the operator, and of any employees present on the premises, to ensure that the illumination described above is maintained at all times that the premises is occupied by patrons or open for business.

(4) It shall be the duty of the operator, and of any employees present on the premises, to ensure that no specified sexual activity occurs in or on the Resolution Licensed premises.

(5) It shall be the duty of the operator to post conspicuous signs in well-lighted entry areas of the business stating all of the following:

- (i) That the occupancy of viewing rooms is limited to one person,
- (ii) That sexual activity on the premises is prohibited,
- (iii) That the making of openings between viewing rooms is prohibited,
- (iv) That violators will be required to leave the premises,
- (v) That violations of Subparagraphs (i), (ii) and (iii) of this paragraph, are unlawful.

(6) It shall be the duty of the operator to enforce the regulations articulated in (5)(i) through (iv) above.

(7) The interior of the premises shall be configured in such a manner that there is an unobstructed view from a operator's station of every area of the premises, including the interior of each viewing room but excluding rest-rooms, to which any patron is permitted access for any purpose. An operator's station shall not exceed thirty-two (32) square feet of floor area. If the premises has two (2) or more operator's stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose from at least one of the operator's stations. The view required in this paragraph must be by direct line of sight from the operator's station. It is the duty of the operator to ensure that at least one employee is on duty and situated in each operator's station at all times that any patron is on the premises. It shall be the duty of the operator, and it shall also be the duty of any employees present on the premises, to ensure that the view area specified in this paragraph remains unobstructed by any doors, curtains, walls, merchandise, display racks or other materials or enclosures at all times that any patron is present on the premises.

(a) It shall be unlawful for a person having a duty under this section to knowingly fail to fulfill that duty.

Section 15. Loitering, exterior lighting, visibility, and monitoring requirements.

(a) It shall be the duty of the operator of a sexually oriented business to: (1) post conspicuous signs stating that no loitering is permitted on such property; (2) designate one or more employees to monitor the activities of persons on such property by visually inspecting such property at least once every ninety (90) minutes or inspecting such property by use of video cameras and monitors; and (3) provide lighting of the exterior premises to provide for visual inspection or video monitoring to prohibit loitering. If used, video cameras and monitors shall operate continuously at all times that the premises are open for business. The monitors shall be installed within an operator's station.

(b) It shall be unlawful for a person having a duty under this section to knowingly fail to fulfill that duty.

(c) No sexually oriented business shall erect a fence, wall, or other barrier that prevents any portion of the parking lot(s) for the establishment from being visible from a public right of way.

Section 16. Enforcement.

(a) Any sexually oriented business which engages in repeated or continuing violations of this ordinance shall constitute a public nuisance. For purposes of this ordinance, "repeated violations" shall mean three or more violations of this ordinance within a one (1) year period dating from the time of any violation, and a "continuing violation" shall mean a violation of this ordinance lasting for three or more consecutive days.

(b) The Town of Greenville, Indiana's legal counsel is hereby authorized to institute civil proceedings necessary for the enforcement of this ordinance to prosecute, restrain, or correct violations hereof. Such proceedings, including injunction, shall be brought in the name of the Town of Greenville, Indiana, provided, however, that nothing in this section and no action taken hereunder, shall be held to exclude such proceedings as may be authorized by other provisions of this ordinance, or any of the laws or ordinances in force in the Town of Greenville, Indiana or to exempt anyone violating this ordinance or any part of the said laws from any penalty which may be incurred.

Section 17. Applicability of ordinance to existing businesses.

This ordinance is necessary to the immediate preservation of the public health and safety, to prevent the negative secondary effects of sexually oriented businesses, and therefore shall become effective immediately upon passage. All sexually oriented businesses lawfully operating in all respects, and all sexually oriented business employees working in a lawfully operating sexually oriented business, on the effective date of this ordinance, are hereby granted a *De Facto* Temporary License to continue operation or employment without a Resolution License for a period of thirty (30) days following the effective date of this ordinance. By the end of said thirty (30) days, all sexually oriented businesses and sexually oriented business employees shall apply for a Resolution License under this ordinance. During said thirty (30) days, all requirements of this ordinance, except for the requirement of obtaining a Resolution License, shall be in full force and effect.

Section 18. Prohibited activities.

It is unlawful for a sexually oriented business to knowingly violate the following regulations or to knowingly allow an employee or any other person to violate the following regulations.

(a) It shall be a violation of this ordinance for a patron, employee, or any other person to knowingly or intentionally, in a sexually oriented business, appear in a state of nudity, regardless of whether such public nudity is expressive in nature.

(b) It shall be a violation of this ordinance for a person to knowingly or intentionally, in a sexually oriented business, appear in a semi-nude condition unless the person is an employee who, while semi-nude, remains at least six (6) feet from any patron or customer and on a stage at least eighteen (18) inches from the floor in a room of at least one thousand (1,000) square feet.

(c) It shall be a violation of this ordinance for any employee who regularly appears semi-nude in a sexually oriented business to knowingly or intentionally touch a customer or the clothing of a customer on the premises of a sexually oriented business.

(d) It shall be a violation of this ordinance for any person to sell, use, or consume alcoholic beverages on the premises of a sexually oriented business.

(e) It shall be a violation of this ordinance for any person to knowingly allow a person under 18 years of age to be or remain on the premises of a sexually oriented business.

A sign in a form to be prescribed by the Town of Greenville Council, and summarizing the provisions of Paragraphs (a), (b), (c), (d), and (e) of this Section, shall be posted near the entrance of the sexually oriented business in such a manner as to be clearly visible to patrons upon entry.

Section 19. Scilenter required to prove violation or business licensee liability.

This ordinance does not impose strict liability. Unless a culpable mental state is otherwise specified herein, a showing of a knowing or reckless mental state is necessary to establish a violation of a provision of this ordinance. Notwithstanding anything to the contrary, for the purposes of this ordinance, an act by an employee that constitutes grounds for suspension or revocation of that employee's resolution license shall be imputed to the sexually oriented Business Resolution Licensee for purposes of finding a violation of this ordinance, or for purposes of Resolution License denial, suspension, or revocation, only if an officer, director, or general partner, or a person who managed, supervised, or controlled the operation of the business premises, knowingly or recklessly allowed such act to occur on the premises. It shall be a defense to liability that the person to whom liability is imputed was powerless to prevent the act.

Section 20. Failure of Town of Greenville, Indiana to meet deadline not to risk applicant Resolution License rights.

In the event that a Town of Greenville, Indiana official is required to take an act or do a thing pursuant to this ordinance within a prescribed time, and fails to take such act or do such thing within the time prescribed, said failure shall not prevent the exercise of constitutional rights of an applicant or licensee. If the act required of the Town of Greenville, Indiana Council under this ordinance, and not completed in the time prescribed, includes approval of conditions necessary for approval by the Town of Greenville, Indiana Council of an applicant or Resolution Licensee's application for sexually oriented Business Resolution License or a sexually oriented business employee's Resolution License (including a renewal), the condition shall be deemed met the day after the deadline for the Town of Greenville, Indiana's Council action has passed.

Section 21. Location of sexually oriented businesses.

(a) Sexually oriented businesses shall not be issued a Special Resolution License. It shall be unlawful to operate a sexually oriented business except in the areas designated as mixed use by the Town of Greenville Land Use Map as General Commercial, Light Industrial and Mix Use. See attached map for these areas with hatch markings.

(b) It shall be unlawful to establish, operate, or cause to be operated a sexually oriented business in the Town of Greenville, Indiana, unless said sexually oriented business is at least:

(1) 500 feet from any parcel occupied by another sexually oriented business or by a business licensed by the State of Indiana to sell alcohol at the premises; and

(2) 500 feet from any parcel occupied by any church, public or private elementary or secondary school, daycare center or preschool, occupied residential home, or any public park.

(c) For the purpose of this section, measurements shall be made in a straight line in all directions without regard to intervening structures or objects, from the nearest portion of any building or structure on the premises where the sexually oriented business is located to the closest property line of the property containing the church, public or private elementary or secondary school, daycare center or preschool, occupied residential home or any public park.

(d) Notwithstanding anything to the contrary in any Town of Greenville, Indiana ordinance, a nonconforming sexually oriented business, lawfully existing in all respects under law prior to the effective date of this ordinance, may continue to operate for one (1) year following that date in order to make a reasonable recoupment of its investment in its current location. At the conclusion of said one (1) year, the use will no longer be recognized as a lawful nonconforming use, provided that a nonconforming sexually oriented business may apply for one or more six-month extensions of the original one year period upon a showing of financial hardship. An application for an initial extension based upon a showing of financial hardship ("hardship exception") shall be made at least sixty (60) days before the conclusion of the aforementioned one year (1-yr.) period. If a hardship extension is granted, subsequent applications for hardship extensions shall be made at least sixty (60) days before the conclusion of the non-conforming sexually oriented business's current extension period.

(e) Procedure for seeking hardship extension. An application for a hardship extension shall be filed in writing with the Town of Greenville, Indiana Council, and shall include evidence of purchase and improvement costs, income earned and lost, depreciation, and costs of relocation. Within ten (10) days after receiving the application, the Town of Greenville Council shall schedule a public hearing on the application before the Greenville, Indiana Town Council which public hearing shall be conducted within thirty (30) days after the Town of Greenville Council's receipt of the application. Notice of the time and place of such public hearing shall be published at least ten (10) days before the hearing in a newspaper of general circulation published within the Town of Greenville, Indiana, and shall contain the particular location for which the hardship extension is requested.

The Town of Greenville, Indiana Council shall issue a written decision within ten (10) days after the public hearing on the application for a hardship extension. The hardship extension shall be granted upon a showing that the nonconforming sexually oriented business is unable, absent the extension, to make a reasonable recoupment of its investment in its currently lawful, nonconforming use location.

Section 22. Severability.

This ordinance and each section and provision of said ordinance hereunder, are hereby declared to be independent divisions and subdivisions and, notwithstanding any other evidence of legislative intent, it is hereby declared to be the controlling legislative intent that if any provisions of said ordinance, or the application thereof to any person or circumstance is held to be invalid, the remaining sections or provisions and the application of such sections and provisions to any person or circumstances other than those to which it is held invalid, shall not be affected thereby, and it is hereby declared that such sections and provisions would have been passed independently of such section or provision so known to be invalid. Should any procedural aspect of this ordinance be invalidated, such invalidation shall not affect the enforceability of the substantive aspects of this ordinance.

Section 23. Conflicting code provisions.

In the event of any conflict between any provision of this ordinance and any provision(s) in another Town of Greenville, Indiana Ordinance, the provisions of this ordinance shall prevail.

Section 24. Effective date, Enforcement, Fines and Penalties.

ENFORCEMENT:

Enforcement of this Ordinance shall be pursuant to I.C. 36-8-2-4, I.C. 36-8-2-10, I.C. 36-8-2-13, I.C.36-1-6-2, I.C.36-1-6-3, I.C.36-1-6-4, or a successor statute if said statute is repealed.

Fines and Penalties:

1. The Town of Greenville Council shall give all persons holding a substantial interest in any Real property, which is not in compliance with this Ordinance ten {10} days written notice to correct the condition and bring the property into compliance. Such notice may be in person by any member of the Greenville Marshal Department, or by mailing it by registered or certified mail with return receipt requested.

2. That for each day any person or entity shall be in violation of this Ordinance after the ten {10} day period set forth in paragraph one {1} above, said person shall be fined an amount not less than \$1,000.00 US Dollars {\$1,000.00} per day plus Attorney fees and Court Cost.

3. If levied fines are not paid within 30 days, a lien will be sought against person or person's responsible real estate in accordance with I.C. 36-1-6-2.

4. Furthermore, if the condition of said real estate has not been corrected within thirty {30} days after the afore-said ten {10} day notice period, the Town of Greenville Council may cause to be certified to the County Auditor as a charge against the taxes due and payable to the County Treasurer in the following year together with Attorney Fees and Court Cost in accordance with IC 36-1-6-2 or successor statute, if said statute is repealed.

5. The Town of Greenville may pursue any and all penalties described in I.C. 36-1-6-3 in addition to the penalties described in I.C. 36-1-6-4, or a successor statute if said statute is repealed.

6. No penalty shall be levied for violation of this Ordinance, nor shall any action be taken by the Town to bring the real property into compliance with this Ordinance, unless all persons holding a substantial interest in the property are given a reasonable opportunity to bring the property into compliance.

7. This Ordinance replaces Ordinance 2006-T-62 and 2006-T-62A. Ordinance 2006-T-62 and 2006-T-62A shall be moved to the voided Ordinance file after passage of this Ordinance.

8. The Town of Greenville Clerk/Treasurer shall publish this Ordinance within 30 days in the New Albany Tribune after passage.

9. The Town of Greenville Clerk/Treasurer shall attach a copy of the publication and related information to the original signed Ordinance and a PDF file shall be added to the electronic file copy of this Ordinance.

ADOPTED BY THE TOWN COUNCIL OF GREENVILLE, INDIANA, ON THE 18th DAY OF JULY, 2011.

PRESIDENT OF THE TOWN COUNCIL OF GREENVILLE, INDIANA

TALBOTTE RICHARDSON,

JACK TRAVILLIAN,

CLERK/TREASURER

PREPARED BY: RANDAL JOHNES

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NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF GREENVILLE, INDIANA, AS FOLLOWS

Section 1. Rationale and Findings:

(a) **Purpose.** It is the purpose of this ordinance to regulate sexually oriented businesses in order to promote the health, safety, moral, and general welfare of the citizens of the Town of Greenville, and to establish reasonable and uniform regulations to prevent the deleterious secondary effects of sexually oriented businesses within the Town of Greenville. 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.

(b) **Findings and Rationale.** Based on evidence of the adverse secondary effects of adult uses presented in hearings and in reports made available to the Town of Greenville Council, and on findings, interpretations, and narrowing constructions incorporated in the cases of *City of Littleton v. Z.J. Gifts D-4, L.L.C.*, 124 S.Ct. 2219 (June 7, 2004); *City of Los Angeles v. Alameda Books, Inc.*, 535 U.S. 425 (2002); *Pap's AM v. City of Erie*, 529 U.S. 277 (2000); *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986), *Young v. American Mini Theatres*, 426 U.S. 50 (1976), *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560 (1991); *California v. LaRue*, 409 U.S. 109 (1972); and

Schultz v. City of Cumberland, 26 F.Supp.2d 1128 (W.D. Wise. 1998), *aff'd in part, rev'd in part*, 228 F.3d 831 (7th Cir. 2000); *Blue Canary Corp. v. City of Milwaukee*, 270 F.3d 1156 (7th Cir. 2001); *Matney v. County of Kenosha*, 86 F.3d 692 (7th Cir. 1996); *Berg v. Health & Hospital Corp.*, 865 F.2d 797 (1989); *DiMa Corp. v. Town of Hallie*, 185 F.3d 823 (1999); *Graff v. City of Chicago*, 9 F.3d 1309 (1993); *North Avenue Novelties, Inc. v. City of Chicago*, 88 F.3d 441 (1996); *Chulchian v. City of Indianapolis*, 633 F.2d 27 (7th Cir. 1980); *Bigg Wolf Discount Video v. Montgomery County*, 256 F. Supp. 2d 385 (D. Md. 2003); *County of Cook v. Renaissance Arcade and Bookstore*, 122 D.I. 2d 123 (1988) (including cases cited therein); *World Wide Video of Washington, Inc. v. City of Spokane*, 368 F.3d 1186 (9th Cir. 2004); *Ben's*

Bar, Inc. v. Village of Somerset, 316 F.3d 702 (7th Cir. 2003); *People ex rel Deters v. Effingham Retail 27, Inc.*, No. 04-CH-26 (4th Judicial Circuit, Effingham County, Ill., June 13, 2005); *Annex Books, Inc. v. City of Indianapolis*, No. 1:03-CV-918, Summary Judgment Order, Aug. 27, 2004 and Order Denying Motion to Alter or Amend, Mar. 31, 2005 (S.D. Ind.); *Andy's Lounge et al. v. City of Gary*, No. 2:01-CV-327, Order Granting Summary Judgment, Mar. 31, 2005 (N.D. Ind.); *LLEH, Inc. v. Wichita County*, 289 F.3d 358 (5th Cir. 2002); *World Wide Video of Washington, Inc. v. City of Spokane*, 368 F.3d 1186 (9th Cir. 2004); *Ben's Bar, Inc. v. Village of Somerset*, 316 F.3d 702 (7th Cir. 2003); *Abilene Retail #30, Inc. v. Board of Commissioners*, 2005 U.S. Dist. LEXIS 30491 (D. Kan., Dec. 1, 2005); and based upon reports concerning secondary effects occurring in and around sexually oriented businesses, including, but not limited to, Austin, Texas - 1986; Indianapolis, Indiana - 1984; Garden Grove, California - 1991; Houston, Texas - 1983, 1997; Phoenix, Arizona - 1979, 1995-98; Chattanooga, Tennessee - 1999-2003; Minneapolis, Minnesota - 1980; Los Angeles, California - 1977; Whittier, California - 1978; Spokane, Washington - 2001; St. Cloud, Minnesota - 1994; Littleton, Colorado - 2004; Oklahoma City, Oklahoma - 1986; Dallas, Texas - 1997; Greensboro, North Carolina - 2003; Amarillo, Texas - 1977; New York, New York Times Square - 1994; and the Report of the Attorney General's Working Group On The Regulation Of Sexually Oriented Businesses, (June 6, 1989, State of Minnesota)

The Town of Greenville, Indiana Council finds:

{1} Sexually oriented businesses, as a category of commercial uses, are associated with a wide variety of adverse secondary effects including, but not limited to, personal and property crimes, prostitution, potential spread of disease, lewdness, public indecency, obscenity, illicit drug use and drug trafficking, negative impacts on surrounding properties, urban blight, litter, and sexual assault and exploitation.

{2} Sexually oriented businesses should be separated from sensitive land uses to minimize the impact of their secondary effects upon such uses, and should be separated from other sexually oriented businesses, to minimize the secondary effects associated with such uses and to prevent an unnecessary concentration of sexually oriented businesses in one area.

{3} Each of the foregoing negative secondary effects constitutes a harm which the Town of Greenville, Indiana has a substantial government interest in preventing and/or abating. This substantial government interest in preventing secondary effects, which is the Town of Greenville, Indiana's rationale for this ordinance, exists independent of any comparative analysis between sexually oriented and non-sexually oriented businesses. Additionally, the Town of Greenville, Indiana's interest in regulating sexually oriented businesses extends to preventing future secondary effects of either current or future sexually oriented businesses that may locate in the Town of Greenville, Indiana. The Town of Greenville, Indiana finds that the cases and documentation relied on in this ordinance are reasonably believed to be relevant to said secondary effects.

{4} The following reports; {1} Madison Wisconsin Planning and Zoning Commission Report 02-14-2011 Concerning Sexually Oriented Businesses and sub-reports mentioned there-in. {2} Adult Entertainment Businesses in Indianapolis 1984 an analysis and appendixes. {3} Crime Related Secondary Effects of Sexually Oriented Business Report to the City Attorney City of Los Angeles May 6th, 2007. {4} Greenville Comprehensive Land Use Map for 2011-TO-019 hereby are incorporated by reference and part of this Ordinance {2011-TO-019}.

Section 2. Definitions.

For purposes of this ordinance, the words and phrases defined in the sections hereunder shall have the meanings therein respectively ascribed to them unless a different meaning is clearly indicated by the context.

"The Town of Greenville Council" means the Town of Greenville, Indiana Council.

"Adult Bookstore" means a commercial establishment which, as a principal part of its business, offers for sale or rental for any form of consideration any one or more of the following: books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, compact discs, digital video discs, slides, or other visual representations which are characterized by their emphasis upon the display of "specified sexual activities" or "specified anatomical areas."

A "principal part of its business" means that the commercial establishment:

- (a) has at least 35% of its displayed merchandise which consists of said items, or
- (b) has at least 35% of the wholesale value of its displayed merchandise which consists of said items, or
- (c) has at least 35% of the retail value of its displayed merchandise which consists of said items, or
- (d) derives at least 35% of its revenues from the sale or rental, for any form of consideration of said items, or
- (e) maintains a section of at least 35% of its interior business space for the sale or rental of said items; or
- (f) maintains an "adult arcade," which means any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are regularly maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are characterized by their emphasis upon matter exhibiting "specified sexual activities" or specified "anatomical areas."

"Adult Cabaret" means a nightclub, bar, juice bar, restaurant, bottle club, or other commercial establishment, whether or not alcoholic beverages are served, which regularly features persons who appear semi-nude.

"Adult Mini Motion Picture Theater" means any commercial establishment which regularly offers rooms with a capacity of more than 5 but less than 50 persons, wherein films, motion pictures, video cassettes, slides, or similar visual images that are distinguished or characterized by an emphasis on specified sexual activities or anatomical areas are regularly presented for observation by patrons therein.

"Adult Motel" means a motel, hotel, or similar commercial establishment which:

- (a) offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, other photographic reproductions, or live performances which are characterized by the display of "specified sexual activities" or "specified anatomical areas"; and which advertises the availability of such material by means of a sign visible from the public right-of-way, or by means of any on or off-premises advertising, including but not limited to, newspapers, magazines, pamphlets or leaflets, radio or television; or
- (b) offers a sleeping room for rent for a period of time that is less than 10 hours; or
- (c) allows a tenant or occupant of a sleeping room to sub rent the room for a period of time that is less than 10 hours.

"Adult Motion Picture Theater" means a commercial establishment where films, motion pictures, videocassettes, slides, or similar photographic reproductions which are characterized by their emphasis upon the display of "specified sexual activities" or "specified anatomical areas" are regularly shown to more than five persons for any form of consideration.

"Adult Service Establishment" means any building, premises, structure, or other facility that uses at least 35% of the building, premises, structure, or other facility for commercial activities involving the display of specified sexual activities or specified anatomical areas.

"Town of Greenville Council" means the Town Council of the Town of Greenville, Indiana, Indiana.

"Characterized by" means describing the essential character or quality of an item. As applied in this ordinance, no business shall be classified as a sexually oriented business by virtue of showing, selling or renting materials rated NC-17 or R by the Motion Picture Association of America.

Employ, Employee, and Employment" describes and pertain to any person who performs any service on the premises of a sexually oriented business, on a full time, part time, or contract basis, whether or not the person is denominated an employee, independent contractor, agent, or otherwise. Employee does not include a person exclusively on the premises for repair or maintenance of the premises or for the delivery of goods to the premises.

"Establish or Establishment" shall mean and include any of the following:

- (a) The opening or commencement of any sexually oriented business as a new business;
- (b) The conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business; or
- (c) The addition of any sexually oriented business to any other existing sexually oriented business.

"Hearing Body" shall mean the Town Council of the Town of Greenville, Indiana.

"Influential Interest" means any of the following: (1) the actual power to operate the sexually oriented business or control the operation, management or policies of the sexually oriented business or legal entity which operates the sexually oriented business, (2) ownership of a financial interest of thirty percent (30%) or more of a business or of any class of voting securities of a business, or (3) holding an office (e.g., president, vice president, secretary, treasurer, managing member, managing director, etc.) in a legal entity which operates the sexually oriented business.

"Licensee" shall mean a person in whose name a Resolution License to operate a sexually oriented business has been issued, as well as the individual or individuals listed as an applicant on the application for a sexually oriented business Resolution License. In case of an "employee," it shall mean the person in whose name the sexually oriented business employee Resolution License has been issued.

"Nudity or a State of Nudity" means the showing of the human male or female genitals, pubic area, vulva, anus, anal cleft or cleavage with less than a fully opaque covering, or the showing of the female breast with less than a fully opaque covering of any part of the nipple.

"Operate or Cause to Operate" shall mean to cause to function or to put or keep in a state of doing business.

"Operator" means any person on the premises of a sexually oriented business who causes the business to function or who puts or keeps in operation the business or who is authorized to manage the business or exercise overall operational control of the business premises. A person may be found to be operating or causing to be operated a sexually oriented business whether or not that person is an owner, part owner, or Resolution Licensee of the business.

"Person" shall mean individual, proprietorships, partnerships, corporation, association, or other legal entity.

"Premises" means the real property upon which the sexually oriented business is located, and all appurtenances thereto and buildings thereon, including, but not limited to, the sexually oriented business, the grounds, any trailers, private walkways, and parking lots and/or parking garages adjacent thereto, under the ownership, control, or supervision of the licensee, as described in the application for a business Resolution License pursuant to Section 4 of this ordinance.

"Regularly" means and refers to the consistent and repeated doing of the act so described.

"Semi-Nude or State of Semi-Nudity" means the showing of the female breast below a horizontal line across the top of the areola and extending across the width of the breast at that point, or the showing of the male or female buttocks. This definition shall include the lower portion of the human female breast, but shall not include any portion of the cleavage of the human female breasts exhibited by a bikini, dress, blouse, shirt, leotard, or similar wearing apparel provided the areola is not exposed in whole or in part.

"Semi-Nude Model Studio" means a place where persons regularly appear in a state of semi-nudity for money or any form of consideration in order to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons.

This definition does not apply to any place where persons appearing in a state of semi-nudity did so in a modeling class operated:

- (a) By a college, junior college, or university supported entirely or partly by taxation;
- (b) By a private college or university which maintains and operates educational programs in which credits are transferable to college, junior college, or university supported entirely or partly by taxation; or
- (c) In a structure:
 - (1) Which has no sign visible from the exterior of the structure and no other advertising that indicates a semi-nude person is available for viewing; and
 - (2) Where, in order to participate in a class a student must enroll at least three days in advance of the class.

"Sexual Device" means any three (3) dimensional object designed and marketed for stimulation of the male or female human genital organ or anus or for sadomasochistic use or abuse of oneself or others and shall include devices such as dildos, vibrators, penis pumps, and physical representations of the human genital organs. Nothing in this definition shall be construed to include devices primarily intended for protection against sexually transmitted diseases or for preventing pregnancy.

"Sexual Device Shop" means a commercial establishment that regularly features sexual devices. Nothing in this definition shall be construed to include any pharmacy, drug store, medical clinic, or any establishment primarily dedicated to providing medical or healthcare products or services, nor shall this definition be construed to include commercial establishments which do not restrict access to any portion of their premises by reason of age.

"Sexual Encounter Center" shall mean a business or commercial enterprise that, as one of its principal business purposes, purports to offer for any form of consideration, physical contact in the form of wrestling or tumbling between persons of the opposite sex when one or more of the persons is semi-nude.

"Sexually Oriented Business" means an "adult bookstore," an "adult cabaret," an "adult mini motion picture theater," an "adult motel," an "adult motion picture theater," an "adult service establishment," a "semi-nude model studio," a "sexual device shop," or a "sexual encounter center," as defined in this ordinance. The term "sexually oriented business" shall also include an "adult drive-in theater," an "adult live entertainment arcade," and an "adult motion picture arcade".

"Specified Anatomical Areas" means and includes:

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

(b) Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

"Specified Criminal Activity" means:

(a) any of the following specified crimes for which less than five years elapsed since the date of conviction, or the date of release from confinement for the conviction, whichever is the later date:

(1) rape, sexual assault, public indecency, statutory rape, rape of a child, sexual exploitation of a minor, indecent exposure;

(2) prostitution, patronizing prostitution, promoting prostitution;

(3) obscenity;

(4) dealing in controlled substances;

(5) racketeering, tax evasion, money laundering;

(b) any attempt, solicitation, or conspiracy to commit one of the foregoing offenses; or

(c) any offense in another jurisdiction that, had the predicate act(s) been committed in Indiana would have constituted any of the foregoing; offenses.

"Specified Sexual Activity" means any of the following:

(a) intercourse, oral copulation, masturbation or sodomy; or

(b) excretory functions as a part of or in connection with any of the activities described in (a) above.

"Substantial" means at least thirty-five percent (35%) of the item(s) so modified.

"Transfer Of Ownership or Control" of a sexually oriented business shall mean any of the following:

(a) The sale, lease, or sublease of the business;

(b) The transfer of securities which constitute an influential interest in the business, whether by sale, exchange, or similar means; or

(c) The establishment of a trust, gift, or other similar legal device which transfers the ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.

"Viewing Room" shall mean the room, booth, or area where a patron of sexually oriented business ordinarily would be positioned while watching a film, videocassette, or other video reproduction.

Section 3. Classifications.

The classifications for sexually oriented businesses shall be as follows:

(a) Adult bookstore;

(b) Adult cabaret;

(c) Adult motel;

(d) Adult mini motion picture theater;

(e) Adult motion picture theater;

(f) Adult service establishment;

(g) Semi-nude model studio;

(h) Sexual device shop;

(i) Sexual encounter center.

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Section 4. Resolution License Required.

(a) It shall be unlawful for any person to operate a sexually oriented business in the Town of Greenville, Indiana without a valid sexually oriented business Resolution License.

(b) It shall be unlawful for any person to be an "employee," as defined in this Ordinance, of a sexually oriented business in the Town of Greenville, Indiana without a valid sexually oriented business employee Resolution License.

(c) An applicant for a sexually oriented business Resolution License or a sexually oriented business employee Resolution License shall file in person at the office of the Greenville Town Clerk/Treasurer requesting a Town of Greenville Council to pass a Town of Greenville Resolution License. A completed application made on a form provided by the Town of Greenville Clerk/Treasurer shall be submitted to the Greenville Town Council for preparation of the Resolution License to be considered at the next Town of Greenville Council Meeting. The application shall be signed as required by subsection (e) herein and shall be notarized. An application shall be considered complete when it contains, for each person required to sign the application, the information and/or items required in Paragraphs 1 through 7 below, accompanied by the appropriate fee identified in Section 6: If completed application meets all ordinance requirements a resolution shall be passed and must be posted at entry of the place of business. Resolution License must be renewed each year on anniversary date.

{1} The applicant's full true name and any other names used by the applicants in the preceding five (5) years.

{2} Current business address or mailing address of the applicant.

{3} Written proof of age, in the form of a driver's license or a copy of a birth certificate accompanied by a picture identification document issued by a governmental agency.

{4} If the application is for a sexually oriented business license, the business name, location, legal description, mailing address and phone number of the sexually oriented business.

{5} Application is for a sexually oriented business Resolution License shall provide the name and business address of the statutory agent or other agent authorized to receive service of process.

{6} A statement of whether an applicant has ever been convicted of or has pled guilty or nolo contendere to a specified criminal activity as defined in this ordinance, and if so, each specified criminal activity involved, including the date, place, and jurisdiction of each as well as the dates of conviction and release from confinement, where applicable.

{7} A statement of whether any sexually oriented business in which an applicant has had an influential interest has, in the previous five (5) years (and at a time during which the applicant had the influential interest):

(i) been declared by a court of law to be a nuisance; or

(ii) been subject to a court order of closure or padlocking.

The information provided pursuant to Paragraphs 1 through 7 of this subsection shall be supplemented in writing by certified mail, return receipt requested, to the Greenville Clerk/ Treasurer within ten (10) working days of a change of circumstances which would render the information originally submitted false or incomplete.

{d} An application for a sexually oriented business license shall be accompanied by a legal description of the property where the business is located and a sketch or diagram showing the configuration of the premises, including a statement of total floor space occupied by the business. The sketch or diagram need not be professionally prepared but shall be drawn, to a

designated scale or drawn with marked dimensions of the exterior of the premises to an accuracy of plus or minus six (6) inches. Applicants who are required to comply with Sections 14 and 18 of this ordinance shall submit a diagram indicating that the interior configuration meets the requirements of those sections.

{e} If a person who wishes to operate a sexually oriented business is an individual, he shall sign the application for a Resolution License as applicant. If a person who wishes to operate a sexually oriented business is other than an individual, each person with an influential interest in the business shall sign the application for a license as applicant. Each applicant must be qualified under Section 5 and each applicant shall be considered a licensee if a Resolution License is granted.

{f} The information provided by an applicant in connection with an application for a Resolution License under this ordinance shall be maintained by the Greenville Town Hall of the Greenville Clerk/Treasurer on a confidential basis, and such information may be disclosed only as may be required, and only to the extent required, by law or court order.

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Section 5. Issuance of Resolution License.

(a) Upon the filing of a completed application under Section 4(c) for a sexually oriented business Resolution License, the Greenville Town Council shall within 30 days after approval of the Resolution License to the applicant. The Greenville Town Council shall issue a Resolution License unless:

- (1) An applicant is less than eighteen (18) years of age.
- (2) An applicant has failed to provide information as required by Section 4 for issuance of a Resolution License or has falsely answered a question or request for information on the application form.
- (3) The Resolution License application fee required by this Ordinance has not been paid.
- (4) The sexually oriented business, as defined herein, is not in compliance with the interior configuration requirements of this Ordinance or is not in compliance with locational requirements of this ordinance or the locational requirements of any other Town of Greenville, Indiana ordinances.
- (5) Any sexually oriented business in which the applicant has had an influential interest, has, in the previous five (5) years (and at a time during which the applicant had the influential interest):
 - (i) been declared by a court of law to be a nuisance; or
 - (ii) been subject to an order of closure or padlocking.
- (6) The applicant has been convicted of or pled guilty or nolo contendere to a specified criminal activity, as defined in this ordinance.

(7) The Greenville Town Council shall either issue a Resolution License or issue a written notice of denial of a Resolution License to the applicant with cause for denial. The Resolution License if approved shall contain the following:

(a) The Resolution License, if granted, shall state on its face the name of the person or persons to whom it is granted, the number of the Resolution License issued to the licensee(s), the expiration date, and, the address of the sexually oriented business. The sexually oriented business Resolution License shall be posted in a conspicuous place at or near the entrance to the sexually oriented business so that it may be read at any time. A sexually oriented business employee shall keep the employee's license on his or her person or on the premises where the licensee is then working or performing.

Section 6. Fees.

(a) The initial Resolution License and annual renewal fees for sexually oriented business Resolution Licenses; and sexually oriented business employee Resolution Licenses shall be as follows: Five Thousand U.S. Dollars (\$5,000) for; the initial fee for a sexually oriented business Resolution License and Two Thousand Five Hundred U.S. Dollars; (\$2,500) for annual; renewal; Five Hundred U.S. Dollars (\$500.00) for the initial sexually oriented business employee Resolution License and Five Hundred U.S. Dollars (\$500.00) for annual renewal.

Section 7. Inspection.

Sexually oriented businesses and sexually oriented business employees shall permit the Greenville Town Council or its designee (Greenville Marshal Department) to inspect, from time to time on an occasional basis, the portions of the sexually oriented business premises where patrons are permitted, for the purpose of ensuring compliance with the specific regulations of this Ordinance, during those times when the sexually oriented business is occupied by patrons or is open to the public. This section shall be narrowly construed by the Town of Greenville, Indiana Council to authorize reasonable inspections of the Resolution Licensed premises pursuant to this ordinance, but not to authorize a harassing or excessive pattern of inspections.

Section 8. Expiration of Resolution License.

(a) Each Resolution License shall remain valid for a period of one calendar year from the date of passage unless otherwise suspended or revoked. Such Resolution License may be renewed only by making application and payment of a fee as provided in Section 4 and Section 6.

(b) Application for renewal should be made pursuant to the procedures set forth in Section 4 at least ninety (90) days before the expiration date, and when made less than ninety (90) days before the expiration date, the expiration of the Resolution License will not be affected.

Section 9. Suspension Resolution License.

(a) The Town of Greenville, Indiana Council shall issue a written letter of intent to suspend a sexually oriented business Resolution License for a period not to exceed thirty (30) days if the sexually oriented business Resolution Licensee has knowingly violated this ordinance or has knowingly allowed an employee to violate this Ordinance.

(b) The Town of Greenville, Indiana Council shall issue a written letter of intent to suspend a sexually oriented business employee Resolution License if the employee has knowingly violated this Ordinance.

Section 10. Revocation Resolution License.

(a) The Town of Greenville, Indiana Council shall issue a letter of intent to revoke a sexually oriented business Resolution License or a sexually oriented business employee license, as applicable, if the Resolution Licensee knowingly violates this ordinance or has knowingly allowed an employee to violate this ordinance and the licensee's Resolution License has been suspended within the previous twelve month (12-month) period.

(b) The Town of Greenville, Indiana Council shall issue written intent to revoke a sexually oriented business Resolution License or a sexually oriented business employee Resolution License, as applicable, if:

(1) The Resolution Licensee has knowingly given false information in the application for the sexually oriented business Resolution License.

(2) The Resolution Licensee has knowingly or recklessly engaged in or allowed possession, use, or sale of controlled substances on the premises;

(3) The Resolution Licensee has knowingly or recklessly engaged in or allowed prostitution on the premises;

(4) The Resolution Licensee knowingly or recklessly operated the sexually oriented business during a period of time when the Resolution License was finally suspended or revoked; or

(5) The Resolution Licensee has knowingly or recklessly engaged in or allowed any specified sexual activity to occur in or on the Resolution Licensed premises.

(c) The fact that any relevant conviction is being appealed shall have no effect on the revocation of the Resolution License, provided that, if any conviction which serves as a basis of a Resolution License revocation is overturned or reversed on appeal, that conviction shall be treated as null and of no effect for revocation purposes.

(d) When, after the notice and hearing procedure described in Section 11, the Town of Greenville, Indiana Council revokes a license, the revocation shall continue for one (1) year and the licensee shall not be issued a sexually oriented business Resolution License or sexually oriented business employee license for one (1) year from the date revocation becomes effective.

Section 11. Hearing: Resolution License denial, revocation, and suspension: appeal.

(a) When the Town of Greenville Council issues a written notice of intent to deny, suspend, or revoke a Resolution License, the Town of Greenville Council shall immediately send such notice, which shall include the specific grounds under this ordinance for such action, to the applicant or Resolution Licensee (respondent) by personal delivery or certified mail. The notice shall be directed to the most current business address or other mailing address on file with the Town of Greenville Council Clerk/Treasurer for the respondent. The notice shall specify a date, not less than ten (10) days nor more than twenty (20) days after the date the notice is issued, on which the Town of Greenville Council shall conduct a hearing on the Town of Greenville Council's intent to deny, suspend, or revoke the license.

At the hearing, the respondent shall have the opportunity to present all of respondent's arguments and to be represented by counsel, present evidence and witnesses on his or her behalf, and cross-examine any of the Town of Greenville Council's witnesses. The Town of Greenville Council shall also be represented by counsel, and shall bear the burden of proving the grounds for denying, suspending, or revoking the Resolution License. The hearing shall take no longer than two (2) days, unless extended at the request of the respondent to meet the requirements of due process and proper administration of justice. The Town of Greenville Council shall issue a written decision, including specific reasons for the decision pursuant to

this ordinance, to the respondent within five (5) days after the hearing. Ten (10) days after the Board issues its written decision, said decision shall be deemed final and any Temporary License shall expire.

If the decision is to deny, suspend, or revoke the license, the decision shall include a statement advising the respondent of the right to appeal or challenge such decision in a court of competent jurisdiction. If the Town of Greenville Council's decision finds that no grounds exist for denial, suspension, or revocation of the license, the Town of Greenville Council shall, contemporaneously with the issuance of the decision, order the Town of Greenville Council to immediately withdraw the intent to deny, suspend, or revoke the license and to notify the respondent in writing by certified mail of such action. If the respondent is not yet Resolution Licensed, the Town of Greenville Council shall contemporaneously therewith issue the Resolution License to the applicant.

(b) If any court action challenging the Town of Greenville Council's decision is initiated, the Town of Greenville Council shall prepare and transmit to the court a transcript of the hearing within ten (10) days after receiving written notice of the filing of the court action. The Town of Greenville Council shall consent to expedited briefing and/or disposition of the action, shall comply with any expedited schedule set by the court, and shall facilitate prompt judicial review of the proceedings. The following shall apply to any sexually oriented business that is lawfully in operation, in all respects, as of the effective date of this ordinance: Upon the filing of any court action to appeal, challenge, restrain, or otherwise enjoin the Town of Greenville, Indiana's enforcement of the denial, suspension, or revocation, the Town of Greenville, Indiana shall immediately issue the respondent a Provisional License. The Provisional License shall allow the respondent to continue operation of the sexually oriented business or to continue employment as a sexually oriented business employee and will expire upon the court's entry of a judgment on the respondent's appeal or other action to restrain or otherwise enjoin the Town of Greenville, Indiana's enforcement.

Section 12. Transfer of Resolution License.

A Resolution Licensee shall not transfer his or her Resolution License to another, nor shall a Resolution Licensee operate a sexually oriented business under the authority of a Resolution License at any place other than the address designated in the sexually oriented business Resolution License application.

Section 13. Hours of Operation.

No sexually oriented business shall be or remain open for business between 12:00 midnight and 6:00 a.m. on any day.

Section 14. Regulations pertaining to exhibition of sexually explicit films or videos.

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(a) A person who operates or causes to be operated a sexually oriented business, other than an adult motel, which exhibits on the premises, through any mechanical or electronic image-producing device, a film, video cassette, or other visual reproduction characterized by an emphasis on the display of specified sexual activities or specified anatomical areas shall comply with the following requirements.

(1) Each application for a sexually oriented business Resolution License shall contain a diagram of the premises showing the location of all operator's stations, viewing rooms, overhead lighting fixtures, video cameras and monitors installed for monitoring purposes and restrooms, and shall designate all portions of the premises in which patrons will not be permitted. Restrooms shall not contain video reproduction equipment. The diagram shall also designate the place at which the Resolution License will be conspicuously posted, if granted. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however, each diagram shall be oriented to the north or to some designated street or object and shall be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus six inches. The Town of Greenville Council may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared.

(2) It shall be the duty of the operator, and of any employees present on the premises, to ensure that no patron is permitted access to any area of the premises which has been designated as an area in which patrons will not be permitted in the application filed pursuant to Paragraph 1 of this subsection.

(3) The interior premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than five (5.0) foot candles as measured at the floor level. It shall be the duty of the operator, and of any employees present on the premises, to ensure that the illumination described above is maintained at all times that the premises is occupied by patrons or open for business.

(4) It shall be the duty of the operator, and of any employees present on the premises, to ensure that no specified sexual activity occurs in or on the Resolution Licensed premises.

(5) It shall be the duty of the operator to post conspicuous signs in well-lighted entry areas of the business stating all of the following:

- (i) That the occupancy of viewing rooms is limited to one person,
- (ii) That sexual activity on the premises is prohibited,
- (iii) That the making of openings between viewing rooms is prohibited,
- (iv) That violators will be required to leave the premises,
- (v) That violations of Subparagraphs (i), (ii) and (iii) of this paragraph, are unlawful.

(6) It shall be the duty of the operator to enforce the regulations articulated in (5)(i) through (iv) above.

(7) The interior of the premises shall be configured in such a manner that there is an unobstructed view from a operator's station of every area of the premises, including the interior of each viewing room but excluding restrooms, to which any patron is permitted access for any purpose. An operator's station shall not exceed thirty-two (32) square feet of floor area. If the premises has two (2) or more operator's stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose from at least one of the operator's stations. The view required in this paragraph must be by direct line of sight from the operator's station. It is the duty of the operator to ensure that at least one employee is on duty and situated in each operator's station at all times that any patron is on the premises. It shall be the duty of the operator, and it shall also be the duty of any employees present on the premises, to ensure that the view area specified in this paragraph remains unobstructed by any doors, curtains, walls, merchandise, display racks or other materials or enclosures at all times that any patron is present on the premises.

(a) It shall be unlawful for a person having a duty under this section to knowingly fail to fulfill that duty.

Section 15. Loitering, exterior lighting, visibility, and monitoring requirements.

(a) It shall be the duty of the operator of a sexually oriented business to: (1) post conspicuous signs stating that no loitering is permitted on such property; (2) designate one or more employees to monitor the activities of persons on such property by visually inspecting such property at least once every ninety (90) minutes or inspecting such property by use of video cameras and monitors; and (3) provide lighting of the exterior premises to provide for visual inspection or video monitoring to prohibit loitering. If used, video cameras and monitors shall operate continuously at all times that the premises are open for business. The monitors shall be installed within an operator's station.

(b) It shall be unlawful for a person having a duty under this section to knowingly fail to fulfill that duty.

(c) No sexually oriented business shall erect a fence, wall, or other barrier that prevents any portion of the parking lot(s) for the establishment from being visible from a public right of way.

Section 16. Enforcement.

(a) Any sexually oriented business which engages in repeated or continuing violations of this ordinance shall constitute a public nuisance. For purposes of this ordinance, "repeated violations" shall mean three or more violations

of this ordinance within a one (1) year period dating from the time of any violation, and a "continuing violation" shall mean a violation of this ordinance lasting for three or more consecutive days.

(b) The Town of Greenville, Indiana's legal counsel is hereby authorized to institute civil proceedings necessary for the; enforcement of this ordinance to prosecute, restrain, or correct violations hereof. Such proceedings, in-

cluding injunction, shall be brought in the name of the Town of Greenville, Indiana, provided, however, that nothing in this section and no action taken hereunder, shall be held to exclude such proceedings as may be authorized by other provisions of this ordinance, or any of the laws or ordinances in force in the Town of Greenville, Indiana or to exempt anyone violating this ordinance or any part of the said laws from any penalty which may be incurred.

Section 17. Applicability of ordinance to existing businesses.

This ordinance is necessary to the immediate preservation of the public health and safety, to prevent the negative secondary effects of sexually oriented businesses, and therefore shall become effective immediately upon passage. All sexually oriented businesses lawfully operating in all respects, and all sexually oriented business employees working in a lawfully operating sexually oriented business, on the effective date of this ordinance, are hereby granted a *De Facto* Temporary License to continue operation or employment without a Resolution License for a period of thirty (30) days following the effective date of this ordinance. By the end of said thirty (30) days, all sexually oriented businesses and sexually oriented business employees shall apply for a Resolution License under this ordinance. During said thirty (30) days, all requirements of this ordinance, except for the requirement of obtaining a Resolution License, shall be in full force and effect.

Section 18. Prohibited activities.

It is unlawful for a sexually oriented business to knowingly violate the following regulations or to knowingly allow an employee or any other person to violate the following regulations.

(a) It shall be a violation of this ordinance for a patron, employee, or any other person to knowingly or intentionally, in a sexually oriented business, appear in a state of nudity, regardless of whether such public nudity is expressive in nature.

(b) It shall be a violation of this ordinance for a person to knowingly or intentionally, in a sexually oriented business, appear in a semi-nude condition unless the person is an employee who, while semi-nude, remains at least six (6) feet from any patron or customer and on a stage at least eighteen (18) inches from the floor in a room of at least one thousand (1,000) square feet.

(c) It shall be a violation of this ordinance for any employee who regularly appears semi-nude in a sexually oriented business to knowingly or intentionally touch a customer or the clothing of a customer on the premises of a sexually oriented business.

(d) It shall be a violation of this ordinance for any person to sell, use, or consume alcoholic beverages on the premises of a sexually oriented business.

(e) It shall be a violation of this ordinance for any person to knowingly allow a person under 18 years of age to be or remain on the premises of a sexually oriented business.

A sign in a form to be prescribed by the Town of Greenville Council, and summarizing the provisions of Paragraphs (a), (b), (c), (d), and (e) of this Section, shall be posted near the entrance of the sexually oriented business in such a manner as to be clearly visible to patrons upon entry.

Section 19. Scienter required to prove violation or business licensee liability.

This ordinance does not impose strict liability. Unless a culpable mental state is otherwise specified herein, a showing of a knowing or reckless mental state is necessary to establish a violation of a provision of this ordinance. Notwithstanding anything to the contrary, for the purposes of this ordinance, an act by an employee that constitutes grounds for suspension or revocation of that employee's resolution license shall be imputed to the sexually oriented Business Resolution Licensee for purposes of finding a violation of this ordinance, or for purposes of Resolution License denial, suspension, or revocation, only if an officer, director, or general partner, or a person who managed, supervised, or controlled the operation of the business premises, knowingly or recklessly allowed such act to occur on the premises. It shall be a defense to liability that the person to whom liability is imputed was powerless to prevent the act.

(1)

~~It is the intent of the Town of Greenville, Indiana Council to not risk applicant Resolution License~~

In the event that a Town of Greenville, Indiana official is required to take an act or do a thing pursuant to this ordinance within a prescribed time, and fails to take such act or do such thing within the time prescribed, said failure shall not prevent the exercise of constitutional rights of an applicant or licensee. If the act required of the Town of Greenville, Indiana Council under this ordinance, and not completed in the time prescribed, includes approval of conditions necessary for approval by the Town of Greenville, Indiana Council of an applicant or Resolution Licensee's application for sexually oriented Business Resolution License or a sexually oriented business employee's Resolution License (including a renewal), the condition shall be deemed met the day after the deadline for the Town of Greenville, Indiana's Council action has passed.

Section 21. Location of sexually oriented businesses.

- (a) Sexually oriented businesses shall not be issued a Special Resolution License. It shall be unlawful to operate a sexually oriented business except in the areas designated as mixed use by the Town of Greenville Land Use Map as General Commercial, Light Industrial and Mix Use. See attached map for these areas with hatch markings.
- (b) It shall be unlawful to establish, operate, or cause to be operated a sexually oriented business in the Town of Greenville, Indiana, unless said sexually oriented business is at least:
- (1) 500 feet from any parcel occupied by another sexually oriented business or by a business licensed by the State of Indiana to sell alcohol at the premises; and
 - (2) 500 feet from any parcel occupied by any church, public or private elementary or secondary school, daycare center or preschool, occupied residential home, or any public park.
- (c) For the purpose of this section, measurements shall be made in a straight line in all directions without regard to intervening structures or objects, from the nearest portion of any building or structure on the premises where the sexually oriented business is located to the closest property line of the property containing the church, public or private elementary or secondary school, daycare center or preschool, occupied residential home or any public park.
- (d) Notwithstanding anything to the contrary in any Town of Greenville, Indiana ordinance, a nonconforming sexually oriented business, lawfully existing in all respects under law prior to the effective date of this ordinance, may continue to operate for one (1) year following that date in order to make a reasonable recoupment of its investment in its current location. At the conclusion of said one (1) year, the use will no longer be recognized as a nonconforming use, provided that a nonconforming sexually oriented business may apply for one or more six-month extensions of the original one year period upon a showing of financial hardship. An application for an initial extension based upon a showing of financial hardship ("hardship exception") shall be made at least sixty (60) days before the conclusion of the aforementioned one year (1-yr.) period. If a hardship extension is granted, subsequent applications for hardship extensions shall be made at least sixty (60) days before the conclusion of the non-conforming sexually oriented business's current extension period.
- (e) Procedure for seeking hardship extension. An application for a hardship extension shall be filed in writing with the Town of Greenville, Indiana Council, and shall include evidence of purchase and improvement costs, income earned and lost, depreciation, and costs of relocation. Within ten (10) days after receiving the application, the Town of Greenville Council shall schedule a public hearing on the application before the Greenville, Indiana Town Council which public hearing shall be conducted within thirty (30) days after the Town of Greenville Council's receipt of the application. Notice of the time and place of such public hearing shall be published at least ten (10) days before the hearing in a newspaper of general circulation published within the Town of Greenville, Indiana, and shall contain the particular location for which the hardship extension is requested.
- The Town of Greenville, Indiana Council shall issue a written decision within ten (10) days after the public hearing on the application for a hardship extension. The hardship extension shall be granted upon a showing that the nonconforming sexually oriented business is unable, absent the extension, to make a reasonable recoupment of its investment in its currently lawful, nonconforming use location.

Section 22. Severability.

This ordinance and each section and provision of said ordinance hereunder, are hereby declared to be independent divisions and subdivisions and, notwithstanding any other evidence of legislative intent, it is hereby declared to be the controlling legislative intent that if any provisions of said ordinance, or the application thereof to any person or circumstance is held to be invalid, the remaining sections or provisions and the application of such sections and provisions to any person or circumstances other than those to which it is held invalid, shall not be affected thereby, and it is hereby declared that such sections and provisions would have been passed independently of such section or provision so known to be invalid. Should any procedural aspect of this ordinance be invalidated, such invalidation shall not affect the enforceability of the substantive aspects of this ordinance.

Section 23. Conflicting code provisions.

In the event of any conflict between any provision of this ordinance and any provision(s) in another Town of Greenville, Indiana Ordinance, the provisions of this ordinance shall prevail.

Section 24. Effective date, Enforcement, Fines and Penalties.**ENFORCEMENT:**

Enforcement of this Ordinance shall be pursuant to I.C. 36-8-2-4, I.C. 36-8-2-10, I.C. 36-8-2-13, I.C.36-1-6-2, I.C.36-1-6-3, I.C.36-1-6-4, or a successor statute if said statute is repealed.

Fines and Penalties:

1. The Town of Greenville Council shall give all persons holding a substantial interest in any Real property, which is not in compliance with this Ordinance ten (10) days written notice to correct the condition and bring the property into compliance. Such notice may be in person by any member of the Greenville Marshal Department, or by mailing it by registered or certified mail with return receipt requested.

2. That for each day any person or entity shall be in violation of this Ordinance after the ten (10) day period set forth in paragraph one (1) above, said person shall be fined an amount not less than \$1,000.00 US Dollars (\$1,000.00) per day plus Attorney fees and Court Cost.

3. If levied fines are not paid within 30 days, a lien will be sought against person or person's responsible real estate in accordance with I.C. 36-1-6-2.

4. Furthermore, if the condition of said real estate has not been corrected within thirty (30) days after the aforesaid ten (10) day notice period, the Town of Greenville Council may cause to be certified to the County Auditor as a charge against the taxes due and payable to the County Treasurer in the following year together with Attorney Fees and Court Cost in accordance with IC 36-1-6-2 or successor statute, if said statute is repealed.

5. The Town of Greenville may pursue any and all penalties described in I.C. 36-1-6-3 in addition to the penalties described in I.C. 36-1-6-4, or a successor statute if said statute is repealed.

6. No penalty shall be levied for violation of this Ordinance, nor shall any action be taken by the Town to bring the real property into compliance with this Ordinance, unless all persons holding a substantial interest in the property are given a reasonable opportunity to bring the property into compliance.

7. This Ordinance replaces Ordinance 2006-T-62 and 2006-T-62A. Ordinance 2006-T-62 and 2006-T-62A shall be moved to the voided Ordinance file after passage of this Ordinance.

8. The Town of Greenville Clerk/Treasurer shall publish this Ordinance within 30 days in the New Albany Tribune after passage.

9. The Town of Greenville Clerk/Treasurer shall attach a copy of the publication and related information to the original signed Ordinance and a PDF file shall be added to the electronic file copy of this Ordinance.

ADOPTED BY THE TOWN COUNCIL OF GREENVILLE, INDIANA, ON THE 18th DAY OF JULY, 2011.

PRESIDENT OF THE TOWN COUNCIL OF GREENVILLE, INDIANA

TALBOTTE RICHARDSON,

JACK TRAVILLIAN,

CLERK/TREASURER

PREPARED BY: RANDAL JOHNES